

HOUSE No. 3339

The Commonwealth of Massachusetts

PRESENTED BY:

Christopher M. Markey

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to innocent spouses.

PETITION OF:

NAME:

Christopher M. Markey

DISTRICT/ADDRESS:

9th Bristol

HOUSE No. 3339

By Mr. Markey of Dartmouth, a petition (accompanied by bill, House, No. 3339) of Christopher M. Markey relative to liabilities on joint tax returns. Revenue.

The Commonwealth of Massachusetts

**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 2014 Official Edition, is
2 hereby amended by striking out Section 84 and inserting in place thereof the following new
3 section:-

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

5 (a) Notwithstanding Chapter 62C section 6—

6 (1) an individual who has made a joint return may elect to seek relief under the
7 procedures prescribed under subsection (b), and

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

12

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

14 (1) Under procedures prescribed by the commissioner, if—

15 A. a joint return has been made under this chapter for a taxable year,

16 B. on such return there is understatement of tax attributable to erroneous items of
17 one individual filing the joint return,

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

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

23 E. the other individual elects (in such form as the commissioner may prescribe) the
24 benefits of this subsection not later than the date which is 2 years after the state the
25 commissioner has begun collection activities with respect to the individual making the election,

26 then the other individual shall be relieved of liability for tax, (including interest, penalties
27 and other amounts) for such taxable year to the extent such liability is attributable to such
28 understatement.

29 (2) Apportionment of relief. If an individual who, but for paragraph (1)(C), would be
30 relieved of liability under paragraph (1), establishes that in signing the return such individual did
31 not know, and had no reason to know, the extent of such understatement, then such individual

32 shall be relieved of liability for tax (including interest, penalties, and other amounts) for such
33 taxable year to the extent that such liability is attributable to the portion of such understatement
34 of which such individual did not know and had no reason to know.

35 (3) Understatement. For purposes of this subsection, the term “understatement” means
36 the excess of the amount shown on the return for the taxable year, over the amount of tax
37 imposed which is shown on the return, reduced by any abatement, credit, refund, or other
38 repayment.

39 (c) Procedures to limit liability for taxpayers no longer married or taxpayers legally
40 separated or not living together

41 (1) Except as provided in this subsection, if an individual who has made a joint return for
42 any taxable year elects the application of this subsection, the individual's liability for any
43 deficiency which is assessed with respect to the return shall not exceed the portion of such
44 deficiency properly allocable to the individual under subsection (d).

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

48 (3) Election

49 (A) Individuals eligible to make election

50 (i) An individual shall only be eligible to elect the application of this subsection if—

51 (I) at the time such election is filed, such individual is no longer married to, or is legally
52 separated from, the individual with whom such individual filed the joint return to which the
53 election relates, or

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

57 (ii) Certain taxpayers ineligible to elect. If the commissioner demonstrates that assets
58 were transferred between individuals filing a joint return as part of a fraudulent scheme by such
59 individuals, an election under this subsection by either individual shall be invalid (and Chapter
60 62C section 6 shall apply to the joint return).

61 (B) Time for election. An election under this subsection for any taxable year may be
62 made at any time after a deficiency for such year is asserted but not later than 2 years after the
63 date on which the commissioner has begun collection activities with respect to the individual
64 making the election.

65 (C) Election not valid with respect to certain deficiencies. If the commissioner
66 demonstrates that an individual making an election under this subsection had actual knowledge,
67 at the time such individual signed the return, of any item giving rise to a deficiency (or portion
68 thereof) which is not allocable to such individual under subsection (d), such election shall not
69 apply to such deficiency (or portion). This subparagraph shall not apply where the individual
70 with actual knowledge establishes that such individual signed the return under duress.

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

72 (A) Notwithstanding any other provision of this subsection, the portion of the deficiency
73 for which the individual electing the application of this subsection is liable (without regard to
74 this paragraph) shall be increased by the value of any disqualified asset transferred to the
75 individual.

76 (B) Disqualified asset. For purposes of this paragraph--

77 (i) The term "disqualified asset" means any property or right to property transferred to an
78 individual making the election under this subsection with respect to a joint return by the other
79 individual filing such joint return if the principal purpose of the transfer was the avoidance of tax
80 or payment of tax.

81 (ii) Presumption

82 (I) For purposes of clause (i), except as provided in subclause (II), any transfer which is
83 made after the date which is 1 year before the date on which the 1st letter of proposed deficiency
84 which allows the taxpayer an opportunity for administrative review in the Department of
85 Revenue Office of Appeals is sent shall be presumed to have as its principal purpose the
86 avoidance of tax or payment of tax.

87 (II) Exceptions. Subclause (I) shall not apply to any transfer pursuant to a decree of
88 divorce or separate maintenance or a written instrument incident to such a decree or to any
89 transfer which an individual establishes did not have as its principal purpose the avoidance of tax
90 or payment of tax.

91 (d) Allocation of deficiency

92 For purposes of subsection (c)--

93 (1) The portion of any deficiency on a joint return allocated to an individual shall be the
94 amount which bears the same ratio to such deficiency as the net amount of items taken into
95 account in computing the deficiency and allocable to the individual under paragraph (3) bears to
96 the net amount of all items taken into account in computing the deficiency.

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

99 (A) the disallowance of a credit, or

100 (B) any tax (other than tax imposed by Chapter 62 section 2) required to be included
101 with the joint return,

102 and such item is allocated to 1 individual under paragraph (3), such deficiency (or
103 portion) shall be allocated to such individual. Any such item shall not be taken into account
104 under paragraph (1).

105 (3) Allocation of items giving rise to the deficiency. For purposes of this subsection--

106 (A) Except as provided in paragraphs (4) and (5), any item giving rise to a deficiency on
107 a joint return shall be allocated to individuals filing the return in the same manner as it would
108 have been allocated if the individuals had filed separate returns for the taxable year.

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

113 (C) Exception for fraud. The commissioner may provide for an allocation of any item in a
114 manner not prescribed by subparagraph (A) if the commissioner establishes that such allocation
115 is appropriate due to fraud of 1 or both individuals.

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

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

123 (e) Equitable relief

124 Under procedures prescribed by the commissioner, if—

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

127 (2) relief is not available to such individual under subsection (b) or (c),

128 the commissioner may relieve such individual of such liability.

129 (f) Credits and refunds

130 (1) Except as provided in paragraphs (2) and (3), notwithstanding any other law or rule of
131 law (other than Chapter 62C section 37, Chapter 58A section 6, or Chapter 62C sections 37A and

132 37C), credit or refund shall be allowed or made to the extent attributable to the application of this
133 section.

134 (2) Res Judicata. In the case of any election under subsection (b) or (c) or of any request
135 for equitable relief under subsection (e), if a decision of a court in any prior proceeding for the
136 same taxable year has become final, such decision shall be conclusive except with respect to the
137 qualification of the individual for relief which was not an issue in such proceeding. The
138 exception contained in the preceding sentence shall not apply if the court determines that the
139 individual participated meaningfully in such prior proceeding.

140 (3) Credit and refund not allowed under subsection (c). No credit or refund shall be
141 allowed as a result of an election under subsection (c).

142 (g) Regulations

143 The commissioner shall prescribe such regulations as are necessary to carry out the
144 provisions of this section, including—

145 (1) regulations providing methods for allocation of items other than the methods under
146 subsection (d)(3), and

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