

Instructions for Transferor's Certification

General Information

This form must be executed by the Transferor and provided to the Withholding Agent when the gross sales price for the sale or conveyance of real estate located in whole or in part in Massachusetts equals or exceeds \$1,000,000. The Transferor shall certify the amount subject to withholding, if any, and make any representations that the Transferor is exempt from withholding or that a full or partial withholding exemption applies. For more information about the withholding requirements that apply to the proceeds of sales or transfers of Massachusetts Real Estate, see 830 CMR 62B.2.4 and mass.gov/info-details/withholding-requirement-sale-of-real-estate-by-non-residents.

Who Must Complete This Certification

The Transferor must complete the Transferor's Certification. The Transferor is the person who, or entity that, transfers ownership of real estate by sale, exchange, or any other transfer. The Transferor may be an individual, corporation, S corporation, trust, estate, or partnership. If there are multiple Transferors, each Transferor must complete a separate Transferor's Certification.

Once the Transferor completes and signs the Transferor's Certification, the Withholding Agent will also sign the document.

Responsibilities and Requirements of Transferor

For all Transfers where the gross sales price for the sale or conveyance of real estate located in whole or part in Massachusetts equals or exceeds \$1,000,000, the Transferor must provide the Withholding Agent with a complete and accurate Transferor's Certification. If the Transferor does not provide a Transferor's Certification, then alternative withholding cannot be elected, exemptions or reductions cannot be claimed, and the Withholding Agent must collect and remit the full amount of withholding based on the gross sales price.

The Transferor shall retain a copy of the Transferor's Certification and shall provide this information to the Commissioner upon request.

The Transferor is responsible for paying any tax due on the net gain from a real estate transfer. For example, the Transferor may be responsible for an estimated tax payment even if a withholding exemption applies.

Responsibilities and Requirements of Withholding Agent

The Withholding Agent is the person responsible for closing the real estate transaction. The Withholding Agent may be an attorney, escrow company, title company, or any other person who receives and disburses the consideration or value for a transfer of real estate. If there is no third-party helping to close the real estate transaction, the Transferee must assume the responsibilities of the Withholding Agent.

The Withholding Agent may accept the Transferor's Certification in good faith, so long as there is no evidence of bad faith. The Withholding Agent shall rely on the information provided on the Transferor's Certification to file Form NRW: Nonresident Real Estate Withholding. The Withholding Agent must attach the signed Transferor's Certification when submitting Form NRW. The Transferor's Certification, Form NRW, and any withholding payment must be submitted within 10 days of Closing.

Gross Sales Price

The gross sales price is the sum of: (i) cash paid or to be paid, excluding interest or original issue discount as defined in Internal Revenue Code (Code) § 1273, (ii) the fair market value of other property transferred or to be transferred, and (iii) the outstanding amount of any liability assumed by the Transferee or to which the real estate is subject immediately before and after the Transfer. The gross sales price includes the entire transaction, including all payments that are, or will be, part of an Installment Transaction.

Withholding Amount

Unless a Transferor elects to use the alternative withholding calculation (explained below), the amount subject to withholding is the "default withholding amount." The default withholding amount equals the Transferor's portion of the Gross Sales Price, reduced by any applicable withholding exemptions or reductions. The default withholding amount shall be multiplied by a 4% tax rate for purposes of the nonresident real estate withholding requirement. For Transferors subject to the personal income tax under MGL ch 62, if the default withholding amount exceeds the taxable income surtax threshold referenced in MGL ch 62, § 4(d), then an additional 4% must be withheld from the excess over the surtax threshold.

Where a Transferor affirmatively elects to use the alternative withholding calculation on the Transferor's Certification, the amount subject to withholding is the "alternative withholding amount." The alternative withholding amount equals the Transferor's estimated net gain from the Transfer, reduced by any applicable withholding exemptions or reductions. The alternative withholding amount shall be multiplied by the tax rate applicable to the Transferor. If the Transferor is subject to tax under MGL ch 63, then the applicable tax rate is 8%. If the Transferor is subject to the personal income tax under MGL ch 62, then the applicable tax rate is 5%. Additionally, if the Transferor is subject to the personal income tax under MGL ch 62 and the Transferor's alternative withholding amount exceeds the taxable income surtax threshold referenced in MGL ch 62, § 4(d), then an additional 4% must be withheld from the excess over the surtax threshold.

Specific Instructions:

Part 1. Transferor

Enter name, identification number (social security or federal employer identification number), address, email address, and phone number of the Transferor. If the Transferor was issued an individual taxpayer identification number (ITIN) by the IRS, enter the ITIN.

