

2011 Form P.S.1 Instructions

Major 2011 Tax Law Changes

The Life Sciences Tax Incentive Program in G.L. c. 23I, § 5, has a new tax incentive. A corporation may in certain circumstances be allowed a refundable jobs credit against its tax liability under G.L. c. 63. The credit must be authorized by the Life Sciences Tax Incentive Program; this is not a credit a taxpayer can claim without prior approval. Among the conditions for claiming this credit is the taxpayer's commitment to create a minimum of 50 net new permanent full-time positions in Massachusetts. See TIR 11-06.

Effective for tax years beginning on or after January 1, 2011, a credit is allowed for qualified donations of certified land to a public or private conservation agency. The credit is equal to 50% of the fair market value of the qualified donation. The amount of the credit that may be claimed by a taxpayer for each qualified donation cannot exceed \$50,000. The credit is refundable but not transferable. The certification process is conducted by the Executive Office of Energy and Environmental Affairs (EEA). EEA has promulgated a regulation, 301 CMR 14.00, entitled Conservation Land Tax Credit, which sets forth criteria for authorizing and certifying the credit. See also, 830 CMR 62.6.4, entitled Conservation Land Tax Credit, promulgated by DOR to explain the calculation of the allowable credit.

There are administrative changes that will affect corporations, relating to interest charges after audit, at G.L. c. 62C, § 32(f), and to overpayments of tax, applications for abatement and refunds, at G.L. c. 62C, §§ 36, 36A and 37. See FY 2012 budget, St. 2011, c. 68, and TIR 11-06.

Who Must File a Public Service Corporation Franchise Tax Return?

All utility corporations subject to Massachusetts General Laws (MGL) Ch. 63, sec. 52A (not including wireless companies), and which do any or all of their business in Massachusetts and which are not part of combined group required to file Form 355U must complete and file Massachusetts Form P.S.1. Utility corporations are as follows:

- Every incorporated electric company and gas company subject to MGL Ch. 164;
- Every incorporated water company and aqueduct company subject to MGL Ch. 165;
- Every incorporated telephone and telegraph company subject to MGL Ch. 166;
- Every incorporated railroad and railway company subject to MGL Ch. 160 and every corporation qualified under said MGL Ch. 160, sec. 131A to acquire, own and operate terminal facilities from steam, electric or other types of railroad;
- Every incorporated street railway subject to MGL Ch. 161;
- Every incorporated electric railroad subject to MGL Ch. 162;
- Every incorporated trackless trolley company subject to MGL Ch. 163;
- Every domestic or foreign pipeline corporation engaged in the transportation or sale of natural gas within the Commonwealth; or
- Every foreign corporation which is not subject to the above chapters, but which does an electric, gas, water, aqueduct, telephone, telegraph, railroad, railway, electric railroad, trackless trolley or bus business within the Commonwealth and has, prior to January 1, 1952, been subject to taxation under MGL Ch. 63, secs. 53–60.

When Must Form P.S.1 Be Filed?

Form P.S.1 must be filed on or before the 15th day of the 3rd month after the close of the utility corporation's taxable year. A late return incurs a penalty of 1% per month (or fraction thereof), up to a maximum of 25% of the tax due. The penalty for late payment of the tax is 1%

per month (or fraction thereof) of the balance due, up to a maximum of 25%.

Can a Corporation Get an Extension of Time to File?

Yes. Utility corporations may request a six-month extension of time to file Form P.S.1 by submitting Massachusetts Form 355-7004 Misc. on or before the original due date of the return. At or before the time of filing Form 355-7004 Misc., the utility corporation must pay in full the estimated tax due. Failure to pay at least 50% of the total tax due as shown on your return will result in the voiding of the extension and the imposition of a late filing penalty.

What Is a Valid Return?

A valid return is a return upon which all required amounts have been entered in all appropriate lines on all forms. Data sheets, account forms or other schedules may be enclosed to explain amounts entered on the forms. However, referencing items to enclosures in lieu of properly entering all amounts onto the return is not sufficient.

A properly filed return must also include exact and complete copies of all four pages of the corporation's U.S. Form 1120. Copies of all accompanying schedules and supplemental statements must be enclosed.

