

## WASHINGTON, DC 20217

Docket No. 3961-20

## ORDER

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit herewith to petitioner and to respondent a copy of the pages of the of the trial of the above case before Judge Mark V. Holmes at San Francisco, California on October 29, 2021, containing his oral findings of fact and opinion rendered after the conclusion of trial.

In accordance with the oral findings of fact and opinion, a decision will be entered under Rule 155.

**(Signed) Mark V. Holmes**  
**Judge**

**Served 12/17/21**

1 Bench Opinion by Judge Mark V. Holmes

2 October 29, 2021

3 Elizabeth Kitazono, Petitioner and Christopher K. Chung,  
4 Intervenor v. Commissioner

5 Docket No. 3961-20

6 THE COURT: Good evening. In the case of  
7 Elizabeth Kitazono, Petitioner and Christopher K. Chung,  
8 Intervenor against Commissioner, docket number 3961-20.  
9 The Court has decided to render oral findings of fact and  
10 opinion in this case and the following represents the  
11 Court's oral findings of fact and opinion.

12 This bench opinion is made pursuant to the  
13 authority granted by section 7459(b) of the Internal  
14 Revenue Code of 1986, as amended and Rule 152 of the Tax  
15 Court's Rules of Practice and Procedure.

16 This case was brought by Elizabeth Kitazono.  
17 Ms. Kitazono in 2000 married Christopher Chung and they  
18 moved from California to Chicago. While in Chicago Mr.  
19 Chung worked for Anderson<sup>e</sup> Consulting, later known as <sup>M-H</sup>  
20 Accenture. He left Accenture and started several  
21 companies. He is a serial entrepreneur. The one  
22 remaining company of interest to us tonight is called  
23 Essention Group, Incorporated. Meanwhile, Ms. Kitazano  
24 was earning her bachelor's of science degree in biology  
25 and she ended up working at the San Francisco Zoo during

1 the tax years in question, which are 2015 through 2017.  
2 She was a wage earner during those years and had a  
3 sufficient personal income tax withheld from her wages.  
4 After she and her husband had their two children, she  
5 became their primary caretaker and Mr. Chung solely  
6 managed his business and their rental properties. Their  
7 marriage turned sour while they were living in San  
8 Francisco, Mr. Chung began having extramarital affairs  
9 which Ms. Kitazano did not realize until years later. She  
10 alleges that she suffered from emotional abuse, had a  
11 tendency to acquiesce in favor of Mr. Chung as his  
12 fortunes in the world increased and hers remained  
13 relatively smaller.

14 She feels that he was abusive both towards her<sup>me</sup>  
15 and towards their children, but most importantly Mr.  
16 Chung's emotional abuse turned violent and became physical  
17 prompting at least two visits from local law enforcement.  
18 The first <sup>was on</sup> ~~son~~ May 8th of 2016<sup>there were a</sup> second and third in 2016 <sup>in</sup> as  
19 well. The couple eventually split and have been legally  
20 separated since September 2018. Throughout this, Mr.  
21 Chung's success in business increased tremendously. On  
22 their tax returns for 2015, 2016 and 2017 he reported  
23 hundreds of thousands of income on his returns as wages  
24 and even a few tens of thousands of dollars income from  
25 real estate, which had become the couple's investment.



1 Mr. Chung also managed the couple's tax return filing  
2 obligations. He prepared their 2015 tax return with a  
3 CPA, Aigul Myekyei for tax years 2016 and 2017 he prepared  
4 the individual income tax returns himself and Ms. Kitazano  
5 doesn't even recall reviewing or signing the returns. At  
6 one point Ms. Kitazano inquired whether she had she had to  
7 sign income tax returns, Mr. Chung indicated that her  
8 signature was unnecessary, because he had electronically  
9 filed them. And indeed the stipulations that I admitted  
10 into evidence at the beginning of trial don't show a  
11 physical signature on those returns.

12 This doesn't really matter. In general, a joint  
13 return must be signed by both spouses. See regulation  
14 section 26 CFR 1.6013-1(a)(2). It is undisputed that even  
15 if Ms. Kitazano did not sign the income tax returns that  
16 Mr. Chung filed, they were filed as joint returns and it  
17 was well settled that if an income tax return is intended  
18 by both spouses as a joint return, the absence of the  
19 signature of one spouse does not prevent their intention  
20 from being realized.

21 We know that Ms. Kitazano had wage income of her  
22 own. She did not file a tax return on her own. So her  
23 intent was to file a joint return even if she did not see  
24 the final product or sign the final return. See, for  
25 example, Estate of Campbell v. Commissioner, 59 T.C. 1, 12



1 (1971). These tax returns for the 2015 through 2017 tax  
2 years were audited by the IRS, which determined large  
3 deficiencies, particularly enormous adjustments to add <sup>in</sup> ~~in~~ <sup>additional</sup>  
4 dividends from Essention. These constructive dividends, <sup>mh</sup> ~~mh~~  
5 none were reported on any of the three returns as  
6 originally filed <sup>mh</sup> ~~mh~~ were, again, in the hundreds of thousands <sup>mh</sup>  
7 of dollars: for 2015, \$201,401; for 2016, \$667,201 and  
8 for 2017 \$347,670. However, during the pretrial process  
9 and in the run up to this trial today, at the end the IRS  
10 conceded a great deal of these adjustments and in Ms.  
11 Kitazano's case, as well as Mr. Chung's case, in the end  
12 the construction dividends, although they stayed the same  
13 for 2015 at \$201,401 were greatly reduced to \$256,925 in  
14 2016 and \$87,152 in 2017.

