

830 CMR 63B.00: DECLARATION OF ESTIMATED TAX BY CORPORATIONS

Section

63B.2.2: Payments of Estimated Corporate Excise for Taxable Years Ending on or after December 31, 1989

63B.2.2: Payments of Estimated Corporate Excise for Taxable Years Ending on or after December 31, 1989

(1) Statement of Purpose, Effective Dates, Outline.

(a) Purpose. The purpose of 830 CMR 63B.2.2, is to describe the procedures and requirements for corporations to make payments of estimated tax, under M.G.L. c. 63B, §§ 2 through 10, for taxable years ending on or after December 31, 1989.

(b) Effective Dates. 830 CMR 63B.2.2 applies to taxable years ending on or after December 31, 1989. For taxable years ending before December 31, 1989, the provisions of St. 1989, c. 39 are not applicable. See St. 1989, c. 36, § 6; St. 1990, c. 121, § 80.

(c) Outline of Topics. In order to facilitate the use of 830 CMR 63B.2.2, 830 CMR 63B.22(1)(c) lists the sections contained in 830 CMR 63B.2.2.

- (1) Statement of Purpose, Effective Dates, Outline.
- (2) Definitions.
- (3) General Rule.
- (4) Estimated Tax Payments.
- (5) Special Estimated Tax Rules for Taxpayers with Less than Ten Employees in the First Taxable Year of 12 Months.
- (6) Estimated Tax Payments for Short Taxable Year Taxpayers.
- (7) Estimated Tax Payments Allowed as Credit against Tax.
- (8) Addition to Tax for Underpayment of Estimated Tax.
- (9) Transition Rule for First and Second Estimated Tax Payments in the Taxable Year Ending on or after December 31, 1989.
- (10) Officers' Personal Liability and Penalty.

(2) Definitions. For the purpose of 830 CMR 63B.2.2, the following terms shall have the following meanings:

Amount of Underpayment, the excess of the amount required in any estimated tax payment over the amount, if any, of the estimated tax payment made on or before the due date of the estimated tax payment.

Calendar Year, any taxable year beginning on January 1 and ending on December 31 of the same year. For the purposes of 830 CMR 63B.2.2(2): Calendar Year, any 52-53 week calendar year permitted under I.R.C. s. 441(f) is a 12 month calendar year; a taxpayer with a permitted 52-53 week calendar year should make estimated tax payments as if its taxable year began on January 1 and ending on December 31.

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

Corporation, every corporation, company, or association subject to taxation under M.G.L. c. 63 or under any special act that is in *lieu* of the provisions of M.G.L. c. 63.

Credit against Tax, the sum of all estimated tax payments made between the beginning of the taxable year and the end of the taxable year plus any overpayment from the preceding taxable year that the taxpayer elected to apply against the current taxable year's estimated tax.

Current Taxable Year, the current or present period for which the taxpayer is required to file a return with the federal government, as defined under M.G.L. c. 63, § 1, § 30(6), § 30(12), or § 52A(1)(c).

Department, the Department of Revenue.

Employee, as defined in M.G.L. c. 62B, § 1.

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Estimated Tax, the amount that a corporation estimates as the taxes due for the current taxable year under M.G.L. c. 63, any act *in lieu* thereof, or any act in addition thereto.

Estimated Tax Payment, the portion of tax due and paid on or before any of the required due dates for payment.

Fiscal Year, any taxable year of 12 months beginning on a date other than January 1 and ending on a date other than December 31 of the same calendar year. For purposes of this definition, any 52-53 week fiscal year permitted under I.R.C. § 441(f) is a 12 month fiscal year; a taxpayer with a permitted 52-53 week fiscal year should make estimated tax payments as if its taxable year began on the first of the calendar month closest to the actual first day of the taxable year and ended on the last day of the calendar month closest to the actual last day of the taxable year.

Period of Underpayment, the period from the due date of the estimated tax payment to the earlier of the following two dates: the due date of the return as required under M.G.L. c. 62C, § 11 or § 12, or, with regard to any amount of underpayment, the date the amount of underpayment is paid.

Preceding Taxable Year, the taxable year ending immediately before the beginning of the current taxable year.

