



JAMES J. BLANCHARD, Governor
ROBERT A. BOWMAN, State Treasurer

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
TREASURY BUILDING
LANSING, MICHIGAN 48922

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INCOME TAX - INNOCENT SPOUSE RELIEF

RAB-88-50. This Bulletin describes the condition where a spouse may be relieved from an income tax liability owed on a joint Michigan Income Tax return where the understatement of tax is attributable to grossly erroneous items of the other spouse.

Federal Income Tax Treatment

Under Section 6013(e) of the Internal Revenue Code (IRC), an innocent spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent the liability is attributable to the substantial understatement, if:

1. A joint return has been made under this section for a taxable year
2. On such return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse
3. The other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such substantial understatement, and
4. Taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such substantial understatement.

Spousal Relief Under Michigan Law

Under Michigan's Income Tax Act, MCL 206.311(1),(3), a taxpayer is required, on or before the due date set for the filing of a return or the payment of the tax, to prepare a return and transmit it with payment of tax due to the Department of Treasury. A husband and wife who file a joint Federal income tax return shall file a joint return for Michigan. A husband and wife are jointly and severally liable for the amount of tax due on the joint return, unless otherwise provided.

The Department of Treasury will grant an innocent spouse relief for the portion of the Michigan Income Tax liability that is attributable to grossly erroneous items (including claims for deductions or credits, as well as omitted income) of the other spouse, where a joint return is filed. The Department will utilize, as standards for ascertaining whether an individual is an innocent spouse, the standards set forth in Section 6013(e) of the IRC. The individual may provide the Department with information that spousal relief was granted for Federal income tax liability as evidence regarding that individual's state liability.