830 CMR 62.00: INCOME TAX

Section

62.3.1: Rent Deduction

(1) General. An individual who rents property located in the Commonwealth as his or her principal residence is entitled to an income tax deduction from Part B adjusted gross income equal to 50% of the rent, as defined in 830 CMR 62.3.1, paid to the landlord. For taxable years beginning on or after January 1, 2001, the maximum deduction shall not exceed $3,000. (M.G.L. c. 62, § 3(B)(a)(9))

(2) Location of Principal Residence. A taxpayer must be a resident of Massachusetts for his or her principal residence to be in Massachusetts. If a taxpayer is resident in Massachusetts and has only one place of residence, that place of residence is the taxpayer's principal residence. If a taxpayer is resident in Massachusetts and has more than one place of residence, the determination of which place of residence is the taxpayer's principal residence depends upon all the facts and circumstances in the case, including the number of days spent at each place of residence and the good faith representations of the taxpayer.

Example 1: A, a Massachusetts resident, owns a house in Springfield in which he or she lives most of the year and also rents a cottage on Cape Cod which he or she uses in the summer months. The Springfield house is his or her principal residence; the summer cottage is not. A may not deduct the rent on the summer cottage.

Example 2: B, a New Hampshire resident, owns a house in New Hampshire and also rents an apartment in Boston. His or her New Hampshire house is his or her principal residence; the Boston apartment is not. B may not deduct the rent on the Boston apartment.

Example 3: C, a Massachusetts resident, rents an apartment in Boston in which he or she lives most of the time and also rents a cottage in Maine. The Boston apartment is C's principal residence; the Maine cottage is not. C may deduct the rent on the Boston apartment.

Example 4: D, a University of Massachusetts undergraduate student, rents an apartment in Amherst during the school year and resides with his or her parents in the family home in Newton when he or she is not at college. His or her home in Newton is his or her principal residence; the apartment rent is not deductible.

(3) What Constitutes Rent. For purposes of 830 CMR 62.3.1 "rent" means the amount paid to a landlord by a tenant for the rental or lease of premises which are occupied as a principal residence located in Massachusetts.

Rent may include the rental of a mobile home or of a mobile home site. Payments by a tenant-stockholder of a cooperative housing corporation to the corporation and payments by an owner of a condominium unit to the condominium association are not rent. Consideration paid for the occupancy of a "hotel", "lodging house" or "motel", as defined in M.G.L. c. 64G, § 1, or similar occupancies, is not rent, unless and until such premises are occupied under a rental agreement, written or oral, creating a landlord-tenant relationship.

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In determining the amount of the deduction, rent includes the amount paid for heat, hot water, gas, electricity, furniture or parking, if the landlord makes no separate charge for these items. But if charges for these items are separately stated at the time of rental, in the rental agreement or otherwise, such charges do not constitute rent for purposes of the rental deduction.

Example: Under the terms of E's lease the rental price of his unit is $300 per month, which includes the cost of heat and hot water. The lease provides for an additional charge of $25 per month for a parking space. E pays for his own electricity. E's rental deduction for each month of occupancy for which rent is paid is $150 (50% of $300 rent).

Where a tenant provides services to a landlord and in consideration for such services receives a reduction in rent, rent is the actual amount of money paid by the tenant to the landlord; rent does not include payments in kind.

Example: M, a tenant in N's apartment building, tends the garden surrounding the building. In consideration for this service M is charged only $250 per month for the right to occupy his apartment unit; other tenants, occupying similar units, are charged $300 per month. M's rental deduction for each month of occupancy for which rent is paid is $125 (50% of $250).

Rent does not include amounts paid as a security deposit or amounts paid for the last month's rent upon entering into a lease, unless and until applied to unpaid rent.

(4) Persons Entitled to Deduction. A taxpayer whose principal residence is in Massachusetts and who pays rent for such premises is eligible for the rental deduction. If two or more individuals jointly rent a unit, each individual who occupies the unit as his principal residence is entitled to a deduction based on the amount of rent he paid.

Example 1: F, a young artist, occupies as her principal residence an apartment in Cambridge, which is leased for her by her aunt who resides in Boston. The rent is paid by the aunt. F is not entitled to a deduction since she does not pay the rent; the aunt is not entitled to the deduction because the apartment is not her residence.

Example 2: G, a teacher, and H, a salesman, rent an apartment in Boston for $300 a month; each pays $150. The apartment is G's only residence; H also owns a house in Pittsfield in which he lives when not traveling. G's rental deduction for each month of occupancy for which rent is paid is $75 (50% of $150). H is not entitled to a deduction since the Boston apartment is not his principal residence.

(5) Prepayment and Late Payment of Rent. The rental deduction may only be taken for the taxable year in which the rent was paid (but see 830 CMR 62.3.1(3) for special rules as to amounts paid for the last month's rent or as a security deposit); it applies to rent paid after December 31, 1980 for rental periods ending after that date.

Example 1: I, a tenant whose rental period runs from the first to the last day of the month, pays his January, 1982 rent in December, 1981. I will take the deduction for the January, 1982 rental period on his 1981 return, the return for the year in which the payment was made.

Example 2: J pays his October and November, 1981 rent in February, 1982; he may take the deduction for this payment on his 1982 return, the return for the year in which the payment was made.

Example 3: K, a tenant whose rental period runs from the 15th day of one month to the 14th day of the following month paid rent for the December 15, 1980 to January 14, 1981 rental period on December 15, 1980. K is not entitled to a deduction for this payment since the rental deduction applies to rent paid after December 31, 1980.

(6) Recordkeeping. Every taxpayer claiming the rental deduction must provide the information required by the appropriate schedule of the Massachusetts Income Tax Return (Form 1) and must retain adequate records to substantiate the deduction.

2.3.1: continued

(7) Effective Date. The residential rental deduction is effective for taxable years ending after December 31, 1980.

62.3.2: Charitable Contribution Deduction

(1) Statement of Purpose, Outline of Topics.

(a) Statement of Purpose. 830 CMR 62.3.2 explains the application of the charitable contribution deduction allowed by M.G.L. c. 62, § 3(B)(a)(13) against Part B adjusted gross income in determining Part B taxable income.

(b) Outline of Topics. 830 CMR 62.3.2 is organized as follows:

1. Statement of Purpose, Outline of Topics
2. Definitions
3. General Rule
4. Charitable Contribution Deduction Calculation
5. Taxable Years in Which a Deduction May Be Claimed
6. Part-year Resident and Nonresident Taxpayers
7. Exempt Unincorporated Associations
8. Trusts and Estates
9. Partners and S Corporation Shareholders
10. No Double Benefit
11. Recordkeeping

(2) Definitions. For purposes of 830 CMR 62.3.2 the following terms shall have the following meanings:

Code. The Internal Revenue Code of the United States, as defined in M.G.L. c. 62, § 1(c).

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

Taxpayer. Any individual or entity subject to taxation under M.G.L. c. 62 and entitled to take a charitable contribution deduction under M.G.L. c. 62, § 3(B)(a)(13).

(3) General Rule. M.G.L. c. 62, § 3(B)(a)(13) allows a personal income tax deduction for charitable contributions based on the federal charitable contribution deduction allowed or allowable under Code § 170, including any carryover allowed therein, with certain modifications described in 830 CMR 62.3.2(4). Taxpayers are not required to claim a federal charitable contribution deduction in order to claim a Massachusetts charitable contribution deduction. The Massachusetts charitable contribution deduction is generally available only for contributions made in taxable years beginning on or after January 1, 2023. However, any amounts attributable to charitable contributions made prior to January 1, 2023 and carried over to tax years beginning on or after January 1, 2023 on the taxpayer's federal income tax return are includable in calculating the Massachusetts charitable contribution deduction.

(4) Charitable Contribution Deduction Calculation.

(a) To be deductible, a charitable contribution must be made on or after January 1, 2023, except as described in 830 CMR 62.3.2(4)(d), and meet all the requirements, conditions, and limitations for deducting charitable contributions under Code § 170 as amended and in effect as specified in M.G.L. c. 62, § 1(c), except that the following rules shall apply:

1. Taxpayers are not required to itemize deductions on their federal income tax return to obtain the Massachusetts deduction.
2. No Massachusetts deduction is allowed for contributions of household goods or used clothing, within the meaning of Code § 170(f)(16).

(b) A taxpayer that itemized deductions and claimed the charitable contribution deduction on their federal return should use as their starting figure in calculating the Massachusetts deduction the amount reported for federal purposes representing contributions to charity. A taxpayer that did not itemize deductions or claim a charitable contribution deduction on their federal return should use as their starting figure the amount they would have reported for federal purposes representing contributions to charity had they itemized and claimed a charitable contribution deduction on their federal return. In either case, such amount, including any federal carryover amount from a prior year, must then be reduced and/or adjusted by the modifications referenced in 830 CMR 62.3.2(4)(a).

(c) In calculating the Massachusetts charitable contribution deduction, the federal limitation on itemized deductions under Code § 68 does not apply.

62.3.2: continued

(d) Any amounts attributable to charitable contributions made prior to January 1, 2023 and carried over to tax years beginning on or after January 1, 2023 on the taxpayer's federal income tax return are includable in calculating the Massachusetts charitable contribution deduction provided such charitable contributions otherwise meet the requirements described in 830 CMR 62.3.2(4)(a).

(5) Taxable Years in Which a Deduction May Be Claimed. Commencing with taxable year 2023, charitable contributions may be deducted in any succeeding taxable year for which the rate of tax on Part B taxable income, imposed under M.G.L. c. 62, § 4(b), in the prior taxable year was equal to 5%.

(6) Part-year Resident and Nonresident Taxpayers.

(a) Part-year Resident Taxpayers. Part-year resident Taxpayers may deduct the dollar amount determined by multiplying their charitable contribution deduction, calculated in the same manner as for full-year resident Taxpayers under 830 CMR 62.3.2(4), by the part-year resident pro-ration formula, which is the number of days of Massachusetts residency divided by 365.

(b) Nonresident Taxpayers. Nonresident Taxpayers may deduct the dollar amount determined by multiplying their charitable contribution deduction, calculated in the same manner as for full year residents under 830 CMR 62.3.2(4), by the fraction representing their income subject to tax in Massachusetts divided by their total income from all sources. *See* 830 CMR 62.5A.1(8)(b).

(7) Exempt Unincorporated Associations. The Massachusetts unrelated business income of an exempt unincorporated association is subject to tax under M.G.L. c. 62. An association's Massachusetts unrelated business income is its federal gross income derived from its unrelated business activity, with the modifications set forth in M.G.L. c. 62, § 2. If the association is engaged in an unrelated trade or business, the association is generally entitled to the deductions allowed under M.G.L. c. 62, including the charitable contribution deduction under M.G.L. c. 62, § 3(B)(a)(13), that are directly connected with that trade or business. *See* 830 CMR 63.38T.1(5)(a) - (c). The charitable contribution deduction, however, is allowed to an exempt unincorporated association engaged in an unrelated trade or business even when the contribution is not directly connected with that trade or business. *See* Code § 512(b)(10).

(8) Trusts and Estates. Generally, trusts and estates cannot claim a charitable contribution deduction against Part B income under M.G.L. c. 62, § 3(B)(a)(13). Instead, amounts paid to, or irrevocably set aside for, public charitable purposes, or paid to or irrevocably set aside for the benefit of an organization established and operated exclusively for charitable purposes, are deductible by trusts and estates against Part B adjusted gross income only as provided in M.G.L. c. 62, § 3(B)(a)(2).

(9) Partners and S Corporation Shareholders.

(a) Partners. Massachusetts generally follows the federal income tax treatment of partnerships and their partners under Code §§ 701 through 761. *See* M.G.L. c. 62, § 17. Code § 703(a)(2)(C) provides that the taxable income of a partnership is computed in the same manner as in the case of an individual except that the deduction for charitable contributions provided in Code § 170 is not allowed to the partnership. Instead, under Code § 702(a)(4) each partner takes into account separately the partner's distributive share of the partnership's charitable contributions.

(b) S Corporation Shareholders. Massachusetts generally follows the federal income tax treatment of S corporations and their shareholders under Code §§ 1361 through 1368. *See* M.G.L. c. 62, § 17A. Code § 1363(b)(2) provides that the taxable income of an S corporation is computed in the same manner as in the case of an individual, except that the deductions referred to in Code § 703(a)(2), including the deduction for charitable contributions provided in Code § 170, is not allowed to the S corporation. Instead, under Code § 1366(a)(1)(B) each S corporation shareholder takes into account separately the shareholder's *pro rata* share of the S corporation's charitable contributions.

(10) No Double Benefit. A Taxpayer claiming a charitable contribution deduction under M.G.L. c. 62, § 3 (B)(a)(13) may not claim any other deduction or credit otherwise allowable under M.G.L. c. 62 with respect to the same charitable contribution.

(11) Recordkeeping. Taxpayers claiming the charitable contribution deduction must follow the recordkeeping and substantiation requirements of Code § 170 and the regulations thereunder, regardless of whether they claim a charitable contribution deduction on their federal returns. Taxpayers must keep records to substantiate cash and noncash charitable contributions. Taxpayers that are deducting noncash charitable contributions with a total value of over $500 must file with the Commissioner a copy of Federal Form 8283.

62.5A.1: Non-resident Income Tax

(1) General.

(a) Massachusetts source income is generally taxable to non-residents. 830 CMR 62.5A.1 sets forth detailed rules for the taxation of this income. Massachusetts source income includes items of gross income derived from or effectively connected with any trade or business, including any employment, carried on by the taxpayer in Massachusetts, whether or not the non-resident is actively engaged in a trade or business or employment in Massachusetts in the year in which the income is received; the participation in any lottery or wagering transaction in Massachusetts; or the ownership of any interest in real or tangible personal property located in Massachusetts. All types of income, including investment income, derived from or effectively connected with the carrying on of a trade or business within Massachusetts are Massachusetts source income. The term may include gain from the sale of a business or of an interest in a business, distributive share income, separation, sick or vacation pay, deferred compensation and nonqualified pension income not prevented from state taxation by the laws of the United States, and income from a covenant not to compete. For rules that apply to non-resident members of professional athletic teams, *see* 830 CMR 62.5A.2.

Certain types of income received by non-residents from sources within Massachusetts are excluded from taxation, such as non-business-related interest, dividends and gains from the sale or exchange of intangibles that are not derived from or effectively connected with the carrying on of a trade or business, and certain qualified pension income.

Massachusetts source income derived from pass-through entities, such as partnerships, trusts, estates, limited liability companies (LLCs), or S corporations, generally is also subject to Massachusetts income taxation for non-residents. The activities of a pass-through entity are attributed to its owners, including non-resident partners, members, or shareholders. Thus, if a non-resident has an ownership interest in a pass-through entity that is engaged in the conduct of a trade or business in Massachusetts, or derives income from the ownership of real or tangible personal property in Massachusetts, the non-resident is treated as if conducting those activities in his or her individual capacity.

The income of a pass-through entity that derives from or is effectively connected with the conduct of a trade or business or the ownership of real or tangible personal property in Massachusetts retains its character as it passes through a tiered structure of pass-through entities before becoming income to the non-resident. Thus, income that is derived from a trade or business does not convert to non-business-related income as it passes through a series of entities. Similarly, Massachusetts source income of any pass-through entities engaged in a unitary business that conducts a trade or business in Massachusetts is taxable to a non-resident member to the extent it would be taxable if received directly by the non-resident.

In the case of multi-tiered unitary businesses where at least one entity in the structure is engaged in the conduct of a trade or business or the ownership of real or tangible personal property in Massachusetts, and income derived from one or more members of the unitary business is taxable in another state, the group of entities must apportion its income, as determined under 830 CMR 62.5A.1.

When a non-resident earns or derives income from sources both in Massachusetts and elsewhere, only that portion of the income earned or derived from Massachusetts is taxed. The types of deductions and exemptions available to a non-resident with respect to Massachusetts source income are generally the same as those granted to a resident.

All transactions involving the taxation of non-residents are subject to the sham transaction rule, as defined in 830 CMR 62.5A.1.

To the extent that any rule in 830 CMR 62.5A.1 conflicts with that in another regulation, such as 830 CMR 62.17A.1, "Massachusetts Taxation of S Corporations and their Shareholders," the most recently promulgated rule applies.

NON-TEXT PAGE

62.5A.1: continued

(b) 830 CMR 62.5A.1 is organized as follows:

1. General.
2. Definitions.
3. Income Subject to Massachusetts Income Tax.
4. Income Not Subject to Massachusetts Income Tax.
5. Rules for Apportionment of Income for Non-Resident Individuals Working in Massachusetts.
6. Rules for Apportionment of Income to Massachusetts for Non-resident Members of Pass-through Entities.
7. Exemptions.
8. Deductions.
9. Estates of Non-resident Decedents.
10. Non-resident Trusts.
11. Returns.
12. Effective Dates

(2) Definitions. Unless the context requires otherwise, for the purposes of 830 CMR 62.5A.1, the following definitions apply:

Code, as defined in M.G.L. c. 62, § 1, which refers to the federal Internal Revenue Code, with certain modifications.

Corporate Trust, any partnership, association, or trust, the beneficial interest of which is represented by transferable shares, which is subject to tax imposed by M.G.L. c. 62 as a corporate trust.

Domicile, the place which is an individual's true, fixed and permanent home, determined by established common law principles and the facts and circumstances in each case.

Entertainer, an individual employee, partner or sole proprietor who receives compensation to perform, entertain, amuse, or inform (as, for example, a lecturer) at one or more discrete events.

Federal Gross Income, gross income as defined under the Code.

Massachusetts Cooperative Housing Corporation, a corporation organized or existing under M.G.L. c. 157B, or M.G.L. c. 157, § 3A.

Massachusetts Gross Income, federal gross income as modified by M.G.L. c. 62, § 2(a).

Massachusetts Source Income, Massachusetts gross income derived from or effectively connected with:

(a) any trade or business, including any employment, carried on by a non-resident in Massachusetts, whether or not the non-resident is actively engaged in a trade or business or employment in Massachusetts in the year in which the income is received;

(b) the participation in any lottery or wagering transaction in Massachusetts; or

(c) the ownership of any interest in real or tangible personal property located in Massachusetts.

Massachusetts Timesharing Arrangement, an arrangement under which a taxpayer purchases a right to use accommodations located in Massachusetts for a specific period of less than a year's duration during any given year over a period of greater than three years.

Member, may include a shareholder of an S corporation; a partner in a partnership, including a limited partner in a limited partnership, or a partner in a limited liability partnership; a member of a limited liability company; or a beneficiary of an estate or trust other than a corporate trust.

Non-resident, any natural person who is not a resident or inhabitant.

62.5A.1: continued

Partner, a member of an entity organized as a general partnership, limited liability partnership, or limited partnership, or a member of any business entity subject to tax as a partnership for Massachusetts purposes.

Partnership, an unincorporated association of two or more individuals or entities organized to carry on, as co-owners, a business for profit. A partnership includes any business entity treated as a partnership for Massachusetts tax purposes, such as LLCs that are classified as partnerships for federal tax purposes. Businesses subject to Massachusetts tax on their income at the entity level, such as a corporate trust or an LLC that elects to be taxed as a corporation for federal tax purposes, are not treated as partnerships for Massachusetts tax purposes.

Part-year Resident, a taxpayer who moves to Massachusetts or establishes a permanent place of abode in Massachusetts and becomes a tax resident during the tax year, or a taxpayer who terminates his or her status as a Massachusetts resident and establishes a residence outside of the state during the tax year.

Pass-through Entity, includes a limited partnership, limited liability partnership, general partnership, a limited liability company that is treated as a partnership for Massachusetts tax purposes, an S corporation, and a trust not taxed at the entity level, including a grantor-type trust, but not including a corporate trust, and an estate not taxed at the entity level.

Person, an individual, corporation, society, association, partnership or other entity.

Presence for Business in Massachusetts, physical presence in Massachusetts for the purpose of engaging in any activity, the object of which is financial profit, gain, benefit, or advantage, direct or indirect.

Professional Athlete who is not a Member of a Professional Athletic Team, an individual employee, partner or sole proprietor who receives compensation to compete in athletics (other than as a member of a professional athletic team) at one or more discrete sporting events. For rules that apply to non-resident professional team athletes, *see* 830 CMR 62.5A.2.

Related Business Activities, as more fully defined in 830 CMR 62.5A.1(6)(d), include activities where there is a sharing or exchange of value between the segments of a single entity or multiple entities such that the activities are mutually beneficial, interdependent, integrated, or such that they otherwise contribute to one another. The term also includes the short-term investment of capital in a non-unitary business segment or activity, or any other investment that serves an operational function.

Resident or Inhabitant, any natural person domiciled in Massachusetts or any natural person who is not domiciled in Massachusetts but who maintains a permanent place of abode in Massachusetts and spends in the aggregate more than 183 days of the tax year in Massachusetts, including days spent partially in and partially out of Massachusetts.

S Corporation, an S corporation as defined in the Code.

Sham Transaction, a transaction that does not have:

(a) a valid, good faith business purpose other than tax avoidance; and
(b) economic substance apart from the asserted tax benefit.

Sham Transaction Rule, the rule, set forth at M.G.L. c. 62C, § 3A, that permits the commissioner, in his discretion, to disallow the asserted tax consequences of a transaction by asserting that it is a sham transaction; in such cases the taxpayer has the burden of proving by clear and convincing evidence that it is not a sham transaction, as more fully described in M.G.L. c. 62C, § 3A.

Tiered Structure, a pass-through entity that has a pass-through entity as a member. As between two entities, the pass-through entity that is a member is the upper-tier entity, and the entity of which it is a member is the lower-tier entity. A tiered pass-through entity arrangement may have two or more tiers; in such cases, a single entity can be both a lower-tier and an upper-tier entity.

62.5A.1: continued

Trust, a trust as defined under Massachusetts law, but for purposes of 830 CMR 62.5A.1, not including a corporate trust.

Unitary Business, a group of related businesses under common ownership that have one or more of the following factors:

(a) functional integration;
(b) centralization of management; and
(c) economies of scale.

Evidence of a unitary business includes facts indicating that there is a flow of value among the entities, or that capital transactions among the businesses serve an operational rather than an investment function.

(3) Income Subject to Massachusetts Income Tax. The Massachusetts income tax is imposed on the Massachusetts source income earned or derived by non-residents. Massachusetts source income includes the following types of income, but excludes items of income set forth in 830 CMR 62.5A.1(4):

(a) Income Derived from or Effectively Connected with a Trade or Business, Including Any Employment Carried on in Massachusetts. This income is defined as the income that is earned by, credited to, accumulated for or otherwise attributable to the taxpayer's trade or business in the Commonwealth in any year or part thereof, regardless of the year in which the income is actually received by the taxpayer and regardless of the taxpayer's residence or domicile in the year it is received. All types of income, including investment income, derived from or effectively connected with the carrying on of a trade or business within Massachusetts are Massachusetts source income. The term may include gain from the sale of a business or an interest in a business, distributive share income, separation, sick or vacation pay, deferred compensation and nonqualified pension income not prevented from state taxation by the laws of the United States, and income from a covenant not to compete.

