HOUSE DOCKET, NO. 4750 FILED ON: 5/2/2016

HOUSE . . . . . No. 4387

The Commonwealth of Massachusetts

PRESENTED BY:

Garrett J. Bradley

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:	DISTRICT/ADDRESS:
Garrett J. Bradley	*3rd Plymouth*

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HOUSE . . . . . No. 4387

By Mr. Bradley of Hingham, a petition (subject to Joint Rule 12) of Garrett J. Bradley relative to relief from joint and several liabilities on joint tax returns. Revenue.

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:

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

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

(a) Notwithstanding section 6 of chapter 62C:

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

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

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

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

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

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

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

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

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

35 (2) Except as provided in paragraphs (3) or (6), each individual who elects the
36 application of this subsection shall have the burden of proof with respect to establishing the
37 portion of a deficiency allocable to such individual.

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

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

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

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

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

52 (6) If the commissioner demonstrates that an individual making an election under this
53 subsection had actual knowledge, at the time such individual signed the return, of an item giving
54 rise to a deficiency or portion thereof, which is not allocable to such individual under paragraphs
55 8 through 12, inclusive, such election shall not apply to such deficiency or portion. This
56 subparagraph shall not apply where the individual with actual knowledge establishes that such
57 individual signed the return under duress.

58 (7) Notwithstanding any other provision of this subsection, the portion of the deficiency
59 for which the individual electing the application of this subsection is liable, without regard to this
60 paragraph, shall be increased by the value of a disqualified asset transferred to the individual. For
61 purposes of this paragraph:

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

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

72 (8) The portion of a deficiency on a joint return allocated to an individual shall be the
73 amount which bears the same ratio to such deficiency as the net amount of items taken into

74 account in computing the deficiency and allocable to the individual bears to the net amount of all
75 items taken into account in computing the deficiency.

76 (9) If a deficiency or portion thereof is attributable to the disallowance of a credit or a tax
77 other than the tax imposed by chapter 62, required to be included with the joint return, and such
78 item is allocated to one individual under paragraph (10), such deficiency or portion thereof shall
79 be allocated to such individual. Any such item shall not be taken into account under paragraph
80 (8).

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

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

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

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

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

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

100 (e) (1) Except as provided in paragraphs (2) and (3), notwithstanding any general or
101 special law to the contrary, other than section 6 of chapter 58A, section 37 of chapter 62C or
102 sections 37A and 37C of chapter 62C, credit or refund shall be allowed or made to the extent
103 attributable to the application of this section.

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

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

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

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

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