Fill in the oval indicating the Transferor entity type.

Part 2. Property being sold

Property sold must be fully or partially located in Massachusetts.

Enter the street address of the property being sold.

Enter the gross sales price of the property being sold.

Enter the Transferor's percentage of the gross sale price of the property. If there is only one Transferor, enter 100%.

Enter the date of Closing for the sale of the property. The date of the Closing is the date of settlement.

Part 3. Exemption and Reductions

Section 1: Certifications which fully exempt the sale from withholding

Withholding is not required for certain Transferors. If a withholding exemption applies to the Transferor, fill in the corresponding oval. Do not fill in more than one oval.

The following types of Transferors qualify for a full exemption:

- A full-year Massachusetts resident. An individual is a full-year resident if they have been a resident, as defined in MGL ch 62, § 1(f), from January 1 of the year in which the real estate sale or transfer occurs through the Closing, and they will continue to be a resident after the Closing.

Note: By filling in the oval for this exemption, the Transferor represents that they will continue to be a resident after Closing.

- A pass-through entity;
- A publicly traded partnership;
- An estate of a resident decedent or a resident trust as described in MGL ch 62, § 10(c);
- A corporation with a continuing Massachusetts business presence or a

member of a combined group where one member of such group has a continuing Massachusetts business presence. A corporation has a continuing Massachusetts business presence if it:

- Filed a Massachusetts income tax return for the tax year prior to the tax year in which the transfer occurs,
- Is subject to a requirement to report the transfer on a Massachusetts tax return for the current year (and it will so report), and
- Is not selling or transferring all, or substantially all, of the corporation's assets situated in Massachusetts such that, under MGL ch 62C, § 51, it would be required to seek a waiver or notify the Commissioner and pay the taxes due on the Transfer on or before the date of sale or Transfer.

Note: By filling in the oval for this exemption, the Transferor represents that (a) it or a member of its combined group is subject to a requirement to report the Transfer on a Massachusetts tax return for the current year, and that it or that member will so report the Transfer, and (b) it is not selling or transferring all, or substantially all, of the corporation's assets situated in Massachusetts such that it would be required to seek a waiver or notify the Commissioner and pay the taxes due on the Transfer on or before the date of sale or Transfer.

- An organization qualified under Code § 501 and exempt from tax in Massachusetts, unless the Transfer results in unrelated business taxable income, as defined under Code § 512, to the Transferor;
- An insurance company that is subject to the provisions of MGL ch 63, §§ 20 through 26;
- The United States Government, the Commonwealth or any political subdivision thereof, or their respective agencies;
- The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company;
- Any financial institution, as defined in MGL ch 63, § 1, that maintains a place of business in Massachusetts; and
- A real estate investment trust under Code §§ 856 through 859, provided that the proceeds from the trust's sale of real estate are distributed to the trust's shareholders in the form of dividends derived from the sale of real estate.

Note: If you filled in an oval in Part 3, Section 1, withholding is not required. Do not complete Part 3, Sections 2 and 3. Do not complete Part 4. Go to Part 5, complete the declaration statement, and sign.

Section 2: Certifications that may reduce withholding

If a certification in Part 3, Section 2 applies to the Transferor or property being transferred, withholding may be reduced or not required. Fill in the corresponding oval for any applicable certification. You may fill in more than one oval. The total amount by which withholding may be reduced by Part 3, Section 2 certifications is calculated in Part 4, Section 1, line 2 or Part 4, Section 2, line 4.

- If the withholding amount, before applying any exemptions or reductions (see "Withholding Amount" above) but after applying the applicable tax rate (not including the additional 4% surtax if applicable), is greater than the amount by which the gross sales price exceeds amounts used for the payment of debts of the Transferor, secured by a mortgage or other lien on the property being transferred that are paid at Closing, fill in the oval. For the purpose of this certification, "debts" do not include those incurred in contemplation of the Transfer, including a debt secured by a mortgage, deed, or trust, or other instrument on the property being sold with an effective date of not more than 90 days before the date of Transfer.
- If the property is transferred pursuant to a foreclosure sale and the gross sales price does not exceed the debt secured by the property held by the mortgagee or lien holder, fill in the oval.
- If the property is transferred pursuant to a foreclosure sale and the gross sales price exceeds the debt secured by the property held by the mortgagee or lien holder, fill in the oval.
- If a mortgagor conveys the mortgaged property to a mortgagee in lieu of foreclosure and with no additional consideration, fill in the oval.
- If the property is being compulsorily or involuntarily converted, and the Transferor intends to acquire property that is similar or related in service or

use to qualify for nonrecognition of gain for Massachusetts income tax purposes under Code § 1033, fill in the oval.

