830 CMR 62C.00: STATE TAX ADMINISTRATION

Section

62C.3.1: Department of Revenue (DOR) 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 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 830 CMR 62C.3.1 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.

(b) Effective Date. 830 CMR 62C.3.1 is effective April 7, 2017.

(c) Outline of Topics. 830 CMR 62C.3.1 is organized as follows:

1. Statement of Purpose; Effective Date; Outline of Topics;
2. Definitions;
3. General;
4. Regulations;
5. Directives and Technical Information Releases;
6. Letter Rulings;
7. Informational Guideline Releases;
8. Local Finance Opinions; and
9. Materials That Are Not Public Written Statements.

(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 (DOR).

Massachusetts Tax Laws. The tax statutes of the Massachusetts General Laws that are within the official purview of the Department, the regulations thereunder, and related statutes and regulations that are within the official purview of the Department.

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MASSTAX Guide. An official publication produced by the Department and Thompson Reuters or a successor 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, specifically: regulations described in 830 CMR 62C.3.1(4), Directives described in 830 CMR 62C.3.1(5), Technical Information Releases described in 830 CMR 62C.3.1(5), Letter Rulings described in 830 CMR 62C.3.1(6), Informational Guideline Releases described in 830 CMR 62C.3.1(7), and 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 the official *MASSTAX Guide* and Supplements or published on the Department's website at http://www.mass.gov/dor.

(3) General. The Department may issue regulations and other public written statements relating to the Massachusetts tax laws and other matters within the official purview of the Department. 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 issued by the Commissioner that are not public written statements should be viewed as informational only and are not considered to be official policy statements of the Department. The Department shall use public written statements in its oversight and administration of the Massachusetts tax laws 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.

(4) Regulations. 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. A regulation under 830 CMR 62C.3.1 has the same meaning as a "regulation" defined under M.G.L. c. 30A, § 1.

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. Requests concerning regulations should be sent in writing to the Bureau Chief, Rulings and Regulations Bureau, Massachusetts Department of Revenue, 100 Cambridge St., Boston, MA 02114.

(5) Directives and Technical Information Releases.

(a) General. In its discretion, the Department may issue Directives and Technical Information Releases (TIRs).

(b) Directives. A Directive is a public written statement, signed by the Commissioner, which clarifies the Department's application and interpretation of the Massachusetts tax laws or the Department's current policies and practices in order to assist taxpayers in complying with their Massachusetts tax obligations.

(c) Technical Information Releases. A TIR is a public written statement, signed by the Commissioner, 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.

(d) Effect of Directives and TIRs. Directives and TIRs are precedential and state the official position of the Department. Directives and TIRs may be relied upon by taxpayers 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.

(6) Letter Rulings.

(a) General. In its discretion, the Department may issue a Letter Ruling in response to a question from an individual or an organization about the application of the Massachusetts tax laws to a particular transaction or other set of facts.

(b) Definition. A Letter Ruling is an "advisory ruling" as defined in M.G.L. c. 30A, § 8, issued by the Department in writing to a taxpayer or the taxpayer's authorized representative that interprets and applies the Massachusetts tax laws to a specific transaction or other set of facts.

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(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 generally only if the taxpayer's tax return for the taxable period in which the transaction was completed has not yet been filed.

(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 830 CMR 62C.3.1, 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.

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(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.

(j) 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 M.G.L. c. 4, § 7, Paragraph 26 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. In its discretion, the Department may issue Informational Guideline Releases (IGRs).

(b) Definition. An IGR is a public written statement issued by the Department's Division of Local Services under the authority of M.G.L. chs. 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 tax and finance, and any other information that the Department deems appropriate.

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(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 Finance Opinions.

(a) General. In its discretion, the Department may issue Local Finance Opinions.

(b) Definition. A Local Finance Opinion is a public written statement issued by the Department's Division of Local Services that clarifies, explains, or elaborates upon Department policy, practice, or interpretation pertaining to specific local tax or finance questions, issues, or matters not addressed in another public written statement. A Local Finance Opinion 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.

(c) Effect. Local Finance Opinions are precedential and state the official position of the Department. Local Finance Opinions may be relied upon by local officials unless and 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.

(9) Materials that Are Not Public Written Statements. The 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, 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. Effect.

a. Requirements Stated in Tax Forms and Instructions. Tax forms and instructions state 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 set forth fully, clearly, and accurately the information required to be included.

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, court decisions, public written statements or any other sources of law. If tax forms or instructions contain an error, the Department will attempt to communicate the correction to those affected, in the manner the Department decides is appropriate.

c. Continued Effect of Tax Forms and Instructions. Tax forms specific to a 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.

3. Penalties of Perjury. Returns required by M.G.L. c. 62C shall contain a declaration that they are made under the penalties of perjury. 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.

4. Availability. Tax forms and instructions are available on the Department's website at http://www.mass.gov/dor.

(b) Publications. The Department issues various publications to explain aspects of the Massachusetts tax laws to the general public. Publications are developed as general information guides to enable taxpayers to become more familiar with their rights and responsibilities under the Massachusetts tax laws.

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(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 830 CMR 62C.3.1(6)(e).

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

(d) Other Written Materials.

1. General. In its discretion, the Department may publish or issue written materials that are not otherwise described in 830 CMR 62C.3.1 or in other regulations of the Department.

2. Effect. Ordinarily, such written materials of the Department serve an informational and advisory purpose only. They do not supersede, alter or otherwise affect provisions of the Massachusetts General Laws, Department public written statements or any other source of law. If the Department intends that the effect of a particular document is different from the informational effect described herein, the document will state its intended effect.

62C.4.1: Use of Whole Dollar Method

(1) Statement of Purpose; Application and Effective Date.

(a) Purpose. The purpose of 830 CMR 62C.4.1 is to provide for the use of whole dollar amounts for any return, statement or other document, whether required by the Commissioner or elected by the taxpayer. *See* M.G.L. c. 62C, § 4.

(b) Application and Effective Date. 830 CMR 62C.4.1 applies to the administration of taxes under M.G.L. c. 62C. 830 CMR 62C.4.1 takes effect on November 3, 2006.

(2) Definition. For the purposes of 830 CMR 62C.4.1, the following term shall have the following meaning:

Whole Dollar Method, a method of reporting dollar amounts in which the fractional part of a dollar is disregarded, unless it amounts to one half dollar or more, in which case the amount is rounded up to the next full dollar.

(3) Commissioner's Requirement of Whole Dollar Method. The Commissioner may require, with respect to any amount that must be shown on a form prescribed by the Commissioner for any return, statement, or other document, that the whole dollar method be used. The Commissioner may effectuate this requirement by publishing or authorizing forms or schedules that do not permit the entry of fractional dollar amounts, or by a statement in the instructions requiring the whole dollar method, or both.

62C.8.1: Massachusetts Reporting Requirements for Third Party Settlement Organizations

(1) Scope of Regulation; Background; Outline of Topics; Effective Date.

(a) Scope of Regulation. 830 CMR 62C.8.1 sets forth the Massachusetts reporting requirements for third party settlement organizations.

(b) Background. M.G.L. c. 62C, § 8 generally requires payors that have made payments subject to taxation under M.G.L. c. 62 during the preceding calendar year to file with the Commissioner an annual report reflecting such income on the same basis as is required by the federal government. In 2017, the Massachusetts Legislature amended M.G.L. c. 62C, § 8 to allow the Commissioner to require additional reporting requirements that differ from those required by the federal government under the Internal Revenue Code. *See* St. 2017, c. 47, § 34 ("An Act Making Appropriations for the Fiscal Year 2018 for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements"). At the time of this statutory amendment, federal law required

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that a TPSO file Form 1099-K with the IRS and furnish a copy to a payee when the TPSO's payments in settlement to that payee exceeded $20,000 in over 200 transactions during a calendar year. 830 CMR 62C.8.1 applies the Massachusetts requirement that a TPSO file and furnish Form 1099-K when it pays amounts in settlement to a payee with a Massachusetts address that equal or exceed $600 in a calendar year, regardless of the number of transactions.

(c) Outline of Topics. 830 CMR 62C.8.1 is organized as follows:

1. Scope of Regulation; Background; Outline of Topics; Effective Date;
2. Definitions;
3. Reporting Requirements;
4. Payee Obligations;
5. Record Keeping; and
6. Penalties.

(d) Effective Date. 830 CMR 62C.8.1 is effective November 13, 2020.

(2) Definitions. For the purposes of 830 CMR 62C.8.1, the following terms have the following meanings:

Code. The Internal Revenue Code as amended and in effect for the taxable year.

Commissioner. The Commissioner of Revenue or the Commissioner's duly authorized representative.

Gross Amount Paid in Settlement. The total dollar amount of all amounts paid in settlement by a TPSO to a payee with no adjustments for credits, cash equivalents, discount amounts, fees, refunded amounts, or any other amounts. The dollar amount of each transaction is determined on the date of the transaction. *See* Treas. Reg. § 1.6050W-1(a)(6).

Payee. Any person who accepts money from a TPSO in settlement of a third-party network transaction. *See* Code § 6050W(d)(1)(a)(ii).

Third Party Settlement Organization or TPSO. A third party settlement organization as defined in Code § 6050W(b)(3). A third party settlement organization also includes any electronic payment facilitator with whom a third party settlement organization has contracted to make payments in settlement to payees on behalf of the third party settlement organization as described in Treas. Reg. § 1.6050W-1(d)(2).

(3) TPSO Reporting Requirements.

(a) A TPSO must report the gross amount paid in settlement to a payee with a Massachusetts address in a calendar year when such amount is $600 or greater, irrespective of the number of transactions between the TPSO and the payee. A TPSO must report these amounts to the Commissioner and furnish a copy of the report to the payee, even if the TPSO does not have a federal reporting obligation. Where a TPSO has a Massachusetts reporting obligation, but is not required to file IRS Form 1099-K, the TPSO may file with the Commissioner using Form 1099-K, Form M-1099-K, or any other form prescribed by the Commissioner.

(b) All Forms 1099-K must be furnished to the payee on or before January 31st following the close of the taxable year and filed with the Commissioner by February 28th of such year, or March 31st if the TSPO is filing electronically. TPSOs filing 50 or more Forms 1099-K annually must file such forms electronically with the Commissioner.

(4) Payee Obligations. A payee that receives a Form 1099-K must determine the amount reported therein that constitutes income subject to tax under M.G.L. c. 62. Because Form 1099-K reports the gross amount paid in settlement by a TPSO to a payee, the amount reported that is subject to tax may vary depending on the nature of the income. The following examples illustrate the payee reporting rules that apply when a payee receives a Form 1099-K.

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Example 1: Taxpayer works as an independent driver that can be hired on the platform administered by Transportation Network Company. Transportation Network Company is a TPSO. Over the course of a calendar year, Transportation Network Company pays $5,000 in settlement to Taxpayer. Transportation Network Company must furnish a Form 1099-K to Taxpayer on or before January 31st of the following calendar year, and file it with the Commissioner on or before February 28th, or March 31st if it is filing electronically. Taxpayer should include the $5,000 amount reported on the Form 1099-K when calculating his or her gross receipts on his or her Massachusetts personal income tax return, and deduct any applicable trade or business expenses when determining his or her taxable income.

Example 2: Over the course of a calendar year, Taxpayer sells several household items on an online auction platform, for which he or she is paid $1,000 in settlement by a TPSO. Taxpayer originally purchased the household items that he or she sold for a total of $2,000. Because Taxpayer sold such items at a loss, the $1,000 reported on the Form 1099-K does not represent income that is subject to tax in Massachusetts and he or she would not need to report it on his or her Massachusetts personal income tax return.

Example 3: Taxpayer goes to dinner with his or her classmates to celebrate their graduation. Taxpayer pays $800 for the entire meal with his or her credit card, and his or her classmates reimburse him or her in the amount of $750 for the expense using a peer-to-peer payment system that is a TPSO. Taxpayer will receive a Form 1099-K from the TPSO reporting the $750. However, because this amount reflects an amount paid to reimburse Taxpayer, and was not a payment for goods or services, it is not subject to tax and Taxpayer does not need to report the amount on his or her Massachusetts personal income tax return.

(5) Record Keeping. All TPSOs and payees must maintain complete and accurate records in accordance with 830 CMR 62C.25.1.

(a) TPSOs. TPSOs must maintain records regarding their payments in settlement to payees and identifying information concerning such payees. Such records include the gross amount paid in settlement to payees, the dates of all such payments in settlement to such payees, and the names, addresses, and social security numbers or federal identification numbers of such payees.

(b) Payees. Payees receiving Form 1099-K must maintain records sufficient to enable the Commissioner to determine the correct amount of tax due. Such records include any permanent books of account, or records, including inventories, as are sufficient to establish the amount of gross income, deductions, or other items required to be shown on their Massachusetts personal income tax return. Such records must be in sufficient detail and clarity to delineate and support each line item deducted on such return.

(6) Penalties. A TPSO that fails without reasonable excuse to file Form 1099-K with the Commissioner or to furnish a copy to a payee is subject to the penalties imposed pursuant to M.G.L. c. 62C, § 77 for each instance of noncompliance.

62C.11.1: Return Due Dates for S Corporations Included in a Combined Group

(1) Scope of Regulation; Background; Outline of Topics; Effective Date.

(a) Scope of Regulation. 830 CMR 62C.11.1 sets forth the corporate excise return due date for an S corporation that is included in a combined group.

(b) Background. A combined group is required to file a combined report pursuant to M.G.L. c. 63, § 32B that includes the income and other attributes of all members of the combined group. The filing of a combined report satisfies the return filing requirements under M.G.L. c. 62C, § 11, ¶ 1 for any business corporation that, pursuant to such report, calculates and reports its own individual corporate excise liability based on the income and non-income measures of the corporate excise, or the minimum excise, as applicable, under M.G.L. c. 63, §§ 32D or 39. *See* M.G.L. c. 62C, § 11, ¶ 2. The principal reporting corporation is required to file the combined report on behalf of the combined group. *See* 830 CMR 63.32B.2(11). The combined report is also used to report a taxable member's non-income measure of the corporate excise when such member's taxable year is the same as the year used for the combined report. An S corporation taxable under M.G.L. c. 63, § 32D is includible in a combined report. *See* 830 CMR 63.32B.2(4)(b).

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St. 2017, c. 5, §§ 11 through 14 ("An Act Making Appropriations for the Fiscal Year 2017 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects") amended M.G.L. c. 62C, §§ 7, 11 and 12 to conform the due dates for Massachusetts partnership and business corporation tax returns to the federal due dates for such tax returns, beginning with tax returns due on or after January 1, 2018. Under prior law, all business corporations, including S corporations, were required to file a corporate excise return on or before the 15th day of the third month following the close of each taxable year. Accordingly, the principal reporting corporation of a combined group was required to file a combined report on behalf of the group on or before the 15th day of the third month following the close of the taxable year of the group. Under the new statutory rules, an S corporation is required to file a corporate excise return on or before the 15th day of the third month following the close of each taxable year, and a business corporation that is not an S corporation is required to a file a corporate excise return on or before the 15th day of the fourth month following the close of each taxable year. This divergence in due dates means that the return due date for the taxpayer members of a combined group may differ when the combined group includes an S corporation even when all such corporations share the same taxable year. 830 CMR 62C.11.1 is being promulgated to clarify the corporate excise return due date in the case of an S corporation that is a member of a combined group.

(c) Outline of Topics. 830 CMR 62C.11.1 is organized as follows:

1. Scope of Regulation; Background; Outline of Topics; Effective Date;
2. Definitions; and
3. Return Due Dates.

(d) Effective Date. 830 CMR 62C.11.1 is effective for returns due on or after January 1, 2018.

(2) Definitions. For the purposes of 830 CMR 62C.11.1, the following terms have the following meanings:

Business Corporation. A business corporation as defined in M.G.L. c. 63, § 30.

Combined Group. A combined group as defined in 830 CMR 63.32B.2.

Combined Report. A combined report as defined in 830 CMR 63.32B.2.

Principal Reporting Corporation. A principal reporting corporation as defined in 830 CMR 63.32B.2.

S Corporation. An entity described at Internal Revenue Code § 1361, as amended and in effect for the taxable year.

(3) Return Due Dates.

(a) Extended Due Date. A business corporation that is not an S corporation is generally required to file a corporate excise return on or before the 15th day of the fourth month following the close of its taxable year. *See* M.G.L. c. 62C, § 11. When one or more such corporations is included in a combined group, the filing requirement for such corporations will be met when the combined report is filed by the group's principal reporting corporation on or before the 15th day of the fourth month following the close of the combined group's taxable year. When an S corporation is also included in such group, there will be a discrepancy in the return due dates of the taxable group members even when the entities all share the same taxable year. Therefore, notwithstanding the provisions of M.G.L. c. 62C, § 11, ¶ 1, an S corporation that is a taxable member of a combined group must file its corporate excise return on or before the 15th day of the fourth month following the close of the combined group's taxable year. Further, this extended due date applies irrespective as to whether the S corporation is the principal reporting corporation of the combined group or whether the combined group consists solely of S corporations. This extended due date also applies to the reporting of the S corporation's non-income measure as required in the context of a combined report filing when the S corporation's taxable year is the same as that of the combined group.

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(b) Application of Rule. The extended due date applicable under 830 CMR 62C.11.1(3)(a) to the return of an S corporation that is a member of a combined group will generally apply for purposes of determining the due date of such an S corporation's return under other applicable provisions of M.G.L. c. 62C, such as for purposes of imposing interest and penalties under M.G.L. c. 62C, §§ 32 and 33. The extended due date in 830 CMR 62C.11.1(3)(a) will not apply to the due date of:

1. the corporate excise return of an S corporation when that corporation is not a member of a combined group;
2. the corporate excise return of an S corporation reporting the non-income measure of the corporate excise when that S corporation's taxable year is not the same as that of the combined group; and
3. the informational return of an S corporation, Form 355S, including Schedules S and SK-1. Such returns remain due on or before the 15th day of the third month following the close of an S corporation's taxable year.

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(4) Taxpayer's Election to Use Whole Dollar Method.

(a) Method of Election. A taxpayer filing a return or form under M.G.L. c. 62C that provides either in the return or form itself or in the accompanying instructions that whole dollar amounts may be used may elect to use whole dollar amounts by reporting all amounts rounded off to the nearest whole dollar amount in the manner set out in 830 CMR 62C.4.1(5) and (6).

(b) Time of Election. The election to use the whole dollar method must be made by filing a return or form employing such method on or before the time prescribed for filing such return or form, including extensions of time granted for such filing.

(c) Effect of Election. The taxpayer's election shall be irrevocable for the return or form filed for a given taxable year, but a new election may be made on the return or form filed for a subsequent taxable year.

(5) Computation of Whole Dollar Amount. For the purpose of arriving at the nearest whole dollar, a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case the amount shall be increased to the next higher even dollar. The following illustrates the application of 830 CMR 62.C.4.1:

Exact Amount	To be reported as
$ 18.49	$ 18
18.5	19
18.51	19

(6) Application of Whole Dollar Method

(a) Tax in Whole Dollar Amount. If the taxpayer uses the whole dollar method, tax must be calculated as a whole dollar amount.

(b) Two Acceptable Ways of Calculating Supporting Amounts. The whole dollar method as provided in 830 CMR 62C.4.1, may be applied in one of two ways. Either method is acceptable as long as the taxpayer uses one method consistently throughout the return. Under either method, amounts reported on a return, form or any schedule required to be submitted with the return or form are rounded to the whole dollar amount. Taxpayers may employ one of the following methods:

1. Supporting Amounts Not Rounded. Items taken into account in determining amounts entered on a return, form, or schedule are calculated to the penny before being added or subtracted; or

2. Supporting Amounts Rounded. Items taken into account in determining amounts entered on a return, form, or schedule are rounded to the whole dollar amount before being added or subtracted.

62C.16.2: Sales and Use Tax Returns and Payments

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

(a) Statement of Purpose. The purpose of 830 CMR 62C.16.2 is to explain the procedures prescribed by the Commissioner, pursuant to M.G.L. c. 62C, §§ 16(h) and (i), for payment of sales and use tax liabilities imposed by M.G.L. c. 64H and M.G.L. c. 64I.

(b) Effective Date. 830 CMR 62C.16.2 will be effective January 1, 1998.

(2) Definitions. For the purpose of 830 CMR 62C.16.2, the following terms shall have the following meanings:

Commissioner, the Commissioner of Revenue or the Commissioner's duly authorized representative.

Person, an individual, partnership, trust or association, with or without transferable shares, joint-stock company, corporation, society, club, organization, institution, estate, receiver, trustee, assignee, or referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals acting as a unit.

Purchaser, a person who purchases or uses tangible personal property or taxable services sold at retail, including a buyer, vendee, lessee, licensee, or grantee.

Retail Sale, a sale as defined in M.G.L. c. 64H, § 1 and M.G.L. c. 64I, § 1. In general, a retail sale is a sale for any purpose other than resale in the regular course of business.

NON-TEXT PAGE

62C.16.2: continued

Tangible personal property, personal property of any nature consisting of any produce, goods, wares, merchandise and commodities brought into, produced, manufactured or being within the commonwealth, but does not include rights and credits, insurance policies, bills of exchange, stocks, bonds, and similar evidence of indebtedness or ownership. For purposes of M.G.L. c. 64H and c. 64I, tangible personal property includes gas, electricity and steam.

Tax, the excise imposed under M.G.L. c. 64H or c. 64I.

Taxable period, any period for which a sales and use or use tax return is due under 830 CMR 62C.16.2.

Taxable services, any service subject to tax under M.G.L. c. 64H or M.G.L. c. 64I.

Use, the exercise of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of that property in the regular course of business; and enjoyment of the benefit of a service, except that it does not include the sale of services in the regular course of business.

Vendor, a retailer or other person selling tangible personal property or taxable services, the gross receipts from the retail sale of which are required to be included in the measure of the tax imposed by M.G.L. c. 64H or c. 64I.

Vendor of meals, a retailer or other person selling meals, as defined under M.G.L. c. 64H, § 6(h).

(3) General Rule. The Massachusetts sales tax is an excise on retail sales of tangible personal property or taxable services in Massachusetts. M.G.L. c. 64H, § 2. A complementary use tax is imposed on tangible personal property or taxable services purchased for storage, use or consumption in Massachusetts. M.G.L. c. 64I, § 2. The sale of tangible personal property or taxable services by any person to be delivered, shipped, or brought into Massachusetts within six months after purchase is presumed to be sold for use, storage, or other consumption in Massachusetts until the contrary is established. Tangible personal property or taxable services need not be used exclusively within Massachusetts or even primarily in Massachusetts for the use tax to apply. The use tax does not apply where sales tax has been collected or where the transaction is exempt from sales or use tax by statute.

Generally the sales tax is collected by the vendor from the purchaser, and the vendor then remits the sales tax to the Commissioner. Certain out-of-state vendors are required to collect the Massachusetts sales or use tax. Some out-of-state vendors, although not so required, collect and remit the Massachusetts tax as a convenience to Massachusetts customers.

Sales and use taxes collected are reported together using the Form ST-9 series of returns. The filing and payment schedule for such vendors is provided in 830 CMR 62C.16.2(4).

If the Massachusetts sales or use tax due is not collected by the vendor, a purchaser owes use tax on the storage, use or consumption of the tangible personal property in Massachusetts and must pay this directly to the Commissioner. If the purchaser is a vendor reporting sales and/or use taxes collected, the vendor reports any use tax due resulting from its own purchases on that same sales and use tax return. If the purchaser is not a vendor reporting sales/use tax collected, purchases are reported on a separate return as provided in 830 CMR 62C.16.2(5).

(4) Filing and Payment Schedule for Vendors.

(a) General. As of January 1, 1998, every vendor required to file a sales and use tax return under M.G.L. c. 62C, § 16(h), must file a return and pay the tax due on an annual, quarterly or monthly basis.

(b) Annual returns. Every vendor whose sales and use tax liability (exclusive of the sales tax on meals) is reasonably estimated to be $100 or less for the calendar year must file a sales and use tax return and pay the tax due on an annual basis. The sales and use tax return and payment for the period of January 1st to December 31st, inclusive, is due on or before the following January 20th.

(c) Quarterly returns. Every vendor whose sales and use tax liability (exclusive of the sales tax on meals) is reasonably estimated to be more than $100 but not more than $1,200 for the calendar year must file a sales and use tax return and pay the tax due for each calendar quarter on or before the 20th day of the month following the close of that calendar quarter.

62C.16.2: continued

(d) Monthly returns. Every vendor whose sales and use tax liability (exclusive of the sales tax on meals) is reasonably estimated to be more than $1,200 for the calendar year must file a sales and use tax return and pay the tax due for each calendar month on or before the twentieth day of the following calendar month.

(e) Reducing filing frequency. The filing schedule chosen at the time the vendor's first sales and use tax return is due must be followed for the entire calendar year. If a vendor pays more or less sales and use tax over the course of the calendar year than was originally estimated to be due, the Commissioner will change the vendor's filing frequency to the correct schedule in the following year. Vendors may not change their filing frequency on their own at any time during the course of the calendar year.

(f) Sales tax on meals.

1. Monthly returns. As of January 1, 1998, every vendor of meals must file a sales tax on meals return (Form ST-MAB-4) and pay the tax due for each calendar month on or before the 20th day of the following calendar month.

2. Other taxable sales. If a vendor of meals makes sales in the regular course of its business, other than sales of meals, that are subject to the sales tax, the vendor of meals must file a sales and use tax return and pay the tax due on those sales according to the rules set out in 830 CMR 62C.16.2(4)(a) through (d). A vendor of meals must file a separate return for sales tax due for sales of meals. Filing a return for sales tax due for sales of meals is not considered a filing for sales and/or use tax due on the sale or purchase of other tangible personal property or services. A separate sales and use tax return must be filed for sales and/or use tax due on the sale or purchase of other tangible personal property or services.

(5) Filing and Payment Schedule for Use Tax on Purchases.

(a) General. Every purchaser required to file a use tax return under M.G.L. c. 62C, § 16(i) must file a return and pay the use tax due on an annual basis, or otherwise, as specified below. A purchaser's presentation of a receipt from a registered vendor for the payment of the sales tax or use tax in the manner and form prescribed by the Commissioner relieves the purchaser from further liability for the use tax for the period or transaction to which the receipt refers.

(b) Special rule for boats and airplanes. Every purchaser of a boat or airplane, for which sales tax has not been paid, must file a use tax return and pay the use tax on the 20th day of the month following the first use, storage, or other consumption of such boat or airplane within Massachusetts.

(c) Special rule for motor vehicles, trailers or other vehicles. Every purchaser of a motor vehicle, trailer or other vehicle who is required to register or title the vehicle in Massachusetts must file Form RMV-1 and pay a sales or use tax to the Registrar of Motor Vehicles within ten days following the date of purchase, transfer or use of such vehicle within Massachusetts. Every purchaser of a vehicle who is not required to register or title the vehicle in Massachusetts must file a completed Sales Tax Payment Form (Form ST-7R) and pay the tax to the Commissioner on the 20th day of the month following the month of purchase, transfer or use in Massachusetts.

See the Motor Vehicles regulation, 830 CMR 64H.25.1(4), for more detailed information.

(d) Fuel purchasers. If a purchaser of fuel, as defined under M.G.L. c. 64A, § 1(d), special fuels, as defined under M.G.L. c. 64E, § 1(d), or aircraft (jet) fuel, as defined under M.G.L. c. 64J, § 1(a), has paid tax due under those chapters and consumes the fuel in a manner not taxable under those chapters, the purchaser is entitled to a refund of the fuel excise, but the fuel purchase may be subject to sales or use tax. Sales or use tax due, for fuel upon which a fuel excise has been paid, must be paid with the purchaser's application for refund of the fuel excise. Generally, the sales and/or use tax due is deducted from the amount of the fuel excise refund.

(e) Individual purchasers. If no Massachusetts sales tax is paid, an individual purchaser of taxable services or tangible personal property (other than boats, airplanes, motor vehicles, trailers or other vehicles, fuels, special fuels, and aircraft (jet) fuel for which fuel excise has been paid) must file a use tax return (Form ST-11) and pay the tax due on such services or property on an annual basis, regardless of the amount of the use tax liability. The use tax return and payment is due on or before April 15 of the calendar year following purchase.

62C.16.2: continued

(f) Business purchasers who are not registered vendors and are not required to be registered vendors. If no Massachusetts sales tax is paid, a business purchaser of taxable services or tangible personal property (other than boats, airplanes, motor vehicles, trailers or other vehicles, fuels, special fuels, and aircraft (jet) fuel for which fuel excise has been paid) who is not registered or required to register as a vendor with the Commissioner pursuant to M.G.L. c. 62C, § 67, must file a use tax return (Form ST-10) and pay the tax due on such services or property on an annual basis, regardless of the amount of the use tax liability. The use tax return and payment is due on or before April 15 of the calendar year following purchase. A business purchaser is not required to register as a use tax purchaser with the Commissioner for use tax purposes but may do so, using Form TA-1. Whether or not registered as a purchaser, such purchaser's use tax is due April 15 of the calendar year following purchase.

(g) Business purchasers who are registered vendors. Every purchaser who is registered as a vendor, or who is required to be registered as a vendor with the Commissioner pursuant to M.G.L. c. 62C, § 67, must report any use tax due on its purchases on its sales and use tax return and pay the tax due according to a reporting schedule based upon the vendor's combined sales and use tax liability, as explained in 830 CMR 62C.16.2(4), above.

(h) Business purchasers who are vendors of meals. Often a vendor of meals will also be a vendor of other tangible personal property or taxable services. If this is the case, use tax due on purchases must be reported on and paid with the vendor's sales and use tax return. If the vendor of meals files only a sales tax on meals return, and not a sales and use tax return, use tax due on its purchases must be reported on Form ST-10, due April 15 of the calendar year following purchase. See 830 CMR 62C.16.2(4)(f)2.

(6) Administrative Provisions.

(a) Penalties.

1. Penalty for failure to file timely. A penalty is imposed for failure to file a sales or use tax return on or before the due date of the sales or use tax return or within any extension of time for payment granted by the Commissioner. The penalty is 1% of the amount of tax required to be shown on the return, computed for each month or fraction of a month during which the failure continues, not exceeding in the aggregate 25% of that amount. In computing the penalty for failure to file timely, the amount of tax required to be shown on the return will be reduced by the amount of any part of the tax which was paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

2. Penalty for failure to pay timely. A penalty is imposed for failure to pay a sales or use tax on or before the due date of the sales or use tax return or within any extension of time for payment granted by the Commissioner. The penalty is ½ of 1% of the amount of unpaid tax shown on the return, for each month or fraction of a month during which the failure continues, not exceeding in the aggregate 25% of that amount. In computing the penalty for failure to pay timely, the amount of tax shown on the return will be reduced by the amount of any part of the tax which is paid before the beginning of that month.

3. Penalty for failure to pay assessment timely. A penalty is imposed for failure to pay an assessment of sales or use tax not reported on a sales or use tax return, within thirty days following the date of the Notice of Assessment by the Commissioner. The penalty is ½ of 1% of the amount of the unpaid assessed tax for each month or fraction of a month during which the failure continues, not exceeding in the aggregate 25% of that amount.

(b) Interest. Any portion of the sales or use tax that is not paid on or before the due date of a sales or use tax return will have added to it, interest from the due date of the return to the date the tax is paid at a rate prescribed by M.G.L. c. 62C, § 32.

(c) Revocation of authority to file annually, quarterly or monthly. The authorization to file a return and to pay the tax due on an annual, quarterly or monthly basis may be revoked by the Commissioner if:

1. The vendor or purchaser is delinquent in filing a return or paying the tax due;

2. The vendor's or purchaser's tax liability exceeds the designated amounts of $100 or $1,200 for any calendar year, as the case may be; or

62C.16.2: continued

3. The Commissioner determines that the annual, quarterly or monthly filing of returns and payment of tax due unduly jeopardizes the proper administration of the tax law. Upon such revocation, the vendor or purchaser will be required to file a return and to pay the tax due on such basis as the Commissioner shall determine.

(7) Sales Tax Filing and Payment Schedule for Certain Vendors during COVID-19 Pandemic. Notwithstanding 830 CMR 62C.16.2(3) through (6), with respect to vendors whose cumulative liability in the 12-month period ending February 29, 2020 for returns required to be filed under M.G.L. c. 62C, § 16(h) and (i) is less than $150,000, returns and payments otherwise due during the period beginning March 20, 2020 and ending June 1, 2021 shall be suspended. All such returns and payments, including any local option amounts, shall be due on October 30, 2021. This suspension does not apply to marijuana retailers as defined in M.G.L. c. 94G, § 1, marketplace facilitators or vendors selling motor vehicles. Such vendors shall continue to file returns and make payments in accordance with the rules set forth in 830 CMR 62C.16.2(3) through (6).

(PAGES 117 AND 118 ARE RESERVED FOR FUTURE USE.)

62C.21.1: Confidentiality of Tax Information

(1) General. The Commissioner, or any deputy, assistant, clerk or assessor, or other employee of the Commonwealth or of any city or town therein, or any employee of a bank designated as a depository and fiscal agent of the Commonwealth under M.G.L. c. 62C, § 45, shall not disclose to any person but the taxpayer or his representative, any information contained in or set forth by any return or document filed with the Commissioner, other than the name and address of the person filing it, except in proceedings or other activities to determine or collect the tax or for the purpose of criminal prosecution under M.G.L. c. 62C or under the statutes referred to in M.G.L. c. 62C, § 2. (For exceptions *see* 830 CMR 62C.21.1(5)).

(2) Definitions.

Depository Bank. Any bank which is designated by the Commissioner and approved by the State Treasurer as a depository and fiscal agent of the Commonwealth for the purpose of receiving any tax, pursuant to M.G.L. c. 62C, § 45.

Inspect. Permission to inspect a tax return shall include permission to receive copies of the tax return upon payment of the required fee.

Returns. For the purposes of 830 CMR 62C.21.1(1) through (4) and (6), a return is any tax return, tax information or declaration together with any schedules, lists or other statements designed to supplement or to become a part of such return, which are filed with the Commissioner. For the purposes of 830 CMR 62C.21.1(1) and (6) only, a return includes information developed by the Department of Revenue based on material filed, or required to be filed, with the Commissioner, or based on information received from the Internal Revenue Service or any other taxing authority or derived from any other source.

Taxpayer. A taxpayer is a person who has filed a return or who is required to file a return, or a person against whom a tax has been assessed or to whom a notice of intention to assess a tax has been issued.

(3) Records. The Commissioner shall keep records of persons who are granted access to, or given copies of, returns. Such records shall contain:

(a) The name and address of the person who has been granted access to, or given copies of returns;
(b) The representative capacity of such person, if not the taxpayer;
(c) The date of disclosure;
(d) The name of the taxpayer(s);
(e) The type of returns; and,
(f) The taxable periods involved.

Such records shall be considered tax information under 830 CMR 62C.21.1(2).

(4) Inspection by Certain Classes of Persons. The following returns shall be open to inspection, as hereinafter provided, by certain classes of persons, who, for the purposes of 830 CMR 62C.21.1(1), shall be considered the taxpayer or representatives of the taxpayer:

(a) Individual returns. All returns filed on behalf of an individual shall be open to inspection:

1. By the individual for whom the return was made;

2. By certain fiduciaries as follows: The administrator, executor, guardian, or conservator of the estate of a deceased or legally incompetent taxpayer shall be permitted to inspect the returns of the taxpayer. A properly authorized employee of a corporate fiduciary shall be permitted the rights of inspection of such fiduciary. Satisfactory evidence of appointment as fiduciary, such as a current certified copy of the court appointment, must be furnished. A fiduciary, during the period of his appointment, shall be permitted to inspect all returns of the taxpayer or his estate to the extent necessary for the discharge of the duties of such fiduciary;

62C.21.1: continued

3. By a Receiver or Trustee in Bankruptcy. A receiver or trustee in bankruptcy of the estate of a bankrupt taxpayer shall be permitted to inspect the returns of such taxpayer. Satisfactory evidence of such appointment, such as a current certified copy of the court order appointing the receiver or trustee, must be furnished. He or she shall be permitted, during the period of his or her appointment, to inspect all of the returns of the taxpayer to the extent necessary for the discharge of his or her duties. The receiver or trustee in bankruptcy may inspect returns made by prior receivers or trustees of the taxpayer's property;

4. By an Attorney of the Taxpayer or of His or Her Representative. An attorney in fact of the taxpayer or of any representatives qualifying as such under 830 CMR 62C.21.1(4)(a)2. and 3. shall be permitted to inspect the returns of the taxpayer or representatives upon production of written evidence of authorization, such as a letter of authorization from the taxpayer or representative, or an appropriate and current power of attorney. The attorney in fact acting for and on behalf of the taxpayer or representative, and acting for and on behalf of no other interested party shall be permitted to inspect only such returns as the taxpayer or representative specifically allows, in the written letter of authorization; or as relate to his or her duties on tax matters for which he or she is so authorized to represent the taxpayer or representative. Where appropriate, a person may be determined by the Commissioner to be the attorney in fact of the taxpayer where there is less formal evidence of authority.

(b) Corporate Returns. All returns filed on behalf of a corporation shall be open to inspection:

1. By a duly authorized officer of the corporation or their designee, and, if the corporation has been dissolved, by the most recently elected president or treasurer of the corporation, or their designee;

2. By the receiver or trustee in bankruptcy, or their attorney, subject to the requirements and restrictions set forth for such representative in 830 CMR 62C.21.1(4)(a)3. and 830 CMR 62C.21.1(4)(a)4.; or

3. By the attorney for the corporation, subject to the requirements and restrictions set forth for such representative in 830 CMR 62C.21.1(4)(a)4.

4. By an individual deemed to be a responsible person, as defined in 830 CMR 62C.31A.1, by the Commissioner for the tax types and tax periods for which the individual was deemed a responsible person, irrespective of whether or not the individual was an officer of the corporation during those periods.

(c) Joint Returns. Joint income tax returns filed pursuant to M.G.L. c. 62C, § 6 shall be open to inspection:

1. By either spouse for whom the return was made;

(PAGES 121 AND 122 ARE RESERVED FOR FUTURE USE.)

62C.21.1: continued

2. If either spouse has died, become legally incompetent, or bankrupt, by the executor, administrator, conservator, guardian, receiver or trustee in bankruptcy of the estate of such spouse, subject to the requirements and restrictions set forth in 830 CMR 62C.21.1(4)(a)2. and 3.; or

3. By the attorney in fact of either spouse, or of a representative, subject to the requirements and restrictions set forth in 830 CMR 62C.21.1(4)(a)4.

(d) Partnership Return. All returns filed by a partnership, including, but not limited to, income tax returns of a partnership (M.G.L. c. 62C, § 7), shall be open to inspection:

1. By any person who was a partner during any part of the period covered by the return;

2. If a partner has died, become legally incompetent or bankrupt, by the executor, administrator, conservator, guardian, receiver or trustee in bankruptcy of the estate of such partner, subject to the requirements and restrictions set forth in 830 CMR 62C.21.1(4)(a)2. and 3.; or

3. By the attorney in fact of a partner, or of a representative, subject to the requirements and restrictions set forth in 830 CMR 62C.21.1(4)(a)4.

(5) Exceptions to Prohibitions on Disclosure.

(a) Processing by a Depository Bank of Returns and Tax Payments. Subject to the following restrictions on the use of information by employees of the depository, the prohibition against disclosure does not prevent an employee of a depository bank (bank) which is processing tax returns and payments pursuant to M.G.L. c. 62C, § 45A, from having such access to tax returns and documents as is reasonably required for such processing.

1. Employees of the bank will not disclose any information contained in a return or document except to other authorized bank employees engaged in processing or to authorized employees of the Department of Revenue. The Commissioner will authorize in writing the Department of Revenue employees who will receive the information.

2. The bank will give the Commissioner a list of all employees of the bank who will have access to returns or documents and will promptly notify the Commissioner in writing of any changes in the list of employees who will have access to the information.

3. Employees of the bank will use such information only as required in performing their duties for the Department of Revenue and will not copy, reproduce, retain or store any information except as instructed in writing by the Commissioner.

4. Returns and documents acquired by the bank will remain the property of the Department of Revenue; the bank will promptly turn over such materials to the Department at the request of the Commissioner.

(b) Information Regarding Licenses Issued by the Commissioner, the Minimum Pricing of Cigarettes, and Other Related Non-tax Information. The Commissioner performs certain functions unrelated to the assessment or collection of taxes, including issuing licenses under M.G.L. c. 62C, § 67 to dealers in various commodities; appointing stampers to buy cigarette stamps from the Commissioner under M.G.L. c. 64C, § 30; enforcing M.G.L. c. 64C, §§ 12 through 20, relating to the price of cigarettes; and assisting other state agencies in implementing and enforcing the fire-safe cigarette law, M.G.L. c. 64C, §§ 2A through 2F, and the Tobacco Master Settlement Agreement of November 1998. Because the considerations that require the confidentiality of tax information do not apply to these non-tax functions, the prohibition against disclosure does not prevent the disclosure by the Department of the following information.

