

HOUSE No. 4942

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, October 25, 2018.

The committee on Ways and Means, to whom was referred the Bill relative to innocent spouses (House, No. 2602), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4714).

For the committee,

JEFFREY SÁNCHEZ.

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**In the One Hundred and Ninetieth General Court
(2017-2018)**

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 SECTION 1. Chapter 62C of the General Laws, as appearing the 2016 Official Edition, is
2 hereby amended by striking out section 84 and inserting in place thereof the following section:-

3 Section 84. (a) Notwithstanding section 6 of chapter 62C, an individual who has made a
4 joint return may elect to seek relief under the procedures prescribed under subsection (b),
5 subsection (c), or both subsections, concurrently.

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

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

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

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

17 (iv) the individual seeking relief from liability elects, in such form as the
18 commissioner may prescribe, the application of this subsection not later than 2 years after the
19 commissioner has begun collection activities, as defined by the commissioner, with respect to the
20 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 application
28 of this subsection, the individual's liability for a deficiency which is assessed with respect to the
29 return shall not exceed the portion of such deficiency properly allocable to the individual under
30 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.

51 This subparagraph shall not apply where the individual with actual knowledge establishes that
52 such 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 the term “disqualified asset” means any property or right to property
57 transferred to an individual making the election under this subsection with respect to a joint
58 return by the other individual filing such joint return if the principal purpose of the transfer was
59 the avoidance of tax or payment of tax; provided, that a transfer, other than a transfer pursuant to
60 a decree of divorce or separate maintenance or a written instrument incident to such a decree or
61 to a transfer which an individual establishes did not have as its principal purpose the avoidance
62 of tax or payment of tax, which is made less than 1 year before the first letter of proposed
63 deficiency which allows the taxpayer an opportunity for administrative review in the department
64 of revenue is sent shall be presumed to have as its principal purpose the avoidance of tax or
65 payment of tax.

66 (8) The portion of a deficiency on a joint return allocated to an individual shall be the
67 amount which bears the same ratio to such deficiency as the net amount of items taken into
68 account in computing the deficiency and allocable to the individual under subsection (10) bears
69 to the net amount of all items taken into account in computing the deficiency.

70 (9) If a deficiency or portion thereof is attributable to the disallowance of a credit or a tax
71 other than the tax imposed by chapter 62, required to be included with the joint return, and such
72 item is allocated to 1 individual under paragraph (10), such deficiency or portion thereof shall be
73 allocated to such individual. Any such item shall not be taken into account under paragraph (8).

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

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

80 (iii) The commissioner may provide for an allocation of an item in a manner not
81 otherwise prescribed by this paragraph if the commissioner establishes that such allocation is
82 appropriate due to fraud of 1 or both individuals.

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

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

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

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

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

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

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

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

105 (1) regulations providing methods for allocation of items other than the methods under
106 clause (iii) of paragraph (10) of subsection (c), and

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