- If the Transfer is made by a mortgagee or assignee or debt holder and all the proceeds are directly given to the mortgagee or lien holder, fill in the oval.
- If the property is located partly within and partly outside of Massachusetts, fill in the oval.

Section 3: Full or partial exemption based on nonrecognition of gain

If a certification in Part 3, Section 3 applies to the Transferor or property being transferred, withholding may be reduced or not required. Fill in the corresponding oval for any applicable certification. You may fill in more than one oval. The total amount by which withholding may be reduced by Part 3, Section 3 certifications is calculated in Part 4, Section 1, line 3 or Part 4, Section 2, line 5.

- If the property qualifies as the Transferor's principal residence under Code § 121, fill in the oval.
- If the Transfer is between spouses or incident to divorce as defined under Code § 1041, fill in the oval.
- If the transfer is to a corporation controlled by a Transferor as defined under Code § 351, fill in the oval.
- If the Transfer qualifies as a tax-free reorganization as defined under Code § 368, fill in the oval.
- If the Transferor will be deferring all of part of the gain under Code § 1031 using a qualified intermediary, fill in the oval.

Note: By filling in the oval for this exemption, the Transferor acknowledges the amount of gain that has been deferred and consents to personal jurisdiction in Massachusetts for the determination and collection of taxes and related interest, penalties, and fees that will be due when the gain is realized.

• If the Transfer is pursuant to an installment sale and the Transferor will receive less than the full purchase price at the time of settlement, fill in the oval.

Note: By filling in the oval for this exemption, the Transferor consents to personal jurisdiction in Massachusetts for the determination and collection of taxes and related interest, penalties, and fees that will be due on subsequent installment payments.

Part 4. Computation of Transferor's Withholding

The default withholding amount is the Transferor's share of the gross sales price of the transferred property, reduced by any applicable withholding exemptions or reductions in Part 3, Sections 2 and 3. The default withholding amount shall be multiplied by a 4% tax rate for purposes of the nonresident real estate withholding requirement. For Transferors subject to the personal income tax under MGL ch 62, if the default withholding amount exceeds the taxable income surtax threshold referenced in MGL ch 62, § 4(d) then an additional 4% must be withheld from the excess over the surtax threshold. The default withholding amount applies unless the Transferor affirmatively elects the alternative withholding amount.

The Transferor must elect the alternative withholding calculation if they would like the Withholding Agent to withhold on that basis. The alternative withholding amount is the Transferor's estimated net gain from the sale or exchange of real estate, reduced by any applicable withholding exemptions or reductions in Part 3, Sections 2 and 3. The alternative withholding amount shall be multiplied by the tax rate applicable to the Transferor. If the Transferor is subject to tax under MGL ch 63, then the applicable tax rate is 8%. If the Transferor is subject to the personal income tax under MGL ch 62, then the applicable tax rate is 5%. Additionally, if the Transferor is subject to the personal income tax under MGL ch 62 and the Transferor's alternative withholding amount exceeds the taxable income surtax threshold referenced in MGL ch 62, § 4(d), then an additional 4% must be withheld from the excess over the surtax threshold.

Fill in the oval if electing the alternative withholding calculation based on estimated net gain. If electing alternative withholding, complete Part 4, Section 2, Alternative withholding calculation. Otherwise, complete Part 4, Section 1, Withholding calculation. Failure to complete Part 4 will result in the Withholding Agent collecting and remitting on the full gross sales price of the sale or transfer.

Section 1: Withholding calculation

You must complete this section unless you are electing the alternative withholding calculation based on estimated gain.

Line 1. Enter the Transferor's portion of the gross sales price. This is the total gross sales price multiplied by the Transferor's percentage of the total gross sales price entered in Part 2.

Line 2. Enter the total amount of any reductions that apply based on the Part 3, Section 2 certifications. If you filled in multiple ovals in Part 3, Section 2, enter the sum of all applicable reductions on line 2.

