

HOUSE No. 4474

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to innocent spouses.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 62C of the General Laws, as appearing the 2014 Official Edition, is hereby
2 amended by striking out section 84 and inserting in place thereof the following new section:-

3 Section 84. Relief from joint and several liability on joint return

4 (a) Notwithstanding section 6 of chapter 62C an individual who has made a joint return
5 may elect to seek relief under the procedures prescribed under subsection (b), subsection (c), or
6 both subsections, concurrently.

7 (b) (1) An individual filing a joint return under this chapter for the taxable year shall
8 be relieved of liability for an understatement of tax, including interest, penalties and other
9 amounts, for the taxable year on which such understatement was reported, to the extent such
10 liability is attributable to such understatement, if:

11 (i) the understatement is attributable to erroneous items of the other individual
12 filing the joint return,

13 (ii) the individual seeking relief from liability establishes that in signing the return
14 he or she did not know, and had no reason to know, that there was such understatement,

15 (iii) taking into account all the facts and circumstances, it is inequitable to hold
16 the individual seeking relief from liability liable for the deficiency attributable to such
17 understatement, and

18 (iv) the individual seeking relief from liability elects, in such form as the
19 commissioner may prescribe, the application of this subsection not later than 2 years after the
20 commissioner has begun collection activities with respect to the individual making the election.

21 (2) If an individual who, but for clause (ii) of paragraph (1), would be relieved of liability
22 under paragraph (1) establishes that in signing the return such individual did not know, and had
23 no reason to know, the extent of such understatement, then such individual shall be relieved of
24 liability for the tax including interest, penalties and other amounts for such taxable year to the
25 extent that such liability is attributable to the portion of such understatement of which such
26 individual did not know and had no reason to know.

27 (c) (1) If an individual who has made a joint return for a taxable year elects the
28 application of this subsection, the individual's liability for a deficiency which is assessed with
29 respect to the return shall not exceed the portion of such deficiency properly allocable to the
30 individual under paragraphs (8) through (12), inclusive.

31 (2) Each individual who elects the application of this subsection shall have the burden of
32 proof with respect to establishing the portion of a deficiency allocable to such individual.

33 (3) An individual shall only be eligible to elect the application of this subsection if:

34 (i) at the time such election is filed, such individual is no longer married to, or is
35 legally separated from, the individual with whom such individual filed the joint return to which
36 the election relates, or

37 (ii) such individual was not a member of the same household as the individual
38 with whom such joint return was filed at any time during the 12-month period ending on the date
39 such election is filed.

40 (4) If the commissioner demonstrates that assets were transferred between individuals
41 filing a joint return as part of a fraudulent scheme by such individuals, an election under this
42 subsection by either individual shall be invalid, and section 6 of chapter 62C shall apply to the
43 joint return.

44 (5) An election under this subsection for any taxable year may be made at any time after
45 a deficiency for such year is asserted but not later than 2 years after the commissioner has begun
46 collection activities with respect to the individual making the election.

47 (6) If the commissioner demonstrates that an individual making an election under this
48 subsection had actual knowledge, at the time such individual signed the return, of an item giving
49 rise to a deficiency or portion thereof, which is not allocable to such individual under paragraphs
50 8 through 12, inclusive, such election shall not apply to such deficiency or portion. This
51 subparagraph shall not apply where the individual with actual knowledge establishes that such
52 individual signed the return under duress.

53 (7) Notwithstanding any other provision of this subsection, the portion of the deficiency
54 for which the individual electing the application of this subsection is liable, without regard to this

55 paragraph, shall be increased by the value of a disqualified asset transferred to the individual. For
56 purposes of this paragraph:

57 (i) The term “disqualified asset” means a property or right to property transferred
58 to an individual making the election under this subsection with respect to a joint return by the
59 other individual filing such joint return if the principal purpose of the transfer was the avoidance
60 of tax or payment of tax.

61 (ii) A transfer, other than a transfer pursuant to a decree of divorce or separate
62 maintenance or a written instrument incident to such a decree or to a transfer which an individual
63 establishes did not have as its principal purpose the avoidance of tax or payment of tax, which is
64 made less than one year before the first letter of proposed deficiency which allows the taxpayer
65 an opportunity for administrative review in the department of revenue is sent shall be presumed
66 to have as its principal purpose the avoidance of tax or payment of tax.

67 (8) The portion of a deficiency on a joint return allocated to an individual shall be the
68 amount which bears the same ratio to such deficiency as the net amount of items taken into
69 account in computing the deficiency and allocable to the individual bears to the net amount of all
70 items taken into account in computing the deficiency.

71 (9) If a deficiency or portion thereof is attributable to the disallowance of a credit or a tax
72 other than the tax imposed by chapter 62, required to be included with the joint return, and such
73 item is allocated to one individual under paragraph (10), such deficiency or portion thereof shall
74 be allocated to such individual. Any such item shall not be taken into account under paragraph
75 (8).

76 (10) (i) Except as provided in paragraphs (11) and (12), an item giving rise to a
77 deficiency on a joint return shall be allocated to individuals filing the return in the same manner
78 as it would have been allocated if the individuals had filed separate returns for the taxable year.

79 (ii) An item otherwise allocable to an individual under clause (i) shall be allocated
80 to the other individual filing the joint return to the extent the item gave rise to a tax benefit on the
81 joint return to the other individual.

82 (iii) The commissioner may provide for an allocation of an item in a manner not
83 otherwise prescribed by this paragraph if the commissioner establishes that such allocation is
84 appropriate due to fraud of one or both individuals.

85 (11) If an item of deduction or credit is disallowed in its entirety solely because a separate
86 return is filed, such disallowance shall be disregarded and the item shall be computed as if a joint
87 return had been filed and then allocated appropriately between the spouses.

88 (12) If the liability of a child of a taxpayer is included on a joint return, such liability
89 shall be disregarded in computing the separate liability of either spouse and such liability shall be
90 allocated appropriately between the spouses.

91 (d) If after taking into account all the facts and circumstances, the commissioner
92 determines it is inequitable to hold the individual liable for a deficiency, or portion thereof, and
93 relief is not available to such individual under subsection (b) or (c), the commissioner may
94 relieve such individual of such liability.

95 (e) (1) Except as provided in paragraphs (2) and (3), notwithstanding any general or
96 special law to the contrary, other than section 6 of chapter 58A, section 37 of chapter 62C or

97 sections 37A and 37C of chapter 62C, credit or refund shall be allowed or made to the extent
98 attributable to the application of this section.

99 (2) In the case of an election under subsection (b) or (c) or of a request for equitable relief
100 under subsection (d), if a decision of a court in a prior proceeding for the same taxable year has
101 become final, such decision shall be conclusive except with respect to the qualification of the
102 individual for relief which was not an issue in such proceeding. This paragraph shall not apply if
103 the court determines that the individual participated meaningfully in such prior proceeding.

104 (3) No credit or refund shall be allowed as a result of an election under subsection (c).

105 (f) The commissioner shall prescribe such regulations as are necessary to carry out the
106 provisions of this section, including:

107 (1) regulations providing methods for allocation of items other than the methods under
108 paragraph (10) subsection (c), and

109 (2) regulations providing the opportunity for an individual to have notice of, and an
110 opportunity to participate in, any administrative proceeding with respect to an election made
111 under subsection (b) or (c) or a request for equitable relief made under subsection (d) by the
112 other individual filing the joint return.