Reproduction of returns must be approved by the DOR prior to filing and meet the criteria provided in Technical Information Release 95-8. Please address form approvals to The Banking and Insurance Unit, PO Box 7052, Boston, MA 02204.

Failure to meet any of the requirements detailed in this section may result in a penalty for filing an insufficient return. Such penalties may be assessed at double the amount of the tax due.

When Must a Corporation Pay Estimated Taxes?

Any utility corporation which reasonably estimates its franchise tax to be more than \$1,000 must pay estimated taxes. Payments must be made in quarterly installments of 40%, 25%, 25% and 10% of the estimated annual tax liability.

Note: New corporations in their first full taxable year with less than 10 employees have different estimated payment percentages — 30%, 25%, 25% and 20% respectively.

Public Utility companies that underpay, or fail to pay, their estimated taxes may incur an additional penalty on the amount of the underpayment for the period of the underpayment. Form M-2220, Underpayment of Massachusetts Estimated Tax by Corporations, is used to compute the additional charge.

Any corporation having \$1 million or more of federal taxable income in any of its three preceding taxable years (as defined in section 6655 (g) of the IRC) may only use its prior year's tax liability to calculate its first quarterly estimated tax payment. Any reduction in the first installment payment that results from using this method must be added to the second installment payment.

How Is the Corporation Franchise Tax Determined?

The tax for utility corporations is 6½% of net income. For tax purposes, net income is gross income from all sources, without exclusion, other than dividends from investment in 80% or more of the voting stock of another utility corporation, less deductions allowed by the Internal Revenue Code in effect for the taxable year. Deductions are not allowed for dividends received, losses sustained in other taxable years, and income, franchise and capital stock taxes. Any credits allowed under the Internal Revenue Code for the taxable year are not allowed in Massachusetts.

Are Combined Returns Allowed?

Public service corporations that are members of combined groups engaged in a unitary business are required to file combined returns under

M.G.L. c. 63, s. 32B. See 830 CMR 63.32B.2 for additional information. A Public service corporation that is a member of such a combined group files Form 355U instead of Form P.S. 1. Public service corporations that are not members of such a group are not allowed to participate in the filing of combined returns.

What if the Taxpayer Is a Fiscal or Short Year Filer?

File the 2011 return for calendar year 2011 and fiscal years that began in 2011 and ended in 2012. For a fiscal year return, fill in the tax year space at the top of page 1. Short year filers should file using the tax form for the calendar year within which the short year falls. If the short year spans more than one calendar year, the filer should file use the tax form for the calendar year in which the short year began. If the current form is not available at the time the short year filer must file, the filer should follow the rules explained in TIR 11-12.

Line Instructions

If your return is not for the calendar year, enter at the top of the form the dates of your taxable year. If the return covers less than a full fiscal year, the taxable year is the twelve month period ending with the close of the period covered by the return.

Should the Whole Dollar Method be Used?

Yes. All amounts entered on Form P.S.1 must be rounded off to the nearest dollar.

Registration Information

If your corporation has undergone a federal audit for some prior year, you must report any changes to Massachusetts on Form CA-6. You must report any federal audit changes within three months after the final determination of the correct taxable income by the IRS. Otherwise, you will be subject to a penalty. If the federal change results in less tax due to Massachusetts than was assessed or paid, you may apply for abatement under the federal change rules within one year of the final federal determination. Answering "yes" to this question does not relieve the utility corporation from this filing obligation.

If the utility corporation is requesting alternative apportionment under Chapter 63, sec. 42, check the box and enclose Form AA-1. Schedule O must also be completed and the tax paid according to the statutory three-factor formula. However, alternative treatment may be requested and a refund will be issued if such treatment is granted by the Commissioner. For further information, see MGL Chapter 63, sec. 42 or 830 CMR 63.42.1.

Excise Tax Calculation

Line 1. Enter the utility corporation's federal taxable income before net operating loss deduction and special deductions, from U.S. Form 1120, line 28.

Line 2. Enter all interest received on state and municipal obligations not reported in federal net income.

Line 3. Massachusetts does not allow a deduction for state, local and foreign income, franchise, excise or capital stock taxes. Any such taxes which have been deducted from federal net income should be entered in line 3 and added back into income.

Line 4. Enter that portion of net capital loss carryover from U.S. Schedule D, Part 1, line 4 used to reduce your capital gain. Enclose a copy of U.S. Schedule D.