1. The Commissioner may disclose the name and business addresses of any person holding a license issued under M.G.L. c. 62C, § 67 or an appointment as a cigarette stamper, and any information appearing on the face of the license or appointment document, including, without limitation, the date of issue or expiration of the license or appointment and the license number; provided, however, that the Commissioner may not disclose other information submitted with an application for a license or for a stamper appointment or any tax identification number on the license or stamper appointment document, unless the disclosure of the tax identification number is to another federal or state agency and is in accordance with state and federal law.

2. The Commissioner may disclose information relating to the Commissioner's suspension or revocation of a license or cigarette stamper appointment, including, without limitation, the date of issue, expiration, revocation, or suspension of a license or appointment, and the date of termination of any suspension.

3. The Commissioner may disclose the name and address of a stamper to which the Commissioner sold a specified cigarette stamp.

4. The Commissioner may disclose the following information relating to a cigarette licensee for which, pursuant to M.G.L. c. 64C, § 13, the Commissioner approved a cigarette price lower than the presumptive cost:

a. the name of the licensee and the address appearing on the license;

b. the date of the Commissioner's approval and the expiration date of the approval; and

c. the price approved by the Commissioner, whether the price is for wholesale or retail sales, whether the price is for cartons or packs of cigarettes, and any other conditions on the approval; provided, however, that the Commissioner may not disclose any other information submitted by the licensee to the Commissioner in connection with its claim that its costs are lower than the presumptive cost.

5. If a cigarette licensee claims to be meeting the prices of a competitor under M.G.L. c. 64C, § 16, the Commissioner may disclose, without limitation, the following:

a. the name of the competitor and the address appearing on its license, the relevant cigarette prices charged by the competitor licensee to the extent known by the Department, and any other information cited by the licensee in support of its claim or deemed relevant by the Commissioner; and

b. the name of the licensee claiming to be meeting the price of a competitor and the address appearing on its license, the relevant cigarette prices charged by the licensee to the extent known by the Department, and other any information deemed relevant by the Commissioner.

6. The Department may publish the information referred to in 830 CMR 62C.21.1(5)(b)1. through 5. in a newspaper, on its website, or by any other means.

7. The Commissioner may disclose such information to officials within the Executive Office of Public Safety that the Commissioner deems relevant or necessary to assist the officials in enforcing the fire-safe cigarette law, M.G.L. c. 64C, §§ 2A through 2F.

8. The Commissioner may disclose such information to the Office of the Attorney General that the Commissioner deems relevant or necessary to assist the Attorney General in enforcing the Tobacco Master Settlement Agreement of November 1998 and in representing the Commonwealth in any litigation, mediation, or arbitration related thereto.

(c) Proceedings to Determine or Collect the Tax. Tax information may be disclosed in proceedings or activities to determine or collect the tax, such as proceedings before federal or state courts, or administrative bodies. For the sole purpose of facilitating the collection of the tax, a tax liability may be disclosed to a person determined by the Commissioner to have a direct interest in discharging the liability, and upon a showing that such person cannot first obtain the information elsewhere. The Commissioner must be reasonably satisfied that such person is legitimately interested in the discharge of the liability, and the Commissioner may require that a request for disclosure be made in writing setting forth the reasons why such person is a legitimate party in interest. Examples of those with a direct interest for purposes of 830 CMR 62C.21.1(5)(c) are:

1. A person who has acquired or intends to acquire an interest in real or personal property subject to a lien, recorded or unrecorded, imposed under M.G.L. c. 62C, § 50; or

2. A person requesting a waiver of a lien pursuant to M.G.L. c. 62C, § 51, or a certificate of good standing pursuant to M.G.L. c. 62C, § 52, when acquiring an interest in the assets of a corporation; or

3. A person requesting a certificate of payment of a tax pursuant to M.G.L. c. 65, § 44 when purchasing a business or stock of goods from a vendor liable for any sales or use tax under M.G.L. c. 64H or 64I.

(d) For the Purpose of Criminal Prosecution. The prohibition against disclosure in 830 CMR 62C.21.(5) does not apply to disclosure for the purpose of criminal prosecution pursuant to the administration of M.G.L. c. 62C or pursuant to statutes referred to in M.G.L. c. 62C, § 2.

(e) Other Statutory Exceptions. 830 CMR 62C.21.1(1) does not prevent the disclosure of information if the disclosure is permitted by M.G.L. c. 62C, § 21 or by any other statutory provision of the Massachusetts General Laws or federal laws.

62C.21.1: continued

(6) Nothing in 830 CMR 62C.21.1 shall be construed to permit the inspection or disclosure, directly or indirectly, of any returns or other information received by the Commissioner from the Internal Revenue Service or from any other taxing authority, except for the purpose of administering the Massachusetts laws relating to state taxation.

62C.22.1 Exchange of Information with Other Taxing Authorities

(1) General. 830 CMR 62C.22.1 construes disclosure of tax information pursuant to M.G.L. c. 62C, § 22, generally including inspection of returns by state and federal government agencies and the provision of information to such agencies under M.G.L. c. 62C, § 22, when such disclosure is not pursuant to an applicable agreement under M.G.L. c. 62C, § 23. 830 CMR 62C.22.1 does not apply to any disclosure of tax information pursuant to joint agreements that the Commissioner may enter into with the Secretary of the Treasury of the United States or tax officers of other territories, states, or political subdivisions or their agents under the authority in M.G.L. c. 62C, § 23. Disclosure of tax information under such joint agreements is governed solely by the terms of the applicable agreement.

(2) Disclosure and Inspection. Returns and information from those returns required to be filed with the Commissioner may be open to inspection to certain designated individuals, as defined in 830 CMR 62C.22.1, provided that:

(a) The laws of the United States, or of such territory, state, or political subdivision, requesting the inspection or information, generally restrict the disclosure of such information except for the purpose of administering tax laws; and

(b) The laws of the United States, or of such territory, state, or political subdivision, requesting the inspection or information, grant substantially similar privileges to the Commissioner.

(c) The Commissioner is satisfied that such information is to be used exclusively for the purpose of administering the tax laws of the United States or of such territory, state, or political subdivision.

(3) Definitions.

Agency, the Internal Revenue Service or the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury or any agent or agency designated under the laws of any territory, state or political subdivision to administer the tax laws of that territory, state, or political subdivision.

Inspect, permission to inspect a tax return shall include permission to receive copies of the tax return upon payment of the required fee.

Returns, is any tax return, tax information return, or declaration, together with any schedules, lists or other statements designed to be supplemental to, or to become a part of, such return, which are filed with the Commissioner. In addition, a return includes information developed by the Department of Corporations and Taxation based on material filed, or required to be filed, with the Commissioner, or based on information received from the Internal Revenue Service or any other taxing authority or derived from any other source.

(4) Requirements. No information may be divulged unless the following requirements are first complied with:

(a) The request must specify in writing:

1. That the purpose for each requested examination is exclusively for the administration of tax laws;
2. The statutory or other authority of the person making the request; and
3. The relation of the purpose and authority to the administration of the tax laws. Only the Secretary of the Treasury or his delegate or the head of an agency will be construed as having the proper authority to make such request.

(b) With each requested examination there must also be submitted in writing the following:

1. Name and address of each taxpayer whose return is requested;
2. Type of tax return, such as income, corporate excise, estate, or sales and use tax;
3. The taxable period(s);

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4. The taxpayer's social security number, in the case of returns relating to individuals; or, in the alternative, the taxpayer's federal identification number; and

5. The representatives of such agency, other than the person making the request, who are to inspect or to receive the return on the agency's behalf.

(5) Receipt of Returns; Designated Individuals.

(a) Returns shall be open to inspection by or disclosure to any agency, body, or commission of any territory, state, or political subdivision thereof, which is charged under the laws of such territory, state, or political subdivision with responsibility for the administration of tax laws for the purpose of, and only to the extent necessary, in the administration of such laws. Delivery of such returns shall be made, only upon written request by the head of such agency, body, or commission, and only to the representatives of such agency, body, or commission designated in such written request as the individuals who are to receive the returns on behalf of such agency, body, or commission.

(b) Returns shall be open to inspection by or disclosure to the Secretary of the Treasury or his delegate. Delivery of such returns shall be made, only upon written request of the Secretary of the Treasury or his delegate, and only to the representatives of the Internal Revenue Service of the Bureau of Alcohol, Tobacco and Firearms, who are designated as the individuals who are to inspect or receive the returns on behalf of the Department of the Treasury. For the purposes of 830 CMR 62C.22.1 those people designated by the Internal Revenue Service or the Bureau of Alcohol, Tobacco and Firearms pursuant to the Agreement on Coordination of Tax Administration to inspect and receive state returns will be considered delegates of the Secretary of the Treasury.

(6) Restrictions on Further Disclosure and Inspection. An agency representative who has received a return pursuant to 830 CMR 62C.22.1 may thereafter disclose such return only to another employee of the agency for the purpose of, and only to the extent necessary in, the administration of the tax laws for which the agency is responsible.

(7) Copies. Any person who is permitted to inspect a return under 830 CMR 62C.22.1 may be furnished with a copy of such return upon request. Such request shall be in writing, shall adequately identify the return and shall be accompanied by evidence that the applicant qualifies as one to whom inspection of the return may be permitted.

(8) Time and Place. A convenient time and place for the inspection of returns permitted under 830 CMR 62C.22.1 will be arranged by the Commissioner.

(9) Court Actions and Proceedings.

(a) The Commissioner may furnish copies of the tax returns, and any other tax information that he may deem proper, for use in court actions or proceedings, whether criminal or civil, involving the administration of tax laws of the United States or of any territory, or state, or any political subdivision thereof, if a written request has been made to the Commissioner by those designated individuals, provided that the laws of the United States, or of such territory, state, or political subdivision grant substantially similar powers. If the Commissioner authorizes the use of returns or other information then he may testify or delegate any employee to testify in such actions or proceedings in respect to such returns or other information.

(b) A return may be disclosed in a judicial or administrative proceeding pertaining to tax administration, but only if:

1. The taxpayer is a party to such proceeding and the return relates to the resolution of a tax issue in such proceeding;

2. The treatment of an item reflected on such return is directly related to the resolution of a tax issue in the proceeding; or,

3. Such return directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which affects the determination or collection of any tax.

(10) Nondisclosure. Notwithstanding any other provision of 830 CMR 62C.22.1, disclosure of a return will not be made if such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

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(11) Redisclosure by Commonwealth. The Commissioner will restrict access to returns, received by the Department of Corporations and Taxation from the United States or any territory, state, or political subdivision, or agency thereof, only to persons within the Department of Corporations and Taxation and only for the purpose of administering state tax laws, and may not redisclose such return to any other territory, state or political subdivision or to the United States.

(12) Computerized Returns. Returns received for inspection which are on magnetic tape shall be processed under the immediate supervision and control of authorized employees of the agency. In those cases where such computer facilities used by the agency are shared with other departments, the agency will assure that only those persons granted authority under 830 CMR 62C.22.1 will have access to such returns.

(13) Refusal to Disclose. The Commissioner, may, in his or her discretion, refuse to disclose returns if there is has been any unauthorized use or disclosure of such returns in the past by the agency receiving such returns.

62C.24A.1: Unified Audit Procedures for Pass-through Entities

(1) Statement of Purpose, Application of Regulation, Organization.

(a) Purpose. The purpose of unified audit and appeal procedures for pass-through entities is to streamline audit, assessment, and appeal procedures as they apply to pass-through entities and their members (whether direct or indirect, as described in 830 CMR 62C.24A.1) and to ensure consistent tax treatment of the members of a pass-through entity. 830 CMR 62C.24A1 describes the administrative procedures applicable to a pass-through entity and its members subject to a unified audit proceeding.

(b) Application of 830 CMR 62C.24A.1.

1. Generally, in instances where Massachusetts unified audit procedures are substantially similar to the tax administration procedures under Internal Revenue Code sections 6221-6233 (TEFRA), Massachusetts unified audit procedures will be informed by TEFRA and the regulations and Internal Revenue Service interpretations and practices thereunder.

2. Unified audit procedures may be commenced after the promulgation of 830 CMR 62C.24A.1 without regard to the taxable year of the pass-through entity subject to audit or the taxable year of its members. If a pass-through entity is subject to a unified audit proceeding for a tax year, the unified audit determination applies to the entity's members that have pass-through entity items associated with the pass-through entity for that year, except to the extent a direct member has elected not to participate in the unified audit, or, in a tiered structure, pass-through members or indirect owners of a source pass-through entity have elected not to participate in the unified audit.

3. 830 CMR 62C.24A1 does not require the Commissioner to perform a unified audit of any pass-through entity. The Commissioner has discretion to audit and assess or abate the tax of one or more members of a pass-through entity without conducting a unified audit, and such audit, assessment, or abatement may encompass adjustments attributable to pass-through entity items as well as any other items.

(c) Organization. 830 CMR 62C.24A.1 is organized as follows:

1. Statement of Purpose, Application of Regulation, Organization;
2. Definitions;
3. Pass-through Entities Subject to Unified Audits;
4. Conduct of Unified Audit;
5. Member Assessment Procedure; Contesting Computational Adjustments;
6. Procedures for a Member to Elect Not to Participate in Unified Audit; Commissioner's Treatment of a Member's Pass-through Entity Items as Non-unified Audit Pass-through Items;
7. Consequences of Unified Audit for Members, Pass-through Members and their Members, and Indirect Owners That Have Elected Not to Participate in the Unified Audit;
8. Relationship between Determinations of Tax in Unified Audits and in Member Audits;
9. Notification of Unified Audit Proceedings by Commissioner;

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10. Designation of Tax Matters Partner; Tax Matters Partner's Powers and Obligations; Other Pass-through Entity Notice Provisions;
11. Period of Limitations for Notice of Determination Under Unified Audit;
12. Period of Limitations for Assessment of Members;
13. Consistency of Characterization of Pass-through Entity Items.

(2) Definitions. For purposes of 830 CMR 62C.24A.1, the following terms have the following meanings.

Affected Item, an item on the member's return that is not a pass-through entity item, but one that is affected by adjustments to the tax treatment of a pass-through entity item.

Commissioner, the Commissioner of Revenue.

Computational Adjustment, adjustment to a member's return and assessment or reduction of tax in order to take into account unified audit results on pass-through entity items and affected items.

Department, the Massachusetts Department of Revenue.

Direct Member, a person or entity reporting or required to report or otherwise entitled to a distributive share of an item from a source pass-through entity of which the person or entity is a partner, S corporation shareholder, or beneficiary. There are no pass-through members between a direct member and the source pass-through entity.

Indirect Owner, a person or entity reporting or required to report or otherwise entitled to, through one or more pass-through members in a tiered structure, a distributive share of an item originating with a source pass-through entity which passes through one or more pass-through members that directly or indirectly have an ownership interest in the source pass-through entity. Unless otherwise specified in 830 CMR 62C.24A.1, the term Member encompasses indirect owners.

Member, a person or entity reporting or required to report or otherwise entitled to a distributive share of an item from a pass-through entity, including indirect owners and pass-through members.

Non-unified Audit Pass-through Items, a member's pass-through entity items that are not included in a unified audit proceeding due to:

(a) a member's election not to participate in the unified audit proceeding (*see* 830 CMR 62C.24A.1(6)(a)); or

(b) the Commissioner's decision to exclude a member from the unified audit (*see* 830 CMR 62C.24A.1(6)(b)).

Notice Member, a direct member to which the Commissioner will provide information regarding the commencement of a unified audit under 830 CMR 62C.24A.1(9)(b), if the Tax Matters Partner has timely provided the Commissioner with the necessary information as required under 830 CMR 62C.24A.1(10)(d).

Partnership, an entity, including, without limitation, a general partnership, a limited partnership, a limited liability partnership, a limited liability company, or any other entity, that in each case is treated as a partnership under M.G.L. c. 62 or 63 for the tax period or periods at issue.

Pass-through Entity, an entity whose income, gains, losses, deductions or credits pass through to members for Massachusetts tax purposes, including a partnership, an S corporation, or a trust.

Pass-through Entity Items, items of income, gain, loss, deduction or credit that originate with a pass-through entity. In addition, items more appropriately determined at the pass-through entity level than at the member level, such as entity-level penalties, additions to tax or additional amounts relating to adjustment of pass-through entity items, may be treated as pass-through entity items under 830 CMR 62C.24A.1.

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Pass-through Member, a pass-through entity in a tiered structure through which indirect owners hold an interest in a source pass-through entity with respect to which unified audit proceedings are conducted.

S Corporation, any corporation for which an S corporation election under Internal Revenue Code section 1362(a) is in effect for the taxable year subject to unified audit.

Source Pass-through Entity, in a tiered structure, the originating pass-through entity of an item of income, gain, loss, deduction or credit that passes to an indirect owner. A reference in 830 CMR 62C.24A.1 to the "source pass-through entity" refers to the entity with respect to which unified audit proceedings are conducted, and which receives the Notice of Unified Audit.

Tax Matters Partner, the member designated to represent a pass-through entity in unified audit proceedings. The Tax Matters Partner has the power, on behalf of a pass-through entity's members, to enter into settlements or extensions of the period of limitations on determinations, and has duties of representation and notice as specified in 830 CMR 62C.24A.1(10), similar to, but not restricted by, the powers and duties specified to the Tax Matters Partner under TEFRA.

Tiered Structure, an entity ownership structure in which a pass-through entity is a member of another pass-through entity.

Unified Audit, the Commissioner's conduct of an audit of a pass-through entity and its members, with respect to pass-through entity items and affected items, under audit and appeal procedures pursuant to M.G.L. c. 62C, § 24A, and 830 CMR 62C.24A.1.

(3) Pass-through Entities Subject to Unified Audits.

(a) Partnerships. All partnerships that are pass-through entities, whether or not subject to unified audits under TEFRA, are subject to unified audit procedures.

(b) S Corporations. All S corporations are subject to unified audit procedures.

(c) Trusts. Trusts that are pass-through entities are subject to unified audit procedures.

(4) Conduct of Unified Audit.

(a) Commencement and Termination of Unified Audit. The Commissioner will commence a unified audit of a pass-through entity by sending a Notice of Unified Audit to the Tax Matters Partner. The Commissioner will conduct the unified audit in the manner described in 830 CMR 62C.24A.1, until such time as a final determination is reached or the Commissioner decides to terminate the audit.

(b) Member's Right to Elect Not to Participate in Unified Audit. A member may elect not to participate in the unified audit, as provided in 830 CMR 62C.24A.1(6)(a). A member electing not to participate in the unified audit is subject to the administrative provisions of M.G.L. c. 62C but not the unified audit rules under M.G.L. c. 62C, § 24A except that the member is subject to the extended period of limitations on assessments specified in 830 CMR 62C.24A.1(12)(b) for non-unified audit pass-through items and affected items.

(c) Conduct of Audit. In general, in the course of a unified audit of a pass-through entity, the Commissioner shall inspect the books, papers, and other records of the pass-through entity to determine whether the statement of pass-through entity items on the entity's return is correct. The determination of pass-through entity items during a unified audit shall be made under the unified audit process which, except as specified in 830 CMR 62C.24A.1, shall supersede the assessment and abatement process otherwise applicable to members participating in the unified audit with respect to pass-through entity items.

(d) Notice of Proposed Adjustments. If, in the course of a unified audit, it appears to the Commissioner that the statement of pass-through entity items on the pass-through entity's return has been incorrectly reported, the Commissioner shall issue a Notice of Proposed Adjustments to the Tax Matters Partner.

(e) Conference May Be Requested Within 30 Days. The Tax Matters Partner or any Notice Member may, within 30 days after the date of the Commissioner's Notice of Proposed Adjustments, request a conference with the Commissioner with regard to proposed adjustments of pass-through entity items. In the event there is more than one request for a conference from the Tax Matters Partner or Notice Members, the Commissioner may arrange one joint conference which shall include all requesting parties.

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(f) Settlement of Disputed Issues. At any time, the Commissioner and the Tax Matters Partner may, under M.G.L. c. 62C, § 37C, settle disputed issues that arise under the unified audit. Except to the extent that it provides otherwise, such a settlement is binding with respect to pass-through entity items on all members participating in the unified audit. *See* 830 CMR 62C.24A.1(4)(i) for treatment of a settlement agreement as a final determination of pass-through entity items.

(g) Notice of Determination. The Commissioner will, unless the Commissioner terminates the audit, issue a Notice of Determination of Pass-through Entity Items to the Tax Matters Partner after the later of:

1. 31 days after the issuance of the Notice of Proposed Adjustments; or
2. if a conference was requested, after the conclusion of the conference.

(h) Appeal. If any portion of the unified audit determination of a pass-through entity item is disputed, the Tax Matters Partner may petition the Appellate Tax Board for review of the determination within 60 days after the date of the Notice of Determination.

(i) Final Determination. In the event of a settlement as described in 830 CMR 62C.24A.1(4)(f), the settlement agreement shall be treated as a final determination except as otherwise provided in the agreement. If no petition is filed with the Appellate Tax Board as provided in 830 CMR 62C.24A.1(4)(h), the unified audit determination of pass-through entity items shall become a final determination on the day after the last date on which the pass-through entity may timely appeal the unified audit determination of pass-through entity items. If a timely petition is filed with the Appellate Tax Board, the determination of pass-through entity items shall become a final determination as adjudicated by the Appellate Tax Board or a court, as the case may be, on the later of:

1. the day after the last date on which the pass-through entity may timely appeal the Appellate Tax Board decision, or subsequent judicial decision, if no such appeal is taken; or
2. the day a final judicial decision is rendered if all appeals have been exhausted.

(5) Member Assessment Procedure; Contesting Computational Adjustments.

(a) Member Assessment Procedure: Notice of Computational Adjustment. After a unified audit determination of pass-through entity items becomes a final determination under 830 CMR 62C.24A.1(4)(i), the Commissioner shall adjust a member's return and assess any deficiency or reduce the member's tax liability to reflect the correct treatment of pass-through entity items by issuing a Notice of Computational Adjustment to each member participating in the unified audit. No such adjustment will be made for any member who has opted out of the unified audit under 830 CMR 62C.24A.1(6)(a), provided, however, that the provisions of 830 CMR 62C.24A.1(7) shall apply. The Notice of Computational Adjustment will generally describe how the adjusted tax liability amount was computed. Pass-through entity item adjustments, affected item computations, and penalties may be assessed by computational adjustment. The Commissioner is not required to issue a notice of intent to assess prior to assessment made through a computational adjustment.

(b) Contesting Computational Adjustment. A computational adjustment shall be treated as an assessment for purposes of M.G.L. c. 62C, § 37. A member subject to a computational adjustment may contest a computational adjustment resulting from a unified audit proceeding by filing an abatement application with the Commissioner within six months after the day on which the Notice of Computational Adjustment is sent to the member. Issues of law and fact with regard to pass-through entity items are deemed to have been conclusively determined in the unified audit proceeding.

1. The scope of an abatement application with regard to a computational adjustment is limited to the following:
   a. determinations of clerical or arithmetic accuracy;
   b. resolution of affected items to the extent of adjustment of such affected items due to changes in pass-through entity items; and
   c. issues relating to the interplay between unified audit items and affected items.
2. Abatement applications are limited to items for which the period of limitations for abatements under M.G.L. c. 62C, § 37 is open.

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(6) Procedures for a Member to Elect Not to Participate in Unified Audit; Commissioner's Treatment of a Member's Pass-through Entity Items as Non-unified Audit Pass-through Items.

(a) Procedures for a Member to Elect Not to Participate in Unified Audit. For any reason, a member of a pass-through entity may elect, in the manner provided in 830 CMR 62C.24A.1(6), not to participate in the unified audit of the pass-through entity.

1. Pass-through entity items for a member that has elected not to participate in a unified audit shall be treated as non-unified audit pass-through items.

2. In the case of a tiered structure, any member of a pass-through member that has elected not to participate in the unified audit shall be deemed to have elected not to participate in the unified audit. Accordingly, procedures that are applicable to a member electing not to participate shall also apply to a member of a pass-through member electing not to participate. Such a member may not choose to be included in the unified audit.

3. To elect not to participate in a unified audit the member shall so notify the Department in the manner designated by the Department and shall also notify the pass-through entity's Tax Matters Partner within 90 days after the date the Commissioner sends the Notice of Unified Audit regarding that pass-through entity. A pass-through member must notify all of its direct members that it is not participating in the unified audit and that the period of limitations for assessment or abatement of the non-unified audit pass-through items sourced to the entity subject to unified audit, as well as any affected items, will be as provided in 830 CMR 62C.24A.1(12)(b).

4. A member that does not timely notify the Commissioner that the member elects to be excluded from the unified audit may not later request to be excluded from the unified audit under 830 CMR 62C.24A.1(6).

5. A member that elects not to participate in the unified audit is not entitled to participate in any settlement agreement between the Commissioner and the pass-through entity with respect to the unified audit, nor in the case of any settlement is the Commissioner required to offer the member settlement terms equivalent to those obtained by other members. The Commissioner is not required to make adjustments indicated by the final determination to the returns of members who have elected not to participate in the unified audit.

(b) Commissioner's Treatment of a Member's Pass-through Entity Items as Non-unified Audit Pass-through Items. In the course of a unified audit, the Commissioner may, for efficient and effective enforcement of the revenue laws, treat all of a member's items originating with a pass-through entity as non-unified audit pass-through items. The items become non-unified audit pass-through items, subject to the administrative provisions of M.G.L. c. 62C without adjustment under M.G.L. c. 24A, as of the date the Commissioner so notifies the member. The Commissioner may elect to treat pass-through entity items as non-unified audit pass-through items for any reason. Among the situations in which the Commissioner may treat a member's items originating with a pass-through entity as non-unified audit pass-through items are instances in which the member:

1. is subject to a jeopardy assessment under M.G.L. c. 62C, § 29;
2. is under criminal investigation for violation of the income tax laws; or
3. is a debtor in a bankruptcy proceeding or a receiver has been appointed.

(7) Consequences of Unified Audit for Members, Pass-through Members and their Members, and Indirect Owners That Have Elected Not to Participate in the Unified Audit.

(a) Assessment of Non-unified Audit Pass-through Items and Affected Items. Generally, if the final determination of a unified audit indicates the likelihood of additional tax liability of a pass-through entity member that has elected under 830 CMR 62C.24A.1(6)(a) not to participate in the unified audit, the Commissioner may send such member, within the period of limitations for assessment, as extended under 830 CMR 62C.24A.1(7)(c), a Notice of Intent to Assess and a Notice of Assessment, under the procedures of M.G.L. c. 62C, § 26, with regard to any items open for assessment. In any such assessment, the Commissioner is not bound by the final determination of pass-through entity items made under the unified audit of the pass-through entity.

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(b) Abatement Application by Non-participating Member. A member that has elected, or is deemed to have elected, not to participate in the unified audit, may, within the time periods provided in M.G.L. c. 62C, § 37, file an abatement application with regard to an assessment under 830 CMR 62C.24A.1(7)(a) provided, however, that the abatement amount shall be limited to tax attributed to adjustments of pass-through entity items of the audited pass-through entity, or changes to the member's affected items relating to such pass-through entity items, except to the extent that the period of limitations for abatement is open for other items.

(c) Period of Limitations for Assessment of Non-unified Audit Pass-through Items and Affected Items. The period of limitations is extended as provided in 830 CMR 62C.24A.1(12)(b) with respect to:

1. non-unified audit pass-through items; and
2. affected items.

(8) Relationship between Determinations of Tax in Unified Audits and in Member Audits. A determination of a member's tax liability in an audit of the taxpayer outside of the context of a unified audit does not bar any adjustment of a member's return, pursuant to a unified audit of a pass-through entity of which the taxpayer is a member, for unified audit items and affected items. Similarly, a unified audit of a pass-through entity does not bar any separate audit and assessment of any member of the pass-through entity with regard to items not included in the unified audit. Any assessment or reduction in tax resulting from the audit of a taxpayer outside of the context of a unified audit generally will be calculated and applied separately from any assessment or reduction in tax resulting from a unified audit.

(9) Notification of Unified Audit Proceedings by Commissioner.

(a) Notice of Unified Audit to Entity in Care of Tax Matters Partner. The Commissioner shall send a Notice of Unified Audit to the entity, at the address shown on the entity's return, in care of the Tax Matters Partner, to initiate the unified audit. The Commissioner shall send all subsequent notices affecting the pass-through entity solely to the Tax Matters Partner, who shall be responsible for communicating information to members.

(b) Information to Notice Members. Generally, the Commissioner will inform Notice Members of the unified audit proceedings within 60 days of the date the Notice of Unified Audit was sent to the Tax Matters Partner. The Commissioner may rely on the list of Notice Members timely provided by the Tax Matters Partner under 830 CMR 62C.24A.1(10)(d). The Commissioner's failure to provide, or a Notice Member's failure to receive, notice regarding the commencement of a unified audit shall not affect the rights, responsibilities, or restrictions applicable to Notice Members under M.G.L. c. 62C, § 24A and 830 CMR 62C.24A.1, or the validity of the unified audit proceeding.

(c) Notice of Proposed Adjustments. The Commissioner shall send the Notice of Proposed Adjustments to the Tax Matters Partner.

(d) Notice of Conference. The Commissioner shall send a Notice of Conference to the Tax Matters Partner.

(e) Notice of Determination. After the conclusion of a unified audit, the Commissioner shall send a Notice of Determination to the Tax Matters Partner.

(f) Notice of Computational Adjustment. The Commissioner shall send Notice of a Computational Adjustment as described in 830 CMR 62C.24A.1(5)(a) to each direct member affected by the computational adjustment, and to any indirect owner affected by the computational adjustment for which the Tax Matters Partner has provided the Commissioner with contact information. The Commissioner shall send Notices of Computational Adjustment to all indirect owners affected by the computational adjustment as they are identified in the course of the Commissioner's examination.

(10) Designation of Tax Matters Partner; Tax Matters Partner's Powers and Obligations; Other Pass-through Entity Notice Provisions.

(a) Designation of Tax Matters Partner. The Tax Matters Partner shall be designated according to the following procedures.

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1. Partnerships. A partnership shall designate a Tax Matters Partner. Unless a partnership designates a different Tax Matters Partner for Massachusetts tax purposes, the Tax Matters Partner for a Massachusetts unified audit will be the same as the federal Tax Matters Partner. If the partnership has not designated a federal or Massachusetts Tax Matters Partner, the Tax Matters Partner shall be the general partner, managing member, or similar partner with primary management responsibility; or, if no member has primary management responsibility, the direct member having the largest profits interest in the partnership determined based on the year-end profits interests reported on the partnership return for the taxable year for which the determination is being made. If designation based on the largest profits interest is impracticable, the Commissioner shall select an interim Tax Matters Partner, pending selection of a Tax Matters Partner by the entity, and shall notify Notice Members of the selection.

2. S Corporations. An S corporation shall designate a Tax Matters Partner. The Tax Matters Partner must be a shareholder. If the S corporation does not designate a Tax Matters Partner, the Tax Matters Partner shall be the shareholder having the largest number of voting shares in the S corporation at the close of the taxable year involved, unless shareholders holding an aggregate of more than 50% of the S corporation voting shares designate a different Tax Matters Partner. If designation based on the largest voting shares interest is impracticable, the Commissioner shall select an interim Tax Matters Partner, pending selection of a Tax Matters Partner by the entity, and shall notify Notice Members of the selection.

3. Trusts. A trust that is a pass-through entity shall designate a Tax Matters Partner. If the trust does not designate a Tax Matters Partner, the trustee or fiduciary with authority over tax matters shall be the Tax Matters Partner. If no trustee or fiduciary has been specifically designated as having such authority, the trustees or fiduciaries shall designate the Tax Matters Partner according to the terms of the trust. If no Tax Matters Partner has been designated, the Commissioner shall select an interim Tax Matters Partner, pending selection of a Tax Matters Partner by the entity, and shall notify Notice Members of the selection.

4. Manner of Designating Tax Matters Partner: Future Guidance. The Tax Matters Partner shall be named on the pass-through entity's return for the tax year beginning on or after January 1, 2014. The Commissioner intends to issue guidance explaining how the pass-through entity should designate the Tax Matters Partner for tax years prior to the 2014 tax year that are subject to unified audit.

(b) Tax Matters Partner's Authority. The authority of the Tax Matters Partner includes the power to:

1. Receive tax notices;

2. Represent the pass-through entity's members during the unified audit proceeding and in administrative appeals with the Commissioner;

3. Enter into settlement agreements as provided in 830 CMR 62C.24A.1(4)(f);

4. File petitions with the Appellate Tax Board and pursue any subsequent judicial appeal with respect to a determination of pass-through entity items by the Commissioner; and

5. Enter into a written agreement with the Commissioner following the procedures under M.G.L. c. 62C, § 27, to extend the period of limitations for the conduct of a unified audit procedure and determination of pass-through entity items.

(c) Notice to Members: Partnership Agreement or Other Entity Agreement Controls. The Tax Matters Partner has the responsibility to provide notice to direct members of the pendency of the unified audit. Such notice shall be provided in the manner and to the extent required in the partnership or other agreement governing the pass-through entity and its members. Any pass-through member in a tiered structure shall provide such notice to its direct members in the manner and to the extent provided in its partnership or other entity agreement.

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(d) Manner of Designating and Informing Commissioner of Notice Members. The Tax Matters Partner shall designate Notice Members and provide the Commissioner with a list of Notice Members no more than 30 days after the Commissioner issues the Notice of Unified Audit to the Tax Matters Partner. To be designated as a Notice Member, a direct member must have an interest in the profits of the pass-through entity of 1% or more for any of the years under audit. The Tax Matters Partner shall provide the Commissioner with the name, address, profits interest, and taxpayer identification number of each Notice Member, and shall certify that the direct member has a profits interest in the pass-through entity of 1% or more.

(e) Provision of Information to Commissioner Regarding All Members. After the Tax Matters Partner receives Notice of Unified Audit, the Tax Matters Partner is responsible for providing to the Commissioner an accurate list of all the pass-through entity's direct members' names, addresses, profits interests, and taxpayer identification numbers.

(f) Tax Matters Partner's or Other Member's Failure to Notify or Act Does Not Affect Validity of Unified Audit. The failure of the Tax Matters Partner or any other member to perform any the functions specified in 830 CMR 62C.24A.1 shall not affect the rights, responsibilities, or restrictions applicable to members under M.G.L. c. 62C, § 24A and 830 CMR 62C.24A.1 , the validity of the unified audit, the determination of pass-through entity items, or adjustments of pass-through entity items and affected items with respect to all members participating in the unified audit.

(11) Period of Limitations for Notice of Determination Under Unified Audit.

(a) General Rule. Generally, the Commissioner shall begin a unified audit procedure and issue a Notice of Determination of pass-through entity items within three years after the date on which the entity's return for the taxable year was filed or the date it was required to be filed, whichever is later, taking extensions into account.

(b) Omission of More than 25% of Gross Income. If a pass-through entity omits from its gross income an amount properly includible therein which is in excess of 25% of the amount of gross income stated in the return, the Commissioner may begin a unified audit procedure and issue a Notice of Determination of pass-through entity items at any time within six years after the entity's return was filed.

(c) No Return; False or Fraudulent Return. If a pass-through entity fails to file a required return, or files a false or fraudulent return, there is no period of limitations for the Commissioner to begin a unified audit procedure and issue a Notice of Determination of pass-through entity items. The pass-through entity's failure to identify any direct member on the entity's return shall be deemed a false return with regard to that member.

(d) Agreement to Extend Period of Limitations for Notice of Determination. An extension of time to issue a Notice of Determination agreed to by the Tax Matters Partner binds the pass-through entity and all members, whether or not they are participating in the unified audit; any agreed-upon extension applies to all of the entity's pass-through entity items, including non-unified audit pass-through items, and all affected items of members. The Tax Matters Partner and the Commissioner may agree in writing to extend the period for Notice of Determination of tax at any time before the expiration of the initial period for Notice of Determination, and they may agree to extend the period further at any time by mutual consent before the extended deadline.

(12) Period of Limitations for Assessment of Members.

(a) General Rule. The period of limitations for assessment of a member as to any pass-through entity item, including non-unified audit pass-through items, or any affected item shall not expire with respect to that item before the latest of:

1. the date which is three years after the date on which the pass-through entity return for such taxable year was filed, or the last day for filing such return for that year, whichever is later;
2. one year after the date that the determination of pass-through entity items becomes a final determination; or
3. the final day of an assessment period otherwise applicable to the particular member.

62C.24A.1: continued

(b) Non-unified Audit Pass-through Items. The period of limitations for assessment as to pass-through entity items that are treated as non-unified audit pass-through items, either because the member has elected or is deemed to have elected not to participate in the unified audit under 830 CMR 62C.24A.1(6)(a) or because the Commissioner has elected to treat all of a member's items originating with a pass-through entity as non-unified audit pass-through items, under 830 CMR 62C.24A.1(6)(b), and as to such member's affected items, shall not expire in any event before the end of the period of limitations specified in 830 CMR 62C.24A.1(12)(a).

(13) Consistency of Characterization of Pass-through Entity Items.

(a) Members Must Report Pass-through Entity Items Consistently with the Reporting by the Pass-through Entity. Every member required to file a return must, except as provided in 830 CMR 62C.24A.1(13)(b), report the share of each item originating with the pass-through entity on the member's tax return, including the amount, timing, and character of the item, in a manner that is consistent with the reporting of the item by the pass-through entity.

(b) Items Reported Inconsistently From the Pass-through Entity and Disclosed to the Commissioner; Electing Large Partnerships. Notwithstanding the requirement under 830 CMR 62C.24A.1(13)(a) that a member report items originating with the pass-through entity in the same manner as reported by the entity, a member may file inconsistently with the reporting of such items by the pass-through entity so long as the member files in good faith and with reasonable cause and files a taxpayer disclosure statement with the member's return in the manner prescribed by the Commissioner, identifying each item on the member's return that is treated inconsistently with its treatment on the entity's return. However, a partner of an electing large partnership under Internal Revenue Code section 775 must always treat a pass-through entity item in a manner that is consistent with the treatment of the item on the partnership return.

(c) Penalties for Failure to Disclose Inconsistent Treatment. Penalties that may be applicable to any member who fails to clearly identify to the Commissioner a known inconsistently reported pass-through entity item on the member's return include, without limitation, a penalty for intentional or negligent disregard of rules and regulations under M.G.L. c. 62C, § 35A, and penalties for filing a false or fraudulent return under M.G.L. c. 62C, § 28.

(d) Incorrect Information. A direct member that reports an item originating with the source pass-through entity inconsistently with the source pass-through entity's reporting of such items to the Commissioner, based on incorrect information furnished to the member by the source pass-through entity, is deemed to have reported the item consistently if the member reports it in the same manner as the source pass-through entity reported the information to the direct member and the direct member reasonably relies, in good faith, on the source pass-through entity's reporting of such items.

(e) Reporting of Pass-through Entity Items by Indirect Owners Deemed Consistent if Reasonably Reported According to Indirect Owner's Information. An indirect owner is deemed to report an item consistently with the reporting of the item by the source pass-through entity if the indirect owner reports the item, in good faith and in reasonable reliance on the information provided to the indirect owner, in the same manner as the pass-through member reported the information to the indirect owner, even if the pass-through member did not report the pass-through entity item consistently with the reporting of the item by the source pass-through entity. In such case the indirect owner may be subject to a computational adjustment but the inconsistency generally will not subject the indirect owner to the penalties described in 830 CMR 62C.24A.1(13)(c).

(f) No Pass-through Entity Return; No Member Return. A member of a pass-through entity where the entity files no return may be subject to a computational adjustment even if the member is unaware of the entity's failure to file a return. A member may be subject to a computational adjustment with regard to pass-through entity items whether or not the member has filed a return.

62C.25.1: Record Retention

(1) Statement of Purpose; Outline of Topics.

(a) Statement of Purpose. Every person subject to taxation under M.G.L. chs. 60A, 62 through 65C; 121A, 138, or 175M, or liable for the collection of any such tax, or required by provisions of those chapters or of M.G.L. c. 62C to file information with respect to any such tax, must preserve and maintain permanent books of account or records, sufficiently accurate and complete to establish the amount of gross income, deductions, credits or other matters required to be shown by such person in any return of such tax or information. The Commissioner may require any person to keep such specific records as he deems necessary to determine the amount of such person's tax liability under the aforementioned Chapters as well as those pertaining to any other tax or fee administered by the Department of Revenue.

