

WORKING DRAFT FOR PRACTITIONER COMMENT - 10/20/19

830 CMR: DEPARTMENT OF REVENUE

830 CMR 62C.00: STATE TAX ADMINISTRATION

830 CMR 62C.3.1 is repealed and replaced with the following:

830 CMR 62C.3.1: Department of Revenue Public Written Statements

(1) Statement of Purpose; Effective Date; Outline of Topics.

(a) Statement of Purpose. Clearly articulated and widely communicated rules, standards and instructions are an important tool in achieving voluntary compliance with Massachusetts tax laws. The Department of Revenue publishes public written statements as well as other documents and forms to explain and communicate the rules ~~which~~that taxpayers and others must follow in order to comply with their obligations, established by law, to file returns and pay all taxes due. The purpose of this regulation is to describe the various types of public written statements and other documents published or issued by the Department of Revenue and the general procedures followed by the Department in issuing public written statements. ~~This regulation also revokes certain outdated materials as described in 830 CMR 62C.3.1(11).~~

(b) Effective Date. 830 CMR 62C.3.1 is effective upon promulgation.

(c) Outline of Topics. This regulation is organized as follows:

1. Statement of Purpose; Effective Date; Outline of Topics
2. Definitions
3. General
4. Regulations
5. ~~DOR~~ Directives

and ~~6.~~ Technical Information Releases

~~6.~~ ~~7.~~ Letter Rulings

~~7.~~ ~~8.~~ Informational Guideline Releases

~~9. Letters of Opinion on~~ ~~8.~~ Local ~~Taxation~~ Finance Opinions

~~10.~~ Materials that are not Public Written Statements

~~11. Revocation of Outdated Materials.~~

(2) Definitions. The following words used in 830 CMR 62C.3.1, have the following meanings unless the context otherwise requires:

Commissioner, the Commissioner of Revenue.

Department, the Massachusetts Department of Revenue.

Massachusetts tax laws, the tax statutes of the Massachusetts General Laws ~~which~~that are within the official purview of the Department, the regulations thereunder, and related statutes and regulations ~~which~~that are within the official purview of the Department.

~~—MASSTAX Guide, an official publication of~~produced by the Department ~~of Revenue containing the Department's Public Written Statements, Administrative Procedures, and selected forms and instructions, published by~~ Thompson ~~West~~Reuters or a successor ~~published~~ on an annual basis with periodic supplements containing the Department's public written statements, selected forms and instructions, and other materials.

Public written statements, official pronouncements of the Department ~~which are limited to the following, specifically:~~ regulations described in 830 CMR 62C.3.1(4), ~~DOR Directives described in 830 CMR 62C.3.1(5), Technical Information Releases described in 830 CMR 62C.3.1(6), letter rulings~~5), Letter Rulings described in 830 CMR 62C.3.1(~~7~~6), Informational Guideline Releases described in 830 CMR 62C.3.1(~~8~~7), and ~~Letters~~Local Finance Opinions described in 830 CMR 62C.3.1(8). All public written statements in effect are included in the latest published version of ~~Opinion~~the official MASSTAX Guide and Supplements or published on ~~Local Taxation described in 830 CMR 62C.3.1(9);~~the Department's website at <http://www.mass.gov/dor>.

~~Regulatory proceedings, proceedings relating to the adoption, amendment or repeal of a regulation.~~

- (3) General. The ~~Commissioner~~Department may, ~~in the interests of sound tax administration, publish or~~ issue regulations and other public written statements relating to the Massachusetts tax laws and other matters within the official purview of the Department ~~of Revenue~~. Only public written statements, as defined in 830 CMR 62C.3.1(2), convey the official position of the Department with respect to the interpretation of the Massachusetts tax laws. Other documents ~~which~~issued by the Commissioner that are not public written statements should be viewed as informational only. ~~The effect of other documents which and are not public written considered to be official policy statements, such as forms and other publications of the Department. The Department shall use public written statements in its oversight and administration of the Massachusetts tax laws until they are as stated in this regulation. Any person relying on~~revoked, modified, or superseded, whether by a public-written statement must consider the effect of direct DOR pronouncement or as a result of a change in the Massachusetts tax laws, later ~~legislation, court decisions, or later public-written statements even if such later legal authorities or documents do not specifically revoke or modify an earlier public-written statement. To the extent that this regulation is inconsistent with any~~subsequent public written statements ~~or other documents or materials issued by the Commissioner prior to the effective date of this regulation, those public-written statements, documents, or materials are superseded to the extent of~~

any such inconsistency.

