

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 134

June 23, 1958

JOINT LIABILITY

Syllabus:

When a husband only signs a joint return, it may be presumed that the return was filed with the tacit consent of the wife. However, whether there was actually such consent and the consequent joint liability must be a factual determination in each particular instance.

Taxpayer and her husband filed separate returns in 1945, in 1946 a joint return, which was not signed by taxpayer, and no returns from 1947 through 1950. Jeopardy assessments were levied against taxpayer and her husband jointly for the years 1946 through 1950. These were permitted to become final and liens were filed. Taxpayer is now divorced and wishes to remove the liens as to her. Advice is requested whether we may compute taxpayer's liability separately for the years 1946 through 1950.

Taxpayer's liability should be computed separately unless she elected to file jointly. The wife's failure to sign a joint return is not conclusive as to the validity of the return. Where the husband files a joint return without objection from the wife, who fails to file separately, it is presumed that the return was filed with the tacit consent of the wife. W. L. Kann, 18 TC 1032, aff'd 210 F2d 247, cert. den. 347 U.S. 967. Hyman B. Stone, 22 TC 893, placed the emphasis upon the intent of the taxpayers at the time of filing. The facts in the present case are distinguishable from both the Kann and Stone cases. Taxpayer had filed separately in preceding years and filed a separate, albeit late, return for the year in question. She has made a sworn affidavit to the effect that she did not intend to file a joint return and that the return was filed without her signature, knowledge or consent. Therefore, since there was no joint return filed in 1946, there could be no joint liability for the years in which no returns were filed. Consequently, taxpayer's liability may be determined separately and she is only liable for the tax due on her separate returns.