1. "Trade or business, including any employment."

a. General Rule. Subject to the exception that applies to presence for business that is casual, isolated, or inconsequential, described in 830 CMR 62.5A.1(3)(h), a non-resident has a trade or business, including any employment carried on in Massachusetts:

i. If the non-resident, directly or through representatives or employees, maintains or operates or shares in maintaining or operating any place in Massachusetts where business affairs are systematically and regularly conducted;

ii. If the non-resident owns an interest in a pass-through entity that, directly or through representatives or employees, or through other pass-through entities, maintains or operates or shares in maintaining or operating any place in Massachusetts where its business affairs are systematically and regularly conducted;

iii. If the non-resident, directly or through representatives or employees, is present for business in Massachusetts either as an employee or as a sole proprietor or other self-employed individual, or if the non-resident owns an interest in a pass-through entity that, directly or through representatives or employees or through other pass-through entities, is present for business. All activities that are considered a "trade or business," including employment, under Massachusetts and/or federal tax law are subject to taxation in Massachusetts under M.G.L. c. 62, § 5A. Income from a trade or business generally includes that gross income against which trade or business expense deductions are allowable under sections 62 and 162 of the Code. *See* M.G.L. c. 62, § 1(l), IRC §§ 62, 162, Treas. Reg. §§ 1.161-1 through 1.162-29;

iv. If the non-resident licenses intangibles, including trademarks or patents, directly or through representatives or employees, for use in Massachusetts on an ongoing basis.

2. Current Residence or Domicile of a Non-resident Taxpayer has no Effect on the Taxability of Massachusetts Source Income. All items of income that derive from the conduct of a trade or business or employment in Massachusetts, as those terms are defined in 830 CMR 62.5A.1(3)(a)1., are Massachusetts source income, even if the taxpayer has not been present in Massachusetts during the year of receipt.

62.5A.1: continued

Example (3)(a)(2). Taxpayer is a resident of New Hampshire and works in Massachusetts from 1984 through 2004. Upon retirement in 2004 Taxpayer receives a severance compensation package that includes $10,000 for severance pay and $5,000 for unused sick leave. The entire $15,000 package is derived from and attributable to Taxpayer's employment in Massachusetts. The entire $15,000 package is thus Massachusetts source income.

(b) Income from a Pass-through Entity that is Derived from or Effectively Connected with a Trade or Business, Including Any Employment Carried on in Massachusetts.

1. General Rule. The activities of a pass-through entity are attributed to its individual members. A non-resident member of a pass-through entity is therefore engaged in the conduct of the trade or business of the pass-though entity of which it is a member, and thus is taxable on the Massachusetts source income of the entity. The character of any item of income, loss, deduction or credit included in the member's distributive share is determined as if it were realized directly by the member from the source from which realized by the pass-through entity, or incurred in the same manner as incurred by the pass-through entity. The principles in 830 CMR 62.5A.1(3)(b)1. shall apply in the case of an ownership chain that runs through multiple pass-through entities. For example, if a non-resident individual is a member of a pass-through entity that, in turn, is a member of a lower-tier pass-through entity that is engaged in a trade or business in Massachusetts, then the non-resident will be taxable on its share of the Massachusetts source income derived from the trade or business conducted by the lower-tier entity.

The income derived by a non-resident limited partner of a Massachusetts limited partnership engaged exclusively in buying, selling, dealing in or holding securities on its own behalf and not as a broker, is not subject to the Massachusetts income tax. *See* M.G.L. c. 62, § 17(b). The Massachusetts source income derived by a non-resident general partner of such a partnership is subject to Massachusetts income tax, provided the partnership is engaged in the conduct of a trade or business in the Commonwealth, or owns or leases real property in the Commonwealth.

2. Multiple Pass-through Entities that are not Engaged in a Unitary Business. In the case of multiple pass-through entities that are not engaged in a unitary business, the pass-through entities must identify the Massachusetts income or loss, reporting that amount to its members, allocated or apportioned as appropriate pursuant to 830 CMR 62.5A.1(6). That income must retain its identity as Massachusetts source income, and be reported as such to members as it passes through multiple pass-through entities, without further apportionment.

Example (3)(b)(2). Florida domiciled LLC ("Florida LLC") has three non-resident members. Florida LLC owns a Massachusetts domiciled LLC ("Massachusetts LLC") that invests in securities on its own behalf and is not engaged in a trade or business. Florida LLC owns a New York domiciled LLC ("New York LLC") that has an office in Boston that offers management services and advice to Massachusetts LLC and receives a fee from Massachusetts LLC based on a percentage of the portfolio value of Massachusetts LLC. Florida LLC also owns Real Estate LLC, commercially domiciled in Utah, but which owns an office tower in Boston and collects rents on that. Real Estate LLC is not engaged in a unitary business with the other members of the group.

Taxation of non-resident members of Florida LLC. The Massachusetts source income of Real Estate LLC, determined pursuant to the allocation and apportionment rules of 830 CMR 62.5A.1(6), is identified and reported to Florida LLC, and is taxable to the non-resident members. It is not subject to further apportionment under 830 CMR 62.5A.1(6) at the level of Florida LLC. Income from Massachusetts LLC is not subject to Massachusetts taxation to the non-resident members, because Massachusetts LLC only invests in securities on its own behalf. The Massachusetts source income derived from New York LLC, determined pursuant to the allocation and apportionment rules of 830 CMR 62.5A.1(6)(a), is taxable because the management company is engaged in the conduct of a trade or business in Massachusetts. The income of the group is not subject to the apportionment provisions described at 830 CMR 62.5A.1(6)(b), because the entities subject to Massachusetts taxation are not engaged in a unitary business.

62.5A.1: continued

3. Multiple Pass-through Entities Engaged in a Unitary Business. In the case of multiple pass-through entities that are engaged in a unitary business, the income of any entity in the structure that derives from or is effectively connected with the conduct of a trade or business or the ownership of real or tangible personal property in Massachusetts retains its character as it passes through the structure. Thus, business income of a pass-through entity does not convert to non-business income as it passes through a series of pass-through entities engaged in related business activities, as that term is defined in 830 CMR 62.5A.1(2), and is further explained in 830 CMR 62.5A.1(6). Investment income of a pass-through entity that would be taxable as business income if received directly by a non-resident member engaged in business in Massachusetts is treated as taxable income of the non-resident. Note that business income can include investment income that the pass-through entity or entities derives from an operational function.

Example (3)(b)(3). A non-resident is a member of a Nevada LLC. The Nevada LLC sells computer software, and has an 80% ownership interest in a Partnership that develops computer software in Massachusetts. The partnership is treated as a partnership for federal and Massachusetts tax purposes. The income of the Partnership flows through the LLC to non-resident members. The LLC and the Partnership are functionally integrated, and are a unitary business. Subject to the apportionment rules found at 830 CMR 62.5A.1(6), below, the income of the Partnership that is passed through to the non-resident shareholders is Massachusetts source income.

(c) Specific Types of Massachusetts Source Income. If a non-resident has a trade or business, including any employment, carried on in Massachusetts, Massachusetts source income includes, among other things:

1. Compensation for Personal Services. All types of compensation received for personal services performed in Massachusetts, regardless of where paid, are Massachusetts source income. Personal service compensation includes wages, salaries, commissions, fees, or payments in kind. In the case of compensation for personal services, the taxpayer must report all Massachusetts source income even though the taxpayer does not receive the entire amount of such income. For example, amounts withheld by an employer for federal or state income taxes, FICA contributions, medical insurance premiums not otherwise excluded from federal gross income, or other similar withholding deductions must be included in Massachusetts source income.

2. Stock Options. A taxpayer must recognize income derived from nonqualified stock options that are connected with employment, or with the conduct of a trade or business, in Massachusetts in the year the income is recognized for federal purposes whether or not the taxpayer is a resident of Massachusetts during the year in which the income is reported and whether or not the taxpayer remains employed by the issuer of the option in the year of recognition of the income. The amount of such income that is taxable to Massachusetts is determined by applying the taxpayer's average Massachusetts apportionment percentage (based on the taxpayer's employment or conduct of business within or without Massachusetts, as described in 830 CMR 62.5A.1(5)) for the period between the option grant date and the option exercise date to the income that derives from the exercise of the option, measured by the share price at exercise minus the option share price, multiplied by the number of shares. A non-resident will generally not be taxable on income that derives from sales of stock acquired pursuant to the exercise of a qualified stock option, namely, an incentive stock option under IRC § 422 or an employee stock purchase plan option under IRC § 423, except in the case of a disqualifying disposition of such stock.

Example (3)(c)(2). Taxpayer works in Massachusetts from 1997 until 2004. Taxpayer lives in Massachusetts in 1997, and then moves to Rhode Island, continuing to work in Massachusetts, with some work days spent in Rhode Island. Taxpayer is granted stock options according to the following schedule:

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Grant Date	# of shares	Option Price/Share	Exercise Date	Price at Exercise/Share	Income From Exercise
11/19/1997	150	$14.68	12/9/2004	$108.5625	$14,082
11/18/1998	1,200	13.82	5/28/2004	94.0625	96,291
11/17/1999	1,500	25.22	12/9/2004	108.5625	125,014

Taxpayer had the following apportionment percentages for the years during which the options were unexercised:

1997, 100% (taxpayer was a resident during 1997 and worked exclusively in Massachusetts during that year); 1998, 83%; 1999, 93.45%; 2000, 89.36%; 2001, 91.27%; 2002, 95.71%; 2003, 93.47%; 2004, 97.44%.

Calculation of apportioned stock option income is as follows:

a. For Grant of 11/19/1997. Average apportionment percentage for 1997-2004, the period the option exists and is unexercised, is 92.96%, which represents the sum of the apportionment percentages, 1997 – 2004, divided by 8, the number of years in the period. The calculation is thus: .9296 * $14,082 (income from exercise) = $13,091 Massachusetts taxable income in 2004.

b. For Grant of 11/18/1998. Average apportionment percentage for 1998-2004, the period the option exists and is unexercised, is 91.96%, which represents the sum of the apportionment percentages, 1998 – 2004, divided by 7, the number of years in the period. The calculation is thus: .9196 * $96,291 (income from exercise) = $88,549 Massachusetts taxable income in 2004.

c. For Grant of 11/17/1999. Average apportionment percentage for 1999-2004, the period the option exists and is unexercised, is 93.45%, which represents the sum of the apportionment percentages, 1999 – 2004, divided by 6, the number of years in the period. The calculation is thus: .9345 * $125,014 (income from exercise) = $116,826 Massachusetts taxable income in 2004.

The total Massachusetts source income derived from these options in 2004 is $218,466.

3. Shares of Stock Issued by a Corporation as Compensation. If a taxpayer obtains an ownership interest in a trade or business as part of the taxpayer's compensation attributable to the period the taxpayer is employed or conducting the trade or business in Massachusetts, the income that the taxpayer recognizes from this element of compensation for federal tax purposes is Massachusetts source income in the year of federal recognition whether or not the taxpayer is a resident of Massachusetts at that time and whether or not the taxpayer continues to conduct a trade or business or be employed in Massachusetts. This rule applies to an ownership interest in any business entity, including a C corporation, S corporation, general partnership, limited liability partnership, limited partnership, or limited liability company.

Example (3)(c)(3). Executive works for C Corporation in Massachusetts in 2003 and is promised one thousand shares of stock as a bonus in 2003, but the stock is not actually issued until 2004, after Executive has been transferred to C Corporation's Boise, Idaho headquarters. The receipt of this stock is attributable to Executive's employment in Massachusetts and is taxable as Massachusetts source income to a non-resident in 2004, the year of federal recognition.

4. Payments from a Covenant not to Compete. Income derived from a covenant not to compete is Massachusetts source income to the extent that it is derived from or effectively connected with any trade or business, including any employment carried on by the taxpayer in Massachusetts.

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Example (3)(c)(4). Franchise Owner owns several franchises of a fast food chain in Massachusetts, each of which is a separate corporation. Franchise Owner sells her interest in the corporations and executes an agreement with the purchaser not to open any competing fast food restaurant near the existing stores. The covenant not to compete provides for payments over a period of three years. Franchise Owner moves to another state and never returns to Massachusetts. Since all the income from the covenant not to compete derives both from the Franchise Owner's former conduct of and her sale of a trade or business in Massachusetts, it is Massachusetts source income for the duration of the covenant, notwithstanding Franchise Owner's change in domicile or lack of business activity in Massachusetts for the years of receipt.

5. Nonqualified Pension Income.

a. Nonqualified pension income is Massachusetts source income to the extent that it is derived from or effectively connected with any trade or business, including employment, carried on by the taxpayer in Massachusetts.

Example (3)(c)(5.1). Taxpayer worked in Massachusetts from 1985 through 2002 and retires, moving out of state. A portion of her pension package includes non-qualified benefits that non-domiciliary states are permitted to tax under federal law. Those benefits are paid in 2003 and years thereafter. Because this taxable pension income is derived from Taxpayer's employment in Massachusetts, it is Massachusetts source income taxable to Taxpayer in the year of receipt.

Example (3)(c)(5.2). Same facts as in Example (3)(c)(5.1), but Taxpayer worked for the same company in various states from 1985 through 2002. Taxpayer is allowed to source her non-qualified pension benefits to Massachusetts in the same proportion as her period of Massachusetts employment credited toward her pension bears to the total period of employment credited toward her pension. The apportionment calculation for this example must be based on the entire employment period from 1985 through 2002, assuming that all of those years were credited toward Taxpayer's pension.

6. Severance and Accumulated Sick Leave. Severance and accumulated sick leave is Massachusetts source income to the extent that it is derived from or effectively connected with any trade or business, including employment carried on by the taxpayer in Massachusetts.

Example (3)(c)(6). *See* Example (3)(a)(2).

7. Deferred Compensation. Deferred compensation is Massachusetts source income to the extent it is derived from or effectively connected with a trade or business including employment carried on in Massachusetts. For purposes of 830 CMR 62.5A.1, deferred compensation is all compensation for services paid or made available to the taxpayer in a tax year following the year in which the services were performed, but does not include qualified pension income as defined in 830 CMR 62.5A.1(4)(e), nor shall it be deemed to include income from qualified tax-deferred retirement plans that is exempt from Massachusetts taxation under any other provision of federal or Massachusetts law. A non-resident whose deferred compensation income is derived from or effectively connected with a trade or business or employment carried on by the non-resident both in Massachusetts and elsewhere may apportion the deferred compensation income under 830 CMR 62.5A.1(5).

Example (3)(c)(7.1). LLP is a limited liability partnership that conducts its business out of its Massachusetts headquarters. It consists of 20 partners. In 2002, ten partners withdraw, leaving ten Active Partners and ten Withdrawn Partners. Upon withdrawal, the ten Withdrawn Partners cease to be members of the partnership, and move out of state. The Withdrawn Partners receive annual payments for ten years after withdrawal. Because these payments are attributable to the partners' conduct of a trade or business in Massachusetts, they are taxable Massachusetts source income to the non-residents.

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Example (3)(c)(7.2). Same facts as in Example (3)(b)(7.1), except that from 1998 through 2002 the partnership had one or more non-resident individual partners and had income derived from business activities in another state, and that other state had jurisdiction to levy an income tax on the partnership or partners. Five-Year Partner was a partner during the period 1998 through 2002. The partnership should apply the average apportionment percentage of the partnership under 830 CMR 62.5A.1(6) during the period 1998 through 2002 and notify the Five-Year Partner of the Massachusetts source income portion of his annual payments.

8. Sale of a Business or an Interest in a Business. Income from a trade or business may include income that results from the sale of a business or an interest in a business. This rule generally applies to the sale of an interest in a sole proprietorship, general partnership, limited liability partnership, a general or limited partner's interest in a limited partnership (subject to the exception in the following sentence), or an interest in a limited liability company. It generally does not apply to the sale of a limited partner's interest in a publicly traded limited partnership, or to the sale of shares of stock in a C or S corporation, to the extent that the income from such gain is characterized for federal income tax purposes as capital gains. Nevertheless, gain from the disposition of a limited partner's interest in a publicly traded limited partnership or the disposition of shares of corporate stock will be considered Massachusetts source income if it is treated as compensation for federal income tax purposes. Such gain may also give rise to Massachusetts source income if, for example, the gain is otherwise connected with the taxpayer's conduct of a trade or business, including employment (as in a case where the stock is related to the taxpayer's compensation for services) or if the organizational form of a business is changed in anticipation of the disposition of one or more interests therein for the purpose of avoiding Massachusetts tax. Depending on the facts and circumstances of the case, gain from the sale of such corporate stock or limited partner's interest in a publicly traded limited partnership will be taxable to non-residents if it is determined that the taxpayer has engaged in a transaction or multiple transactions, the purpose of which is the avoidance of tax upon the gain (*e.g.* sham or step transaction, or prohibited assignment of income).

Example (3)(c)(8.1). Limited Liability Partner, a non-resident, owns a 25% partnership interest in a Massachusetts limited liability partnership that operates a computer consulting business in Massachusetts. Partner contributed funds to the limited liability partnership upon its creation, but took no part in its management or operations. Partner sells his interest in the partnership and recognizes a capital gain for federal tax purposes. Partner is taxable in Massachusetts on the gain.

Example (3)(c)(8.2). Same facts as in Example (3)(c)(8.1), but the partnership had one or more nonresident individual partners, had income derived from business activities in another state, and such other state had the jurisdiction to levy an income tax on the partnership or partners. Non-resident Limited Liability Partner may apportion the gain on the sale of the partnership interest. The proper method for determining apportionment is to use the average of the apportionment percentages under 830 CMR 62.5A.1(6), taken from each partnership Form 3, during the period the partner owned the partnership interest.

Example (3)(c)(8.3). Limited Partner, a non-resident, purchased an interest in a limited partnership that was not publicly traded, but that had Massachusetts source income. After two years, Limited Partner sells her interest. Limited partner is taxable on the apportioned share of gain from the disposition, apportioned by averaging the apportionment percentages of the partnership under 830 CMR 62.5A.1(6) during the two years Limited Partner owned her shares

Example (3)(c)(8.4). Investor is an out-of-state employee of NationalCorp, a C corporation doing business in Massachusetts. Investor works in NationalCorp's Massachusetts offices. Investor purchases stock of NationalCorp as an ordinary investment unrelated in any way to his compensation. The gain on Investor's sale of the stock is not Massachusetts source income.

Example (3)(c)(8.5). Employee works in Massachusetts and is granted a bonus of restricted stock, subject to risk of forfeiture, with vesting conditioned on her employer's reaching certain projected increases in corporate earnings. Employee does not make an election to include the value of the stock in gross income in the year of the transfer under IRC § 83(b). Three years later Employee moves out of state, and sells the stock before it becomes substantially vested, triggering inclusion of the gain in income as compensation for federal income tax purposes. Employee's gain is Massachusetts source income taxable to Employee.

9. Taxable Unemployment Compensation or Disability Income. All unemployment compensation and disability income included in Massachusetts gross income and derived from employment in Massachusetts is Massachusetts source income.

(d) Income from Ownership of Any Interest in Real or Tangible Personal Property. All income derived from the ownership of any interest in real or tangible personal property located in Massachusetts is Massachusetts source income. For purposes of 830 CMR 62.5A.1, the ownership of an interest in real property located within Massachusetts includes the ownership of an interest in a partnership to the extent that the partnership holds an interest in real property located in Massachusetts. Income from the ownership of any interest in real or tangible personal property located in Massachusetts includes income and gains derived from the following:

1. Real Property Located in Massachusetts. This category includes the ownership of an interest in a partnership, to the extent that the partnership holds an interest in real property located in Massachusetts.

Example (3)(d)(1.1). A Vermont resident owns real estate located in Massachusetts that is sold for a profit. The Vermont resident will be subject to Massachusetts income tax on the net gain derived from the sale.

Example (3)(d)(1.2). A New York resident receiving rental income from real estate located in Massachusetts will be subject to Massachusetts income tax on such income.

Example (3)(d)(1.3). A Connecticut resident owns real estate located in Massachusetts. She sells the property for a gain and as part of the consideration for the sale receives a note from the buyer for 20% of the purchase price. Under the note the buyer will pay principal and interest in installments over the next five years. Both the gain and interest received will be subject to Massachusetts income tax, whether or not the non-resident elects to defer recognition of the income under the installment sale provisions set forth in M.G.L. c. 62, § 63.

Example (3)(d)(1.4). Texas General Partnership has three non-resident partners. The Partnership owns shares in a REIT that is formed as a corporation that are sold on a secondary market, such as through an investment firm, which it has purchased at arms length. Income from the REIT is not treated as income from real estate, but rather as income from certain intangibles not subject to Massachusetts income tax for non-residents, according to the rule at 830 CMR 62.5A.1(4)(b). As in all cases, such income may be taxable to non-residents under the sham transaction rule.

Example (3)(d)(1.5). MallPartners is a partnership with three non-resident partners that owns malls throughout the country, including a mall in Massachusetts. Income derived from the Massachusetts mall is Massachusetts source income derived from real property, and is taxable to the non-resident partners.

Example (3)(d)(1.6). Non-resident is a partner in a partnership that owns ten acres of land in Massachusetts. Non-resident sells his interest in the partnership. Non-resident is taxable on the gain from the sale.

1. Like-kind exchanges under Code section 1031. Massachusetts does not tax gain from the sale of real property that is deferred under the like-kind exchange provisions of Code section 1031. However, when the taxpayer subsequently disposes of the property acquired in such an exchange, the amount of the gain that reflects appreciation of Massachusetts real estate is Massachusetts source income.

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2. tangible personal property having a situs in Massachusetts;
3. any interest in a Massachusetts cooperative housing corporation;
4. any interest in a Massachusetts timesharing or similar arrangement;
5. another interest in Massachusetts real or tangible personal property. This category includes income from extractive rights for timber or minerals.

(e) Income from Lottery or Wagering Transactions. All winnings from lottery or wagering transactions within Massachusetts are Massachusetts source income.

Example (3)(e)(1.1). A Maine resident who purchases a Massachusetts lottery ticket and wins a prize will be subject to Massachusetts income tax on the full amount of the winnings.

Example (3)(e)(1.2). A New Hampshire resident visits a horseracing track in Massachusetts, places a bet on a horse and wins. The full amount of the winnings will be subject to Massachusetts income tax.

(f) Income from Patents, Copyrights and Other Similar Intangibles.

1. Royalty Income. Royalty income from the licensing of a patent or copyright, and income from the licensing of a design, idea or other similar intangible, to a person for use in Massachusetts is Massachusetts source income. For this purpose, "royalty income" shall include payments derived from the licensing or sale of an intangible where the amount is contingent on productivity, use, or disposition of the intangible (royalty-type payments) irrespective of whether such transaction may be treated as a "sale" of all substantial rights in the intangible for certain tax purposes.

Example (3)(f)(1). A non-resident scientist develops a formula for a new drug product, patents the formula and grants a license to a pharmaceutical company, which produces the product at its Springfield, Massachusetts plant. The entire income from the licensing agreement is Massachusetts source income to the scientist.

2. Non-royalty-type Income from Sale or Exchange of Intangible. Income derived from non-royalty-type payments from the sale or exchange of a patent, copyright, design, idea or other similar intangible by a non-resident is Massachusetts source income if derived from or effectively connected with a trade or business including employment carried on in Massachusetts.

