

SENATE NO. 1707

AN ACT PROVIDING RELIEF FROM JOINT AND SEVERAL LIABILITY ON JOINT RETURN

*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. Section eighty-four of Chapter sixty-two C of the General Laws, as appearing in the
2 nineteen hundred and ninety-six Official Edition, is repealed and replaced with the following:

SECTION 84.

RELIEF FROM JOINT AND SEVERAL

LIABILITY ON JOINT RETURN.

6 (a) In general — Notwithstanding section 6(a) —

7 (1) an individual who has made a joint return may elect to seek relief under the procedures
8 prescribed under section (b); and

9 (2) if such individual is eligible to elect the application of subsection (c), such individual may,
10 in addition to any election under paragraph (1), elect to limit such individual's liability for any
11 deficiency with respect to such joint return in the manner prescribed under subsection (c).

12 Any determination under this section shall be made without regard to community property
13 laws.

14 (b) Procedures for relief from liability applicable to all joint filers.

15 (1) In general, under procedures prescribed by the commissioner, if:—

16 (A) a joint return has been made for a taxable year;

17 (B) on such return there is an understatement of tax attributable to erroneous items of one
18 individual filing the joint return;

19 (C) the other individual filing the joint return establishes that in signing the return he or she did
20 not know, and had no reason to know, that there was such understatement;

21 (D) taking into account all the facts and circumstances, it is inequitable to hold the other
22 individual liable for the deficiency in tax for such taxable year attributable to such understatement, and

23 (E) the other individual elects (in such form as the commissioner may prescribe) the benefits of
24 this subsection not later than the date which is two years after the date the commissioner has begun to
25 collection activities with respect to the individual making the election, then the other individual shall
26 be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to
27 the extent such liability is attributable to such understatement.

28 (2) Apportionment of relief. If an individual who, but for paragraph (1)(C), would be relieved
29 of liability under paragraph (1), establishes that in signing the return such individual did not know, and
30 had no reason to know, the extent of such understatement, then such individual shall be relieved of
31 liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent
32 that such liability is attributable to the portion of such understatement of which such individual did not
33 know and had no reason to know.

34 (c) Procedures limiting liability for taxpayers no longer married or taxpayers legally separated
35 or not living together.

36 (1) In general, except as provided in this subsection, if an individual who has made a joint
37 return for any taxable year elects the application of this subsection, the individual's liability for any
38 deficiency which is assessed with respect to the return shall not exceed the portion of such deficiency

39 properly allocable to the individual under subsection (d).

40 (2) Burden of proof, except as provided in subparagraph (A)(ii) or (C) of paragraph (3), each
41 individual who elects the application of this subsection shall have the burden of proof with respect to
42 establishing the portion of any deficiency allocable to such individual.

43 (3) Election.

44 (A) Individuals eligible to make election.

45 (i) In general, an individual shall only be eligible to elect the application of this subsection
46 if:—

47 (I) at the same time such election is filed, such individual is no longer married to, or is legally
48 separated from, the individual with whom such individual filed the joint return to which the election
49 relates; or

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

52 (ii) Certain taxpayers ineligible to elect, if the commissioner demonstrates that assets were
53 transferred between individuals filing a joint return as part of a fraudulent scheme by such individuals,
54 an election under this subsection, by either individual shall be invalid (and section 6(a) shall apply to
55 the joint return).

56 (B) Time for election, an election under this subsection for any taxable year shall be made not
57 later than two years after the date on which the commissioner has begun collection activities with
58 respect to the individuals making the election.

59 (C) Election not valid with respect to certain deficiencies, if the commissioner demonstrates
60 that an individual making an election under this subsection had actual knowledge, at the time such
61 individual signed the return, of any item giving rise to a deficiency (or portion thereof) which is not

62 allocable to such individual under subsection (d), such election shall not apply to such deficiency (or
63 portion). This subparagraph shall not apply where the individual with actual knowledge establishes
64 that such individual signed the return under duress.

65 (4) Liability increased by reason of transfers of property to avoid tax:

66 (A) In general, notwithstanding any other provision of this subsection, the portion of the
67 deficiency for which the individual electing the application of this subsection is liable (without regard
68 to this paragraph) shall be increased by the value of any disqualified asset transferred to the individual.

69 (B) Disqualified asset. For purposes of this paragraph:—

70 (i) In general, the term “disqualified asset” means any property or right to property transferred
71 to an individual making the election under this subsection with respect to a joint return by the other
72 individual filing such joint return if the principal purpose of the transfer was the avoidance of tax or
73 payment of tax.

74 (ii) Presumption.

75 (I) In general, for purposes of clause (i), except as provided in subclause (II), any transfer
76 which is made after the date which is one year before the date on which the first letter of proposed
77 deficiency which allows the taxpayer an opportunity for administrative review in the Department of
78 Revenue is sent shall be presumed to have its principal purpose the avoidance of tax or payment of tax.

79 (II) Exceptions, subclause (I) shall not apply to any transfer pursuant to a decree of divorce or
80 separate maintenance or a written instrument incident to such a decree or to any transfer which an
81 individual establishes did not have as its principal purpose the avoidance of tax or payment of tax.

82 (d) Allocation of deficiency.