(4) Regulations.

~~(a) General. The Department may adopt, amend or repeal regulations, including emergency regulations, under the authority granted by M.G.L. c. 14, § 6, and in compliance with the provisions of M.G.L. c. 30A and M.G.L. c. 62C, § 3. The Commissioner shall issue notice for the adoption, amendment, or repeal of regulations in accordance with the requirements set forth in M.G.L. c. 30A, 830 CMR-62C.3.1. A regulation under this section has the same meaning as a “regulation” defined under M.G.L. c. 30A, § 1.~~

~~(b) Definition. A regulation is a public written statement which is a regulation within the meaning of M.G.L. c. 30A.~~

~~(c) Procedure for Adopting Amending or Repealing a Regulation.~~

~~1. Notice. The Commissioner shall issue notice of the proposed adoption, amendment, or repeal of a regulation at least twenty-one (21) days before such action.~~

~~2. Manner of Issuing Notice. The Commissioner shall issue notice in the following manner:~~

~~a. publish notice of the proposed action in the manner specified by any law, or if no manner is specified, then in such newspapers, and, where appropriate, in such trade, industry or professional publications as the Commissioner deems appropriate;~~

~~b. notify any person to whom specific notice must be given by delivering or mailing a copy of the notice to the last known address of the person required to be notified;~~

~~c. notify any person filing a written request for notice of the Commissioner's regulatory proceedings by delivering or mailing a copy of the notice to the last known address of the person; and~~

~~d. file a copy of the notice with the state Secretary.~~

~~3. Content of Notice. The notice shall:~~

~~a. refer to the statutory authority under which the action is proposed;~~

~~b. give the time and place of any public hearing or state the anticipated time of the Department's action;~~

~~c. state the manner in which data, views or arguments may be submitted to the Department by any interested person;~~

~~d. state the express terms or describe the substance of the proposed action; and~~

~~e. include any additional matter required by law.~~

~~4. Public Hearing. The Commissioner shall hold a public hearing to solicit data, views and arguments regarding the proposed adoption, amendment or repeal of a regulation. Nothing in 830 CMR 62C.3.1(3)(c)4. shall be construed to prohibit, before or after the publication of the notice of proposed action, the holding of public discussion to solicit data, views and arguments regarding the proposed action.~~

~~(d) Emergency Regulations. If the Commissioner finds that the immediate adoption, amendment or repeal of a regulation is necessary for the preservation of the public health, safety or general welfare, and that observance of the requirements of notice and hearing would be contrary to the public interest, the Commissioner may issue, adopt, amend or repeal the regulation as an emergency regulation pursuant to M.G.L. c. 30A, § 5.~~

~~(e) Retroactive application. A regulation is retroactive in effect, except to the extent that it expressly provides otherwise.~~

~~(f) Request for Adoption, Amendment or Repeal of a Regulation. Any interested person may request that the Commissioner adopt, amend or repeal any regulation, and may accompany the request with relevant data, views, and arguments. ~~The Rulings and Regulations Bureau will consider all requests. Requests concerning regulations, either proposed or promulgated, and any accompanying data, views and arguments,~~ should be sent in writing to the Bureau Chief, Rulings and Regulations Bureau, Massachusetts Department of Revenue, 100 Cambridge St., Boston, MA 02114.~~

(5) ~~DOR~~ Directives and Technical Information Releases.

(a) ~~_____~~ (a) ~~General.~~ The In its discretion, the Department may, ~~as the Commissioner deems appropriate,~~ issue ~~DOR Directives in compliance with 830 CMR 62C.3.1.~~ and Technical Information Releases (TIRs).

~~_____~~ (b) ~~Definition.~~
Directives. A ~~DOR~~ Directive is a public written statement, signed by the Commissioner and entitled “~~DOR Directive,~~” which provides details or supplementary information; clarifies ambiguities; resolves inconsistencies; or explains or elaborates upon issues, concerning current Department policy, practice or the Department’s application and interpretation.