Present Minimum Corporate Excise, the minimum corporate tax of \$456, or the current applicable amount, as imposed by M.G.L. c. 63, §§ 32, 39, as amended by St. 1969, c. 546, § 18, and St. 1988, c. 202, §§ 14, 18, or any act in addition thereto, or the minimum corporate excise of \$228, or the current applicable amount, as imposed by M.G.L. c. 63, § 38B.

Required Annual Payment, the amount of estimated tax required to be paid, as determined under M.G.L. c. 63B, § 3(c)(i) through (iii), as amended by St. 1989, c. 39, § 1, and under 830 CMR 63B.2.2(8)(b).

Short Taxable Year, any taxable year of less than 12 calendar months that is not a 52-53 week calendar year or fiscal year permitted under I.R.C. § 441(f).

Tax, the tax required to be paid under M.G.L. c. 63, any act *in lieu* thereof, or any act in addition thereto.

Tax Shown on the Return, tax liability shown on the return that is originally filed by the taxpayer.

Taxable Year, the period for which the taxpayer is required to file a return with the federal government, as defined under M.G.L. c. 63, § 1, § 30(6), § 30(12), or § 52A(1)(c).

Taxpayer, any corporation subject to taxation under M.G.L. c. 63, any act *in lieu* thereof, or in addition thereto.

(3) General Rule. Any taxpayer that reasonably expects that its tax in any taxable year, as shown on its return, will exceed \$1,000 must make estimated tax payments.

(4) Estimated Tax Payments.

(a) Requirement of Estimated Tax Payments. A taxpayer that reasonably expects that its tax for any taxable year, as shown on its return, will exceed \$1,000 must make estimated tax payments of its required annual payment.

(b) Number of payments and amounts to be included in estimated tax payments.

1. General. A taxpayer that reasonably expects that its tax for any taxable year, as shown on its return, will exceed \$1,000 must make four estimated tax payments of its required annual payment in any taxable year, except as otherwise provided in 830 CMR 63B.2.2(4)(c) and 830 CMR 63B.2.2(5).

2. Due dates and amounts of payments to be made in four installments.

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- a. The first installment is due on or before the 15th day of the third month of the taxable year and should be equal to 40% of its required annual payment, except as otherwise provided in 830 CMR 63B.2.2(4)(c).
 - b. The second installment is due on or before the 15th day of the sixth month of the taxable year and should be equal to 25% of its required annual payment, except as otherwise provided in 830 CMR 63B.2.2(4)(c).
 - c. The third installment is due on or before the 15th day of the ninth month of the taxable year and should be equal to 25% of its required annual payment, except as otherwise provided in 830 CMR 63B.2.2(4)(c).
 - d. The fourth installment is due on or before the 15th day of the 12th month of the taxable year and should be equal to the remaining 10% of its required annual payment, except as otherwise provided in 830 CMR 63B.2.2(4)(c).
3. Election to Make Early Estimated Tax Payments. At the election of the taxpayer, the taxpayer may make any estimated tax payment before the due date.
- (c) Exceptions to Requirement of Four Estimated Tax Payments.
1. General. The first installment is due on or before the 15th day of the third month of the taxable year, unless after the last day of the second month of the taxable year or as otherwise provided in 830 CMR 63B.2.2(5) the taxpayer reasonably estimates that its tax, as shown on its return, will exceed \$1,000.
 2. Requirement to Make Three Estimated Tax Payments. If after the last day of the second month of the taxable year and before the first day of the sixth month of the taxable year the taxpayer reasonably estimates that its tax, as shown on its return, will exceed \$1,000, the first installment is due on or before the 15th day of the sixth month of the taxable year and should be equal to 65% of its required annual payment, the second installment is due on or before the 15th day of the ninth month of the taxable year and should be equal to 25% of its required annual payment, and the third installment is due on or before the 15th day of the 12th month of the taxable year and should be equal to the remaining 10% of its required annual payment.
 3. Requirement to Make Two Estimated Tax Payments. If after the last day of the fifth month of the taxable year and before the first day of the ninth month of the taxable year the taxpayer reasonably estimates that its tax, as shown on its return, will exceed \$1,000, the first installment is due on or before the 15th day of the ninth month of the taxable year and should be equal to 90% of its required annual payment and the second installment is due on or before the 15th day of the 12th month of the taxable year and should be equal to the remaining 10% of its required annual payment.
 4. Requirement to Make one Estimated Tax Payment. If after the last day of the eighth month and before the first day of the 12th month of the taxable year the taxpayer reasonably estimates that its tax, as shown on its return, will exceed \$1,000, the single installment is due on or before the 15th day of the 12th month of the taxable year and should be equal to 100% of its required annual payment.
- (5) Special Estimated Tax Rules for Taxpayers with Fewer than Ten Employees in the First Taxable Year of 12 Months.
- (a) General. A taxpayer with fewer than ten employees for the entirety of its first taxable year of 12 months is not subject to the percentage schedule for estimated tax payments described in 830 CMR 63B.2.2(4)(b) and (c) and may make its estimated tax payments in accord with the percentage schedules described in 830 CMR 63B.2.2(5)(b) and (c).
 - (b) Due Dates and Amounts of Payments to be Made in Four Installments.
 1. The first installment is due on the 15th day of the third month of the taxable year and should be equal to 30% of its required annual payment, except as otherwise provided in 830 CMR 63B.2.2(5)(c).
 2. The second installment is due on the 15th day of the sixth month of the taxable year and should be equal to 25% of its required annual payment, except as otherwise provided in 830 CMR 63B.2.2(5)(c).
 3. The third installment is due on the 15th day of the ninth month of the taxable year and should be equal to 25% of its required annual payment, except as otherwise provided in 830 CMR 63B.2.2(5)(c).