Line 5. For Massachusetts tax purposes, for taxable years ending after September 10, 2001, depreciation is to be claimed on all assets, regardless of when they are placed in service. Use the method used for federal income tax purposes prior to the enactment of section 168(k). For more information, see TIR 02-11 and TIR 03-25.

Line 6. Massachusetts law requires that a taxpayer add back to net income certain interest or intangible expenses and costs, including losses incurred in connection with factoring or discounting transactions. This add back is mandatory, with certain exceptions based

generally upon showing by clear and convincing evidence that a particular add back would be unreasonable. To claim an exception for this new requirement, file Schedule ABI, Exceptions to the Add Back of Interest Expenses and/or Schedule ABIE, Exceptions to the Add Back of Intangible Expenses. For more information, see TIR 03-19.

Line 7. Effective January 1, 2005, Massachusetts has decoupled from the American Jobs Creation Act of 2004, Public Law 108-357. For corporate excise purposes, the definition of net income does not include the new federal production activity deduction. See TIR 05-5 for further information.

Line 8. Enter all gross income from all other sources not included in lines 1 or 2 above.

Line 10. From Schedule N enter the dividends received from other utility corporations of which your company owns 80% or more.

Line 11. Enter the total costs of renovating an abandoned building in an Economic Opportunity Area. Multiply this amount by .10 and enter the result here. For further information, contact the Massachusetts Office of Business Development at One Ashburton Place, Room 2101, Boston, MA 02108.

Line 15. If the utility corporation conducts business activities in another state sufficient to give that state the jurisdiction to tax the corporation, Schedule O should be completed in order to determine the apportionment percentage. If all income is derived from business conducted in Massachusetts, enter 100% in line 15.

Line 18. If the corporation is required to recapture any amount of previously claimed EOA Credit, Low-Income Housing Credit, Brownfields Credit, Life Science Credit or Historic Rehabilitation Credit, complete Schedule H-2 and enter the result in line 18 of the return. Current year credits can then be used to offset the total excise due which will include the recapture amount.

Also include in line 18 the tax amount representing an interest charge on the deferred tax on gain from certain installment sales with a sales price over \$150,000 if you are not a dealer and the aggregate face amount of installment obligations arising during the tax year and outstanding as of the close of the tax year exceeds \$5 million. For more information see M.G.L. Ch. 62C, sec. 32A(a) and I.R.C. sec. 453A (a)-(c).

Also include in the total the tax amount representing interest on the deferred gain from the installment sale of timeshares and residential lots, if the sale meets one of the following criteria: 1) the sale is of a timeshare right for 6 weeks or less; 2) the sale is for the recreational use of specified campgrounds; or 3) the sale is for a residential lot and neither the dealer nor someone related to the dealer is obligated to make any improvements on the lot. For more information see M.G.L. Ch. 62C, sec. 32A (b) and I.R.C. sec. 453(l)(2)(B).

Line 20: Economic Opportunity Area Credit. Enter the amount of Economic Opportunity Area Credit claimed this year from Schedule EOAC, line 15. Enclose a completed Schedule EOAC to this return. For more information, contact the Massachusetts Office of Business Development at One Ashburton Place, Room 2101, Boston, MA 02108.

Line 21: Economic Development Incentive Credit. Under the provisions of the Economic Development Incentive Program (EDIP) established pursuant to M.G.L. Ch. 23A, the Economic Assistance Coordination Council (EACC) may authorize taxpayers participating in certified projects to claim tax credits under M.G.L. Ch. 62 sec. 6(g) and M.G.L. Ch. 63 sec. 38N. Taxpayers authorized by the EACC to claim tax credits for projects certified on or after January 1, 2010 must use Form EDIP, Refundable Economic Development Incentive Program Credit, to claim such credits. Taxpayers seeking to claim credits for projects certified prior to January 1, 2010 must use Schedule EOAC. See TIR 10-01 for further information.

Line 22: Low-Income Housing Credit. To claim the Low-Income Housing credit, enclose documentation with the return. For further information on this credit, contact the DHCD, Division of Private Housing, at (617) 727-7824.