(b) ~~_____~~ (c) ~~Purpose.~~ The purposes of a DOR Directive are to inform Department personnel and the public of Department policy and practice, thereby promoting the uniform application

of the Massachusetts tax laws ~~by~~ or the ~~Department~~ Department's current policies and assisting practices in order to assist taxpayers in complying with ~~the~~ their Massachusetts tax ~~laws.~~ obligations.

- ~~(d) Effect. A DOR Directive states the official position of the Department. The Department will use a DOR Directive as precedent in the disposition of cases unless and until it is revoked or modified under 830 CMR 62C.3.1(5)(e)2. or otherwise. A taxpayer may rely upon a DOR Directive unless and until it is revoked or modified. A taxpayer may rely upon a DOR Directive, however, only if the facts, circumstances and issues presented by the taxpayer's situation are substantially similar to those set forth in the DOR Directive. Any person relying on a DOR Directive must consider the effect of later legislation, regulations, court decisions, rulings, DOR Directives, and Technical Information Releases.~~
- ~~(e) Procedure For Issuing, Revoking or Modifying a DOR Directive.~~
- ~~1. Issuance. The Commissioner may issue a DOR Directive without notice or public hearing. Ordinarily the Department itself identifies the need for or subject matter of a DOR Directive.~~
- ~~2. Revocation or Modification. The Commissioner may revoke or modify a DOR Directive by issuing a revocation or modification in the same manner as a DOR Directive is issued. Wherever possible, a revocation or modification shall identify the DOR Directive and any other public written statements affected, and the extent of the revocation and modification. However, a Directive that does not expressly identify an inconsistent prior public written statement, document or other material nonetheless supersedes the earlier item to the extent of any inconsistency.~~
- ~~(f) Prospective Application. A DOR Directive is prospective in effect, except to the extent that it expressly provides otherwise.~~
- ~~(6) Technical Information Releases.~~
- ~~(a) General. The Department may, as the Commissioner deems appropriate, issue Technical Information Releases in compliance with 830 CMR 62C.3.1. Generally, within four months of a final court decision interpreting Massachusetts tax law, a TIR will be issued setting forth the Commissioner's position relative to that decision. See M.G.L. c. 62C, § 3.~~
- ~~(c) _____ (b) Definition. A Technical Information Release (TIR). A TIR is a public written statement, signed by the Commissioner and entitled "Technical Information Release," which informs the public of the Department's response to changes in federal or Massachusetts tax laws, or to court decisions interpreting federal or Massachusetts tax laws. Within four months of a final court decision interpreting Massachusetts tax law, the Department will issue a TIR setting~~

forth the Department's position relative to that decision where required by M.G.L. c. 62C, § 3.

- ~~(c) Purpose.~~ The purposes of a TIR are to inform Department personnel and the public of Department policy and practice, thereby promoting the uniform application of the Massachusetts tax laws by the Department and assisting taxpayers in complying with the Massachusetts tax laws.
- ~~(d) Effect.~~ A TIR states of Directives and TIRs. Directives and TIRs are precedential and state the official position of the Department. ~~The Department will use a TIR as precedent in the disposition of cases unless Directives and TIRs may be relied upon by taxpayers until it is they are~~ revoked or, modified under 830 CMR 62C.3.1(6)(e)2. or otherwise. A taxpayer may rely upon a TIR unless and until it is revoked or modified. A taxpayer may rely upon a TIR, however, only if the facts, circumstances and issues presented, or superseded, whether by the taxpayer's situation are substantially similar to those set forth in the TIR. Any person relying on a TIR must consider the effect of a direct DOR pronouncement or as a result of a change in the Massachusetts tax laws, later legislation, regulations, court decisions, rulings, DOR Directives, and TIRs.
- ~~(e) Procedure For Issuing, Revoking or Modifying a TIR.~~
 - ~~1. Issuance.~~ The Commissioner may issue a TIR without notice or public hearing.
 - ~~(d) 2. Revocation or Modification.~~ The Commissioner may revoke or modify a TIR by issuing a revocation or modification in the same manner as a TIR is issued. Wherever possible, a revocation or modification shall identify the TIR and any other or subsequent public written statements affected, and the extent of the revocation or modification. However, a TIR that does not expressly identify an inconsistent prior public written statement, document or other material nonetheless supersedes the earlier item to the extent of any inconsistency.
- ~~(f) Prospective Application.~~ A TIR is prospective in effect, except to the extent that it expressly provides otherwise.

~~(7)~~(6) Letter Rulings.