Every person required by statute, regulation, letter ruling, technical information release or by instructions applicable to a tax form, to keep a copy of a return, schedule, statement or other document, must keep such copy as part of his records.

Every person filing a claim for credit, refund, or abatement must retain records of sufficient detail to substantiate such claim.

Every person retaining records required to be retained under 830 CMR 62C.25.1 shall make the records available to the Commissioner in machine-sensible format upon request of the Commissioner.

(b) Outline of Topics. 830 CMR 62C.25.1 is organized as follows:

1. Statement of Purpose; Outline of Topics
2. Definitions
3. Form of Records
4. Failure to Maintain Adequate Records
5. Electronic Data Interchange Requirements
6. Electronic Data Processing System Requirements
7. Alternative Storage Media
8. Period of Retention
9. Verification of Returns
10. Personal Income Tax
11. Income Tax Withholding
12. Paid Family and Medical Leave Contributions
13. Corporate Excises
14. Business Excises
15. Estate Tax

(2) Definitions. For purposes of 830 CMR 62C.25.1, the following terms shall have the following meanings unless the context requires otherwise:

Automated Sales Suppression Devices, Software Programs. carried on a memory stick or removable compact disc or accessed through an internet link or through any other means, that falsify the electronic records of electronic cash registers or other point-of-sale systems including, but not limited to, transaction data and transaction reports. *See* M.G.L. c. 62C, § 35F. These devices are commonly referred to as zappers.

Commissioner. The Commissioner of Revenue or the Commissioner's duly authorized representative.

Database Management System. A software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

Electronic Data Interchange or EDI Technology. The computer-to-computer exchange of business transactions in a standardized structured electronic format.

Hard-copy. Any documents, records, reports or other data printed on paper.

Machine-sensible Record. A collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

Phantom-ware. Any hidden programming option that is embedded in the operating system of an electronic cash register or hardwired into the electronic cash register and may be used to create a virtual second till, such as a virtual second cash register, or to eliminate or manipulate transaction records to represent the true or manipulated record of transactions in the electronic cash register. *See* M.G.L. c. 62C, § 35F.

Point of Sale or POS System. Hardware and software used at the point a retail sale is completed to record and track sales to a business's customers that may be integrated with accounting modules, including general ledgers, accounts receivable, accounts payable, purchasing, and inventory control systems. A POS System may include Database Management Systems, Electronic Data Interchange or EDI Technology, Machine-sensible Records and similar systems.

Storage-only Imaging System. A system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

(3) Form of Records. The records required by 830 CMR 62C.25.1 must be easily locatable, organized and in such form as to enable the Commissioner to ascertain whether liability for tax is incurred, and if so, the amount of liability. In the event a taxpayer's records are dispersed, disorganized or otherwise kept in such manner as to make it impossible for the Commissioner to ascertain the proper amount of tax due without inordinate audit time, the Commissioner may require the taxpayer to organize and present the pertinent records in such form as to enable a determination of the amount of any such liability. If the taxpayer is unwilling or unable to do so, the Commissioner may use any reasonable alternative method of determining the amount due, including obtaining records from third parties, to verify any entries, deductions, statements, and credits on the taxpayer's return.

(a) Machine-sensible Records. Machine-sensible records used to establish tax compliance must contain sufficient transaction-level detail information including the state of origination and destination of transactions so that the details underlying the machine-sensible records can be identified and made available to the Commissioner upon request. A taxpayer may discard duplicated records and redundant information provided its responsibilities under 830 CMR 62C.25.1 are otherwise met.

(b) At the time of examination, the retained records must be capable of being retrieved and converted to a standard format.

(c) A taxpayer is not required to construct machine-sensible records other than those created in the ordinary course of business or those required to establish tax compliance as set out in 830 CMR 62C.25.1(3)(a). A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for purposes of 830 CMR 62C.25.1 provided that:

1. a taxpayer who maintains machine-sensible records in archive form or off-site in a data warehouse may be required to retrieve and produce such records, and;

2. a taxpayer who maintains machine-sensible records in the form of an electronic database may be required to generate reports from existing data fields maintained in such database, whether or not such reports are otherwise generated by the taxpayer in the ordinary course of business.

(4) Failure to Maintain Adequate Records. The taxpayer bears the burden of proof with respect to any entry, statement, deduction, or credit claimed on a tax return. A taxpayer meets that burden by maintaining adequate records of all such entries, statements, deductions or credits. Records will be considered adequate if they are complete, accurate, and accessible such that the Commissioner can quickly confirm the proper amount of tax due.

Where a taxpayer fails to maintain adequate records, the Commissioner may determine the amount of tax due by using any information available and may verify the taxpayer's amount of tax due using third party sources. The Commissioner may issue administrative summonses pursuant to M.G.L. c. 62C, § 70 to compel the production of any books, papers, records, and other data from the taxpayer or other sources.

A taxpayer's failure to maintain complete, accurate, and accessible records may result in the imposition of penalties under M.G.L. c. 62C, including double deficiency assessment penalties under M.G.L. c. 62C, § 28, and other appropriate action provided by law, including the disallowance of any deduction, credit, and exemption and the addition of any tax to which the requested records relate.

(5) Electronic Data Interchange Requirements. Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor/purchaser name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping details, *etc*. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the Commissioner to interpret the coded information.

A taxpayer may capture the information necessary to satisfy the requirements of 830 CMR 62C.25.1(5) at any level within the accounting system provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (*i.e.*, they contain only codes for that information), the taxpayer must also retain other records such as its vendor master file and product code description lists and makes them available to the Commissioner in electronic format.

(a) Requirements for POS Systems. POS systems used by taxpayers must provide enough detail to independently determine the taxability of each sale and the amount of tax due and collected. Each POS transaction record must provide detailed information including, but not limited to:

1. individual item(s) sold;
2. selling price;
3. tax due;
4. invoice number;
5. date of sale;
6. method of payment; and
7. POS terminal number and POS transaction number.

POS system records must permit the direct reconciliation of the receipts, invoices, and other source documents with entries in the books and records and on the returns of a taxpayer.

Users of POS systems must maintain auditable internal controls to ensure the accuracy and completeness of the transactions recorded in the POS system including a separate and accessible platform that continually backs up the POS system's data. The records must provide audit trail details including, but not limited to;

a. internal sequential transaction numbers;

b. records of all POS terminal activity; and

c. procedures to account for voids, cancellations, or other discrepancies in sequential numbering.

The POS audit trail or logging functionality must be activated and operational at all times, and it must record any and all activity related to other operating modes available in the system, such as a training mode; and any and all changes in the setup of the system. If a POS system lacks storage capacity or the taxpayer makes a change to a POS system, the taxpayer must transfer, maintain, and have available in a machine-sensible and auditable form any data removed from the POS system. In the event that a POS system fails, crashes, or otherwise loses data or becomes inaccessible, the user of the POS system must provide contemporaneous documentation from a third-party vendor describing the cause and duration of the incident, the extent of any necessary repairs, the scope of the data affected, and which data were salvageable. Where a user of a POS system fails to maintain proper POS system records as described by this paragraph, the Commissioner will consider the taxpayer not to have maintained adequate records and may impose applicable penalties as provided in 830 CMR 62C.25.1(4). If it is determined that the failure to maintain proper records constitutes a willful attempt to evade or defeat payment of the tax due, such as where the user continues to fail to maintain proper POS system records in subsequent audits, criminal penalties may be imposed pursuant to M.G.L. c. 62C, § 73.

(b) Prohibition of the Use of Automated Sales Suppression Devices and Phantom-ware. The use of automated sales suppression devices and phantom-ware is prohibited. M.G.L. c. 62C, § 35F. A person or entity that sells or offers for sale an automated sales suppression device or phantom-ware will be subject to a civil penalty of not more than $25,000 for the first offense and not more than $50,000 for each subsequent offense. Use of such systems or any other means of willfully underreporting sales, whether in connection with the use of POS systems or otherwise, is illegal and will be subject to the tax evasion penalties of M.G.L. c. 62C, § 73, including a felony conviction, a fine of not more than $100,000 or $500,000 in the case of a corporation, or by imprisonment for not more than five years, or both, and payment of the costs of prosecution.

Any person or entity that sells or offers for sale an automated sales suppression device or phantom-ware will be subject to a civil penalty of not more than $25,000 for the first offense and not more than $50,000 for each subsequent offense.

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(6) Electronic Data Processing System Requirements. The requirements for an electronic data processing accounting system are similar to that of a manual accounting system, in that an adequately designed system should incorporate methods and records that will satisfy the requirements of 830 CMR 62C.25.1.

(a) Upon the request of the Commissioner, a taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records. A taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;
2. the internal controls used to ensure accurate and reliable processing; and
3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(b) The following specific documentation is required for machine-sensible records retained pursuant to 830 CMR 62C.25.1:

1. record formats or layouts;
2. field definitions (including the meaning of all codes used to represent information);
3. file descriptions (*e.g.*, data set name);
4. detailed charts of accounts and account descriptions;
5. evidence that the retained records reconcile to the accounting records and to the tax returns.

(c) A taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

(7) Alternative Storage Media. For purposes of storage and retention, a taxpayer may convert hard-copy documents received or produced in the normal course of business and required to be retained under 830 CMR 62C.25.1 to electronic format or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of 830 CMR 62C.25.1 are otherwise met. Documents which may be stored on these media include, but are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of detail such as sales invoices, purchase invoices, exemption certificates, and credit memoranda. Upon request of the Commissioner, a taxpayer must provide facilities and equipment for locating, reading and reproducing any documents maintained on storage-only imaging media and all data shall be maintained and arranged in a manner that readily permits the location of any particular record.

(8) Period of Retention. The records required by 830 CMR 62C.25.1, must be kept so long as their contents are material in the administration of Massachusetts tax laws. At a minimum, unless the Commissioner consents in writing to an earlier destruction, the records must be preserved until the statute of limitations for making additional assessments for the period for which the return was due has expired; generally, this is three years after the due date of the return or the date the return is actually filed, whichever occurs later.

There are a number of situations including, but not limited to the following, where the three-year limitation on assessments does not apply:

(a) in case of fraud or failure to file a required return the Commissioner may assess a tax and examine all records related to such return at any time;

(b) if an executor, as defined in M.G.L. c. 65C, omits from the gross estate, as reported in the estate tax return, items which should have been included in the return, and the sum of such items exceeds 25% of the gross estate reported in the return, the Commissioner may assess the estate tax and examine all records related to such tax at any time within six years after the return was filed;

62C.25.1: continued

(c) where the taxpayer and the Commissioner have agreed to extend the time for assessing the tax, records are to be kept for such additional period;

(d) records related to a taxable event which will occur in the future, such as records of property for which a basis must be determined to compute gain or loss upon disposition, must be retained for three years after the return for the year in which the disposition occurred was due or was actually filed, whichever occurs later; and

(e) any person claiming a refund, credit or abatement shall keep all records relating to the taxable period involved until final resolution of the claim.

(9) Verification of Returns. For purposes of verification of returns, all records required by M.G.L. c. 62C or 830 CMR 62C.25.1, must be kept, by the person required to keep them, at one or more convenient locations accessible to the Commissioner and must be made available in a timely manner for inspection by the Commissioner at any reasonable time. No taxpayer shall be subject to unnecessary inspections, examinations, or investigations of his records, and only one inspection of a taxpayer's general books of account for a particular tax shall be made for any taxable period, unless the taxpayer requests otherwise or unless the Commissioner notifies the taxpayer in writing that an additional inspection is necessary.

(10) Personal Income Tax. Every person required to file a personal income tax return under M.G.L. c. 62C, § 6, and the regulations thereunder, must keep such records as will enable the Commissioner to determine the correct amount of tax due. The records of taxpayers required to complete Schedule C (Profit or Loss from Business or Profession) must include such permanent books of account, or records, including inventories, as are sufficient to establish the amount of gross income, deductions, or other items required to be shown on Schedule C of the personal income tax return. Such records must be in sufficient detail and clarity to delineate and support each line item deducted on such Schedule C.

Massachusetts nonresident employees that work for a Massachusetts employer and who source their income to Massachusetts based on their proportion of time spent in Massachusetts and time spent elsewhere must maintain source records adequate to substantiate their amount of time spent outside of Massachusetts. Examples of source records include, but are not limited to, detailed work calendars created contemporaneously, employee badge swipe reports, expense reports, approved timesheets, taxpayer-specific letters from the taxpayer's employer on the taxpayer's employer's letterhead with an authorized signature stating the number of days the taxpayer worked in Massachusetts and elsewhere, and signed telework agreements. The records must be sufficient to enable the Commissioner to determine how much time the nonresident employee worked outside of Massachusetts during the year.

Taxpayers receiving a Form 1099-K or Form M-1099-K must maintain records sufficient to enable the Commissioner to determine the correct amount of tax due with respect to the income reported. Such records must sufficiently establish the amount of gross income, deductions, or other items required to be shown on the Massachusetts personal income tax return. For each line item deducted on such return, the records must sufficiently detail and delineate the deduction.

62C.25.1: continued

(11) Income Tax Withholding. Every employer required by M.G.L. c. 62B to withhold Massachusetts income taxes from the wages of his employees must keep the following records:

(a) General.

1. the name, address, occupation and social security number of each employee;
2. the amount and date of all payments of wages and the period of services covered by such payments, and the amounts of tax withheld thereon;
3. employees' statements of tips received
4. employees' requests to be withheld on the basis of cumulative wages;
5. employees' withholding allowance certificates (Forms M-4 and W-4);
6. employer's copies of employees' wage and tax statements (Form W-2); and
7. copies of all withholding returns.

(b) Employers with Nonresident Employees. For an employer that withholds income tax from wages paid to a non-resident employee based on the employee's workdays in and out of Massachusetts, payroll and attendance records that accurately reflect the location from which the employee works. Alternately, the employer may use any other reasonable method to determine the portion of the non-resident employee's work performed at locations in Massachusetts, including estimating that portion based on a certification provided by the non-resident employee if taken in good faith. Where an employer uses such an alternative method, the employer must retain documentation to verify the method and if it is relying on employee certification, the employer must retain a signed statement from the employee attesting to the number of days the employee worked in Massachusetts or expects to work in Massachusetts.

(12) Paid Family and Medical Leave Contributions. All employers and covered businesses, both as defined in M.G.L. c. 175M, § 1, and self-employed individuals electing coverage under M.G.L. c. 175M, must maintain records sufficient to comply with the requirements of 458 CMR 2.00: *Family and Medical Leave* and 830 CMR 175M.8.1: *Administration and Collection of Paid Family and Medical Leave Contributions*. Such records must include:

(a) The name, address, occupation and social security number of each employee and covered contract worker, both as defined in M.G.L. c. 175M, § 1;

(b) The amount and date of all payments of wages and payments to covered contract workers, including the period of services covered by such payments, and the amount of Paid Family and Medical Leave contributions collected and remitted;

(c) The number of employees and covered contract workers compensated for services throughout the calendar year;

(d) Copies of employees' wage and tax statements (Form W-2) and covered contract workers' payments and tax statements (Form 1099-MISC);

(e) Copies of all spreadsheets and any other document used to prepare any employment and wage detail report; and

(f) Copies of all employment and wage detail reports and any other documents submitted online to the Commissioner through MassTaxConnect.

(13) Corporate Excises. Every corporation required to file a return under M.G.L. c. 62C, § 11 or § 12, must keep adequate and complete records, including copies of federal and state income tax returns, schedules used in connection with the preparation of returns, and records showing source, date and amount of income received or expenses claimed as deductions. The corporation must also keep information relative to tangible personal property located in the Commonwealth as to which such corporation is lessor or lessee.

62C.25.1: continued

(14) Business Excises.

(a) Gasoline. Every distributor, unclassified importer and unclassified exporter, as defined in M.G.L. c. 64A (and denominated for purposes of 830 CMR 62C.25.1(14)(a) as a licensee), is required to maintain:

1. a complete and accurate record of all sales of fuel, including the name and address of the purchaser, the place and date of delivery, the number of gallons of each type of fuel (*e.g.* unleaded regular, unleaded premium, gasohol and products sold or used as fuel for aircraft, except aircraft fuel as defined in M.G.L. c. 64J, § 1), and the total price paid for each type;

2. a complete and accurate record of the number of gallons of each type imported, exported, produced, refined, manufactured, and compounded and the date of import, export, production, refining, manufacturing or compounding;

3. a complete and accurate record of the number of taxable gallons placed in the licensee's own vehicles or in registered vehicles leased to the licensee.

4. copies of statements delivered with every consignment of fuel to a purchaser within the Commonwealth containing the date of purchase, the name of the purchaser, the name of the seller, the number of gallons of each type of fuel delivered and the total price paid for each type.

Licensees must retain copies of gasoline excise returns filed.

(b) Tobacco Products. Every manufacturer, wholesaler, retailer, vending machine operator, transportation company and unclassified acquirer, as defined in M.G.L. c. 64C, is required to maintain a complete and accurate record of all tobacco products, as defined in M.G.L. c. 64C, § 1, including electronic nicotine delivery systems, as defined in M.G.L. c. 64C, § 7E, as well as cigars and smoking tobacco, as defined in M.G.L. c. 64C, § 7B, manufactured, purchased or otherwise acquired. Such record must include copies of statements delivered with sales or consignments containing: the name and address of the seller, the name, address and federal identification number of the purchaser, the date of delivery, the quantity purchased, the trade name or brand and the price paid for each brand. Every vending machine operator is required to keep a detailed record for each vending machine owned for the sale of tobacco products showing: the location of the machine, the date of placing the machine at that location, the quantity of each brand of tobacco products placed in the machine, the date when such quantity was placed in the machine and the amount of the commission paid or earned on sales through such vending machine.

Taxpayers must retain copies of all tobacco product excise returns filed.

(c) Special Fuels. Every person licensed as a user-seller or supplier, as defined in M.G.L. c. 64E, is required to keep a complete and accurate record of all purchases, sales and use of special fuels. Such record shall include:

1. an inventory of each type of special fuels on hand at the beginning and the end of the period of filing a special fuels excise return;

2. the number of gallons of each type acquired from all sources during the period including the date of each purchase or acquisition, the name and address of each supplier, and the number of gallons acquired from each supplier;

3. the number of taxable gallons of each type placed in the licensee's own vehicles or in registered motor vehicles leased to him during the period including the make and type of each vehicle, the odometer reading of each vehicle, the engine hour reading of each vehicle, the number of gallons placed in such vehicles from the licensee's own storage or supply and the number of gallons placed in such vehicles from other sources;

4. the total number of taxable gallons of each type sold to other users for use in registered motor vehicles during the period including the name and address of each purchaser and the number of gallons sold;

5. a written statement for each sale to user-sellers during the period including the date of sale, the name of the purchaser, date of delivery, the delivery address, gross sales price and the number of gallons of each type sold;

6. the total number of non-taxable gallons of each type sold during the period, including the date of sale, name and address of each purchaser date of delivery, gross sales price and the number of gallons sold to each purchaser;

7. the total number of each type of non-taxable gallons used by the licensee during the period including the nature of the use, the type of machine using the special fuel and the number of gallons used;

8. a complete and accurate record of the number of gallons imported, produced, refined, manufactured or compounded during the period and the date of importation, production, refining, manufacturing or compounding; and

9. the gross cost paid as consideration for liquefied gases (including propane) used by licensed suppliers in their own motor vehicles and not resold during the period.

Licensees must retain copies of special fuels excise returns filed.

If any supplier or user-seller not properly licensed pursuant to M.G.L. c. 64E, becomes liable for the excise under M.G.L. c. 64E, such person must retain those records which a licensee is required to retain under 830 CMR 62C.25.1.

(d) Fuels Acquired Outside the Commonwealth. Every motor carrier, as defined in M.G.L. c. 64F, is required to keep complete and accurate records of all miles travelled and fuel used in operations. Such records must specify:

1. the number of miles travelled everywhere, the number of miles travelled in Massachusetts, the number of miles travelled on the Massachusetts Turnpike substantiated by toll receipts or daily listing invoices issued by the Massachusetts Turnpike Authority, the number of gallons of fuel used everywhere, the number of gallons of fuel used in Massachusetts; and

2. the sources of fuel purchased in Massachusetts, including the date of supply, the name and address of the supplier, the number of gallons of gasoline supplied and the number of gallons of special fuel supplied.

Motor carriers must retain copies of gasoline and special fuels excise returns filed.

(e) Room Occupancy. Every operator and intermediary, both as defined in M.G.L. c. 64G, § 1, must maintain records sufficient to comply with the requirements of 830 CMR 64G.1.1: *Massachusetts Room Occupancy Excise*. Operators and intermediaries must retain complete and accurate records of charges and receipts for all transfers of occupancy sufficient to determine whether the proper amount of tax and any applicable fees have been paid. If an occupant claims entitlement to an exemption from the room occupancy excise, the operator or intermediary must maintain records to support the exemption.

All operators and intermediaries must retain copies of all room occupancy excise returns filed.

(f) Sales and Use. For purposes of 830 CMR 62C.25.1(14)(f), "vendor" means vendor as defined in M.G.L. c. 64H, § 1, “purchaser” means any purchaser as defined in M.G.L. c. 64H, § 1 or M.G.L. c. 64I, § 1 as the context requires, “retailer” means any retailer as defined in M.G.L. c. 64H, § 1, "promoter" means promoter as defined in M.G.L. c. 62C, § 1 and "contractor" means any person engaged in the construction, reconstruction, alteration, remodeling, or repair of real property.

Every promoter must maintain the following records:

1. a copy of the notice filed with the Commissioner indicating the date and place of each flea market, craft show, antique show, coin show, stamp show, comic book show, fair and any similar show held within the Commonwealth with respect to which he was a promoter;

2. a copy of the promoter registration certificate issued by the Commissioner; and

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3. name, address, and vendor registration number, by show, of every person whom he permitted to display for sale or to sell tangible personal property subject to tax under M.G.L. c. 64H at such show.

Every vendor, purchaser, retailer and contractor required by M.G.L. c. 64H or c. 64I to file sales or use tax returns shall maintain a complete and accurate record of the gross receipts/expenditures from all purchases and sales, whether or not taxable. Such persons shall retain copies of tax returns filed together with supporting data to indicate how the figures in such returns were calculated.

Every vendor, purchaser, retailer and contractor must maintain the following records:

a. a journal or its equivalent, which records daily all non-cash transactions affecting accounts payable;

b. a cash journal or its equivalent, which records daily all cash receipts and cash disbursements, including any check transactions;

c. a sales slip, invoice, cash register tape, or other document evidencing the original transaction, which substantiates each entry in the journal or cash journal;

d. memorandum accounts, records or lists concerning inventories, fixed assets or prepaid items, except in cases where the accounting system clearly records such information; and

e. a ledger to which totals from the journal, cash journal and other records have been periodically posted. The ledger must clearly classify the individual accounts receivable and payable and the capital account.

Vendors, purchasers, retailers and contractors who maintain double-entry or cost accounting systems, or whose total sales volume for the month for which a return has most recently been filed is in excess of $100,000, or who maintain machine-sensible records for accounting purposes, must maintain the following records, or other records which will readily furnish the equivalent information:

i. evidence of original transactions: all customer orders, sales invoices, purchase invoices, credit memoranda, shipping documents, and cancelled checks;

ii. journals: a cash journal or journals, specifying cash receipts and disbursements (including all check transactions), a sales journal recording all charge sales, a purchase journal recording all charge purchases of merchandise for resale or of materials to be incorporated into a finished product, a voucher register recording all purchases by check of materials or services, a general journal recording any non-recurrent transactions, a journal voucher and standard journal recording recurrent transactions not otherwise accounted for;

iii. ledger and balance sheet records: a general ledger accounting for every balance sheet and profit and loss item, to which periodic postings are made, and reflecting totals from the journals; a subsidiary ledger classifying and detailing all accounts payable or receivable, expense accounts and any other accounts so recorded; a private ledger; records concerning fixed assets; depreciation schedules; records of inventories and transfers; a detailed chart of accounts; and

iv. general records: sales contracts, lease agreements, contractor bonds and annual auditor's reports.

Every holder of a certificate of exemption from the sales or use tax must retain a record of each purchase made under the certificate including the certificate itself, a description of each item purchased, the name and address of the vendor, the cost of the item and the date of the purchase.

Every vendor making a sale to the holder of an exempt purchaser certificate must retain a copy of the certificate, a record of each sale made under the certificate including a description of each item sold, the price charged for each item, the date of sale, the name and address of the purchaser, and the certificate number of the purchaser.

Every vendor making a sale to the holder of a contractor's exempt purchase certificate must retain a copy of the certificate, a record of each sale made under the certificate including a description of each item sold, the price charged for each item, the date of sale, the name and address of the purchaser, and the contract number or other identifying designation of an unnumbered contract. The contract number or other identifying designation must appear on all purchase orders and invoices.

Every vendor making a sale to the holder of an exempt use certificate must retain a copy of the certificate, a record of each sale made under the certificate including a description of each item sold, the price charged for each item, the date of sale, the name and address of the purchaser and purchase orders which clearly indicate that they represent exempt use purchases.

Every vendor making a sale to the holder of a resale certificate must retain a copy of the certificate, a record of each sale made under the certificate including a description of each item sold, the price charged for each item, the date of the sale, the name and address of the purchaser-vendor, the registration number of the purchaser-vendor, and the business of the purchaser-vendor.

Every motor vehicle dealer must retain copies of his reports of sales of motor vehicles and trailers (Form MV-DL) and accompanying documents.

In addition to other records of vendors required by this regulation to be retained, every vendor of aircraft, boats and recreation or snow vehicles must keep copies of Form ST-6, (Certificate of Payment of Sales or Use Tax).

(g) Marketplace Facilitators. Each marketplace facilitator, as defined in M.G.L. c. 64H, § 1 and 830 CMR 64H.1.9: *Remote Retailers and Marketplace Facilitators*, must maintain records sufficient to comply with the requirements of 830 CMR 64H.1.9. Such records must be sufficient to determine whether the proper amount of tax has been paid. Marketplace facilitators must also maintain any other records required under 830 CMR 62C.25.1(14)(f) where applicable.

(h) Sales and Use-meals. Every vendor of meals, as defined in M.G.L. c. 64H, § 6(h), is required to maintain complete and accurate records of all sales of meals and alcoholic beverages, and all sales of non-taxable food and beverages. The records must include cash register tapes, alcoholic beverages bar checks, dining room meals checks, and a daily receipts book or record. Vendors must retain copies of sales tax on meals returns filed.

Every vendor of meals making a sale to the holder of an exempt purchaser certificate must retain a copy of the certificate, a record of each sale made under the certificate including a description of each item sold, the price charged for each item, the date of sale, the name and address of the purchaser, and the certificate number of the purchaser.

Every vendor of meals making a sale to the holder of a resale certificate must retain a copy of the certificate, a record of each sale made under the certificate including a description of each item sold, the price charged for each item, the date of the sale, the name and address of the purchaser-vendor, the registration number of the purchaser-vendor, and the business of the purchaser-vendor.

(i) Alcoholic Beverages. Every licensee subject to the excise on alcoholic beverages under M.G.L. c. 138, § 21 must keep and preserve a complete and accurate record of all alcoholic beverages, alcohol and malt beverages manufactured, distilled, bottled, imported, purchased or sold within the Commonwealth or exported from the Commonwealth. Such records must include: the total number of gallons, by brand, the price or prices paid for each brand, the name and address of the purchaser to whom sold or vendor from whom purchased and the date of the purchase or sale. Licensees must retain copies of alcoholic beverages excise returns filed.

(j) Deeds. Every person liable for payment of the excise on deeds, instruments or writings under M.G.L. c. 64D, must keep such adequate and complete records as to allow the Commissioner to ascertain that the proper amount of the excise has been paid. Such records shall include books, papers or memoranda bearing upon the amount of excise owed the Commissioner. These records need be preserved for only two years from the date of conveyance.

(k) Aircraft Fuel. Every person licensed as a user-seller or supplier, as defined in M.G.L. c. 64J, § 1, is required to keep a complete and accurate record of all purchases, sales and use of aircraft fuel. Such records shall include:

1. a complete and accurate record of all purchases, sales and use of aircraft fuel, including the name and address of the person accepting delivery of said aircraft fuel to be used in an aircraft in the commonwealth, its place and date of delivery, and the gross sales price or cost;
2. a complete and accurate record of the number of gallons imported, produced, refined, manufactured or compounded and the date of the importation, production, refining, manufacturing or compounding; and
3. a written statement for each sale containing the date of the sale, the name of the person making delivery and the name of the person receiving the same; and
4. a completed certificate of exemption (Form JFT-8) for all exempt sales.

Licensees must retain copies of all aircraft fuel excise returns filed.

(l) Abandoned Deposit Amounts. Every bottler or distributor maintaining or required to maintain, a Deposit Transaction Fund, as required by M.G.L. c. 94 is required to keep a complete and accurate record of all transactions affecting the Deposit Transaction Fund. Such records shall include the number of non-reusable beverage containers for which refund values have been received or for which refund values have been paid, interest income earned on amounts held in the Deposit Transaction Fund, and beginning and end of month fund balances.

Bottlers and distributors required to maintain Deposit Transaction Funds must retain copies of Abandoned Deposit Amounts returns.

(m) Convention Center Financing Surcharge. Operators of sightseeing tours, operators of parking facilities in a convention center facility in Boston, Springfield, or Worcester, and vendors with customers that sign vehicle rental contracts subject to the surcharge imposed under St. 1997, c. 152, the Convention Center Act, are required to keep complete and accurate record of all sales subject to the surcharge. Such records shall include the following:

1. a complete and accurate record for all sales of tickets, parking, and all vehicle rental contracts subject to St. 1997, c. 152, the Convention Center Act; and
2. supporting data that indicates how the amounts of the surcharge reported in the returns were calculated.

Taxpayers must retain copies of Convention Center Forms filed.

(n) Ferry Embarkation Fee. Every ferry operator subject to the provisions of St. 2003, c. 55 is required to maintain compete and accurate records regarding passenger embarkation from each port town voting to impose the embarkation fee. Such records shall include:

1. the total number of fee passengers departing from each port town;
2. the number of such passengers using tickets purchased as commuter fares;
3. the number of such passengers using tickets purchased at school-related rates; and
4. the total embarkation fees collected.

Taxpayers must retain copies of ferry embarkation fee returns.

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(o) Uniform Oil Spill Fee. Every marine terminal operator registered under M.G.L. c. 21M, must keep a complete and accurate record of the receipt of all petroleum products or crude oil at the marine terminal. Such records must include the name and address of the owner of the petroleum product or crude oil, the date and the number of barrels of petroleum products received at the marine terminal and the point of origin shipment. Licensees must retain copies of the Uniform Oil Response and Prevention Fee form.

(p) Vehicular Rental Surcharges. Vendors entering into a vehicular rental transaction contract in the Commonwealth that is subject to the police training surcharge imposed pursuant to M.G.L. c. 90, § 32⅞ or the surcharge imposed on such vehicular rental contracts in Revere pursuant to St. 2005, c. 92, are required to keep complete and accurate record of all sales subject to such su rcharges. Records must be sufficient to establish the amount of vehicular rental surcharge due and indicate how the amount of the surcharge reported was calculated. Vendors must retain copies of all Vehicle Rental Surcharge returns filed.

(q) Direct Broadcast Satellite Service Excise. Each direct broadcast satellite service provider required to collect and remit the excise imposed under M.G.L. c. 64M, § 2, must maintain business records sufficient to determine whether the proper amount of tax has been paid. The records must include a breakdown of any amounts excluded from gross revenues pursuant to M.G.L. c. 64M, § 1. Direct broadcast satellite service providers are required to retain copies of all Monthly Satellite Service returns filed.

(r) Marijuana Excise. Every marijuana retailer, as defined in M.G.L. c. 94G, § 1, must maintain complete and accurate records as required by 830 CMR 64N.1.1: *Marijuana Retail Taxes*, as well as any other records required under 830 CMR 62C.25.1(14)(f) where applicable. Marijuana retailers must retain copies of all Marijuana Retail Tax returns filed.

(15) Estate Tax. An executor as defined in M.G.L. c. 65C, must keep such complete and detailed records of the affairs of the estate for which he acts as will enable the Commissioner to determine the amount of the estate tax liability. The executor must furnish pertinent records upon request, including:

(a) copies of any documents relating to the estate which are on file in any court having jurisdiction over the estate;

(b) appraisal lists of any items included in the gross estate;

(c) copies of insurance policies on the decedent's life;

(d) copies of instruments which transferred the decedent's property within three years preceding his death;

(e) copies of trust instruments in which decedent had an interest, including powers of appointment;

(f) copies of federal estate and gift tax returns and any documents required to be submitted to the Internal Revenue Service in connection with them;

(g) copies of balance sheets, profit and loss statements and other pertinent financial records relating to the value of closely-held businesses owned by the decedent;

(h) copies of documents which verify deductions taken on the estate tax return; and

(i) available copies of the decedent's federal and state income tax returns.

62C.26.1: Assessments

(1) Statement of Purpose; Application of 830 CMR 62C.26.1.

(a) The purpose of 830 CMR 62C.26.1 is to describe in detail the procedures for the assessment of taxes by the Commissioner, under M.G.L. c. 62C, §§ 3, 26, 27, 28, 29, 30, 31, 32, and 36.

(b) 830 CMR 62C.26.1 applies to all taxes imposed under M.G.L. chs. 60A; 62 through 64J; 65B; 65C; 121A, § 10 and 138, § 21.

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(c) Organization. 830 CMR 62C.26.1 is organized as follows:

1. Statement of Purpose; Application of 830 CMR 62C.26.1; Organization
2. Definitions
3. Assessment upon Filing of a Return - General Rule
4. Deficiency Assessment by the Commissioner - General Rule
5. Overpayment Determination - General Rule
6. Requirements and Procedures for a Deficiency Assessment
7. Corrections of Returns
8. Deficiency Assessment for Failure to File or for False or Fraudulent Returns
9. Deficiency Assessment for Nonresident's Failure to File
10. Deficiency Assessment upon Executor's Omission of items from the Gross Estate
11. Deficiency Assessment upon Omission of Gross Income
12. Deficiency Assessment upon Omission of Tax
13. Double Deficiency Assessment for Taxpayer's Failure to File or Correct
14. Double Deficiency Assessment for Filing a False or Fraudulent Return
15. Jeopardy Assessments
16. Assessment with Respect to a Federal Change
17. Application of Overpayment to Other Taxes; Refund of Overpayment
18. Correction of Erroneous Deficiency Assessment or Erroneous Receipt of Tax Payment
19. Extension of Limitation Period for Assessment

(2) Definitions. For the purposes of 830 CMR 62C.26.1 the following terms shall have the following meanings:

Abatement, the determination by the Commissioner that an assessment exceeds the amount properly due and the adjustment by the Commissioner of the amount in the Commissioner's assessment records.

Assessment, the process of the Department of Revenue's determination or verification of the amount of tax, as provided under M.G.L. c. 62C, §§ 24, 25, and 26, imposed and due from a taxpayer under M.G.L. chs. 60A; 62 through 64J; 65B; 65C; 121A, § 10; and 138, § 21; and the entry of the amount of the tax due in the Commissioner's assessment records; or the taxpayer's calculation and declaration of the tax due, as provided under M.G.L. c. 62C, § 26(a), completed in full on a return, including any amendment, correction, or supplement thereto, by the taxpayer or the taxpayer's representative and duly filed with the Commissioner, in accordance with rules adopted by the Commissioner.

Assessment Records, the official records of the Department that indicate the amount of tax due and assessed by the Commissioner.

Commissioner, the Commissioner of Revenue or the Commissioner's designee duly authorized to perform the duties of the Commissioner.

Deficiency, the difference between the amount of any earlier assessment under M.G.L. c. 62C, § 26(a) or (b), if any, for the same tax period and the amount of tax properly due as determined by the Commissioner, if the amount of tax properly due is greater than the amount of the earlier assessment.

Deficiency Assessment, the assessment of a deficiency.

Department, the Department of Revenue.

Double Deficiency Assessment, a deficiency assessment under M.G.L. c. 62C, § 28, at up to double the amount of tax due.

Executor, the executor or administrator of the estate of a decedent, or, if there is no executor or administrator appointed, qualified, and acting within Massachusetts, any person in actual or constructive possession of any property of the decedent.

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Instruction to Bill, an internal Department document in either electronic or paper form prepared in connection with some, but not all, assessments that includes the Commissioner's signed and dated statement that a deficiency assessment has been made and the Commissioner's request that a notice of assessment be issued to the taxpayer. The signature may be in electronic form or appear on a paper Instruction to Bill.

Jeopardy Assessment, an assessment of a deficiency upon the Commissioner's determination that the collection of any tax will be jeopardized by delay, as authorized by M.G.L. c. 62C, § 29.

Limitation Period for Assessment, the period within three years after the date a return is filed or required to be filed, whichever is later, or the period of extension for assessment agreed upon in writing by the Commissioner and the taxpayer.

Nonresident, any natural person who is not a resident or inhabitant of Massachusetts as defined in M.G.L. c. 62, § 1(f).

Notice of Assessment, the notification to a taxpayer, under M.G.L. c. 62C, § 31, that the Commissioner has made a deficiency assessment.

Notice of Change. Notice provided under M.G.L. c. 62C, § 26(c) of correction of a return by Commissioner based on arithmetic, clerical, or other obvious error on the face of the return, information from Department of Revenue records, or information from third party sources.

Notice of Intention to Assess (NIA), the notification to a taxpayer, under M.G.L. c. 62C, § 26(b), that the Commissioner intends to make a deficiency assessment after 30 days.

Overpayment, the difference between the amount of tax paid and the amount of tax properly due, if the amount of tax paid is greater than the amount of tax properly due.

Overpayment Determination, the calculation and the entry of the amount of an overpayment in the Commissioner's assessment records.

Refund, the amount paid by the Commissioner to a taxpayer for the balance of any overpayment or abatement after any application of the overpayment or abatement to any unpaid taxes of the taxpayer.

Return, a taxpayer's signed declaration of the tax due, if any, properly completed and filed by the taxpayer in the manner prescribed by the Commissioner.

Tax or Taxes, any tax imposed under M.G.L. chs. 60A, §§ 62 through 64J; 65B; 65C, 121A, § 10 and 138, § 21, and any act in addition thereto or amendment thereof, and including any interest or penalties imposed under M.G.L. c. 62C, §§ 28, 30 and 32 through 35.

Taxpayer, any person required to pay taxes imposed under M.G.L. chs. 60A, §§ 62 through 64J; 65B; 65C, 121A, § 10, and 138, § 21 or required to file returns under M.G.L. c. 62C, §§ 6 through 8, 10 through 14, and 16 through 18.

Taxpayer's Last Known Address, the taxpayer's address as it appears in the taxpayer's most recent return for the particular tax or a properly completed and submitted Change of Taxpayer's Address form, for a particular tax, whichever is last received by the Department.

(3) Assessment upon Filing of a Return.

(a) General Rule. When a taxpayer files a return under M.G.L. chs. 60A, §§ 62 through 64J; 65B; 65C; 121A, § 10; and 138, § 21, including any properly completed amendment,

correction, or supplement thereto, in accordance with rules adopted by the Commissioner, the tax is deemed to be self-assessed at the amount shown as the tax due on the return or at the amount properly due, whichever is less, and at the time when the return is filed or required to be filed, whichever occurs later.

(b) Changes To Taxpayer Self-assessments. To adjust the self-assessed tax shown on a previously filed return, a taxpayer is required to file an amended return in accordance with 830 CMR 62C.26.2. For procedures relating to reporting federal and state changes, *see* also 830 CMR 62C.30.1 and 62C.30A.1.

(4) Deficiency Assessment by the Commissioner - General Rule. If the Commissioner determines that the full amount of the tax has not been assessed or deemed to be assessed, the Commissioner may assess the full amount of the tax. The Commissioner will give taxpayers written notice of deficiency assessments, as explained in 830 CMR 62C.26.1(6).

(5) Overpayment Determination - General Rule. If the Commissioner determines that a taxpayer has paid more than the full amount of the tax, the Commissioner may, in the Commissioner's discretion, apply the amount of the overpayment against any unpaid amounts of any other taxes due from the taxpayer. The Commissioner will refund the balance of any overpayment to the taxpayer, as explained in 830 CMR 62C.26.1(17).

(6) Requirements and Procedures for a Deficiency Assessment.

(a) General. If the Commissioner determines that the full amount of any tax has not been assessed or deemed to be assessed, the Commissioner will first give a taxpayer written notice of the Commissioner's intention to make a deficiency assessment, unless this requirement is otherwise excepted under 830 CMR 62C.26.1(6)(c). The taxpayer may confer with the Commissioner as to the intended assessment within 30 days after the issuance of the notice of intention to assess. After 30 days and within the limitation period for assessment, the Commissioner will assess the tax remaining due.

(b) Notice of Intention to Assess.

