12/22/09

Regulatory Analysis Form
(Completed by Promulgating Agency)

IRRC
Independent Regulatory Review Commission

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INDEPENDENT REGULATORY REVIEW COMMISSION

SECTION I: PROFILE

(1) Agency:

Revenue

(2) Agency Number:

Identification Number: 15-448

IRRC Number: 2829

(3) Short Title:
Innocent Spouse Relief – Pennsylvania Personal Income Tax

(4) PA Code Cite:
61 Pa. Code § 119.30

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):
Primary Contact:
Mary R. Sprunk, Regulatory Coordinator
Pennsylvania Department of Revenue, Office of Chief Counsel
P.O. Box 281061
Harrisburg, PA 17128-1061
(717) 783-7524
(717) 772-1459 (Fax)

Secondary Contact: Douglas A. Berguson (717) 346-4633

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- ☒ Proposed Regulation
- ☐ Final Regulation
- ☐ Final Omitted Regulation
- ☐ Emergency Certification Regulation;
  - ☐ Certification by the Governor
  - ☐ Certification by the Attorney General

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Department is promulgating a new regulation that will clarify the Department's policy, provide uniformity and guidance on innocent spouse relief for Pennsylvania Personal Income Tax as enacted under Act 87 of 2002 (P.L. 522, No. 87) (72 P.S. § 3310-212). In addition, the regulation will provide clear instructions and examples for taxpayers regarding elections filed with the Taxpayers' Rights Advocate seeking relief from liability.

(9) Include a schedule for review of the regulation including:

A. The date by which the agency must receive public comments:	30 days after publication
B. The date or dates on which public meetings or hearings will be held:	N/A
C. The expected date of promulgation of the proposed regulation as a final-form regulation:	2nd Quarter, 2010
D. The expected effective date of the final-form regulation:	Upon final publication
E. The date by which compliance with the final-form regulation will be required:	Upon final publication
F. The date by which required permits, licenses or other approvals must be obtained:	N/A

(10) Provide the schedule for continual review of the regulation.

This regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

Statutory authority for the regulation is set forth in section 212 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 3310-212).

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is not mandated by federal or state law, court order or federal regulation. Act 87 of 2002 mirrors federal law for relief from liability in the circumstances described in subsection 6015(b) or (c) of the Internal Revenue Code (26 U.S.C. § 6015).

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The creation of § 119.30 is proposed to provide uniformity and guidance to Pennsylvania taxpayers seeking innocent spouse relief from Pennsylvania Personal Income Tax as enacted in Act 87 of 2002..

Pennsylvania taxpayers and tax practitioners will benefit as a result of the new regulation.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

No scientific data, studies or references are used to justify this regulation.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

No parties should be adversely affected by the regulation.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

Pennsylvania taxpayers and tax practitioners will be required to comply with the regulation.

SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation does not increase costs or savings to the regulated community. No legal, accounting or consulting procedures are required by this regulation.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation does not increase costs or savings to local governments. No legal, accounting or consulting procedures are required by this regulation.

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

This regulation does not increase costs or savings to state government. No legal, accounting or consulting procedures are required by this regulation.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	$ NA	$	$	$	$	$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	NA					
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	NA					
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
NA	NA	NA	NA	NA

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The proposed regulation will explain and expound upon the Department's existing policy on innocent spouse relief for Pennsylvania Personal Income Tax under the provisions of 72 P.S. § 3310-212. In addition, the regulation is in the public's interest and will provide clear instructions for taxpayers regarding elections filed with the Taxpayers' Rights Advocate seeking relief from liability.

There are no adverse effects from this regulation and implementation costs are minimal.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

A copy of the regulation was forwarded to the Pennsylvania Bar Association, the Philadelphia Bar Association, the Pennsylvania Institute of Certified Public Accountants, the Pennsylvania Society of Public Accountants, and the Pennsylvania Chamber of Business and Industry. The regulation is listed on the Department's Quarterly Regulatory Report posted on the Department's website and will be forwarded to interested parties upon request.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

There are no alternative regulatory provisions associated with the regulation.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no federal standards associated with this regulation.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The regulation will not put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation does not affect any other existing or proposed regulations of the Department or any other state agency.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This regulation does not change existing reporting, recordkeeping or other paperwork requirements. The new regulatory language will provide uniformity and guidance to Pennsylvania taxpayers.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Taxpayers who have filed a joint return for Pennsylvania Personal Income Tax and seek relief from liability under the innocent spouse relief statute are affected by the regulation. Specifically, three types of innocent spouse relief are included in this regulation:

(1) Relief from liability applicable to all joint filers for understatement of tax.
(2) Separation of liability relief applicable to taxpayers no longer married or taxpayers legally separated or not living together.
(3) Relief for unpaid tax and liability for a deficiency if the other two forms of relief are not available.

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FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

12/22/09

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INDEPENDENT REGULATORY REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

By: Amy M. Elliott
(Deputy Attorney General)

MAR 02 2010

DATE OF APPROVAL

☐ Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

PA Department of Revenue
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 15-448

DATE OF ADOPTION ______________

BY ______________
Stephen H. Stetler
TITLE Secretary of Revenue
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies

BY ______________
Andrew C. Clark

JAN 28 2010

DATE OF APPROVAL

(Deputy General Counsel)
(~~Chief Counsel Independent Agency~~)
(Strike inapplicable title)

☐ Check if applicable. No Attorney General Approval or objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF REVENUE

Personal Income Tax - Innocent spouse relief

61 Pa. Code § 119.30

PREAMBLE

The Department of Revenue (Department), under authority contained in section 212 of the Tax Reform Code of 1971 (TRC) (72 P.S. § 3310-212), proposes amendments to 61 Pa. Code, Chapter 119. Liabilities and Assessment - Procedure and Administration, by adding section 119.30 (relating to innocent spouse relief) to read as set forth in Annex A.

Purpose of Regulation

This regulation change will clarify the Department's policy on innocent spouse relief for Pennsylvania Personal Income Tax as enacted under Act 87 of 2002 (P.L. 522, No. 87) (72 P.S. § 3310-212). In addition, the regulation will provide clear instructions for taxpayers regarding elections filed with the Taxpayers' Rights Advocate seeking relief from tax liability of Pennsylvania Personal Income Tax.

