

Sec. 12-702(c)(1)-2. Relief of spouse from Connecticut income tax liability on joint Connecticut income tax return

(a) If a joint Connecticut income tax return was filed, pursuant to § 12-702(c)(1)-1 of this Part, on which there is a substantial understatement of Connecticut income tax attributable to grossly erroneous items of one spouse, the other spouse (the “innocent spouse”) shall be relieved of liability for such understated Connecticut income tax (including interest, penalties and other amounts) for such taxable year if:

(1) the spouse seeking relief establishes that, in signing such return, he or she did not know, and had no reason to know, that there was such substantial understatement; and

(2) taking into account all the facts and circumstances, including whether or not the spouse seeking relief benefited directly or indirectly from the grossly erroneous items, it is inequitable to hold such spouse liable for the understated Connecticut income tax for such taxable year.

(b) A spouse may make application for the relief provided for in this section by filing with the Commissioner a sworn statement stating all the facts and circumstances set forth in subdivisions (a)(1) and (2) of this section in support of such application. The Commissioner may request additional sworn statements, testimony under oath or any other proof required to determine whether the applicant should be relieved of liability for Connecticut income tax as provided in this section.

(c) For the purposes of this section:

(1) the term “grossly erroneous items” means, with respect to any spouse, any item of Connecticut adjusted gross income attributable to such spouse which is omitted from Connecticut adjusted gross income and any claim for Connecticut income tax purposes of a deduction, exemption, credit or basis by such spouse in an amount for which there is no basis in fact or law;

(2) the term “substantial understatement” means a difference between the amount of the Connecticut income tax required to be reported on the Connecticut income tax return for the taxable year and the amount of Connecticut income tax actually reported on the Connecticut income tax return that exceeds \$500; and

(3) the determination of the spouse to whom items of Connecticut adjusted gross income (other than Connecticut adjusted gross income derived from property) are attributable shall be made without regard to community property laws.

(d) Connecticut income tax liability attributable to a substantial understatement shall exceed the specified percentage (as provided in subdivision (1) of this subsection) of the innocent spouse’s Connecticut adjusted gross income.

(1) Except as provided in subdivision (3) of this subsection, the provisions of this section apply:

(A) if the innocent spouse’s Connecticut adjusted gross income for the most recent taxable year ending before the date the deficiency notice is mailed is \$20,000 or less, only if the liability for Connecticut income tax described in subsection (a) of this section (including interest, penalties and other amounts) attributable to the substantial understatement is greater than 10% of such Connecticut adjusted gross income; or

(B) if the innocent spouse’s Connecticut adjusted gross income for the most recent taxable year ending before the date the deficiency notice is mailed is more than \$20,000,

only if the liability for Connecticut income tax described in subsection (a) of this section (including interest, penalties and other amounts) attributable to the substantial understatement is greater than 25% of such Connecticut adjusted gross income.

(2) For purposes of this subsection, if the innocent spouse is married to another spouse at the close of such year, the innocent spouse's Connecticut adjusted gross income shall include the Connecticut adjusted gross income of the new spouse, whether or not they file a joint Connecticut income tax return.

(3) The requirements contained in subdivision (1) of this subsection do not apply to a substantial understatement attributable to an omission from Connecticut adjusted gross income. Therefore, the relief provided by this section shall be available without the need to meet the applicable percentage limitation specified in this subsection where there is a substantial understatement attributable to an omission from Connecticut adjusted gross income.

(f) While this section pertains to Section 12-702(c)(1) of the general statutes, for purposes of supplementary interpretation, as the phrase is used in Section 12-2 of the general statutes, the adoption of this section is authorized by Section 12-740(a) of the general statutes.

(Effective November 18, 1994)