Line 23: Historic Rehabilitation Credit. Effective for tax years beginning on or after January 1, 2005 and ending on or before December 31, 2017, taxpayers may be eligible for the Historic Rehabilitation Credit (HRC). To claim this credit, a historic rehabilitation project must be complete and have been certified by the Massachusetts Historical Commission. Unused portions of the credit may be carried forward for a maximum of five years. This credit may be transferred or sold to another taxpayer. The HRC is not subject to the 50% limitation rule for corporate taxpayers. If the taxpayer disposes of the property generating the HRC, a portion of the credit may be subject to recapture. For further information, see 830 CMR 63.38R.1, Massachusetts Historic Rehabilitation Tax Credit.

Line 24: Film Incentive Credit. For tax years beginning on or after January 1, 2006 and before January 1, 2023, motion picture companies may claim a credit equal to 20% of the total qualifying aggregate payroll for employing persons within the Commonwealth in connection with the filming and production of a motion picture, and a credit equal to 25% of their Massachusetts productions expenses. The credits are transferable. For further information, see TIR 06-1.

Line 25: Medical Device Credit. For tax years beginning on or after January 1, 2006, medical device companies that develop or manufacture medical devices in Massachusetts can claim a credit equal to 100% of the user fees paid to the U. S. Food and Drug Administration. The credit is transferable. For more information, see TIR 06-22.

Line 26: Brownfields Credit. Recent legislation extends the Brownfield credit to nonprofit organizations, extends the time frame for eligibility for the credit, and permits the credit to be bought, sold or assigned. Under prior law, net response and removal costs incurred by a taxpayer between August 1, 1998 and August 5, 2005, were eligible for the credit provided that the taxpayer commenced and diligently pursued an environmental response action before August 5, 2005. As a result of the recent legislation, the environmental response action commencement cut-off date is changed from August 5, 2005 to August 5, 2013, and the time for incurring eligible costs that qualify for the credit is extended to January 1, 2014. For further information, see TIR 06-16.

Line 27: Life Science Company Investment Tax Credit. For taxable years beginning on or after January 1, 2009, a new Investment Tax Credit (ITC) may be available to taxpayers.

This credit, which is available to certified life sciences companies only to the extent authorized pursuant to the Life Sciences Tax Incentive Program, is equal to 10% of the cost of qualifying property acquired, constructed or erected during the taxable year and used exclusively in the Commonwealth.

The refundable ITC can apply to purchases made on or after January 1, 2009 even if a construction project started before that date. The scope of qualifying property for purposes of the new credit is the same as that provided by the existing ITC under M.G.L. Ch. 63, sec. 31A.

Life sciences companies or persons also qualifying for the Economic Opportunity Area Credit (EOAC) for the same property may only take such EOAC to the extent of an additional 2% of the cost of the qualifying property. Corporations taking these credits are not allowed to take the ITC under M.G.L. Ch. 63, sec. 31A or the Low-Income Housing Credit under M.G.L. Ch. 63, sec. 31H for the same qualifying property.

If a life sciences ITC exceeds the tax otherwise due as applicable, 90% of the balance of such credit may, at the option of the taxpayer and to the extent authorized pursuant to the Life Sciences Tax Incentive Program, be refundable to the taxpayer for the tax year in which the qualified property giving rise to such credit is placed in service. If

such refund is elected by the taxpayer, then the carryover provisions for this credit that would otherwise apply shall not be available. For further information, see TIR 08-23.

Line 28: Life Science Company FDA User Fees Credit. For taxable years beginning on or after January 1, 2009, a new credit may be available to taxpayers for user fees paid on or after June 16, 2008 to the U.S. Food and Drug Administration (USFDA) upon submission of an application to manufacture a human drug in the Commonwealth.

This credit, which is available to certified life sciences companies only to the extent authorized pursuant to the Life Sciences Tax Incentive Program, is equal to 100% of the user fees actually paid by the taxpayer, as specified in the certification, and may be claimed in the taxable year in which the application for licensure of an establishment to manufacture the drug is approved by the USFDA.

To be eligible for the credit, more than 50% of the research and development costs for the drug must have been incurred in Massachusetts. Taxpayers may use the FDA user fees credit to reduce their tax to zero. To the extent authorized pursuant to the Life Sciences Tax Incentive Program, 90% of the balance of credit remaining is refundable. The deduction otherwise allowable for user fees qualifying for the credit is disallowed. For further information, see TIR 08-23.