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4. The fourth installment is due on the 15th day of the 12th month of the taxable year and should be equal to the remaining 20% of its required annual payment, except as otherwise provided in 830 CMR 63B.2.2(5)(c).
- (c) Exceptions to Requirement of Four Estimated Tax Payments.
1. General. The first installment is due on the 15th day of the third month of the taxable year, unless after the last day of the second month of the taxable year the taxpayer reasonably estimates that its tax will exceed \$1,000.
 2. Requirement to Make Three Estimated Tax Payments. If after the last day of the second month of the taxable year and before the first day of the sixth month of the taxable year the taxpayer reasonably estimates that its tax will exceed \$1,000, the first installment is due on or before the 15th day of the sixth month of the taxable year and should be equal to 55% of its required annual payment, the second installment is due on or before the 15th day of the ninth month of the taxable year and should be equal to 25% of its required annual payment, and the third installment is due on the 15th day of the 12th month of the taxable year and should be equal to the remaining 20% of its required annual payment.
 3. Requirement to Make Two Estimated Tax Payments. If after the last day of the fifth month of the taxable year and before the first day of the ninth month of the taxable year the taxpayer reasonably estimates that its tax will exceed \$1,000, the first installment is due on or before the 15th day of the ninth month of the taxable year and should be equal to 80% of its required annual payment and the second installment is due on or before the 15th day of the 12th month of the taxable year and should be equal to the remaining 20% of its required annual payment.
 4. Requirement to Make One Estimated Tax Payment. If after the last day of the eighth month and before the first day of the 12th month of the taxable year the taxpayer reasonably estimates that its tax will exceed \$1,000, the single installment is due on or before the 15th day of the 12th month of the taxable year and should be equal to 100% of its required annual payment.
- (d) Conditions for Eligibility for Special Rules. A taxpayer with fewer than ten employees for the entirety of its first taxable year of 12 months may use the percentage schedules outlined in 830 CMR 63B.2.2(5)(b) and (c) only under the following conditions:
1. The taxpayer may not employ more than nine employees at any time during its first taxable year of 12 months; and
 2. The taxpayer, for purposes of determining the number of its employees, must count all employees, regardless of their location, both inside and outside Massachusetts.
- (6) Estimated Tax Payments for Short Taxable Year Taxpayers.
- (a) General. Any taxpayer with a short taxable year of four calendar months or more and that on or before the first day of the last month of the taxpayer's short taxable year reasonably expects that its tax, as shown on its return, in the short taxable year will exceed \$1,000 must make estimated tax payments. The Commissioner will not impose an addition to tax for underpayment of estimated tax against any taxpayer with a short taxable year of less than four calendar months; taxpayers with a short taxable year of less than four calendar months must file their returns and pay their tax in accord with the provisions of M.G.L. c. 62C, §§ 11, 12.
 - (b) Due Dates and Amounts to be Included in Estimated Tax Payments.
 1. Short Taxable Years of Ten to 11 Months. Taxpayers with short taxable years of ten to 11 months should make their first estimated tax payment equal to 30% of the tax on the 15th day of the fourth month of the short taxable year, their second estimated tax payment equal to 25% of the tax on the 15th day of the sixth month, their third estimated tax payment equal to 25% of the tax on the 15th day of the ninth month, and their fourth estimated tax payment equal to 20% on the 15th day of the last month.
 2. Short Taxable Years of Seven to Nine Months. Taxpayers with short taxable years of seven to nine months should make their first estimated tax payment equal to 30% of the tax on the 15th day of the fourth month of the short taxable year, their second estimated tax payment equal to 25% of the tax on the 15th day of the sixth month, and their third estimated tax payment equal to 45% of the tax on the 15th day of the last month.

