

By Ms. Candaras of Wilbraham, petition of Gale D. Candaras and Benjamin Swan for legislation to provide relief from liability in the filing of certain tax returns. Revenue.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

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3 Edition, is repealed and replaced with the following:—

4 SECTION 84.
5 RELIEF FROM JOINT AND SEVERAL
6 LIABILITY ON JOINT RETURN.

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

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

10 (2) if such individual is eligible to elect the application of sub-
11 section (c), such individual may, in addition to any election under
12 paragraph (1), elect to limit such individual's liability for any
13 deficiency with respect to such joint return in the manner pre-
14 scribed under subsection (c).

15 Any determination under this section shall be made without
16 regard to community property laws.

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

19 (i) In general, under procedures prescribed by the commis-
20 sioner, if:—

- 21 (A) a joint return has been made for a taxable year;
- 22 (B) on such return there is an understatement of tax attributable
23 to erroneous items of one individual filing the joint return;
- 24 (C) the other individual filing the joint return establishes that in
25 signing the return he or she did not know, and had no reason to
26 know, that there was such understatement;
- 27 (D) taking into account all the facts and circumstances, it is
28 inequitable to hold the other individual liable for the deficiency in
29 tax for such taxable year attributable to such understatement, and
- 30 (E) the other individual elects (in such form as the commis-
31 sioner may prescribe) the benefits of this subsection not later than
32 the date which is two years after the date the commissioner has
33 begun to collection activities with respect to the individual
34 making the election, then the other individual shall be relieved of
35 liability for tax (including interest, penalties, and other amounts)
36 for such taxable year to the extent such liability is attributable to
37 such understatement.

38 (2) Apportionment of relief. If an individual who, but for para-
39 graph (1)(C), would be relieved of liability under paragraph (1),
40 establishes that in signing the return such individual did not know,
41 and had no reason to know, the extent of such understatement,
42 then such individual shall be relieved of liability for tax (including
43 interest, penalties, and other amounts) for such taxable year to the
44 extent that such liability is attributable to the portion of such
45 understatement of which such individual did not know and had no
46 reason to know.

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

49 (1) In general, except as provided in this subsection, if an indi-
50 vidual who has made a joint return for any taxable year elects the
51 application of this subsection, the individual's liability for any
52 deficiency which is assessed with respect to the return shall not
53 exceed the portion of such deficiency properly allocable to the
54 individual under subsection (d).

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

60 (3) Election.

61 (A) Individuals eligible to make election.

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

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

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

72 (ii) Certain taxpayers ineligible to elect, if the commissioner
73 demonstrates that assets were transferred between individuals
74 filing a joint return as part of a fraudulent scheme by such individ-
75 uals, an election under this subsection, by either individual shall
76 be invalid (and section 6(a) shall apply to the joint return).

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

81 (C) Election not valid with respect to certain deficiencies, if the
82 commissioner demonstrates that an individual making an election
83 under this subsection had actual knowledge, at the time such indi-
84 vidual signed the return, of any item giving rise to a deficiency (or
85 portion thereof) which is not allocable to such individual under
86 subsection (d), such election shall not apply to such deficiency (or
87 portion). This subparagraph shall not apply where the individual
88 with actual knowledge establishes that such individual signed the
89 return under duress.

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

92 (A) In general, notwithstanding any other provision of this sub-
93 section, the portion of the deficiency for which the individual
94 electing the application of this subsection is liable (without regard
95 to this paragraph) shall be increased by the value of any disquali-
96 fied asset transferred to the individual.

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

98 (i) In general, the term “disqualified asset” means any property
99 or right to property transferred to an individual making the elec-

100 tion under this subsection with respect to a joint return by the
101 other individual filing such joint return if the principal purpose of
102 the transfer was the avoidance of tax or payment of tax.

103 (ii) Presumption.

104 (I) In general, for purposes of clause (i), except as provided in
105 subclause (II), any transfer which is made after the date which is
106 one year before the date on which the first letter of proposed defi-
107 ciency which allows the taxpayer an opportunity for administra-
108 tive review in the Department of Revenue is sent shall be
109 presumed to have its principal purpose the avoidance of tax or
110 payment of tax.