(g) Other Income. All other types of income that fall within the definition of Massachusetts source income.

(h) Presence for Business, Casual, Isolated and Inconsequential for Non-resident Individuals. Notwithstanding the provisions of 830 CMR 62.5A.1(3)(a), a non-resident individual does not have a trade or business, including any employment, carried on in Massachusetts if the non-resident's presence for business in Massachusetts is casual, isolated and inconsequential. A non-resident's presence for business in Massachusetts will ordinarily be considered casual, isolated and inconsequential if the non-resident's presence for business in Massachusetts is ancillary to the non-resident's primary business or employment duties performed at a base of operations outside of Massachusetts, as with occasional presence in Massachusetts for management reporting or planning, training, attendance at conferences or symposia, and other similar activities that are secondary to the individual's primary out-of-state duties.

Example (3)(h)(1.1). A former politician, a resident of California, now earns a living speaking at various functions across the country. She spends one day in Massachusetts delivering a speech at a convention in Lowell, Massachusetts and earns $30,000. This non-resident is considered to be carrying on business in Massachusetts because the fee is earned as a direct consequence of the Massachusetts activity, and this activity is not merely ancillary to her business conducted outside of Massachusetts.

Example (3)(h)(1.2). A dentist employed by a health maintenance organization in Portland, Maine, comes to Massachusetts for a paid six-week training course in pediatric dentistry. Her presence for business in Massachusetts is ancillary to her primary employment duties elsewhere and is therefore casual, isolated and inconsequential. She is not considered to be carrying on employment in Massachusetts.

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Example (3)(h)(1.3). A New York attorney, practicing law as a sole practitioner primarily in New York City, is retained by a Massachusetts business in connection with a pending lawsuit in a Massachusetts court. All of the trial preparation occurs in New York but the attorney appears in court in Massachusetts every day for four weeks. This non-resident is considered to be carrying on business in Massachusetts while in the Commonwealth because the duties performed in Massachusetts are not merely ancillary to his primary business outside Massachusetts.

(4) Income Not Subject to Massachusetts Income Tax. The following types of income earned or derived by non-residents are not subject to Massachusetts income tax:

(a) Duty in the Armed Forces. Compensation paid by the United States of America to its service members for services rendered on active duty, including members of the Army, Navy, Air Force, Coast Guard and Marines who are assigned to a military airbase, naval station, or any facility, public or private, in Massachusetts, to which they must report under service orders.

(b) Income from Certain Intangibles. Income from annuities, interest, dividends, and gains from the sale or exchange of intangibles, when purely of a passive investment character, not related to the operational functions of a business, and not related to employment or business activity in Massachusetts or to the sale or exchange of Massachusetts real or tangible personal property or of an interest in a business, and not related to a partnership interest in a partnership to the extent the partnership holds an interest in real property located in Massachusetts.

(c) Certain Income of Foreign Citizens. Massachusetts source income received by a non-resident who is a citizen of a foreign country, which income is excluded from federal gross income under an income tax treaty or convention to which the United States is a party. Massachusetts source income not excluded from federal gross income by the treaty or convention and that is included in federal gross income is subject to Massachusetts income tax.

(d) Certain Pension Income. Income from any contributory annuity, pension, endowment or retirement fund of the United States Government or the Commonwealth or any political subdivision thereof, to which the employee has contributed.

(e) Qualified Pension Income, as set forth in 4 U.S.C. § 114, or other provision of federal law that would preclude such income from being subject to Massachusetts tax, which includes any distribution received by the taxpayer from:

1. a qualified trust under section 401(a) of the Code that is exempt from taxation under section 501(a) of the Code;
2. a simplified employee pension as defined in section 408(k) of the Code;
3. an annuity plan described in section 403(a) of the Code;
4. an annuity contract described in section 403(b) of the Code;
5. an individual retirement plan described in section 7701(a)(37) of the Code;
6. an eligible deferred compensation plan as defined in section 457 of the Code;
7. a governmental plan as defined in section 414(d) of the Code;
8. a trust described in section 501(c)(18) of the Code;
9. any plan, program, or arrangement described in section 3121(v)(2)(C) of the Code, under the conditions provided in 4 U.S.C. § 114.

(f) Federal Preemption. Any other income that is the subject of federal preemption on state taxation. This includes income of: certain seafarers and fishers, as set forth at 46 USC § 11108, or its successor; certain employees of interstate rail carriers, as set forth at 49 USC § 11502, or its successor; certain employees of motor carriers, as set forth at 49 USC § 14503, or its successor; certain employees of air carriers who regularly perform duties on an aircraft, as set forth at 49 USC, § 40116, or its successor.

(5) Rules for Allocation or Apportionment of Income to Massachusetts for Non-resident Individuals Working in Massachusetts. When a non-resident earns or derives income from sources both within Massachusetts and elsewhere, the taxpayer must either allocate or apportion the income to determine the amount of Massachusetts source income, using the following apportionment provisions. 830 CMR 62.5A.1(5) applies to non-resident individuals working in Massachusetts. Non-resident members of pass-through entities use the rules at 830 CMR 62.5A.1(6). The Commissioner may by rule or other public statement create alternate allocation and apportionment methods.

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(a) Employees Compensated on an Hourly, Daily, Weekly or Monthly Basis. When a non-resident employee is able to establish the exact amount of pay received for services performed in Massachusetts, that amount is the amount of Massachusetts source income. When no exact determination of amounts earned or derived in Massachusetts is possible, the income of employees who are compensated on an hourly, daily, weekly or monthly basis must be apportioned to Massachusetts by multiplying the gross income, wherever earned, by a fraction, the numerator of which is the number of days spent working in Massachusetts and the denominator of which is the total working days. The result is the amount of the non-resident's Massachusetts source income. Total working days does not include days in which the employee was not required to work, such as holidays, sick days, vacations, and paid or unpaid leave. When a working day is spent working partly in Massachusetts and partly elsewhere, it will be treated as a day spent working in Massachusetts, unless the non-resident can prove that he or she worked outside Massachusetts for more than half the day.

Example (5)(a)(1.1). An auditor living in Providence, Rhode Island is employed by an accounting firm in Boston at an annual salary of $66,000. The auditor is considered to have a trade or business including employment carried on in Massachusetts. He works a total of 240 days during the year. He works on audit engagements in Rhode Island and Connecticut on 160 days of the year and works 80 days in Boston. His Massachusetts source income is $22,000, calculated as follows:

$$\$66{,}000 \times \frac{80}{240} = \$22{,}000$$

Example (5)(a)(1.2). A telecommuter works for a Massachusetts firm, mainly out of her home in Ohio. The telecommuter works a total of 240 days during the tax year, and is in Massachusetts on 60 of those days. Her salary is $120,000 per year. Her Massachusetts source income is $30,000, calculated as follows:

$$\$120{,}000 \times \frac{60}{240} = \$30{,}000$$

The following example is an instance where the rule in 830 CMR 62.5A.1(5)(a) is modified to apply to a specific industry.

Example (5)(a)(1.3). In some cases, a non-resident flight crew member, such as a pilot or flight attendant, may be subject to taxation in Massachusetts. The general apportionment rules at 830 CMR 62.5A.1(5)(a) do not adequately measure a flight crew member's activities in the state. Using the authority stated in 830 CMR 62.5A.1(5), the Commissioner has by rule created an alternate allocation and apportionment method, as follows. When a flight crew member is unable to establish the exact amount of pay received for services performed in Massachusetts, the employee should apportion his or her income to Massachusetts by multiplying the gross income related to his or her employment, wherever earned, by an apportionment factor, that is, a fraction, the numerator of which is Massachusetts workdays and the denominator of which is total workdays. For purposes of this example, a Massachusetts workday is any workday that a flight crew member flies out of Massachusetts. For workdays on which a flight crew member does not fly out of Massachusetts, the general rule at 830 CMR 62.5A.1(5)(a) applies, and any day part of which is spent in Massachusetts will be treated as a Massachusetts workday, unless the taxpayer can prove that he or she worked outside of Massachusetts for more than half the day. The term "total work days" is the sum of all days that an employee is either flying or is required to be on duty (non-flight workdays).

(b) Employees Compensated on a Mileage Basis. The amount of Massachusetts source income of an employee whose wages are based on mileage is determined by multiplying the employee's Massachusetts gross income, determined as if the non-resident were a resident, by a fraction, the numerator of which is the employee's total mileage traveled in Massachusetts and the denominator of which is the employee's total mileage upon which the employer computes total wages.

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(c) Salespersons. The amount of Massachusetts source income of a salesperson or other employee whose compensation is based in whole or in part upon commissions is determined by multiplying the Massachusetts gross income, determined as if the non-resident were a resident, by a fraction, the numerator of which is the dollar amount of sales made within Massachusetts and the denominator of which is the dollar amount of sales everywhere. The determination of whether sales are made within Massachusetts or elsewhere is based upon where the salesperson performs the activities in obtaining the order, not the location of the formal acceptance of the contract.

(d) Self-employed Non-residents Carrying on a Trade or Business in Massachusetts and Elsewhere.

1. General Rule. The non-resident must report on the return the gross income of the trade or business, wherever derived, and apportion that income in the same manner as employees apportion income under either 830 CMR 62.5A .1(5)(a), (b) or (c), whichever applies. In the following examples, the non-resident is considered to have a trade or business including employment carried on in Massachusetts:

Example (5)(d)(1.1). A non-resident surgeon is called in from New York to perform tests and surgery at a Boston hospital. The surgeon spends six days performing the tests and surgery in Boston and is paid $50,000. The entire $50,000 is income subject to the Massachusetts income tax.

Example (5)(d)(1.2). A non-resident carpenter is contracted by a Vermont resident to remodel her Vermont home and perform other work as needed. The carpenter works a total of 90 days remodeling the house. As part of the contract, the carpenter works for 45 additional days repairing the Vermont resident's Massachusetts vacation house. The carpenter is paid a total of $21,000 for his services under the contract. His Massachusetts source income from this contract is $7,000, calculated on the following basis:

$$\$21{,}000 \text{ (total income)} \times \frac{45 \text{ (days worked in Massachusetts)}}{135 \text{ (total working days)}} = \$7{,}000$$

2. Other Situations – Three Factor Apportionment. If none of the formulas described in 830 CMR 62.5A.1(5)(a) through (c) is applicable to the apportionment of a non-resident's trade or business income, then the amount of Massachusetts source income is determined based upon the three-factor formula for apportioning a corporation's income under M.G.L. c. 63, § 38 and the definitions applicable to that formula. The following three factors must be determined:

a. Property Factor. The average value of the taxpayer's real and tangible personal property owned or rented, and used in the taxpayer's business in Massachusetts, divided by the average value of all the taxpayer's real and tangible personal property owned or rented everywhere, and used in the taxpayer's business during the tax year. The average value of property is determined by averaging the values at the beginning and at the end of the tax year.

b. Payroll Factor. The total wages, salaries and other personal service compensation paid during the tax year to employees in connection with the trade or business carried on within Massachusetts divided by the total of such wages and compensation wherever earned and paid.

c. Sales Factor. The gross sales in Massachusetts, or gross receipts derived from activities in Massachusetts, divided by the total gross sales or charges everywhere.

The above three factors must be carried out to four decimal places. The apportionment percentage is a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. The resulting figure is then multiplied by the entire net income of the trade or business, wherever derived. The result is the Massachusetts source income.

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d. In a case where only two of the foregoing three factors are applicable, the Massachusetts source income is determined by multiplying the entire net income of the business by a fraction, the numerator of which is the remaining two factors with their respective weights and the denominator of which is the number of times that such factors are used in the numerator. If only one of the three factors is applicable, the Massachusetts source income is determined solely by that factor. A factor will not be deemed to be inapplicable merely because the numerator of the factor is zero. A factor will not be applicable if the denominator of the factor is less than 10% of one third of the entire net income or if it is otherwise determined to be insignificant in producing income.

(e) Entertainers and Professional Athletes not Members of a Professional Athletic Team. The Massachusetts source income of non-resident entertainers and professional athletes who are not members of a professional athletic team is the entire amount received for performances, engagements or events that occurred in Massachusetts. If the entertainer or athlete is not paid separately for each Massachusetts event, then the following apportionment formula must be used. The income earned and subject to the Massachusetts income tax is the total annual compensation derived from performances, engagements, or events multiplied by a fraction, the numerator of which is the number of performances or events the entertainer or athlete performed (or was available to perform, as, for example, with understudies) in Massachusetts, and the denominator of which is the total number of performances or events that the entertainer or athlete was obligated to perform during the tax year.

Example (5)(e)(1.1). A non-resident entertainer performs for three evenings at Symphony Hall in Boston and earns $100,000. The entire $100,000 is income subject to Massachusetts income tax.

Example (5)(e)(1.2). A non-resident professional dancer earns an annual salary of $50,000. She dances in all 40 of her dance company's performances during the tax year, 20 of which took place in Massachusetts. The income subject to tax in Massachusetts is $25,000, calculated by multiplying $50,000 by 20/40.

Example (5)(e)(1.3). A non-resident professional tennis player plays in one tournament in Massachusetts during the tax year. She spends six days in Massachusetts and earns $75,000 in winnings from the tournament. The entire $75,000 income is subject to Massachusetts income tax.

(f) Allocation and Apportionment for Non-residents who have Income Attributable to a Period of Massachusetts Residence. Non-residents who have income attributable to a period during which they were residents are taxable only on income from sources within Massachusetts, which includes items of gross income derived from or effectively connected with any trade or business, including any employment carried on by the taxpayer in Massachusetts. Because taxpayers were residents and thus subject to 100% allocation of income during the period to which the current income is attributable, the non-resident receiving such income may allocate or apportion it according to 830 CMR 62.5A.1(5) if the income was attributable to more than one jurisdiction during the year it was earned. A taxpayer asserting this right must document all factors used in calculating the Massachusetts source income under 830 CMR 62.5A.1(5). In the absence of such documentation, the presumption will be that 100% of the income for that year is allocated to Massachusetts. For allocation and apportionment rules for income derived from the sale of a business or an interest in a business, *see* Example (3)(c)(8.2).

Example (5)(f)(1). Taxpayer lived in Massachusetts in 2005 and worked for a single corporation in both Massachusetts and Connecticut during that year. In 2006, Taxpayer moved to Florida. In 2008, Taxpayer receives income that is attributable to her work for that corporation in 2005. Taxpayer has no apportionment percentage available for 2005, because Taxpayer was a resident and subject to 100% allocation of income. Taxpayer is unable to establish the exact amount of pay received for services performed in Massachusetts. Taxpayer can, however, prove through documentation that she worked 50% of her working days in Massachusetts and 50% in Connecticut. The Massachusetts source income is the amount of the payment attributable to 2005 multiplied by the resulting apportionment percentage of 50%.

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(6) Rules for Allocation or Apportionment of Income to Massachusetts for Non-resident Members of Pass-through Entities. A pass-through entity that earns or derives income from sources both within Massachusetts and elsewhere must either allocate or apportion the income to determine the amount of Massachusetts source income of its non-resident members, using the following allocation and apportionment provisions. 830 CMR 62.5A1(6) applies to pass-through entities with non-resident members that have Massachusetts source income. Non-resident individuals use the rules at 830 CMR 62.5A.1(5). The Commissioner may by rule or other public statement create alternate allocation and apportionment methods.

(a) General. A pass-through entity that has income that is taxable both within and outside of Massachusetts must report the member's apportioned share of income to the member. To arrive at the apportioned income figure, the pass-through entity must multiply its taxable net income by the apportionment percentage determined under M.G.L. c. 63, § 38 and 830 CMR 63.38.1. For taxable years beginning on or after January 1, 2025, the apportionment percentage is equal to the sales factor except as otherwise required under M.G.L. c. 63, § 38. For Massachusetts purposes, the pass-through entity's income subject to apportionment is its entire net income derived from its related business activities, as that term is defined at 830 CMR 62.5A.1(2), and further described at 830 CMR 62.5A.1(6)(d), within and outside of Massachusetts. The entity's income subject to Massachusetts tax is its apportioned net income derived from its related business activities, plus any other income subject to the tax jurisdiction of Massachusetts. Guaranteed payments made to pass-through entity members are treated as other income of the pass-through entity is treated, and are subject to the apportionment rules in this paragraph.

(b) Treatment of Multiple Pass-through Entities Engaged in a Unitary Business. If a pass-through entity has Massachusetts source income and is related to one or more other pass-through entities in a unitary business, including non-Massachusetts businesses that are in a unitary relationship, the entire income derived from the related activities of the members of the unitary business is subject to Massachusetts apportionment. The method of apportionment is to take the *pro rata* share of the applicable apportionment factor or factors of each entity in the unitary structure, and to aggregate the result for the entire group. The non-resident members will report as Massachusetts source income their apportioned share of income of the entire unitary business.

Example (6)(b)(1.1). In a taxable year beginning before January 1, 2025, General Partnership (General) has a 50% interest in Subsidiary Partnership (Subsidiary); the entities are engaged in a unitary business. General has the following apportionment factors attributable to Massachusetts, presented as a fraction of Massachusetts activity divided by activity everywhere: Property, 25/100; Payroll, 50/100; Sales, 1000/10,000. General has income of $1,000. Subsidiary has the following apportionment factors, presented as a fraction of Massachusetts activity divided by activity everywhere: Property, 10/100; Payroll, 50/100; Sales, 1000/10,000. Subsidiary has a loss of $500. The Massachusetts income of the unitary group is calculated as follows: Income = $1,000 (General's income) - $250 (representing half the loss of Subsidiary; half because General has a 50% interest in Subsidiary) = $750. The $750 income figure must be multiplied by the blended apportionment factors. The blended factors are determined by adding the full factor of General to half the value of Subsidiary's factors (again, because of the 50% ownership). Thus the blended property factor is (25 + 5)/(100 + 50) = 30/150; the blended payroll factor is (50 + 25)/(100 + 50) = 75/150; the blended sales factor (to be counted twice according to the double weighted sales factor rule) is [(1000 + 500)/(10,000 + 5,000)] = 1,500/15,000; the sum of these factors is then divided by four to yield the following result: .2 + .5 + .1 + .1 = .9 / 4 = .225.

Example (6)(b)(1.2). Assume the same facts as in Example (6)(b)(1.1), except that the taxable year begins on or after January 1, 2025. In this case, the $750 income figure must be multiplied by the blended sales factor. The blended sales factor is determined by adding the full sales factor of General to half the value of Subsidiary's sales factor (again, because of the 50% ownership). Thus, the blended sales factor is [(1000 + 500)/(10,000 + 5,000)] = 1,500/15,000 = .1.

(c) Treatment of Income Derived from Unrelated Activities. If the unitary business subject to Massachusetts apportionment has income derived from unrelated business activities, as determined under 830 CMR 62.5A.1(6)(d), these items of income will be excluded from the

taxpayer's taxable net income and will not be apportioned to Massachusetts if Massachusetts does not have jurisdiction to tax the items of income under the Constitution of the United States. Income derived from unrelated business activities will be allocated to Massachusetts when the entity's commercial domicile is Massachusetts. The unitary business must report to the non-resident taxpayer, and the non-resident taxpayer must disclose on his or her return, the nature and amount of any item of income that is derived from unrelated business activities and is excluded from (or is excludable from) taxable net income. The taxpayer must also disclose and exclude expenses allocable in whole or part to such unrelated business activities. Any property, payroll, or sales derived from unrelated business activity are excluded from the taxpayer's applicable apportionment factor or factors.

Example (6)(c)(1). In a taxable year beginning before January 1, 2025, Massachusetts LLC owns a commercial real estate property that it leases, both to its parent, a Partnership that gives investment advice to clients, and to other unrelated tenants. The Partnership, in turn, is owned by three Owner LLCs, all of which have a commercial domicile in other states. The Owner LLCs own the interests in the Partnership, as well as other business ventures, such as a manufacturing corporation in South Carolina and a public utility corporation in North Dakota. The manufacturing corporation and the utility corporation are not in a unitary business with other entities, nor do they have any contacts with Massachusetts. The Massachusetts LLC and the Partnership have centralization of management and a flow of value between the entities, and comprise a unitary business. In determining the Massachusetts source income of the Owner LLC members, the Massachusetts LLC and the Partnership must combine their taxable net income and calculate the Massachusetts apportionment percentage based on their combined property, payroll, and sales. The unitary business will exclude the income of the manufacturing corporation and the public utility corporation from this determination, and will not take into account any of the property, payroll, or sales of the two corporations in calculating the Massachusetts apportionment percentage of the unitary business.

Example (6)(c)(2). Assume the same facts as in Example (6)(c)(1), except that the taxable year begins on or after January 1, 2025. In this case, the Massachusetts source income of the Owner LLC members, the Massachusetts LLC and the Partnership is determined by combining their taxable net income and calculating the Massachusetts apportionment percentage based on their combined sales. The unitary business will exclude the income of the manufacturing corporation and the public utility corporation from this determination, and will not take into account any of the sales of the two corporations in calculating the Massachusetts apportionment percentage of the unitary business.

(d) Related Business Activities.

1. Definition.

a. General Rule. Related business activities are activities where there is a sharing or exchange of value between the segments of a single entity or multiple entities such that the activities are mutually beneficial, interdependent, integrated, or such that they otherwise contribute to one another, as generally described under the discussion of the unitary business principle in *Allied-Signal, Inc. v. Director, Division of Taxation*, 504 U.S. 768 (1992). The rules that apply to corporations, found at 830 CMR 63.38.1(4), generally apply to pass-through entities as they are applicable, with certain modifications set forth in 830 CMR 62.5A.1. In general, any two segments or activities of a single pass-though entity are related business activities unless the two segments or activities are not unitary. In addition, the following activities are related business activities notwithstanding the absence of a unitary relationship:

i. the short term investment of capital in a non-unitary business segment or activity; and

ii. any other investment of capital that serves an operational function.

b. Income from Cash, Cash Equivalents, and Short-term Securities. Interest or other income from cash deposits, cash equivalents, and short-term securities is considered related business income if such capital serves or performs an operational function. Without limitation, examples of operational functions include: the use or holding of funds as working capital or reserves; the use or holding of funds to maintain a favorable credit rating (*e.g.* by maintaining a strong current or quick asset ratio); the

use or holding of funds to self-insure against business risks; and the interim investment of funds pending their future use in the taxpayer's business.

2. Burden of Proof. Except as provided in 830 CMR 62.5A.1(6)(d)(3) (relating to pass-through entity limited partners), all income of a single pass-though entity (whether derived directly or through representatives, or other pass-through entities) is presumed to be income from related business activities until the contrary is established. Either the taxpayer or the Commissioner may assert that an item of a taxpayer's income is derived from unrelated business activities. The party making such an assertion must prove by clear and cogent evidence that the business activities do not reasonably warrant a finding that the business activities are related. To demonstrate that income from cash, cash equivalents, or short-term securities is derived from unrelated business activities, a taxpayer must prove by clear and cogent evidence that the underlying assets and their acquisition, maintenance, and management were, in fact, unrelated to the pass-through entity's business activities in the Commonwealth.