- ~~(a) General.~~ The Commissioner issues letter rulings. In its discretion, the Department may issue a Letter Ruling in response to questions of individuals and organizations a question from an individual or an organization about tax aspects or tax treatment of the application of the Massachusetts tax laws to a particular transaction or other set of facts.
- ~~(b) Definition.~~ For A Letter Ruling is an "advisory ruling" as defined in M.G.L. c. 30A, § 8, issued by the Department in writing to a detailed explanation of letter rulings

~~see 830 CMR 62C.3.2: taxpayer or the taxpayer's authorized representative that interprets and applies the Massachusetts tax laws to a specific transaction or other set of facts.~~

~~(a)(c)~~ Letter Rulings. Pertaining to Specific Transactions. The Department will generally only issue a Letter Ruling that is requested with respect to a particular transaction when that transaction is prospective. If a transaction has been completed, the Department may, in its discretion, issue a Letter Ruling, but only if the taxpayer's tax return for the taxable period in which the transaction was completed has not yet been filed.

~~(8) Informational Guideline Releases.~~

~~(a) General. The~~

~~(d) Circumstances Where the Department Will Not Issue a Letter Ruling. The Department may, decline to issue a Letter Ruling for any reason. The Department does not generally issue a Letter Ruling where:~~

- ~~1. The request for a Letter Ruling presents the same or a similar issue that the Department knows or has reason to believe is before it in connection with an examination or audit of the liability of the same taxpayer for the same or any other prior period.~~
- ~~2. The request for a Letter Ruling pertains to hypothetical situations.~~
- ~~3. The request for a Letter Ruling does not identify the taxpayer or taxpayers.~~
- ~~4. The request for a Letter Ruling pertains to an issue that is adequately addressed by the Massachusetts tax laws, public written statements, or a decision of the Massachusetts or federal courts.~~
- ~~5. The request for a Letter Ruling raises issues that are inherently factual, including, but not limited to, questions of domicile or nexus.~~

~~(e) Requirements for a Request for a Letter Ruling.~~

- ~~1. Each request for a Letter Ruling must contain a complete written statement of all relevant facts relating to the transaction or other subject of the requested Letter Ruling. Such statement must include the name, address, and taxpayer identification number of the taxpayer and any pertinent related parties; a full and precise statement of the business reasons for the transaction or other action that may be contemplated; and a carefully detailed description of the transaction or other subject of the requested ruling. The Department does not issue Letter Rulings upon oral requests.~~
- ~~2. Copies of all documents relevant to the requested Letter Ruling must be submitted as part of the request. The pertinent facts reflected in the documents submitted must be highlighted in the taxpayer's statement of the facts and not~~

merely incorporated by reference, and must be accompanied by an analysis of their relevance to the issue or issues, specifying the applicable provisions of the Massachusetts tax laws. Where the request pertains to only one step of an integrated transaction, the facts and circumstances must be detailed with respect to the entire transaction.

3. The request must contain a statement whether, to the best of the knowledge of the taxpayer or the taxpayer's representative, a similar or identical issue is being considered by the Department in connection with an active examination or an audit of the liability of the same taxpayer or a related party for the same or any other prior period.
4. If a request for a Letter Ruling on the same transaction or issue has been or is being submitted to the Internal Revenue Service or the taxing authority of another state, the request for a Letter Ruling to the Department must disclose this fact.
5. A request for a Letter Ruling must state the taxpayer's view as to the correct tax result and furnish a statement of relevant authorities to support such view.
6. A request for a Letter Ruling by or for a taxpayer must be signed by the taxpayer or his authorized representative. If the request for a Letter Ruling is made by a taxpayer's representative, a duly executed power of attorney (Form M-2848) must be provided to the Department.
7. A request for a Letter Ruling should be addressed to the Commissioner of Revenue, 100 Cambridge Street, Boston, Massachusetts 02114; Attention: Rulings and Regulations Bureau.
8. The Department will acknowledge receipt of all requests for Letter Rulings. If a request for a Letter Ruling does not comply with the provisions of this regulation, the Department will advise the taxpayer of the requirements that have not been met.

(f) Conferences. A taxpayer seeking a Letter Ruling may request a conference with the Department. Such a conference, held either in person or by telephone, would be informal in nature and conducted for the purpose of discussing the issues raised by the request for Letter Ruling. A conference will only be scheduled when the Department concludes that it would be useful in making the determination. The conference shall not be construed as an "adjudicatory proceeding" as defined by M.G.L. c. 30A.