Explanation of Regulatory Requirements

Section 119.30 is proposed to provide uniformity and guidance to Pennsylvania taxpayers seeking innocent spouse relief under the provisions of 72 P.S. § 3310-212 (relating to innocent spouse relief). Several examples are included in this new section.

Subsection (a) contains definitions for "collection activity," "disqualified asset," "electing spouse," "nonelecting spouse," "rebate," "Taxpayers' Rights Advocate" and "understatement."

Subsection (b) provides general information on relief from joint and several liability for understated tax and unpaid tax.

Subsection (c) provides qualifications for relief from liability applicable to all joint filers for understatement of tax. In addition, knowledge or reason to know of an understatement and apportionment of relief are explained. This subsection also includes an example.

Subsection (d) details qualifications for separation of liability relief applicable to taxpayers no longer married or taxpayers legally separated or not living together. Individuals eligible to make elections, elections not valid with respect to certain deficiencies and disqualified asset transfers are explained in this subsection. Several examples are included in this subsection.

Subsection (e) explains the factors the Taxpayers' Rights Advocate will consider in determining granting unpaid tax relief and relief from liability for a deficiency if relief is unavailable under subsections (c) and (d). In addition, this subsection includes several examples.

Subsection (f) explains the election procedure and timing of election for requesting innocent spouse relief.

Subsection (g) explains the Taxpayers' Rights Advocate's procedures for an invalid election, spousal notification, relief determination, notification of relief, and appeal rights.

Subsection (h) explains relief for penalties, interest and other charges. An example is also illustrated.

Affected Parties

Pennsylvania taxpayers and tax practitioners may be affected by the regulation.

Fiscal Impact

The Department has determined that the proposed amendment creates no foreseeable revenue impact on the Commonwealth.

Paperwork

The proposed amendment will not create additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The regulation will become effective upon final publication in the Pennsylvania Bulletin. The regulation is scheduled for review within five years of final publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing any comments, suggestions, or objections regarding the proposed amendment to Mary R. Sprunk, Office of Chief Counsel, PA Department of Revenue, P.O. Box 281061, Harrisburg, Pennsylvania 17128-1061, within thirty (30) days after the date of the publication of this notice in the Pennsylvania Bulletin.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 29, 2010, the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

The Committees may, at any time prior to the submittal of the final-form regulation, convey to the agency and the Commission, their comments, recommendations and objections to the proposed regulation. The Independent Regulatory Review Commission may, within 30 days of the close of the public comment period, submit to the agency and Committees any comments, recommendations and objections to the proposed regulation. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections raised, prior to final publication of the amendments, by the Department, the General Assembly and the Governor.

STEPHEN H. STETLER
SECRETARY OF REVENUE

08/24/09

CONTINUATION SHEET
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(Pursuant to Commonwealth Documents Law)

ANNEX A

Title 61. Revenue, Part I. Department of Revenue, Subpart B. General Fund Revenues, Article V. Personal Income Tax, Chapter 119. Liabilities and Assessment - Procedure and Administration.

Editor's note: Section 119.30 is new. The text is not underlined for ease of reading.

§ 119.30. Innocent spouse relief.

(a) Definitions.

The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Collection activity - The application of any overpayment to the liability provided for under section 346 of the Tax Reform Code of 1971 (72 P.S. § 7346), the mailing of a notice that the Department plans to intercept taxpayer's Federal Income Tax under section 6402 of IRC (26 U.S.C.A. § 6402) or the issuance of a writ of execution, whichever first occurs.

Disqualified asset - Any property or right to property that was transferred from the nonelecting spouse to the electing spouse if the principal purpose of the transfer was the avoidance of tax or payment of tax, including additions to tax, penalties, and interest.

Electing spouse - A taxpayer who follows the procedure described in subsection (f).

Nonelecting spouse - An electing taxpayer's spouse in the tax year for which the electing taxpayer is seeking tax relief under this section.

Rebate - The amount refunded or credited to taxpayer because the Department determined that the Pennsylvania tax liability reported on the Personal Income Tax return exceeds the Pennsylvania tax liability due or any other amount refunded or credited to taxpayer that reduces the Pennsylvania tax liability reported on the return.

Taxpayers' Rights Advocate - As defined in 72 P.S. § 3310-207.

Understatement - The excess of the tax required to be shown on the Personal Income Tax return for the taxable year, less the tax shown on the Personal Income Tax return reduced by any rebate.

(b) In general.

(1) Relief from joint and several liability for understated tax. A spouse who filed a joint Pennsylvania Personal Income Tax return with his or her spouse may elect relief from joint and several liability for Pennsylvania

Personal Income Tax which was understated on the joint return, provided all of the following conditions are met:

(i) The understatement of tax is attributable to erroneous items of his or her spouse.

(ii) The eligible spouse did not know or have reason to know of the understatement.

(2) Relief from joint and several liability for unpaid tax. The Taxpayers' Rights Advocate may grant relief for a tax liability due to the underpayment of tax as reported on the taxpayers' joint return. The relief granted must be a separate liability of the taxpayer's spouse, and the Taxpayers' Rights Advocate must find that it is inequitable to hold the taxpayer liable for the separate liability of the taxpayer's spouse.

(c) Joint liability relief for an understatement of tax available to all joint filers.

(1) In general. A joint filer shall be relieved of liability for tax (including interest, penalties and other charges) for such taxable year to the extent the liability is an understatement attributable to the other joint filer if all of the following conditions are met:

(i) A joint return has been made for a taxable year.

(ii) There is an understatement of tax on the return attributable to erroneous items of the other individual filing the joint return.

(iii) The individual establishes that in signing the return he or she did not know and had no reason to know of the understatement made on the return.

(iv) Taking into account all the facts and circumstances, it is inequitable to hold the individual liable for the tax deficiency attributable to the understatement.

(v) The individual elects the benefits of this subsection no later than 2 years from the date of the first collection activity for such understatement.

(2) Knowledge or reason to know. A spouse has knowledge or reason to know of an understatement if he or she actually knew of the understatement or if a reasonable person in similar circumstances would have known of the understatement. All facts and circumstances are considered in determining whether an electing spouse had reason to know of an understatement. Some of the facts and circumstances considered include the following:

(i) The nature of the erroneous item and the amount of the erroneous item relative to other items.