3. Presumption of Unrelated Business Activity of Pass-through Entity Limited Partners. In cases where a pass-through entity limited partner owns no more than 50% of the capital interests of a partnership, income that the pass-through entity limited partner derives from the holding or disposition of its limited partnership interest is presumed to be unrelated to the pass-through entity's other business activities unless the Commissioner or the taxpayer rebuts this presumption, as provided (and applicable) in 830 CMR 63.39.1(8)(f). If the business activities of the pass-through entity limited partner and the limited partnership are unrelated, then the pass-through entity limited partner must separately account for its limited partnership income and its other business income and must separately apportion to Massachusetts income from each unrelated activity (to the extent that Massachusetts has jurisdiction to tax income from each such activity), using only the apportionment factor or factors applicable to that activity.

Example (6)(d)(3.1). Texas LLC owns a minority limited partnership interest in Partnership A. Partnership A conducts business in Massachusetts. Apart from this partnership holding, Texas LLC does not conduct business in Massachusetts. Texas LLC does conduct business in other jurisdictions, either directly or through ownership of other pass-through entities. Neither Texas LLC nor the Commissioner rebuts the presumption that the business activities of Texas LLC and Partnership A are unrelated. Texas LLC must separately apportion to Massachusetts income from the holding or disposition of its interest in Partnership A, using the apportionment factor or factors derived from the partnership's activity. Income from Texas LLC's other activities is not subject to Massachusetts tax jurisdiction and is excluded from the Massachusetts source income that it reports to its members.

(e) Special Apportionment Rules for the Gain on the Sale of an Ownership Interest in a Partnership That Holds Real Property in Massachusetts.

1. Partnerships That Are Carrying on a Trade or Business in Massachusetts. A non-resident partner who sells an interest in a partnership that both holds an interest in real property in Massachusetts and is carrying on a trade or business in Massachusetts is subject to the general rule at 830 CMR 62.5A.1(3)(c)8., particularly as illustrated at 830 CMR 62.5A.1, Example (3)(c)(8.2).

2. Partnerships That Are Not Carrying on a Trade or Business in Massachusetts. A non-resident partner who sells an interest in a partnership that holds an interest in real property in Massachusetts but is not carrying on a trade or business in Massachusetts should apply the following rule. The non-resident partner selling his or her interest in the partnership must multiply the gain by a fraction, the numerator of which is the value of the Massachusetts real property and the denominator of which is the total value of the partnership. The value of real property to be used in the fraction is the current fair market value of the property reduced by the value of any lien or encumbrance remaining thereon at the time the partner sells his or her interest in the partnership.

Example (6)(e)(2). Non-resident is a partner in LandHold, a partnership that purchases land in several states and holds the land for subsequent sale to developers. The partnership was formed with an initial capital contribution from its partners, but was not engaged in the conduct of a trade or business in Massachusetts during the year that Non-

resident sells his interest in the partnership. The Massachusetts source income derived from the sale is the total gain from the sale, multiplied by fraction set forth in 830 CMR 62.5A.1(6)(e)(2).

(7) Exemptions.

(a) General. A non-resident is entitled to the same exemptions under M.G.L. c. 62 as those granted to a resident, found at M.G.L. c. 62, § 3(B)(b), with exceptions that apply to participants in a composite return, set forth at 830 CMR 62.5A.1(11)(f).

(b) Deduction and Exemption Ratio. The non-resident's applicable exemption amounts must be totaled and apportioned to Massachusetts. The total exemption amount must be pro-rated by the "deduction and exemption ratio" of the taxpayer's Massachusetts source income to his or her total income. The deduction and exemption ratio is a fraction, the numerator of which is the non-resident's Massachusetts source income and the denominator of which is the non-resident's Massachusetts gross income for the tax year determined as if the taxpayer had been a Massachusetts resident. For more detail, see the instructions to Form 1 NR/PY.

Example (7)(b)(1.1). Taxpayer, an unmarried full year resident of New Hampshire, is over 65 and earns $20,000 in Massachusetts source income and $10,000 in New Hampshire during the tax year. Taxpayer is entitled to a personal exemption of $3,300 and an additional exemption of $700 for having attained the age of 65 before the close of the tax year. He may claim an exemption amount of $2,667, calculated on the following basis:

$3,300 (personal exemption) + $700 (age 65 exemption) = $4,000;
$4,000 x $20,000 (Massachusetts source income)/($20,000 + $10,000) (total income from all sources) = $2,667.

Example (7)(b)(1.2). Husband and Wife are full year residents of Maine during the tax year. Husband has $24,000 of Massachusetts source income. Wife earns $25,000 in Maine and $1,000 in Massachusetts. They have one dependent child. They are entitled to claim an exemption of $3,800, calculated on the following basis:

$6,600 (personal exemption) + $1,000 (dependent child exemption) = $7,600;
$7,600 x ($24,000 + $1,000) (Massachusetts source income)/($24,000 + $25,000 + $1,000) (total income from all sources) = $3,800.

(c) Rules That Apply to a Taxpayer Who Is Both a Non-resident and Part-year Resident during a Tax Year. If during a single tax year an individual changes status from that of resident to that of non-resident, or vice versa, the individual will be required to file one Form 1-NR/PY as both a non-resident and part-year resident. To calculate exemption amounts applicable for the period when the individual was considered a non-resident, refer to the instructions for Form 1-NR/PY.

(8) Deductions.

(a) General. A non-resident is entitled to the same deductions under M.G.L. c. 62 as those granted to a resident, with exceptions that apply to participants in a composite return, set forth at 830 CMR 62.5A.1(11)(f).

Example (8)(a)(1). A non-resident earned $10,000 in Massachusetts and $20,000 in Connecticut in 2000. He may deduct only that FICA amount withheld from the $10,000 earned in Massachusetts.

(b) Apportionment of Deductions. Where a particular deductible item is not directly traceable to Massachusetts source income, as may be the case for certain employee business expenses, the non-resident's applicable deduction amounts must be totaled and apportioned to Massachusetts using the applicable rules for apportionment of income set forth in 830 CMR 62.5A.1(5) and (6). Deductions for alimony paid and for employment related expenses for the care of a child under age 13, disabled dependent or disabled spouse, and for a dependent member of the household under age 12 at year end must be apportioned to Massachusetts using the deduction and exemption ratio set forth in 830 CMR 62.5A.1(7)(b).

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(9) Estates of Non-resident Decedents. The estate of a decedent who was a non-resident at the time of death, or the taxable beneficiaries of the estate, are subject to Massachusetts income taxation on the Massachusetts source income of the estate.

(10) Non-resident Trusts. A non-resident trust deriving Massachusetts source income, or taxable beneficiaries of the trust, are subject to Massachusetts income taxation on the Massachusetts source income of the trust.

(11) Returns. General Note. All returns may be subject to electronic filing requirements, subject to change over time, according to the rules set forth on the Department of Revenue's web site. *See* www.mass.gov/dor for current requirements.

(a) Individuals.

1. General. An individual non-resident whose Massachusetts source income exceeds $8,000 or the personal exemption to which the non-resident is entitled after apportionment, whichever is the lesser, is required to file with the Commissioner a return on Form 1-NR/PY.

2. Married Individuals. If the Massachusetts source income of one or both married individuals exceeds the minimum filing amount, each married individual whose income exceeds that amount must file a Massachusetts income tax return. For taxable years beginning on or after January 1, 2024, married individuals must file a joint Massachusetts income tax return for any year for which they file a joint federal income tax return, except in the following situations:

a. the married individuals' tax years do not begin on the same day;

b. the married individuals' tax years do not end on the same day except where such tax years end on different days solely because of the death of either or both;

c. either married individual is not required to file a return under M.G.L. c. 62C, § 6(a); or

d. one or both married individuals is a non-resident and has items of income, exemptions or deductions unrelated to their Massachusetts income; and

i. if only one of the married individuals is a nonresident, the sum of the resident married individual's Massachusetts gross income and the non-resident married individual's Massachusetts source income does not exceed the threshold in M.G.L. c. 62, § 4(d); or

ii. if both of the married individuals are nonresidents, the married individuals' combined Massachusetts source income does not exceed the threshold in M.G.L. c. 62, § 4(d).

In any taxable year, married non-resident individuals may file a joint Massachusetts income tax return provided that they are both non-residents and that their tax years begin on the same day and either end on the same day or end on different days solely because of the death of either or both. If married individuals do not file a joint return, each married individual with a tax filing obligation under M.G.L. c. 62C, § 6(a) must file a separate return with the Commissioner on Form 1 (for residents) or Form 1-NR/PY (for non-residents and part-year residents).

3. Failure to File. The Massachusetts income tax will be assessed on the entire Massachusetts source income of a non-resident who fails to file a return. The Commissioner will determine the non-resident's Massachusetts source income according to his best information and belief and may assess the tax with penalties and interest, and without allowance for deductions or exemptions, in addition to any other penalties allowed by law.

(b) Partnerships. Any partnership having a usual place of business in Massachusetts and federal gross income in excess of $100 during the tax year must file with the Commissioner on or before the 15th day of the fourth month following the close of the tax year, an information return, sworn to by a member of the partnership, on Form 3 and its schedules. The return must include the partnership's income or losses from Massachusetts sources; any deductions or credits attributable thereto; the names and addresses of the resident and non-resident partners; their distributive shares of the various classes of the partnership's income, losses, deductions or credits apportioned to each, and other information as required by Form 3 and its schedules. In general, a partnership must maintain an office or other place of business in the state (which may include an office that is neither owned nor rented by the partnership, but is provided by another party) in order for it to have a "usual place of

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business" in Massachusetts. It is not necessary that the place of business maintained in Massachusetts be the principal place of business of a partnership in order for it to be a usual place of business.

(c) Estates of Non-resident Decedents. An executor or administrator of a non-resident decedent's estate deriving Massachusetts source income that meets other filing requirements must file with the Commissioner a return on Form 2, Fiduciary Income Tax Return, and all other required forms.

(d) Non-resident Trusts. The trustee of a non-resident trust deriving Massachusetts source income that meets other filing requirements must file with the Commissioner a return on Form 2, Fiduciary Income Tax Return, and all other required forms.

(e) Payor's Information Returns. Every individual or entity doing business in Massachusetts must file information returns (such as the federal form W-2 or form 1099) with the Commissioner, on or before June 1st of each year, for each non-resident deriving income in Massachusetts to whom it has paid any income subject to Massachusetts income taxation. All returns must report the name and address of the non-resident recipient(s), the total amount paid to him or her during the preceding calendar year, the amount of Massachusetts source income, and the amount of Massachusetts tax withheld. *See* 830 CMR 62B.2.1(6). This requirement applies to payments to any entity, as described in 830 CMR 62B.2.1.

(f) Composite Returns.

1. General Rule. A pass-through entity may file a composite return on behalf of qualified electing non-residents reporting and paying income tax on the non-residents' *pro rata* or distributive shares of Massachusetts source income of the pass-through entity.

a. Person Responsible for Filing. Each qualified electing non-resident member must give the pass-through entity a power of attorney authorizing a common member to act as the filing agent to represent the participating member in making, executing, and filing the return, and in acting on any matter relating to the return. The power of attorney shall include authorization of a successor to the filing agent. The filing agent must make the composite tax return using the pass-through entity's name and federal identification number, sign the composite tax return, and accept all notices from the Department of Revenue on behalf of any and all qualified electing non-residents.

b. Qualified Electing Non-residents. A non-resident who meets all of the following criteria is a qualified electing non-resident:

i. the person must be an individual, or an entity that is taxed under the Code as an individual, such as an electing small business trust (ESBT), or the estate or trust of a deceased non-resident;

ii. the person must be a non-resident for the entire tax year;

iii. the person must elect to be included in the composite return by signing, either as individual or as trustee, the statement required under 830 CMR 62.5A.1(11)(f)3.; and

iv. the person must waive the right to claim deductions, exemptions, and credits allowable under M.G.L. c. 62, §§ 3, 5, and 6 on income reported on the composite return.

c. Tiered Pass-through Entities. To prevent multiple composite returns on the same income, an upper-tier pass-through entity that recognizes distributive share income is not required to file a composite return on non-resident member income generated by a lower-tier entity that the lower-tier entity has already reported on a composite return.

d. Special Rule for Trusts That Are Not Taxed under the Code as Individuals. Trusts that are not taxed as individuals under the Code may be qualified electing non-residents if each beneficiary of the trust that receives Massachusetts-source income would qualify to join in the filing of a composite return under 830 CMR 62.5A.1(11)(f)1.b.i. through iv. In addition to other requirements under 830 CMR 62.5A.1(11)(f), the trust must file a statement with the composite return that contains the name and federal identification number of each beneficiary of the trust that receives Massachusetts-source income. The statement must affirm that each beneficiary meets the requirements of 830 CMR 62.5A.1(11)(f)1.b.i through iv.

e. Withholding Requirement. To the extent applicable, a pass-through entity is subject to the withholding requirements at 830 CMR 62B.2.2.

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2. Composite Returns and Other Filing Obligations.

a. General Rule. The filing of a composite tax return and composite payments of estimated taxes will satisfy the obligation, as to any Massachusetts-source income derived from the pass-through entity, of each qualified electing non-resident to file a tax return and to make estimated tax payments under M.G.L. c. 62C, § 6, and M.G.L. c. 62B, § 13.

b. Limitations of Composite Returns.

i. deductions, exemptions, and credits allowable under M.G.L. c. 62, §§ 3, 5, and 6 may not be claimed on a composite return.

ii. for purposes of the statute of limitations on assessments provided in M.G.L. c. 62C, § 26(b), the statutory period will apply with regard to the composite return and items of income required to be reported on a composite return; the Commissioner will not, however, treat a composite return as a return by the individuals on whose behalf it is filed.

c. Separate Tax Return in Addition to Composite Return.

i. Separate tax return required for other Massachusetts-source income. A taxpayer with Massachusetts-source income other than that reported on one or more composite returns, or with a separate filing obligation, must ensure timely payment of tax through withholding or estimated payments with respect to such income and must report such income on a separate tax return filed in addition to any composite returns filed on the taxpayer's behalf. A taxpayer subject to personal income tax may claim a share of exemptions and deductions based only on the income reported on the separate return, as calculated under 830 CMR 62.5A.1(7) and (8).62.5A.1:

ii. Required Information on Separate Tax Return. A person filing a separate income tax return for whom one or more composite returns are also filed must identify, on the separate income tax return, the name, address, and federal identification number of all entities filing composite returns on that person's behalf.

3. Filing Statement. Each person participating in the filing of a composite return must sign under penalties of perjury a statement affirmatively stating the person's qualifications and election to file a composite return. The person must submit this filing statement to the filing agent, who must retain the statements in his or her records. The statement must include the following information:

a. the name and taxpayer identification number of the pass-through entity;

b. the person's taxpayer identification number and the exact address of the person's principal place of residence;

c. an acknowledgment of the person's obligation to file a return, make estimated tax payments if required, and pay his or her *pro rata* share of any penalty and interest due for any underpayment of estimated taxes;

d. an agreement to be subject to jurisdiction in Massachusetts;

e. a statement of waiver of the right to claim, with regard to the income reported on the composite return, any deductions, exemptions, and credits allowable under M.G.L. c. 62, §§ 3, 5, and 6; and

f. a power of attorney authorizing the filing agent to represent the qualified electing non-resident in making, executing, and filing the composite return, making tax payments and estimated tax payments and authorizing the filing agent to receive notices from the Department of Revenue on behalf of the non-resident. A properly completed Massachusetts Power of Attorney Form M-2848 attached to the qualified electing non-resident's statement will fulfill the power of attorney authorization requirement.

4. Composite Return Filing Requirements. The filing agent must file composite returns electronically. The total Massachusetts source income reported on the composite return shall be the sum of all the qualified electing non-residents' Massachusetts-source income. Persons included in the composite return filing must have the same tax year.

5. Components of the Composite Return. The filing agent shall submit as part of the return:

a. a statement signed by the filing agent under penalties of perjury, certifying that:

i. each non-resident included in the composite return has executed the statement required by 830 CMR 62.5A.1(11)(f)3.;

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ii. those statements are on file at the principal office in Massachusetts of the pass-through entity; and

iii. the filing agent signing the composite return is authorized to act as such under power of attorney. The statement shall provide the address of the principal office in Massachusetts of the pass-through entity, or the address of the pass-through entity if there is no Massachusetts office.

b. a schedule showing the name, tax identification number, address, method of tax compliance, Massachusetts-source distributive share items of each non-resident member of the pass-through entity, and any other information the Commissioner requires. The schedule shall specify which non-residents are participating in the composite return.

6. Composite Payments of Estimated Tax. Composite payments of estimated tax must satisfy the estimated payment obligations for each electing non-resident with regard to the Massachusetts-source income of the pass-through entity. The filing agent shall make payments of estimated tax electronically, through ACH debit.

Estimated tax payments made by individuals cannot be credited against tax due with the composite return. Individuals who have made such payments with respect to a tax year and desire to participate in a composite return filing for that year may file a separate income tax return and request a refund of any overpaid taxes.

7. Extension of Time to File. The filing agent may obtain an extension of time to file the composite return in the same manner as an individual filer obtains an extension. An extension of time to file does not affect the due date for payment of tax.

8. Due Dates. The following due dates apply to 830 CMR 62.5A.1(11)(f):

a. A qualified electing non-resident must submit the filing statement required under 830 CMR 62.5A.1(11)(f)3. to the pass-through entity on or before the last day of the first month of the entity's taxable year, or within 30 days of joining the entity.

b. A composite return is due on the same date that the return of an individual would be due, and may be allowed the same extensions granted individuals under M.G.L. c. 62C, § 19.

c. Composite payments of estimated tax are due on April 15th of the tax year, June 15th of the tax year, September 15th of the tax year, and January 15th of the following tax year.

9. Filing Instructions. The filing agent shall submit the composite return and composite payments of tax in accordance with the filing instructions at the Department of Revenue web site, www.mass.gov/dor.

10. Special Rules. The following special rules apply to composite returns and composite payments of estimated tax:

a. The filing agent is merely an agent for the qualified electing non-residents and each qualified electing non-resident is personally responsible for timely filing of returns and payment of his or her tax liabilities. Non-residents are subject to the same requirements for filing tax returns and the same penalties for failure to file or failure to pay their tax as other taxpayers.

b. A non-resident taxpayer has the right to file an individual amended return. The Commissioner retains the right to require the filing of an individual non-resident personal income tax return by any of the qualified electing non-residents. The filing of an individual tax return will not, ordinarily, affect the validity of the original composite return for the tax year to which the individual return required by the Commissioner relates.

c. A pass-through entity may file an amended composite return on behalf of electing non-residents only if it filed an original composite return on their behalf.

(g) Composite Returns for Tiered Pass-through Entities. A tiered group of pass-through entities (a pass-through entity with one or more members that are also pass-through entities) may file a single composite return on behalf of its non-resident members if each entity and individual taxpayer is otherwise eligible to participate in the filing of a composite return. The following additional requirements must also be met:

1. Each of the pass-through entities must join in the filing of a single composite return on behalf of its qualified electing non-residents, and the filing agent of each entity must sign the return.

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2. A schedule must be submitted with the composite return indicating each qualified electing non-resident's distributive share of Massachusetts source income from each pass-through entity, and the total amount of Massachusetts source income received by each taxpayer from all the pass-through entities combined.

3. A statement must be submitted with the composite return disclosing the group's ownership structure, the identity of each member, (including name, address, and federal identification number), the nature and extent of ownership interests, and the identity of each partner or member of all of the related entities from which participating non-residents directly or indirectly derive Massachusetts source income.

4. The return must indicate that it is a tiered entity composite return.

(12) Effective Dates. General. 830 CMR 62.5A.1 repeals and replaces the prior version of 830 CMR 62.5A.1 as of August 8, 2008. The prior version of 830 CMR 62.5A.1 is effective for all periods prior to that date. The provisions in 830 CMR 62.5A.1 generally shall apply to tax years beginning on or after January 1, 2006, except to the extent that a provision:

(a) is subject to a specific effective date in 830 CMR 62.5A.1(12);

(b) is subject to a specific effective date created by legislation; or

NON-TEXT PAGE

62.5A.1: continued

(c) reflects a position appearing in a prior public written statement or other Department of Revenue publication, including electronic publication. Provisions under 830 CMR 62.5A.1(11)(f), relating to the filing of composite returns, are effective for tax years beginning on or after January 1, 2009. All rules that antedate 830 CMR 62.5A.1, whether appearing in a prior public written statement or other Department of Revenue publication, continue in force and effect except to the extent any such rules are revised or altered by 830 CMR 62.5A.1. For periods prior to August 8, 2008, the Commissioner reserves the right to assert a position reflected in 830 CMR 62.5A.1 that is not inconsistent with a prior public written statement, and that otherwise is consonant with the law in effect at that time.

62.5A.2: Compensation Received by Non-resident Professional Team Athletes

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

(a) Statement of Purpose. The purpose of 830 CMR 62.5A.2 is to explain the rules for the taxation of income received by non-resident professional team athletes. The rules for the taxation of non-resident professional non-team athletes are set forth in 830 CMR 62.5A.1.

(b) Outline of Topics. 830 CMR 62.5A.2 is organized as follows:

1. Statement of Purpose; Outline of Topics; Effective Date
2. General Rule
3. Definitions
4. Examples
5. Alternative Apportionment Method
6. Composite Returns
7. No Tax Status

(c) Effective Date. The provisions of 830 CMR 62.5A.2 are effective for tax years beginning after December 31, 2001.

(2) General Rule. The Massachusetts source income of a non-resident individual who is a member of a professional athletic team includes that portion of such individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within Massachusetts rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without Massachusetts during the taxable year.

(3) Definitions. Unless the context requires otherwise, for the purposes of 830 CMR 62.5A.2, the following definitions apply:

Authorized Return Signer, an individual authorized by the qualified electing non-resident team members to act as their agent in filing a composite tax return and estimated tax payments and who signs the composite tax return, and who is a duly authorized officer of the professional athletic team for which the qualified electing non-resident team members perform their services.

Bonuses, remuneration earned as a result of play (*i.e.*, performance bonuses) during the season, including remuneration paid for championship, playoff, or "bowl" games played by a team, or for selection to all-star league or other honorary position; and remuneration paid for signing a contract (*i.e.*, signing bonuses), unless all of the following conditions are met:

(a) the payment for the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;
(b) the signing bonus is payable separately from the salary and any other compensation; and
(c) the signing bonus is nonrefundable.

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

62.5A.2: continued

Duty Days, all days, from the beginning of the professional athletic team's official pre-season training period through the last game in which the team competes or is scheduled to compete during the taxable year. The term "duty days" shall also include game days, practice days, days spent at team meetings, promotional "caravans" and pre-season training camps, and days served with the team through all post-season games in which the team competes or is scheduled to compete. The term "duty days" is further defined as follows:

(a) For a member of a professional athletic team who renders services for a team that does not fall within the aforementioned period, such member's duty days shall include such additional days. Examples of such services include participation in instructional leagues, the "Pro Bowl," promotional "caravans," or representing the team at an all-star game. Rendering a service includes conducting training and rehabilitation activities on a day outside the period mentioned in 830 CMR 62.5A.2(3): Duty Days, but only if conducted at the facilities of the team.

