

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
- 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
- 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

Penalties for non compliance

If Withholding Agent fails to meet its withholding obligation

- Shall be subject to the penalties for failure to withhold (M.G.L. c. 62B and M.G.L. c 62C.)
- Equivalent to failure to withhold employee taxes

Withholding Agent is not liable for penalties

- IF the tax due is paid by the original or extended due date of the Transferor's tax return or
- If the Withholding Agent fails to meet its withholding obligation because it relied in good faith on the Transferor's Certification.

The Regulation: Applicability

If withholding is required

- And the amount to be withheld
 - Exceeds the Gross Sales Price minus
 - Amount needed to pay debts secured by a mortgage or other lien on the property,
- Then the Withholding Agent shall withhold and remit all remaining funds

“Debts” do not include those incurred in contemplation of the Transfer, including a debt secured by a mortgage, or other lien with an effective date of not more than 90 days before the date of Transfer.

The Regulation: Example (BCROD)

Sales Price	\$1,100,000	Sales Price x 4%	= \$44,000
- 1 st Mortgage	\$ 770,000	(withholding)	
- HELOC	\$ 120,000	Excise Tax	= \$7,128
- DOR lien	<u>\$ 170,000</u>	Real Estate	= \$55,000
Proceeds	\$ 40,000	(commission)	

Available Proceeds \$ 40,000

Remit to DOR \$ 40,000 (total available after debts)

Due from Seller \$62,128 (for Tax and Commission)