Line 29: Life Sciences Company Research Credit. For taxable years beginning on or after January 1, 2009, a new credit may be available for certified life sciences companies pursuant to the Life Sciences Tax Incentive Program, to provide qualifying companies with a means to obtain a research credit for certain expenditures not qualifying for the existing research credit under c. 63, § 38M. St. 2008, c. 130, §§ 30 and 53, codified at G.L. c. 63, § 38W. Under this new provision, the credit is generally calculated in the same manner as the research credit under section 38M. However, the qualified research expenditures which form the basis for the calculation in new section 38W differ from those of section 38M in that they can qualify when the activities are performed both inside and outside of the Commonwealth, to the extent they relate to legally mandated clinical trial activities. The new life sciences research credit is not refundable. For further information, see TIR 08-23.

Line 32: Voluntary Contribution for Endangered Wildlife Conservation. Any corporation that wishes to contribute any amount to the Natural Heritage and Endangered Species Fund may do so on this form. This amount is added to the excise due. It increases the amount of the corporation's payment or reduces the amount of its refund.

The Natural Heritage and Endangered Species Fund is administered by the Department of Fisheries, Wildlife and Law Enforcement to provide for conservation programs for rare, endangered and nongame wildlife and plants in the Commonwealth.

Line 37: Pass-through Entity Withholding. Enter the amount of any withholding tax from pass-through entities. Be sure to include the taxpayer identification number of the person or entity submitting the withholding payment on behalf of the taxpayer.

Line 38: Refundable Film Credit. Schedule RFC, Refundable Film Credit, is used by motion picture production companies to elect to claim a refundable film credit if they have not transferred or carried forward a portion of the film credit for the production. Transferees of the film credit do not qualify for the refundable film credit. If an election to refund the film credit for a production is made, the entire film credit remaining after reducing the current year tax liability will be refunded at 90%. The production company is not allowed to partially refund and partially transfer or carryover over any portion of the credit to the next tax year.

Line 39: Refundable Dairy Credit. A taxpayer who holds a certificate of registration as a dairy farmer pursuant to M.G.L. Ch. 94, sec. 16A is allowed a refundable tax credit based on the amount of milk produced and sold. The dairy farmer tax credit as originally enacted was

90% refundable. Under recent legislation, the dairy farmer tax credit is now 100% refundable.

Line 40: Refundable Life Science Credit. There are two different credits which the Massachusetts Life Sciences Center, with the approval of the Secretary of Administration and Finance, may authorize a taxpayer to have refunded in lieu of carrying forward such credit to a future year.

A taxpayer may apply for a refund of 90% of the unused Investment Tax Credit granted under M.G.L. Ch. 63, sec. 38U or the additional credit on the same property that may be granted under M.G.L. Ch. 63, sec. 38N if property for which the 38U credit is granted is used in a certified project.

A taxpayer may apply for a refund of 90% of the unused FDA User Fee Credit granted under M.G.L. Ch. 63, sec. 38M, including credits carried over from prior years. Schedule RLC, Refundable Life Science Credit, is used by taxpayers to claim the refund.

Line 41: Refundable Economic Development Incentive Credit. Under the provisions of the Economic Development Incentive Program (EDIP) established pursuant to M.G.L. Ch. 23A, the Economic Assistance Coordination Council (EACC) may authorize taxpayers participating in certified projects to claim tax credits under M.G.L. Ch. 62 sec. 6(g) and M.G.L. Ch. 63 sec. 38N. Taxpayers authorized by the EACC to claim tax credits for projects certified on or after January 1, 2010 must also submit Form EDIP, Refundable Economic Development Incentive Program Credit, to support the claim for this credit.

Line 42: Refundable Conservation Land Credit. Effective for tax years beginning on or after January 1, 2011, a credit is allowed for qualified donations of certified land to a public or private conservation agency. The credit is equal to 50% of the fair market value of the qualified donation. The amount of the credit that may be claimed by a taxpayer for each qualified donation cannot exceed \$50,000. The credit is refundable but not transferable. The certification process is conducted by the Executive Office of Energy and Environmental Affairs (EEA). EEA has promulgated a regulation, 301 CMR 14.00, entitled Conservation Land Tax Credit, which sets forth criteria for authorizing and certifying the credit. See also, 830 CMR 62.6.4, entitled Conservation Land Tax Credit, promulgated by DOR to explain the calculation of the allowable credit.