(b) Duty days for any person who joins a team during the season shall begin on the day such person joins the team, and for any person who leaves a team shall end on the day such person leaves the team. Where a person switches teams during a taxable year, a separate duty day calculation shall be made for the period such person was with each team.

(c) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when such member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days. Duty days do not include any try-out or pre-season cut days that a player shall survive in order to obtain a contract.

(d) Days for which a member of a professional athletic team is on the disabled list, does not conduct rehabilitation activities at facilities of the team in Massachusetts, and is not otherwise rendering services for the team in Massachusetts, are presumed not to be duty days spent in Massachusetts. However, all days on the disabled list shall be included in total duty days spent within and without Massachusetts.

(e) Travel days that do not involve either a game, practice, team meeting, promotional "caravan," or other similar team event are not considered duty days spent in Massachusetts. However, such travel days shall be considered in the total duty days spent both within and without Massachusetts.

Member of a Professional Athletic Team, includes, but is not limited to, those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis, including coaches, managers, and trainers.

Non-resident, any natural person who is not a resident or inhabitant. The term "resident" or "inhabitant" shall mean any natural person domiciled in Massachusetts or any natural person not domiciled in Massachusetts but who maintains a permanent place of abode in Massachusetts and spends in the aggregate more than 183 days of the taxable year in Massachusetts, including days spent partially in and partially out of Massachusetts.

Professional Athletic Team, includes, but is not limited to, any professional baseball, basketball, football, soccer or hockey team.

Qualified Electing Non-resident Team Member, a non-resident team member of a professional athletic team seeking to file a composite return with other team members who meets all of the following criteria:

(a) is a non-resident for the entire taxable year;

(b) has no other Massachusetts source income, and if married and filing jointly with his or her spouse, whose spouse has no Massachusetts source income;

(c) elects to be included in the composite return by signing the statement required under 830 CMR 62.5A.2(6)(a);

(d) has not filed a separate return in Massachusetts for the tax year in question; and

(e) waives the right to claim deductions, exemptions, and credits allowable under M.G.L. c. 62, §§ 3, 5, and 6.

62.5A.2: continued

Team Member, a member of a professional athletic team or the estate or trust of a deceased member of a professional athletic team.

Total Compensation for Services, the total compensation received by a non-resident team member during the taxable year for services rendered:

(a) from the beginning of the official pre-season training period through the last game, including play-off games, in which the team competes or is scheduled to compete during that taxable year; and

(b) during the taxable year on a date which does not fall within the aforementioned period (*e.g.*, participation in instructional leagues, the "Pro Bowl," promotional "caravans," or representing the team at an all-star game). Such compensation shall include, but is not limited to, salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year. Such compensation shall not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

(4) Examples. The following examples illustrate the application of 830 CMR 62.5A.2:

Example 1: Player A, a member of a professional athletic team, is a non-resident of Massachusetts. Player A's contract for such team requires A to report to such team's training camp and to participate in all exhibition, regular season, and playoff games. Player A has a contract which covers seasons that occur during year one year two and year two year three. Player A's contract provides that A receive $500,000 for the year one year two season and $600,000 for the year two year three season. Assuming Player A receives $550,000 from such contract during taxable year two ($250,000 for ½ the year one year two season and $300,000 for ½ the year two year three season), the portion of such compensation received by Player A for taxable year two, attributable to Massachusetts, is determined by multiplying the compensation Player A receives during the taxable year ($550,000) by a fraction, the numerator of which is the total number of duty days Player A spends rendering services for the team in Massachusetts during taxable year two (attributable to both the year one year two season and the year two year three season) and the denominator of which is the total number of Player A's duty days spent both within and without Massachusetts for the entire taxable year.

Example 2: Player B, a member of a professional athletic team, is a non-resident of Massachusetts. During the season, B is injured and is unable to render services for B's team. While B is undergoing medical treatment at a clinic in Massachusetts, B's team, which is not based in Massachusetts, travels to Massachusetts for a game. The number of days B's team spends in Massachusetts for practice, games, meetings, *etc.*, while B is present at such clinic in Massachusetts shall not be considered duty days spent in Massachusetts for Player B for that tax year for purposes of 830 CMR 62.5A.2, but such days are considered to be included within total duty days spent within and without Massachusetts.

Example 3: Player B, a member of a professional athletic team, is a non-resident of Massachusetts. During the season, B is injured and is unable to render services for B's team. B performs rehabilitation exercises at the facilities of B's team in Massachusetts as well as at personal facilities in Massachusetts. The days B performs rehabilitation exercises in the facilities of B's team are considered duty days spent in Massachusetts for Player B for that tax year for purposes of 830 CMR 62.5A.2. However, the days B spends in private facilities in Massachusetts shall not be considered duty days spent in Massachusetts for Player B for that tax year, though such days are considered to be included within total duty days spent within and without Massachusetts.

Example 4: Player C, a member of a professional athletic team, is a non-resident of Massachusetts. During the season, C travels to Massachusetts to participate in the annual all-star game as a representative of C's team. The number of days C spends in Massachusetts for practice, the game, meetings, *etc.*, shall be considered duty days spent in Massachusetts for Player C for that tax year for purposes of 830 CMR 62.5A.2, as well as included within total duty days spent within and without Massachusetts.

62.5A.2: continued

Example 5: Assume the same facts as given in Example 4, except that Player C is not participating in the all-star game and is not rendering services for C's team in any manner. Player C is traveling to and attending such game solely as a spectator. The days Player C spends in Massachusetts for the game are not considered to be duty days spent in Massachusetts. However, those days are included within total duty days spent both within and without Massachusetts.

Example 6: Player D, a member of a professional athletic team, is a non-resident of Massachusetts. During the pre-season, D travels to Massachusetts to participate in a training camp which D's team conducts in Massachusetts. D performs no further services in Massachusetts. D's team does not play any regular season or playoff games in Massachusetts. The days D spends in Massachusetts at the team's training camp are considered to be duty days spent in Massachusetts for Player D for that taxable year.

(5) Alternative Apportionment Method. 830 CMR 62.5A.2 is designed to apportion to Massachusetts, in a fair and equitable manner, the total compensation for services of a non-resident member of a professional athletic team rendered as a member of such team. It is presumed that application of the foregoing provisions of 830 CMR 62.5A.2 will result in a fair and equitable apportionment of such compensation. Where it is demonstrated that the method provided under 830 CMR 62.5A.2 does not fairly and equitably apportion such compensation, the Commissioner may require such member of a professional athletic team to apportion such compensation under such method as the Commissioner prescribes, as long as the prescribed method results in a fair and equitable apportionment. A non-resident member of a professional athletic team may submit a proposal for an alternative method to apportion such compensation, where he or she demonstrates that the method provided under 830 CMR 62.5A.2 does not fairly and equitably apportion such compensation. If approved, the proposed method must be fully explained in the personal income tax return of the non-resident member of the professional athletic team.

(6) Composite Returns. Any professional athletic team that has two or more qualified electing non-resident team members may file a composite tax return as an agent for the qualified electing non-resident team members.

(a) Qualified Electing Non-resident Team Member's Statement. Each qualified electing non-resident team member must sign under penalties of perjury a statement affirmatively stating such team member's qualifications and election to file a composite return. The statement must include the following information:

1. the name and taxpayer identification number of the professional athletic team;
2. the team member's taxpayer identification number and the exact address of the team member's principal place of residence;
3. an acknowledgment of the team member's obligation to file a return, make estimated tax payments if required, and pay the team member's *pro rata* share of any penalty and interest due for any underpayment of estimated taxes;
4. a statement of waiver of the right to claim any deductions, exemptions, and credits allowable under M.G.L. c. 62, §§ 3, 5, and 6; and
5. a power of attorney authorizing the authorized return signer to represent the qualified electing non-resident team member in making, executing, and filing the composite tax return, tax payments and estimated tax payments. Attaching a properly completed Massachusetts Power of Attorney Form M-2848 to the qualified electing non-resident team members' statement will fulfill the power of attorney authorization requirement.

(b) Composite Returns. The composite return shall be filed on a Massachusetts Non-resident Individual Income Tax Return (Form 1-NR/PY), with a composite Massachusetts Schedule E-NR/PY attached. The authorized return signer shall indicate clearly and conspicuously at the top of each form or schedule filed that the form or schedule is a composite form or a composite schedule. The total Massachusetts gross income reported on the composite Form 1-NR/PY shall be the sum of all the qualified electing non-resident team members' Massachusetts source professional athletic team income. Team members included in the composite return filing must have the same taxable year.

62.5A.2: continued

(c) Attachments. The authorized return signer shall attach to the composite return:

1. a statement signed by the authorized return signer under penalties of perjury, certifying that each qualified electing non-resident team member included in the composite return has executed a statement which meets the requirements of 830 CMR 62.5A.2(6)(a), that those statements are on file at the professional athletic team's principal office and the address of that office, and that the authorized return signer signing the composite return is the authorized return signer authorized under power of attorney to act as agent for the qualified electing non-resident team members of the professional athletic team; and

2. a schedule of each qualified electing non-resident team member's name, tax identification number, and Massachusetts source professional athletic team income.

(d) Composite Payments of Estimated Tax. The composite payments of estimated tax shall be made on Massachusetts Estimated Income Tax Vouchers (Form 1-ES). The authorized return signer shall indicate clearly and conspicuously on the form that the form is a composite estimated tax payment. Estimated tax payments made by individual members of a professional athletic team cannot be credited against tax due with the composite return. Individual members of a professional athletic team who have made such payments with respect to a taxable year and desire to participate in a composite return filing for that year, may request a refund of their individual estimated tax payments. The request must be made in writing to the Massachusetts Department of Revenue, Customer Service Bureau, Attn: Composite Return Refund Request. The written request must state that the taxpayer is electing to participate in a composite filing for the taxable year. The professional athletic team filing the composite form must be clearly identified by name, address and federal identification number. The application will not be considered complete until the composite return is filed with the Department. A copy of the composite return should be attached to the refund request where available.

(e) Extension of Time to File. The qualified electing non-resident team members of a professional athletic team may request an extension of time to file the composite return. An application for extension of time to file a composite return must include a schedule listing the qualified electing non-resident team members and their tax identification numbers. The authorized return signer shall indicate clearly and conspicuously on the application that the form is a composite application for extension of time to file a Massachusetts composite income tax return. If granted, the extension of time to file shall apply only to qualified electing non-resident team members who were included in the application for an extension of time to file and are included in the composite return.

(f) Due Dates. The following due dates apply to 830 CMR 62.5A.2(6):

1. To be included in a composite return, a qualified electing non-resident team member must file the statement electing to be included in the composite return with the professional athletic team before the due date, without any extensions, of the composite return.

2. A composite return is due on the same date that the return of an individual would be due, including extensions granted under M.G.L. c. 62C, § 19.

3. Composite payments of estimated tax are due on April 15th of the taxable year, June 15th of the taxable year, September 15th of the taxable year, and January 15th of the following taxable year.

(g) Filing Address. The authorized return signer shall mail the composite return and composite payments of estimated tax in accordance with the filing instructions for the Massachusetts Non-resident Individual Income Tax Return (Form 1-NR/PY) and Massachusetts Estimated Income Tax Vouchers (Form 1-ES). The authorized return signer must indicate clearly and conspicuously on each form that it is a composite form.

(h) Special Rules. 830 CMR 62.5A.2(6)(h)1. through 4. applies to composite returns and composite payments of estimated tax:

1. The filing of the composite tax return and composite payments of estimated taxes will be treated as satisfying the obligation of each qualified electing non-resident team member to file a tax return and to make estimated tax payments under M.G.L. c. 62C, § 6, and M.G.L. c. 62B, § 13, respectively.

62.5A.2: continued

2. The authorized return signer is merely an agent for the qualified electing nonresident team members of a professional athletic team and each qualified electing nonresident team member is personally responsible for timely filing of returns and payment of such team member's tax liabilities. Nonresident members of a professional athletic team are subject to the same requirements for filing tax returns and the same penalties for failure to file or failure to pay their tax as other taxpayers.

3. A nonresident taxpayer has the right to file an individual amended return. The Commissioner retains the right to require the filing of an individual nonresident personal income tax return by any of the qualified electing nonresident team members. This ordinarily will not affect the validity of the original composite return for the taxable year to which the individual return required by the Commissioner relates.

4. A professional athletic team may file an amended composite return on behalf of electing qualified nonresident team members only if it timely filed an original composite return on behalf of these members under the provisions of 830 CMR 62.5A.2.

(7) No Tax Status. Massachusetts law provides that an individual's taxable income shall be exempt from tax if his or her Massachusetts adjusted gross income for the taxable year does not exceed $8,000. M.G.L. c. 62, § 5(a). Massachusetts adjusted gross income includes the Massachusetts portion of a nonresident team member's total compensation for services rendered. If a nonresident team member's Massachusetts adjusted gross income is $8,000 or less, he or she does not owe Massachusetts tax and should not sign a statement electing to file on a composite basis. A nonresident team member will not receive no tax status if he or she elects to be treated as part of a composite return.

62.5A.3: Massachusetts Source Income of Nonresidents Telecommuting Due to the COVID-19 Pandemic

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

(a) Scope of Regulation. 830 CMR 62.5A.3 sets forth the sourcing rules that apply to income earned by a nonresident employee who telecommutes on behalf of an in-state business from a location outside the state due to the COVID-19 pandemic.

(b) Background. In response to the COVID-19 pandemic, Massachusetts and other states have declared states of emergency and issued temporary social-distancing measures and other restrictions. Many businesses and employees have adopted telecommuting arrangements in response to the pandemic.

For Massachusetts personal income tax purposes, Massachusetts residents are generally taxed on all of their income from whatever sources derived. M.G.L. c. 62, § 2. Nonresidents are taxed on items of gross income from sources within the Commonwealth, including income derived from or connected with any trade or business, including any employment, in Massachusetts. M.G.L. c. 62, § 5A(a). Wage income paid to an individual that is subject to the Massachusetts personal income tax generally must be withheld upon for each payroll period by his or her employer. M.G.L. c. 62B, § 2. 830 CMR 62.5A.3 sets forth general rules applicable to nonresident employees who are telecommuting on behalf of an in-state business from a location outside the state due to the COVID-19 pandemic, and explains the parallel treatment that will be accorded to resident employees with income tax liabilities in other states that have adopted similar sourcing rules.

(c) Outline of Topics. 830 CMR 62.5A.3 is organized as follows:

1. Scope of Regulation; Background; Outline of Topics; Effective Date
2. Definitions
3. Massachusetts Source Income for Nonresidents Telecommuting due to Pandemic-related Circumstances
4. Sourcing Rules in Other States

(d) Effective Dates. 830 CMR 62.5A.3 applies to the sourcing of wage income attributable to employee services performed commencing March 10, 2020 through 90 days after the date on which the Governor of the Commonwealth gives notice that the Massachusetts COVID-19 state of emergency is no longer in effect.

(2) Definitions. Unless the context requires otherwise, for the purposes of 830 CMR 62.5A.3, the following definitions apply:

62.5A.3: continued

Massachusetts COVID-19 State of Emergency. The state of emergency in the Commonwealth of Massachusetts proclaimed in the Governor's Declaration of a State of Emergency to Respond to COVID-19, issued March 10, 2020.

Nonresident. Any natural person who is not a Massachusetts resident.

Pandemic-related Circumstances, generally include the following situations;

(a) a government order issued in response to the COVID-19 pandemic,

(b) a remote work policy adopted by an employer in compliance with federal or state government guidance or public health recommendations relating to the COVID-19 pandemic,

(c) the worker's compliance with quarantine, isolation directions relating to a COVID-19 diagnosis or suspected diagnosis, or advice of a physician relating to COVID-19 exposure or,

(d) any other work arrangement in which an employee who performed services at a location in Massachusetts prior to the Massachusetts COVID-19 state of emergency performs such services for the employer from a location outside Massachusetts during a period in which 830 CMR 62.5A.3 is in effect.

Resident. Any natural person domiciled in Massachusetts or any natural person who is not domiciled in Massachusetts, but who maintains a permanent place of abode in Massachusetts and spends in the aggregate more than 183 days of the tax year in Massachusetts, including days spent partially in and partially out of Massachusetts.

(3) Massachusetts Source Income for Nonresidents Telecommuting Due to Pandemic-related Circumstances.

(a) In General. Under M.G.L. c. 62, § 5A(a), income of a nonresident derived from a trade or business, including any employment, carried on in the Commonwealth is sourced to Massachusetts. Pursuant to this rule, all compensation received for services performed by a nonresident who, immediately prior to the Massachusetts COVID-19 state of emergency was an employee engaged in performing such services in Massachusetts, and who is performing services from a location outside Massachusetts due to a Pandemic-related Circumstance will continue to be treated as Massachusetts source income subject to personal income tax under M.G.L. c. 62, § 5A and personal income tax withholding pursuant to M.G.L. c. 62B, § 2.

(b) Apportionment Based on Days Spent Working in Massachusetts. Consistent with the rule set forth in 830 CMR 62.5A.3(3)(a), a nonresident employee who, prior to the Massachusetts COVID-19 state of emergency, determined Massachusetts source income by apportioning based on days spent working in Massachusetts in accordance with 830 CMR 62.5A.1(5)(a), must continue to do so based on:

1. the percentage of the employee's work days spent in Massachusetts during the period January 1 through February 29, 2020 as determined under 830 CMR 62.5A.1(5)(a); or

2. if the employee worked for the same employer in 2019, the apportionment percentage properly used to determine the portion of employee wages constituting Massachusetts source income on the employee's 2019 return. For example, if a nonresident employee is working from home full-time due to a Pandemic-related Circumstance, but during the period January 1 through February 29, 2020 the employee worked five days a week, two of those days from an office in Boston and three of those days from home, 40% of the employee's wages would continue to be Massachusetts source income.

(4) Sourcing Rules in Other States. Other states have adopted or may adopt sourcing rules similar to the rule in 830 CMR 62.5A.3(3). A resident employee who, immediately prior to the Massachusetts COVID-19 state of emergency, was an employee engaged in performing services from a location outside of Massachusetts, and who began performing such services in Massachusetts due to a Pandemic-related Circumstance, will be eligible for a credit for income taxes paid to the state where the employee was previously providing services, to the extent provided under M.G.L. c. 62, § 6(a). In addition, the employer of such employee is not obligated to withhold Massachusetts income tax to the extent the employer remains required to withhold income tax with respect to the employee in such other state.

62.6.1: Residential Energy Credit

(1) General. An owner or tenant of a residential property located in the Commonwealth who is not a dependent of another taxpayer and who occupies the residential property as his or her principal residence is allowed a solar and wind energy credit ("energy credit") against personal income tax equal to 15% of the net expenditure for renewable energy source property, or $1000, whichever is less. *See* M.G.L. c. 62, § 6(d). The $1000 credit limitation applies to all renewable energy source expenditures made by an owner or tenant ("taxpayer") with respect to his or her principal residence.

(2) Definitions.

Internal Revenue Code. The Internal Revenue Code, as amended on January 1, 1988, and in effect for the taxable year.

Net Expenditure. The total of the purchase price for any renewable energy source property, plus installation cost, but less any credits received under the Internal Revenue Code and less grants or rebates received from the United States Department of Housing and Urban Development.

Renewable Energy Source Property. Property, including materials and component parts thereof, separately purchased and assembled by the residential property owner or tenant which, when installed in connection with a dwelling, transmits or uses solar energy or other form of renewable energy for the purposes of heating or cooling such dwelling or providing hot water for use within such dwelling, or for producing electricity for such purposes; wind energy for nonbusiness residential purposes is also renewable energy source property. To qualify as renewable energy source property, the original use of the property must begin with the taxpayer, the property must reasonably be expected to remain in operation for at least five years, and the property must meet quality standards as prescribed by 830 CMR 62.6.1.

Except as stated in 830 CMR 62.6.1, renewable energy source property does not include heating or cooling systems used to supplement renewable energy source equipment in heating or cooling a residence when such systems employ a form of energy other than solar or wind. For example, heat pumps or oil or gas furnaces used in connection with renewable energy source property are not renewable energy source property.

Solar Energy Property. Property which, when installed in connection with a dwelling, transmits or uses solar energy directly to heat or cool a dwelling or to provide hot water for use within a dwelling, or to produce electricity for such purposes, and which otherwise meets the requirements of 830 CMR 62.6.1 for renewable energy source property. Property which uses fuel or energy only indirectly derived from solar energy, such as fossil fuel or wood, is not solar energy property.

Passive and active solar systems, and portions of the structure of the principal residence when the sole purpose of such portions is to transmit or use solar radiation or to enhance the collection and storage of solar energy by such systems, are solar energy property. For example, root ponds, roof collectors, freestanding thermal containers, and non-window glazing may qualify for the credit. However, portions of the structure of a principal residence, equipment, and materials which serve a dual purpose along with energy transmission (*i.e.*, that serve as a structural component of the residence or that have a significant structural function) are not solar energy property. For example, roofs, windows, walls, and greenhouses are not solar energy property.

Examples of items that may qualify as solar energy property include collectors used to absorb sunlight and create hot liquids or air, storage tanks to store hot liquids, rockbeds to store hot air, thermostats to activate pumps or fans which circulate hot liquid or air, and heat exchangers which use hot liquids or air to create hot air or water.

62.6.1: continued

Wind Energy Property. Property which, when installed in connection with a residential property, transmits or uses wind energy to produce energy in any form for nonbusiness residential purposes and which otherwise qualifies as renewable energy source property. Wind energy property generally uses wind to generate electricity, or mechanical forms of energy. Windmills and wind-driven generators are examples of wind energy property.

(3) Qualifying Expenditures. Only net expenditures paid with respect to renewable energy source property used in connection with the taxpayer's principal residence may be used to compute the amount of the credit. The term "in connection with" includes, but is not limited to, renewable energy source property in or on a principal residence or residential property.

(a) Principal Residence. A taxpayer must be a resident of Massachusetts for his or her principal residence to be in Massachusetts. If a taxpayer is resident in Massachusetts and has only one place of residence, that place of residence is the taxpayer's principal residence. If a taxpayer is resident in Massachusetts and has more than one place of residence, the determination of which place of residence is the taxpayer's principal residence depends upon all the facts and circumstances in the case, including the number of days spent at each place of residence and the good faith representations of the taxpayer.

If an owner or tenant changes his or her principal place of residence within a taxable year an energy credit may be claimed for each principal residence of the taxpayer, subject to the maximum credit amount of $1000. Subject to the requirements of 830 CMR 62.6.1, joint owners of residential property may share any energy credit claimed for renewable energy source property expenditures in the same proportion as their ownership interest in the residential property. Joint owners are subject to the maximum credit amount of $1000. Joint ownership includes joint tenancy, tenancy in common and tenancy by the entirety. An individual who is a stockholder in a cooperative housing corporation, or who is a member of a condominium association with respect to a condominium which he or she owns, may claim a proportionate share of the renewable energy source expenditure of such condominium association or cooperative housing corporation. A cooperative housing or condominium unit may be treated as a "principal residence" for purposes of the $1000 credit limitation.