1. Contents of Notice.

a. Required Information. The notice of intention to assess will contain the following:

i. The name of the taxpayer, as shown in the records of the Department;

ii. The amount of the proposed deficiency assessment, including any applicable interest and penalties from the statutory due date and including interest for 30 days calculated from the date of the issuance of the notice of intention to assess;

iii. A statement that the taxpayer may confer with the Commissioner as to the assessment, as provided under 830 CMR 62C.26.1(6)(d); and

iv. The time within which the taxpayer must confer with the Commissioner, as provided under 830 CMR 62C.26.1(6)(d)2.

b. Discretionary Information. The notice of intention to assess will ordinarily contain the following, but the lack of any one or more of these items will not affect the validity of the notice of intention to assess:

i. The taxpayer identification number;

ii. The type of tax or taxes assessed;

iii. The amount of any payments made by the taxpayer since the filing of the taxpayer's return;

iv. The amount of balance due after application of any payments made by the taxpayer;

v. The tax period or periods;

vi. A brief explanation of the deficiency assessment;

vii. A statement regarding the taxpayer's option to make voluntary payment upon receipt of the notice of intention to assess, as provided under 830 CMR 62C.26.1(6)(a);

viii. A citation of applicable law; and

ix. Any additional information the Commissioner deems appropriate.

2. Effect of Failure to Receive Notice of Intention to Assess. A taxpayer's failure to receive a notice of intention to assess that has been mailed by the Commissioner does not affect the validity of a subsequent assessment.

(c) Exceptions to Requirement of the Issuance of Notice of Intention to Assess. The Commissioner is not required to give a taxpayer notice of the intention to assess a deficiency under the following circumstances:

1. Corrections of returns based on arithmetic, clerical or other obvious error on the face of the return, information from Department of Revenue records, or information from third party sources, as explained in 830 CMR 62C.26.1(7);

2. False or fraudulent return filed with intent to evade a tax, as explained in 830 CMR 62C.26.1(8);

3. Failure to file a return, as explained in 830 CMR 62C.26.1(8);

4. Double deficiency assessment upon taxpayer's failure to file or correct, as explained in 830 CMR 62C.26.1(13);

5. Double deficiency assessment for filing a false or fraudulent return, as explained in 830 CMR 62C.26.1(14);

6. Jeopardy assessment, as explained in 830 CMR 62C.26.1(15).

(d) Taxpayer's Conference with the Commissioner Before Assessment.

1. Request for a Conference.

a. A taxpayer who has received notice of the Commissioner's intention to assess a deficiency may confer with the Commissioner within 30 days after the date of the issuance of the notice of intention to assess.

b. A taxpayer or the taxpayer's representative must send a written request for a conference to the Commissioner at the address shown on the notice of intention to assess.

2. Timely Request for a Conference. A timely request in writing for a conference must be postmarked by the 25th day following the issuance of the notice of intention to assess. A request for a conference postmarked after the 25th day following the issuance of the notice of intention to assess will be considered solely at the discretion of the Commissioner. If the request for a conference is not received in sufficient time for a conference to be held within 30 days of the issuance of the notice of intention to assess, the Commissioner may assess the tax, unless the Commissioner in his or her discretion agrees to hold the conference after the 30th day, subject to the Commissioner's right to require a consent to extension of time agreement as described in 830 CMR 62C.26.1(6)(d)3.

3. Conference to Be Held within 30 Days.

a. Any taxpayer who submits a timely request for a conference must be available to confer within 30 days of the issuance of the notice of intention to assess. The Commissioner may, at the discretion of the Commissioner, hold the requested conference after the 30th day.

b. If the taxpayer is not available to confer with the Commissioner within 30 days of the issuance of the notice of intention to assess and wishes to confer with the Commissioner after the 30th day and the Commissioner grants the request for a conference, the Commissioner may require as a prerequisite to granting a conference that the taxpayer sign a consent to extension of time agreement, as provided in 830 CMR 62C.26.1(19).

4. Conduct of the Taxpayer's Conference. The taxpayer's conference with the Commissioner before assessment is an informal proceeding.

5. Taxpayer's Right to One Conference with the Commissioner. The Commissioner or the Commissioner's duly authorized representative will confer at least once with any taxpayer who makes a timely request for a conference and who is available to confer within the 30 days. The Commissioner may grant additional conferences with the taxpayer at the sole discretion of the Commissioner.

6. Extension of Limitation Period for Assessment for Subsequent Taxpayer's Conferences. If the taxpayer requests more than one conference with the Commissioner and the Commissioner grants the request for an additional conference or conferences, the Commissioner may require that the taxpayer sign a consent to extend the limitation period for assessment, as provided under 830 CMR 62C.26.1(19), before the Commissioner agrees to grant any additional conferences to the taxpayer.

(e) Taxpayer's Payment upon Receipt of the Notice of Intention to Assess.

1. A taxpayer may voluntarily pay the amount due or any portion thereof upon receipt of the notice of intention to assess. This payment will stop the accrual of any additional interest and applicable penalties on the amount paid.

2. If the taxpayer makes a full payment of the amount shown on the notice of intention to assess, the Commissioner will issue a written notice of assessment to the taxpayer, according to 830 CMR 62C.26.1(6)(g) through (i), and the notice will ordinarily state no balance due.

3. The taxpayer's right to apply for abatement of the deficiency assessment accrues immediately upon the date of assessment. The taxpayer may make application for abatement as provided by M.G.L. c. 62C, § 37 and 830 CMR 62C.37.1.

4. The taxpayer's payment of part of the balance due will be reflected ordinarily as a credit in the notice of assessment issued to the taxpayer.

(f) Time for Deficiency Assessment. A deficiency assessment occurs on the date the Commissioner enters the amount of the assessment upon his or her records, which may be in electronic or paper form. Generally, the date of deficiency assessment is the date of the Notice of Assessment unless an Instruction to Bill has been prepared, in which case the date of assessment is the earlier of the date of the Instruction to Bill or the date of the Notice of Assessment.

(g) Limitation Period for Assessment.

1. General Three-year Limitation Period for Assessment. The Commissioner may make any deficiency assessment within three years after the date the applicable return was filed or the return was required to be filed, whichever occurs later, except as otherwise provided in 830 CMR 62C.26.1(6)(g)2.

2. Exceptions to General Three-year Limitation Period for Assessment. The Commissioner is not required to make a deficiency assessment within the general three-year limitation period for assessments under the following circumstances:

a. False or fraudulent return filed with intent to evade a tax, as explained in 830 CMR 62C.26.1(8);

b. Failure to file a return, as explained in 830 62C.26.1(8);

c. Deficiency assessment upon executor's omission of items from the gross estate, as explained in 830 CMR 62C.26.1(10);

d. Deficiency assessment upon omission of gross income, as explained in 830 CMR 62C.26.1(11);

e. Deficiency assessment upon omission of tax, as explained in 830 CMR 62C.26.1(12);

f. Double deficiency assessment upon taxpayer's failure to file, as explained in 830 CMR 62C.26.1(13);

g. Double deficiency assessment for filing a false or fraudulent return, as explained in 830 CMR 62C.26.1(14); and

h. A valid consent to extension agreement, as explained in 830 CMR 62C.26.1(19).

(h) Notice of Deficiency Assessment.

1. Contents of Notice.

a. Required Information. A written notice of assessment will contain the following:

i. The name of the taxpayer;

ii. The amount of the deficiency assessment;

iii. The amount of any balance due;

iv. The date payment of the deficiency assessment is due.

b. Discretionary Information. The written notice of assessment will ordinarily contain the following, but the lack of any one or more of these items will not affect the validity of the notice of assessment:

i. The taxpayer identification number;

ii. The type of tax or taxes assessed;

iii. The tax period or periods;

iv. The date of the assessment; and

v. Any additional information the Commissioner deems appropriate.

2. Effect of Failure to Receive Notice of Assessment. A taxpayer's failure to receive a written notice of deficiency assessment that has been mailed by the Commissioner does not affect the validity of the assessment.

(i) Due Date of Payment of Deficiency Assessment. The amount of the balance due from a taxpayer generally must be paid on or before the 30th day from the date of the issuance of the notice of assessment. *See* 830 CMR 62C.26.1(16). The taxpayer's failure to pay the balance due by the due date will subject the taxpayer to the imposition of additional interest, penalties, and collection activities.

(j) Interest Charges on the Balance Due. The amount of the balance due includes interest calculated to the 30th day following the date of the issuance of the notice of assessment.

(k) Offsetting Deficiencies with Overpayments.

1. If the Commissioner audits or verifies returns for two or more tax periods for the same tax and determines from the audit or verification that the taxpayer had deficiencies in one or more tax periods and overpayments in one or more tax periods, the Commissioner will first offset any overpayments against any deficiency assessments and will then refund only the net overpayments in accord with the provisions of 830 CMR 62C.26.1(17).

2. The taxpayer is not required to file an amended return under 830 CMR 62C.26.2 to obtain any refund of a net overpayment determined under 830 CMR 62C.26.1(6)(k).

(l) Application of Requirements and Procedures of Deficiency Assessments to Determinations of Personal Liability Against Responsible Persons. 830 CMR 62C.26.1 and specifically 830 CMR 62C.26.1(6), are not intended to control the procedures required for determinations of personal liability and deemed assessment against responsible persons. The Commissioner will make determinations of personal liability against responsible persons under the procedures of the State Tax Administration Regulation on Responsible Persons, 830 CMR 62C.31A.1.

(7) Corrections of Returns.

(a) General. If the Commissioner corrects a return based on arithmetic, clerical, or other obvious error on the face of the return, information from Department of Revenue records, or information from third party sources, he or she may correct the self-assessment without giving prior notice to the taxpayer under M.G.L. c. 62C, § 26(b). For example, the Commissioner need not provide prior notice to the taxpayer if the return omits or understates items of taxable income that are known from any third party source.

(b) Examples of arithmetic, clerical, or other errors obvious on the face of a return, information from Department of Revenue records, or information from third party sources. The following list is intended to be illustrative, not exhaustive.

1. An error in addition, subtraction, multiplication, or division shown on a return;
2. An incorrect use of a Department of Revenue table or an Internal Revenue Service table if the incorrect use seems apparent from other information on a return;
3. Inconsistent entries on a return, if it seems apparent which of the inconsistent entries on the return is correct and which is incorrect;
4. An omission of information that is required on a return in order to substantiate an entry on the return;
5. An entry on a return of a deduction or a credit in an amount that exceeds a statutory limit that is either a specified monetary amount or a percentage, ratio, or fraction and if the items entering into the application of the limit appear in the return; or
6. An understatement or omission of an item of taxable income on a return as to which the Department has information from third party sources, including other state agencies, as to the actual amount paid to the taxpayer.

(c) Notice of Change. Concurrently with making the correction, the Commissioner will notify the taxpayer of the change and the reason for the change by way of a Notice of change. Any amount due must be paid within the 30 days to avoid additional penalties, interest and collection action.

1. If the taxpayer agrees with the change or fails to dispute the change explained in the Notice of change in writing within 30 days from the date appearing on the Notice, or within any extended period permitted by the Department, the corrected self-assessment will become final and no further action is required on the part of the Department or the taxpayer. The Notice of change will be the Notice of assessment.
2. If the taxpayer does not agree with the change, the taxpayer may dispute the correction described in the Notice of change within 30 days and the Commissioner may then issue a deficiency assessment under M.G.L. c. 62C, § 26(b). Under these circumstances, the Notice of change will be treated as the Notice of intention to assess and the taxpayer may request a pre-assessment hearing in accordance with M.G.L. c. 62C, § 26(b) within the 30 day period set out in the Notice of change.

(8) Deficiency Assessment for Failure to File or for False or Fraudulent Returns.

(a) General. If the Commissioner determines that a taxpayer has failed to file a return or that the taxpayer has filed a false or fraudulent return with intent to evade a tax, and that the full amount of the tax has not been assessed, the Commissioner may make a deficiency

assessment according to the Commissioner's best information and belief, without issuing a notice of intention to assess, under M.G.L. c. 62C, § 26(d).

(b) Notice of Intention to Assess Not Required. If the Commissioner makes a deficiency assessment for failure to file or for filing a false or fraudulent return, the Commissioner need not issue a Notice of Intention to assess under 830 CMR 62C.26.1(6)(b) and (d).

(c) Basis for Commissioner's Determination. The Commissioner's determination that the taxpayer has failed to file a return or has filed a false or fraudulent return may be based on the verification of a return for a prior or subsequent tax period or a return for another type of tax or on any other information.

(d) Requirements for a Deficiency Assessment for Failure to File or for False or Fraudulent Return. The Commissioner will issue a written notice of deficiency assessment to a taxpayer, as prescribed under 830 CMR 62C.26.1(6)(f) through (i).

(e) No limitation period for deficiency assessment for failure to file or for false or fraudulent return. The Commissioner may make a deficiency assessment for failure to file or for false or fraudulent return at any time, without regard to the general three-year limitation period for assessment.

(f) Application of deficiency assessment for failure to file to double deficiency assessment for failure to file. The Commissioner may make a deficiency assessment for failure to file, without giving notice of the Commissioner's intention to assess. The Commissioner may also make a double deficiency assessment for failure to file, if the requirements under 830 CMR 62C.26.1(13)(c) are met.

(g) Application of deficiency assessment for false or fraudulent return to double deficiency assessment for filing a false or fraudulent return. The Commissioner may make a deficiency assessment for false or fraudulent return, without giving notice of the Commissioner's intention to assess. The Commissioner may also make a double deficiency assessment for filing a false or fraudulent return, if the requirements under 830 CMR 62C.26.1(14)(c) are met.

(9) Deficiency Assessment for Nonresident's Failure to File.

(a) General. If a nonresident fails to file a Massachusetts personal income tax return, under M.G.L. c. 62, § 5A, c. 62C, § 6, and 830 CMR 62.5A.1, the Commissioner may assess the tax on the nonresident's Massachusetts gross income, according to the Commissioner's best information and belief, without allowance for deductions or exemptions and with interest and penalties. *See* also 830 CMR 62.5A.1(12)(a)3.

(b) Application of Other Penalties. The deficiency assessment for a nonresident's failure to file is in addition to all other taxes and penalties that may be imposed under M.G.L. c. 62C.

(c) No Limitation Period for Assessment. Because no return has been filed, the general limitation period of three years from the filing of a return does not apply to a deficiency assessment for a nonresident's failure to file, and the Commissioner may assess a nonresident for failure to file at any time.

(d) Requirements for a Deficiency Assessment for a Nonresident's Failure to File. The Commissioner will follow the procedures and requirements for a deficiency assessment, as prescribed under 830 CMR 62C.26.1(6).

(10) Deficiency Assessment upon Executor's Omission of Items from the Gross Estate.

(a) General. If an executor omits from a decedent's gross estate on an estate tax return items includable in the gross estate that exceed 25% of the gross estate reported on the return, under M.G.L. c. 62C, § 26(f) the Commissioner may assess the tax due at any time within six years after the return was filed.

(b) Limitation Period for Assessment. The general three-year limitation period for assessment does not apply to a deficiency assessment made upon an executor's omission of items includable in the gross estate that exceed 25% of the gross estate reported on the return. The Commissioner may instead make a deficiency assessment upon an executor's omission of items from the gross estate at any time within six years after the estate tax return was filed.

(c) Disclosure of Omitted Item Elsewhere on Return. The Commissioner will not consider for the purposes of the calculation of the amount in excess of 25% any item omitted from an estate tax return if the item was disclosed on the return or in a statement attached to the return, in a manner adequate to apprise the Commissioner of the nature and amount of the item.

(d) Requirements for a Deficiency Assessment for Executor's Omission of Items from Gross Estate. The Commissioner will follow the procedures and requirements for a deficiency assessment, as prescribed under 830 CMR 62C.26.1(6).

(11) Deficiency Assessment upon Omission of Gross Income.

(a) General. If a taxpayer omits from gross income any amount properly includable in gross income that exceeds 25% of the amount of gross income in any return filed pursuant to M.G.L. c. 62C, §§ 6 or 11, under M.G.L. c. 62C, § 26(h) the Commissioner may assess the tax due at any time within six years after the return was filed.

(b) Limitation Period for Assessment. The general three-year limitation period for assessment does not apply to a deficiency assessment made upon the omission of gross income that exceeds 25% of the amount of gross income reported in the return. The Commissioner may instead make a deficiency assessment upon the omission of gross income within six years after the return was filed.

(c) Disclosure of Omitted Gross Income Elsewhere on Return. The Commissioner will not consider for the purpose of the calculation of the amount in excess of 25% any amount of gross income omitted from the return if the amount was disclosed on the return or in a statement attached to the return in a manner adequate to apprise the Commissioner of the nature and amount of the gross income.

(d) Requirements for a Deficiency Assessment upon Omission of Gross Income. The Commissioner will follow the procedures and requirements for a deficiency assessment, as prescribed under 830 CMR 62C.26.1(6).

(12) Deficiency Assessment upon Omission of Tax.

(a) General. If a taxpayer omits from tax any amount properly includable in tax that exceeds 25% of the amount of tax reported in any return filed pursuant to M.G.L. c. 62C, §§ 12, 14, or 16, under M.G.L. c. 62C, § 26(i) the Commissioner may assess the tax due at any time within six years after the return was filed.

(b) Limitation Period for Assessment. The general three-year limitation period for assessment does not apply to a deficiency assessment made upon the omission of tax that exceeds 25% of the amount of tax reported in the return. The Commissioner may instead make a deficiency assessment upon omission of tax within six years after the return is filed.

(c) Disclosure of Omitted Tax Elsewhere on Return. The Commissioner will not consider for the purpose of the calculation of the amount in excess of 25% any amount of tax omitted if the transaction giving rise to the tax is disclosed on the return or in a statement attached to the return in a manner adequate to apprise the Commissioner of the existence and nature of the transaction.

(d) Requirements for a Deficiency Assessment upon Omission of Tax. The Commissioner will follow the procedures and requirements for a deficiency assessment, as prescribed under 830 CMR 62C.26.1(6).

(13) Double Deficiency Assessment for Taxpayer's Failure to File or Correct.

(a) General. If the Commissioner notifies a taxpayer that the taxpayer failed to file a return or that the taxpayer filed an incorrect or insufficient return and the taxpayer refuses or neglects to file a proper return or correct the return within 30 days of the date of notification, the Commissioner may determine the tax due and according to the Commissioner's best information and belief, and may assess the tax at up to double the amount of the tax due, under M.G.L. c. 62C, § 28.

(b) Application of Other Penalties. The doubling of the assessment for a taxpayer's failure to file or correct is a tax additional to any other remedies or penalties that may be imposed under M.G.L. c. 62C.

(c) Requirements for a Double Deficiency Assessment for Failure to File or Correct.

1. The Commissioner will send the taxpayer a written notification, requesting that the taxpayer file a proper return or requesting that the taxpayer correct the taxpayer's incorrect or insufficient return.

2. The written notification will ordinarily contain the following:
   i. The name of the taxpayer;
   ii. The taxpayer identification number;
   iii. The type of tax for which the return must be filed;
   iv. The tax period or periods for which the return must be filed;
   v. An explanation of the double deficiency assessment that may be imposed if the taxpayer refuses to file a proper return or correct the return; and
   vi. Any other information the Commissioner deems appropriate.
3. The Commissioner will issue a written notice of deficiency assessment to a taxpayer, as prescribed under 830 CMR 62C.26.1(6)(f) through (i).

(d) Limitation Period for Assessment.

1. Failure to File a Return. Because the taxpayer failed to file any return, the general limitation period of three years from the filing of a return does not apply, and the Commissioner may make a double deficiency assessment for failure to file at any time.

2. Failure to Correct a Return. The Commissioner may make a double deficiency assessment for failure to correct a return within the general three-year limitation period for assessment.

(14) Double Deficiency Assessment for Filing a False or Fraudulent Return.

(a) General. If the Commissioner determines from the verification of a return or by any other means that a taxpayer has filed a false or fraudulent return in a willful attempt to defeat or evade a tax in any manner, the Commissioner may determine the tax due, according to the Commissioner's best information and belief, and may assess the tax at up to double the amount of the tax due, under M.G.L. c. 62C, § 28.

(b) Notice of Intention to Assess Not Required. If the Commissioner makes a double deficiency assessment for filing a false or fraudulent return, the Commissioner need not issue a notice of intention to assess under 830 CMR 62C.26.1(6)(b) and (d).

(c) Application of Other Penalties. The doubling of the assessment for filing a false or fraudulent return is a tax additional to any other remedies and penalties that may be imposed under M.G.L. c. 62C.

(d) Requirements for a Double Deficiency Assessment for Filing of a False or Fraudulent Return. The Commissioner will follow the procedures and requirements for a deficiency assessment, as prescribed under 830 CMR 62C.26.1(6)(f) through (i).

(e) No Limitation Period for Double Deficiency Assessment for Filing of a False or Fraudulent Return. The Commissioner may make a double deficiency assessment for filing of a false or fraudulent return at any time, without regard to the general three-year limitation period for assessment. *See* M.G.L. c. 62C, § 26(d) and 830 CMR 62C.26.1(8).

(15) Jeopardy Assessments.

(a) General. If the Commissioner determines that delay may jeopardize the collection of any taxes, the Commissioner may immediately make a jeopardy assessment according to the Commissioner's best information and belief under M.G.L. c. 62C, § 29. The Commissioner may make a jeopardy assessment whether the time otherwise prescribed by law or by regulation for filing the return or paying the tax has expired.

(b) Interest and Penalties. A jeopardy assessment will include interest and penalties.

(c) Payment of Jeopardy Assessment. The amount of a jeopardy assessment is immediately due and payable. The Commissioner will make immediate demand for the amount of a jeopardy assessment.

(d) Collection of Jeopardy Assessment. If the taxpayer neglects or refuses to pay the amount of a jeopardy assessment, the Commissioner may pursue any and all available remedies to collect the amount of the jeopardy assessment.

(e) Determination that Collection of Tax may be Jeopardized. A determination that collection of any tax may be jeopardized by delay is made in each instance based on the facts and circumstances of the individual case. The determination is a matter of the

Commissioner's discretion. The Commissioner may use the following criteria to determine that delay will jeopardize collection, but the Commissioner is in no way limited to these criteria:

1. A taxpayer is arrested by law enforcement officers with substantial amounts of cash, its equivalent, or contraband in the taxpayer's possession, which is or appears to be unreported income;

2. A taxpayer is or appears to be designing to leave Massachusetts immediately or to go into hiding immediately;

3. A taxpayer is or appears to be immediately designing to place the taxpayer's property beyond the reach of Massachusetts' taxing jurisdiction by concealing it, dissipating it, removing it from Massachusetts, or transferring it to some other person;

4. A taxpayer's financial solvency is or appears to be imperiled;

5. A taxpayer fails to file timely returns for and pay withholding, room occupancy, sales, meals, or use tax after receiving notice that such returns are past due, and the Commissioner determines that the circumstances indicate that the tax has actually been withheld or collected and that any further delay will jeopardize the collection of the tax; or

6. Any other reason that in the Commissioner's discretion is sufficient to support the Commissioner's belief that delay may jeopardize collection.

(f) Requirements for a Jeopardy Assessment. The Commissioner will send a written notice of assessment to the taxpayer under the provisions of 830 CMR 62C.26.1(6)(f) through (i).

(16) Assessment with Respect to a Federal Change. *See* State Tax Administration Regulation on Changes in Federal Taxable Income, 830 CMR 62C.30.1.

(17) Application of Overpayment to Other Taxes; Refund of Overpayment.

(a) General. If the Commissioner determines from the verification of a return or otherwise that more than the full amount of any tax has been paid or assessed and paid, the Commissioner may make an overpayment determination. The Commissioner, as a matter of discretion, may apply the amount of the overpayment against any unpaid amounts of any other taxes due from the taxpayer. The Commissioner will refund the balance of any overpayment to the taxpayer as specified in 830 CMR 62C.26.1(17)(c).

(b) Time of Overpayment Determination.

1. Overpayment of $10.00 or More. The date the over-payment determination is made is the date the Commissioner applies the amount of the overpayment to any unpaid amounts of any other taxes or, if no application of overpayment to other taxes is made, the date the Commissioner issues a refund check.

2. Overpayment of Less Than $10.00. The date the overpayment determination is made is the date the Commissioner applies the amount of the overpayment to any unpaid amounts of any other taxes or, if no application of overpayment to other taxes is made, the date the Commissioner issues a refund check of the amount of the overpayment or the date the Commissioner applies the amount of the overpayment to the taxpayer's credit on the Commissioner's books of account.

(c) Refund of Overpayment Determinations.

1. Balance of $10.00 or More. The Commissioner will refund to the taxpayer the balance of any overpayment of $10.00 or more, after any application of the overpayment to other taxes.

2. Balance of Less Than $10.00.

a. The Commissioner, as a matter of discretion, may automatically refund to the taxpayer the balance of any overpayment of less than $10.00.

b. If the taxpayer has been informed by the Department that the Commissioner has already made an overpayment determination of less than $10.00, the taxpayer may make application for the balance of the overpayment by sending a letter containing the taxpayer's name, the taxpayer's Social Security number or tax identification number, whichever is applicable, and the tax period or periods in which the overpayment was made to the Department at the following address:

Massachusetts Department of Revenue
P.O. Box 7010
Boston, Massachusetts 02204

c. If the taxpayer has not been informed by the Department that the Commissioner has made any overpayment determination, the taxpayer may make application for the balance of the overpayment by filing an amended return before the expiration of the statute of limitations contained in M.G.L. c. 62C, §§ 30, 30A, 36 and/or 37, as applicable.

62C.26.1: continued

(d) Interest on Refunds of Overpayments.

1. Interest Rate.

a. Interest accruing on or after January 1, 1993 on a refund of an overpayment determination will be paid at the Federal short term rate plus four percentage points, compounded daily, or any other rate, as may be prescribed by M.G.L. c. 62C, § 32.

b. Effective July 1, 2003, the interest rate paid by the Commissioner on overpayments is reduced to the Federal short-term rate determined under § 6621(b) of the Internal Revenue Code, as amended and in effect for the taxable year plus two percentage points, simple interest.

2. Period for Computing Interest. Except as provided in 830 CMR 62C.33.1(7)(c) and (d), interest is computed from the due date of the applicable return without regard to extensions, or date of receipt of the overpayment, or the date of filing of the return, whichever is later, to a date no more than 30 days before the issuance of the refund.

3. Payment of Refund within Period of Time Prescribed by M.G.L. c. 62C, § 40 for the Applicable Tax Year. If the Commissioner refunds the balance of an overpayment within 120 days (or other applicable period) after the last day prescribed for filing the return, determined without regard to any extension of time, or within 120 days (or other applicable period) after the date the return reporting the overpayment was filed, if the return was filed after the last day prescribed for filing the return, interest is not paid to a taxpayer on the overpayment.

4. No interest paid on certain refunds. Interest is not paid on any of the following:

a. A refund made pursuant to Article VIII of the Compact on Taxation of Motor Fuels consumed by Interstate Buses, St. 1963, c. 465, § 1;

b. A refund of the deeds excise imposed by M.G.L. c. 64D; or

c. Refunds made under the following provisions:

i. M.G.L. c. 64A, §§ 7 and 7A;

ii. M.G.L. c. 64E, § 5;

iii. M.G.L. c. 64F, § 4; or

iv. M.G.L. c. 64G, § 7A.

(e) Commissioner's Tender of Refund. The Commissioner will send any refund, including interest, to the taxpayer at the taxpayer's last known address. No additional interest will accrue on the amount of any refund after the Commissioner's tender of refund.

(f) Taxpayer's Acceptance of Refund. A taxpayer's acceptance of a refund check will not prejudice any right of the taxpayer to claim any additional overpayment.

(g) Requirement of Properly Filed Return. For purposes of any return required to be filed to obtain a refund under 830 CMR 62C.26.1(17), the Commissioner will not treat a return as filed until the return is filed on a form prescribed by the Commissioner, containing the following information:

1. The taxpayer's name, address, tax identification number, and any required signatures; and

2. Sufficient information to permit the mathematical verification of the tax liability shown on the return.

(18) Correction of Erroneous Deficiency Assessment or Erroneous Receipt of Tax Payment.

(a) General. If the Commissioner determines that any tax has been assessed in excess of the proper tax due because of any Department clerical error or that any tax payment was received in error, the Commissioner may, as a matter of discretion, correct the error at any time and adjust the assessment accordingly.

(b) Interest on Refunds Made Because of Corrections of Erroneous Deficiency Assessment or Erroneous Receipt of Tax Payment.

1. Interest on Refunds as Provided under M.G.L. c. 62C, § 40. The Commissioner will pay interest on any refunds made under M.G.L. c. 62C.26.1(17)(d).

2. Calculation of Interest. The Commissioner will calculate the interest to be paid to a taxpayer from the date of payment of the amount of the erroneous deficiency

assessment or of the date of the erroneous receipt to a date no more than 30 days before the issuance of the refund.

62C.26.1: continued

(19) Extension of Limitation Period for Assessment.

(a) General. The Commissioner and the taxpayer may agree in writing to extend the limitation period for assessment. The Commissioner may make an assessment at any time before the expiration of the extended time.

(b) Timing of Consent to Extension Agreement. In order for a consent to extend the limitation period for assessment to be valid, the Commissioner and the taxpayer must enter the consent to extension of time agreement before the expiration of the three-year limitation period for assessment described in M.G.L. c. 62, § 26(b) or before the expiration of any prior consent to extension of time agreement.

(c) Effective Date of Consent to Extension Agreement. The consent to extend the limitation period for assessments is effective upon the date the consent is signed by both the Commissioner and the taxpayer.

(d) Consent to Extension Agreement Applicable to Overpayments. If the Commissioner determines during the extension of the limitation period for assessment that the taxpayer has made any overpayment, the Commissioner will deduct the overpayment from any deficiency assessment and will refund any balance of the overpayment determination as provided in M.G.L. c. 62C, § 27 and 830 CMR 62C.26.1(17).

62C.26.2: Amended Returns

(1) Statement of Purpose; Outline of Topics.

(a) Statement of Purpose. The purpose of 830 CMR 62C.26.2 is to explain the process for amending returns and how this process inter-relates with the assessment and abatement of tax by the Commissioner. 830 CMR 62C.26.2 applies to taxpayers seeking to increase a previously reported tax; decrease a previously reported tax; and report any other changes that have no net effect on the tax shown on a previously filed return.

In the case of most Massachusetts tax types, a taxpayer is required by M.G.L. c. 62C to file a return, on or before a required due date, upon which the amount of tax due is calculated and declared by the taxpayer. The tax declared on the return filed by the taxpayer is a self-assessment of tax by the taxpayer. In general, a self-assessment is accepted as the tax due from the taxpayer for the tax period indicated on the return unless the self-assessed amount is later adjusted, either by the Commissioner or by the taxpayer. In most cases, adjustments by the Commissioner take the form of a correction of a mathematical or other error evident on the face of the return, or follow from the statutory process associated with a deficiency assessment. In contrast, 830 CMR 62C.26.2 discusses taxpayer adjustments to a previously filed return through the filing of an amended return, either to increase or to decrease the amount of previously self-assessed tax or otherwise to adjust items shown on previous returns.

The Commissioner has modified return processing procedures with regards to amended returns to improve processing time and efficiency while maintaining the right of a taxpayer to contest assessments of tax, including self-assessments. Historically, amended returns that increased the tax reported to be due were processed separately from amended returns that reduced the tax reported to be due. The latter were treated as "abatements" and were manually evaluated. Under the revised procedures provided in 830 CMR 62C.26.2, amended returns generally are now processed in the same manner as original returns, without regard to whether the amended return increases or decreases a prior self-assessment. Amended returns are subject to review and/or adjustment by the Commissioner in the same manner as original returns. With some exceptions, which are not itemized here, the abatement process is reserved for situations where the taxpayer disputes a deficiency assessment or an assessment of penalties by the commissioner. *See* 830 CMR 62C.37.1.

(b) Outline of Topics. Following is a list of sections contained in 830 CMR 62C.26.2:

1. Statement of Purpose; Outline of Topics
2. Definitions
3. Process for Amending a Return

4. Commissioner Adjustments
5. Deemed Abatements

62C.26.2: continued

(2) Definitions.

Abatement, an application by a taxpayer pursuant to M.G.L. c. 62C, § 37 that seeks to reduce a previous assessment of tax and/or penalties.

Amended Return, a correction or adjustment made by a taxpayer to a previously filed return.

Assessment, any determination of tax due under M.G.L. c. 62C, including the self-assessment of tax by a taxpayer on a return or a deficiency assessment by the Commissioner.

Commissioner, the Commissioner of Revenue or the Commissioner's designee duly authorized to perform the duties of the Commissioner.

Deficiency Assessment, the assessment of tax by the Commissioner pursuant to M.G.L. c. 62C, including, generally, assessments under M.G.L. c. 62C, § 26, and jeopardy assessments under M.G.L. c. 62C, § 29.

Original Return, the first complete return filed by a taxpayer for a particular tax type and taxable period.

Return, a taxpayer's signed declaration of the tax due, if any, properly completed and filed by the taxpayer in the manner prescribed by the Commissioner.

Self-assessment, the declaration of a tax due by a taxpayer on a return pursuant to M.G.L. c. 62C, § 26(a), or other applicable law.

Taxpayer, any person or entity required to file a return pursuant to M.G.L. c. 62C.

(3) Process for Amending a Return. To adjust a self-assessment shown on a prior return, a taxpayer is required to file an amended return, either electronically or otherwise as prescribed by the Commissioner. In general, the Commissioner will process an amended return in the same manner as an original return, subject to review or other process provided in 830 CMR 62C.26.2(4) and (5).

(a) Statute of Limitations. An amended return that reduces the tax reported to be due must be filed within the statute of limitations applicable to an abatement under M.G.L. c. 62C, § 37, or within the period authorized by M.G.L. c. 62C, §§ 30, 30A, as applicable. Notwithstanding the statute of limitations applicable to an abatement under M.G.L. c. 62C, § 37, an amended return that reduces the tax reported to be due is also subject to the statute of limitations under M.G.L. c. 62C, § 36 applicable to overpayments of tax.

(b) Substantiation. At the time of filing an amended return, supporting information, documents, explanations, arguments and authorities that will reasonably enable the Commissioner to determine whether the amended return is correct shall be included and or attached to the amended return.

(c) Commissioner Offsets. Any refund of tax requested on an amended return is subject to any allowable offset or intercept.

(d) Reporting a Change Resulting from a Final Federal or State Determination. *See* 830 CMR 62C.30.1 and 62C.30A.1 for rules regarding the filing of amended returns by taxpayers seeking to report an increase in tax resulting from a final federal or state determination; to report a decrease in tax resulting from a final federal or state determination; and report any other federal or other jurisdiction changes that have no net effect on the tax shown on a previously filed return.

(4) Commissioner Adjustments. The Commissioner's acceptance or processing of an amended return, including any issuance of a refund pursuant to an amended return, is not a determination

by the Commissioner as to the correctness of the self-assessed tax shown on the amended return. Amended returns are subject to review or audit by the Commissioner during or subsequent to the processing of the amended return in accordance with M.G.L. c. 62C, §§ 26, 29, 30, 30A, 36, 37, and 40.

62C.26.2: continued

(a) Correction of Errors on the Return. The Commissioner may correct errors evident on the face of an amended return, if any, as provided in M.G.L. c. 62C, § 26(c). *See* 830 CMR 62C.26.1.

(b) Assessment of Additional Tax Due. If the Commissioner reviews an amended return and determines that additional tax is due, either because the Commissioner disagrees with the correctness of the return amendments or otherwise, the Commissioner may assess additional tax through a deficiency assessment. *See* 830 CMR 62C.26.1 and 62C.37.1 for an explanation of the deficiency assessment process, including taxpayer rights of appeal.

(5) Deemed Abatements. An amended return filed by a taxpayer to adjust a self-assessment is generally not considered to be an application for abatement under M.G.L. c. 62C, § 37, even in the case of a reduction in a self-assessment. However, the Commissioner will deem an amended return that reduces a self-assessment to be such an abatement application and will so notify the taxpayer where the Commissioner determines that processing the amended return as an abatement is necessary to protect the taxpayer's statutory rights of appeal or those of the Department to provide sufficient review of an amended return.

In the event that the Commissioner fails to take action with regard to a properly filed amended return that reduces a self-assessment before the expiration of the statute of limitations under M.G.L. c. 62C, §§ 30, 30A and/or 37, such amended return will be deemed by the Commissioner to be an abatement as of the date of filing the amended return. For purposes of 830 CMR 62C.26.2(5), to "take action" with regard to an amended return means when the taxpayer's self-assessment is reduced on the Commissioner's books and records and/or a refund is issued to the taxpayer; the Commissioner issues a Notice of Intent to Assess, Notice of Change, Notice of Assessment or any other notice related to the reduction sought required under M.G.L. c. 62C; the Commissioner issues a letter informing the taxpayer that its amended return has been deemed an abatement application; the Commissioner issues a notice of abatement determination, or the Commissioner issues any other notice indicating resolution of the amended return.

As stated in 830 CMR 62C.37.1(5)(c), the filing of an amended return shall act as a waiver of the right to treat the Commissioner's failure to act on an amended return deemed to be an abatement application prior to six months from the date of filing as a denial of the application pursuant to M.G.L. c. 58A, § 6. This waiver may be withdrawn at any time in writing by the applicant, in which event the application, unless previously acted upon by the Commissioner, shall be deemed to be denied at the expiration of the six months or on the date of withdrawal, whichever is later.

Where the Commissioner deems an amended return to be an abatement, the process under M.G.L. c. 62C, § 37 and 830 CMR 62C.37.1 shall apply.

NON-TEXT PAGE

62C.30.1: Changes in Federal Taxable Income, Federal Tax Credits, or Federal Taxable Estate

(1) Statement of Purpose; Application; Organization.

(a) The purpose of 830 CMR 62C.30.1 is to describe the requirements and procedures for a Massachusetts taxpayer to report and adjust the tax due to the Commonwealth after a change in federal taxable income, federal tax credits, or federal taxable estate. Persons and corporations subject to taxation under M.G.L. chs. 62 and 63, respectively, must report to Massachusetts when federal taxable income or federal tax credits are finally determined by the federal government to be different from the taxable income or credits originally reported. Estates subject to taxation under M.G.L. c. 65C must report to Massachusetts when the federal taxable estate is finally determined by the federal government to be different from the taxable estate originally reported. *See* M.G.L. c. 62C, § 30.

(b) 830 CMR 62C.30.1 applies to taxes imposed under M.G.L. chs. 62, 63, and 65C.

(c) 830 CMR 62C.30.1 is organized as follows:

1. Statement of Purpose; Application; Organization
2. Definitions
3. Reporting Federal Change
4. Date of Assessment with Respect to Federal Change; Determination of Amount of Assessment with Respect to Federal Change
5. Taxpayer Offset of Tax Due
6. Amended Returns with Respect to Federal Change
7. Penalties and Interest

(2) Definitions. For the purposes of 830 CMR 62C.30.1 only, the following terms shall have the following meanings:

Abatement, a reduction of an amount of tax that equals the difference between the amount of tax assessed as a result of an assessment or deemed assessment and the lower amount of tax properly due.

Commissioner, the Commissioner of Revenue or the Commissioner's designee duly authorized to perform the duties of the Commissioner.

Department, the Department of Revenue.

Duly Filed, filed correctly and completely in the manner prescribed by the Commissioner.

Federal Determination, an action taken under federal law that determines a taxpayer's federal taxable income, federal tax credits, or federal taxable estate to be different from that originally reported to the federal government. A federal determination includes, without limitation:

(a) an agreement between the taxpayer and the Commissioner of Internal Revenue to an assessment of any type of liability, including an accepted offer in compromise on an issue of liability;

(b) an executed closing agreement;

(c) any final decision or dismissal by a federal court or tax court resulting in the assessment of a deficiency or in the abatement of an assessed liability;

(d) an assessment based on a defaulted Notice of Deficiency or clerical or mathematical error;

(e) a federal closing letter;

(f) any of the above with regard to a partnership or flow-through entity affecting the tax of a partner or member; or

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(g) any of the above with regard to an S Corporation affecting the tax of an S Corporation shareholder.

With regard to partnerships or flow-through entities, Federal Determination includes federal actions that affect partnership or entity items, such as a Notice of Final Partnership Administrative Adjustment, or a disallowance in whole or in part of an Administrative Adjustment Request. An accepted offer in compromise on an issue of ability to pay is not a federal determination for purposes of 830 CMR 62C.30.1.

Federal Tax Credit, a direct reduction of tax due arising from a tax credit or similar provision in the Internal Revenue Code that affects Massachusetts tax liability.