(g) Request for Additional Information. The Department may request that the taxpayer or the taxpayer's representative submit additional information or documents in connection with a request for a Letter Ruling.

(h) Withdrawal of Requests. The taxpayer's request for a Letter Ruling may be withdrawn at any time prior to the issuance of the Letter Ruling. However, in

such a case, the Department may consider the information submitted by the taxpayer in the request for a Letter Ruling in any subsequent audit or examination by the Department of the taxpayer's return. Even though a request is withdrawn, all correspondence and exhibits will be retained by the Department. Notwithstanding a taxpayer's withdrawal of its request for a Letter Ruling, the Department may decide to issue a generally-applicable public written statement on the same or similar issues that were presented in the request.

(i) Effect of Letter Rulings.

1. A taxpayer may rely on a Letter Ruling issued to that taxpayer unless and until the Letter Ruling is revoked, modified, or superseded, whether by a direct DOR pronouncement or as a result of a change in the Massachusetts tax laws, later court decisions, or subsequent public written statements.
2. A Letter Ruling issued to a taxpayer with respect to a particular transaction represents a determination of the Department on that transaction only.

(i) Confidentiality.

1. Persons requesting a Letter Ruling must do so on the basis that the text of any Letter Ruling will be published in the manner described in 830 CMR 62C.3.1(6)(k), subject to the redactions hereinafter described. Persons requesting a Letter Ruling waive all rights to prevent disclosure of the text of the Letter Ruling, except as such rights are provided in 830 CMR 62C.3.1(6)(j)(2).
2. Before publishing any Letter Ruling under 830 CMR 62C.3.1(6)(k) the Department shall redact:
 - a. the names, addresses, and other identifying details of the person to whom the Letter Ruling pertains and of any other person identified therein;
 - b. information specifically exempted from disclosure by any statute that is applicable to the Department;
 - c. information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
 - d. any information the Department deems to be exempt from public disclosure under M.G.L. c. 4, § 7, Paragraph 26 or other law.

The Department will treat information redacted pursuant to this paragraph as confidential taxpayer information prohibited from disclosure under M.G.L. c. 62C, § 21.

Before publishing a Letter Ruling, the Department will, at the taxpayer's request, give the taxpayer an opportunity to indicate whether the Letter Ruling

in its proposed redacted form contains information that the taxpayer believes should also be redacted as confidential. The Department shall ultimately make the final determination as to what contents are confidential and subject to redaction.

(k) Publication of Letter Rulings. The Department will publish Letter Rulings in the MASSTAX Guide and on the Department's website at <http://www.mass.gov/dor> and may take steps to bring Letter Rulings to the attention of the news media and publishers of tax services.

(7) Informational Guideline Releases.

(a) General. ~~appropriate,~~ In its discretion, the Department may issue Informational Guideline Releases ~~in compliance with 830 CMR 62C.3.1.~~ (IGRs).

(b) Definition. An ~~Informational Guideline Release (IGR)~~ is a public written statement ~~entitled "Informational Guideline Release,"~~ issued by the Department's Division of Local Services under the authority of M.G.L. c. 44 and 58, on matters pertaining to assessment, classification, and administration of local taxes and municipal finance. ~~#~~An IGR promotes the uniform oversight and administration of Massachusetts local tax laws and finance laws by the Department and assists local officials in complying with the Massachusetts local tax and finance laws. An IGR may include standards of local assessment performance and accounting, studies, cost and price schedules, news and reference bulletins, digests of law on local ~~taxation~~tax and finance, and any other information ~~which~~that the ~~Commissioner~~Department deems appropriate.

