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October 2, 2025

Geoffrey E. Snyder
Commissioner, Massachusetts Department of Revenue
By email: RulesandRegs@dor.state.ma.us

Re: Proposed revisions to draft Transferor's Certification form issued in connection with 830 CMR 62B.2.4

Dear Commissioner Snyder:

We are writing on behalf of the Real Estate Bar Association for Massachusetts (REBA), an organization representing over 2,000 lawyers practicing in all areas of real estate law. Our members represent both buyers and sellers of homes as well as clients needing wills, trusts, or other estate planning documents.

We hereby respectfully offer comments and suggested revisions to the draft Transferor's Certification form issued in connection with 830 CMR 62B.2.4. We appreciate the Department's efforts to implement the updated nonresident real estate withholding requirements and we recognize the importance of a clear and administrable process. However, we have identified several areas of concern with the current draft form that we believe merit further consideration.

1. Insufficient Information for Withholding Agent to Determine Withholding Amount

The current draft form does not solicit all the information necessary to determine the correct withholding amount. Specifically:

- a. The form does not ask whether the Transferor is subject to the personal income tax under M.G.L. c. 62, or the corporate excise tax under M.G.L. c. 63.
- b. It does not reference or incorporate the taxable income surtax threshold under M.G.L. c. 62, § 4(d).

Given that the applicable tax rate and potential surtax depend on this classification, we recommend adding checkboxes or fields in both Section 1 and Section 2 of Part 4 to capture this information explicitly.

2. Missing Line for Final Withholding Amount

The form does not include a line item that calculates the final withholding amount. For example:

- a. In Part 4, Section 1, there is no line instructing the Transferor to multiply the amount subject to withholding by 4%.
- b. In Part 4, Section 2, there is no line instructing the Transferor to multiply the estimated net gain by the applicable tax rate (5% or 8%).

This omission places the burden of tax computation on the conveyancing attorney, which is inconsistent with 830 CMR 62B.2.4(9). The regulation requires the Withholding Agent to file the withholding return and remit payment, but does not obligate the agent to perform tax calculations. This distinction was a key change between the proposed and final regulations and should be reflected in the form.

We strongly recommend that the form include a final line item in each section that clearly calculates the withholding amount, based on the inputs provided by the Transferor.

3. Unreasonable Burden on Conveyancing Attorneys

The current structure of the form appears to require conveyancing attorneys to perform tax calculations without adequate support. This is problematic for several reasons:

- a. Attorneys are not tax preparers and should not be responsible for determining tax liability.
- b. The form should be designed to allow the Transferor to provide all necessary information and perform the relevant calculations, with the Withholding Agent submitting that documentation, together that calculated amount.

We urge the Department to revise the form so that it clearly places the responsibility for tax calculations on the Transferor, and not on the closing agent.

We appreciate your attention to these concerns and consideration of our views, and welcome the opportunity to discuss them further with you or your staff.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter Wittenborg".

Peter Wittenborg
Executive Director

Cc: REBA Board of Directors
Benjamin Fierro III, *REBA Legislation Counsel*