(b) Renewable Energy Source Property. Only renewable energy source property used for residential purposes qualifies for the energy credit. When at least 80% of the use of such property is for residential purposes, the entire amount of the renewable energy source expenditure may be used to compute the credit. However, if less than 80% of such property is used for residential purposes, the percent of the amount of the expenditure that must be used to compute the credit is the percent of the property's residential use.

Subject to the requirements of 830 CMR 62.6.1, joint owners of renewable energy source property may share any energy credit claimed for renewable energy source property expenditures in the same proportion as their expenditures for that property. Joint owners are subject to the maximum credit amount of $1000 per principal residence.

A renewable energy source expenditure does not include any expenditure for any energy storage medium if the primary function of that medium is not the storage of energy. For this reason expenditures for insulation, storm or thermal windows or doors, caulking or weather-stripping, furnace replacement burners, devices for modifying flue openings, furnace ignition systems, automatic setback thermostats, energy use meters and similar devices and items are not renewable energy source expenditures. In addition, the costs of maintenance and repair of installed renewable energy source property, or of leasing renewable energy source property, are not renewable energy source expenditures.

(4) Claiming the Credit. For purposes of determining the taxable year in which an energy credit may be claimed, a renewable energy source expenditure is treated as made on the date on which the expenditure qualifies as timely, or the date on which the expenditure is paid or incurred by the taxpayer, whichever is later.

The amount of the energy credit claimed by the taxpayer in a taxable year may not exceed the taxpayer's personal income tax liability for that year. To determine the amount allowable in a given taxable year, a taxpayer must reduce the $1000 maximum credit amount by the amount of any energy credit allowed to the taxpayer in any prior taxable years with respect to the same principal residence. A taxpayer may carry-over any excess credit amount, as reduced from year to year, and apply it to his or her personal income tax liability for any one or more of the next succeeding three taxable years.

62.6.3: Lead Paint Removal Credit

(1) Introduction. 830 CMR 62.6.3 explains the lead paint removal credit ("deleading credit") allowed against income tax imposed pursuant to M.G.L. c. 62. *See* M.G.L. c. 62, § 6(e), as amended by St. 1993, c. 482. 830 CMR 62.6.3 applies to taxable years beginning on or after January 1, 1994. 830 CMR 62.6.3 must be read in conjunction with any pertinent regulations of the Department of Public Health and the Department of Workforce Development.

In general, the owner of a residential premises who pays for the deleading of the premises for the purpose of bringing the premises into full compliance with M.G.L. c. 111, §§ 189A through 199B, may claim a deleading credit equal to the lesser of the cost of deleading, or $1500, per dwelling unit. M.G.L. c. 62, § 6(e). The owner of a residential premises who pays for the deleading of the premises for the purpose of bringing the premises into interim control pending full compliance pursuant to M.G.L. c. 111, § 197(b), may claim a deleading credit equal to the lesser of ½ the cost of deleading, or $500, per dwelling unit. *Id*.

For purposes of claiming the deleading credit, the owner of the residential premises may choose full compliance directly, or to undertake full compliance as soon as feasible after the institution of interim control and the receipt of a letter of interim control.

(2) Definitions.

Accessible, means readily accessible to children under six years of age. Any surface is accessible for purposes of 830 CMR 62.6.3 if it must be deleaded to bring the residential premises into compliance with M.G.L. c. 111, §§ 189A through 199B.

Authorized Person, means a person who may legally perform a deleading activity for which he or she has received the required training or course of instruction and, as necessary, an authorization, certificate, or license, all in accordance with the requirements of the regulations of the Department of Public Health 105 CMR 460.000, 454 CMR 22.00 and the training materials approved by the lead poisoning control Director. See 105 CMR 460.110(C). An authorized person may be a licensed deleader, a licensed lead-safe renovator, an owner, or an owner's agent. To become an authorized person, an owner or owner's agent must complete a course of instruction designed by the Childhood Lead Poisoning Prevention Program of the Department of Public Health before conducting moderate-risk abatement activities. This includes taking a one-day class, taking and passing a written examination and receiving an authorization number from the Department of Public Health. Before performing low-risk abatement and/or containment activities, the owner or owner's agent must review a training booklet and take an at-home test which must be returned to the Massachusetts Childhood Lead Poisoning Prevention Program (CLPPP), and receive an authorization number from CLPPP.

Compliance, means that the premises have been deleaded and that a letter of compliance has been issued by a licensed inspector certifying that the deleading of the premises complies with the full compliance provisions of M.G.L. c. 111, §§ 189A through 199B. Interim control means that the premises have been deleaded using interim control measures pending full compliance and that a letter of interim control has been issued by a licensed risk assessor stating that the deleading of the premises complies with the provisions of M.G.L. c. 111, § 197(b).

Cost, means the costs of deleading materials and activities performed by authorized persons, necessary to bring the premises into full compliance with M.G.L. c. 111, §§ 189A through 199B, which are paid for by the owner of the residential premises and for which the owner receives no reimbursement. In terms of interim control, only those interim control expenses necessary to achieving full compliance are a "cost" for the purposes of claiming the deleading credit. "Cost" includes licensed inspector's fees. If a loan or credit is used to pay for deleading, "cost" does not include finance charges or similar fees, or the amount of any deferral or forgiveness.

Dangerous Level of Lead, the level of lead in accessible structural materials which endangers human health as defined at 105 CMR 460.020.

Deleading, means the containment or abatement of a dangerous level of lead in accessible structural materials, including the replacement of window units, undertaken to achieve full compliance with the provisions of M.G.L. c. 111, §§ 189A through 199B. Abatement requires the

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removal and replacement of paint, plaster or other accessible structural materials containing dangerous levels of lead. Containment includes the encapsulation, covering or enclosing by any authorized means of all paint, plaster or other accessible structural materials containing dangerous levels of lead.

Dwelling Unit, a dwelling unit as defined in 105 CMR 410.00 that was constructed prior to 1978 and that is located in Massachusetts.

Letter of Compliance, a letter of compliance is a statement issued by a licensed inspector that the deleaded premises meets the full compliance provisions of M.G.L. c. 111, § 189A through 199B.

Letter of Interim Control, a letter of interim control is a statement issued by a licensed risk assessor that the premises meets the interim control provisions of M.G.L. c. 111, § 197(b). The Letter of Interim Control shall state a date of expiration that shall be one year from the date of issue.

Licensed Deleader, a licensed deleader is any individual, corporation or entity licensed by the Department of Labor and Workforce Development pursuant to M.G.L. c. 111, § 197B(b) to perform deleading activities. Only licensed deleaders may perform certain high-risk deleading activities not listed in 105 CMR 460.175(A) or (B). Licensed deleaders must be trained and licensed pursuant to 454 CMR 22.00.

Licensed Lead Inspector, a licensed lead inspector is an individual licensed by the Department of Public Health pursuant to M.G.L. c. 111, § 197B(a), to inspect and assess premises for the presence of a dangerous level of lead in accessible structural materials.

Licensed Lead-safe Renovator, a licensed lead-safe renovator is a contractor who must complete training required by the Department of Labor and Workforce Development, pass an exam, and become licensed, in order to perform moderate risk deleading work.

Licensed Risk Assessor, a licensed risk assessor is a licensed lead inspector who is also specifically licensed by the Department of Public Health to identify and assess urgent lead violations and hazards for the purpose of interim control.

Low-risk Abatement and/or Containment, low-risk abatement and/or containment means the work allowed by 105 CMR 460.175(A) which can be performed by authorized persons, provided such activities are performed in compliance with the requirements of 105 CMR 460.000, and in the case of deleaders and lead-safe renovators, the additional requirements of 454 CMR 22.00.

Moderate-risk Abatement, moderate-risk abatement means the work allowed by 105 CMR 460.175(B) to be performed by authorized persons, as long as such activities are performed in compliance with the requirements of 105 CMR 460.000, and, in the case of lead-safe renovators and deleaders, the additional requirements of 454 CMR 22.00.

Owner, the owner of a residential premises is any person subject to the provisions of M.G.L. c. 62, who, alone or jointly or severally with others: has legal title to a residential premises; or has charge or control of a residential premises; or is an estate or trust of which a residential premises is a part, or is the grantor or beneficiary of such an estate or trust; or is the association of unit owners of a condominium or cooperative (which is an owner solely with respect to the common areas and exterior surfaces and fixtures of the condominium or cooperative). "Owner" does not include a secured lender except to the extent provided in M.G.L. c. 111, § 197D.

Owner's Agent for Low-risk Abatement or Containment, an owner's agent for low-risk abatement or containment is an owner's compensated employee or contractor, or other uncompensated person, 18 years of age or older who performs work at the direction of the owner.

Owner's Agent for Moderate-risk Abatement or Containment, an owner's agent for moderate-risk abatement or containment is an owner's compensated employee, or other uncompensated person, 18 years of age or older who performs work at the direction of the owner, but does not include a contractor.

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Premises, means residential premises, including any residential dwelling unit and residential property constructed prior to 1978.

(3) Full Compliance Deleading. To qualify as full compliance deleading for purposes of claiming the deleading credit, the following requirements must be met:

(a) a dangerous level of lead in the accessible structural materials of the residential premises is established by a licensed inspector; and

(b) following deleading by an authorized person, the owner obtains a letter of compliance from a licensed inspector; and

(c) the owner files a copy of the letter of compliance with the Department of Revenue by attaching it to Schedule LP with the owner's income tax return.

These procedures must be followed even if the owner has already obtained a letter of interim control and has received or claimed a deleading credit for interim control. If the owner is claiming a deleading credit based on interim control and full compliance, both the letter of interim control and the letter of full compliance must be attached to the owner's income tax return.

(4) Interim Control. To qualify as interim control for the purpose of claiming the deleading credit, the following requirements must be met:

(a) a dangerous level of lead in the accessible structural materials of the premises is established by a licensed risk assessor; and

(b) the premises are deleaded using interim control measures performed by an authorized person, and the owner obtains a letter of interim control from a licensed risk assessor which certifies that the costs of instituting interim control measures are costs necessary to achieving full compliance; and

(c) the owner files a copy of the letter of interim control with the Department of Revenue by attaching it to Schedule LP with the owner's income tax return. A letter of interim control that has expired or that has been revoked on or before it is filed with the department is not a letter of interim control for the purposes of claiming a deleading credit.

(5) Who May Claim the Credit. Any person or entity subject to taxation pursuant to M.G.L. c. 62, that is the owner of the residential premises and has paid the cost of deleading the premises for the purposes of full compliance, and that has received a letter of compliance from a licensed inspector, may claim the deleading credit.

Any person or entity subject to taxation pursuant to M.G.L. 62, that is the owner of the residential premises and has paid the cost of deleading the premises for the purpose of interim control, and that has received a letter of interim control from a licensed risk assessor may claim the deleading credit.

(6) Amount of the Credit.

(a) Full Compliance: The maximum aggregate amount of the deleading credit that may be claimed by the owner of residential premises for the cost of full compliance is the lesser of the cost of deleading the premises, or $1500, per dwelling unit. If the owner has claimed or received a deleading credit based on the cost of interim control the amount of the deleading credit claimed or received for interim control must be deducted when determining the amount of the deleading credit that may be claimed for full compliance.

(b) Interim Control: The maximum aggregate amount of the deleading credit that may be claimed by the owner of a residential premises for the cost of interim control is the lesser of ½ the cost of interim control, or $500, per dwelling unit.

(c) Co-owners: The maximum aggregate amount of the deleading credit that may be claimed or received by the owner, including multiple co-owners, of the premises deleaded is $1500 for full compliance and $500 for interim control, per dwelling unit. Thus, the amount of any deleading credit claimed or received by any co-owner of the premises must be deducted by any other co-owner when determining the amount of deleading credit to be claimed.

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(7) Condominiums and Cooperatives. An owner of a condominium or cooperative residential dwelling unit that has been inspected and deleaded may not claim a deleading credit for that unit unless the condominium or cooperative common areas, exterior surfaces and fixtures are deleaded in compliance with the full compliance provisions of M.G.L. c. 111. If such deleading is undertaken by the association of condominium or cooperative owners, the association may claim the deleading credit subject to the limitations set forth in 830 CMR 62.6.3 if the association is subject to the provisions of M.G.L. c. 62.

(8) Timing and Carry-over of the Credit. The deleading credit for full compliance may be claimed in the taxable year in which the premises is brought into full compliance as determined by a letter of compliance, or in the taxable year in which the cost of deleading is paid, whichever is later. Any unused portion of the credit may be carried forward from the taxable year in which it is first claimed and applied in any one or more of the succeeding seven taxable years.

The deleading credit for interim control may be claimed in the taxable year in which the premises is brought into interim control as determined by a letter of interim control, or in the taxable year in which the cost of deleading is paid, whichever is later. Any unused portion of the credit may be carried forward from the taxable year in which it is first claimed and applied in any one or more of the succeeding seven taxable years.

The deleading credit may not be used to reduce a taxpayer's liability under M.G.L. c. 62 to less than zero.

62.6.4: Conservation Land Tax Credit

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

(a) Statement of Purpose. 830 CMR 62.6.4 explains the calculation of the tax credit allowed for qualified donations of certified land to a public or private conservation agency, established by St. 2008, c. 509, §§1 through 4, amended by St. 2010, c. 409, §§ 4 through 13, and codified at M.G.L. c. 62, § 6(p) and M.G.L. c. 63, § 38AA. Regulations issued by the Executive Office of Energy and Environmental Affairs setting forth criteria for authorizing and certifying the credit may be found at 301 CMR 14.00: *Conservation Land Tax Credit*.

(b) Outline of Topics. 830 CMR 62.6.4 is organized as follows:

1. Statement of Purpose, Outline of Topics, Effective Date
2. Definitions
3. Prerequisites to Claiming the Credit
4. Amount of Credit
5. Multiple Donors
6. Credit is Refundable
7. Cumulative Annual Cap
8. No Double Benefit
9. Special Rules Applicable to Pass-Through Entities
10. Qualified Donations by Married Couples

(c) Effective Date. 830 CMR 62.6.4 takes effect on March 30, 2012 and applies to tax years beginning and to qualified donations of certified land made on or after January 1, 2011.

(2) Definitions. For purposes of 830 CMR 62.6.4, the following terms have the following meanings, unless the context requires otherwise:

Bargain Sale, the sale of an interest in real property at an amount below fair market value as evidenced by a qualified appraisal, when a portion of the value of the interest in real property is a qualified donation, as defined in 830 CMR 62.6.4(2), and which meets the requirements of IRC § 1011(b).

Certified Land, an interest in real property, the donation or bargain sale of which has been certified by the Secretary to have sufficient natural resources to qualify to be in the public interest for natural resource protection and be protected in perpetuity. Certified land includes drinking water supplies, wildlife habitats and biological diversity, agricultural and forestry production, recreational opportunities, and scenic and cultural values of statewide or regional significance.
Commissioner, the Commissioner of Revenue or the Commissioner's duly authorized representative.

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Department, the Department of Revenue.

Interest in Real Property, any right in real property in the Commonwealth, with or without improvements thereon, or water including a fee simple interest, life estate, restriction, easement, covenant, condition, partial interest, remainder interest, future interest, lease, license, mineral right, riparian right, or other interest or right in real property that may be conveyed pursuant to a power to transfer property.

IRC, with respect to personal income taxation under M.G.L. c. 62, the federal Internal Revenue Code, as defined in M.G.L. c. 62, § 1(c). With respect to corporate excise taxation under M.G.L. c. 63, the federal Internal Revenue Code, as amended and in effect for the taxable year, as more fully defined in M.G.L. c. 63, § 1.

Private Conservation Agency, a qualified organization as defined in 301 CMR 14.02: *Definitions*.

Public Conservation Agency, the Commonwealth, or any political subdivision thereof, or any municipality, with authority to hold property interests for natural resource purposes.

Qualified Appraisal, a qualified appraisal as defined in Treas. Reg. § 1.170A-13(c)(3) and 301 CMR 14.02.

Qualified Appraiser, a qualified appraiser as defined in Treas. Reg. § 1.170A-13(c)(5).

Qualified Donation, a donation, or the donated portion of a bargain sale, made in perpetuity and duly recorded in a Registry of Deeds, of a fee simple or less-than-fee simple interest in real property. A qualified donation includes a conservation, agricultural preservation, or watershed preservation restriction, as defined in M.G.L. c. 184, § 31, provided that such less-than-fee simple interest meets the requirements for a qualified conservation contribution under IRC § 170(h).

Secretary, the Secretary of the Executive Office of Energy and Environmental Affairs.

Taxpayer, any individual or entity subject to taxation under M.G.L. c. 62 or M.G.L. c. 63 and entitled to take a credit under M.G.L. c. 62, § 6(p) or M.G.L. c. 63, § 38AA, as applicable.

(3) Prerequisites to Claiming the Credit. Before a credit may be claimed:

(a) The Taxpayer must obtain a qualified appraisal prepared by a qualified appraiser that substantiates the fair market value of the qualified donation. A summary of the qualified appraisal or, if requested by the Secretary, the appraisal itself is to be filed with the Secretary as part of the certification process. The fair market value of a qualified donation is subject to review by the Commissioner. Upon request, the summary or the qualified appraisal itself and the certification is to be transferred by the Secretary to the Commissioner.

(b) The Secretary must certify that the Taxpayer made a qualified donation, in perpetuity, of certified land to a public or private conservation agency and issue a certificate to the Taxpayer that establishes that the prerequisites to claiming the credit in 830 CMR 62.6.4(3) have been met. No credit will be allowed unless the certificate number is included in the space provided on the return filed by the Taxpayer with the Department for the taxable year in which the credit is claimed or such other validation as the Commissioner may require is provided.

(4) Amount of Credit. The credit shall be equal to 50% of the fair market value of the qualified donation. The amount of the credit that may be claimed by a Taxpayer for each qualified donation shall not exceed $50,000.

(5) Multiple Donors. In the case of a qualified donation of certified land by multiple donors, the credit that may be claimed by any one donor is limited to the donor's proportionate share of the total credit allowed based on the donor's ownership interest or right in the real property donated. The total aggregate amount of the credit claimed by all donors shall not exceed $50,000.

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Example. Five siblings make a qualified donation of certified land. The fair market value of the land donated is $1,000,000. Each sibling has a $^1/_5$ interest in the land. The total aggregate amount of the credit claimed by all of the siblings shall not exceed $50,000. The maximum amount of credit each sibling can claim is $10,000.

(6) Credit is Refundable. The credit is refundable, but not transferable. The Commissioner will apply the credit against the Taxpayer's liability as reported on the Taxpayer's tax return, as first reduced by any other available credits, and then refund the balance of the credit to the Taxpayer. The provisions of M.G.L. chs. 62C and 62D including, without limitation, provisions allowing offsets of refunds for unpaid tax assessments, child support obligations, or other applicable obligations also apply to refunds under 830 CMR 62.6.4(6).

(7) Cumulative Annual Cap. The total cumulative value of all the credits authorized pursuant to M.G.L. c. 62, § 6(p) and M.G.L. c. 63, § 38AA shall not exceed $2,000,000 annually.

(8) No Double Benefit. A Taxpayer claiming a credit under M.G.L. c. 62, § 6(p) or M.G.L. c. 63, § 38AA may not claim any other credit or deduction otherwise allowable under M.G.L. c. 62 or M.G.L. c. 63 during any one tax year with respect to the same interest in certified land.

(9) Special Rules Applicable to Pass-through Entities.

(a) Pass-through Entities Not Taxed at Entity Level. In the case of a qualified donation of certified land by a pass-through entity that is not taxable at the entity level, such as a partnership, the credit allowed under M.G.L. c. 62, § 6(p) or M.G.L. c. 63, § 38AA, as applicable, shall be passed through to the entity's partners or owners in proportion to the partners' or owners' interests in such entity. The total aggregate amount of the credit passed through by such entity and claimed by its partners or owners for each qualified donation shall not exceed $50,000.

(b) Pass-through Entities Taxed at Entity Level. A trust or subchapter S corporation subject to tax at the entity level in any year may claim the credit allowed under M.G.L. c. 62, § 6(p) or M.G.L. c. 63, § 38AA, as applicable, for the taxable year. Alternatively, the credit from the taxable year may be passed through to beneficiaries or to shareholders in proportion to their interests in the entity. These alternatives are mutually exclusive. The total aggregate amount of the credit passed through by such entities and claimed by their beneficiaries or shareholders for each qualified donation shall not exceed $50,000.

(10) Qualified Donations by Married Couples. Married couples who make a qualified donation of certified land may claim the credit allowed under M.G.L. c. 62, § 6(p) as follows. If both spouses are required to file Massachusetts income tax returns, the credit allowed under M.G.L. c. 62, § 6(p) may be claimed only if the spouses file a joint return. If only one spouse is required to file a Massachusetts income tax return, that spouse may claim the credit on a separate return.

62.6.5: Angel Investor Tax Credit

(1) Statement of Purpose, Outline of Topics, Applicable Tax Years.

(a) Statement of Purpose. 830 CMR 62.6.5 explains the calculation of the Angel Investor Tax Credit allowed to taxpayer investors for qualifying investments in qualifying businesses, established by St. 2016, c. 219, § 139; amended by St. 2018, c. 228, §§ 13 and 14; and codified at M.G.L. c. 62, § 6(t).

830 CMR 62.6.5 is necessary to explain how to calculate and claim the angel investor tax credit allowed to M.G.L. c. 62 taxpayers for investments in certain qualifying small businesses. An investment must be made by an accredited investor, as defined by the United States Securities and Exchange Commission, to qualify for the credit and investments must be used to support a qualifying business for purposes such as capital improvements, plant equipment, research and development and working capital. Under M.G.L. c. 62, § 6(t), a taxpayer investor may be allowed a credit against the Massachusetts personal income tax up to an amount equal to 20% of the qualifying investments in a qualifying business. A taxpayer investor may be allowed a credit up to an amount equal to 30% of the amount of qualifying investments in a qualifying business located in a "Gateway Municipality", as defined in M.G.L. c. 23A, § 3A.

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Administration of the credit has been delegated to the Massachusetts Life Sciences Center (MLSC), in consultation with the Executive Office of Housing and Economic Development (EOHED) and the Department of Revenue (DOR). Accordingly, 830 CMR 62.6.5 is being promulgated in collaboration with theses agencies. M.G.L. c. 62, § 6(t)(b). Angel investor tax credits awarded by MLSC are subject to the annual cap applicable to other life sciences credits. No credit may be claimed prior to an award by MLSC.

(b) Outline of Topics. 830 CMR 62.6.5 is organized as follows:

1. Statement of Purpose, Outline of Topics, Applicable Tax Years;
2. Definitions;
3. General Rule;
4. Proof of Qualifying Business Status;
5. Proof of Qualifying Investment;
6. Proof of Taxpayer Investor Status;
7. Limitations on the Amount of the Credit;
8. Timing of Qualifying Investment;
9. Annual Cumulative Cap;
10. Process for Claiming the Credit;
11. Carry Over of Unused Credit;
12. Credit is Nonrefundable;
13. Recapture;
14. Offset Debt Collection;
15. Special Rules Applicable to Pass-through Entities;
16. Annual Reporting;
17. Examples.