83 For purposes of subsection (c)

84 (1) In general, the portion of any deficiency on a joint return allocated to an individual shall be

85 the amount which bears the same ratio to such deficiency as the net amount of items taken into account
86 computing the deficiency and allocable to the individual under paragraph (3) bears to the net amount
87 of all items taken into account in computing the deficiency.

88 (2) Separate treatment of certain items. If a deficiency (or portion thereof) is attributable to:—

89 (A) the disallowance of a credit; or

90 (B) any tax required to be included with the joint return; and such item is allocated to one
91 individual under paragraph (3), such deficiency (or portion) shall be allocated to such individual.

92 Any such item shall not be taken into account under paragraph (1)

93 (3) Allocation of items giving rise to the deficiency. For purposes of this subsection:—

94 (A) In general, except as provided in paragraphs (A) and (5), any item giving rise to a
95 deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it
96 would have been allocated if the individuals had filed separate returns for the taxable year.

97 (B) Exception where other spouse benefits. Under rules prescribed by the commissioner, an
98 item otherwise allocable to an individual under subparagraph (A) shall be allocated to the other
99 individual filing the joint return to the extent the item gave rise to a tax benefit on the joint return to
100 the other individual.

101 (C) Exception for fraud. The commissioner may provide for an allocation of any item in a
102 manner not prescribed by subparagraph (A) if the commissioner establishes that such allocation is
103 appropriate due to fraud of one or both individuals.

104 (4) Limitations on separate returns disregarded. If an item of deduction or credit is disallowed
105 in its entirety solely because a separate return is filed, such disallowance shall be disregarded and the
106 item shall be computed as if a joint return had been filed and then allocated between the spouses
107 appropriately.

108 (5) Child's liability. If the liability of a child of taxpayer is included on a joint return, such
109 liability shall be disregarded in computing the separate liability of either spouse and such liability shall
110 be allocated appropriately between the spouses.

111 (e) Petition for review by the Department of Revenue.

112 (1) In general, in the case of an individual who elects to have subsection (b) or (c) apply:

113 (A) In general, the individual may petition the Department of Revenue to determine the
114 appropriate relief available to the individual under this section if such petition is filed during the 90-
115 day period beginning on the date on which the commissioner mails by certified or registered mail a
116 notice to such individual of the commissioner's determination of relief available to the individual.
117 Notwithstanding the preceding sentence, an individual may file such petition at any time after the date
118 which is six months after the date such election is filed with the commissioner and before the close of
119 such 90-day period.

120 (B) Restrictions applicable to collection of assessment.

121 (i) In general, except as otherwise provided, no levy or proceeding in court shall be made,
122 begun, or prosecuted against the individual making an election under subsection (b) or (c) for
123 collection of any assessment to which such election relates until the expiration of the 90-day period
124 described in subparagraph (A), or, if a petition has been filed with the Department of Revenue, until
125 the decision of the Department of Revenue has become final.

126 (ii) Authority to enjoin collection actions. Notwithstanding any other provision, the beginning
127 of such levy or proceeding during the time the prohibition under clause (i) is in force may be enjoined
128 by a proceeding in the proper court. The Department of Revenue shall have no jurisdiction under this
129 subparagraph to enjoin any action or proceeding unless a timely petition has been filed under
130 subparagraph (A) and then only in respect of the amount of the assessment to which the election under

131 subsection (b) or (c) relates.

132 (2) Suspension of running of period of limitations.

133 The running of the period of limitations on the collection of the assessment to which the
134 petition under paragraph (1)(A) relates shall be suspended for the period during which the
135 commissioner is prohibited by paragraph (1)(B) from collecting by levy or a proceeding in court and
136 for 60 days thereafter.

137 (3) Applicable rules.

138 (A) Allowance of credit or refund. Except as provided in subparagraph (B), notwithstanding
139 any other law or rule of law, credit or refund shall be allowed or made to the extent attributable to the
140 application of this section.

141 (B) Res judicata. In the case of any election under subsection (b) or (c), if a decision of the
142 Department of Revenue in any prior proceeding for the same taxable year has become final, such
143 decision shall be conclusive except with respect to the qualification of the individual for relief which
144 was not an issue in such proceeding. The exception contained in the preceding sentence shall not apply
145 if the Department of Revenue determines that the individual participated meaningfully in such prior
146 proceeding.

147 (4) Notice to other spouse. The Department of Revenue shall establish rules which provide the
148 individual filing a joint return but not making the election under subsection (b) or (c) with adequate
149 notice and an opportunity to become a party to a proceeding under either such subsection.

150 (f) Equitable relief. Under procedures prescribed by the commissioner, if:—

151 (1) taking into account all the facts and circumstances, it is inequitable to hold the individual
152 liable for any unpaid tax or any deficiency (or any portion of either); and

153 (2) relief is not available to such individual under subsection (b) or (c), the commissioner may

154 relieve such individual of such liability.

155 (g) Regulations. The commissioner shall prescribe such regulations as are necessary to carry
156 out the provisions of this section, including:—

157 (1) regulations providing methods for allocation of items other than the methods under
158 subsection (d)(3); and

159 (2) regulations providing the opportunity for an individual to have notice of, and an
160 opportunity to participate in, any administrative proceeding with respect to an election made under
161 subsection (b) or (c) by the other individual filing the return.