(ii) The couple's financial situation.

(iii) The electing spouse's educational background and business experience.

(iv) The extent of the electing spouse's participation in the activity that resulted in the erroneous item.

(v) Whether the electing spouse failed to inquire, at or before the time the return was signed, about items on the return or omitted items from the return that a reasonable person would question.

(vi) Whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns. Such as, omitted income from an investment regularly reported on prior years' returns.

(3) Apportionment of relief. Relief shall be apportioned when a spouse establishes that in signing the return the spouse did not know, and had no reason to know, the extent of the understatement; and but for spouse's knowledge of the understatement, the spouse would have been relieved of liability under paragraph (c)(1). The spouse shall be relieved of liability for tax (including interest, penalties and other charges) for the taxable year to the extent that the liability is attributable to the portion of the understatement of which the spouse did not know and had no reason to know.

Example: H and W are married and file their 2005 joint Pennsylvania Personal Income Tax return on March 1, 2006. In 2005 casinos report income of $300,000 to H, and H and W do not include this income on their return. H kept his gambling income in an individual bank account; and each month, H transferred a sum of at least $6,000 into H and W's joint bank account. The total deposits from H's separate account to the joint account for the 2005 tax year totaled $90,000. All of H′ and W's reported income was deposited into this joint account.

W paid the household expenses using the joint account and regularly received the bank statements for it. W did have knowledge and reason to know of at least $90,000 of the $210,000 income reported by the casinos. W may not be relieved of the liability for the tax deficiency arising from $90,000 of the unreported gambling income of which she knew. W may be relieved of the deficiency arising from the additional $210,000 of gambling income reported by the casinos if given the facts and circumstances of H and W's activities, income, and the like, W had no reason to know of the additional $210,000 of income.

(d) Joint liability relief by separation of liability available to taxpayers no longer married or taxpayers legally separated or not living together.

(1) In general. Except as provided in this subsection, if an individual who has made a joint return for any

taxable year elects the relief available in this subsection, the individual's liability for tax which is assessed due to an understatement of tax on the return shall not exceed the portion of such deficiency allocable to the individual as provided in paragraph (d)(3).

(2) Election.

(i) Individuals eligible to make election.

(A) In general. An individual shall only be eligible to elect the application of this subsection if one of the following conditions is met:

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

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

(B) Certain taxpayers ineligible to elect. If the Department determines that assets were transferred between individuals filing a joint return or by individuals filing a joint return as part of a fraudulent scheme by such individuals, an election under this subsection by either individual shall be invalid and the liability with respect to the tax shall be joint and several. Transfer made as part of a fraudulent scheme include transfers made to frustrate the collection of tax. For purposes of this subsection, a fraudulent scheme includes a scheme to defraud the Department or another third party, including, but not limited to, creditors, ex-spouses and business partners.

(C) Member of the same household.

(I) Separate dwellings. A husband and wife who reside in the same dwelling are considered members of the same household. In addition, a husband and wife who reside in two separate dwellings are considered members of the same household if the spouses are not estranged or one spouse is temporarily absent from the other's household within the meaning of subclause (d)(2)(i)(C)(II).

(II) Temporary absences. An electing spouse and a nonelecting spouse are considered members of the same household during either spouse's temporary absences from the household if it is reasonable to assume that the absent spouse will return to the household; and the household or a substantially equivalent household is maintained in anticipation of such return. Examples of temporary absences may include absence due to incarceration, illness, business, vacation, military service, or education.

(ii) Election not valid with respect to certain deficiencies. If the individual making an election under this subsection had actual knowledge, at the time such individual signed the return, of any item giving rise to a deficiency (or portion thereof) which is not allocable to such individual under paragraph (d)(3), an election shall not apply to the deficiency or any portion.

(A) Actual knowledge - omitted income. In the case of omitted income, knowledge of the item includes knowledge of the receipt of the income. This rule applies equally in situations where the other spouse has unreported income although the spouse does not have an actual receipt of cash (such as, dividend reinvestment or a distributive share from a flow-through entity).

Example. W received $5,000 of dividend income from her investment in X Company but did not report it on the joint return. H knew that W received $5,000 of dividend income from X Company that year. H had actual knowledge of the erroneous item (that is, $5,000 of unreported dividend income from X Company); and no relief is available under this section for the deficiency attributable to the dividend income from X Company.

(B) Actual knowledge - deduction or credit. In the case of an erroneous deduction or credit, knowledge of the item means knowledge of the facts that made the item not allowable as a deduction or credit. If a deduction is fictitious or inflated, the Department must establish that the electing spouse actually knew that the expenditure was not incurred or not incurred to that extent.

(C) Partial knowledge. If an electing spouse had actual knowledge of only a portion of an erroneous item, then relief is not available for that portion of the erroneous item. An electing spouse's actual knowledge of the proper tax treatment of an item is not relevant for purposes of demonstrating that the electing spouse had actual knowledge of an erroneous item. In addition, an electing spouse's knowledge of how an erroneous item was treated on the tax return is not relevant to a determination of whether the electing spouse had actual knowledge of the item.

Example 1. If H knew that W received $5,000 of gambling winnings but did not know that W's actual winnings were $25,000, relief would not be available for the portion of the deficiency attributable to the $5,000 of income of which H had actual knowledge.

Example 2. Relief is not available under this subsection when H knew that W received winnings of $5,000 but did not know they were taxable.

Example 3. H knew of W's winnings, but H failed to review the completed return and did not know that W omitted the income from the return. Relief is not available under this subsection.

(D) Knowledge of the source not sufficient. Knowledge of the source of an erroneous item is not sufficient to establish actual knowledge. In addition, an electing spouse's actual knowledge may not be inferred when the electing spouse merely had reason to know of the erroneous item. Similarly, the Department need not establish that an electing spouse knew the source of an erroneous item in order to establish that the electing spouse had actual knowledge of the item itself.

Example 1. H knew that W owned X Company stock, but H did not know that X Company paid dividends that year. H's knowledge of W's ownership in X Company is not sufficient to establish that H had actual knowledge of the dividend income from X Company. Even if H's knowledge of W's ownership interest in X Company indicates a reason to know of the dividend income, actual knowledge of such dividend income cannot be inferred from H's reason to know.