111 (II) Exceptions, subclause (I) shall not apply to any transfer
112 pursuant to a decree of divorce or separate maintenance or a
113 written instrument incident to such a decree or to any transfer
114 which an individual establishes did not have as its principal pur-
115 pose the avoidance of tax or payment of tax.

116 (d) Allocation of deficiency.

117 For purposes of subsection (c)

118 (1) In general, the portion of any deficiency on a joint return
119 allocated to an individual shall be the amount which bears the
120 same ratio to such deficiency as the net amount of items taken into
121 account computing the deficiency and allocable to the individual
122 under paragraph (3) bears to the net amount of all items taken into
123 account in computing the deficiency.

124 (2) Separate treatment of certain items. If a deficiency (or por-
125 tion thereof) is attributable to:—

126 (A) the disallowance of a credit; or

127 (B) any tax required to be included with the joint return; and
128 such item is allocated to one individual under paragraph (3), such
129 deficiency (or portion) shall be allocated to such individual. Any
130 such item shall not be taken into account under paragraph (1)

131 (3) Allocation of items giving rise to the deficiency. For pur-
132 poses of this subsection:—

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

138 (B) Exception where other spouse benefits. Under rules pre-
139 scribed by the commissioner, an item otherwise allocable to an

140 individual under subparagraph (A) shall be allocated to the other
141 individual filing the joint return to the extent the item gave rise to
142 a tax benefit on the joint return to the other individual.

143 (C) Exception for fraud. The commissioner may provide for an
144 allocation of any item in a manner not prescribed by subparagraph
145 (A) if the commissioner establishes that such allocation is appro-
146 priate due to fraud of one or both individuals.

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

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

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

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

159 (A) In general, the individual may petition the Department of
160 Revenue to determine the appropriate relief available to the indi-
161 vidual under this section if such petition is filed during the 90-day
162 period beginning on the date on which the commissioner mails by
163 certified or registered mail a notice to such individual of the com-
164 missioner's determination of relief available to the individual.
165 Notwithstanding the preceding sentence, an individual may file
166 such petition at any time after the date which is six months after
167 the date such election is filed with the commissioner and before
168 the close of such 90-day period.

169 (B) Restrictions applicable to collection of assessment.

170 (i) In general, except as otherwise provided, no levy or pro-
171 ceeding in court shall be made, begun, or prosecuted against the
172 individual making an election under subsection (b) or (c) for col-
173 lection of any assessment to which such election relates until the
174 expiration of the 90-day period described in subparagraph (A), or,
175 if a petition has been filed with the Department of Revenue, until
176 the decision of the Department of Revenue has become final.

177 (ii) Authority to enjoin collection actions. Notwithstanding any
178 other provision, the beginning of such levy or proceeding during
179 the time the prohibition under clause (i) is in force may be

180 enjoined by a proceeding in the proper court. The Department of
181 Revenue shall have no jurisdiction under this subparagraph to
182 enjoin any action or proceeding unless a timely petition has been
183 filed under subparagraph (A) and then only in respect of the
184 amount of the assessment to which the election under subsection
185 (b) or (c) relates.

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

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

192 (3) Applicable rules.

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

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

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

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

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

215 (2) relief is not available to such individual under subsection
216 (b) or (c), the commissioner may relieve such individual of
217 such liability.

218 (g) Regulations. The commissioner shall prescribe such regula-
219 tions as are necessary to carry out the provisions of this section,
220 including:—

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

223 (2) regulations providing the opportunity for an individual to
224 have notice of, and an opportunity to participate in, any adminis-
225 trative proceeding with respect to an election made under subsec-
226 tion (b) or (c) by the other individual filing the return.

The following is a list of the names of the persons who were members of the
 Board of Directors of the [Organization Name] during the year 1914-1915.
 The names are listed in alphabetical order of their surnames.
 The names of the persons who were members of the Board of Directors
 during the year 1914-1915 are as follows:
 [List of names follows, including names like J. H. [Name], W. B. [Name], etc.]