~~(c) Purpose. The purposes of an Informational Guideline Release are to inform Department personnel, city, town, county and district officers, and the public of Department policy and practice, thereby promoting the uniform application of the Massachusetts tax laws by the Department and assisting local officials and taxpayers in complying with the Massachusetts tax laws.~~

~~(d) Effect. An Informational Guideline Release states the official position of the Department on certain matters pertaining to assessment, classification, and administration of local taxes and municipal finance. The Department and city, town, county, and district officers will follow an Informational Guideline Release unless and until it is revoked or modified under 830 CMR 62C.3.1(8)(e)2. or otherwise. A taxpayer should rely on an Informational Guideline Release as the official position of the Department unless and until it is revoked or modified, as long as the facts, circumstances and issues presented in the taxpayer's situation are substantially similar to those set forth in the Informational Guideline Release. Any person relying on an Informational Guideline Release must consider the effect of later legislation, regulations, court decisions, rulings, and Informational Guideline Releases.~~

~~(e) Procedure for Issuing, Revoking or Modifying an Informational Guideline Release.~~

~~1. Issuance. The Commissioner may issue an Informational Guideline Release without notice or public hearing.~~

~~2. Revocation or Modification. The Commissioner may revoke or modify an Informational Guideline Release by issuing a revocation or modification in the same manner as an Informational Guideline Release is issued. A revocation or modification shall identify the Informational Guideline Release and any other public written statements affected, and the extent of the revocation or modification. However, an Information Guideline Release that does not expressly identify an inconsistent prior public written statement, document or other material nonetheless supersedes the earlier item to the extent of any inconsistency.~~

~~(f) Prospective Application. An Informational Guideline Release is prospective in effect, except to the extent that it expressly provides otherwise.~~

~~(9) Letters of Opinion on~~

(c) Effect. IGRs are precedential and state the official position of the Department. IGRs may be relied upon by local officials until they are revoked, modified, or superseded, whether by a direct DOR pronouncement or as a result of a change in the Massachusetts tax laws, later court decisions, or subsequent public written statements.

(8) Local Taxation Finance Opinions.

(a) General. ~~The~~ In its discretion, the Department may, ~~as the Commissioner deems appropriate,~~ issue Letters of Opinion on Local Taxation in compliance with 830 CMR 62C.3.1. Finance Opinions.

(b) Definition. ~~A Letter of Opinion on A Local Taxation Finance Opinion~~ is a public written statement ~~entitled "Letter of Opinion on Local Taxation,"~~ issued by the Department's Division of Local Services in response to that clarifies, explains, or elaborates upon Department policy, practice, or interpretation pertaining to specific local tax or finance questions of individuals, organizations and municipal, county and district officials, on, issues, or matters pertaining to assessment, classification not addressed in another public written statement. A Local Finance Opinion promotes the uniform oversight and administration of local taxes and municipal finance.

~~(c) Purpose. The purposes of a Letter of Opinion on Local Taxation are to inform Department personnel, city, town, county and district officers, and the public of Department policy and practice, thereby promoting the uniform application of the Massachusetts local tax laws and the administration of municipal finance laws by the Department and assists local officials in complying with the Massachusetts local tax and finance by the Department and assisting local officials and taxpayers in complying with the Massachusetts tax laws laws.~~

~~(d)~~ Effect. ~~A Letter of Opinion on Local Taxation states~~ Finance Opinions are precedential and state the official position of the Department ~~on certain matters pertaining to assessment, classification and administration of local taxes and municipal finance. The Department will use a Letter of Opinion on Local Taxation as precedent in the disposition of cases~~ Finance Opinions may be relied upon by local officials unless and until ~~it is~~ they are ~~revoked or modified under 830 CMR 62C.3.1(9)(e)2, or superseded, whether by a direct DOR pronouncement or otherwise.~~ A person may rely upon ~~as~~ a Letter of Opinion on Local Taxation unless and until it is ~~revoked or modified.~~ A person may rely upon ~~result of~~ a Letter of Opinion on Local Taxation, however, only if the facts, circumstances and issues presented by the person's situation are substantially similar to those set forth in the Letter of Opinion on Local Taxation. Any person relying on a Letter of Opinion on Local Taxation must consider the effect of change in the Massachusetts tax laws, later legislation, regulations, court decisions, rulings, Informational Guideline Releases and Letters of Opinion on Local Taxation.