Example 2. H knew that W received $5,000, but he did not know the source of the $5,000. W and H omit the $5,000 from their joint return. H had actual knowledge of the erroneous item (that is, the omitted $5,000). No relief is available under this subsection.

(E) Factors supporting actual knowledge. To demonstrate that an electing spouse had actual knowledge of an erroneous item at the time the return was signed, the Taxpayers' Rights Advocate may rely upon all the facts and circumstances. One factor that may be relied upon in demonstrating that an electing spouse had actual knowledge of an erroneous item is whether the electing spouse made a deliberate effort to avoid learning about the item in order to be shielded from liability. This factor, together with all other facts and circumstances, may demonstrate that the electing spouse had actual knowledge of the item, and the electing spouse's election would be invalid with respect to that entire item. Another factor that may be relied upon in demonstrating that an electing spouse had actual knowledge of an erroneous item is whether the electing spouse and the nonelecting spouse jointly owned the property that resulted in the erroneous item. Joint ownership is a factor supporting a finding that the electing spouse had actual knowledge of an erroneous item.

(iii) Disqualified asset transfers.

(A) In general. The portion of the deficiency for which an electing spouse is liable is increased (up to the entire amount of the deficiency) by the value of any disqualified asset that was transferred to the electing spouse. For purposes of this subparagraph, the value of a disqualified asset is the fair market value of the asset on the date of the transfer.

(B) Presumption. Any asset transferred from the nonelecting spouse to the electing spouse during the 12-month period before the mailing date of the Department's first billing notice of the tax liability for which innocent spouse relief is requested is presumed to be a disqualified asset. The presumption also applies to any asset that is transferred from the nonelecting spouse to the electing spouse after the mailing date of the first billing notice. The presumption does not apply, however, if the electing spouse establishes that the asset was transferred pursuant to a divorce decree or a separate maintenance order or a written instrument incident to the decree or court order. If the presumption does not apply, but the Department can establish that the purpose of the transfer was the avoidance of tax or payment of tax, the asset will be disqualified, and its value (up to the entire amount of the deficiency) will be added to the amount of the deficiency for which the electing spouse remains liable. If the presumption applies, an electing spouse may still rebut the presumption by establishing that the principal purpose of the transfer was not the avoidance of tax or payment of tax.

Example 1. Disqualified asset presumption. H and W are divorced. In May 2005, W transfers $20,000 to H, and in April 2006, H and W receive a billing notice proposing a $40,000 deficiency on their 2004 joint Pennsylvania Personal Income Tax return. The liability remains unpaid, and in October 2006, H elects to allocate the deficiency under this section. Seventy-five percent of the net amount of erroneous items is allocable to W, and 25% of the net amount of erroneous items is allocable to H.

In accordance with the proportionate allocation method (see paragraph (d)(3)), H proposes that $30,000 of the deficiency be allocated to W and $10,000 be allocated to himself. H submits a signed statement providing that the principal purpose of the $20,000 transfer was not the avoidance of tax or payment of tax, but he does not submit any documentation indicating the reason for the transfer. H has not overcome the presumption that the $20,000 was a disqualified asset. Therefore, the portion of the deficiency for which H is liable ($10,000) is increased by the value of the disqualified asset ($20,000). H is relieved of liability for $10,000 of the $30,000 deficiency allocated to W, and remains jointly and severally liable for the remaining $30,000 of the deficiency (assuming that H does not qualify for relief under any other provision).

Example 2. Disqualified asset presumption inapplicable. On May 1, 2001, H and W receive a billing notice regarding a proposed deficiency on their 1999 joint Pennsylvania Personal Income Tax return relating to an unreported capital gain from H's sale of his investment in Z stock. W had no actual knowledge of the stock sale. The deficiency is assessed in November 2001, and in December 2001, H and W divorce. According to a decree of divorce, H must transfer 1/2 of his interest in mutual fund A to W. The transfer takes place in February 2002. In August 2002, W elects to allocate the deficiency to H. Although the transfer of 1/2 of H's interest in mutual fund A took place after the billing notice was mailed, the mutual fund interest is not presumed to be a disqualified asset because the transfer of H's interest in the fund was made pursuant to a decree of divorce.

Example 3. Overcoming the disqualified asset presumption. H and W are married for 25 years. Every September, on W's birthday, H gives W a gift of $500. On February 28, 2007, H and W received a billing notice from the Department relating to their 2003 joint Pennsylvania Personal Income Tax return. The deficiency relates to H's business, and W had no knowledge of the items giving rise to the deficiency. H and W are legally separated in June 2004, and, despite the separation, H continues to give W $500 each year for her birthday. H is not required to give such amounts pursuant to a decree of divorce or separate maintenance.

On January 27, 2009, W files an election to allocate the deficiency to H. The $1,500 transferred from H to W from February 28, 2006 (a year before the billing notice was mailed) to the present is presumed disqualified. However, W may overcome the presumption that the amounts were disqualified by establishing that the amounts were birthday gifts from H and that she has received the gifts during their entire marriage. Such facts would show that the amounts were not transferred for the purpose of avoidance of tax or payment of tax.

(3) Allocation of relief.

(i) Allocation of erroneous items. For purposes of allocating a deficiency under this section, erroneous items are generally allocated to the spouses as if separate returns were filed, subject to the following exceptions:

(A) Benefit on the return. An erroneous item that would otherwise be allocated to the nonelecting spouse is allocated to the electing spouse to the extent that the electing spouse received a tax benefit on the joint return.

(B) Fraud. The Taxpayers' Rights Advocate may allocate any item between the spouses if the Department establishes that the allocation is appropriate due to fraud by one or both spouses.

(C) Erroneous items of income. Erroneous items of income are allocated to the spouse who was the source of the income. Compensation is allocated to the spouse who performed the services producing such compensation. Items of business or investment income are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, the erroneous item of income is generally allocated between the spouses in proportion to each spouse's ownership interest in the business or investment, subject to the limitations of paragraph (d)(3). In the absence of clear and convincing evidence supporting a different allocation, an erroneous income item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the limitations in paragraph (d)(3) and the exceptions in subparagraph (d)(3)(i).

