

Overview of the New Massachusetts Regulation: 830 CMR 62B.2.4

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Purpose of the new Regulation

- Facilitate the collection of personal income tax (M.G.L. c. 62) or corporate excise (M.G.L. c. 63) due from transferors of Massachusetts real estate;
- Establish withholding requirements for proceeds of certain sales of Massachusetts real estate;
- Withhold taxes from payments due from certain transferors of Massachusetts real estate.

Basics of the Regulation: 830 CMR 62B.2.4

Effective Date:

Closings that occur on or after November 1, 2025

General Rule:

- (a) Sale of real property in Massachusetts
- (b) Gross Sales Price equals or exceeds \$1,000,000
- (c) IF not exempt, withhold and remit 4% of 'Gross Sales Price' to Department of Revenue (see later slide)
- (d) Within 10 days of closing

The Regulation: Who Reports?

Who determines if regulation applies/
does the report and submits the withholding amount?

- The “Withholding Agent”: The person responsible for closing the real estate transaction, including the
 - Attorney
 - Escrow company, or
 - Title company, or
 - Any other person who receives and disburses the consideration for a transfer of real estate.

The Regulation: Who Reports?

What is the Withholding Agent's obligation?

- *If the transfer is exempt*
- Submit a Transferor's Certification for each transferor
- Submit a withholding return (NRW) to the DOR with a settlement statement ("HUD-1")
- Within 10 days of closing
- Copy of Transferor's Cert and NRW to Seller
- *ALL* transmissions must be electronic (MassTaxConnect)

The Regulation: Who Reports?

What is the Withholding Agent's obligation?

- *If the transfer is not exempt*
- Submit a Transferor's Certification for each transferor
- Submit a withholding (NRW) return to the DOR with Settlement Statement (HUD-1)
- Collect and remit withholding amounts due to DOR
- Within 10 days of closing
- Copy of Transferor's Cert, NRW and receipt to Seller
- *ALL* transmissions must be electronic (MassTaxConnect)

The Regulation: Applicability

Is the transaction reportable?

- If sales price at or over \$1,000,000-**YES**
 - MUST file Transferor Certification and NRW and Settlement Statement
- MAY be exempt, explain on Certification

The Regulation: Applicability

Is the transaction exempt from withholding? Full or partial exemption may apply:

- Principal residence of transferor
- Due to divorce
- Foreclosure Sale, based on sale price
- Full year MA resident, as defined in regulation
- The estate of a resident decedent
- Corporation with continuing MA business presence

The Regulation: Applicability

Is the transaction exempt from withholding? YES, if:
Seller is:

- Financial Institution
- 501(c)(3) organization
- Publicly traded corporation/partnership
- Insurance company
- US, MA or other government entity
- Fannie/Freddie/Home Loan/Ginnie/PMI

But NOT exempt from Reporting

NOT exempt based on use ('commercial' / 'residential')

Reporting the Transaction

Calculating the amount to withhold and remit

- If not exempt, basic rule
 - 4% of Gross Sales Price
- If not exempt, and the taxpayer is subject to “Millionaire’s tax” (c. 62, §4 (d))
 - then additional 4% from portion exceeding threshold

Reporting the Transaction

Calculating the amount to withhold and remit

- If not exempt, and “Transferor elects Alternative withholding”
 - then estimated net gain X applicable tax rate

To facilitate reporting and calculations

Recommend adding rider to P&S where Sales Price is at or over \$1,000,000 obligating seller cooperation with reporting