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3. Short Taxable Years of Five to Six Months. Taxpayers with short taxable years of five to six months should make their first estimated tax payment equal to 30% of the tax on the 15th day of the fourth month of the short taxable year and their second estimated tax payment equal to 70% of the tax on the 15th day of the last month.
 4. Short Taxable Years of Four Months. Taxpayers with short taxable years of four months should make their single estimated tax payment equal to 100% of the tax on the 15th day of the month following the close of the short taxable year.
 - (c) Treatment of Partial Months. For the purposes of the due dates for estimated tax payments in 830 CMR 63B.2.2(6)(b), the Commissioner will treat any short taxable year of a certain number of full calendar months plus a partial calendar month as if the partial month were a full calendar month.

Example 1: Osgood Co., a calendar year taxpayer, was purchased during a hostile takeover and closed its taxable year on June 15, 1989. Its next taxable year ended December 31, 1989. For purposes of calculating estimated tax payments due dates, the taxable year ending June 15, 1989, is a short taxable year of six months, and the taxable year beginning June 16, 1989, and ending December 31, 1989, is a short taxable year of seven months. Osgood's estimated tax payments for the short taxable year ending June 15, 1989, are due on April 15, 1989, and June 15, 1989. Osgood's estimated tax payments for the short taxable year beginning June 16, 1989, and ending December 31, 1989, are due on September 15, 1989, November 15, 1989, and December 15, 1989.
 - (d) Election to Make Early Estimated Tax Payments. At the election of the short taxable year taxpayer, the taxpayer may make any estimated tax payment before the due date of the installment.
- (7) Estimated Tax Payments Allowed as Credit against Tax.
- (a) General. The Commissioner will allow all payments made under M.G.L. c. 63B for any taxable year as a credit to the taxpayer for the tax under M.G.L. c. 63 for the taxpayer's current taxable year. Under M.G.L. c. 62C, § 79(c), any amounts paid as estimated tax for any taxable year under M.G.L. c. 63B will be deemed to have been paid on the last day prescribed for filing the return for that taxable year, determined without regard to any extension of time for filing the return.
 - (b) Application of Tax Refunds to Estimated Tax. Tax refunds due to the taxpayer under M.G.L. c. 62C, § 36, for the preceding taxable year may be applied as payments of estimated tax for the current taxable year, if the taxpayer specifies on its return for the preceding taxable year that it wishes the refund so applied. See 830 CMR 63B.2.2(8)(c) regarding application of tax refunds to estimated tax and the imposition of additions to tax.
 - (c) Carryover Credits or Deductions not Allowed. Carryover credits or deductions for any preceding taxable year are not allowed as credits against estimated tax.
- (8) Addition to Tax for Underpayment of Estimated Tax.
- (a) General. If a taxpayer is required under M.G.L. c. 63B, § 2, and under 830 CMR 63B.2.2(4) through (6) to make estimated tax payments of its required annual payment and fails to make the payments, the Commissioner will impose an addition to tax upon the amount of the underpayment for the period of the underpayment. For underpayments prior to January 1, 1993, an addition to tax of 18% per year will be imposed. For underpayments outstanding or coming into existence on or after January 1, 1993, an addition to tax at the rate established under M.G.L. c. 62C, § 32 will be imposed.
 - (b) Standards for Calculation of a Taxpayer's Required Annual Payment. The Commissioner will not impose an addition to tax for underpayment of an estimated tax payment if the amount of the payment made on or before the due date equals the required percentage of the taxpayer's required annual payment as described in 830 CMR 63B.2.2(4) through (6), in accord with the following rules:
 1. 90% of the Tax Shown on the Return for the Current Taxable Year. The Commissioner will not impose an addition to tax for underpayment of estimated tax if the estimated tax payments for the current taxable year equal or are greater than 90% of the tax shown on the return for the current taxable year or, if no return is filed, 90% of the tax liability as finally determined for the current taxable year.
 2. 100% of the Tax Shown on the Return for the Preceding Taxable Year.