(D) Erroneous deduction items. Erroneous deductions related to a business or investment are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, an erroneous deduction item is generally allocated between the spouses in proportion to each spouse's ownership interest in the business or investment. In the absence of clear and convincing evidence supporting a different allocation, an erroneous deduction item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the limitations in paragraph (d)(3) and the exceptions in subparagraph (d)(3)(i). Deduction items unrelated to a business or investment are also allocated 50% to each spouse, unless the evidence shows that a different allocation is appropriate.

(ii) Allocation method.

(A) Proportionate allocation. The portion of a deficiency allocable to the electing spouse is the amount that bears the same ratio to the deficiency as the net amount of erroneous items allocable to the electing spouse bears to the net amount of all erroneous items. This calculation may be expressed as follows:

$$X = (\text{deficiency}) * \left(\frac{\text{net amount of erroneous items allocable to the electing spouse}}{\text{net amount of all erroneous items}} \right)$$

X = Electing spouse's share of deficiency

(B) Items proportionately allocated. The proportionate allocation in clause (d)(3)(ii)(A) applies to any portion of the deficiency, except for the following:

(I) Any portion of the deficiency attributable to erroneous items allocable to the nonelecting spouse of which the electing spouse had actual knowledge.

(II) Any portion of the deficiency attributable to penalties.

(C) Penalties. Any additions, penalties and fees under section 352 of the Tax Reform Code of 1971 (72 P.S. § 7352) are allocated to the spouse whose item generated the cost.

(D) Examples. In each example, the electing spouse or spouses qualify to elect to allocate the deficiency, that any election is timely made, and that the deficiency remains unpaid. In addition, unless otherwise stated, assume that neither spouse has actual knowledge of the erroneous items allocable to the other spouse.

Example 1. Allocation of erroneous items. W and H timely file their 2005 joint Pennsylvania Personal Income Tax return on April 15, 2006. On October 17, 2006, the Department issued an assessment with respect to their 2005 joint return. The following erroneous items give rise to the deficiency:

(1) A disallowed business expense for H's business.

(2) A disallowed deduction for educational expenses reported by W.

(3) Unreported interest income from a joint account.

H and W divorce on January 4, 2007, and W timely elects to allocate the deficiency. The erroneous items are allocated as follows:

(1) The disallowed business expense is allocable to H.

(2) The disallowed educational expense is allocable to W.

(3) The unreported interest income from the joint account normally would be allocated ½ to H and ½ to W, but because both H and W had knowledge of the income, an election to allocate this portion of the deficiency is invalid.

Example 2. Proportionate allocation. W and H timely file their 2005 joint Pennsylvania Personal Income Tax return on April 15, 2006. On October 17, 2006, the Department issued an assessment for $12,280 with respect to their 2005 joint return. H and W divorce on December 4, 2006, and W timely elects to allocate the deficiency. The following erroneous items give rise to the deficiency:

(1) $300,000 business loss allocable to H.

(2) Deduction under section 179 of the IRC (26 U.S.C.A. § 179) of $60,000 allocable to H.

(3) $15,000 deduction for unreimbursed employee business expenses allocable to W.

(4) $25,000 of unreported interest allocable to W.

H's items:		W's items:	
$300,000	Business loss	$25,000	Interest

$60,000	Section 179	$15,000	Unreimbursed employee business expenses

In total, there are $400,000 of erroneous items, of which $40,000 is attributable to W and $360,000 is attributable to H. The ratio of erroneous items allocable to W to the total erroneous items is 1/10 ($40,000/$400,000).

$$\$1,228 = (\$12,280) * \frac{\$40,000}{\$400,000}$$

W's liability is limited to $1,228 of the deficiency (1/10 of $12,280). The Department may collect up to $1,228 from W and up to $12,280 from H. The total amount collected, however, may not exceed $12,280. If H also made an election, there would be no remaining joint and several liability, and the Department would be permitted to collect $1,228 from W and $11,052 from H.

Example 3. Proportionate allocation with joint erroneous item. On September 4, 2006, W elects to allocate to H a $921 deficiency for the 2005 tax year. The following erroneous items give rise to the deficiency:

(1) Unreported interest in the amount of $20,000 from a joint bank account.

(2) Disallowed unreimbursed employee business expenses of $2,000 attributable to W.

(3) Disallowed business expenses in the amount of $8,000 attributable to H's business.

The erroneous items total $30,000. Generally, income, deductions, or credits from jointly held property that are erroneous items are allocable 50% to each spouse. However, in this case, both spouses had actual knowledge of the unreported interest income. Therefore, W's election to allocate the deficiency attributable to the interest is invalid. W and H remain jointly and severally liable for the tax due on the interest. The tax due on the interest is $614. W may allocate the remaining $10,000. The tax due on the amount to be allocated is $307.

H's items:		W's items:	
$8,000	Business expenses	$2,000	Unreimbursed employee business expenses

Total allocable items: $10,000

$$\$61.40 = (\$307) * \frac{\$2,000}{\$10,000}$$

W's remaining tax liability = $724; [$61 (Allocable to W) + $614 (Non-allocable portion of deficiency)]

H's liability = $921. The Department would be permitted to collect $724 from W and $921 from H. The total amount collected, however, may not exceed $921.

If H were also to make an election, the Department would be permitted to collect $860 from H. [(.8)($307) = $246 Portion allocable to H]; [$860 = $246 + 614 (Non-allocable portion of deficiency)]

(4) Burden of proof. Except for establishing actual knowledge under subparagraph (d)(2)(ii), the electing spouse must prove that all of the qualifications for making an election under this section are satisfied and that none of the limitations (including the limitation relating to transfers of disqualified assets) apply. The electing spouse must also establish the proper allocation of the erroneous items.

(5) Limitations. The relief available under this subsection is limited to relief for understated tax. Refunds are not authorized under this subsection.

(e) Relief by income allocation for unpaid tax or an understatement of tax if relief was unavailable under subsections (c) and (d).

(1) In general. Using the factors provided in paragraph (e)(3), if the electing spouse is divorced, widowed, or legally separated and the factors favoring relief outweigh the factors weighing against relief and none of the limitations in paragraph (e)(2) apply, the Taxpayers' Rights Advocate may allocate the electing spouse's tax liability as provided in paragraph (e)(3).