15 The question we face tonight is whether Ms.  
16 Kitazano has to pay tax on that increase in the conceded  
17 income that the couple received during those three years  
18 in the form of constructive dividends from Mr. Chung's  
19 company. As a general matter married taxpayers may file  
20 joint federal income tax returns if they choose to do so.  
21 Section 6013. Section 6013(d)(3) provides that if a joint  
22 return is filed each spouse is jointly and severally  
23 liable for the entire tax due for that year. A requesting  
24 spouse may be relieved from joint and severable liability  
25 under section 6015, however, if certain conditions are

1 met. Section 6015 provides three different avenues to  
2 relief under subsections b, c, and f. A requesting spouse  
3 who satisfies the conditions of section 6015(b) may be  
4 relieved of liability from an understatement of tax  
5 attributable to the other spouse. A requesting spouse who  
6 satisfies the conditions of section 6015(c) may have his  
7 or her liability for a deficiency limited to the portion  
8 of the deficiency allocated to him or her under section  
9 6015(d). <sup>(A)</sup> These are the two subsections which are at issue  
10 in this case. mt

11 <sup>no A</sup> I will begin and taking them in reverse order. mh  
12 Subject to other conditions, section 6015(c) allows a  
13 divorced or separated spouse to elect to limit her  
14 liability for a deficiency with respect to a joint return,  
15 to the portion of that deficiency allocable to her under  
16 subsection d. Under section 6015(d)(3)(A), "Any item  
17 giving rise to a deficiency in a joint return shall be  
18 allocated to individuals filing the return in the same  
19 manner as it would have been allocated if the individuals  
20 had filed separate returns for the taxable year."  
21 Furthermore, according to the regulation, "erroneous items  
22 of income are allocated to the spouse who was the source  
23 of the income." See 26 CFR section 1.6015-3(d)(2)(iii).

24 Denial of relief requires evidence that the  
25 requesting spouse had "actual knowledge at the time such



1 individual signed the return of any item giving rise to a  
2 deficiency or portion thereof which is not allocable to  
3 such individual." See section 6015(c)(3)(C).

4 Section 6015(c) differs from the relief under  
5 provisions of subsections b and f, under which relief may <sup>mh</sup>  
6 be denied if party requesting relief had even constructive  
7 knowledge of the item giving rise to the deficiency.  
8 There has been a question as to where the burden of proof  
9 lies in cases, when as here, the IRS favors granting  
10 relief and the non-requesting spouse, here Mr. Chung,  
11 intervenes to oppose it. We have resolved such cases in  
12 the past by determining whether actual knowledge has been  
13 established by a preponderance of the evidence as  
14 presented by all parties. See Pounds v. Commissioner,  
15 T.C. Memo. 2011-202; Knight v. Commissioner, T.C. Memo.  
16 2010-242.

17 To determine whether a requesting spouse had any  
18 knowledge, I have to consider all of the facts and  
19 circumstances. See section 26 CFR 1.6015-3(c)(2)(iv).  
20 Similarly, I look to the surrounding facts and  
21 circumstances for what is called an actual and clear  
22 awareness, as opposed to a reason to know of the items  
23 giving rise to the deficiency. See Cheshire v.  
24 Commissioner, 115 T.C. 183,195 (2000), aff'd, 282 F.3d 326  
25 (5th Circuit <sup>2002</sup>). The regulations also give me guidance <sup>mh</sup>



1 in a case like this where the question is one of omitted  
2 income. 26 CFR section 1.6015-3(c)(2)(i)(A) states, "in  
3 the case of omitted income knowledge of the item includes  
4 knowledge of the receipt of the income."

5 Moreover, subpart iii, says, "knowledge of the  
6 source of an erroneous item is not sufficient to establish  
7 actual knowledge." For example, assume H knew that W  
8 owned ~~Ex~~ Co stock, but H did not know that ~~Ex~~ Co paid mh  
9 dividends to W that year. H's knowledge of W's ownership  
10 in ~~Ex~~ Co is not sufficient to establish that H had actual  
11 knowledge of the dividend income from ~~Ex~~ Co. Even if H's mh  
12 knowledge of W's ownership interest in ~~Ex~~ Co indicates a mh  
13 reason to know of the dividend income, actual knowledge of  
14 such dividend income cannot be inferred from H's reason to  
15 know.