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a. General. The Commissioner will not impose an addition to tax for underpayment of estimated tax if the estimated tax payments for the current taxable year equal or are greater than 100% of the tax shown on the return for the preceding taxable year, except as provided in 830 CMR 63B.2.2(8)(b)2.b.

b. Exception not Applicable to Large Corporations.

i. The exception provided in 830 CMR 63B.2.2(8)(b)2.a. does not apply to a taxpayer that is a large corporation, as defined in I.R.C. § 6655(g)(2), as amended on January 1, 1989, and in effect for the taxable year.

ii. A large corporation may use the exception provided in 830 CMR 63B.2.2(8)(b)2.a. for the purposes of making its first estimated tax payment as long as any reduction in the first estimated tax payment caused by the use of this exception is made up by increasing the amount of the next installment by the amount of the reduction.

iii. Any taxpayer that is a large corporation for purposes of determining any addition to federal tax under I.R.C. § 6655 in any taxable year is also deemed to be a large corporation for purposes of the exception in 830 CMR 63B.2.2(8)(b)2.a. for the same taxable year. The rules for component members of a controlled group of corporations under I.R.C. §§ 1561, 6655(g)(B)(ii), apply for determining whether a corporation is a large corporation for Massachusetts purposes.

iv. The Commissioner will not impose the addition to tax for underpayment from large corporations if the large corporation can show that the amount of any payment made on or before the due date equaled the required percentage of the large corporation's tax for the current taxable year, as described in 830 CMR 63B.2.2(8)(b)1., without regard to any extraordinary, non-recurring event or circumstances that occur after the due date for the estimated tax payment, so long as the estimated tax payment due immediately following the extraordinary event includes the amount of the increase due to the extraordinary event.

v. The Commissioner will impose the addition for tax for underpayment if the large corporation did not pay the applicable percentage of tax for any estimated tax payment because of seasonal, cyclical, or otherwise predictable events in the current taxable year of the large corporation.

3. 90% of the Tax for the Current Taxable Year or, if no Return is Filed, 90% of the Tax for the Current Taxable Year Determined Using the Income Apportionment Percentage for the Preceding Taxable Year.

a. Return is Filed. When a return is filed, the Commissioner will not impose an addition to tax for underpayment of estimated tax if the estimated tax payments for the current taxable year equal or are greater than 90% of the tax liability as finally determined for the current taxable year.

If an addition to tax for underpayment of estimated tax is imposed at the time a return is filed because the taxpayer did not come within the safe harbor of either 830 CMR 63B.2.2(8)(b)1 or 830 CMR 63B.2.2(8)(b)2. but subsequently – for example, after an abatement, or credit given on an audit, or reduction in tax resulting from a federal change – the taxpayer's estimated tax payments for that year equal or are greater than ninety percent of the taxpayer's revised tax liability for that year, then the previously imposed addition to tax will also be abated.