(2) Relief limitations.

(i) The income tax liability which the electing spouse seeks relief must be attributable to an item of the other spouse (or former spouse) with whom the electing spouse filed the joint return,. unless one of the following exceptions applies:

(A) An electing spouse has only nominal ownership of an item. If an item is titled in the name of the electing spouse, the item is presumptively attributable to the electing spouse. This presumption is rebuttable.

Example: H opens an individual retirement account (IRA) in W's name and forges W's signature on the IRA in 1980. Thereafter, H makes contributions to the IRA. In 2007, when H is age 50, H takes a distribution from the IRA. H and W file a joint return for the 2007 taxable year but do not report the taxable portion of the distribution on their joint return. The Department issues an assessment relating to the IRA distribution and assesses the deficiency against H and W. W requests relief from joint and several liability under this section. W establishes that W had no knowledge of the IRA account, did not contribute to the IRA, sign paperwork relating to the IRA, or otherwise act as if she were the owner of the IRA. W thereby rebutted the presumption the IRA is attributable to W.

(B) If the electing spouse did not know and had no reason to know that funds intended for the payment of tax were misappropriated by the nonelecting spouse for the nonelecting spouse's benefit, the Taxpayers' Rights Advocate will consider granting equitable relief in this case only to the extent that the funds intended for the payment of tax were taken by the nonelecting spouse.

(C) If the electing spouse establishes he or she was the victim of abuse prior to the time the return was signed, and that, as a result of the prior abuse, the electing spouse did not challenge the treatment of any items on the return for fear of the nonelecting spouse's retaliation, the Taxpayers' Rights Advocate will consider granting equitable relief although the understatement may be attributable in part or in full to an item of the electing spouse.

(ii) Refunds are not available under this subsection. Relief is limited to reducing or eliminating an electing spouse's tax deficiency.

(iii) Relief is not available for unpaid tax that is a separate liability of the taxpayer's spouse and is for a tax year more than 12 months prior to the legal separation or divorce of the taxpayer from his or her spouse or for a tax year more than 12 months prior to the date the taxpayer and his or her spouse were no longer members of the same household as described in clause (d)(2)(i)(C).

(iv) Relief is not available if an electing spouse has taxable income and has not filed the return required by section 330 of the Tax Reform Code (72 P.S. § 7331) or if an electing spouse has an outstanding personal income tax liability for a tax year or tax years other than the year or years for which the electing spouse is seeking relief under this section.

(v) Relief is not available for an electing spouse unless one of the following conditions is met:

(A) At the time the election is filed, the individual is no longer married to or is legally separated from the individual with whom such individual filed the joint return to which the election relates.

(B) The electing individual was not a member of the same household as the individual with whom the joint return was filed at any time during the 12-month period ending on the date the election is filed.

(3) Factors for determining whether to grant relief as described in subsection (e). The Taxpayers' Rights Advocate will consider the following factors in determining whether, taking into account all the facts and circumstances, it is inequitable to hold the electing spouse liable for all or part of the tax deficiency or unpaid tax:

(i) Knowledge or reason to know. The electing spouse's knowledge or reason to know of a deficiency or the failure to pay the reported tax liability is a factor weighing against relief. The lack of such knowledge, however, is not a factor weighing in favor of granting relief.

(A) Unpaid tax. In the case of an income tax liability that was properly reported but not paid, the electing spouse's actual knowledge or reason to know that the nonelecting spouse would not pay the income tax liability is a factor weighing against relief.

(B) Deficiency cases. Actual knowledge of the item giving rise to the deficiency is a strong factor weighing against relief. This strong factor only may be overcome if the factors in favor of relief are compelling. Reason to know of the item giving rise to the deficiency rather than actual knowledge will not be weighed more heavily than other factors.

(C) Reason to know. For purposes of (A) and (B) above, in determining whether the electing spouse had reason to know, the Taxpayers' Rights Advocate will consider the electing spouse's level of education, any deceit or evasiveness of the nonelecting spouse, the electing spouse's degree of involvement in the activity generating the income tax liability, the electing spouse's involvement in business and household financial matters, the electing spouse's business or financial expertise, and any lavish or unusual expenditures compared with past spending levels.

(ii) Abuse. The presence of abuse by the nonelecting spouse is a factor favoring relief. The lack of abuse by the nonelecting spouse will not be weighed against relief. A history of abuse by the nonelecting spouse may mitigate an electing spouse's knowledge or reason to know.

(iii) Nonelecting spouse's legal obligation. The nonelecting spouse's legal obligation to pay the outstanding income tax liability pursuant to a divorce decree or agreement will not weigh in favor of relief if the electing spouse knew or had reason to know, when entering into the divorce decree or agreement, that the nonelecting spouse would not pay the income tax liability.

(iv) Significant benefit. The electing spouse has significantly benefited beyond normal support from the unpaid liability. Evidence of direct or indirect benefit may consist of transfers of property or rights to property, including transfers that may be received several years after the year of the understatement. The receipt of a significant benefit is a strong factor weighing against relief. The failure of the electing spouse to receive a significant benefit will not weigh in favor of relief.

Example. If an electing spouse receives property (including life insurance proceeds) from the nonelecting spouse that is beyond normal support and traceable to items omitted from gross income that are attributable to the nonelecting spouse, the electing spouse will be considered to have received significant benefit from those items.

(v) Compliance with income tax laws. The failure of an electing spouse to comply with the Pennsylvania Personal Income Tax Law (72 P.S. §§ 7301 - 7361) in the taxable years following the taxable year or years to which the request for relief relates is a strong factor weighing against relief without clear evidence that the electing spouse made a good faith effort to comply.

(vi) Economic hardship. Whether the electing spouse would suffer economic hardship if the Taxpayers' Rights Advocate does not grant relief from the income tax liability. Economic hardship is present where the electing spouse is unable to pay his or her reasonable basic living expenses. The determination of a reasonable amount of basic living expenses will vary according to the circumstances of the individual taxpayer. These circumstances, however, do not include the maintenance of an affluent or luxurious standard of living. In determining a reasonable amount for basic living expenses the

Taxpayers' Rights Advocate will consider any information provided by the taxpayer including the following:

(A) The taxpayer's age, employment status and history, ability to work, number of dependents, and status as a dependent of someone else.