Lines 44 through 46: Overpayments and refunds. If line 43 is larger than line 33, enter the amount overpaid in line 44.

The overpayment may be applied in part or in full to 2011 estimated taxes by entering in line 45 the amount to be credited to 2012 estimated tax payments. Enter in line 45 the amount to be refunded.

An overpayment of tax cannot be applied as a credit to the tax of another account of this company or to the tax of another company.

Line 47: Balance due. If line 33 is larger than line 43, enter the balance due in line 46. Payment in full is due on or before March 15, 2012.

Lines 48 and 49: Penalties and interest. Any company that has an underpayment of estimated tax will incur a penalty on the underpayment for the period of the underpayment. Enclose a copy of Form M-2220. For more information, refer to the section, "When Are Estimated Tax Payments Required?"

Any company that fails to file a timely return will be subject to a late filing penalty of 1% per month, (or fraction thereof), and a late payment penalty of 1% per month, (or fraction thereof), on the amount required to be shown as the tax due on the return. For more information, refer to the section, "What Are the Penalties for Late Returns?"

Any company which fails to pay its tax when due will be subject to interest on the unpaid balance.

Line 50: Payment due. Enter the total payment due. Checks for this amount should be made payable to the **Commonwealth of Massachusetts**. Checks should have the company's federal identification number written in the lower left corner.

Schedule N. Dividends from Other Utility Corporations 80% or More Owned

Enter the federal identification number and the names of the utility corporations of which the corporation owns 80% or more of the voting stock, and actual amounts of dividends received. Enter the total in line 9 of the Computation of Franchise Tax.

Schedule O. Income Apportionment

Schedule O should be completed only by a corporation deriving income from business activities in another state which allows such state the jurisdiction to levy tax on account of such activities.

Property Factor

Line 1a. For tax purposes, average value is based on original cost and is determined by averaging the property values at the beginning and end of the taxable year. If substantial changes occur during the taxable year, the Commissioner may require monthly averaging to properly reflect the average value of the property.

Line 1b. Property rented by the corporation is valued at eight times the annual net rental rate paid less any sub-rentals received.

Payroll Factor

Line 2a. For column A, use the same basis as is used for reporting employee compensation to the Massachusetts Department of Employment and Training. For column B, use the same basis as is used for reporting employee compensation to the Internal Revenue Service.

Sales Factor

For sales factors, enter all gross receipts of the corporation with the exception of those receipts from interest, dividends and the sale or other disposition of securities.

Line 3a. Sales of tangible property including water and steam are assignable to Massachusetts if:

- the property is delivered or shipped to any buyer, including the U.S. government, in Massachusetts; or
- the selling corporation is not taxable in the state of the buyer and the property is not sold by an agent or agencies chiefly situated at, connected with, or sent out from premises for the transaction of business owned or rented by the corporation outside Massachusetts. A buyer for this item includes the U.S. Government.

Line 3b. Sales of services, or other intangibles, are assigned to Massachusetts if the income producing activity is performed in Massachusetts, or if a greater portion of the activity, based on performance cost, occurs in Massachusetts than in any other state. For sales of electricity, see TIR 06-9.

Line 3c. Rents from property located or used in Massachusetts are assigned to Massachusetts. Royalties are assigned to the state in which the property right is actually used by the lessee.

Line 5. Divide the total apportionment percentage in line 4 by either 3, 2 or 1, depending upon the number of apportionment factors which apply. For example, if only the sales and payroll factors are applicable, divide by 2 instead of 3. An apportionment factor should not necessarily be considered inapplicable if its Massachusetts total (column a, lines 1c, 2a or 3e) is zero. If any of the apportionment totals for "world-wide," (column b, items 1c, 2a or 3e) are less than 3.33% of net income, **do not** include that factor in your Massachusetts apportionment percentage.

Schedule S. Leased Property

A corporation which is the lessee of any real estate or tangible personal property in Massachusetts must submit the name and address of the owner of such property and its location.

Where to File

All returns should be mailed to: **Massachusetts Department of Revenue, PO Box 7052, Boston, MA 02204.**