Final Determination, a federal determination when there is no right of administrative or judicial appeal. A federal determination is deemed final, for a taxpayer with a right of appeal, if no appeal is taken. A federal determination is final on the date of decision in the court of last resort. A judicial determination is deemed final on the date the right to any further appeal expires if the appeal is not carried to the court of last resort. For purposes of 830 CMR 62C.30.1, Final Determination is not limited to the meaning of the term when used by the Internal Revenue Service in connection with a closing agreement.

Offset,

(a) a reduction, proposed by the taxpayer at the time of the report of federal change, in the amount of payment owed by a taxpayer after a federal change, subject to the Commissioner's approval; or

(b) a reduction by the Commissioner in the amount of an abatement requested as a result of a federal change.

Tax or Taxes, any tax imposed under M.G.L. c. 62, 63, or 65C, and any interest or penalties imposed under M.G.L. c. 62C and treated as additional tax.

Taxpayer, any individual, partnership, trust, estate, or any other fiduciary subject to taxation under M.G.L. c. 62 or 65C, or any corporation or other entity subject to taxation under M.G.L. c. 63.

(3) Reporting Federal Change.

(a) M.G.L. c. 62 Taxpayers. A taxpayer subject to taxation under M.G.L. c. 62 must report to the Commissioner any change in federal taxable income or federal tax credits resulting in increased Massachusetts tax liability within one year of the date of notice of the federal government's final determination, whether or not the audit or other review is complete with respect to issues not addressed in the agreement, accompanied by payment of any additional tax due plus interest. Interest is calculated under the provisions of M.G.L. c. 62C, § 32, from the due date of the original return. Offsets do not affect the determination whether Massachusetts tax liability has increased due to a federal change.

Taxpayers subject to taxation under M.G.L. c. 62 must report changes in federal taxable income in the manner prescribed by the Commissioner and must submit a copy of the federal Revenue Agent's Report, agreement, document, or any other federal report that provides the necessary information illustrating the changes in federal taxable income or federal tax credits. The filing agent for a composite return shall report when there is any final determination, allocated among the affected taxpayers, that increases any taxpayer's Massachusetts tax liability.

(b) M.G.L. c. 63 Taxpayers. 830 CMR 62C.30.1(3)(a) applies to taxpayers subject to taxation under M.G.L. c. 63, except that these taxpayers must report and pay any additional tax due, plus interest, within three months of the date of notice of the federal government's final determination. The principal reporting corporation for a combined filing group shall report when there is any final determination that changes the Massachusetts tax liability of

any member of the group, or of any other member of a federal consolidated group that includes a member of the combined filing group. The principal reporting corporation must provide sufficient detail to properly attribute and allocate the federal adjustments to group members, and to reconcile such amounts with the final determination.

62.30.1: continued

(c) M.G.L. c. 65C Taxpayers. 830 CMR 62C.30.1(3)(a) applies to taxpayers subject to taxation under M.G.L. c. 65C, except that these taxpayers must report and pay any additional tax due, plus interest, within two months of the date of notice of the federal government's final determination.

(d) Procedures Applicable to all Taxpayers. Effective December 5, 2016, all taxpayers shall report all federal changes to the Commissioner by filing an amended return, in the manner prescribed in 830 CMR 62C.26.2.

(4) Date of Assessment with Respect to Federal Change; Determination of Amount of Assessment with Respect to Federal Change.

(a) Date of Assessment with Respect to Federal Change.

1. Taxpayer Self-assessment. The tax is deemed to be assessed with regard to a report of federal change under 830 CMR 62C.30.1(3), at the time when the report of federal change is duly filed.

2. Commissioner Deficiency Assessment. For the purposes of 830 CMR 62C.30.1, the tax is assessed upon the issuance of a Notice of Assessment to a taxpayer, or the entry in the Commissioner's books and records of an amount due from the taxpayer, if such entry predates the Notice of Assessment.

(b) Determination of Assessment Amount with Respect to Federal Change.

1. Taxpayer Self-assessment. Taxes are deemed to be assessed with the taxpayer's calculation and declaration of the tax due, as provided under M.G.L. c. 62C, § 26(a), reported as prescribed by the Commissioner, by the taxpayer or the taxpayer's representative and duly filed with the Commissioner. The deemed assessment is the amount due before any offsets are claimed by the taxpayer.

2. Deficiency Assessment by the Commissioner.

a. Full Amount of Tax Not Assessed. If the Commissioner determines from the taxpayer's report of federal change or upon investigation that the full amount of tax resulting from the federal change has not been assessed or deemed to be assessed, the Commissioner will assess, notwithstanding any limitation in M.G.L. c. 62C, § 26, the full amount of tax with interest, as provided in M.G.L. c. 62C, § 32, from the due date of the original return. Any assessment under 830 CMR 62C.30.1(4)(b)2. will be made in the manner provided in 830 CMR 62C.26.1.

b. Limitation Period for Assessment. The Commissioner will make any deficiency assessment within one year of receiving a taxpayer's report of federal change, as provided in 830 CMR 62C.30.1(3). Where no report of federal change is filed as provided in 830 CMR 62C.30.1(3), the Commissioner will make any deficiency assessments within two years of receiving information from the federal government that it has made a final determination of a taxpayer's federal taxable income, federal tax credits, or federal taxable estate that is different from the amount originally reported. The Commissioner has two years from receipt of information from the federal government to make deficiency assessments.

c. Limitation on Items Assessed. Any assessment made under 830 CMR 62C.30.1(4)(b)2. is limited to changes in taxpayer's tax liability directly attributable to changes, adjustments, or corrections to the taxpayer's federal taxable income or federal credits or federal taxable estate resulting in a final determination.

(5) Taxpayer Offset of Tax Due.

(a) General. When a taxpayer reports a change in federal taxable income, federal tax credits, or federal taxable estate that results in additional tax due to Massachusetts, the taxpayer may propose that the additional tax be offset based on issues for the same tax type and tax year that are unrelated to the federal change by attaching an application justifying the offset, with worksheets as necessary, to the report of federal change. The additional tax due as a result of the federal change may not be offset below zero. Any statement or worksheet attached to the taxpayer's report is considered part of the report of federal change.

(b) Procedure. The reporting and offsetting procedure is as follows:

1. A taxpayer must report federal changes as provided in 830 CMR 62C.30.1(3). The taxpayer must report increases in Massachusetts tax resulting from the change in federal taxable gross income, federal tax credits or federal taxable estate without offsets.

2. To offset any increased taxes for the taxable year in which the federal change applies, the taxpayer must request an offset amount and attach a statement justifying the offset to its report of federal change. The taxpayer may attach worksheets illustrating the tax effect and showing the revised amount after offsets have been taken into account.

3. The Commissioner will make an assessment of the tax, as provided in 830 CMR 62C.30.1(4), based upon the report of federal change. The Commissioner will determine the taxpayer's balance due, taking into consideration the taxpayer's offset request, including the taxpayer's statement and worksheets justifying the proposed offsets.

(6) Amended Returns with Respect to Federal Change.

(a) General Rule. Effective December 5, 2016, if, as a result of the change by the federal government in a taxpayer's federal taxable gross income, federal tax credits, or federal taxable estate, a taxpayer believes that a lesser tax was due the Commonwealth than was assessed or paid, the taxpayer shall file an amended return reporting, in the manner prescribed by the Commissioner in 830 CMR 62C.26.2, the amount of Massachusetts tax determined as a result of the federal change and the amount of the claimed overpayment, accompanied by a copy of the federal revenue agent's report, agreement, document, or any other federal report illustrating the changes in federal taxable income, federal tax credits, or federal taxable estate. The taxpayer's amended return is limited to changes in the taxpayer's tax liability directly attributable to changes, adjustments, or corrections to the taxpayer's federal taxable income, federal tax credits, or federal taxable estate resulting in a final determination.

(b) Limitation Period for Amended Returns. Amended returns reporting a federal change under 830 CMR 62C.30.1 shall be filed within one year of the date of the notice to the taxpayer of final determination by the federal government.

(c) Limitation on the Federal Change Amount. Any reduction in tax shown on an amended return as a result of a federal change under M.G.L. c. 62C, § 30 is limited to the reduction in Massachusetts taxes that results from the federal change.

(d) Substantiation. The taxpayer shall, at the time of filing its amended return, include and attach to it all supporting information, documents, explanations, arguments and authorities that will reasonably enable the Commissioner to determine whether the taxpayer is entitled to the reduction in tax requested. In certain instances an amended return showing a reduction in tax may be treated by DOR as an application for abatement and will be subject to the substantiation requirements set forth in 830 CMR 62C.37.1(6).

(e) Commissioner Offsets. The Commissioner may offset the amount of any overpayment resulting from a federal changewith any additional tax due whether or not the additional tax is based on issues related to the change. Offsets based on issues unrelated to the change may reduce or eliminate the abatement, but any such offset shall not give rise to a net amount of tax due based on an assessment that would otherwise be barred as untimely. Any refund resulting from a federal change is also subject to intercept.

(f) Correlation with Limitation Period for Amended Returns under M.G.L. c. 62C, §§ 36 and 37. Notwithstanding M.G.L. c. 62C, § 30 and 830 CMR 62C.30.1(6)(a) through (d) *supra*, a taxpayer may file an amended return seeking a reduction in tax, including tax assessed as a result of a change in federal taxable gross income, federal credit, or federal taxable estate, in accordance with the limitations provided in M.G.L. c. 62C, §§ 36 and 37.

(7) Penalties and Interest.

(a) Imposition. Any taxpayer that fails to timely submit a report of federal change or pay any additional tax due plus interest will be assessed a penalty of 10% of the additional tax due in addition to any other applicable interest and penalties. The penalty becomes a part of the additional tax due. Penalties and interest may apply to amounts claimed as offsets that are disallowed by the Commissioner.

(b) Abatement of Penalties. The Commissioner may abate for reasonable cause any penalties imposed under 830 CMR 62C.30.1(7). A taxpayer seeking an abatement of any

penalties must present specific facts establishing that its failure to submit a timely report of federal change was due to reasonable cause. A mere assertion, by affidavit or otherwise, that a taxpayer's failure to timely file a report of federal change was reasonable or excusable due to oversight or inadvertence is insufficient to establish reasonable cause.

62C.30.1: continued

(c) Interest Payable by Taxpayers on Additional Amount Due Resulting from Federal Change. Interest for a taxpayer duly filing a report of federal change will be calculated on the balance due after offsets have been taken into account. Interest on the balance due amount will accrue from the due date of the original return as provided under M.G.L. c. 62C, § 32(b).

(d) Interest Payable by Commissioner. The Commissioner will pay interest on overpayments resulting from a federal change, reduced for any offsets made by the Commissioner, calculated from the date of receipt of a duly filed report of federal change at the rate provided for overpayments.

62C.30A.1: Changes in Tax Due to any Other United States or Canadian Jurisdiction

(1) Statement of Purpose; Application; Organization.

(a) The purpose of 830 CMR 62C.30A.1 is to describe the requirements and procedures for a Massachusetts resident taxpayer to report and adjust the tax due to the Commonwealth after a change in tax due to any other United States state, territory or possession or the Dominion of Canada or any Canadian province, when such tax was or may be the basis for a credit claimed by the Massachusetts resident taxpayer under M.G.L. c. 62, § 6(a). *See* M.G.L. c. 62C, § 30A.

(b) 830 CMR 62C.30A.1 applies to taxes imposed under M.G.L. c. 62.

(c) 830 CMR 62C.30A.1 is organized as follows:

1. Statement of Purpose; Application; Organization
2. Definitions
3. Reporting State Change
4. Date of Assessment with Respect to State Change; Determination of Amount of Assessment with Respect to State Change
5. Taxpayer Offset of Tax Due
6. Amended Returns with Respect to State Change
7. Penalties and Interest

(2) Definitions. For the purposes of 830 CMR 62C.30A.1 only, the following terms shall have the following meanings:

Abatement, a reduction of an amount of tax that equals the difference between the amount of tax assessed as a result of an assessment or deemed assessment and the lower amount of tax properly due.

Another Jurisdiction or Other Jurisdiction, any state other than Massachusetts, or any territory or possession of the United States, or the Dominion of Canada or any of its provinces.

Another Jurisdiction's Tax Determination, an action taken under the law of another jurisdiction, that establishes that a taxpayer's tax owed to that jurisdiction is different from the tax previously paid, when such tax was or may be the basis for a credit claimed under M.G.L. c. 62, § 6(a). With regard to partnerships or flow-through entities, "another jurisdiction's tax determination" includes actions that affect partnership or entity items.

Assessment Records, the official records of the Department that indicate the amount of tax due and assessed by the Commissioner.

Commissioner, the Commissioner of Revenue or the Commissioner's designee duly authorized to perform the duties of the Commissioner.

Department, the Department of Revenue.

Duly Filed, filed correctly and completely in the manner prescribed by the Commissioner.

Credit, the amount allowed pursuant to M.G.L. c. 62, § 6(a) against taxes imposed under M.G.L. c. 62.

62C.30A1. continued

Final Determination, or State Change, another jurisdiction's tax determination where there is no right of administrative or judicial appeal. If a taxpayer has a right of appeal from another jurisdiction's tax determination, the determination will be deemed final, for a taxpayer with a right of appeal, if no appeal is taken. Another jurisdiction's tax determination is final on the date of decision in the court of last resort. Another jurisdiction's tax determination made judicially is deemed final on the date that the right to any further appeal expires if the appeal is not carried to the court of last resort.

Offset.

(a) a reduction, proposed by the taxpayer at the time of the report of state change, in the amount of payment of Massachusetts tax owed by a taxpayer after a state change, subject to the Commissioner's approval; or

(b) a reduction by the Commissioner in the amount of an abatement requested as a result of a state change.

Tax or Taxes, any tax imposed under M.G.L. c. 62, and any interest or penalties imposed under M.G.L. c. 62C and treated as additional tax.

Taxpayer, any individual, trust, estate, or any other fiduciary subject to taxation under M.G.L. c. 62.

(3) Reporting State Change. A taxpayer subject to taxation under M.G.L. c. 62 must report a final determination resulting in a decrease in the tax liability to another jurisdiction, based upon which a Massachusetts credit was claimed, under M.G.L. c. 62, § 6(a), to the Commissioner within one year of the date of notice of that jurisdiction's final determination, accompanied by payment of any additional tax due plus interest. Interest is calculated under the provisions of M.G.L. c. 62C, § 32, from the due date of filing the original return. Offsets do not affect the determination whether Massachusetts tax liability has increased due to a state change.

Effective December 5, 2016, a taxpayer subject to taxation under M.G.L. c. 62 must report a state change to the Commissioner by filing an amended return in the manner prescribed in 830 CMR 62C.26.2 and must submit a copy of the other jurisdiction's agreement, document, or any other report that provides the necessary information illustrating the change in the tax owed to the other jurisdiction.

(4) Date of Assessment with Respect to State Change; Determination of Amount of Assessment with Respect to State Change.

(a) Date of assessment with respect to state change.

1. Taxpayer Self-assessment. The tax is deemed to be assessed with regard to a report of state change under 830 CMR 62C.30A.1(3) at the time when the report of state change is duly filed.

2. Commissioner Deficiency Assessment. For the purposes of 830 CMR 62C.30A.1, the tax is assessed upon the issuance of a Notice of Assessment to a taxpayer, or the entry in the Commissioner's assessment records of an amount due from the taxpayer, if such entry predates the Notice of Assessment.

(b) Determination of assessment amount with respect to state change.

1. Taxpayer Self-assessment. Taxes are deemed to be assessed with the taxpayer's calculation and declaration of the tax due, as provided under M.G.L. c. 62C, § 26(a), reported as prescribed by the Commissioner by the taxpayer or the taxpayer's representative and duly filed with the Commissioner. The deemed assessment is the amount due before any offsets are claimed by the taxpayer.

2. Deficiency Assessment by the Commissioner.

a. If the Commissioner determines from the taxpayer's report of state change or upon investigation that, as a result of the change in tax liability to another jurisdiction and consequent change in the Massachusetts tax credit claimed by the taxpayer, the

full amount of tax has not been assessed or deemed to be assessed, the Commissioner will assess, notwithstanding the three year limitation in M.G.L. c. 62C, § 26, the full amount of tax with interest, as provided in M.G.L. c. 62C, § 32, from the due date of the original return. Any assessment under 830CMR 62C.30A.1(4)(b) 2. will be made in the manner provided in 830 CMR 62C.26.1.

b. Limitation Period for Assessment. The Commissioner will make any deficiency assessment within one year of receiving a taxpayer's report of state change, as provided in 830 CMR 62C.30A.1(3). If no report of state change is filed as provided in 830 CMR 62C.30A.1(3), the Commissioner will make any deficiency assessment within two years of receiving information from the other jurisdiction that it has made a final determination of a taxpayer's tax liability that is less than originally reported.

c. Limitation on Items Assessed. Any assessment made under 830 CMR 62C.30A.1(4)(b)2. is limited to changes in a taxpayer's tax liability directly attributable to changes, adjustments, or corrections to the taxpayer's tax owed to another jurisdiction resulting in a final determination.

(5) Taxpayer Offset of Tax Due.

(a) General. When a taxpayer reports a change in tax liability to another jurisdiction and consequent change in the Massachusetts tax credit claimed by the taxpayer that results in additional tax due to Massachusetts, the taxpayer may propose that the additional tax be offset based on issues for the same tax year that are unrelated to the state change by attaching an application justifying the offset, with worksheets as necessary, to the report of state change. The additional tax due as a result of the state change may not be offset below zero. Any statement or worksheet attached to the taxpayer's report is considered part of the report of state change.

(b) Procedure. The reporting and offsetting procedure is as follows:

1. A taxpayer must report state changes as provided in 830 CMR 62C.30A.1(3). The taxpayer must report changes in Massachusetts tax resulting from the change in another jurisdiction's tax liability and consequent change in the Massachusetts tax credit claimed by the taxpayer without offsets.

2. To offset any increased taxes for the taxable year in which the state change applies, the taxpayer must request an offset amount and attach a statement justifying the offset to its report of state change. The taxpayer may attach worksheets illustrating the tax effect and showing the revised amount after offsets have been taken into account.

3. The Commissioner will make an assessment of the tax, as provided in 830 CMR 62C.30A.1(4), based upon the report of state change. The Commissioner will determine the taxpayer's balance due, taking into consideration the taxpayer's offset request, including the taxpayer's statement and worksheets justifying the proposed offsets.

(6) Amended Returns with Respect to State Change.

(a) General Rule. Effective December 5, 2016, if, as a result of the change in tax liability to another jurisdiction and consequent change in the Massachusetts tax credit that was or may be claimed by the taxpayer, a taxpayer believes that a lesser tax was due the Commonwealth than was assessed or paid, the taxpayer shall file an amended return reporting, in the manner prescribed by the Commissioner in 830 CMR 62C.26.2, the amount of tax overpaid as a result of the other jurisdiction's change and the amount of the claimed overpayment, accompanied by a copy of the other jurisdiction's revenue agent's report, agreement, document, or any other report illustrating the changes in the other jurisdiction's tax. The taxpayer's amended return is limited to changes in the taxpayer's Massachusetts tax liability directly attributable to changes, adjustments, or corrections to the taxpayer's tax owed to the other jurisdiction resulting in a final determination from that jurisdiction.

(b) Limitation Period for Amended Returns. Amended returns reporting state changes under 830 CMR 62C.30A.1 shall be filed within one year of the date of the notice to the taxpayer of final determination by the other jurisdiction.

(c) Limitation on State Change Amount. Any reduction in tax shown on an amended return as a result of a state change under M.G.L. c. 62C, § 30A is limited to the reduction in Massachusetts taxes that results from the other jurisdiction's change.

(d) Substantiation. The taxpayer shall, at the time of filing its amended return, include and attach to it all supporting information, documents, explanations, arguments and authorities

that will reasonably enable the Commissioner to determine whether the taxpayer is entitled to the reduction in tax requested. In certain instances an amended return showing a reduction in tax may be treated by DOR as an application for abatement and will be subject to the substantiation requirements set forth in 830 CMR 62C.37.1(6).

(e) Commissioner Offsets. The Commissioner may offset the amount of any overpayment resulting from a state change with any additional tax due whether or not the additional tax is based on issues related tothe change. Offsets based on issues unrelated to the change may reduce or eliminate the abatement, but any such offset shall not give rise to a net amount of tax due based on an assessment that would otherwise be barred as untimely. Any refund resulting from a state change is also subject to intercept.

(f) Correlation with Limitation Period for Amended Returns under M.G.L. c. 62C, §§ 36 and 37. Notwithstanding the rules under M.G.L. c. 62C, § 30A, and 830 CMR 62C.30A.1(6)(a) through (d), *supra*, a taxpayer may file an amended return seeking a reduction in tax, including tax paid as a result of a change in tax paid to another jurisdiction, in accordance with the limitations provided in M.G.L. c. 62C, §§ 36 and 37.

(7) Penalties and Interest.

(a) Imposition. Any taxpayer that fails to timely submit a report of state change under 830 CMR 62C.30A.1(3) or pay any additional tax due plus interest will be assessed a penalty of 10% of the additional tax due in addition to any other applicable interest and penalties. The penalty becomes a part of the additional tax due. Penalties and interest may apply to amounts claimed as offsets that are disallowed by the Commissioner.

62C.30A.1 continued

(b) Abatement of Penalties. The Commissioner may abate for reasonable cause any penalties imposed under 830 CMR 62C.30A.1(7). A taxpayer seeking an abatement of any penalties must present specific facts establishing that its failure to submit a timely report of state change, as required by 830 CMR 62C.30A.1(3), was due to reasonable cause. A mere assertion, by affidavit or otherwise, that taxpayer's failure to timely file a report of state change was reasonable or excusable due to oversight or inadvertence is insufficient to establish reasonable cause.

(c) Interest payable by taxpayers on additional amount due resulting from state change. Interest for a taxpayer duly filing a report of state change will be calculated based on the balance due after offsets have been taken into account. Interest on the balance due amount will accrue from the due date of the original return as provided under M.G.L. c. 62C, § 32(b).

(d) Interest Payable By Commissioner. The Commissioner will pay interest on overpayments resulting from a state change, reduced for any offsets made by the Commissioner, calculated from the date of receipt of a duly filed report of state change, at the rate provided for overpayments.

62C.31A.1: Responsible Persons

(1) Statement of Purpose, Effective Date.

(a) The purpose of 830 CMR 62C.31A.1 is to describe the procedures prescribed by the Commissioner, pursuant to M.G.L. c. 62C, §§ 3 and 31A; M.G.L. c. 62B, § 5; M.G.L. c. 64G, § 7B; M.G.L. c. 64H, § 16; and M.G.L. c. 64I, § 17, for the assessment of taxes upon and the collection of taxes from responsible persons, persons under a duty to pay over certain trustee taxes and certain use taxes owed by a corporation, partnership or limited liability company.

(b) With regard to limited liability companies 830 CMR 62C.31A.1 applies to taxes remaining unpaid on or after December 8, 2005.

(2) Definitions. For the purposes of 830 CMR 62C.31A.1 the following terms shall have the following meanings:

Commissioner, the Commissioner of Revenue or his representative duly authorized to perform the duties of the Commissioner relating to the assessment upon and collection of taxes from responsible persons.

Demand, notification to a taxpayer or a responsible person that the amount of an original assessment or a responsible person assessment is currently due and payable to the Commonwealth.

Determination of Responsible Person's Personal Liability, the result of the process by which the Commissioner ascertains a taxpayer's responsible person and records the identity of the responsible person and the amount due from the responsible person.

Duty to Pay Over Taxes, an obligation to remit taxes that arises from a person's position, function, or responsibility undertaken on behalf of a corporation, partnership or limited liability company. Such obligation need not be a legally enforceable agreement between the corporation, partnership or limited liability company and the person.

Original Assessment, the assessment that results from the process by which the Department of Revenue verifies and/or determines the amount of tax imposed on and due from a taxpayer under M.G.L. chs. 62B, 64G, 64H, and 64I, determines the amount of applicable interest and penalties imposed and due from the taxpayer under M.G.L. c. 62C on an on-going basis, and records the amounts.

Person, an individual, partnership, trust, or association, with or without transferable shares, joint-stock company, corporation, limited liability company, society, club, organization, institution, estate, receiver, trustee, assignee, or referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals acting as a unit.

Responsible Person, any person who is or was under a duty to pay over taxes imposed on a corporation, partnership or limited liability company by M.G.L. chs. 62B, 64G, 64H, and 64I.

Responsible Person Assessment, the assessment, together with any additional accrued interest, that results from the process by which the Department of Revenue determines a responsible person's personal liability.

Responsible Person's or Person's Last Known Address, the responsible person's or the person's address as it appears in the records of the Commissioner or as it is found through investigation.

Required Tax or Required Taxes, any tax or taxes imposed, assessed, and owing under M.G.L. chs. 62B, 62C, 64G, 64H, or 64I.

Tax or Taxes, any withholding tax imposed under M.G.L. c. 62B, any room occupancy excise imposed under M.G.L. c. 64G, any sales tax imposed under M.G.L. c. 64H, any use tax imposed under M.G.L. c. 64I, and including any interest or penalties imposed under M.G.L. c. 62B, § 7 and c. 62C, §§ 28, 30, 30A, 32, 33, 34, 35, and 35A for withholding tax, room occupancy excise, sales tax, or use tax.

Taxpayer, any corporation, partnership or limited liability company required to file returns or pay over taxes imposed under M.G.L. chs. 62B, 62C, 64G, 64H, or 64I.

(3) General Rules.

(a) Substantive Rule.

1. General. If a corporation, partnership or limited liability company fails to pay to the Commissioner any required tax or required taxes of such taxpayer, the person or persons who have or had the duty to pay over the tax or taxes on behalf of the corporation, partnership or limited liability company shall be personally and individually liable for the amount of the required tax or required taxes.

2. Clarification of general rule for certain sales and use taxes beginning May 30, 2002 (December 8, 2005 for sales and use taxes of a limited liability company). In the case of (i) sales taxes due under M.G.L. c. 64H, § 8(d) or § 8(h) only, (ii) use taxes due under M.G.L. c. 64I, § 8(e) or § 8(j), (iii) use taxes due on purchases of a corporation, partnership or limited liability company on which no sales or use taxes were paid, and (iv) use taxes due from a taxpayer's customers but not collected by the taxpayer, the general rule in 830 CMR 62C.31A.1(3)(a)1. will apply to responsible person determinations made on or after May 30, 2002 (December 8, 2005 for determinations involving taxes of limited liability companies) and only for underlying liabilities for such taxes incurred by the corporation, partnership, or limited liability company after that date.

Exception for certain responsible person determinations made on or after December 8, 2005. No person shall be personally or individually liable for a use tax liability due from a corporation, partnership or limited liability company resulting from purchases by the corporation, partnership or limited liability company of tangible personal property or services purchased for use by the entity unless the person's failure to pay the tax was willful or unless the person made personal use of the property or services subject to tax. This exception applies to responsible person determinations made on or after December 8, 2005.

(b) Procedure. The Commissioner will notify each person in writing of the proposed determination of personal liability. The person may confer with the Commissioner as to the original assessment or the proposed determination of personal liability. Upon the Commissioner's determination that the person was or is under a duty to pay over taxes, an assessment upon the responsible person occurs and the responsible person is personally and individually liable for the assessed and unpaid taxes of the corporation, partnership or limited liability company.

(4) Information Used in the Determination of Who May Have the Duty to Pay Over Taxes. The determination of who is under a duty to pay over taxes is made case by case, based on the facts and circumstances of the individual case. The Commissioner may use any information to determine who may be or may have been under a duty to pay over taxes, including but not limited to the following.

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(a) Examination of Records. The Commissioner may examine any records, including but not limited to the following:

1. Tax Returns. To determine who may be or may have been under a duty to pay over taxes imposed under M.G.L. chs. 62B, 62C, 64G, 64H, or 64I, the Commissioner may examine the taxpayer's Massachusetts returns and the taxpayer's Application for Registration, Form TA-1. The Commissioner may also examine federal tax returns for the same purpose.

2. Other Records. To determine who may be or may have been under a duty to pay over taxes imposed under M.G.L. chs. 62B, 62C, 64G, 64H, or 64I, the Commissioner may examine all or any of the following records, as well as any other relevant records.

a. Articles of incorporation.

b. Minute books and bylaws.

c. Bank records.

i. Signature cards.

ii. Cancelled checks and bank statements.

d. Partnership agreements.

e. Operating agreements of limited liability companies.

(b) Investigation. To determine who may be or may have been under a duty to pay over taxes, the Commissioner may conduct an investigation or audit and may use any documents, testimony, or any other information derived from the investigation or audit.

(5) Factors in the Determination of Who May Have the Duty to Pay Over Taxes. The factors that the Commissioner may consider to determine who may be or may have been under a duty to pay over taxes include, but are not limited to, the following:

(a) Duty to Pay Over Taxes Shared by More Than One Person.

1. Multiple Determinations. The Commissioner may make multiple proposed determinations of personal liability if the Commissioner believes more than one person has or had the duty of collecting and paying over taxes on behalf of the same taxpayer. If the Commissioner determines that more than one person has or had the duty of collecting and paying over taxes on behalf of the same taxpayer for the same tax periods, such persons shall be jointly and severally liable for the amount of the assessment.

2. Partners in a Partnership.

a. Ordinarily, all general partners of a partnership are under a duty to pay over taxes. The Commissioner may thus make proposed determinations of personal liability against any or all general partners.

b. The Commissioner may make a proposed determination of personal liability against a limited partner if the limited partner is shown to be or to have been under a duty to pay over taxes.

3. Members of an LLC.

a. Ordinarily, all managing members of an LLC are under a duty to pay over taxes. The Commissioner may thus make proposed determinations of personal liability against any or all managing members.

b. The Commissioner may make a proposed determination of personal liability against a non-managing member if the non-managing member is shown to be or to have been under a duty to pay over taxes.

(b) Duty to Pay Over Taxes Acquired After Original Assessment. The Commissioner will not generally make a proposed determination of personal liability if the Commissioner believes the person did not have the duty to pay over taxes during the period of time in which the taxpayer's liability for the original assessment arose. But if funds sufficient to pay the unpaid original assessment are available to the taxpayer at the time a person acquires the duty to pay over taxes and the person fails to pay the original assessment upon receipt of a demand, the Commissioner may make a proposed determination of personal liability against that person.

The Commissioner will not make a proposed determination of personal liability against a person for an original assessment against a limited liability company that arose prior to December 8, 2005 unless funds sufficient to pay the unpaid original assessment became available to the limited liability company on or after December 8, 2005 and the person fails to pay the original assessment upon receipt of a demand.

(c) Duty to Pay Over in Absence of Other Factors. In the absence of any other relevant factors, the Commissioner may consider that all or any one or more of the following persons are or were under a duty to pay over the taxes:

1. The president, secretary, and treasurer of a corporation;
2. Any other principal officer or officers, whatever their titles, of a corporation;
3. All or any one of the active partners of a partnership;
4. All or any one of the managers of a limited liability company; and
5. All or any one of the members of a limited liability company involved in managing the company.

(6) Notification of Proposed Determination of Personal Liability.

(a) Requirement of Notification. If the Commissioner determines from a consideration of information under 830 CMR 62C.31A.1(4) or factors under 830 CMR 62C.31A.1(5), or otherwise, that a person or persons under a duty to pay taxes of the corporation, partnership or limited liability company failed to do so the Commissioner will notify each such person of the proposed determination of personal liability for taxes assessed against the taxpayer under M.G.L. chs. 62B, 62C, 64G, 64H, or 64I. This notice shall serve as a the notice of intention to make a responsible person assessment.

(b) Time for Notification. The Commissioner may send the notification referred to in 830 CMR 62C.31A.1(6)(a) at any time during the limitation period for collection of taxes from an original assessment.

(c) Contents of Notification. The notification of proposed determination of personal liability will include the following:

1. The date of its issuance,
2. The name of the person to whom it is issued,
3. The name of the taxpayer,
4. The type of tax or taxes assessed upon the taxpayer,
5. The date of the original assessment,
6. The tax period or periods,
7. The amount of the original assessment,
8. A description of the person's right to confer with the Commissioner or his duly authorized representative as to the original assessment and the proposed determination of personal liability,
9. An explanation that a lien will arise in favor of the Commonwealth upon all property belonging to the person if a determination of responsible person's personal liability is made,
10. The deadline that the person must meet to confer with the Commissioner, and
11. Any additional information the Commissioner considers appropriate.

(d) Presumption of Receipt of Notice. The transmittal of a notification of proposed determination of personal liability through the United States mail to the person at the person's last known address creates a presumption that the notification was received by the person.

(e) Failure to Receive Notice. A person's failure to receive a notification of proposed determination of personal liability does not delay a determination of responsible person's personal liability and does not affect the validity of the determination, the original assessment or the responsible person assessment.

(7) Conference with the Commissioner.

(a) Request for a Conference.

1. Any person notified of the proposed determination of personal liability may confer with the Commissioner within thirty days after the date of the issuance of the notification of the proposed determination of personal liability.
2. A person or representative must send a written request for a conference to the Chief of the Collections Bureau or other authorized Massachusetts Department of Revenue

personnel specified in the notification of proposed determination of personal liability, at the address shown on the notification.

3. To expedite processing, a request for a conference should include telephone numbers for the person and/or the person's representative. All requests must include a current address for the person and/or the person's representative; requests without a full return address will be considered incomplete and without effect.

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(b) Conduct of the Conference. The conference with the Commissioner is an informal proceeding.

(c) Referral to Office of Appeals. The person may request referral to the Office of Appeals. The Chief of the Collections Bureau or other authorized Massachusetts Department of Revenue personnel specified in the notification of proposed determination of personal liability and the Director of the Office of Appeals, as a matter of joint discretion, may agree to refer the conduct of the conference to the Office of Appeals but such requests will generally only be granted if they present novel issues of law or fact. Unless the person is notified of a referral to the Office of Appeals, the conference will be held in the Collections Bureau or other Bureau specified in the notification of proposed determination of personal liability. Conferences held in the Office of Appeals are conducted as described in 830 CMR 62C.31A.1(7)(b).

(d) Timely Request for a Conference. A timely request for a conference must be received by the Collections Bureau or other Bureau specified in the notification of proposed determination of personal liability by the 30th day following the issuance of the proposed determination of personal liability. A request for a conference received after the 30th day following the issuance of the notification will be considered solely at the discretion of the Chief of the Collections Bureau or other authorized Massachusetts Department of Revenue personnel specified in the notification of proposed determination of personal liability.

(e) Issues That May be Raised at the Conference.

1. At the conference the person may raise any issue concerning the validity of the original assessment that the taxpayer may have or could have raised. If the taxpayer or the person or anyone else has paid the amount of the original assessment, proof of the payment should be presented at the conference.
2. The person may raise issues concerning the person's duty to pay over the taxes.

(8) Determination of Responsible Person's Personal Liability and the Responsible Person Assessment.

(a) The Commissioner's Determination of Responsible Person's Personal Liability. If the Commissioner determines that a person did have the duty to pay over taxes, the person will be personally and individually liable for the unpaid amount of the original assessment.

(b) Timing of the Determination of Responsible Person's Personal Liability.

1. If the person does not request a conference within 30 days of the date of the issuance of the notification of proposed determination of personal liability, the determination of responsible person's personal liability shall take effect 30 days after the issuance of the notification of the proposed determination of personal liability. In any case, the Commissioner may, in his or her sole discretion, make the determination of responsible person's personal liability at a date later than 30 days after the notification of proposed determination of personal liability.
2. If the person makes a timely request for a conference, the Commissioner will make the determination of responsible person's personal liability after the conference. In any case, the Commissioner may, in his or her sole discretion, make a determination of responsible person's personal liability at a date later than 30 days after the issuance of the notification of the proposed determination of personal liability.

(c) The Responsible Person Assessment. The responsible person assessment shall take effect on the date the determination of responsible person's personal liability is made.

(d) Written Notice of Responsible Person Assessment. The Commissioner will send a written notice of the responsible person assessment to the responsible person, at the responsible person's last known address or at the address given on the request for a conference, on or as soon as practicable possible after the date of the Commissioner's determination of responsible person's personal liability. The written notice shall serve as a the notice of assessment and constitutes a demand upon the responsible person.

(e) Contents of Written Notice of Responsible Person Assessment. The written notice of the responsible person assessment will include the following:

1. The date of the Commissioner's determination of responsible person's personal liability,
2. The date of the responsible person assessment,
3. The amount of the responsible person assessment,

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4. The name of the responsible person,
5. The name of the corporation, partnership or limited liability company,
6. The type of tax,
7. The amount of the original assessment,
8. The date of the original assessment,
9. The tax period or periods,
10. A description of the responsible person's right to apply for abatement,
11. The deadlines that the responsible person must meet to apply for abatement, and
12. Any additional information the Commissioner considers appropriate.

(f) Presumption of Receipt of Written Notice of Responsible Person Assessment. The transmittal of a written notice of determination of the responsible person assessment through the United States mail to the responsible person at the responsible person's last known address or at the address given on the request for a responsible person's conference creates a presumption that the written notice of the responsible person assessment was received by the responsible person.

(g) Failure to Receive Notice. A responsible person's failure to receive a written notice of the responsible person assessment does not affect the validity of the responsible person assessment.

(9) Responsible Person's Application for Abatement.

(a) Application for Abatement to the Commissioner. Any responsible person aggrieved by the original assessment or the responsible person assessment may apply in writing to the Commissioner for an abatement of the original assessment or of the responsible person assessment.

(b) Deadlines for Application for Abatement. Any responsible person's application for abatement must be received by the Commissioner by the following dates, whichever is later:

1. Within three years from the last day for filing the return for the tax upon which the original assessment was based, determined without regard to any extension of time,
2. Within two years from the date of the responsible person assessment, or
3. Within one year from the date that the amount of responsible person assessment was paid.

(c) Requirements of Application for Abatement.

1. Abatement of the Responsible Person Assessment. If a responsible person is aggrieved by the responsible person assessment, the responsible person may apply in writing for an abatement on Form CA-6, Application for Abatement. If the responsible person wishes to apply for an abatement of the responsible person assessment only, the responsible person is not required to file any tax returns under M.G.L. c. 62C, § 38 and 830 CMR 62C.37.1(4)(a)1.
2. Abatement of Original Assessment.
   a. If a responsible person is aggrieved by the original assessment, the responsible person may apply in writing on Form CA-6, Application for Abatement, attaching a copy of the tax return for the tax on which the original assessment was issued.
   b. If a responsible person is aggrieved by the original assessment and the return for the tax on which the original assessment was based has not been filed by the taxpayer or the responsible person cannot locate it, the responsible person may complete and file a tax return on behalf of the taxpayer, according to the responsible person's best information and belief, in order to satisfy the jurisdictional requirement of M.G.L. c. 62C, § 38 and 830 CMR 62C.37.1(4)(a)1. The completion and filing of a tax return for jurisdictional purposes is not evidence of a responsible person's duty to pay over taxes.

(d) Right to a Hearing on an Application for Abatement. A responsible person seeking abatement may request a hearing pursuant to M.G.L. c. 62C, § 37 and 830 CMR 62C.37.1(6).

(e) Extension of Limitation Period for Collection of Taxes Upon Application for Abatement. A timely application for abatement is a pending question that will extend the limitation period for collection of taxes under 830 CMR 62C.31A.1(14).

(f) Other Provisions. Except as noted in 830 CMR 62C.31A.1(9)(a) through (d), the responsible person's application for abatement must be made in accordance with M.G.L. c. 62C, §§ 37 through 39 and 830 CMR 62C.37.1.

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(10) Lien on a Responsible Person's Property.

(a) Creation of Lien Upon Responsible Person's Property. Upon the Commissioner's determination of responsible person's personal liability, the responsible person assessment becomes a lien in favor of the Commonwealth upon all real and personal property and rights to property belonging to the responsible person.

(b) Duration of Lien Upon Responsible Person's Property.

1. The lien arises at the time of the responsible person assessment.

2. The lien against a responsible person continues until that responsible person's liability for the responsible person assessment is satisfied by payment, as provided under 830 CMR 62C.31A.1(12), or until that responsible person's liability for the responsible person assessment is satisfied by settlement, as provided under 830 CMR 62C.31A.1(13) or until the Commissioner otherwise exercises the authority to release a lien pursuant to M.G.L. c. 62C, § 50(f).

3. The lien against the responsible person's property will terminate ten years after the date of the responsible person assessment unless the Commissioner exercises the authority to extend or refile the lien pursuant to M.G.L. c. 62C, § 50(a).

(c) Limitations Upon a Lien Upon Responsible Person's Property. Any lien upon a responsible person's property is subject to all limitations prescribed in M.G.L. c. 62C, § 50(b) and (c) and 830 CMR 62C.50.1(3).