(B) The amount reasonably necessary for food, clothing, housing (including utilities, homeowner insurance, homeowner dues, and the like), medical expenses (including health insurance), transportation, current tax payments (including federal, state, and local), alimony, child support, or other court-ordered payments, and expenses necessary to the taxpayer's production of income (such as dues for a trade union or professional organization, or child care payments which allow the taxpayer to be gainfully employed).

(C) The cost of living in the geographic area in which the taxpayer resides.

(D) The amount of property exempt from levy which is available to pay the taxpayer's expenses.

(E) Any extraordinary circumstances such as special education expenses, a medical catastrophe, or natural disaster.

(F) Eligibility for tax forgiveness in current and tax years subsequent to the tax year for which relief is requested.

(vii) Mental or physical health. Whether the electing spouse was in poor mental or physical health on the date the electing spouse signed the return or at the time the electing spouse requested relief. The Taxpayers' Rights Advocate will consider the nature, extent, and duration of illness when weighing this factor, but the lack of evidence of poor mental or physical health of an electing spouse will not weigh against relief.

(4) Allocation method for unpaid tax. The electing spouse's liability for unpaid tax (including interest, penalties and other charges) is determined using the items reported on the joint return and calculating the separate return amount due from the electing spouse in accordance with the following:

(i) Income, deductions, and credits earned by, paid to, paid by, or attributable to solely one spouse will be assigned to that spouse.

(ii) Except for estimated tax payments made jointly and a payment made with the joint return from joint funds of both spouses, income, deductions, and credits earned by, paid to, paid by, or attributable to both spouses jointly, or paid from joint funds of both spouses will be divided equally between the spouses.

(iii) The portion of the estimated tax payments made jointly and the payment made with the joint return that is from joint funds of the spouses that is allocable to each spouse is the amount that bears the same ratio to the sum of the spouse's joint estimated payments and joint payment with the return as the separate return amount of each spouse's total income less compensation bears to the total income less compensation reported on the joint return.

Example 1: H and W filed a joint 2006 Pennsylvania Personal Income Tax return on February 1, 2007, and reported a tax due amount of $307. H and W did not include any payment with the return. H and W had separate checking accounts. W did not participate in H's business. The Department issued an assessment for the $307 on October 1, 2007. H and W did not file a petition for reassessment. On November 1, 2008, H and W's divorce was finalized. On July 15, 2009, W filed the forms required to request innocent spouse relief for the tax assessment issued on October 1, 2007. W timely filed her 2007 and 2008 Pennsylvania Personal Income Tax returns and paid the tax due with the return. W states that she assumed H wrote a check for the 2006 tax due and enclosed the check with the return because in previous years he paid the tax due with the return because her earnings were subject to withholding tax and H had no withholding tax. In addition, the interest they earned each year generally was less than the unreimbursed business expenses W incurred.

H and W's joint return reported the following:

Gross Compensation	$40,000		
(Unreimbursed Business Expense)	($10,000)		
Net Compensation		$30,000	
Net Profits		$40,000	
Interest		$10,000	
Total PA Taxable Income			$80,000
(Other Deductions)		($10,000)	
Adjusted PA Taxable Income			$70,000
PA Tax Liability			$2,149
Total PA Tax Withheld		$1,228	
Resident Credit		$614	
Tax Due			$307

If H and W were to have filed separate returns, the returns would appear as follows:

H's Separate Return:

Gross Compensation	--		
(Unreimbursed Business Expense)	--		
Net Compensation		--	
Net Profits		$40,000	
Interest		$5,000	
Total PA Taxable Income			$45,000
(Other Deductions)		($5,000)	
Adjusted PA Taxable Income			$40,000
PA Tax Liability			$1,228
Resident Credit		$614	
Tax Due			$614

W's Separate Return:

Gross Compensation	$40,000		
(Unreimbursed Business Expense)	($10,000)		
Net Compensation		$30,000	
Net Profits		--	
Interest		$5,000	
Total PA Taxable Income			$35,000
(Other Deductions)		($5,000)	
Adjusted PA Taxable Income			$30,000

PA Tax Liability		$921
Total PA Tax Withheld	$1,228	
Overpayment		$307

Factors weighing in favor of granting W relief are W's divorce from H within the year following the tax year for which she is seeking tax relief. H and W did not have a joint checking account, and in past years, H paid the tax due with each return with a check from his account. W's withholding exceeded the tax liability attributable to the income allocable to her. W has no outstanding tax liabilities, and she properly filed her 2007 and 2008 Pennsylvania Personal Income Tax returns. Both years her withholding tax exceeded the tax due with the return. No evidence exists for factors weighing against granting relief from the tax liability attributable to H's income.

The Taxpayers' Rights Advocate may grant W relief on the assessment because the factors weighing in favor of granting relief exceed the factors weighing against granting relief. W does not receive a refund. H is liable for the $307 tax due with H and W's 2007 joint return.

Example 2: H and W have lived apart since December 2008. H and W filed a joint income tax return for tax year 2006. The return included the following:

Compensation (H-$40,000; W-$40,000)	$80,000
Interest	$8,000
Rent	$12,000

Total PA Taxable Income	$100,000	
PA Tax Liability		$3,070
Total PA Tax Withheld		$2,456
Tax Due		$614

H and W did not pay the tax due. H and W only had a joint checking account, and the interest they received related to jointly held investment. The rental property was owned by H and W. W regularly picked up and opened the household mail.

W received a notice that her Federal income tax refund would be intercepted to pay the 2006 Pennsylvania Personal Income Tax liability. W filed an election to obtain innocent spouse relief. W did not present any evidence that she would suffer economic hardship if relief was not granted. W's tax returns for subsequent tax years were filed and any tax due was paid.

Since H and W's employers withheld the applicable income tax on the compensation they earned, the unpaid tax due related to the interest and rental income. Since this income is attributable to jointly held property, if H and W had filed separate returns, they each would have reported half of the interest income and rental income. Accordingly, if the Taxpayers' Rights Advocate grants W any relief, the relief which may be granted is limited to 50 percent of the outstanding liability.