~~(e) Procedure for Issuing, Revoking or Modifying a Letter of Opinion on Local Taxation.~~

~~1. Issuance. The Commissioner may issue a Letter of Opinion on Local Taxation without notice or public hearing.~~

~~2. Revocation or Modification. The Commissioner may revoke or modify a Letter of Opinion on Local Taxation by issuing a revocation or modification in the same manner as a Letter of Opinion of Local Taxation is issued. A revocation or modification shall identify the Letter of Opinion on Local Taxation and any other or subsequent public written statements affected, and the extent of the revocation or modification. However, a Letter of Opinion on Local Taxation that does not expressly identify an inconsistent prior public written statement, document or other material nonetheless supersedes the earlier item to the extent of any inconsistency.~~

~~(f) Prospective Application. A Letter of Opinion on Local Taxation is prospective in effect, except to the extent that it expressly provides otherwise.~~

~~(10)~~ (9) Materials that are not Are Not Public Written Statements. The ~~Commissioner~~ Department issues other materials of an informational nature that are not public written statements within the meaning of 830 CMR 62C.3.1(2). These include, but are not limited to the following:

(a) Tax Forms and Instructions.

1. General. The Massachusetts General Laws require taxpayers and others to timely file tax returns and other statements of information with the Department and to pay timely all taxes due. The Department develops and publishes various tax forms ~~and~~, instructions, certificates, applications, and others documents for taxpayers, which may be in an

electronic format, to use in preparing and filing tax returns and other statements of information.

~~2.~~ 2. ~~Definition. Tax forms and instructions are the various forms, instructions, certificates, applications and other documents prescribed and furnished by the Commissioner for the filing of returns and any other statements of information with the Department.~~

~~3.~~ 3. Effect.

a. Requirements stated in tax forms and instructions. Tax forms and instructions state ~~the requirements of~~ what information must be provided to the Department and the manner in which information must be provided. Every person filing a return or other statement of information with the Department shall ~~carefully prepare the return or other statement of information, setting~~ set forth fully, clearly, and accurately the information required to be included. ~~Returns and statements of information which have not been so prepared will not meet the requirements of law.~~

b. Errors in tax forms and instructions. Nothing contained in tax forms and instructions supersedes, alters or otherwise affects provisions of the Massachusetts General Laws, ~~Massachusetts regulations,~~ court decisions, ~~rulings~~ public written statements or any other sources of ~~the~~ law. If tax forms or instructions contain an error, the ~~Commissioner~~ Department will attempt to communicate the correction to those affected, in the manner the ~~Commissioner~~ Department decides is appropriate.

c. Continued effect of tax forms and instructions. Tax forms ~~bearing~~ specific to a date particular tax year or period (such as personal income tax returns) and their associated instructions apply only to the taxable year or period for which they are issued. Other tax forms and their associated instructions are effective only until such time as they are revised or updated. Revised tax forms and instructions supersede all prior tax forms and instructions for the taxable year or period to which they apply.

43. Penalties of Perjury. Returns required by M.G.L. c. 62C shall contain a declaration that they are made under the penalties of perjury. ~~The Commissioner may, in his~~ In its discretion, ~~the Department may~~ require that any other tax form or statement of information contain a declaration that it is made under the penalties of perjury.

54. Availability. ~~The public may obtain tax~~ Tax forms and instructions ~~from the Customer Service Bureau, Massachusetts Department of Revenue and~~

~~many forms and instructions can be printed from~~ are available on the Department's website ~~at~~ <http://www.mass.gov/dor>.

- (b) ~~Taxpayer Publications.~~ The Department issues various ~~taxpayer~~ publications to explain ~~various~~ aspects of the Massachusetts tax laws to the general public. ~~Taxpayer publications~~ Publications are developed as general information guides to enable taxpayers to become more familiar with their rights and responsibilities under the Massachusetts tax laws. ~~Each taxpayer publication will ordinarily contain the following or a similar notice:~~

(c) Information Letters. An "information letter" is a statement issued by the Department in response to an inquiry from an individual or organization that states an interpretation or well-established principle of tax law, without applying it to a specific set of facts. An information letter may be issued when the nature of the request from an individual or an organization suggests that the requester is seeking general information, or where the request does not meet all the requirements for a request for Letter Ruling as outlined in section (6)(e) of this regulation.

An information letter issued by the Department is informational only and cannot be relied upon.