- If you filled in the oval certifying that the withholding amount before applying any exemptions or reductions, but after applying the Transferor's applicable tax rate (not including the additional 4% surtax if applicable), is greater than the amount by which the gross sales price exceeds amounts used for the payment of debts of the Transferor, secured by a mortgage or other lien on the property being transferred that are paid at Closing, then the reduction is equal to the excess of the withholding amount over the gross sales price less the payment of debts.
 - If you filled in the oval certifying that the property is transferred pursuant to a foreclosure sale and the gross sales price does not exceed the debt secured by the property held by the mortgagee or lien holder, then the reduction is equal to the gross sales price.
 - If you filled in the oval certifying that the property is transferred pursuant to a foreclosure sale and the gross sales price exceeds the debt secured by the property held by the mortgagee or lien holder, then the reduction is equal to the excess of the withholding amount over the gross sales price less the secured debt.
 - If you filled in the oval certifying that a mortgagor conveys the mortgaged property to a mortgagee in lieu of foreclosure and with no additional consideration, then the reduction is equal to gross sales price.
 - If you filled in the oval certifying that the property is being compulsorily or involuntarily converted, and the Transferor intends to acquire property that is similar or related in service or use to qualify for nonrecognition of gain for Massachusetts income tax purposes under Code § 1033, then the reduction is equal to the gross sales price reasonably attributed to gain that is realized but not recognized pursuant to the compulsory or involuntary conversion.
 - If you filled in the oval certifying that the transfer is made by a mortgagee or assignee or debt holder and all the proceeds are directly given to the mortgagee or lien holder, then the reduction is equal to the proceeds given to the mortgagee or lien holder.
 - If you filled in the oval certifying that the property is located partly within and partly outside of Massachusetts, then the reduction is equal to the portion of the gross sales price reasonably attributed to the portion of the property located outside of Massachusetts.
- Line 3.** Enter the total amount of any reductions that apply based on the Part 3, Section 3 certifications. If you filled in multiple ovals in Part 3, Section 3, enter the sum of all applicable reductions on line 3.
- If you filled in the oval certifying that the property qualifies as the Transferor's principal residence under Code § 121, then the reduction is equal to the portion of the gross sales price reasonably attributed to the gain that is not recognized under Massachusetts law.
 - If you filled in the oval certifying that the transfer is between spouses or incident to divorce as defined under Code § 1041, then the reduction is equal to the portion of the gross sales price reasonably attributed to the gain that is not recognized under Massachusetts law.
 - If you filled in the oval certifying that the transfer is to a corporation controlled by a transferor as defined under Code § 351, then the reduction is equal to the portion of the gross sales price reasonably attributed to the gain that is not recognized under Massachusetts law.
 - If you filled in the oval certifying that the transfer qualifies as a tax-free reorganization as defined under Code § 368, then the reduction is equal to the portion of the gross sales price reasonably attributed to the gain that is not recognized under Massachusetts law.
 - If you filled in the oval certifying that the Transferor will be deferring all of

part of the gain under Code § 1031 using a qualified intermediary, then the reduction is equal to the portion of the gross sales price reasonably attributed to the gain that is deferred.

- If you filled in the oval certifying that the transfer is pursuant to an installment sale and the Transferor will receive less than the full purchase price at the time of settlement, then the reduction is equal to the portion of the gross sales not received at the time of settlement.

Line 4. Calculate the Transferor's portion of the gross sales price subject to withholding as follows: The Transferor's portion of the total gross sales price (line 1), less the total amount of any reductions calculated under Part 3, Section 2 (line 2), less the total amount of any reductions calculated under Part 3, Section 3 (line 3). If the result is less than zero, enter zero. The amount subject to withholding cannot be less than zero. The Transferor's portion of the gross sales price subject to withholding reported on line 4 multiplied by 4% (plus any additional amount required if the amount on line 4 exceeds the surtax threshold) is the amount that the withholding agent must withhold if the Transferor did not elect alternative withholding.

Section 2: Alternative withholding calculation

You must fill in the oval and complete this section to elect the alternative withholding calculation.

Line 1. Enter the Transferor's portion of the gross sales price. This is the total gross sales price multiplied by the Transferor's percentage of the total gross sales price entered in Part 2.

Line 2. Enter the Transferor's Estimated Adjusted Basis. The Estimated Adjusted Basis is the Transferor's acquisition cost of the property (or the Transferor's share of the fair market value of the property at the date of death for inherited property), plus the Transferor's costs of any major improvements to the property if such costs are known. This amount may be an estimate for the purpose of the Transferor's Certification.

Line 3. Enter the Transferor's selling expenses. Do not include expenses included in the Estimated Adjusted Basis.

Line 4. Enter the total amount of any reductions that apply based on the Part 3, Section 2 certifications. If you filled in multiple ovals in Part 3, Section 2, enter the sum of all applicable reductions on line 4.