The factors weighing against granting even 50 percent relief outweigh the factors favoring relief because no factor weighs in favor of relief. W had reason to know that the tax due was not paid with the return and is outstanding. The income on which the tax was not paid was attributable to jointly held property. The Taxpayers' Rights Advocate should not grant W relief.

Example 3: H and W divorced in November 2008. H and W filed a joint income tax return for tax year 2003. The return included the following:

Compensation (H-$40,000; W-$40,000)	$80,000	
Interest	$8,000	
Rent	$12,000	
Total PA Taxable Income	$100,000	
PA Tax Liability		$3,070
Total PA Tax Withheld		$2,456
Tax Due		$614

H and W did not pay the tax due. H and W only had a joint checking account, and the interest they received related to jointly held investment. The rental property was owned by H and W. W regularly picked up and opened the household mail.

W received a notice that her Federal income tax refund would be intercepted to pay the 2003 Pennsylvania Personal Income Tax liability. W filed an election to obtain innocent spouse relief. W did not present any evidence that she would suffer economic hardship if relief was not granted. W's tax returns for subsequent tax years were filed and any tax due was paid.

The unpaid tax due is attributable to income obtained from jointly held property. If H and W had filed separate returns, they each would have reported half of the interest income and rental income.

No relief may be granted because W is seeking relief for a tax year more than twelve months before she was divorced or maintained a separate household from her spouse.

(5) Burden of proof. The electing spouse must prove that the allocation of the income, deductions, credits, and other items from the joint return to separate returns is correct.

(f) Procedure for requesting relief.

(1) Election.

(i) To make an election for the relief available in subsections (c) and (d) of this section, an electing spouse must complete and file with the Taxpayers' Rights Advocate the forms and documentation prescribed by the Department.

(ii) A valid election under this section is the first timely claim for relief from joint and several liability for the tax year for which relief is sought. A valid election also includes an electing spouse's second election to seek relief from joint and several liability for the same tax year under subsection (d) when all of the following apply:

(A) The electing spouse did not qualify for relief under subsection (d) when the Taxpayers' Rights Advocate considered the first election solely because the qualifications of clause (d)(2)(i)(A) of this section were not satisfied.

(B) At the time of the second election, the qualifications for relief under subsection (d) are satisfied.

(iii) An electing spouse is entitled to only one final administrative determination of relief under this section for a given liability, unless the electing spouse properly submits a second request for relief as described in subparagraph (f)(1)(ii). A taxpayer's failure to make a valid election as provided in paragraph (g)(1) is not an election for relief, and the Taxpayers' Rights Advocate notice to the Taxpayer of the invalid election is not an administrative determination of relief.

(2) Timing of election.

(i) The forms prescribed by the Department must be filed no later than 2 years from the date of the first collection activity against the electing spouse with respect to the joint tax liability.

(ii) The Taxpayers' Rights Advocate may not consider a claim for innocent spouse relief that is filed for a tax year prior to the date the tax becomes collectible by the Department.

(g) Taxpayers' Rights Advocate's procedure.

(1) Invalid election. In the event that the taxpayer fails to complete and provide the prescribed forms and documentation required for a valid election, the taxpayer will be notified that the forms as submitted do not qualify as an election and will advise the electing spouse what information or documentation must be provided to make the election. If the taxpayer fails to cure the inadequacy of the election, the Taxpayers' Rights Advocate will notify the electing spouse that a decision cannot be rendered.

(2) Spousal notification. The Taxpayers' Rights Advocate will notify the nonelecting spouse of the valid election filed by his or her spouse for relief under this section and give the nonelecting spouse the opportunity to become a party to any proceeding or object to the Taxpayers' Rights Advocate's proposed allocation.

(3) Relief determination. The Taxpayers' Rights Advocate will determine the portion of the tax that will be apportioned or allocated solely to the nonelecting spouse as permitted under subsections (c), (d) and (e) and grant the electing spouse relief from joint and several liability for such amounts.

(4) Notification of relief. Within six months of the Taxpayers' Rights Advocate's notice of its receipt of a valid

election, the Taxpayers' Rights Advocate will notify the electing spouse of the relief granted.

(5) Appeal rights.

(i) The electing spouse may appeal any of the following actions by filing a petition as prescribed in section 2704 of the Tax Reform Code of 1971 (72 P.S. § 9704):

(A) A denial of his or her election for relief available in subsections (c) and (d).

(B) The Taxpayers' Rights Advocate's failure to notify the electing spouse of a decision within six months of the date of the electing spouse's valid election.

(ii) Since a taxpayer elects the relief available under subsections (c) and (d) and the right of appeal is limited to a denial of the taxpayer's election or the failure to notify the taxpayer of a decision within six months of the valid election, the Taxpayers' Rights Advocate's decision to deny relief described in subsection (e) is not subject to review.

(h) Relief for penalties, interest and other charges. Relief for penalties, interest and other charges follows relief granted on the underlying tax. Thus, if an electing spouse is eligible for relief from tax, the electing spouse is also eligible for relief from the corresponding penalties, interest and other charges. No relief is available under this section if there was no underpayment of tax on the tax return or the tax reported as due with the return was paid with the return.

Example: Taxpayers filed a joint return late, paid the tax but still owed penalties and interest for filing late. Relief is not available under this section.

12/04/09

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER:	15-448
SUBJECT:	PERSONAL INCOME TAX – INNOCENT SPOUSE RELIEF
AGENCY:	DEPARTMENT OF REVENUE

TYPE OF REGULATION

X Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

RECEIVED
INDEPENDENT REGULATORY REVIEW COMMISSION
2010 MAR 30 PM 2:04

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/29	[signature] (minority)	HOUSE COMMITTEE ON FINANCE SAMUEL Rohrer
3/29	Sharon L. Snell	MAJORITY CHAIRMAN DAVID K. Levdansky
3/29	[signature] (minority)	SENATE COMMITTEE ON FINANCE JAMES FERLO
3/29	Lorne Cooper	MAJORITY CHAIRMAN Patrick M. Browne
3/29/10	K Cooper	INDEPENDENT REGULATORY REVIEW COMMISSION
		~~ATTORNEY GENERAL (for Final Omitted only)~~
3/29	Maya Garcia	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

March 4, 2010