~~(d) The purpose of these publications is to provide general information about Massachusetts tax laws and Department of Revenue policies and procedures. They are not designed to address all questions which may arise nor to address complex issues in detail. Nothing contained in these publications supersedes, alters or otherwise changes any provision of the Massachusetts General Laws, Massachusetts Department of Revenue Regulations, Department rulings or any other sources of the law.~~

~~(e) Other Written Materials.~~

1. General. ~~From time to time~~ In its discretion, the Department may, ~~as the Commissioner deems appropriate,~~ publish or issue written materials that are not otherwise described in ~~this regulation,~~ 830 CMR 62C.3.1, or in other regulations of the Department.
2. Effect. Ordinarily, such written materials of the Department ~~provide information~~ serve an informational and advisory purpose only. They do not supersede, alter or otherwise affect provisions of the Massachusetts General Laws, ~~Massachusetts regulations,~~ Department ~~rulings~~ public written statements or any other ~~source~~ source of the law. ~~They may not be relied upon, used or cited as precedent in the disposition of cases.~~ If the Department intends that the effect of a particular document is different from the informational effect described ~~in 830 CMR 62C.3.1(10)(c),~~ herein, the document will state its intended effect.

~~(11) Revocation of Outdated Documents or Materials.~~

~~(a) Documents Revoked. With exceptions noted in 830 CMR 62C.3.1(11)(c), any document, letter, instruction, ruling or other public written statement that is not in the latest published version of the official MASSTAX Guide and Supplements or Code of Massachusetts regulations is obsolete and revoked. To the extent that any such document or other item had any effect prior to the promulgation of 830 CMR 62C.3.1, the revocation of such document or other item is effective prospectively from the date of promulgation of 830 CMR 62C.3.1. In addition, any outstanding classified permits issued under M.G.L. c. 64H, § 9 or M.G.L. 64I, § 11, are revoked.~~

~~(b) Current Series of Public Written Statements in the Latest Published Version of the Official MASSTAX Guide and Supplements or Code of Massachusetts Regulations Not Revoked. For purposes of this section, the “current series of public written statements published in the latest version of the official MASSTAX Guide and Supplements or Code of Massachusetts Regulations” includes any regulations promulgated under the commissioner’s authority to administer the tax, child support, or other laws of Massachusetts pursuant to M.G.L. c. 62C, §§ 2 and 3, or M.G.L. c. 119A, or other authorizing provision; Technical Information Releases 74-1 to the present, Department of Revenue Directives 86-1 to the present; and Department of Revenue Letter Rulings 77-1 to the present.~~

~~(c) Exceptions; Other Materials Not Revoked. The following are not revoked under 830 CMR 62C.3.1(10)(a): Informational Guideline Releases described in 830 CMR 62C.3.1(4) and Letters of Opinion on Local Taxation described in 830 CMR 62C.3.1(5) issued by the Department’s Division of Local Services. Additionally, certain other materials that are not public written statements remain effective notwithstanding 830 CMR 62C.3.1(11), to the extent that they have not been revoked, modified, or superceded by other legal authorities or documents or otherwise. These include Administrative Procedures 101 through 635, inclusive; most recently published Guides, such as *A Guide to Sales and Use Tax*, *A Guide to the Department of Revenue*, *Your Taxpayer Bill of Rights*, and similar Guides, published electronically or in hard copy; any document issued by the Child Support Enforcement unit of the Department of Revenue; any letter establishing security corporation or manufacturing corporation classification pursuant to M.G.L. c. 63; nexus determinations issued under 830 CMR 63.39.1(9); and any Form ST-2, Certificate of Exemption. Tax forms and instructions remain in effect to the extent provided in 830 CMR 62C.3.1(10)(a)3.~~

~~(d) Reapplication. Any taxpayer or other person wishing to rely prospectively on any written materials revoked under this section must apply to the Rulings and Regulations Bureau of the Department of Revenue for a determination or ruling regarding the validity of the document in question.~~

~~(e) Effect of this section on existing current series of public written statements. Nothing in this section, 830 CMR 62C.3.1(11), shall be construed to alter any~~

~~existing revocation or modification of documents comprising the current series of public written statements as defined in 830 CMR 62C.3.1(11)(b). For example, if a 1994 Technical Information Release indicates that it partially or wholly revokes a 1993 Directive, the 1993 Directive's partially or wholly revoked status remains revoked and is not affected by this section. Furthermore, excluding the current series of public written statements in the latest published version of the Official MASSTAX Guide and Supplements from the revocation provisions of 830 CMR 62C.3.1(11) is not intended to sanction or reaffirm the validity of any of those documents. The validity of all such documents must be evaluated in light of later legislation, court decisions, regulations and public written statements.~~

WORKING DRAFT FOR PRACTITIONER COMMENT - 10/20/19