Example: Company A makes estimated tax payments during 2001 of \$ 800 and files a 2001 corporate excise return showing a tax liability of \$1,000. Company A's 2000 return showed a tax liability of \$ 900. Because Company A does not meet either the 90% of this year's tax safe harbor or the 100% of last year's tax safe harbor, it pays an addition to tax on its underpayment of estimated tax. In 2003, Company A obtains an abatement of \$ 150 for its 2001 corporate return. Because the \$800 it paid in estimated tax payments for 2001 equals or is greater than 90% of Company A's actual 2001 tax liability ($\$850 \times 90\% = \$ 765$) the addition to tax paid on the 2001 return is abated.

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b. No Return is Filed. When no return is filed, the Commissioner will not impose an addition to tax for underpayment of estimated tax if the estimated tax payments for the current year equal or are greater than ninety percent of the taxpayer's tax liability for the current taxable year, as calculated by multiplying the Commissioner's estimate of the taxpayer's current taxable net income by the preceding taxable year's income apportionment percentage, if any. Taxpayers who apportioned no income to Massachusetts in the preceding taxable year cannot assert this safe harbor provision, 830 CMR 63B.2.2(8)(b)3.b.

(c) Addition to Tax for Underpayment and the Application of Tax Refunds to Estimated Taxes. The Commissioner will generally not impose any addition to tax for underpayment of estimated tax against any taxpayer that meets both of the following requirements:

1. The taxpayer requests that its tax refund, or any portion of the tax refund, for the preceding taxable year be applied to its estimated taxes for the current taxable year; and
2. The amount of tax refund applied from the preceding taxable year is equal to or greater than the required annual payment as calculated under 830 CMR 63B.2.2(8)(b).

(d) Collection of Addition to Tax for Underpayment. The Commissioner will assess and collect the addition to tax for underpayment in the same manner as the Commissioner assesses and collects the tax on domestic business corporations under M.G.L. c. 63, § 32.

(9) Transition Rule for First and Second Estimated Tax Payments in the Taxable Year Ending on or after December 31, 1989.

(a) Inclusion of Increase in Percentage for First Estimated Tax Payment. Any taxpayer that made its first estimated tax payment for its first taxable year ending on or after December 31, 1989, before April 27, 1989, the effective date of St. 1989, c. 39, under the percentage schedule of former M.G.L. c. 63B, § 4, must increase its second estimated tax payment by the difference between the amount required for the first estimated tax payment under the former percentage schedule and the amount required for the first estimated tax payment under the current applicable percentage schedule under M.G.L. c. 63B, §§ 2 through 5, 7, 9, 10, as amended by St. 1989, c. 39, notwithstanding any other provisions of M.G.L. c. 63B and 830 CMR 63B.2.2.

(b) Addition to Tax for Failure to Include Increase. If a taxpayer fails to pay the difference between the amounts required for the first installment under the former percentage schedule and the current applicable percentage schedule on or before the due date of the second estimated tax payment, the Commissioner will impose an addition to tax for underpayment of estimated tax for the period between the due date of the second estimated tax payment and the date the taxpayer pays the amount of the difference.

These provisions are illustrated by the following example:

Example 2: Abbot, Inc., a calendar year taxpayer, reasonably expected in January 1989 that its tax for 1989 would be \$10,000. On March 15, 1989, Abbot paid \$3,000 (30% of \$10,000) in estimated tax. On June 15, 1989, Abbot should pay \$3,500 (25% plus 10% of \$10,000); on September 15, 1989, Abbot should pay \$2,500 (25% of \$10,000); on December 15, 1989, Abbot should pay \$1,000 (10% of \$10,000).

(10) Officers' Personal Liability and Penalty. Any officer, director, or employee of a taxpayer required to pay an estimated tax who is wilfully responsible for the failure of the taxpayer to make an estimated tax payment will be liable under M.G.L. c. 63B, § 9, for the amount of tax not paid to the Department as a result of such failure and for a penalty of not less than \$500 and not more than \$5,000.

REGULATORY AUTHORITY

830 CMR 63B.2: M.G.L. c. 14, § 6(1) and c. 62C, § 3.

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(PAGES 265 THROUGH 276 ARE RESERVED FOR FUTURE.)