(d) Enforcement of a Lien Upon Responsible Person's Property Through the Courts. If a responsible person refuses or neglects upon demand to pay the amount of the responsible person assessment, whether or not any levy has been made upon the responsible person's property, the Commissioner may direct a civil action to be filed in a district court or superior court of the Commonwealth under M.G.L. c. 62C, § 50(e) to enforce the lien upon the responsible person's property or to subject any property of the responsible person of whatever nature or property in which the responsible person has any right, title, or interest to the payment of such liability.

(e) Release of a Lien Upon Responsible Person's Property. The Commissioner may issue a release of lien upon a responsible person's property pursuant to M.G.L. c. 62C, § 50(f) and 830 CMR 62C.50.1(4) and (6).

(11) Other Collection Remedies. The Commissioner may use any other remedies available by law to collect the amount of a responsible person assessment.

(12) Satisfaction of Responsible Person's Personal Liability by Payment. Payment in full of the amount of the original assessment or the responsible person assessment will satisfy the liability of the taxpayer and responsible person or persons as described below unless such payment is later determined to be a preference item in bankruptcy proceedings.

(a) Payment by Taxpayer. Payment in full of the original assessment, together with any additional accrued interest and penalties, by the taxpayer will satisfy the liability of the taxpayer for the original assessment and the liability of any responsible person for the responsible person assessment.

(b) Payment by Other Person. Payment in full of the original assessment or the responsible person assessment by a person (hereinafter "payor") other than the taxpayer will satisfy the payor's liability for the original assessment or the responsible person assessment. Such payment will not satisfy the liability of the taxpayer or the liability of any responsible person (other than the payor) until one of the following conditions is satisfied:

1. the payor waives his or her rights to appeal the original and/or the responsible person assessment or otherwise to claim relief from either assessment; or

2. the period available for the payor to appeal the original assessment and/or the responsible person assessment or otherwise to claim relief from the original assessment and/or responsible person assessment, through abatement or otherwise, has expired without the payor filing such an appeal or seeking such relief; or

3. the payor's appeal or other claim for relief from the original assessment results in part or all of the original assessment being abated and the Commissioner does not take an appeal from that decision. In the case of partial abatement of the original assessment, the responsible person assessment shall be partially abated to the same extent. The liability of the taxpayer or the liability of any responsible person is satisfied only to the extent of such partial abatement and only if the Commissioner does not appeal the decision.

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(13) Settlement of Responsible Person's Tax Liabilities.

(a) A responsible person may make an offer to the Commissioner which is less than the amount of the responsible person assessment. Settlement of the responsible person assessment pursuant to M.G.L. c. 62C, § 37A and 830 CMR 62C.37A.1 satisfies the liability of the taxpayer and the liability of any other responsible person or persons only up to the amount of the settlement.

(b) Settlement of the taxpayer's liability for the original assessment pursuant to M.G.L. c. 62C, § 37A and 830 CMR 62C.37A.1 satisfies the liability of the taxpayer and the liability of any responsible person or persons for the original assessment and for the responsible person assessment resulting there from.

(c) Notwithstanding the rules concerning satisfaction of liability as set out in 830 CMR 62C.31A.1, any satisfaction resulting from a settlement agreement is void if the settlement agreement is reopened based upon factors described in the Settlement of Tax Liabilities Regulation 830 CMR 62C.37A.1(5).

(14) Limitation Period for Collection of Taxes from a Responsible Person.

(a) Limitation Period for Collection of Taxes from an Original Assessment.

1. Effective January 1, 1988: taxes relating to an original assessment may be collected from a responsible person within ten years after an original assessment, before the expiration of any period of collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such ten-year period, or, if there is a release of levy under M.G.L. c. 62C, § 64 after such ten-year period, then before such release. If any question relative to the original assessment or the responsible person determination is pending before the Department of Revenue, the Appellate Tax Board, or any court at the end of the original ten-year period, the period will extend until one year after the final determination of the question. *See* M.G.L. c. 62C, § 65.

2. Effective January 1, 1999 and thereafter, for bankruptcy cases in which the taxpayer is the debtor under relevant chapters of Title 1 of the United States Code, the running of the period of limitations for the original assessment shall be suspended for the period during which the Commissioner is prohibited by reason of such case from collecting the tax, and for the period during which a plan for payment of the tax is in effect, and for six months thereafter.

3. Effective January 1, 2005 and thereafter, within an additional period if the original assessment remains unpaid, but only as to real or personal property of the taxpayer to which a tax lien has attached and for which notice of the lien has been filed or recorded under M.G.L. c. 62C, § 50.

(b) Limitation Period for Collection of Taxes from a Responsible Person Assessment. Effective December 8, 2005 and thereafter for responsible person assessments made on or after that date, in addition to the period for collection of taxes from the original assessment, *supra*, taxes from a responsible person assessment may be collected from a responsible person:

1. within ten years after a responsible person assessment modified as follows;

2. within any further period after such ten-year period during which the responsible person assessment remains unpaid but only against any real or personal property of the responsible person to which a tax lien has attached and for which notice of the lien has been filed or recorded under M.G.L. c. 62C, § 50 in favor of the commonwealth in accordance with applicable state and federal law within ten years after the responsible person assessment of the tax;

3. before the expiration of any period of collection agreed upon in writing by the Commissioner and the responsible person before the expiration of such ten-year period;

4. if there is a release of levy against the responsible person under M.G.L. c. 62C, § 64 after such ten-year period, then before such release; or

5. if any question relative to the responsible person assessment is pending before the Department of Revenue, the Appellate Tax Board, or any court at the end of the ten-year

period, within one year after the final determination of the question. For bankruptcy cases in which the responsible person is a debtor under relevant chapters of Title 1 of the United States Code, the running of the period of limitations shall be suspended for the period during which the commissioner is prohibited by reason of such case from collecting the tax, and for the period during which a plan for payment of the tax is in effect, and for six months thereafter.

62C.33.1: Interest, Penalties, and Application of Payments

(1) Statement of Purpose and Application.

(a) The purpose of 830 CMR 62C.33.1 is to describe the computation of interest and penalties under M.G.L. c. 62C and interest on refunds of tax. It is not intended as an exhaustive treatment of all penalties administered by the Commissioner. 830 CMR 62C.33.1 also explains the manner in which the Commissioner will apply a payment received from a taxpayer to tax, penalties or interest in the absence of instruction from the taxpayer, and the mechanism by which a taxpayer may direct the Commissioner to apply a voluntary payment made by the taxpayer to one or more of the taxpayer's outstanding liabilities. Except as otherwise provided, the provisions of 830 CMR 62C.33.1 apply to the taxes imposed under M.G.L. chs. 60A; 62 through 65C; 121A, § 10; and 138, § 21, and to any other provisions of the law under which the Commissioner is authorized generally to exercise his powers under M.G.L. c. 62C.

(b) Organization. 830 CMR 62C.33.1 is organized as follows:

1. Statement of Purpose and Application
2. Definitions
3. Determination of Interest Rate on Unpaid Taxes
4. Interest on Unpaid Taxes
5. Penalties
6. Interest on Penalties
7. Interest on Refunds of Overpayments
8. Methods for Directing Payment
9. Application of Payments in the Absence of Taxpayer Instruction

(2) Definitions. For the purposes 830 CMR 62C.33.1, the following words have the following meanings unless the context requires otherwise.

Adequate Disclosure, submission of a written statement setting out the relevant facts including, without limitation, the basis for the challenge and identifying the tax law or public written statement being challenged. Such disclosure shall be made in a manner that the Commissioner may prescribe or otherwise approve.

Amount of Tax Required to be Shown, the proper amount of tax ultimately determined to have been due on the statutory due date for the complete tax period covered by a return.

Amount of Tax Shown, the amount of tax that a taxpayer reports on a return as due for the complete tax period covered by the return.

Assessment, the act of determining or verifying the amount of tax due from a taxpayer and the entry of such amount on the Commissioner's assessment records, including the acceptance of a taxpayer's calculations and declarations of tax as reported on a proper return duly filed by the taxpayer with the Commissioner.

Commissioner, the Commissioner of Revenue or the Commissioner's authorized designee.

Date Prescribed for Payment, the last day on which the tax is required to be paid under the governing statute or regulation, including any valid extensions of time to pay that are granted by the Commissioner.

Department, the Department of Revenue.

Disregard, includes any careless, reckless, or intentional disregard of the tax laws of the Commonwealth or the Commissioner’s public written statements.

Inconsistent Filing Position, a taxpayer is deemed to have taken an inconsistent filing position when the taxpayer pays less tax in Massachusetts based upon an interpretation of Massachusetts law that differs from the position taken by the taxpayer in another state where the taxpayer files a return and the governing law in that other state is the same in all material respects as the Massachusetts law.

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Interest, the daily and cumulative charge against a taxpayer authorized by M.G.L. c. 62C, § 32, for failing to pay an amount of tax on or before the statutory due date or failing to pay a penalty that has accrued or been assessed. Interest accruing before January 1, 1993 was simple interest. Interest accruing on or after January 1, 1993 compounds daily.

Involuntary Payment, any payment received by agents of the Commonwealth as a result of distraint or levy or from a legal proceeding in which the Commonwealth is seeking to collect its delinquent taxes, interest, or penalties, or has filed a claim therefor. Payments made pursuant to claims filed in bankruptcy liquidation or reorganization proceedings are involuntary payments.

Listed Abusive Transactions or Strategies, items as defined in 830 CMR 62C.33.1(5)(k).

Month or Monthly Period, the period beginning on the statutory due date or the date prescribed for payment, whichever is applicable, and ending in the succeeding calendar month on the date numerically corresponding to such statutory due date or date prescribed for payment, including any valid extensions, and each such successive corresponding period thereafter. If, in any succeeding calendar month, there is no date numerically corresponding to the date prescribed for payment, then the last day of such succeeding calendar month is the end of that monthly period.

Negligence, includes any failure to make a reasonable attempt to comply with the tax laws of the Commonwealth or the Commissioner's public written statements (other than letter rulings, unless issued to the same taxpayer).

Notice of Intention to Assess, the notice to a taxpayer required by M.G.L. c. 62C, § 26, that the Commissioner intends to assess tax not previously assessed or deemed to be assessed.

Notice of Assessment, the notice to a taxpayer required by M.G.L. c. 62C, § 31, that the Commissioner has made an assessment of tax.

Penalty, a charge under M.G.L. chs. 60A, 62 through 65C, 121A or l38, for failing to perform an act required by the governing statute or regulation or for performing an act prohibited by the governing statute or regulation.

Realistic Possibility of Being Sustained on its Merits, with respect to a position taken on a return or claim for abatement or refund, a position that upon a reasonable and well-informed analysis by a person knowledgeable in the tax law would lead such a person to conclude that the position has approximately a one in three, or greater, likelihood of being sustained on its merits.

Reasonable Basis, a return position has a reasonable basis if it premised on statutory or regulatory authority, public written statement, and/or court cases (taking into account the relevance and persuasiveness of the authorities, and subsequent developments). The term will be interpreted in a manner consistent with Treas. Reg. § 1.6662-3(b)(3).

Return, a taxpayer's declaration of tax due, including all schedules and attachments, completed by the taxpayer on a form or in a manner prescribed as a return by the Commissioner.

Return Preparer, any person who is engaged in the business of preparing, or providing services in connection with the preparation of returns of tax or any claim for refund of tax imposed by the Internal Revenue Code and/or the Massachusetts General Laws, or any person who for compensation prepares any such return for any other person. A person who only gives advice on specific issues of law shall only be considered a return preparer under the circumstances set out in Treas. Reg. §301.7701-15(a)(2).

Statutory Due Date, the last day on which a return is required to be filed under the governing statute or regulation, without regard to any extensions.

Substantial Authority, a return position is supported by substantial authority only if the weight of the authorities supporting the position is substantial in relation to the weight of authorities supporting the contrary position. The term will be interpreted in a manner consistent with Treas. Reg. § 1.6662-4(d)(2).

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Substantial Understatement of Liability, an understatement for any tax period that exceeds the greater of 10% of the tax required to be shown on the return or $1,000.

Tax, without limitation any tax or excise imposed under the following provisions: M.G.L. chs. 60A and 62 through 65C, 121A, § 10; 138, § 21 and assessments imposed pursuant to M.G.L. 62C, § 28.

Taxpayer, any person (or the agent or representative of such person) required to file a return or required to pay a tax under M.G.L. c. 62C.

Underpayment, with respect to any tax governed by the provisions of M.G.L. c. 62C, the difference between the amount of tax required to be shown on a return and a lesser amount paid in connection with that return.

Valid Extension of Time to File, in the case of a return required by M.G.L. c. 62C, §§ 11 or 12, an extension of time to file the return granted by the Commissioner where 50% of the amount required to be shown on the return is paid on or before the date prescribed for payment; in the case of any other return, an extension of time to file the return granted by the Commissioner where 80% of the amount required to be shown on the return is paid on or before the date prescribed for payment.

Valid Extension of Time to Pay, an extension of time to pay the tax granted by the Commissioner pursuant to M.G.L. c. 65C, § 10.

(3) Determination of Interest Rate on Unpaid Taxes.

(a) General. Interest accrues on or after January 1, 1993, at the federal short term rate plus four percentage points, and compounds daily. The federal short term rate is determined quarterly and is based on the average yield of outstanding federal obligations with a maturity date of three years or less. *See* IRC §§ 6621(b) and 1274(d). The short term rate is set for the first month of each calendar quarter and takes effect in the first month of the next quarter. The Department of Revenue will announce the applicable Massachusetts rate on a quarterly basis.

(b) Daily Rate. Interest accrues daily on unpaid taxes, interest, and penalties, as described in 830 CMR 62C.33.1. The daily rate can be determined by dividing the quarterly rate described in 830 CMR 62C.33.1(3)(a) by the number of days in the year.

(c) Compounding. Interest will accrue daily on unpaid interest balances (*i.e.*, will compound daily) until all accrued interest has been paid in full. Interest will continue to compound until paid even if the underlying liabilities for tax or penalties have been paid.

(4) Interest on Unpaid Taxes.

(a) General Rule. If any amount of tax is not paid in full on or before the statutory due date of the return, interest accrues prior to January 1, 1993 on the unpaid tax at the rate of 18% *per annum*, or such other rate as may be prescribed by M.G.L. c. 62C, § 32. Interest accrues on or after January 1, 1993 on unpaid taxes and penalties at the rate described in 830 CMR 62C.33.1(3). In situations where a taxpayer has underpaid tax prior to January 1, 1993, the taxpayer's account will be calculated using the former interest rate through December 31, 1992, and the new rate applied to any balance of tax and penalty on and after January 1, 1993, regardless of when the underlying liability was incurred or when the tax was assessed.

(b) Interest Computation on Notice of Assessment. Generally, interest is computed on a daily basis on unpaid tax from the statutory due date of the return to and including the date of full payment of the tax. However, if the Commissioner makes an assessment of tax, including double assessments under M.G.L. c. 62C, § 28, and issues a Notice of Assessment, interest on the assessed tax is computed from the statutory due date of the return to and

including the 30th day following the date of Notice of Assessment, even if payment in full is made prior to such 30th day. If the tax, or any portion thereof, is not paid by the 30th day following the Notice of Assessment, interest again accrues on a daily basis until the tax is paid in full.

(c) Abatement of Interest. The Commissioner may not abate assessed or accrued interest unless the underlying tax on which the interest is computed is also abated.

(5) Penalties.

(a) Penalty Under M.G.L. c. 62C, § 28 for Failure to File or Filing of Incorrect Return.

1. General Rule. Assessment of penalties under M.G.L. c. 62C, § 28 shall be governed by the provisions of 830 CMR 62C.26.1(13) and (14).

2. Abatement of Penalty. The Commissioner shall not abate the tax below double the amount for which the person assessed was properly taxable if such person files a fraudulent return; or, having filed an incorrect or insufficient return fails, after notice, to file a proper return unless the taxpayer can affirmatively demonstrate that there was reasonable cause for the lack of a response or for the late response.

(b) Penalties under M.G.L. c. 62C, § 30 for Failure to Report Federal Income Tax Changes and under M.G.L. c. 62C, § 30A for Failure to Report Changes in Taxes Due in Certain Other Jurisdictions.

1. General Rule. Assessment of penalties under M.G.L. c. 62C, § 30 shall be governed by the provisions of 830 CMR 62C.30.1. Penalties under M.G.L. c. 62C, § 30A shall be governed by the provisions of 830 CMR 62C.30A.1. Other penalties in addition to those imposed under 830 CMR 62C.30.1 and 830 CMR 62C.30A.1 may apply.

2. Abatement of Penalty. Abatement of any penalty imposed for failure of a person or an estate to report to the Commissioner a change in federal personal or corporate taxable income or federal taxable estate as a result of a final determination by the federal government that such income or estate is different from that originally reported shall be governed by the provisions of 830 CMR 62C.30.1(7)(b). Abatement of any penalty imposed for failure of a person to report to the Commissioner a change in tax due to any other state, territory or possession of the United States, or the Dominion of Canada or any of its provinces, on account of any item of gross income of a Massachusetts resident, where such tax is finally determined on or after December 8, 2005 by that jurisdiction to be less than the tax previously reported, and where such tax was the basis for a credit claimed by the Massachusetts resident under M.G.L. c. 62, § 6(a) shall be governed by the provisions of 830 CMR 62C.30A.1(7)(b).

(c) Penalty Under M.G.L. c. 62C, § 33(a), for Failure to File Timely.

1. General Rule. A taxpayer who fails to file a return on or before either the statutory due date of the return or the last day of a valid extension of time to file the return, whichever date is later, is subject to a penalty under M.G.L. c. 62C, § 33(a). The penalty is 1% of the amount of tax required to be shown on the return, and is computed for each month or fraction of a month during which the taxpayer's failure to file the return continues, subject to the limitations in 830 CMR 62C.33.1(5)(c)5.

2. Application of Penalty to Returns. The penalty under M.G.L. c. 62C, § 33(a), is computed only on tax imposed by M.G.L. chs. 60A; 62 through 65C, including double tax assessments under 62C, § 28; 121A, § 10; and 138, § 21; but not on estimated taxes imposed under M.G.L. c. 62B or 63B.

3. Extensions of Time to File Returns. In order to be valid, a request for an extension to file a return must meet the requirements set out in 830 CMR 62C.19.1. Generally, a return required by M.G.L. c, 62C, §§ 11 or 12 must include at least 50% of the tax due and a request for an extension to file any other return required by M.G.L. c. 62C must include at least 80% of the tax due. The following rules apply when a taxpayer obtains an extension of time to file a return:

a. if the taxpayer obtains a valid extension of time to file and files the return within the time allowed by the extension, the M.G.L. c. 62C, § 33(a) penalty does not apply;

b. if the taxpayer obtains a valid extension of time to file but does not file the return within the time allowed by the extension, the M.G.L. c. 62C, § 33(a) penalty is computed beginning as of the last day of the extension; and

c. if the taxpayer files an application for extension that does not meet the requirements for obtaining a valid extension of time to file, the extension is void and the M.G.L. c. 62C, § 33(a) penalty is computed beginning as of the statutory due date of the return, as if the taxpayer had not filed for any extension.

4. Computation on Unpaid Portion of Amount Required to be Shown. The amount of tax required to be shown on a return is the proper amount of tax ultimately determined to have been due on the statutory due date for the complete period covered by the return. The amount required to be shown consists of both unreported tax determined by the Commissioner to have been due, as well as the tax that is properly reported by the taxpayer as having been due. The penalty under M.G.L. c. 62C, § 33(a), is computed each month on the amount of tax required to be shown on the return, less any portion of the tax that was paid on or before the due date, and less any credits against the tax which are allowable on the return.

5. Limitation on Amount of Penalty. The penalty under M.G.L. c. 62C, § 33(a), ceases to accrue when any of the following events occurs:

a. the return is filed;

b. the aggregate M.G.L. c. 62C, § 33(a) penalty totals 25% of the amount of tax required to be shown on the return, less any portion of the tax that was paid on or before the due date, and less any credits against the tax which are allowable on the return; or

c. the taxpayer fails to file a return and the Commissioner makes an assessment of tax for the tax period that would have been covered by the return.

6. Effect of Assessment When a Taxpayer Fails to File. If, as a result of a taxpayer's failure to file a return, the Commissioner makes an assessment of the tax, the Commissioner's assessment is deemed to be the taxpayer's filing of the return. The M.G.L. c. 62C, § 33(a) penalty is computed on an amount equal to the unpaid tax assessed by the Commissioner, from the due date of the return until the first of the three events identified in 830 CMR 62C.33.1(5)(c)5. takes place.

7. Waiver or Abatement of Penalty. The Commissioner may waive or abate the penalty imposed under M.G.L. c. 62C, § 33(a), if the Commissioner finds that a taxpayer's failure to file timely was due to reasonable cause and not willful neglect. A taxpayer seeking an abatement of the penalty must present specific facts establishing that its failure to file timely was due to reasonable cause. A mere assertion, by affidavit or otherwise, that the failure to file timely was reasonable or excusable due to oversight or inadvertence is not sufficient to establish reasonable cause.

(d) Penalty Under M.G.L. c. 62C, § 33(b), for Failure to Pay Tax Timely.

1. General Rule. A taxpayer who fails to pay a tax on or before the date prescribed for payment is subject to a penalty under M.G.L. c. 62C, § 33(b). The penalty is 1% of the unpaid amount of tax shown on the return, and is computed for each month or fraction of a month during which the taxpayer's failure to pay the tax continues, subject to the limitations in 830 CMR 62C.33.1(5)(d)5.

2. Application of Penalty to Taxes. The penalty under M.G.L. c. 62C, § 33(b), is computed only on amounts of tax imposed by M.G.L. chs. 60A; 62 through 65C, including doubled tax assessments under 62C, § 28; 121A, § 10; and 138, § 21; but not on estimated taxes imposed under M.G.L. c. 62B or 63B.

3. Extensions of Time to Pay Tax. The following rules apply when a taxpayer obtains a valid extension of time to pay the tax:

a. if the taxpayer obtains a valid extension of time to pay and pays the tax within the time allowed by the extension, the M.G.L. c. 62C, § 33(b) penalty does not apply;

b. if the taxpayer obtains a valid extension of time to pay but does not pay the tax within the time allowed by the extension, the M.G.L. c. 62C, § 33(b) penalty is computed beginning as of the last day of the extension; and

c. if the taxpayer files an application for extension that does not meet the requirements for obtaining a valid extension of time to pay the tax, the extension is void and the M.G.L. c. 62C, § 33(b) penalty is computed as of the statutory due date of the return, as if the taxpayer had not filed for any extension.

4. Computation on Amount of Tax Shown on Return. The amount of tax shown on a return is the total amount of tax reported by the taxpayer as due for the complete period

covered by the return. The penalty under M.G.L. c. 62C, § 33(b), is computed each month on the amount of tax shown on the return, less any portion of the tax that is paid at any time prior to the first day of the month for which it is computed.

5. Limitation on Amount of Penalty. The penalty under M.G.L. c. 62C, § 33(b), ceases to accrue if any of the following events occurs:

a. the taxpayer pays the full amount of tax shown on the return;

b. the aggregate M.G.L. c. 62C, § 33(b) penalty totals 25% of the amount of tax shown on the return;

c. the taxpayer and the Commissioner execute a written settlement agreement under M.G.L. c. 62C, § 37A, which provides that the M.G.L. c. 62C, § 33(b) penalty ceases to accrue; or the taxpayer and the Commissioner execute a written payment agreement which provides that the M.G.L. c. 62C, § 33(b) penalty ceases to accrue.

6. Effect of Assessment When a Taxpayer Fails to File. If, as a result of a taxpayer's failure to file a return, the Commissioner makes an assessment of the tax, the Commissioner's assessment is deemed to be the taxpayer's filing of the return. The M.G.L. c. 62C, § 33(b) penalty is computed on the amount of unpaid tax assessed by the Commissioner, and is computed beginning as of the statutory due date of the return.

7. Waiver or Abatement of Penalty. The Commissioner may waive or abate the penalty imposed under M.G.L. c. 62C, § 33(b), if the Commissioner finds that a taxpayer's failure to pay the tax timely was due to reasonable cause and not willful neglect. A taxpayer seeking an abatement of the penalty must present specific facts establishing that its failure to pay timely was due to reasonable cause. A mere assertion, by affidavit or otherwise, that the failure to pay timely was reasonable or excusable due to oversight or inadvertence is not sufficient to establish reasonable cause.

(e) Penalty Under M.G.L. c. 62C, § 33(c), for Failure to Pay Assessment Timely.

1. General Rule. A taxpayer who fails to pay an assessment of tax not reported on a return within 30 days following the date of the Commissioner's Notice of Assessment, is subject to a penalty under M.G.L. c. 62C, § 33(c). The penalty is 1% of the unpaid assessed tax stated in the Notice of Assessment, and is computed, beginning as of the 30th day following the date of the Notice of Assessment, for each month or fraction of a month during which the taxpayer's failure to pay the assessment continues, subject to the limitations in 830 CMR 62C.33.1(5)(e)4.

2. Application of Penalty to Taxes. The penalty under M.G.L. c. 62C, § 33(c), is computed on all taxes imposed by M.G.L. chs. 60A; 62 through 65C, including double assessments of tax under M.G.L. c. 62C, § 28; 121A, § 10; and 138, § 21; but not on estimated taxes imposed under M.G.L. c. 62B or 63B.

3. Computation on Assessed Tax in Notice. The penalty under M.G.L. c. 62C, § 33(c), is computed each month on the amount of tax, including assessments under M.G.L. c. 62C, § 28, stated in the Notice of Assessment, less any portion of that tax that is paid prior to the first day of the month for which it is computed.

4. Limitation on Amount of Penalty. The penalty under M.G.L. c. 62C, § 33(c), ceases to accrue if any of the following events occur:

a. the taxpayer pays the full amount of assessed tax stated in the Notice of Assessment;

b. the aggregate M.G.L. c. 62C, § 33(c) penalty totals 25% of the amount of assessed tax stated in the Notice of Assessment;

c. the taxpayer and the Commissioner execute a written settlement agreement under M.G.L. c. 62C, § 37A which provides that the M.G.L. c. 62C, § 33(c) penalty ceases to accrue; or the taxpayer and the Commissioner execute a written payment agreement which provides that the M.G.L. c. 62C, § 33(c) penalty ceases to accrue.

5. Abatement of Penalty. The Commissioner may abate the penalty imposed under M.G.L. c. 62C, § 33(c), if the Commissioner finds that a taxpayer's failure to pay the assessment timely was due to reasonable cause and not willful neglect. A taxpayer seeking an abatement of the penalty must present specific facts establishing that its failure to pay the assessment timely was due to reasonable cause. A mere assertion, by affidavit or otherwise, that the failure to pay timely was reasonable or excusable due to oversight or inadvertence is not sufficient to establish reasonable cause.

(f) Penalty Under M.G.L. c. 62C, § 35, for Tender of Worthless Check or Electronic Funds Transfer.

1. General Rule. A taxpayer who submits a check or electronic funds transfer in payment of any tax, interest, penalty, fee or other charge, which check or electronic funds transfer is not duly paid, shall be subject to penalty under M.G.L. c. 62C, § 35. The penalty is an amount equal to 2% of the amount of such check or electronic funds transfer; provided, however, that if the amount of such check or transfer is less than $1,500, the penalty shall be $30 or the amount of such payment, whichever is less.

2. The Commissioner has discretion to abate any penalty assessed pursuant to M.G.L. c. 62C, § 35 for payment of any tax, interest, penalty, fee or other charge by a check or electronic funds transfer which is not duly paid. A mere assertion, by affidavit or otherwise, that the failure to properly tender the check or transfer was reasonable or excusable due to oversight or inadvertence is not sufficient to establish reasonable cause.

(g) Penalty Under M.G.L. c. 62C, § 35A, for Negligence or Substantial Understatement of Tax.

1. General Rule. A taxpayer who files a return on or after December 8, 2005 which reflects an underpayment of tax required to be shown on such return and which is attributable to negligence or disregard of the tax laws of the Commonwealth or of public written statements issued by the Commissioner (other than a letter ruling, unless issued to the same taxpayer) or is attributable to a substantial understatement of liability shall be subject to a penalty under M.G.L. c. 62C, § 35A. The penalty shall be an amount equal to 20% of the portion of the underpayment to which M.G.L. c. 62C, § 35A applies.

2. Limitation on Amount of Penalty. The penalty under M.G.L. c. 62C, § 35A is limited by the following provisions:

a. The amount of an understatement will be reduced by any portion of the understatement attributable to a position supported by substantial authority or if the relevant facts and basis for the position are adequately disclosed in the return and there is a reasonable basis for the return position. However, these mitigating factors are inapplicable in the case of listed abusive transactions or strategies as noted in 830 CMR 62C.33.1(5)(k).

b. A penalty under M.G.L. c. 62C, § 35A may not be imposed with respect to any portion of an underpayment if it is shown there was reasonable cause for such portion and the taxpayer acted in good faith.

(h) Penalty Under M.G.L. c. 62C, § 35C, for Return Preparers.

1. General Rule for Penalty Under M.G.L. c. 62C, § 35C(a). A person who is a return preparer with respect to a return or claim for abatement or refund is subject to a $1,000 penalty for a position taken on such return or claim for abatement or refund filed on or after December 8, 2005 where the position had no realistic possibility of being sustained on its merits and the facts of the item at issue and basis for the position were not disclosed or the position taken was frivolous.

2. Period for Assessment. A penalty under M.G.L. c. 62C, § 35C(a) may be assessed within three years after the return or claim is filed.

3. Waiver or Abatement of Penalty. The Commissioner may waive or abate a penalty under M.G.L. c. 62C, § 35C(a) if the return preparer can demonstrate reasonable cause and not willful neglect. An application for abatement may be filed up to three years from the time such penalty is paid.

4. General Rule for Penalty Under M.G.L. c. 62C, § 35C(b). Where any part of an understatement on a return or a claim for refund or abatement filed on or after December 8, 2005 is due to a willful attempt by the return preparer to understate a tax liability or results from the preparer's careless, reckless or intentional disregard of the Commonwealth's tax laws or the Commissioner's public written statements (other than a letter ruling, unless issued to the same taxpayer), the preparer shall be subject to a penalty equal to the greater of $1,000 or 10% of the tax attributable to such understatement, provided that where penalties under M.G.L. c. 62C, § 35C(a) and (b) are applicable to the same return or claim, the penalty under M.G.L. c. 62C, § 35C(b) will be reduced by the amount of the penalty imposed under M.G.L. c. 62C, § 35C(a).

5. Period for Assessment. A penalty under M.G.L. c. 62C, § 35C(b) may be assessed against the return preparer at any time.

6. Abatement of Penalty. An application for abatement of a penalty under M.G.L. c. 62C, § 35C(b) may be filed within two years from the time the assessment was made.

7. Standard for Careless, Reckless or Intentional Disregard. A return preparer will not be considered to have carelessly, recklessly or intentionally disregarded a tax law or public written statement if the position taken on the return or claim is adequately disclosed; and either in the case of a return, has a realistic possibility of being sustained on the merits, or in the case of a claim for abatement or refund, is not frivolous.

62C.33.1: continued

(i) Penalty Under M.G.L. c. 62C, § 35D for Inconsistent Filing Positions.

1. General Rule. A taxpayer must disclose any inconsistent filing position when it files returns under M.G.L. c. 63 and M.G.L. c. 62 on or after December 8, 2005. If such inconsistent filing position is not disclosed, the taxpayer will be subject to a penalty equal to the amount of tax attributable to the inconsistency. This penalty under M.G.L. c. 62C, § 35D is in addition to any other penalties that may apply.

Example 1: A foreign corporation doing business in Massachusetts sells the stock of a subsidiary. The corporation's commercial domicile is in another state. The corporation claims there was no unitary business relationship between it and the subsidiary and therefore does not apportion the gain from the sale in reporting income for Massachusetts corporate tax purposes. Rather, the corporation allocates the gain from the sale of the subsidiary to its state of commercial domicile, and it reports the gain in a consistent manner in its state of commercial domicile. The corporation is not subject to the penalty for an inconsistent filing position.

Example 2: The facts are the same as in Example 1 except that the corporation treats the gain from the sale of its subsidiary as apportionable income in its state of commercial domicile and does not report the inconsistency in reporting income for Massachusetts corporate tax purposes. The law in the corporation's state of commercial domicile is the same in all material respects. The corporation is subject to the penalty for an inconsistent filing position.

2. Waiver or Abatement of Penalty. The Commissioner may waive or abate a penalty under M.G.L. c. 62C, § 35D if the inconsistent filing position or failure to disclose was attributable to reasonable cause and not willful neglect. A mere assertion, by affidavit or otherwise, that the inconsistent filing position or failure to disclose was reasonable or excusable due to oversight or inadvertence is not sufficient to establish reasonable cause.

(j) Penalty Under M.G.L. c. 62C, § 35E for Promoters of Abusive Tax Shelters.

1. General Rule. Where a person (hereinafter a "promoter") organizes or assists in the organization of a plan or arrangement or the sale of a plan or arrangement and makes or furnishes or causes another person to make or furnish a statement with respect to the allowability of a deduction or credit, the excludability of income, or the securing of any other tax benefit, including the avoidance of a filing requirement, which tax benefit the promoter knows or has reason to know is false, fraudulent, or deliberately misleading as to any material matter, the promoter shall pay a penalty equal to $5,000, or, if the promoter establishes that it is lesser, 100% of the gross income derived or to be derived from the proscribed activity.

2. Applicability. Imposition of the penalty under M.G.L. c. 62C, § 35E applies with respect to each taxpayer to whom the promoter makes an offending statement. Without limitation, the Commissioner may apply the penalty under M.G.L. c. 62C, § 35E to persons subject to penalty under Internal Revenue Code § 6700, whether or not such penalty has been imposed, where such activities affect tax returns required to be filed with the Commissioner, as well as to persons promoting plans or arrangements with respect to asserted benefits that are specific to state taxes.

3. Period for Assessment. A penalty under M.G.L. c. 62C, § 35E may be assessed within six years after the offending statement is made.

4. Abatement of Penalty. An application for abatement of a penalty under M.G.L. c. 62C, § 35E may be filed within two years from the time the assessment was made.

(k) Listed Abusive Transactions or Strategies. The Department may apply the relevant penalty provisions to abusive plans or arrangements including, but not limited to, "listed transactions" as defined by the Internal Revenue Service ("IRS") in Treasury Regulation § 1.6011-4(b)(2) as warranted.

In addition to federally "listed transactions" the Commissioner reserves the right to identify, by public written statement, abusive transactions or tax strategies to which the relevant penalties will apply.

62C.33.1: continued

(6) Interest on Penalties.

(a) General Rule. On or after January 1, 1993, interest accrues on unpaid penalties as well as unpaid tax at the federal short term rate plus four percentage points, compounded daily.

(b) Period for Computing Interest. Interest accrues on the failure to file penalty under M.G.L. c. 62C, § 33(a), starting on the later of the statutory due date or the last day of a valid extension of time to file the return, and continuing to the date of the payment of the penalty, and on failure to pay penalties under M.G.L. c. 62C, §§ 33(b) and 33(c), starting 31 days after the notice of assessment and continuing to the date of full payment of the penalty amounts.

(c) Abatement of Interest. The Commissioner may not abate assessed or accrued interest on penalties unless the underlying penalty on which the interest is computed is abated.

(7) Interest on Refunds of Overpayments.

(a) General Rule. Effective July 1, 2003, the interest rate on refunds of overpayments is the federal short-term rate plus two percentage points, simple interest. For the period from January 1, 1993 until June 30, 2003, interest on a refund of an overpayment will be paid at the federal short term rate determined under § 6621(b) of the Internal Revenue Code, as amended and in effect for the taxable year, plus four percentage points, compounded daily.

(b) Period for Computing Interest for Abatement Applications filed before July 1, 2003. Interest is computed from the due date of the applicable return without regard to extensions, or date of receipt of the overpayment, or the date of filing of the return, whichever is later, to a date no more than 30 days before the issuance of the refund.

(c) Interest on Abatements for Abatement Applications filed on or after July 1, 2003. Interest will be calculated on any tax, interest or penalty refunded from the date of receipt of a completed and fully substantiated abatement application.

(d) Interest on Denied Abatements. In a case in which the Commissioner has denied an abatement application based upon incomplete supporting information, no interest under M.G.L. c. 62C, § 40 shall begin to accrue upon any such claim which is appealed to the appellate tax board or to a probate court under M.G.L. c. 62C, § 39 before the date on which a decision on such claim on the merits is rendered by the board or court in favor of the taxpayer unless the board or the court, whichever the case may be, expressly holds that interest shall begin to accrue from an earlier date as it sees fit.

(e) Interest Where Return Does Not Agree with Information from Third Party Sources or DOR Records. For returns filed on or after July 1, 2003, no interest will be paid on refunds of overpayments of tax if the return as filed requires correction of the tax liability by the Department based on information from third party sources or Department records.

Example: A taxpayer files a return reflecting a tax due of $500. However, the return was prepared based upon a Form W-2 that overstated the taxpayer's wages. A corrected Form W-2 from the taxpayer's employer was subsequently submitted, and the return as adjusted for the corrected W-2 reflected an overpayment. No interest on the resulting refund will be paid.

(8) Methods for Directing Payment.

(a) General Rule. A taxpayer may not direct involuntary payments. A taxpayer may direct the Commissioner to apply the taxpayer's voluntary payment to one or more specific assessments or anticipated assessments of interest, penalties, or tax by submitting written instructions to the Commissioner at the time the payment is made and in the manner provided in 830 CMR 62C.33.1. The Commissioner will not recognize oral instructions. Written instructions may be given by completing and signing Form TDP-1 and submitting the Form with the payment, or by submitting with the payment a letter that contains all information specified in 830 CMR 62C.33.1(8)(b) through (e). A taxpayer may not direct the application of a payment by writing on the payment check.

NON-TEXT PAGE

62C.33.1: continued

(b) Direction by Letter.

1. Required Information. If a taxpayer directs the application of a payment in a letter, the letter will be effective only if it accompanies the payment and contains all of the information listed in 830 CMR 62C.33.1(8)(b)1.a. through c.

a. the name, address, and social security number (or other federal tax identification number) of the taxpayer;

b. a clear statement of the particular liabilities to which the taxpayer's payment should be applied, generally including the tax type, period, and amount;

c. the taxpayer's signature and the date of signature.

2. Extrinsic Information. Letters directing payments should be limited to the subject of application of payments. Taxpayers who wish to bring other matters to the attention of the Department should do so by separate correspondence.

(c) Multiple Instructions and Past and Future Payments. In the case of multiple payments, a separate written instruction must be attached to each payment. Also, the Commissioner will not accept or recognize written instructions that attempt to direct the application of one or more past payments or that attempt to direct the application of one or more future payments.

(d) Payment Agreements. A payment agreement entered into by the Commissioner under M.G.L. c. 62C, §§ 64, 65, shall not be construed as allowing a taxpayer to direct payments made under the agreement unless the agreement expressly allows such direction.

(e) Application of Excess Amounts. If a payment that is directed to a particular liability or liabilities exceeds the amount of the specified liability or liabilities, the Commissioner may apply the excess amount in any manner. A payment directed to a specified tax type and period will be treated as an excess payment to the extent that it exceeds the total of the assessments or anticipated assessments, as evidenced by a Notice of Intent to Assess, for that tax type and period made on or before the date of the payment. A payment directed to a specified tax type and period will also be treated as an excess payment if the specified liability is reduced after the date of payment, due to abatement or otherwise, and if the payment exceeds the reduced liability.

(9) Application of Payments in the Absence of Taxpayer Instruction.

(a) General Rule. In the absence of written taxpayer instructions given in the manner provided in 830 CMR 62C.33.1(8), the Commissioner may apply a taxpayer's payments to its outstanding liabilities in any manner. In the case of partial written instructions, such as a payment directed to tax with no instructions relating to tax type or period, the Commissioner may apply the payment in any manner that does not conflict with the partial instructions given.

(b) Order of Application and New Ordering Rules. In general, in the case of a taxpayer with outstanding liabilities for multiple types of taxes over multiple tax periods, the Commissioner will apply a payment first by tax type, in the order specified in 830 CMR 62C.33.1(9)(c), second by tax period in chronological order, and finally, within any one tax type and period, to tax, penalties, and interest in that order. However, the Commissioner may adjust the general payment application sequence when a particular liability is approaching the statute of limitations for collection, or for any other reason that, in the Commissioner's discretion, requires such an adjustment.

(c) Application by Tax Type. The following is a list of major tax types. As provided in 830 CMR 62C.33.1(9)(b), the Commissioner generally will follow the numerical order listed below when applying taxpayer payments. This list reflects the Department's practice of 830 CMR 62C.33.1 as of May 4, 2007, but it is provided for general information only. The list is not binding on the Commissioner and may be changed without notice.