(c) Applicable Tax Years. The credit is available for qualifying investments made on or after January 1, 2020.

(2) Definitions. For purposes of 830 CMR 62.6.5, the following terms have the following meanings, unless the context requires otherwise.

Business. A profession, sole proprietorship, trade partnership, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity or other business entity engaged in the life sciences as defined in M.G.L. c. 23I, § 2.

Code. As defined in M.G.L. c. 62, § 1, which refers to the federal Internal Revenue Code, with certain modifications.

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

Credit. The angel investor credit provided in M.G.L. c. 62, § 6(t).

DOR. The Massachusetts Department of Revenue.

EOHED. The Executive Office of Housing and Economic Development.

Gateway Municipality. A Gateway Municipality as defined in M.G.L. c. 23A, § 3A.

MLSC. The Massachusetts Life Sciences Center.

Qualifying Business. A business that:

(a) has its principal place of business in the Commonwealth;
(b) has at least 50% of its employees located in the business's principal place of business;
(c) has a fully developed business plan that includes all appropriate long-term and short-term forecasts and contingencies of business operations, including research and development, profit, loss and cash flow projections and details of angel investor funding;
(d) employs 20 or fewer full-time employees at the time of the taxpayer investor's initial qualifying investment in a business;

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(e) has a federal tax identification number; and
(f) has gross revenues equal to or less than $500,000 in the fiscal year prior to claiming eligibility.

Qualifying Investment. A monetary investment that is at risk and is not secured or guaranteed; provided, however, that a qualifying investment shall not include venture capital funds, hedge funds or commodity funds with institutional investors or investments in a business involved in retail, real estate, professional services, gaming or financial services.

Taxpayer Investor. An accredited investor, as defined by the United States Securities and Exchange Commission pursuant to 15 USC § 77b(15)(ii), who is not:
(a) the principal owner of the qualifying business; or
(b) involved in the qualifying business as a full-time professional activity.

(3) General Rule. In general, a taxpayer investor making a qualifying investment in a qualifying business may be allowed a credit up to an amount equal to 20% of the qualifying investment. A taxpayer investor who makes a qualifying investment in a qualifying business with its principal place of business located in a Gateway Municipality may be allowed a credit up to an amount equal to 30% of the amount of the taxpayer's qualifying investment. The credit may be applied only against tax due under M.G.L. c. 62. Any amount of credit allowed that exceeds a taxpayer investor's tax due for a taxable year under M.G.L. c. 62 may be carried forward to any of the three subsequent taxable years. M.G.L. c. 62, § 6(t) provides for recapture if the qualifying business ceases to have its principal place of business in the Commonwealth within the three taxable years following the taxable year of the investment.

Credits will be awarded by the MLSC in its sole discretion, in accordance with the MLSC's statutory obligations to support economic development in the life sciences across the Commonwealth and which contribute to a balanced and strong portfolio of tax beneficiaries including, but not limited to, consideration of the following:
(a) alignment with MLSC's strategic priorities including, but not limited to, advancement of novel modalities, expansion outside of Greater Boston, and growth in manufacturing, digital health and data analytics;
(b) ability to create and retain jobs;
(c) wide geographic distribution of life sciences operations in the Commonwealth;
(d) wide distribution of life sciences technologies and industries supported by the MLSC;
(e) diversity among businesses at different stages of product development and commercialization; and
(f) ability of the taxpayer investor and the qualifying business to verify eligibility.

(4) Proof of Qualifying Business Status. To demonstrate that a business is a qualifying business, the business must provide the MLSC with the following:
(a) certification, in a form and substance acceptable to the MLSC, executed by the Chief Executive Officer or other authorized representative of the business, that attests to the location of the principal place of business, the number of full-time-equivalent employees (35 hours or more per week) (FTEs) working for the business, and the percentage of FTEs who work at the principal place of business;
(b) a fully developed business plan that includes long-term and short-term forecasts and contingencies of business operations, including research and development, profit, loss and cash flow projections and details of angel investor funding;
(c) its federal tax identification number;
(d) a letter from the business's certified professional accountant that makes the representation that the business has gross revenues equal to or less than $500,000 in the fiscal year prior to application;
(e) a Certificate of Good Standing, issued by the Massachusetts Secretary of the Commonwealth within the previous six months; and
(f) a Certificate of Good Standing, issued by the DOR within the previous six months.

(5) Proof of Qualifying Investment. A taxpayer investor must provide the MLSC with the executed legal instruments of the investment for verification by the MLSC that the investment meets the requirements of a qualifying investment.

62.6.5: continued

(6) Proof of Taxpayer Investor Status. To demonstrate eligibility for the credit, a taxpayer investor must provide the MLSC with the following:

(a) evidence of accredited investor status by providing a letter from the taxpayer investor's certified professional accountant or lawyer that makes the representation that such professional has taken reasonable steps to verify the taxpayer investor's net income or net worth and any other requirements as defined by the United States Securities and Exchange Commission to establish accredited investor status, pursuant to 17 USC § 230.501(a); and

(b) a Certificate of Good Standing for the taxpayer investor, issued by the DOR within the previous six months.

(7) Limitations on the Amount of Credit. A taxpayer investor may be allowed a credit in connection with up to $125,000 of qualifying investments per qualifying business per year, and up to $250,000 in cumulative qualifying investments for each qualifying business. In any one taxable year, the total amount of all tax credits available to the taxpayer investor making qualified investments under 830 CMR 62.6.5(7) shall not exceed $50,000.

(8) Timing of Qualifying Investment. The credit shall be allowed for the taxable year in which the qualifying investment is made by a taxpayer. A qualifying investment is made at the time delivery is "effected" of the qualifying investment by a taxpayer investor to a qualifying business, as that term is used in Treas. Reg. § 1.170A-1(b). Accordingly, for example, the unconditional delivery of a cash contribution or mailing of a check by a taxpayer investor, which subsequently clears in due course, to a qualifying business, shall constitute an effective qualifying investment by the taxpayer investor on the date of delivery or mailing.

(9) Annual Cumulative Cap. Taxpayer investors may invest up to $125,000 per qualifying business per year with a $250,000 maximum for each qualifying business. The total of all tax credits available to a taxpayer investor pursuant to 830 CMR 62.6.5(9) shall not exceed $50,000 in a single calendar year. Tax credits authorized pursuant to M.G.L c. 62, § 6(t)(1) shall be subject to the annual cumulative cap pursuant to M.G.L. c. 23I, subsection (d).

(10) Process for Claiming the Credit. Before a credit may be claimed the following must occur:

(a) a taxpayer investor and the qualifying business they invested in shall have been approved by the MLSC's Board of Directors;

(b) a taxpayer investor and the qualifying business shall enter into an agreement with the MLSC, in a form and substance acceptable to the MLSC, that establishes the prerequisites to claiming the credit have been met;

(c) if the MLSC elects to award the credit, the contract shall be finalized in a form and substance acceptable to the MLSC; and

(d) MLSC must certify to DOR that the taxpayer investor made a cash contribution to a qualifying investment in a qualifying business during a taxable year. No credit will be allowed in such taxable year for such contribution, unless a copy of the agreement referenced in 830 CMR 62.6.5(10)(b), or such other validation as the Commissioner may require, has been received by the Commissioner, and it has been shown that all prerequisites have been met for the taxable year in which the credit is claimed.

(11) Carry Over of Unused Credit. A taxpayer investor who is entitled to claim a credit under M.G.L. c. 62, § 6(t)(1) for a taxable year may carry over and apply against the taxpayer's tax liability under M.G.L. c. 62 for any one or more of the succeeding three taxable years, the portion, as reduced from year to year, of the credit that exceeds the tax for the taxable year.

(12) Credit is Nonrefundable. The credit is nonrefundable and nontransferable.

(13) Recapture. If a taxpayer investor is allowed a credit for an investment in a qualifying business that ceases to have its principal place of business in the Commonwealth within the three taxable years following the taxable year for which the credit was allowed, the taxpayer investor must repay the total credit amount to the Commonwealth. Where a taxpayer investor in such a business has unused credit that has been carried forward from a prior year, the taxpayer investor shall not claim any further credits and must repay to the Commonwealth the total amount of credits already claimed. A business will be treated as having ceased to have its principal place of business in the Commonwealth if its principal place of business moves out of the Commonwealth, or if it ceases to do business.

62.6.5: continued

(14) Offset Debt Collection. The provisions of M.G.L. chs. 62C and 62D, including without limitation, provisions allowing offsets of refunds for unpaid tax assessments, child support obligations, or other applicable obligations, apply to refunds and credits under 830 CMR 62.6.5.

(15) Special Rules Applicable to Pass-through Entities. In the case of a qualifying investment by a pass-through entity such as a partnership, the credit allowed under M.G.L. c. 62, § 6(t) shall be passed through to the entity's partners or owners *pro rata* or pursuant to an executed agreement among the entity's partners or owners documenting an alternative distribution method without regard to their sharing of other tax or economic attributes of the entity. The total aggregate amount of the credit passed through such entity and claimed by its partners or owners in any taxable year shall not exceed the credit amount allowed by the MLSC, and 830 CMR 62.6.5.

(16) Annual Reporting.

(a) Reporting Required by the Qualifying Business. On an annual basis, the Chief Executive Officer or other authorized representative of every qualifying business that receives cash contributions from taxpayer investors shall maintain records and shall certify on a form required by the MLSC the following information:

1. each investment contribution received by the qualifying business, including the name and address of the taxpayer investor making the contribution, or other claimant, if applicable, if the contribution is made by a pass-through entity, along with the dollar amount of each such contribution, and the date the contribution was made;
2. the location of the principal place of business; and
3. a list of the uses and dollar amounts to which any qualifying investment was applied or, alternatively, an attestation that no portion of any qualifying investment was used to pay dividends, fund or repay shareholders' loans, redeem shares, and/or repay debt or pay wages or other benefits of the taxpayer investor.

(b) Reporting Required by the Taxpayer Investor. On an annual basis, a taxpayer investor that has been awarded a credit for a qualifying investment shall provide any additional information as the MLSC shall require including, but not limited to, the amount of the credit claimed by the taxpayer on its return filed that year.

NON-TEXT PAGE

62.6.5: continued

(17) Examples. The following examples illustrate the provisions of 830 CMR 62.6.5; they are not intended to be exhaustive.

(a) Example 1. Qualifying Investments in Qualifying Businesses Not Located in Gateway Municipality. On June 1, 2020, James, a Massachusetts resident, makes a $100,000 qualifying investment in X Corporation, a qualifying business not located in a Gateway Municipality within Massachusetts. Upon approval by the MLSC's Board of Directors, MLSC certifies to DOR that James and X Corporation entered into an agreement with the MLSC and that James is a taxpayer investor and made a qualifying investment in a qualifying business. The total allowable credit in the agreement is $20,000. As stated in 830 CMR 62.6.5, the credit is equal to 20% of the total qualifying investment made by the taxpayer investor for the taxable year. James may claim the $20,000 credit on his 2020 Massachusetts income tax return.

(b) Example 2. Qualifying Investments in Qualifying Businesses Located in Gateway Municipality. On June 1, 2020, Julia, a Massachusetts resident, makes a $100,000 qualifying investment in X Corporation, a qualifying business located in a Gateway Municipality within Massachusetts. Upon approval by the MLSC's Board of Directors, MLSC certifies to DOR that Julia and X Corporation entered into an agreement with the MLSC and that Julia is a taxpayer investor who made a qualifying investment in a qualifying business. The total allowable credit in the agreement is $30,000. As stated in 830 CMR 62.6.5, the credit is equal to 30% of the total qualifying investment made by the taxpayer investor for the taxable year. Julia may claim the $30,000 credit on her 2020 Massachusetts income tax return.

(c) Example 3. Qualifying Investments by a Nonresident Taxpayer. On June 1, 2020, Jack, a resident of New York, with no Massachusetts source income as defined in M.G.L. c. 62, § 5A, makes a $100,000 qualifying investment in X Corporation, a Massachusetts qualifying business located in a Gateway Municipality within Massachusetts. Upon approval by the MLSC's Board of Directors, MLSC certifies to DOR that Jack and X Corporation entered into an agreement and that Jack is a taxpayer investor who made a qualifying investment in a qualifying business. The total allowable credit in the agreement is $30,000. As a nonresident with no Massachusetts source income, Jack is not able to claim the credit for the 2020 taxable year because he has no Massachusetts source income with which to offset the credit. In the following taxable year, Jack plays the Lottery in Massachusetts and wins. Jack now has Massachusetts source income and is required to file a 2021 Form 1-NR/PY nonresident income tax return in Massachusetts. Jack can carry forward the unused credit from 2020 to offset the amount of tax due for the 2021 taxable year. Any unused credit may be carried forward for up to two additional years and used to offset Massachusetts source income, if any, recognized in those years.

62.6M.1: Community Investment Tax Credit

(1) Statement of Purpose, Outline of Topics, Applicable Tax Years.

(a) Statement of Purpose. 830 CMR 62.6M.1 explains the calculation of the community investment tax credit allowed for qualified investments to a community partner or community partnership fund, established by St. 2012, c. 238, §§ 29, 30, 35, 36, 82, 83, 95, 97, 97A and 98; amended by St. 2013, c. 36, §§ 8 through 15, 58 and 82; St. 2016, c. 219, §§ 78, 79, 92 and 93; and St. 2018, c. 99, §§ 11, 12, 12A, 19, 20 and 21; and codified at M.G.L. c. 62, § 6M and M.G.L. c. 63, § 38EE. Regulations issued by the Department of Housing and Community Development (DHCD) setting forth the process by which community development corporations and community support organizations may apply to be a community partner and receive a community investment tax credit allocation and qualified investments from taxpayers may be found at 760 CMR 68.00: *Community Investment Tax Credit Program*.

(b) Outline of Topics. 830 CMR 62.6M.1 is organized as follows:

1. Statement of Purpose, Outline of Topics, Applicable Tax Years;
2. Definitions;

62.6.4: continued

Example. Five siblings make a qualified donation of certified land. The fair market value of the land donated is $1,000,000. Each sibling has a $^1/_5$ interest in the land. The total aggregate amount of the credit claimed by all of the siblings shall not exceed $50,000. The maximum amount of credit each sibling can claim is $10,000.

(6) Credit is Refundable. The credit is refundable, but not transferable. The Commissioner will apply the credit against the Taxpayer's liability as reported on the Taxpayer's tax return, as first reduced by any other available credits, and then refund the balance of the credit to the Taxpayer. The provisions of M.G.L. chs. 62C and 62D including, without limitation, provisions allowing offsets of refunds for unpaid tax assessments, child support obligations, or other applicable obligations also apply to refunds under 830 CMR 62.6.4(6).

(7) Cumulative Annual Cap. The total cumulative value of all the credits authorized pursuant to M.G.L. c. 62, § 6(p) and M.G.L. c. 63, § 38AA shall not exceed $2,000,000 annually.

(8) No Double Benefit. A Taxpayer claiming a credit under M.G.L. c. 62, § 6(p) or M.G.L. c. 63, § 38AA may not claim any other credit or deduction otherwise allowable under M.G.L. c. 62 or M.G.L. c. 63 during any one tax year with respect to the same interest in certified land.

(9) Special Rules Applicable to Pass-through Entities.

(a) Pass-through Entities Not Taxed at Entity Level. In the case of a qualified donation of certified land by a pass-through entity that is not taxable at the entity level, such as a partnership, the credit allowed under M.G.L. c. 62, § 6(p) or M.G.L. c. 63, § 38AA, as applicable, shall be passed through to the entity's partners or owners in proportion to the partners' or owners' interests in such entity. The total aggregate amount of the credit passed through by such entity and claimed by its partners or owners for each qualified donation shall not exceed $50,000.

(b) Pass-through Entities Taxed at Entity Level. A trust or subchapter S corporation subject to tax at the entity level in any year may claim the credit allowed under M.G.L. c. 62, § 6(p) or M.G.L. c. 63, § 38AA, as applicable, for the taxable year. Alternatively, the credit from the taxable year may be passed through to beneficiaries or to shareholders in proportion to their interests in the entity. These alternatives are mutually exclusive. The total aggregate amount of the credit passed through by such entities and claimed by their beneficiaries or shareholders for each qualified donation shall not exceed $50,000.

(10) Qualified Donations by Married Couples. Married couples who make a qualified donation of certified land may claim the credit allowed under M.G.L. c. 62, § 6(p) as follows. If both spouses are required to file Massachusetts income tax returns, the credit allowed under M.G.L. c. 62, § 6(p) may be claimed only if the spouses file a joint return. If only one spouse is required to file a Massachusetts income tax return, that spouse may claim the credit on a separate return.

62.6M.1: Community Investment Tax Credit

(1) Statement of Purpose, Outline of Topics, Applicable Tax Years.

(a) Statement of Purpose. 830 CMR 62.6M.1 explains the calculation of the community investment tax credit allowed for qualified investments to a community partner or community partnership fund, established by St. 2012, c. 238, §§ 29, 30, 35, 36, 82, 83, 95, 97, 97A and 98; amended by St. 2013, c. 36, §§ 8 through 15, 58 and 82; St. 2016, c. 219, §§ 78, 79, 92 and 93; and St. 2018, c. 99, §§ 11, 12, 12A, 19, 20 and 21; and codified at M.G.L. c. 62, § 6M and M.G.L. c. 63, § 38EE. Regulations issued by the Department of Housing and Community Development (DHCD) setting forth the process by which community development corporations and community support organizations may apply to be a community partner and receive a community investment tax credit allocation and qualified investments from taxpayers may be found at 760 CMR 68.00: *Community Investment Tax Credit Program*.

(b) Outline of Topics. 830 CMR 62.6M.1 is organized as follows:

1. Statement of Purpose, Outline of Topics, Applicable Tax Years;
2. Definitions;

62.6M.1: continued

3. Prerequisites to Claiming the Credit;
4. Amount of Credit;
5. When a Qualified Investment is Made;
6. Cumulative Cap;
7. Credit is Refundable;
8. Carry Over of Unused Credit;
9. Offset Debt Collection;
10. Special Rules Applicable to Pass-through Entities;
11. Qualified Investments by Married Couples;
12. Qualified Investments by Corporations That File a Combined Report;
13. General Rules - Taxpayers That Have No Tax Liability or Filing Requirements;
14. Organizations Exempt From Taxation under Code § 501;
15. Cash Contributions Where Credit May Be Disallowed;
16. Massachusetts Gross Income;
17. Recordkeeping; and
18. Examples.

(c) Applicable Tax Years. The community investment tax credit available under M.G.L. c. 62, § 6M and M.G.L. c. 63, § 38EE is applicable to tax years beginning, and for qualified investments made, on or after January 1, 2014 through December 31, 2025, or to such time as the Legislature may extend the expiration date of the credit.

(2) Definitions. For purposes of 830 CMR 62.6M.1, the following terms have the following meanings, unless the context requires otherwise:

Code, with respect to personal income taxation under M.G.L. c. 62, the federal Internal Revenue Code, as modified in M.G.L. c. 62, § 1(c); and with respect to corporate level taxation under M.G.L. c. 63, the federal Internal Revenue Code, as amended and in effect for the taxable year, as more fully defined in M.G.L. c. 63.

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

Community Development Corporation, a corporation as defined in M.G.L. c. 40H, § 2 and certified as a community development corporation by DHCD.

Community Investment Tax Credit Allocation, an award provided by DHCD through a competitive process that enables the recipient of the allocation to solicit and receive qualified investments from taxpayers and to provide those taxpayers with a community investment tax credit.

Community Partner, a community development corporation or a community support organization selected by DHCD through a competitive process to receive a community investment tax credit allocation.

Community Partnership Fund, a fund administered by a nonprofit organization selected by DHCD to receive qualified investments from taxpayers for the purpose of allocating such investments to community partners.

Community Support Organization, any nonprofit organization that is neither a community development corporation nor a nonprofit organization selected to administer a community partnership fund that has a record of providing capacity building services to community development corporations.

DHCD, the Department of Housing and Community Development.

Qualified Investment, a cash contribution made to a specific community partner to support the implementation of its community investment plan as defined in M.G.L. c. 62, § 6M(b) and M.G.L. c. 63, § 38EE(b) or to a community partnership fund.

Taxpayer, any individual or entity that makes a qualified investment and is entitled to claim a credit under M.G.L. c. 62, § 6M or M.G.L. c. 63, § 38EE, as applicable.

62.6M.1: continued

(3) Prerequisites to Claiming the Credit. Before a credit may be claimed, DHCD must certify that the taxpayer made a cash contribution to a community partner or to a community partnership fund and issue an interim certificate to the taxpayer that establishes that the prerequisites to claiming the credit in 830 CMR 62.6M.1 have been met. Upon receipt of the interim certificate, the taxpayer must complete the taxpayer portion of the form and forward it to the Commissioner, who shall then issue a final certificate to the taxpayer. No credit will be allowed unless the certificate number from the final certificate is included in the space provided on the return filed by the taxpayer with the Commissioner for the taxable year in which the credit is claimed or such other validation as the Commissioner may require is provided.

(4) Amount of Credit. In general, the credit shall be equal to 50% of the total qualified investment made by the taxpayer for the taxable year. No credit shall be allowed to a taxpayer that makes a qualified investment of less than $1,000.

(5) When a Qualified Investment is Made. The credit shall be allowed for the taxable year in which the qualified investment is made by a taxpayer. A qualified investment is made at the time delivery of the qualified investment by a taxpayer to a community partner or community partnership fund is "effected", as that term is used in Treasury Regulation § 1.170A-1(b). Accordingly, for example, the unconditional delivery of a cash contribution or mailing of a check by a taxpayer, which subsequently clears in due course, to a community partner or a community partnership fund shall constitute an effective qualified investment by the taxpayer on the date of delivery or mailing.

(6) Cumulative Cap. The total cumulative value of all the credits authorized pursuant to M.G.L. c. 62, § 6M and M.G.L. c. 63, § 38EE shall not exceed:

(a) $3,000,000 in taxable year 2014;
(b) $6,000,000 in each of taxable years 2015 through 2018;
(c) $8,000,000 in each of taxable years 2019 and 2020;
(d) $10,000,000 in each of taxable years 2021 and 2022; and
(e) $12,000,000 in each of taxable years 2023 through 2025.

(7) Credit is Refundable. The credit is refundable but not transferable. The Commissioner shall apply the credit against the taxpayer's liability as reported on the taxpayer's tax return, as first reduced by any other available credits, and then refund the balance of the credit to the taxpayer without interest.

(8) Carry Over of Unused Credit. Alternatively, at the option of the taxpayer, a taxpayer entitled to claim a credit under M.G.L. c. 62, § 6M or M.G.L. c. 63, § 38EE for a taxable year may carry over and apply against the taxpayer's tax liability for any one or more of the succeeding five taxable years, the portion, as reduced from year to year, of the credit which exceeds the tax for the taxable year. If the taxpayer elects to carry over a credit balance, then the credit refund provisions allowed by 830 CMR 62.6M.1(7) shall not apply.

(9) Offset Debt Collection. The provisions of M.G.L. chs. 62C and 62D including, without limitation, provisions allowing offsets of refunds for unpaid tax assessments, child support obligations, or other applicable obligations, apply to refunds and credits under 830 CMR 62.6M.1(7) and (8).