16 Now in figuring out whether Ms. Kitazano had  
17 actual knowledge on the date she signed the return or  
18 actually when the return was filed with her intent to file  
19 a joint return, which it was in August of 2018 and in  
20 earlier years, all of the facts and circumstances have to  
21 be considered. I have to consider whether she made a  
22 deliberate effort to avoid learning about any of these  
23 items in order to be shielded from liability. One of the  
24 things I look at is joint ownership. That is a factor  
25 that supports a finding of actual knowledge of an

1 erroneous item, but here Ms. Kitazano had no joint  
2 ownership except by operation of community property laws  
3 in Mr. Chung's corporation Essention. So that doesn't  
4 count under 26 CFR section 1.6015-3(c)(2)(iv). There is  
5 an exception in the next subpart which came up during the  
6 course of the trial for victims of domestic abuse, and  
7 that is if a victim of domestic abuse prior to the time  
8 their return was signed and that as a result of the prior  
9 abuse the requesting spouse did not challenge the  
10 treatment of an item on the return for fear of the  
11 requesting spouse's retaliation, the limitation on actual  
12 knowledge in this paragraph will not apply.

13 So I ~~concluded~~<sup>sider</sup> whether abuse exists. It's <sup>a</sup> term <sup>(m)</sup>  
14 that's not defined in the regulations. It had developed  
15 in the caselaw. Well the caselaw in this leads me to  
16 conclude that it is more likely than not that there is  
17 abuse for purposes of innocent spouse relief when there  
18 has been verifiable physical harm. See, for example,  
19 McKnight v. Commissioner, T.C. Memo. 2006-155 (finding  
20 abuse where an alcoholic nonrequesting spouse physical  
21 shoved, hit, cut and beat the requesting spouse on  
22 multiple occasions.) That's kind of what happened here.  
23 There was physical abuse three times. It was part of an  
24 ongoing pattern, close in time <sup>to</sup> ~~of~~ the filing of three tax <sup>mh</sup>  
25 returns at issue here. So I do find that Ms. Kitazano



1 established by a preponderance of the evidence that she  
2 was abused. Nevertheless, I also have to find that that  
3 was not what compelled her to not challenge the treatment  
4 of any items on the return for out of fear. I don't think  
5 she even knew how the returns were being <sup>Under these</sup> ~~(audio~~ mh  
6 ~~interference)~~ circumstances she would be on the hook for mh  
7 filing that joint return, <sup>and</sup> ~~but~~ I don't think she gets out mh  
8 of the knowledge requirement by the abuse which she  
9 suffered here.

10 What has to be shown is whether she had actual  
11 knowledge of the receipt of the constructive dividends.  
12 It was clear to me from the evidence that Ms. Kitazano  
13 knew that she was using some corporate funds, her  
14 signature was on some of the checks that had Essention  
15 Group on them. She certainly understood that some of the  
16 everyday expenses in the household were coming from  
17 Essention, but that's not the same thing. As the  
18 regulation said, knowing the source of the item is not  
19 enough to show that she knew that the item was erroneous.  
20 There was perfectly legitimate and reported income coming  
21 in from Essention to the couple. It was in such enormous  
22 quantities that I believe her testimony when she said that  
23 she thought that was more than enough to seed the  
24 investments, the couple <sup>made</sup> ~~when they were younger, had started~~ mh  
25 ~~engaging in,~~ and buying leveraged real estate, good real mh



1 estate investments that they had begun investing in. With  
2 that much money flowing through in the form of reportable  
3 wage income, it was not enough to say that she had reason  
4 to know that there might be even more coming in in the  
5 form of constructive dividends.

6 But even if the amount of those dividends was  
7 very large, which it isn't in relation to the average  
8 amount of wage income that was coming in, there is no  
9 evidence that she knew that this money was coming from  
10 Essention due to Mr. Chung giving himself constructive  
11 dividends. She knew that there was income coming in, but  
12 she did not know that it was in the form of constructive  
13 dividends, and she had no reason to know this in fact, but  
14 the standard here is whether by a preponderance of the  
15 evidence her knowledge has been proved, and that I can say  
16 was not done.

17 Certainly there was use of corporate credit  
18 cards, but at most she knew that the corporation was  
19 paying some of those expenses, but she may well have  
20 thought that that was part of Mr. Chung's wage income that  
21 was being reported as such. It was striking to me, for  
22 instance, that the checks that she signed that had  
23 Essention Group on them were for things like daycare and  
24 other common household expenses relating to childcare, and  
25 he told her, I believe her when she said this, that this

1 was part of a corporate program to pay for childcare  
2 expenses. In short it has not been shown by a  
3 preponderance of the evidence that Ms. Kitazano had  
4 acknowledge of the contested items here that were  
5 erroneous.

6 Due to all the other concessions in the case on  
7 both sides I can't render a decision now for one side or  
8 the other. A decision will be entered under Rule 155.

9 This concludes the Court's oral findings of fact  
10 and opinion in this case.

11 (Whereupon, at 7:27 p.m., the above-entitled  
12 matter was concluded.)

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