1. Excise of domestic corporations;
2. Excise of foreign corporations;
3. Personal income tax (other than fiduciary income);
4. Tax on income received by fiduciaries;

5. Taxes withheld from wages;
6. Room occupancy excise;
7. Sales tax on meals;
8. Sales taxes (other than meals);
9. Estate tax.

62C.37.1: Abatements

(1) Statement of Purpose; Organization.

(a) The purpose of 830 CMR 62C.37.1 is to explain how, under M.G.L. c. 62C, § 37, a person may apply for an abatement of tax or penalty that has been assessed by DOR (*e.g.* "deficiency assessment"). 830 CMR 62C.37.1 also explains how a taxpayer may:

1. dispute a responsible person determination;
2. dispute a state-collected motor vehicle excise assessment;
3. seek an abatement of self-assessed tax on behalf of a vendor/operator;
4. seek an abatement when an amended return is treated as an application for abatement;
5. seek relief from joint tax liability; or
6. seek an abatement as otherwise provided for by the Commissioner.

As of December 5, 2016, an amended return shall be filed by all taxpayers, except as specified above, when seeking to increase a previously self-assessed tax; decrease a previously self-assessed tax; report an increase in tax resulting from a final federal or state determination; report a decrease in tax resulting from a federal or state determination; and report amendments that have no net effect on the tax shown on a return. An amended return shall be filed in the manner prescribed by the Commissioner in 830 CMR 62C.26.2, 62C.30.1 or 62C.30A.1, as applicable. Such filers will no longer file an abatement application to amend a return and, except as specified, an amended return is not a form approved by the commissioner to seek abatement of tax.

(b) 830 CMR 62C.37.1 is organized as follows:

1. Statement of Purpose; Organization
2. Definitions
3. Time for Filing Application
4. Limitations on Amount of Abatement
5. Application for Abatement
6. Substantiation Requirements; Denial for Failure to Substantiate
7. Hearing on the Application
8. Decision on the Application
9. Abatement of Additional Tax or Penalty
10. Erroneous Refunds

(2) Definitions. For the purposes of 830 CMR 62C.37.1 only, the following terms shall have the following meanings:

Abatement, a reduction of an amount of tax that equals the difference between the amount of tax assessed as a result of an assessment or deemed assessment and the lower amount of tax properly due.

Assessment:

(a) the issuance of a Notice of Assessment to a taxpayer, or the entry in the Commissioner's assessment records of an amount due from the taxpayer, if such entry predates the Notice of Assessment; or

(b) the taxpayer's calculation and declaration of the tax due, as provided under M.G.L. c. 62C, § 26(a), completed on a return, or on any amendment, correction, or supplement thereto, by the taxpayer or the taxpayer's representative and duly filed with the Commissioner, in accordance with rules adopted by the Commissioner; provided, however, that for purposes of the time limit for the taxpayer to apply for an abatement, the date of assessment shall not be before the date of Notice of Assessment.

Commissioner, the Commissioner of Revenue or the Commissioner's designee duly authorized to perform the duties of the Commissioner.

Department, the Department of Revenue.

Original Return, the original tax return filed by the taxpayer for the tax year at issue.

Tax or Taxes, any tax imposed under M.G.L. chs. 60A, 62 through 65C, c. 121A § 10, and c. 138, § 21, and any penalties imposed under M.G.L. c. 62C.

Taxpayer, any person required to pay taxes imposed under M.G.L. chs. 60A, 62 through 64J, 65B and 65C, 121A, § 10, and 138, § 21 or required to file returns under M.G.L. c. 62C, §§ 6 through 8, 10 through 14, and 16 through 18.

(3) Time for Filing Application.

(a) General Rule. An application for abatement may be filed at any time within three years from the date of filing of the original return, taking into account M.G.L. c. 62C, § 79, paragraph (a), within two years from the date the tax was assessed or deemed to be assessed, or within one year from the date that the tax was paid, whichever is later.

(b) Exception to General Rule if Commissioner and Taxpayer Agree to Assessment Extension. If the Commissioner and the taxpayer have agreed to extend the period for assessment of a tax pursuant to M.G.L. c. 62C, § 27, the application for abatement may be made within the assessment extension period.

(4) Limitations on Amount of Abatement. If more than three years have expired from the date of filing of the original return, taking into account M.G.L. c. 62C, § 79, paragraph (a), and an application for abatement is filed within two years of an assessment the Commissioner will grant an abatement up to the amount of that assessment. If the time for filing an abatement application has otherwise expired and an application for abatement is filed within one year of a payment of a portion of an assessment, the Commissioner will not grant an abatement in excess of the payment.

(5) Application for Abatement.

(a) Prerequisites.

1. Return. Any taypayer filing an application for abatement of an assessed tax shall have filed, at or before the time of filing the application, a tax return for the period to which the application relates as required by M.G.L. c. 62C. Filing a return is not a prerequisite if the abatement application is founded on the assertion that no return is required.

2. Assessment. No application for abatement should be filed until the tax is actually assessed. Only upon actual assessment is a person "aggrieved by the assessment of a tax" within the meaning of M.G.L. c. 62C, § 37.

Example: The Commissioner determines that Vendor A has not reported fully the gross receipts from sales at retail as required by M.G.L. chs. 62C and 64H. After the return is filed, the Commissioner timely notifies A of the Commissioner's intention to make an additional assessment pursuant to M.G.L. c. 62C, § 26(b). No assessment has actually been made. Vendor A should not file an application for abatement until and unless the tax is actually assessed by the Commissioner.

(b) Form of Application. Except as noted in 830 CMR 62C.37.1(1)(a) and (5)(d), *infra*, each applicant shall file an Application for Abatement, either electronically using MTC or on a paper form, and shall set forth, in addition to taxpayer identification:

1. the type of tax;
2. the taxable periods;
3. the amount of abatement requested; and
4. the specific facts and contentions of law relied upon. *See* 830 CMR 62C.37.1(6) for substantiation requirements.

(c) Waiver of Time Limitation. Unless an applicant strikes the consent clause of the application or otherwise withdraws consent in writing, the filing of an application for abatement, including an amended return treated as an abatement application, by an applicant shall act as a waiver of the right to treat the Commissioner's failure to act on the application prior to six months from the date of filing as a denial of the application pursuant to M.G.L. c. 58A, § 6. This waiver may be withdrawn at any time in writing by the applicant, in which event the application, unless previously acted upon by the Commissioner, shall be

deemed to be denied at the expiration of the six months or on the date of withdrawal, whichever is later.

(d) Change in Federal Taxable Income, Federal Tax Credits, or Federal Taxable Estate or in Tax Liability to Another State or Jurisdiction. A taxpayer should follow the procedures in 830 CMR 62C.30.1 and 62C.30A.1, respectively to report such changes.

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(e) Stay of Involuntary Collection. The filing of an application for abatement shall stay involuntary collection of the disputed portion of tax imposed by M.G.L. chs. 62, 63, 64A through 64F, 64J through 65C, and by M.G.L. c. 138, § 21 and trustee taxes imposed by M.G.L. c. 62B and by M.G.L. c. 64G through 64I, provided that the taxes imposed under these chapters were not withheld by the employer or collected by the vendor. The statute of limitations for collection of taxes in M.G.L. c. 62C, § 65, and the date of termination of tax liens in M.G.L. c. 62C, § 50, is extended by the period that collection of the tax is stayed by M.G.L. c. 62C, § 32(e). Interest and penalties under M.G.L. c. 62C, §§ 33(a) and 33(b) will continue to accrue. The stay expires on the date on which any right of appeal from a refusal or deemed refusal by the Commissioner to grant an abatement of such tax expires without any appeal to the Appellate Tax Board (ATB) or the probate court having been filed, or as otherwise provided in M.G.L. c. 62C, § 32(e).

(f) Multiple Claims.

1. A taxpayer shall file a separate application for abatement of each tax, penalty or additional assessment or portion thereof for each taxable period; however, where the tax is due on other than an annual basis the taxpayer may file one application combining taxable periods of each calendar year. If different issues are raised on the combined application, the application must clearly specify which issues are related to each of the periods. A taxpayer using MassTaxConnect may file a dispute for multiple periods on the same account at the same time.

2. A taxpayer should combine all challenges to an assessment in a single abatement application. However, a taxpayer may file a subsequent application for abatement concerning the same tax and taxable period as a previous application so long as the taxpayer intends to challenge a portion of the tax different from that challenged in the previous application. A taxpayer may not file a second application for abatement which puts in issue the identical item of tax for a given period as challenged in a previous application.

The following list illustrates but does not exhaust situations in which a timely second abatement application, concerning the same tax and taxable period as a previous application, would be considered by the Commissioner:

a. The first application for abatement from a business corporation challenges an assessment by the Department (deficiency assessment) resulting from a final determination by the federal government of a change in the corporation's net taxable income due to disallowance of entertainment expenses, and the second application challenges apportionment of the corporation's net income.

b. The first application for abatement challenges a deficiency assessment based on under reporting the number of dependents on a personal income tax return, and the second application challenges the deficiency assessment based on an understatement of the taxpayer's social security deduction.

c. The first application for abatement from an executor liable for the M.G.L. c. 65C estate tax challenges the Commissioner’s determination of the value of decedent's real estate and the second application for abatement challenges the Commissioner’s determination of the value of decedent's closely held business.

3. The Commissioner would not consider a later application for abatement in the following illustrative cases:

a. Taxpayer fails to file an appeal to the Appellate Tax Board within 60 days of the denial of the abatement and, in an attempt to revive the taxpayer's lapsed right of appeal, files an identical second application for abatement with the Commissioner.

b. The first application for abatement challenges the Commissioner's deficiency assessment based on an interpretation of M.G.L. c. 62 as imposing a tax on interest income from New York City bonds, the second application requests an abatement of the Commissioner's tax assessment based on the same interest income on the ground that the statute is unconstitutional.

(6) Substantiation Requirements; Denial For Failure to Substantiate.

(a) Substantiation Generally.

1. An applicant filing an application for abatement, shall attach all supporting information, documents, explanations, arguments and authorities that will reasonably enable the Commissioner to determine whether the applicant is entitled to the abatement amount requested.

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2. The applicant shall not be considered to have submitted a completed written abatement application until the date on which all such information reasonably requested from the applicant and reasonably necessary for a decision, including the amount of abatement claimed and the factual and legal basis for claiming an abatement, has been furnished to the Commissioner.

3. If the Commissioner has made a written request to the applicant for additional information, not then contained in the taxpayer's pending abatement application, and the applicant fails to provide such information within 30 days after such request, or within any extended period allowed by the Commissioner, that application shall be considered incomplete and shall be denied without prejudice to its timely renewal.

4. The Commissioner shall give such applicant written notice that the denial is based upon the lack of sufficient information to grant the taxpayer's abatement application.

5. Following a denial of an unsubstantiated abatement application, the applicant may file a new abatement application that must be properly substantiated with additional facts and information within the time limitations of 830 CMR 62C.37.1, and M.G.L. c. 62C, § 37, without regard to the prior filing, or in the alternative, may appeal to the Appellate Tax Board or the probate court on the merits within the time limitations of M.G.L. c. 62C, § 39. The applicant may not file a new abatement application raising the same issues while an appeal is pending on the merits either before the Appellate Tax Board or the Probate court.

6. The substantiation requirements of M.G.L. c. 62C, § 37, and 830 CMR 62C.37.1, do not preclude a taxpayer from amending a pending, timely filed abatement application to add additional claims based on new legal precedent not available to the taxpayer at the time the application was filed.

(b) Substantiation of Refund to Purchaser. If a purchaser is filing an application for abatement on behalf of an operator subject to the room occupancy excise as defined in M.G.L. c. 64G, § 1 or on behalf of a vendor subject to the sales or use tax as defined in M.G.L. c. 64H or c. 64I, § 1 no refund of money shall be made until it is established, to the satisfaction of the Commissioner, that the operator or vendor has repaid or credited or will repay or credit any purchaser who has paid the tax to the operator or vendor in the amount for which the application is made. The repayment or credit to the purchaser must include all interest paid pursuant to M.G.L. c. 62C, § 40, unless the vendor or operator actually repaid or credited the purchaser the amount in question prior to the filing of the abatement application. An operator or vendor may use any reasonable method to allocate interest among purchasers that is supported by its books and records.

(7) Hearing on the Application. Any applicant who files an application for abatement may request a hearing upon the application either in the application itself or by separate written request made before the Commissioner has acted upon the application. The hearing shall be set down for a specific date and the applicant shall be given notice thereof in writing at least ten days before the hearing. A taxpayer will be entitled to either a pre-assessment hearing under M.G.L. c. 62C, § 26(b) or an abatement hearing under M.G.L. c. 62C, § 37, but not both. An exception to this one-hearing rule will be made if there is new factual information or new legal precedent that was not available at the time of the pre-assessment hearing or the taxpayer raises a new issue not considered at the pre-assessment hearing.

(8) Decision on the Application. If the Commissioner finds that the tax is excessive in amount or illegal, the tax shall be abated in whole or in part, accordingly. The Commissioner shall mail or deliver written notice of the decision to grant or deny the abatement application to the taxpayer or the taxpayer's representative. The taxpayer may appeal from the Commissioner's decision within 60 days of the date of notice of the decision in accordance with M.G.L. c. 62C, § 39.

(9) Abatement of Additional Tax or Penalty. Refer to M.G.L. c. 62C, § 33 and 830 CMR 62C.33.1, on Interest, Penalties, and Application of Payments, for information on abatement of penalties and interest.

(10) Erroneous Refunds. In the event of an erroneous refund, the provisions of M.G.L. c. 62C, § 36A will apply.

NON-TEXT PAGE

62C.47A.1: Lists of Licenses and Providers

(1) Definitions.

Agency, every department board, commission, division, authority or other agency of the Commonwealth or of its subdivisions.

Commissioner, the Commissioner of Revenue.

License, any license or other certificate of authority to conduct a profession, trade or business.

Provider, any person who has agreed to furnish goods, services or real estate space to an agency or subdivision.

Subdivision, every political subdivision of the Commonwealth, including counties, cities, towns, and districts.

(2) Annual Submission of Information.

(a) Every agency or subdivision issuing or renewing a license must annually, on or before February 1, furnish to the Commissioner a report of all licenses issued or renewed by the agency or subdivision during the preceding calendar year.

(b) Every agency or subdivision, except for towns and districts having a population of less than 5,000 and agencies thereof, must annually, on or before August 1, furnish to the Commissioner a report of all providers who have furnished goods, services or real estate space to the agency or subdivision during the preceding fiscal year, under contracts or agreements which, taken together, required the agency or subdivision to pay the provider $5,000.00 or more during the preceding fiscal year. The Commissioner may waive this requirement with respect to payments by state agencies which have been individually reported to, and certified prior to payment by, the Comptroller's Division of the Executive Office for Administration and Finance. In the event of a waiver of this requirement, such payments will not be taken into account in determining whether the agency was required to pay the provider $5,000.00 or more during the preceding fiscal year.

(3) Form and Contents.

(a) The information on licenses must include the name, address, and social security or federal identification number of each licensee, his license number, and the type of license issued to him.

(b) The information on providers must include the name, address, and social security or federal identification number of each provider, the provider identification number assigned to him by the agency or subdivision, and the amount paid to him during the preceding fiscal year.

(c) Agencies and subdivisions must provide information either electronically or on magnetic tape, in a format approved by the Commissioner.

(PAGES 169 AND 170 ARE RESERVED FOR FUTURE USE.)

62C.47A.2: continued

(5) Action by Agency or Subdivision.

(a) General. An agency or subdivision will not reissue, renew or extend a license or agreement if it has been notified by the Commissioner that the licensee or provider is delinquent, until the agency or subdivision receives a certificate from the Commissioner that the Person is in good standing with respect to any and all returns due and taxes payable to the Commissioner as of the date of issuance of the certificate. The Commissioner will issue such a certificate to the agency or subdivision, at the person's request, when the person has satisfied the Commissioner that he is in good standing.

(b) Suspension or Revocation of State Licenses.

1. General. M.G.L. c. 62C, § 47A requires state agencies to suspend or revoke the licenses of delinquent licensees at the request of the Commissioner.

2. Notice and Hearing Before Licensing Agency.

a. General. A license will be suspended or revoked at the request of the Commissioner only after the licensee has been afforded notice and an opportunity for a hearing before the licensing agency.

b. Procedure. Notice will be given and the hearing conducted in accordance with the rules governing license suspension or revocation hearings of the licensing agency.

The scope of the hearing will be limited to a determination whether the licensee has neglected or refused to file any returns or pay any taxes and whether the licensee has filed in good faith a pending application for abatement or a pending petition before the Appellate Tax Board prior to the date of the Commissioner's notice to the licensee or provider. The Commissioner's representations with respect to these issues in his notification to the agency will constitute prima facie evidence.

The propriety of the Commissioner's interpretation of the tax laws and the validity of the underlying tax or assessment will not be open to review at the hearing.

The Commissioner will have the right to intervene in the hearing.

c. Decision. The agency will suspend or revoke the license if it finds that any returns or taxes have not been filed or paid and that the licensee has not, prior to the date of the Commissioner's notice to him, filed in good faith a pending application for abatement or a pending petition before the Appellate Tax Board.

The agency will notify the Commissioner of its decision, whether or not he has intervened in the hearing.

d. Appeal. Any person aggrieved by the agency's decision may appeal therefrom pursuant to M.G.L. c. 30A, § 14.

3. Reinstatement. When a person whose license has been suspended or revoked at the request of the Commissioner satisfies the Commissioner that he has filed all required returns and paid all taxes due, the Commissioner will issue to the agency, at the person's request, a certificate that the person is in good standing with respect to any and all returns due and taxes payable to the Commissioner as of the date of issuance of the certificate. The agency will not reissue or renew the person's license until it receives such a certificate.

62C.50.1: Lien on Property

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

(a) Statement of Purpose. 830 CMR 62C.50.1 explains the application of M.G.L. c. 62C, § 50, as amended by St. 2004, c. 262, § 26. This amendment extended the duration of Department of Revenue liens by adopting the federal limitations period of ten years, or such longer period as permitted by § 6322 of the Code and regulations promulgated thereunder. The provisions of M.G.L. c. 62C, § 50 apply to any tax liability, inclusive of penalties, interest, costs, forfeitures or additions to tax which remained due and unpaid as of January 1, 2005. St. 2004, c. 262, § 70.

(b) Effective Date. 830 CMR 62C.50.1 is effective January 22, 2010.

(c) Outline of Topics. 830 CMR 62C.50.1 is organized as follows:

6. Release of Lien
7. Partial Release of Lien: Certificate of Subordination
8. Revocation of Certificate of Release of Lien; Reinstatement of Lien

(2) Definitions. As used in 830 CMR 62C.50.1:

Adequate and Full Consideration in Money or Money's Worth, a consideration in money or money's worth having a reasonable relationship to the true value of the interest in property acquired. The phrase "money or money's worth" includes any money, a security, tangible or intangible property, services, and other consideration reducible to a money value. The phrase "adequate and full consideration in money or money's worth" includes the consideration in a transaction in which the purchaser has not completed performance of his obligation, such as the consideration in an installment purchase contract, even though the purchaser has not completed the installment payments.

Code, the Internal Revenue Code, as amended and in effect for the applicable period.

Interest in Property, each of the following interests is considered to be an interest in property if it is not a lien or security interest:

(a) A lease of property;
(b) A written executory contract to purchase or lease property;
(c) An option to purchase or lease property and any interest therein; or,
(d) An option to renew or extend a lease of property.

Judgment Creditor, a person who has obtained a valid judgment in a court of record and of competent jurisdiction for the recovery of specifically designated property or for a certain sum of money. The term judgment does not include the determination of a quasi-judicial body or of an individual acting in a quasi-judicial capacity. In the case of a judgment for the recovery of a certain sum of money, a judgment on the property involved. A judgment lien does not include an inchoate lien, such as an attachment lien, unless and until such lien has ripened into a judgment.

Mortgagee and Pledgee, a person who holds any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. Such security interest exists at any time:

(a) If, at such time, the property is in existence and the interest has become protected against a subsequent judgment lien arising out of an unsecured obligation; and,
(b) To the extent that, at such time, the mortgagee or pledgee has parted with money or money's worth, as defined in 830 CMR 62C.50.1(2).

Purchaser, a person who, for adequate and full consideration in money or money's worth acquires an interest (other than a lien or security interest) in property which is valid against subsequent purchasers without actual notice.

Security, any bond, debenture, note or certificate or other evidence of indebtedness issued by any corporation, including one issued by a governmental or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(3) General.

(a) Scope of Lien. If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount, including any interest, additional amount, addition to tax, assessable penalty or forfeiture together with any costs that may accrue in addition thereto,

shall be a lien in favor of the Commonwealth upon all property, or rights to property, whether real or personal, tangible or intangible, belonging to such person. The lien shall also extend to property or rights to property of a trust with respect to tax amounts due from a grantor or other person treated as the owner of a portion of such trust by reason of §§ 671-678 of the Code and to property or rights to property of a disregarded entity with regard to tax amounts due from the owner of the entity. The lien may also extend to property owned by a taxpayer even though a third person holds legal title.

(b) Duration of Lien. The lien shall arise at the time the assessment is made or deemed to be made and shall continue to attach to all property and rights to property, including property acquired after the lien arises, belonging to such person at any time during the period of the lien until:

1. the liability for the amount assessed or deemed to be assessed is satisfied;
2. a judgment against the taxpayer arising out of such liability is satisfied; or
3. any such liability or judgment becomes unenforceable by reason of lapse of time within the meaning of § 6322 of the Code. A Massachusetts notice of tax lien in favor of the Commonwealth recorded on a date making it less than six years old as of January 1, 2005, if not sooner discharged as a result of payment of the tax, remains in full force and effect for

a. a period of ten years after the date of assessment, deemed assessment or self-assessment of the tax; or

b. for such longer period of time as permitted by § 6322 of the Code, in effect and as amended from time to time, and as construed or interpreted either by the regulations or other authorities promulgated under § 6322 of the Code by the Internal Revenue Service or by any federal court or United States Tax Court decision.

(c) Extension of Lien. If, by operation of § 6322 of the Code, a tax lien in favor of the Commonwealth would extend beyond its initial or subsequent ten-year period, the Commissioner is authorized to refile the notice of lien. *See* 830 CMR 62C.50.1(5) for rules governing refiling of liens and the effect of such refilings on the duration of a lien.

(4) Validity of Lien Against Mortgagees, Pledgees, Purchasers, and Judgment Creditors.

(a) Place for Filing Notice of Lien. The lien imposed by M.G.L. c. 62C, § 50 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice of the lien has been filed by the Commissioner as follows:

1. Real Property and Fixtures. With respect to real property and fixtures, notice shall be filed in the registry of deeds of the county where such property is situated.
2. Personal Property Other than Fixtures. With respect to personal property other than fixtures, notice shall be filed in the filing office in which the filing of a financing statement would perfect, under Article 9 of M.G.L. c. 106, an attached non-possessory security interest in tangible personal property belonging to the person liable to pay the tax as if the person were located in Massachusetts under M.G.L. c. 106, § 9-307.

(b) Protection for Certain Interests Even Though Notice Is Filed. Even though notice of a lien has been filed in the manner prescribed in 830 CMR 62C.50.1(4)(a) 2., the lien shall not be valid with respect to a security as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without actual notice or knowledge of the existence of such lien.

(c) Form of Notice. Notice of Massachusetts tax lien shall be completed and filed in accordance with 830 CMR 62C.50.1(3)(a). Such notice places on public record the following:

1. The document identification number assigned to the notice;
2. The name, address, and partially redacted identification number of the taxpayer;
3. For each assessment listed, the type of tax, the date of the assessment, and the amount of assessment outstanding at the time of the notice;
4. The name of the recording office in which the notice is filed; and
5. The signature of the Commissioner or the signature and title of the Commissioner's duly authorized representative.

The filing of a notice of lien or of a waiver or release of lien shall be received and registered or recorded without payment of any fee.

(5) Refiling of Notice of Tax Lien.

(a) General. If, by operation of § 6322 of the Code, a tax lien in favor of the Commonwealth would extend beyond its initial or subsequent ten-year period, the Commissioner is authorized to refile the notice of the tax lien. In such cases, the lien must be refiled during the required refiling period set forth in 830 CMR 62C.50.1(5)(c) in the same office or registry in which the lien was originally filed. Notice of the refiling of the lien

will be mailed to the last known address. A refiled lien will terminate upon satisfaction of the outstanding liability, or not later than 20 years from the date when the assessment to which it relates was made or deemed to be made. A lien that is again refiled in any subsequent required refiling period is extended for an additional ten years beyond the expiration of the previous refiling period.

(b) Effect of Refiling a Notice of Tax Lien. A properly refiled notice of lien that is refiled within the "required refiling period", as that phrase is defined in 830 CMR 62C.50.1(5)(c) is effective from the date on which the notice of lien to which it relates was effective. A refiled notice of tax lien that is either improperly filed or not refiled within the required refiling period is effective only from the date of refiling of the notice.

Until refiling of the notice of tax lien by the Commissioner, the lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor, even if the interest of such mortgagee, pledgee, purchaser or judgment creditor was at some previous time junior to the tax lien of the Commonwealth.

(c) Required Refiling Period. The phrase "required refiling period" means:

1. the one-year period ending 30 days after the expiration of ten years after the date of the assessment of the tax; and

2. the one-year period ending with the expiration of ten years after the close of the preceding required refiling period for such notice of lien.

(d) Effect of Failure to Refile Notice of Tax Lien. If the Commissioner fails to refile a notice of tax lien in the time and manner set forth in 830 CMR 62C.50.1(5), the notice is not effective, after the expiration of the required refiling period set forth in 830 CMR 62C.50.1(5)(c), as against any person without regard to when the interest of the person in the property subject to the lien was acquired. However, the failure of the Commissioner to refile a Notice of Tax Lien during the required refiling period will not, following the expiration of the refiling period, affect the effectiveness of the notice with respect to:

1. property which is the subject matter of a suit to which the Commonwealth is a party, commenced prior to the expiration of the required refiling period, or

2. property which has been levied upon by the Commissioner prior to the expiration of the refiling period.

However, if a suit or levy referred to in the preceding sentence is dismissed or released and the property is subject to the lien at such time, a Notice of Tax Lien with respect to the property is not effective until after the suit or the levy is dismissed or released unless refiled during the required refiling period. Failure to refile a notice of tax lien does not affect the existence of the lien.

(e) Filing of a New Notice. If a notice of tax lien is not refiled, and if the lien remains in existence, the Commissioner may nevertheless file a new Notice of Tax Lien. This new filing must meet the requirements of 830 CMR 62C.50.1 and is effective from the date on which such filing is made.

(6) Release of Lien.

(a) When Commissioner May Issue a Certificate of Release of Tax Lien. The Commissioner may issue a Certificate of Release of Tax Lien imposed with respect to any Massachusetts tax if the Commissioner finds that any of the following conditions exist:

1. the liability for the amount assessed or deemed to be assessed, together with any interest and penalties which have accrued, is fully satisfied by the payment of such amounts;

2. a judgment against the taxpayer arising out of such liability is satisfied;

3. the taxpayer furnishes and the Commissioner accepts a bond, conditioned on payment of the amount assessed and any interest and penalties assessed thereon within an agreed period of time; or

4. the liability or judgment becomes unenforceable as a matter of law (and not merely uncollectible or unenforceable as a matter of fact) by reason of lapse of time within the meaning of § 6322 of the Code. In all cases liability for the payment of the tax continues

until the satisfaction of the tax in full or until the expiration of the statutory period for collection, including such extension of the period for collection as may be agreed upon in writing by the taxpayer and the Commissioner.

(b) Effect of Certificate of Release. Except as otherwise provided in 830 CMR 62C.50.1(8) with respect to revocation of a certificate of release and reinstatement of a tax lien, if a notice of tax lien contains a certificate of release that automatically becomes effective on the date prescribed in the notice, (*e.g.* the date on which the required refiling period ends) the certificate of release shall be conclusive evidence that the tax lien upon the property covered by the certificate is extinguished as of that date. *See* Treas. Reg. § 301.6325-1(a); § 301.6325-1(f)(1); Treas. Reg. § 301.6323(g)-1(a)(4).

(7) Partial Release of Lien: Certificate of Subordination. The Commissioner may issue a release of lien as to a part of the property subject to a tax lien, provided that the Commissioner is satisfied that such partial release will facilitate the collection of the outstanding tax liability. An application for a partial release shall be submitted to the Commissioner in writing and shall include the following:

(a) an identifying description, including address, of all real property subject to the lien, giving appropriate title references and the location and an identifying description of all personal property subject to the lien, including, where appropriate, the name of the manufacturer and model number of the item, the office in which any encumbrances on such property are recorded;

(b) the address and a full legal description of any real property sought to be released; and the location and a full identifying description, as in 830 CMR 62C.50.1(7)(a) of any personal property sought to be released;

(c) a statement of the fair market value of each property subject to the lien, including the property sought to be released;

(d) a statement of the reasons for which the taxpayer seeks the release;

(e) a statement of all encumbrances on the property, including the property sought to be released, and the dates of their recording, where applicable;

(f) a statement of the consideration offered by the taxpayer for the partial release; and,

(g) a copy of the notice of a tax lien.

In considering an application for a partial release of a lien, the Commissioner may require further evidence or documentation, such as a supporting appraisal of the property. As a general guideline, a partial release will not be issued unless the fair market value of the property which would remain subject to the tax lien after issuance of a partial release, is at least double the amount of the unsatisfied liability secured by the tax lien and of the amount of all other liens on the property which have priority to such tax lien.

Example:

Taxpayer T has an unsatisfied tax liability of $10,000, and three parcels of real estate subject to the lien: Whiteacre, Blackacre and Greenacre. The fair market value of Whiteacre is $20,000, but there is a mortgage of $10,000 (including interest) which is prior to the tax lien of Whiteacre. Blackacre has a fair market value of $10,000, but there is a mortgage of $3,000 (including interest) which is prior to Blackacre. Greenacre has a fair market value of $5,000, and is unencumbered except for the tax lien. T seeks a partial release of the lien, to free Greenacre for sale. T offers the Commissioner $5,000 as consideration for such partial release, which would reduce his unpaid tax liability to $5,000. If the partial release were issued, the fair market value of the property remaining subject to the lien would be $30,000. However, the prior liens and the unsatisfied tax liability total $18,000. Since the fair market value of the property remaining subject to the lien is not at least double this total, the application fails to meet the criterion, and would not be likely to be granted.

A release of lien as to a part of the property subject to the tax lien of the Commonwealth may be issued, if such part is sold at a foreclosure sale, and, a written agreement is made with the Commissioner by the parties in interest which provides that the proceeds be held as a fund subject to the liens and interests which attached to the property to be released. The liens and

interests shall have the same order and priority with respect to the proceeds of sale as they had with respect to the property. In order for the provisions of this paragraph to apply, the sale must divest the taxpayer of all rights, title and interest in the property sought to be released.

62C.50.1: continued

In appropriate circumstances, the Commissioner may certify that the tax lien as to some part of the property subject to the tax lien is subordinate to a lien or interest held by another party, if there is paid to the Commissioner an amount equal to the amount of the lien or interest to which the tax lien is made subordinate. If the certificate of subordination is to be issued before such amount is paid over to the Commissioner, a separate escrow account must be established in full amount, to secure the tax lien.

If, after issuance of a partial release or certificate of subordination, the taxpayer reacquires any interest in the property for which such certificate was obtained, the lien will again attach to such property.

(8) Revocation of Certificate of Release of Tax Lien; Reinstatement of Lien. In certain instances, the Commissioner may revoke a certificate of release of tax lien and re-instate the tax lien if the Commissioner determines that: a certificate of release was issued erroneously or improvidently; a certificate of release of such lien was issued in connection with a compromise agreement made pursuant to M.G.L. c. 62C, §§ 37A, 37B, or 37C which has been breached; or the period of limitations on collection after the assessment of the tax liability has not expired.

(a) Method of Revocation and Reinstatement. The method of revocation and reinstatement is accomplished by mailing notice of the revocation to the taxpayer's last known address, and by filing notice of the revocation of the certificate in the same office in which the notice of lien to which it relates has been filed.

(b) Effect of Reinstated Lien. A tax lien reinstated in accordance with 830 CMR 62C.50.1(8) is effective on or after the date the notice of revocation is mailed to the taxpayer at this last known address, but the reinstated lien is not effective before the filing of the notice of revocation of the certificate in the same office in which the notice of lien tax which if relates was filed (if the notice of lien has been filed.) As of the effective date of reinstatement, a reinstated tax lien has the same force and effect as the lien which arose upon the assessment of liability. The reinstated lien continues in existence until the expiration of the period of limitations on collection after the assessment of the tax liability to which it relates. The reinstatement of the lien does not retroactively reinstate a previously filed notice of lien. The reinstated lien is not valid against any holder of a lien or interest described in 830 CMR 62C.50.1 until notice of the reinstated lien has been filed in accordance with the provisions of 830 CMR 62C.50.1 subsequent to or concurrent with the time the reinstated lien became effective.

62C.55A.1: Determination of Amount Exempt from Levy

(1) General. Under M.G.L. c. 62C, § 55A(a)(9) and (d), certain amounts payable to or received by a taxpayer as wages or salary for personal services or as income from other sources are exempt from levy. 830 CMR 62C.55A.1, describes what amount of wages, salary, and other income payable to or received by a taxpayer is eligible for the exemption from levy and describes how pay periods are determined. 830 CMR 62C.55A.1, defines the term "dependent" for purposes of determining amounts exempt from levy, and explains the procedure for the taxpayer to claim any dependent exemptions. Finally, 830 CMR 62C.55A.1, explains how the payor should submit to the Commissioner amounts not exempt from levy.

62C.55A.1: continued

(2) Definitions. For purposes of 830 CMR 62C.55A.1, the following words have the following meanings, unless the context otherwise requires:

Commissioner, the Commissioner of Revenue or the Commissioner's designee.

Day, for purposes of 830 CMR 62C.55A.1(5) and (6), the term "day" does not include Saturdays, Sundays or a legal holiday within the meaning of M.G.L. c. 4, § 7 and Section 7503 of the Internal Revenue Code in effect on July 1, 1983.

Dependent, a person described in M.G.L. c. 62C, § 55A(d)(1)(B) and 830 CMR 62C.55A.1(5), and a person defined in Section 152(a)(1) through (a)(9) of the Internal Revenue Code in effect on July 1, 1983.

Payor, the employer or other person obligated to pay the taxpayer wages, salary, and other income and upon whom the Commissioner's levy is served with respect to such wages, salary, and other income.

Pay period, a period of time for which any wages, salary, and other income are payable to or received by a taxpayer. The rules for determination of a pay period are found in 830 CMR 62C.55A.1(4).

Taxpayer, any person whose wages, salary, and other income are subject to levy by the Commissioner.

Wages, salary, and other income, all income from whatever source derived, including, but not limited to, the items specified in Section 61 of the Internal Revenue Code in effect on July 1, 1983, and including, but not limited to, the items specified in M.G.L. c. 62, § 2(1), but excluding any amounts listed as being exempt from levy under M.G.L. c. 62C, § 55A(a)(1) through (a)(9).

(3) Determination of Exempt Amount. Out of amounts payable to the taxpayer as wages, salary, and other income for each pay period described in 830 CMR 62C.55A.1(4), the following amounts are exempt from levy:

(a) If the pay period is daily: $15 personal exemption, plus $5 for each person who is claimed as a dependent pursuant to 830 CMR 62C.55A.1(5).

(b) If the pay period is weekly: $75 personal exemption, plus $25 for each person who is claimed as a dependent pursuant to 830 CMR 62C.55A.1(5).

(c) If the pay period is once every two weeks: $150 personal exemption, plus $50 for each person who is claimed as a dependent pursuant to 830 CMR 62C.55A.1(5).

(d) If the pay period is twice in a calendar month: $162.50 personal exemption, plus $54.17 for each person who is claimed as a dependent pursuant to 830 CMR 62C.55A.1(5).

(e) If the pay period is monthly: $325 personal exemption, plus $108.33 for each person who is claimed as a dependent pursuant to 830 CMR 62C.55A.1(5).

(f) If the pay period is not daily, weekly, once every two weeks, twice in a calendar month, or monthly: a proportionate amount determined by multiplying the sum of an annual personal exemption of $3,900, plus an annual dependent exemption of $1,300 for each person who is claimed as a dependent pursuant to 830 CMR 62C.55A.1(5), by a fraction the numerator of which is the number of hours, days, weeks, or months, whichever is applicable, in the pay period, and the denominator of which is the corresponding number of hours, days, weeks, or months in a calendar year.

Example: Taxpayer A, an employee of the X corporation, is paid wages of $600 every three weeks and has two dependent children. The amount of wages exempt from levy for taxpayer A for each three week pay period is:

$$\frac{(3{,}900 + (2 \times 1{,}300)) \times 3 \text{ weeks}}{52 \text{ weeks}} = \$375.00$$

(4) Determination of Pay Period. For purposes of determining the amount of wages, salary, and other income exempt from levy under M.G.L. c. 62C, s. 55A(a)(9) and (d), the pay period shall be determined as follows:

(a) Regularly Used Pay Periods. A regularly used pay period is an established period of time, regularly used by a payor, for which wages, salary, and other income are payable to or received by a taxpayer. Regularly used pay periods include, but are not limited to, pay periods which are daily, weekly, once every two weeks, twice in a calendar month, and monthly.

(b) Amounts Paid on Irregular but Recurrent Basis. In the case of wages, salary, and other income paid to the taxpayer on an irregular but recurrent basis, the first day of the taxpayer's pay period is the day following the day upon which the wages, salary, and other income were last paid to the taxpayer. The last day of the pay period is the day upon which the current payment becomes payable to the taxpayer. However, where amounts are paid to the taxpayer on an irregular but recurrent basis and more than 60 days lapse between the current payment and the last payment, the current payment will be deemed a one-time payment. See 830 CMR 62C.55A.1(4)(c).

(c) One-time Payment. If a taxpayer is paid wages, salary, and other income on a one-time basis, the taxpayer's pay period is deemed to be weekly, and the deemed one-week pay period ends on the day of payment. See 830 CMR 62C.55A.1(4)(b).

(5) Dependent Exemption.

(a) Dependent Defined. For purposes of M.G.L. c. 62C, § 55A(d)(1)(B) and 830 CMR 62C.55A.1(3), a person is a dependent of the taxpayer for any pay period of the taxpayer, if

1. Over half of that person's support for the pay period was received from the taxpayer, and

2. The person either is the taxpayer's spouse or bears, on the last day of the pay period, a relationship to the taxpayer specified in Section 152(a)(1) through (a)(9) (relating to definition of dependent) of the Internal Revenue Code in effect on July 1, 1983, and

3. The person is not the taxpayer's minor child with respect to whom amounts are exempt from levy under M.G.L. c. 62C, § 55A(a)(8) (relating to exemption from levy for judgments for support of minor children) at any time during the pay period.

For purposes of 830 CMR 62C.55A.1(5)(a)2., "pay period" should be substituted for "taxable year" each place it appears in I.R.C. § 152(a)(9).

(b) Claim for Dependent Exemption. No amount will be exempt as a dependent exemption unless the payor submits a claim for dependent exemption. A claim for dependent exemption shall be made by either completion of a DOR Statement of Exemptions Form, or a written statement that: (i) identifies by name and by relationship to the taxpayer each person for whom a dependent exemption is claimed, (ii) is signed by the taxpayer, and (iii) contains a declaration that it is made under the penalties of perjury.

(c) Delivery of Statement of Exemptions to Taxpayer. Generally, the Commissioner will deliver to the payor a Statement of Exemptions upon which the taxpayer claims any dependent exemptions. The Statement of Exemptions will accompany the DOR Notice of Levy Form. The payor must promptly deliver the Statement of Exemptions to the taxpayer.

(d) Submission of Statement of Exemptions to Payor. The taxpayer must submit the Statement of Exemptions to the payor no later than the third day before the last day of the pay period for which the dependent exemptions are claimed. If the levy is made on or after the third day before the last day of the pay period, the taxpayer must submit the Statement of Exemptions to the payor no later than two days after the day the taxpayer receives the form. The payor may accept a Statement of Exemptions at any time as long as payment to the Commissioner is made in accordance with 830 CMR 62C.55A.1(6).

62C.55A.1: continued

(e) Failure to Submit a Statement of Exemptions. If the taxpayer does not submit a Statement of Exemptions within the time specified in 830 CMR 62C.55A.1(5)(d), the taxpayer is entitled only to a personal exemption for any pay period.

