

STATE OF MICHIGAN



JOHN ENGLER, Governor

DEPARTMENT OF TREASURY

TREASURY BUILDING, LANSING, MICHIGAN 48922
MARK A. MURRAY, State Treasurer

REVENUE ADMINISTRATIVE BULLETIN 2000 - 9

Approved: December 15, 2000

**Individual Income Tax--Relief From Joint and Several Liability on
Joint Returns (Formerly Innocent Spouse Relief)**

(Replaces RAB 1988-50)

RAB 2000-9. This Revenue Administrative Bulletin (RAB) describes the circumstances where the Department of Treasury (Department) will hold only one spouse liable for an income tax liability owed on a joint Michigan income tax return. This bulletin reflects changes made to the Internal Revenue Code (IRC) by the IRS Restructuring and Reform Act of 1998 (P.L. 105-206) regarding innocent spouse relief. This RAB supersedes RAB 1988-50.

ISSUES

- I. Does the Department honor requests for relief from joint and several liability for Michigan income tax?
- II. What requirements must a spouse meet to be granted relief from joint and several liability by the Department?
- III. Will the Department issue a refund of any payments made toward the income tax liability by the spouse that has been granted relief from joint and several liability?
- IV. How should a taxpayer request relief from joint and several liability for a joint Michigan income tax return?
- V. When is this RAB effective?

CONCLUSIONS

- I. The Department follows the IRC and related federal provisions regarding relief from joint and several liability for income tax. The Department will review all written requests and grant relief from joint and several liability if the taxpayer demonstrates that relief was granted on a corresponding federal income tax liability or, if there was no federal liability, that the federal requirements for relief are satisfied.
- II. The Department will use the standards set forth in IRC § 6015, Treasury Regulations, federal Publication 971, and other IRS published guidance, as standards for determining whether an individual is eligible for relief from joint and several liability on a Michigan income tax liability.

III. The Department may issue a refund of payments made by a spouse who has been granted relief under the federal guidelines for innocent spouse and equitable relief only. The Department will use the guidelines set forth in IRC § 6015. Following the IRS provisions, no refund will be issued when a spouse is granted relief under the separation of liability provisions.

IV. A request for relief must be in writing and include documentation supporting the criteria for relief and a copy of federal relief, if any, that was granted. The request must be sent to:

Michigan Department of Treasury
Customer Service Center
Individual Taxes Unit
Treasury Building
Lansing, MI 48922

A taxpayer may request relief from joint and several liability at any time upon learning of a joint debt but no later than two years after the Department begins collection activity against the requesting spouse. For purposes of determining this date, collection activity includes an offset of the electing spouse's tax refund or other monies owed by the state, garnishment of the electing spouse's wages, and notice of levy against the electing spouse's property. It does not include a final assessment or final demand letter addressed to both spouses.

V. This RAB is effective for unpaid income tax balances as of July 22, 1998, and liabilities arising after July 22, 1998. This is in accordance with the effective date of IRC § 6015.

LAW AND ANALYSIS

Federal Law

IRC § 6013 (d)(3) provides that a husband and wife who file a joint return under IRC § 6013(a) have joint and several liability with respect to their tax liability. This means each spouse is individually responsible for the accuracy and completeness of the return, for paying the tax liability as reported on the return, and for paying any additional tax, penalties, and interest that is due. Thus, under joint and several liability, each spouse is responsible for the entire income tax liability even though all or part of the liability arises from income earned by or a deduction attributable to the other spouse. An election to file a joint return may only be revoked before the due date of the return, including extensions.

As part of the Internal Revenue Service Restructuring and Reform Act of 1998 (P.L. 105-206), Congress replaced the former innocent spouse relief section, IRC § 6013(e), with IRC § 6015 and expanded the provisions for obtaining relief from joint and several liability. IRC § 6015 prescribes three ways to obtain relief: (1) Innocent Spouse, (2) Separation of Liability, and (3) Equitable Relief. Innocent Spouse relief is dependent on an understatement of tax due to erroneous items attributed to the other spouse or former spouse of which the taxpayer had no knowledge. Separation of Liability allows for the allocation of the understatement of tax (plus penalties and interest) on a joint return between the two spouses. Unlike the other two elections, Equitable Relief provides relief not only from the understatement of tax but for an underpayment of tax, when it is established that it is inequitable to hold the individual liable.

To qualify for relief under IRC § 6015(b), Innocent Spouse, an individual must meet all of the following conditions:

1. A joint return has been made for the tax year in question;

2. There is an understatement of tax attributable to erroneous items of the other spouse filing the joint return;
3. The innocent spouse establishes that in signing the return he or she did not know, and had no reason to know, of the understatement;
4. Taking into account all of the facts and circumstances, it is inequitable to hold the individual liable for the deficiency in tax for such taxable year attributable to such understatement; and
5. The innocent spouse elects the benefits under this section not later than the date which is 2 years after the date on which the IRS first began collection activity against the individual making the election.

To qualify for relief under IRC § 6015 (c), Separation of Liability, an individual must meet all of the following conditions:

1. A joint return has been made for the tax year in question;
2. At the time the request for separation of liability is made, the individual is no longer married to, or is legally separated from, the person with whom the individual filed the joint return; and
3. The individual was not a member of the same household as the person with whom the joint return was filed at any time during the 12-month period ending on the date the request is made.
4. The election for Separation of Liability for any taxable year shall be made not later than 2 years after the date on which collection activities have begun with respect to the individual making the request.

To qualify for relief under IRC § 6015(f), Equitable Relief, an individual must meet all of the following conditions:

1. A joint return has been made for the tax year in question;
2. Taking into account all of the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either); and
3. Relief is not available to the individual under Innocent Spouse or Separation of Liability.
4. The requesting spouse must apply for relief no later than two years after the date of the IRS' first collection activity after July 22, 1998 with respect to the requesting spouse.

Treasury regulations, rulings, procedures, and other publications further prescribe the requirements for relief eligibility.

Michigan Individual Income Tax Treatment

Under section 311 of Michigan's Income Tax Act [MCL 206.311(3); MSA 7.557(1311)], a husband and wife who file a joint federal income tax return shall file a joint return for Michigan. In addition, a husband and wife are jointly and severally liable for tax due on the joint return.

The Department may grant Innocent Spouse Relief, Separation of Liability, or Equitable Relief for the portion of the Michigan income tax liability that is attributable to the understatement of tax (including

claims for deductions or credits, as well as omitted income) or the underpayment of tax. The Department shall use the standards set forth in IRC § 6015 and related federal provisions when determining what, if any, relief shall be granted. Michigan adheres to IRS interpretation in matters regarding relief from joint and several liability. Taxpayers requesting relief should consult the IRC, regulations, and other published IRS guidance before requesting relief from a state liability.

The individual requesting relief shall provide information regarding spousal relief that has been granted for federal income tax liability or other documentation or information to support the individual's request. A request for relief must be filed with the Department no later than 2 years after the Department's first collection activity after July 22, 1998 with respect to the requesting spouse.

Definitions

"IRC" means the United States Internal Revenue Code of 1986 in effect on January 1, 1996 or at the option of the taxpayer, in effect for the tax year.

"MCL" means Michigan Compiled Laws.

"MSA" means Michigan Statutes Annotated.