- If you filled in the oval certifying that the withholding amount, before applying any exemptions or reductions, but after applying the applicable tax rate (not including the additional 4% surtax if applicable) is greater than the amount by which the gross sales price exceeds amounts used for the payment of debts of the Transferor, secured by a mortgage or other lien on the property being transferred that are paid at Closing, then the reduction is equal to the excess of the withholding amount over the gross sales price less the payment of debts.
- If you filled in the oval certifying that the property is transferred pursuant to a foreclosure sale and the gross sales price does not exceed the debt secured by the property held by the mortgagee or lien holder, then the reduction is equal to the gross sales price.
- If you filled in the oval certifying that the property is transferred pursuant to a foreclosure sale and the gross sales price exceeds the debt secured by the property held by the mortgagee or lien holder, then the reduction is equal to the excess of the withholding amount over the gross sales price less the secured debt.
- If you filled in the oval certifying that a mortgagor conveys the mortgaged property to a mortgagee in lieu of foreclosure and with no additional consideration, then the reduction is equal to gross sales price.
- If you filled in the oval certifying that the property is being compulsorily or involuntarily converted, and the Transferor intends to acquire property that is similar or related in service or use to qualify for nonrecognition of gain for Massachusetts income tax purposes under Code § 1033, then the reduction is equal to the gross sales price reasonably attributed to gain that is realized but not recognized pursuant to the compulsory or involuntary conversion.
- If you filled in the oval certifying that the transfer is made by a mortgagee or assignee or debt holder and all the proceeds are directly given to the mortgagee or lien holder, then the reduction is equal to the proceeds given to the mortgagee or lien holder.

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- If you filled in the oval certifying that the property is located partly within and partly outside of Massachusetts, then the reduction is equal to the portion of the gross sales price reasonably attributed to the portion of the property located outside of Massachusetts.

Line 5. Enter the total amount of any reductions that apply based on the Part 3, Section 3 certifications. If you filled in multiple ovals in Part 3, Section 3, enter the sum of all applicable reductions on line 5.

- If you filled in the oval certifying that the property qualifies as the Transferor's principal residence under Code § 121, then the reduction is equal to the portion of the gross sales price reasonably attributed to the gain that is not recognized under Massachusetts law.
- If you filled in the oval certifying that the transfer is between spouses or incident to divorce as defined under Code § 1041, then the reduction is equal to the portion of the gross sales price reasonably attributed to the gain that is not recognized under Massachusetts law.
- If you filled in the oval certifying that the transfer is to a corporation controlled by a transferor as defined under Code § 351, then the reduction is equal to the portion of the gross sales price reasonably attributed to the gain that is not recognized under Massachusetts law.
- If you filled in the oval certifying that the transfer qualifies as a tax-free reorganization as defined under Code § 368, then the reduction is equal to the portion of the gross sales price reasonably attributed to the gain that is not recognized under Massachusetts law.
- If you filled in the oval certifying that the Transferor will be deferring all of part of the gain under Code § 1031 using a qualified intermediary, then the reduction is equal to the portion of the gross sales price reasonably attributed to the gain that is deferred.
- If you filled in the oval certifying that the transfer is pursuant to an installment sale and the Transferor will receive less than the full purchase price at the time of settlement, then the reduction is equal to the portion of the gross sales not received at the time of settlement.

Line 6. Calculate the Transferor's estimated net gain subject to withholding as follows: The Transferor's portion of the total gross sales price (line 1), less the Transferor's estimated cost basis (line 2), less the Transferor's selling expenses (line 3), less the total amount of any reductions calculated under Part 3, Section 2 (line 4), less the total amount of any reductions calculated under Part 3, Section 3 (line 5). If the result is less than zero, enter zero. The estimated net gain subject to withholding cannot be less than zero.

Line 7. Enter the Transferor's tax rate. If the Transferor is subject to the corporate excise, the tax rate will be 8%. If the Transferor is subject to the personal income tax under MGL ch 62, the tax rate will be 5%. For Transferors subject to the personal income tax, if the Transferor's estimated net gain subject to withholding (line 6) exceeds the taxable income surtax threshold referenced in MGL ch 62, § 4(d), then an additional 4% must be withheld from the estimated net gain exceeding the surtax threshold. The Transferor should enter the applicable tax rate on line 7 (8% or 5%), not including the 4% surtax threshold if applicable. The Transferor's estimated net gain subject to withholding reported on line 6 multiplied by the Transferor's tax rate (plus any additional amount required if the surtax threshold applies) is the amount that the withholding agent must withhold if the Transferor elects alternative withholding.

Part 5. Declaration and Signature

Your signature(s) signifies that the information provided on this form is, to the best of your knowledge and belief, true, correct, and complete, under the penalties of perjury.

Privacy Act Notice

The Privacy Act Notice is available upon request or at mass.gov/dor