(f) Effect of Statement of Exemptions. A Statement of Exemptions is effective for all pay periods until the taxpayer submits to the payor an amended Statement of Exemptions, or until the liability is paid in full and a release of levy is issued, or until the levy becomes unenforceable by reason of lapse of time.

(g) Validity of Statement of Exemptions. The Commissioner has the authority at any time to determine the validity of the Statement of Exemptions. The Commissioner may determine the proper number of dependent exemptions to which a taxpayer is entitled. Upon notification by the Commissioner, the payor shall use the number of dependent exemptions determined by the Commissioner.

(6) Payment to Commissioner of Amounts Not Exempt from Levy.

(a) General Rule. The payor is required to make payment to the Commissioner on the date the payor is otherwise obligated to pay the taxpayer.

(b) Delayed Payment in Certain Cases. If the levy is served on the payor on or after the third day before the last day of the pay period, the payor is required to make payment to the Commissioner no later than five days after the day the levy is served on the payor.

62C.64.1: Release of Levy

(1) General. The Commissioner may release a levy imposed under M.G.L. c. 62C, § 53 upon all or part of the property or rights to property levied upon. A levy will be released only if the Commissioner determines that such action will facilitate the collection of the delinquent taxpayer's tax liability.

(2) Subsequent Levy. A release of levy under M.G.L. c. 62C, § 64 shall not prevent any subsequent levy, even though the subsequent levy or levies are made on the same property or rights to property.

(3) Conditions For Release. To facilitate collection of the liability, seized property or property as to which notice of levy has been given may be released prior to sale for less than immediate full payment. As a condition to such a release, the taxpayer must provide for full payment in one of the following ways:

(a) Escrow Arrangement. The delinquent taxpayer offers a satisfactory arrangement, acceptable to the Commissioner, for placing property in escrow to secure the payment of the liability (including the expenses incurred in levy on the property), which is the basis of the levy.

(b) Bond. The delinquent taxpayer delivers a bond, acceptable to the Commissioner, conditioned upon the payment of the liability (including the expenses incurred in levy on the property) which is the basis of the levy.

(c) Payment of the Amount of the Commonwealth's Interest in the Property. The delinquent taxpayer pays to the Commissioner an amount determined by the Commissioner to be equal to the interest of the Commonwealth in the part of the seized property to be released. Such payment does not operate to release any tax lien which the Commonwealth may have on the property, which continues until the tax liability is satisfied, or the lien is specifically released, or until the expiration of the statutory period for which the lien remains in force.

(d) Assignment of Salaries and Wages. The delinquent taxpayer executes an agreement with the Commissioner directing his employer to pay to the Commissioner amounts deducted from the employee's wages or salary on a regular, continuing, or periodic basis, in such manner and in such amount as is agreed upon with the Commissioner, until the full amount of the liability is satisfied. The agreement must be accepted by the employer before the levy may be released.

(e) Installment Payment Arrangement. The delinquent taxpayer makes satisfactory arrangements with the Commissioner to pay the amount of the liability in installments.

62C.64.1: continued

(4) Value Insufficient to Cover Expenses. If the Commissioner determines that the value of the interest of the Commonwealth in the property, or in the part of the property to be released from levy, is insufficient to cover the expenses of the sale of such property, the Commissioner may release the levy on such property. A release under 830 CMR 62C.64.1(4), will be considered to facilitate the collection of the delinquent taxpayer's tax liability.

62C.67.1: Display of Certificates of Registration

(1) General. M.G.L. c. 62C, § 67 states that certificates of registration issued by the Commissioner of Revenue must be displayed conspicuously by the holder thereof. A certificate of registration issued to a vendor or an operator by the Commissioner of Revenue must be displayed in the manner specified in 830 CMR 62C.67.1.

(2) Definitions. As used in 830 CMR 62C.67.1, the following words shall have the following meanings:

Certificate of Registration, Registration, Certificate, the document evidencing the registration required by M.G.L. c. 64G, § 6; M.G.L. c. 64H, § 7; and M.G.L. c. 64I, § 9, and issued by the Commissioner in accordance with M.G.L. c. 62C, § 67.

Commissioner, the Commissioner of Revenue.

Customer Relations Counter, includes but is not limited to, a counter where a customer or an occupant may pay bills from credit charges, submit complaints or have personal checks approved.

Displayed Conspicuously, Conspicuously Displayed, posted or otherwise displayed in a prominent place at the vendor's or the operator's place of business so that the vendor's customers or the operator's occupants are able to see and read it.

Operator, any person operating a hotel, motel, or lodging house in the Commonwealth, including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such hotel, motel, or lodging house. *See* M.G.L. c. 64G, § 1(d).

Vendor, a retailer or other person selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the tax imposed by M.G.L. c. 64H or 64I. See M.G.L. c. 64H, § 1(18); M.G.L. c. 64I, § 1.

(3) Proper Display. Every vendor and every operator must obtain a certificate of registration from the Commissioner for each place of business. Each certificate of registration must be displayed conspicuously by the vendor or the operator at the place of business for which the certificate is obtained. Each certificate must be posted or otherwise displayed in the following manner.

(a) Place of Business - No Cash Register. If a place of business for which a certificate of registration is obtained does not have a cash register, the certificate of registration must be conspicuously displayed at the customer relations counter; and if the place of business does not have a customer relations counter, the certificate of registration must be conspicuously displayed at the business entrance which is used by most of the vendor's customers or the operator's occupants, so that the customers or the occupants are able to see and read the certificate upon entering the place of business.

(b) Place of Business - Single Cash Register.

1. If a place of business for which a certificate of registration is obtained has a single cash register and the cash register is visible to the vendor's customers or the operator's occupants and the customers or the occupants typically approach the cash register, the certificate of registration must be attached to the cash register so that the vendor's customers or the operator's occupants are able to see and read the certificate or otherwise conspicuously displayed in the vicinity of the cash register.

2. If the single cash register is not visible to the vendor's customers or the operator's occupants or if the customers or the occupants do not typically approach the cash register (as, for example, when the customer typically pays a waitress/waiter; or when an operator does not have a cash register at the front desk), the certificate of registration must be conspicuously displayed at the business entrance which is used by most of the vendor's customers or the operator's occupants so that the vendor's customers or the operator's occupants are able to see and read the certificate upon entering the place of business.

(c) Place of Business - Multiple Cash Registers.

1. If a place of business for which a certificate of registration is obtained has more than one cash register, the certificate of registration may not be attached to any cash register but must be conspicuously displayed at the customer relations counter.

2. If a place of business with more than one cash register does not have a customer relations counter, the certificate of registration must be conspicuously displayed at the business entrance which is used by most of the vendor's customers or the operator's occupants so that the vendor's customers or the operator's occupants are able to see and read the certificate upon entering the place of business.

(d) Place of Business - Non-Public. A certificate of registration obtained for a place of business which is non-public must be kept on file at the place of business so that the vendor's customers are able to see and read it upon request; and a copy of the certificate must be kept on file at the vendor's tax department or other office where the vendor's tax records are kept. A non-public place of business includes but is not limited to a non-public business office from which sales subject to the sales tax are made but which customers typically do not enter (for example, a corporate sales department).

Example: Ellipso Corporation sells computer equipment at three retail outlets in Massachusetts. Ellipso must obtain for each of these places of business a certificate which must be displayed conspicuously as required by 830 CMR 62C.67.1. Sales to large suppliers are often negotiated over the telephone by the sales department at Ellipso's main office rather than at a retail store. Ellipso must obtain a certificate of registration for the main office since it serves as a place of business. The certificate must be kept on file at the sales department office so that the vendor's customers are able to see and read it upon request and a copy must be kept on file at Ellipso's tax department office or other office where the vendor's tax records are kept.

(e) Vending Machines. Generally, a vendor who operates vending machines is required to obtain only one certificate of registration for each place of business from which it operates vending machines regardless of the number of vending machines operated at the place of business. However, if a vendor operates a vending machine or machines which require a sales and use tax certificate of registration and a vending machine or machines which require a meals and all beverages sales tax certificate of registration at the same place of business one of each type of certificate of registration will be required for the place of business.

1. If a vendor operates only one vending machine per type of certificate of registration at a place of business the certificate of registration must be attached to the vending machine for which it was obtained so that the vending machine customers are able to see and read the certificate.

2. If a vendor operates more than one vending machine at a place of business under a single certificate of registration, the certificate must not be attached to any vending machine but must be conspicuously displayed at the business entrance used by most of the vending machine vendor's customers so that the vending machine vendor's customers are able to see and read the certificate upon entering the place of business. This rule does not apply to vending machine operators within the meaning of M.G.L. c. 64C.

(f) Carts, Stands, Trucks and Other Merchandising Devices. A vendor who does business from a cart, stand, truck or other merchandising device must attach his certificate of registration to such cart, stand, truck or other merchandising device in a prominent place so that the vendor's customers are able to see and read the certificate.

62C.67.1: continued

(g) Sales and/or Use Tax Vendor Out-of-State. A Massachusetts certificate of registration issued to an out-of-state vendor who is without a place of business in Massachusetts, must be kept on file at the vendor's place of business where Massachusetts orders are customarily taken, or if no such office exists, at the vendor's main place of business so that the vendor's customers are able to see and read the certificate upon request. A copy of the certificate must be kept on file at the vendor's tax department office or other office where the vendor's tax records are kept.

(4) Improper Display. A certificate of registration located so that the vendor's customers or the operator's occupants cannot see and read it, is not properly displayed except that 830 CMR 62C.67.1 does not apply to certificates maintained pursuant to 830 CMR 62C.67.1(3)(d) or (g). For example, a certificate of registration located in a vendor's or an operator's private office is not properly displayed unless the certificate is maintained pursuant to 830 CMR 62C.67.1(3)(d) or (g); a certificate of registration located high on a wall so that customers or occupants cannot read it is not properly displayed.

(5) Failure to Display Properly Certificates of Registration. If the Commissioner determines that a certificate of registration is not displayed conspicuously at a place of business or by a vendor or an operator the Commissioner may suspend or revoke the vendor's or the operator's registration. The Commissioner will notify the vendor or the operator in writing, at his place of business as shown on the records of the Commissioner, of the Commissioner's decision to revoke or suspend the vendor's or the operator's certificate of registration. *See* M.G.L. c. 62C, § 68. Any person aggrieved by suspension or revocation of registration may appeal therefrom to the Appellate Tax Board and may petition the Board for a stay of the suspension or revocation Pending a hearing on the merits. *See* M.G.L. c. 62C, § 68.

(6) Penalties. The following are in addition to any other penalties established by law.

(a) A vendor or an operator whose registration has been suspended or revoked under 830 CMR 62C.67.1 must pay to the Commissioner a fee of $20 for the reissuance of a registration. The Commissioner will not issue a new registration after suspension or revocation of a registration unless he is satisfied that the former registration holder will comply with 830 CMR 62C.67.1, and M.G.L. c. 62C, § 68;

(b) A vendor or an operator who conducts business in Massachusetts for which a registration is required and who is not in possession of such registration may be punished by a fine of not less than $200 and not more than $500 and may be restrained from doing business in Massachusetts. M.G.L. c. 62C, § 76;

(c) No person may do business in Massachusetts as a vendor or an operator unless a certificate of registration has been issued to him for each place of business. M.G.L. c. 64G, § 6; M.G.L. c. 64H, § 7;

(d) No person engaged in business as a vendor may sell tangible personal property for storage, use or other consumption in Massachusetts unless a certificate of registration has been issued to him. M.G.L. c. 64I, § 9.

62C.84.1: Spousal Relief from Joint Income Tax Liability

(1) Statement of Purpose; Organization.

(a) Statement of Purpose. 830 CMR 62C.84.1 explains the criteria and procedures a taxpayer must follow in applying for spousal relief from joint income tax liability under M.G.L. c. 62C, § 84. M.G.L. c. 64C, § 84 provides for three types of relief from joint tax liability for a requesting spouse: innocent spouse relief, separation of liability relief, and equitable relief, each with its own requirements. M.G.L. c. 64C, § 84 does not provide for an abatement of tax. Instead, it provides for circumstances in which a requesting spouse may be relieved of liability for the tax.

830 CMR 62C.84.1 is effective for any pending application to which M.G.L. c. 62C, § 84 applies.

(b) Organization. 830 CMR 62C.84.1 is organized as follows:

1. Statement of Purpose; Organization;
2. Definitions;
3. General Rule;

62C.84.1: continued

4. Innocent Spouse Relief;
5. Separation of Liability Relief;
6. Equitable Relief;
7. Time and Manner of Application;
8. Non-requesting Spouse's Notice and Opportunity to Participate;
9. Effect of Prior Proceedings;
10. Effect of Determination; and
11. Appeal of Determination.

(2) Definitions. For the purposes of 830 CMR 62C.84.1, the following terms have the following meanings unless the context requires otherwise:

Assessment. The process of the Commissioner's determination or verification of the amount of tax, as provided under M.G.L. c. 62C, §§ 24, 25, and 26, imposed and due from a taxpayer under M.G.L. chs. 60A; 62 through 64J; 65B and 65C; 121A, § 10; 138, § 21; and the entry of the amount of the tax due in the Commissioner's assessment records; or the taxpayer's calculation and declaration of the tax due, as provided under M.G.L. c. 62C, § 26(a), completed in full on a return, including any amendment, correction, or supplement thereto, by the taxpayer or the taxpayer's representative and duly filed with the Commissioner, in accordance with rules adopted by the Commissioner.

Commissioner. The Commissioner of Revenue or the Commissioner's duly authorized representative.

Department. The Massachusetts Department of Revenue.

Erroneous Item. Any item resulting in an understatement or deficiency in tax to the extent that such item is omitted from, or improperly reported (including improperly characterized) on an individual income tax return including, but not limited to, improper omissions from income; improper deductions, exemptions, or credits; improper carryovers of attributes; and improper characterizations of items of income or expense.

Joint Return. A joint return of personal income tax as provided under M.G.L. c. 62C, § 6(a).

Non-requesting Spouse. The individual with whom the requesting spouse filed the joint return for the year for which relief from joint income tax liability is sought.

Notice of Assessment. The notification to a taxpayer, under M.G.L. c. 62C, § 31, that the Commissioner has made a deficiency assessment.

Notice of Intention to Assess. The notification to a taxpayer, under M.G.L. c. 62C, § 26(b), that the Commissioner intends to make a deficiency assessment after 30 days.

Requesting Spouse. An individual who filed a joint return and requests relief from Massachusetts personal income tax liability arising from that return under 830 CMR 62C.84.1(4) or (5).

Tax or Taxes. With respect to personal income tax, any tax, interest, penalty, or addition to tax imposed by M.G.L. c. 62, 62B, and 62C, including any act in addition thereto or amendment thereof.

Understatement. The understated tax resulting from an erroneous item attributable to the non-requesting spouse. For purposes of 830 CMR 82C.84.1(2), the term "tax" excludes interest and penalties.

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(3) General Rule. Pursuant to M.G.L. c. 62C, § 6(a), each spouse is jointly and severally liable for the entire amount of tax due on a jointly filed personal income tax return. However, M.G.L. c. 62C, § 84 allows a requesting spouse to seek relief from joint tax liability where certain criteria are met. An eligible requesting spouse may apply for innocent spouse relief (pursuant to M.G.L. c. 62C, § 84(b)), separation of liability relief (pursuant to M.G.L. c. 62C, § 84(c)), or both. The Commissioner may also grant equitable relief (pursuant to M.G.L. c. 62C, § 84(d)) if he or she determines, in his or her sole discretion, that it is inequitable to hold the requesting spouse liable for any unpaid tax or deficiency, and the requesting spouse is not eligible for innocent spouse or separation of liability relief. These three types of relief are addressed respectively at 830 CMR 62C.84.1(4) through (6). Any determination under 830 CMR 62C.84.1 shall be made without regard to community property laws.

(4) Innocent Spouse Relief.

(a) Request for Relief. An eligible requesting spouse may apply for innocent spouse relief, pursuant to M.G.L. c. 62C, § 84(b), by submitting an application in the manner prescribed in 830 CMR 62C.84.1(7), not later than two years after the Commissioner has begun collection activities with respect to the requesting spouse.

(b) Criteria for Eligibility. The Commissioner may grant a requesting spouse relief from liability for an understatement of tax, including interest and penalties, on a joint return if:

1. the understatement is attributable to erroneous items of the non-requesting spouse;
2. the requesting spouse establishes that he or she did not know, and had no reason to know, that there was an understatement of tax; and
3. it is inequitable to hold the requesting spouse liable for the deficiency in tax. In determining whether it would be inequitable to hold the requesting spouse liable, the Commissioner will consider all facts and circumstances including, but not limited to, the factors described in 830 CMR 62C.84.1(4)(e).

(c) Apportionment of Relief. In some cases a requesting spouse would be eligible for innocent spouse relief under 830 CMR 62C.84.1(4) but for the application of 830 CMR 62C.84.1(4)(b)2. In those cases a requesting spouse may establish that in signing the return he or she did not know, and did not have reason to know, the extent of the understatement. The requesting spouse may be relieved of liability for the portion of the tax, including interest and penalties, for which such facts are established.

(d) Knowledge or Reason to Know. A requesting spouse knows, or has reason to know, of an understatement of tax if the requesting spouse actually knew of the understatement, or if a reasonable person in similar circumstances would have known of the understatement. The Commissioner will consider all facts and circumstances in determining whether a requesting spouse had reason to know of an understatement. These facts and circumstances include, but are not limited to:

1. The nature of the erroneous item and the amount of the erroneous item relative to other items;
2. The couple's financial situation;
3. The requesting spouse's educational background and any relevant business experience;
4. The extent of the requesting spouse's participation in the activity that resulted in the erroneous item;
5. Whether the requesting spouse failed to inquire, at or before the time the return was signed, about items presented on the return or omitted from the return that a reasonable person would question; and
6. Whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns.

(e) "Inequitable" Described. Whether it is inequitable to hold a requesting spouse liable for a deficiency in tax, within the meaning of 830 CMR 62C.84.1, will be determined on the basis of all the facts and circumstances. In making such a determination, factors that the Commissioner will consider include, but are not limited to:

1. whether the non-requesting spouse has deserted the requesting spouse;
2. whether the requesting spouse is divorced or separated from his or her spouse; and
3. whether the requesting spouse significantly benefited, directly or indirectly, from the understatement of tax.

For purposes of 830 CMR 62C.84.1(4)(e), maintaining a normal standard of living is not considered a significant benefit. However, if it is determined that a requesting spouse maintains a standard of living inconsistent with the amount of income reported on the return, then the requesting spouse will be considered to have benefited.

Transfers of property, including property transferred at any time after the year of the understatement of tax, may constitute evidence of direct or indirect benefit. For example, if a requesting spouse receives property (including life insurance proceeds) from the non-requesting spouse that is beyond normal support and traceable to items omitted from gross income that are attributable to the non-requesting spouse, the requesting spouse will be considered to have received significant benefit from those items.

(5) Separation of Liability Relief.

(a) Request for Relief. An eligible requesting spouse may apply for separation of liability relief, pursuant to M.G.L. c. 62C, § 84(b), by submitting an application in the manner prescribed in 830 CMR 62C.84.1(7), not later than two years after the Commissioner has begun collection activities with respect to the requesting spouse. If a requesting spouse is eligible and is granted separation of liability relief, his or her liability for any deficiency assessed with respect to a joint return shall not exceed the portion of the deficiency that is properly allocable to him or her pursuant to M.G.L. c. 62C, § 84(c)(8) through (12).

(b) Criteria for Eligibility.

1. In General. A requesting spouse is eligible to request the application of 830 CMR 62C.84.1(5) only if:

a. at the time the application is filed, he or she is no longer married to, or is legally separated from, the individual with whom the requesting spouse filed the joint return to which the application relates; or

b. the requesting spouse was not a member of the same household as the individual with whom the joint return was filed at any time during the 12-month period ending on the date the application is filed.

2. Members of the Same Household.

a. Temporary Absences. A requesting spouse and a non-requesting spouse are considered members of the same household during either spouse's temporary absence from the household if it is reasonable to assume that the absent spouse will return to the household, and the household or a substantially equivalent household is maintained in anticipation of such return. Examples of temporary absences may include, but are not limited to, absence due to incarceration, illness, business, vacation, military service, or education.

b. Separate Dwellings. Spouses who reside in the same dwelling are considered members of the same household. In addition, spouses who reside in two separate dwellings are considered members of the same household if the spouses are not estranged or one spouse is temporarily absent from the other's household within the meaning of 830 CMR 62C.84.1(5)(b)2.a.

3. Relief may be available to both spouses filing the joint return if each spouse is eligible for and applies for relief under 830 CMR 62C.84.1(5).

4. Fraudulent Schemes. An application under 830 CMR 62C.84.1(5) by either spouse that filed a joint return shall be invalid if the Commissioner determines that assets were transferred between the spouses as part of a fraudulent scheme. In such cases, each spouse is jointly and severally liable for the entire amount of tax due on the return pursuant to M.G.L. c. 62C, § 6.

(c) Burden of Proof. Each requesting spouse who applies for relief under 830 CMR 62C.84.1(5) shall have the burden of proof with respect to establishing the portion of a deficiency allocable to the requesting spouse.

(d) Request for relief not valid with respect to certain deficiencies.

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1. In General. If the Commissioner determines that a requesting spouse applying for relief under 830 CMR 62C.84.1(5) had actual knowledge, at the time he or she signed the return, of an erroneous item that is allocable to the non-requesting spouse, the allocation of the deficiency attributable to that item is invalid, and the requesting spouse remains liable for the portion of the deficiency attributable to that item. For example, assume that W knew that H received a retirement distribution but improperly reported it as nontaxable on their joint return. W remains liable for the portion of the deficiency attributable to the distribution. 830 CMR 62C.84.1(5)(d) shall not apply where the requesting spouse establishes that he or she signed the return under duress.

2. Omitted Income. In the case of omitted income, knowledge of the item includes knowledge of the receipt of the income. For example, assume W received $ 5,000 of dividend income from her investment in X Co. but did not report it on the joint return. H knew that W received $ 5,000 of dividend income from X Co. that year. H had actual knowledge of the erroneous item (*i.e.*, $ 5,000 of unreported dividend income from X Co.), and no relief is available under 830 CMR 62C.84.1(5)(d) for the deficiency attributable to the dividend income from X Co. 830 CMR 62C.84.1 applies equally in situations where the other spouse has unreported income although the spouse does not have an actual receipt of cash.

3. Erroneous Deductions or Credits. In the case of an erroneous deduction or credit, knowledge of the item means knowledge of the facts that made the item not allowable as a deduction or credit.

4. Fictitious or Inflated Deductions. If a deduction is fictitious or inflated, the Commissioner must determine that the requesting spouse actually knew that the expenditure was not incurred, or not incurred to that extent.

5. Partial Knowledge. If a requesting spouse had actual knowledge of only a portion of an erroneous item, then relief is not available for that portion of the erroneous item. For example, if H knew that W received $1,000 of dividend income and did not know that W received an additional $4,000 of dividend income, relief would not be available for the portion of the deficiency attributable to the $1,000 of dividend income of which H had actual knowledge. A requesting spouse's actual knowledge (or lack thereof) of the proper tax treatment of an item is not relevant for purposes of a determination that the requesting spouse had actual knowledge of an erroneous item. For example, assume H did not know W's dividend income from X Co. was taxable, but knew that W received the dividend income. Relief is not available under 830 CMR 62C.84.1(5)(d)5. In addition, a requesting spouse's knowledge of how an erroneous item was treated on the tax return is not relevant to a determination of whether the requesting spouse had actual knowledge of the item. For example, assume that H knew of W's dividend income, but H failed to review the completed return and did not know that W omitted the dividend income from the return. Relief is not available under 830 CMR 62C.84.1(5)(a)5.

6. Knowledge of the Source Not Sufficient. Knowledge of the source of an erroneous item is not a sufficient basis for a determination of actual knowledge. For example, assume H knew that W owned X Co. stock, but H did not know that X Co. paid dividends to W that year. H's knowledge of W's ownership in X Co. is not a sufficient predicate for the Commissioner to determine that H had actual knowledge of the dividend income from X Co. In addition, a requesting spouse's actual knowledge may not be inferred when the requesting spouse merely had reason to know of the erroneous item. Even if H's knowledge of W's ownership interest in X Co. indicates a reason to know of the dividend income, actual knowledge of such dividend income cannot be inferred from H's reason to know. Similarly, the Commissioner need not find that a requesting spouse knew of the source of an erroneous item in order to determine that the requesting spouse had actual knowledge of the item itself. For example, assume H knew that W received $1,000, but he did not know the source of the $1,000. W and H omit the $1,000 from their joint return. H has actual knowledge of the item giving rise to the deficiency ($1,000), and relief is not available under 830 CMR 62C.84.1(5)(d)6.

7. Factors Supporting Actual Knowledge. To determine that a requesting spouse had actual knowledge of an erroneous item at the time the return was signed, the Commissioner may rely upon all of the facts and circumstances. One factor that may be relied upon in determining that a requesting spouse had actual knowledge of an erroneous item is whether the requesting spouse made a deliberate effort to avoid learning about the item in order to be shielded from liability. This factor, together with all other facts and circumstances, may demonstrate that the requesting spouse had actual knowledge of the item, and the requesting spouse would not be entitled to relief with respect to that entire item. Another factor that may be relied upon in determining that a requesting spouse had actual knowledge of an erroneous item is whether the requesting spouse and the non-requesting spouse jointly owned the property that resulted in the erroneous item. Joint ownership is a factor supporting a finding that the requesting spouse had actual knowledge of an erroneous item. A requesting spouse will be considered to have had an ownership interest in an item only if the requesting spouse's name appeared on the ownership documents, or there otherwise is an indication that the requesting spouse asserted dominion and control over the item.

8. Abuse Exception. If the requesting spouse establishes that he or she was the victim of domestic abuse prior to the time the return was signed, and that, as a result of the prior abuse, the requesting spouse did not challenge the treatment of any items on the return for fear of the non-requesting spouse's retaliation, the limitation on actual knowledge in 830 CMR 62C.84.1(5)(d) will not apply. As used in 830 CMR 62C.84.1, "abuse" may include physical, psychological, sexual, or emotional abuse.

(e) Disqualified Asset. Notwithstanding the provisions of 830 CMR 62C.84.1(5)(d), the portion of a deficiency for which the requesting spouse is liable will be increased by the value of a disqualified asset transferred to the requesting spouse. For purposes of 830 CMR 62C.84.1(5)(e), the term "disqualified asset" means any property or right to property that is transferred to a spouse filing an application under 830 CMR 62C.84.1(5)(e) by the other spouse filing a joint return, if the principal purpose of the transfer is the avoidance of tax. The Commissioner will presume that the principal purpose of a transfer is the avoidance of tax if the transfer is made less than one year before the Commissioner's notice of intention to assess the tax. The presumption will not apply to any transfer pursuant to a decree of divorce or separate maintenance, or to any written instrument incident to such a decree.

(f) Allocation of Deficiency.

1. Allocation of Items of Deficiency.

a. Except as otherwise provided in 830 CMR 62C.84.1(5)(f), items giving rise to a deficiency on a joint return shall be allocated to each spouse in the same manner as they would have been allocated if the spouses had filed separate returns for the taxable year.

b. An item otherwise allocable to one spouse under 830 CMR 62C.84.1(5)(f)(i)a. shall be allocated to the other spouse to the extent the item gave rise to a tax benefit on the joint return to the other spouse.

c. Erroneous items of income are allocated to the spouse who was the source of the income. Wage income is allocated to the spouse who performed the services producing such wages. Items of business or investment income are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, the erroneous item of income is generally allocated between the spouses in proportion to each spouse's ownership interest in the business or investment, subject to the provisions of 830 CMR 62C.84.1(5)(d). In the absence of clear and convincing evidence supporting a different allocation, an erroneous income item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the provisions of 830 CMR 62C.84.1(5)(d).

d. Erroneous deductions related to a business or investment are allocated to the spouse who owned the business or investment. If both spouses owned an interest in the business or investment, an erroneous deduction item is generally allocated between the spouses in proportion to each spouse's ownership interest in the business or investment. In the absence of clear and convincing evidence supporting a different allocation, an erroneous deduction item relating to an asset that the spouses owned jointly is generally allocated 50% to each spouse, subject to the provisions of 830 CMR 62C.84.1(5)(d). Deduction items unrelated to a business or investment are also generally allocated 50% to each spouse, unless the evidence shows that a different allocation is appropriate.

e. The requesting spouse must prove that all of the qualifications for relief under 830 CMR 62C.84.1(5)(f) are satisfied and that none of the limitations apply.

f. The Commissioner may allocate any item between the spouses if the Commissioner determines that the allocation is appropriate due to fraud by one or both spouses.

2. Disallowance of Items Due to Separate Return Disregarded. If an item of deduction or credit would have been disallowed in its entirety solely because a separate return was filed, the disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated appropriately between the spouses.

3. Liability of a Child on Joint Return. Any portion of a deficiency relating to the liability of a child of the requesting and non-requesting spouse is allocated jointly to both spouses. For purposes of 830 CMR 62C.84.1(5)(f)2., a child does not include the taxpayer's stepson or stepdaughter, unless such child was legally adopted by the taxpayer. If the child is the child of only one of the spouses, and the other spouse had not legally adopted such child, any portion of a deficiency relating to the liability of such child is allocated solely to the parent spouse.

4. Ratio of Deficiency. A spouse's portion of a deficiency on a joint return shall bear the same ratio to the total deficiency that the net amount of the items taken into account in computing the deficiency allocable to that spouse under 830 CMR 62C.84.1(5)(f)4. bears to the net amount of all items taken into account in computing the total deficiency. For example, suppose W and H timely file a joint income tax return, and the Commissioner assesses a $12,000 deficiency. W and H later divorce, and W timely applies to allocate the deficiency. Four erroneous items give rise to the deficiency:

a. a disallowed $7,000 business deduction allocable to H;

b. $9,000 of unreported income allocable to H;

c. a disallowed $5,000 deduction for educational expenses allocable to W; and

d. a disallowed $3,000 charitable contribution deduction allocable to W.

In total, there are $24,000 worth of eroneous items, of which $16,000 are attributable to H and $8,000 are attributable to W. The ratio of erroneous items allocable to W to the total erroneous items is ⅓ ($8,000/$24,000). W's liability is thus limited to $4,000 of the deficiency (⅓ of $12,000). The Commissioner may collect up to $4,000 from W and $12,000 from H (the total amount collected, however, may not exceed $12,000). If H also applied for relief, there would be no remaining joint and several liability, and the Commissioner would be permitted to collect $4,000 from W and $8,000 from H.

5. Any portion of a deficiency that is:

a. attributable to the disallowance of a credit or to a tax other than the tax imposed by M.G.L. c. 62;

b. required to be included with the joint return; and

c. attributable to an item allocated to one spouse under 830 CMR 62C.84.1(5)(f)1., shall be allocated to that spouse. Any item giving rise to such deficiency shall not be taken into account for purposes of 830 CMR 62C.84.1(5)(f)4.

(g) No credit or refund shall be allowed as a result of the application of 830 CMR 62C.84.1(5).

(6) Equitable Relief.

(a) If relief is not available to the requesting spouse under 830 CMR 62C.84.1(4) or 830 CMR 62C.84.1(5), and the Commissioner determines, after taking into account all the facts and circumstances, that it is inequitable to hold a requesting spouse liable for any unpaid tax or deficiency, or any portion thereof, attributable to the non-requesting spouse, the Commissioner may nonetheless relieve the requesting spouse of joint liability. The Commissioner may grant equitable relief in his or her sole discretion. Equitable relief is not available as a matter of right.

(b) Factors Considered. In determining whether it is inequitable to hold a requesting spouse liable for any unpaid tax or any deficiency, or any portion thereof, the Commissioner may consider any relevant facts and circumstances. These include, but are not limited to:

1. The couple's marital status at the time the Commissioner makes the determination (this factor will weigh in favor of relief if the couple is divorced or legally separated and will be neutral if the couple is still married);
2. Whether the requesting spouse will suffer economic hardship if relief is not granted;
3. In the case of an understatement, whether the requesting spouse knew or had reason to know of the item giving rise to the understatement or deficiency as of the date the joint return was filed;
4. In the case of an underpayment, whether the requesting spouse knew or had reason to know the tax liability would not or could not be paid;
5. Whether the requesting spouse was the victim of physical, psychological, sexual, or emotional abuse;
6. Whether the requesting spouse or the non-requesting spouse has a legal obligation to pay the outstanding tax liability;
7. Whether the requesting spouse significantly benefitted from the unpaid tax liability or understatement;
8. Whether the requesting spouse has made a good faith effort to comply with the income tax laws in the taxable years following the taxable year or years to which the request for relief relates; and
9. Whether the requesting spouse was in poor mental or physical health at the time the return was filed.

(7) Time and Manner of Application.

(a) Application Must Be Received within Two Years of the Beginning of Collection Activities.

1. The process of applying for innocent spouse relief is distinct from the process of applying for an abatement pursuant to M.G.L. c. 62C, § 37. A taxpayer wishing to request relief from joint income tax liability under 830 CMR 62C.84.1(4) or (5) must submit an application for relief (as described in 830 CMR 62C.84.1(7)(b)) to the Commissioner not later than two years after the Commissioner has begun collection activities with respect to such taxpayer. An eligible taxpayer may submit a single claim seeking relief under either 830 CMR 62C.84.1(4) or (5), or both.
2. A requesting spouse's failure to receive a notice from the Commissioner does not extend the period for claiming relief under M.G.L. c. 62C, § 84. In accordance with 830 CMR 62C.26.1, notices regarding income tax liability are sent to a taxpayer's last known address as it appears on the taxpayer's most recent income tax return or on a properly completed and submitted change of taxpayer's address form, whichever is last received by the Commissioner.
3. For purposes of 830 CMR 62C.84.1(4) and (5) collection activities include, but are not limited to:
    a. A bank account levy or a wage levy;

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b. A lien, bill, or notice from the Commissioner of the commencement of collection activities (including a Notice of Intent to Assess, Notice of Assessment, Statement of Account, Final Notice, or Notice of Levy);

c. Offset of a tax refund;

d. Intercept of a state and/or federal refund or other government payment;

e. Intercept of insurance proceeds, lottery or casino winnings;

f. Suspension or revocation of a driver's license and/or a vehicle registration;

g. Suspension, revocation or non-renewal of a professional license or certificate;

h. Addition of the requesting spouse to the public disclosure list of delinquent taxpayers; and

i. Seizure of business or other assets.

(b) Content of Application for Relief from Joint Income Tax Liability. The application for relief under 830 CMR 62C.84.1(4) and 830 CMR 62C.84.1(5) must contain:

1. the name, address and taxpayer identification numbers of the requesting spouse and the non-requesting spouse;

2. a completed U.S. Form 8857, Request for Innocent Spouse Relief (including any supporting or related documentation), irrespective as to whether such Form was or is to be filed for federal purposes; and

3. a written statement or affidavit, signed under the penalties of perjury, containing all the facts necessary for determining that the requirements of 830 CMR 62C.84.1 are satisfied.

The burden is on the taxpayer to establish that he or she qualifies for relief under M.G.L. c. 62C, § 84. The requesting spouse must indicate on the application for relief whether he or she has applied for and received relief from federal tax liability under I.R.C. § 6015(b), (c), or (f). If the taxpayer has applied for relief from federal tax liability as an innocent spouse, he or she should also submit the final federal determination letter and the relevant federal tax return, including any supporting or related documentation.

(c) Written Notice of Determination. The Commissioner will determine whether the requesting spouse is eligible for relief under M.G.L. c. 62C, § 84, and will issue a written notice thereof to the requesting spouse.

(d) Stay of Involuntary Collection. The filing of an application for relief shall stay involuntary collection of the disputed portion of tax imposed by M.G.L. c. 62, provided that the taxes at issue were not withheld by the requesting spouse's employer. The statute of limitations for collection of taxes in M.G.L. c. 62C, § 65, and the date of termination of tax liens in M.G.L. c. 62C, § 50, is extended by the period that collection of the tax is stayed by M.G.L. c. 62C, § 32(e). Interest and penalties under M.G.L. c. 62C, §§ 33(a) and 33(b) will continue to accrue. The stay expires on the date on which any right of appeal from a refusal by the Commissioner to grant relief expires without any appeal to the Appellate Tax Board, or as otherwise provided in M.G.L. c. 62C, § 32(e).

(8) Non-requesting Spouse's Notice and Opportunity to Participate.

(a) In General.

1. When the Commissioner receives an application for relief, the Commissioner will send a notice to the non-requesting spouse's last known address that informs the non-requesting spouse of the requesting spouse's claim for relief. The notice will provide the non-requesting spouse with an opportunity to submit any information that should be considered in determining whether the requesting spouse should be granted relief from the joint and several liability requested. A non-requesting spouse is not required to submit information. Upon the request of either spouse, the Commissioner will share with one spouse the substantive information submitted by the other spouse, unless the Commissioner determines that the sharing of such information would impair tax administration. The Commissioner will not share the contact information of one spouse with the other spouse.

2. The non-requesting spouse's failure to receive notice of the requesting spouse's claim for relief shall not affect the validity of the requesting spouse's application for relief.

3. The Commissioner will send a notice to the non-requesting spouse's last known address informing the non-requesting spouse of his or her determination with respect to the requesting spouse's claim for relief under M.G.L. c. 62C, § 84.

(b) Information That Will Be Considered. The Commissioner may consider any information (as relevant to each particular relief provision) that the non-requesting spouse submits or that is otherwise available to the Commissioner in determining whether relief from joint and several liability is appropriate for the requesting spouse, including information relating to the following:

1. The legal status of the requesting and non-requesting spouses' marriage;
2. The extent of the requesting spouse's knowledge of the erroneous items or underpayment;
3. The extent of the requesting spouse's knowledge or participation in the family business or financial affairs;
4. The requesting spouse's education level;
5. The extent to which the requesting spouse benefited from the erroneous items;
6. Any asset transfers between the spouses;
7. Any indication of fraud on the part of either spouse;
8. Whether it would be inequitable, within the meaning of 830 CMR 62C.84.1(4)(e) to hold the requesting spouse jointly and severally liable for the outstanding liability;
9. The allocation or ownership of items giving rise to the deficiency; and
10. Anything else that may be relevant to the determination of whether relief from joint and several liability should be granted.

(c) Effect of Failure to Submit Information. The failure of the non-requesting spouse to submit information pursuant to 830 CMR 62C.84.1(8)(b) does not affect the non-requesting spouse's ability to seek relief from joint and several liability for the same tax year. However, information that the non-requesting spouse submits pursuant to 830 CMR 62C.84.1(8)(b) is relevant in determining whether relief from joint and several liability is appropriate for the non-requesting spouse should the non-requesting spouse also submit an application for relief.

(9) Effect of Prior Proceedings.

(a) In General. A final decision regarding the requesting spouse's tax liability by a Massachusetts court or the Appellate Tax Board in a prior proceeding for the same taxable year shall be conclusive as to the qualification of a requesting spouse for relief under 830 CMR 62C.84.1, so long as:

1. relief under 830 CMR 62C.84.1 was at issue in the prior proceeding; or
2. the requesting spouse meaningfully participated in the prior proceeding and could have raised relief under 830 CMR 62C.84.1. If relief under 830 CMR 62C.84.1 was not at issue in the prior proceeding and the requesting spouse did not meaningfully participate in the prior proceeding, the decision is not conclusive as to the qualification of the requesting spouse for relief.

(b) Meaningful Participation. In determining whether a requesting spouse participated meaningfully in the prior proceeding, the Commissioner will consider all relevant information relating to the prior proceeding including, but not limited to, whether the requesting spouse:

1. Was represented by an attorney;
2. Signed court documents;
3. Spoke at, or otherwise participated in, pretrial meetings or settlement negotiations;
4. Appeared at the trial;
5. Contributed to decision-making during trial; and
6. Testified at the trial.

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(10) Effect of Determination. A grant of relief by the Commissioner under M.G.L. c. 62C, § 84, and 830 CMR 62C.84.1, relieves the requesting spouse of liability for income tax only to the extent specified in the Commissioner's determination. The requesting spouse remains jointly and severally liable for any amounts where relief is not provided. Additionally, the non-requesting spouse remains liable for the entire tax determined to be due regardless of the Commissioner's determination as to the requesting spouse. If the Commissioner finds that relief was obtained by false or fraudulent means, the grant of relief will be deemed void.

(11) Appeal of Determination. A requesting spouse that is denied relief under 830 CMR 62C.84.1(4) or 830 CMR 62C.84.1(5) may appeal such denial by filing a petition with the Appellate Tax Board within 60 days after the date of the Commissioner's written notice of determination.

REGULATORY AUTHORITY

830 CMR 62C.00: M.G.L. c. 62C, § 84; M.G.L. c. 14, § 6(1); M.G.L. c. 62C, § 3.