(10) Special Rules Applicable to Pass-through Entities.

(a) Pass-through Entities Not Taxed at Entity Level. In the case of a qualified investment by a pass-through entity that is not taxable at the entity level, such as a partnership, the credit allowed under M.G.L. c. 62, § 6M or M.G.L. c. 63, § 38EE, as applicable, shall be passed through to the entity's partners or owners *pro rata* or pursuant to an executed agreement among the entity's partners or owners documenting an alternative distribution method without regard to their sharing of other tax or economic attributes of the entity. The total aggregate amount of the credit passed through by such entity and claimed by its partners or owners in any taxable year shall not exceed the credit amount allowed by 830 CMR 62.6M.1(4).

62.6M.1: continued

(b) Pass-through Entities Taxed at Entity Level. A trust or subchapter S corporation subject to tax at the entity level in any year may claim the credit allowed under M.G.L. c. 62, § 6M or M.G.L. c. 63, § 38EE, as applicable, for the taxable year in which the qualified investment is made. Alternatively, the credit may be passed through to the entity's beneficiaries or shareholders *pro rata* or pursuant to an executed agreement among the entity's beneficiaries or shareholders documenting an alternative distribution method without regard to their sharing of other tax or economic attributes of the entity. These alternatives are mutually exclusive; an entity may not claim part of the credit against its own excise and pass the rest through to its beneficiaries or shareholders. Either: (i) the entity or (ii) the beneficiaries or shareholders may claim the credit, but not both. If credits are passed through to beneficiaries or shareholders, any credits that cannot be applied in the taxable year for which a carryover is elected may be carried over and applied against the beneficiary's or shareholder's tax liability in succeeding taxable years. Carryovers may not be claimed at the entity level in such cases. The total aggregate amount of the credit passed through by such entity and claimed by its beneficiaries or shareholders in any taxable year shall not exceed the credit amount allowed by 830 CMR 62.6M.1(4).

(11) Qualified Investments by Married Couples. In any one taxable year, the total amount of the credit that may be claimed under M.G.L. c. 62, § 6M by a married couple who makes qualified investments shall not exceed the credit amount allowed by 830 CMR 62.6M.1(4) and may be claimed only if the spouses file a joint return, if both spouses are required to file Massachusetts income tax returns. If only one spouse is required to file a Massachusetts income tax return, that spouse may claim the credit on a separate return.

(12) Qualified Investments by Corporations That File a Combined Report. In any one taxable year, the total aggregate amount of the credit that may be claimed under M.G.L. c. 63, § 38EE by corporations that make qualified investments and are members of a combined group required to file a combined report under M.G.L. c. 63, § 32B shall not exceed the credit amount allowed by 830 CMR 62.6M.1(4).

(13) Taxpayers Who Have No Tax Liability or Filing Requirements. Taxpayers who have no Massachusetts corporate excise or income tax liability or are not otherwise required to file a return in Massachusetts that make a qualified investment are nonetheless eligible to claim a refund of the credit by filing a Massachusetts corporate excise or income tax return, as applicable, for the taxable year in which the qualified investment is made.

(14) Organizations Exempt from Taxation under Code § 501. An organization exempt from taxation under Code § 501 that makes a qualified investment is eligible to claim a refund of the credit. The Commissioner shall apply the credit first against the organization's liability arising from its unrelated business taxable income, as defined in § 512 of the Code, if any, as reported on the organization's income tax return, whether or not the credit results from the unrelated business activity of the organization that gave rise to such liability, and then refund the balance of the credit to the organization.

(15) Cash Contributions Where Credit May Be Disallowed.

(a) Contributions by Community Partners and Their Employees. A community partner that makes a cash contribution to another community partner is ineligible to claim the credit otherwise allowed under M.G.L. c. 62, § 6M or M.G.L. c. 63, § 38EE with respect to the contribution. Similarly, an employee of a community partner is ineligible to claim the credit otherwise allowed under M.G.L. c. 62, § 6M or M.G.L. c. 63, § 38EE with respect to cash contributions made by such employee to such community partner.

62.6M.1: continued

(b) Contributions Where Business Relationship Exists between Community Partner and Taxpayer. A cash contribution by a taxpayer to a community partner that purchases goods or services from the taxpayer may qualify for the credit under M.G.L. c. 62, § 6M or M.G.L. c. 63, § 38EE only if the cash contribution is not in any way an element of or contingent upon such contractual relationship between the parties or upon its continuation. In the case of any taxpayer who receives or expects to receive payment of more than $1000 from a community partner in the year that the taxpayer makes a cash contribution to such community partner or in the immediately preceding year, the taxpayer must disclose its contractual relationship with the community partner as part of its application for credit and must certify as part of the application that the cash contribution is entirely independent of such contractual relationship. The Commissioner may disallow a credit or recapture a refund in the event that the Commissioner determines, pursuant to audit or otherwise, that any such required disclosure was incomplete or inaccurate.

(16) Inclusion of Credit in Massachusetts Gross Income. A refund of the credit is includable in Massachusetts gross income to the extent it is includable in federal gross income. Generally a refund of a state credit is includable in federal gross income if it is received by the taxpayer as an actual or constructive payment from the state, after reduction for such portion of the credit, if any, that is used to reduce the taxpayer's current tax liability. The amount of refunded credit that is includable in income would include any offset of the otherwise available credit that is made to cover other applicable obligations owed by the taxpayer under 830 CMR 62.6M.1(9). That portion of a refundable state credit, if any, that is applied to reduce the taxpayer's current state tax liability, in contrast, is generally treated for federal tax purposes as a reduction in tax and is not included in the taxpayer's federal gross income, or otherwise treated as a payment from the state.

(17) Recordkeeping. Every community partner or community partnership fund that receives cash contributions from taxpayers shall maintain records regarding each contribution received of $1000 or more, and shall provide a copy of these records to DHCD. Each record shall include the name and address of the taxpayer making the contribution, or other claimant, if applicable, if the contribution is made by a pass-through entity, along with the dollar amount of each such contribution, and the date the contribution was made.

(18) Examples. The following examples illustrate the provisions of 830 CMR 62.6M.1; they are not intended to be exhaustive.

(a) Example 1. Qualified Investments Directly to Community Partners. On June 1, 2014, John Flyn, a Massachusetts resident, makes a $20,000 qualified investment to JY Corporation, a community development corporation dedicated to community development initiatives within Massachusetts and selected by DHCD to be a community partner. DHCD certifies that John made a qualified investment and issues him an interim certificate on July 3, 2014. The total credit certified on the certificate is $10,000, as stated in 830 CMR 62.6M.1(4), the credit is equal to 50% of the total qualified investment made by the taxpayer for the taxable year. John may claim the $10,000 credit on his 2014 Massachusetts income tax return.

(b) Example 2. Qualified Investments to a Community Partnership Fund. On December 30, 2014, Mary Smith, a Massachusetts resident, makes a qualified investment to a community partnership fund by mailing to the fund a check for $18,000. The fund distributes Mary's $18,000 to a community partner dedicated to undertaking development projects in the city in which Mary lives on February 5, 2015. DHCD certifies that Mary made a qualified investment (*i.e.*, the $18,000 she gave to the community partnership fund) and issues her an interim certificate on February 20, 2015. The total credit certified on the certificate is $9,000. Pursuant to 830 CMR 62.6M.1(5), Mary may claim the $9,000 credit on her 2014 Massachusetts income tax return, as 2014 is the taxable year in which Mary makes a qualified investment. The fact that the community partnership fund to which Mary made her qualified investment subsequently distributes the $18,000 to a community partner in 2015 or the fact that DHCD issues Mary a certificate in 2015 are not determinative of the taxable year in which the credit shall be claimed under 830 CMR 62.6M.1(5).

62.6M.1: continued

(c) Example 3. Qualified Investments by Organizations Exempt From Tax Under Code § 501. On May 12, 2015, Nonprofit Unincorporated Association ("NUA") makes a $25,000 qualified investment to a community partnership fund that, in turn, on July 21, 2015, distributes the money equally ($12,500 each) to two community partners. DHCD certifies that NUA made a qualified investment of $25,000 and issues NUA an interim certificate on August 3, 2015. The total credit certified on the certificate is $12,500. In 2015, NUA has unrelated business taxable income that results in a tax liability before credits of $1,000. The qualified investment NUA made to the community partnership fund is unrelated to the business activity that gave rise to NUA's taxable income. Nevertheless, in determining NUA's refund amount, the Commissioner will first apply NUA's $12,500 credit against NUA's $1,000 tax liability and refund the remaining $11,500 to NUA, pursuant to 830 CMR 62.6M.1(14).

(d) Example 4. Donor Advised Funds. On May 10, 2014, Fred Jones, a Massachusetts resident, makes an irrevocable contribution of $100,000 to the donor advised fund ("DAF") he established through XYZ organization ("XYZ"), a public charity exempt from taxation under Code § 501. Fred advises XYZ on how to invest the assets in the DAF so that they may grow prior to being granted and recommends, among other grants, periodic grants of varying amounts from the DAF to community partners located in the city in Massachusetts in which he resides. The final decision as to the distribution of the $100,000 rests with XYZ, however; no distribution from the DAF is made unless XYZ agrees to or approves of it. On October 3, 2014, XYZ makes three $5,000 grants from the DAF established by Fred. Two of those grants qualify as qualified investments as they are made to two separate community partners located in Fred's city. DHCD certifies that XYZ made two qualified investments and issues XYZ two interim certificates on October 25, 2014. The total credit certified on each certificate is $2,500, for a total allowable credit for 2014 of $5,000. Pursuant to 830 CMR 62.6M.1(13), XYZ files a Massachusetts income tax return for 2014 and claims a $ 5,000 refund, as XYZ has no unrelated business taxable income for tax year 2014. Fred, on the other hand, is entitled to claim no credit or refund on his 2014 Massachusetts income tax return for the $100,000 contribution he made to his DAF, as a DAF is not a community partner or a community partnership fund and, thus, contributions to a DAF are not "qualified investments."

(e) Example 5. Qualified Investments by a Nonresident Taxpayer. Jack Cline, a resident of New York with no Massachusetts source income, as defined in M.G.L. c. 62, § 5A, whose only ties to Massachusetts are that he has a daughter and grandchildren living in Massachusetts, makes a $30,000 qualified investment in 2016 directly to a Massachusetts community development corporation dedicated to improving the community his daughter and grandchildren live in and selected by DHCD to be a community partner. DHCD certifies that Jack made a qualified investment and issues him an interim certificate on June 20, 2016. The total credit certified on the certificate is $15,000. Although not otherwise required to file a 2016 nonresident income tax return in Massachusetts, Jack must file a Massachusetts nonresident return in order to receive a payment of the $15,000 refund, as stated in 830 CMR 62.6M.1(13).

62.6W.1: Cranberry Bog Renovation Credit

(1) Statement of Purpose, Outline of Topics.

(a) Statement of Purpose. 830 CMR 62.6W.1 explains the calculation of the tax credit allowed for qualified renovation expenditures incurred in connection with the qualified renovation of a cranberry bog. Regulations issued by the Executive Office of Energy and Environmental Affairs setting forth criteria for authorizing and certifying the credit may be found at 301 CMR 16.00: *Cranberry Bog Renovation Tax Credit*.

(b) Outline of Topics. 830 CMR 62.6W.1 is organized as follows:

1. Statement of Purpose, Outline of Topics
2. Definitions
3. General Rule
4. Claiming the Credit
5. Amount of Credit
6. Credit in Excess of Liability
7. Cumulative Annual Cap

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8. Ordering
9. Special Rules Application to Pass-through Entities
10. Interactions with the Investment Tax Credit
11. Qualified Projects by Corporations that File a Combined Report
12. Annual Reporting Requirements

830 CMR 62.6W.1 applies to qualified renovation expenditures made on or after January 1, 2020.

(2) Definitions. For purposes of 830 CMR 62.6W.1, the following terms have the following meanings, unless the context requires otherwise:

Code. The Internal Revenue Code of the United States, as in effect for the applicable year.

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

Credit. The Cranberry Bog Renovation Credit authorized pursuant to M.G.L. c. 62 § 6(w) and M.G.L. c. 63, § 38II.

Cranberry Bog. An area actively cultivated for the harvesting or production of cranberries.

Qualified Renovation. The renovation, repair, replacement, regrading or restoration of a cranberry bog for the cultivation, harvesting or production of cranberries or any other activity or action associated with the renovation of an abandoned cranberry bog for purposes of restoring cranberry production; provided, however, that Qualified Renovation shall not include the construction of facilities or structures for the processing of cranberries.

Qualified Renovation Expenditure. For the purposes of the administration of the Credit, the term Qualified Renovation Expenditure shall have the same meaning as that given to it in 301 CMR 16.02: *Definitions*.

Secretary. The Secretary of Energy and Environmental Affairs.

Taxpayer. Any individual or entity subject to taxation under M.G.L. c. 62 or M.G.L. c. 63, § 39 and entitled to take a credit under M.G.L. c. 62, § 6(w) or M.G.L. c. 63, § 38II, as applicable.

Taxpayer Primarily Engaged in Cranberry Production. A Taxpayer engaged in agriculture, as defined by M.G.L. c. 128, § 1A, that generates sales from cranberry production equal to 50% or more of its total revenue.

(3) General Rule. The Secretary may award a credit against the excise imposed pursuant to M.G.L. c. 63 and the tax imposed pursuant to M.G.L. c. 62 to taxpayers primarily engaged in cranberry production. To be considered for an award, a taxpayer must engage in the qualified renovation of a cranberry bog, as that term is defined in 301 CMR 16.02: *Definitions*. The credit is generally equal to 25% of the total qualified renovation expenses incurred during the taxpayer's taxable year, as further described in 830 CMR 62.6W.1(4). The credit is refundable, but it is not transferable. The Secretary shall notify the Commissioner of the amount of credit awarded to each taxpayer.

(4) Claiming the Credit.

(a) To claim the credit a taxpayer must apply to the Secretary and complete the process described in 301 CMR 16.05: *Authorization Process for Calendar Tax Credit Years 2023 and Later* and 301 CMR 16.06: *Authorization Process for Calendar Tax Credit Years 2020 to 2022*. The Secretary will provide notice to the Commissioner of the amount of expenditures and the amount of credit which a taxpayer is authorized to claim, and of the taxable year for which the taxpayer may claim it.

(b) The Taxpayer must claim the credit on its annual return filed with the Commissioner. The credit shall be allowed for the taxable year for which the Secretary notifies the Commissioner of its certification of the taxpayer's expenditures and the amount of the credit, irrespective of the date on which notice was provided to the Commissioner.

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(5) Amount of Credit. The amount of the credit is determined by the Secretary. The credit is generally equal to 25% of the total qualified renovation expenses incurred in connection with the qualified renovation of a cranberry bog during the taxpayer's taxable year. The Secretary will not approve a credit in excess of $100,000 for any taxpayer for any taxable year.

(6) Credit in Excess of Tax Liability.

(a) Credit is Refundable. The Commissioner will apply the credit against the taxpayer's liability as reported on the taxpayer's tax return, as first reduced by any other available credits, and then refund the balance of the credit to the taxpayer. The provisions of M.G.L. c. 62C and M.G.L. c. 62D including, without limitation, provisions allowing offsets of refunds for unpaid tax assessments, child support obligations, or other applicable obligations also apply to refunds under 830 CMR 62.6W.1(6). The credit is not transferable.

(b) Carry Over of Unused Credit. Alternatively, at the option of the taxpayer, a taxpayer entitled to claim a credit under M.G.L. c. 62, § 6(w) or M.G.L. c. 63, § 38II for a taxable year may carry over unused credits and apply such credits against the tax imposed under M.G.L. c. 62 or the excise imposed under M.G.L. c. 63 for any of the succeeding five taxable years.

(7) Cumulative Annual Cap. The total cumulative value of all the credits authorized pursuant to M.G.L. c. 62, § 6(w) and M.G.L. c. 63, § 38II shall not exceed $ 2,000,000 annually.

(8) Ordering. The credit may be applied in combination with other credits allowed under M.G.L. c. 62 in any order. Similarly, the credit may be applied in combination with other credits allowed under M.G.L. c. 63 in any order.

(9) Special Rules Applicable to Pass-through Entities.

(a) Pass-through Entities Not Taxed at Entity Level. A credit granted to a partnership, a limited liability company, or other unincorporated business entity taxed as a partnership shall be attributed to the partners, members or owners, on a *pro rata* basis or pursuant to an alternative method agreed upon by the members, provided that the method would be a permissible method to allocate federal items under Code Section 704. The total aggregate amount of the credit passed through by such entity and claimed by its partners or owners shall not exceed $ 100,000 for any taxable year.

(b) Pass-through Entities Taxed at Entity Level. Any subchapter S corporation or unincorporated business entity subject to the excise imposed pursuant to M.G.L. c. 63 or the tax imposed pursuant to M.G.L. 62 at the entity level in any year may claim the credit allowed under M.G.L. c. 62, § 6(w) or M.G.L. c. 63, § 38II against its entity-level tax. Alternatively, the credit may be passed through to beneficiaries or to shareholders in proportion to their interests in the entity, and shall be taken into account in determining the credit for the taxable year during which the taxable year of the unincorporated business entity ends. These alternatives are mutually exclusive. The total aggregate amount of the credit claimed by the entity or passed through to beneficiaries or shareholders for each qualified renovation expenditure shall not exceed $100,000 for any taxable year.

(10) Interaction with the Investment Tax Credit. The credit may not be claimed for any property if the investment tax credit made available under M.G.L. c. 63 § 31A has been claimed with respect to the same property.

(11) Qualified Projects by Corporations That File a Combined Report. A taxpayer that participates in the filing of a Massachusetts combined report under M.G.L. c. 63, § 32B may apply the credit against its liability as determined through such filing, and the taxpayer may share the credit with the other taxable members of the combined group in accordance with the provisions of 830 CMR 63.32B.2(9).

(12) Annual Reporting Requirements. Annually:

(a) the Secretary shall provide any documentation that the Commissioner may deem necessary to confirm compliance with the cumulative annual cap in 830 CMR 62.6W.1(7); and

(b) the Commissioner shall provide a report confirming compliance with the cap to the Secretary of Administration and Finance.

62.10.1: Income Tax on Trusts and Estates

(1) Jurisdiction over Trusts for Taxation.

(a) Testamentary Trusts. Trusts created under the will of a person who died a resident of Massachusetts are subject to the taxing jurisdiction of Massachusetts with respect to all of their taxable income from whatever source derived. Trusts created under the will of a person who died a resident of any other state or foreign country are subject to the taxing jurisdiction of Massachusetts only to the extent of income derived by the trustee (regardless of his residence) from the carrying on of a profession, trade or business within Massachusetts.

(b) Trusts *Inter Vivos*. Inter vivos or "living trusts" which are created by a grantor during his lifetime are classified in 830 CMR 62.8.1 as either "Resident *Inter Vivos* Trusts" or "Non-Resident *Inter Vivos* Trusts". The description of these categories and the conditions under which each category is subject to the taxing jurisdiction of Massachusetts are set out in 830 CMR 62.10.1(1)(b)1.

1. Resident *Inter Vivos* Trusts. To be subject to the taxing jurisdiction of Massachusetts as a "Resident Inter Vivos Trust" at least one trustee must be a resident of Massachusetts and in addition at least one of the following conditions must exist:

a. At the time of the creation of the trust the grantor (or any one of several grantors) was a resident of Massachusetts. The "time of the creation of the trust" will ordinarily be the time when a declaration of trust has been made and property delivered by the grantor to the trustee.

b. During any part of the year for which income is computed the grantor (or any one of several grantors) resided in Massachusetts.

c. The grantor (or any one of several grantors) died a resident of Massachusetts.

62.8.1: continued

(3) Interpretation of 830 CMR 62.8.1.

(a) In interpreting 830 CMR 62.8.1, the Department of Revenue will follow federal regulations, and revenue rulings published in the Internal Revenue Bulletin, that clarify the circumstances under which a trust is an "investment" trust within the meaning of 26 C.F.R. § 301-7701-4(c), which is classified as a trust for federal income tax purposes under that regulation. In addition, in determining whether a trust is an "investment" trust within the meaning of 26 C.F.R. § 301-7701-4(c), which is classified as a trust for federal income tax purposes under that regulation, the Department will rely on a federal private letter ruling which is binding on the Internal Revenue Service with respect to that trust. Because applicable federal authorities provide adequate guidance to taxpayers, the Department will not rule whether a trust is an "investment" trust within the meaning of 26 C.F.R. § 301-7701-4(c), which is classified as a trust for federal income tax purposes under that regulations.

(b) 830 CMR 62.8.1, concerns only those entities qualifying as fixed investment trusts under 830 CMR 62.8.1(2). 830 CMR 62.8.1 is intended to create no implications concerning the tax treatment of any other entities.

(4) Persons Performing Services in Connection With Fixed Investment Trusts. Individuals, corporations, partnerships, trusts, and other entities performing services in connection with fixed investment trusts, including but not limited to trustees, paying and collection agents, investment advisors, and brokers, are considered to be earning income from their activities in their own capacities. Income earned by an individual, corporation, partnership, trust, or other entity in connection with a fixed investment trust shall be subject to Massachusetts taxation or shall be apportioned to Massachusetts for purposes of taxation, according to the rules of taxation and apportionment ordinarily applicable to the entity under the Massachusetts General Laws and applicable regulations.

62.10.1: Income Tax on Trusts and Estates

(1) Jurisdiction over Trusts for Taxation.

(a) Testamentary Trusts. Trusts created under the will of a person who died a resident of Massachusetts are subject to the taxing jurisdiction of Massachusetts with respect to all of their taxable income from whatever source derived. Trusts created under the will of a person who died a resident of any other state or foreign country are subject to the taxing jurisdiction of Massachusetts only to the extent of income derived by the trustee (regardless of his residence) from the carrying on of a profession, trade or business within Massachusetts.

(b) Trusts Inter Vivos. Inter vivos or "living trusts" which are created by a grantor during his lifetime are classified in 830 CMR 62.8.1 as either "Resident Inter Vivos Trusts" or "Non-Resident Inter Vivos Trusts". The description of these categories and the conditions under which each category is subject to the taxing jurisdiction of Massachusetts are set out in 830 CMR 62.10.1(1)(b)1.

1. Resident Inter Vivos Trusts. To be subject to the taxing jurisdiction of Massachusetts as a "Resident Inter Vivos Trust" at least one trustee must be a resident of Massachusetts and in addition at least one of the following conditions must exist:

a. At the time of the creation of the trust the grantor (or any one of several grantors) was a resident of Massachusetts. The "time of the creation of the trust" will ordinarily be the time when a declaration of trust has been made and property delivered by the grantor to the trustee.

b. During any part of the year for which income is computed the grantor (or any one of several grantors) resided in Massachusetts.

c. The grantor (or any one of several grantors) died a resident of Massachusetts.

62.10.1: continued

2. Non-Resident Trusts. A "Non-Resident Inter Vivos Trust" is any inter vivos trust which is not a "Resident Inter Vivos Trust". Such a trust is subject to the taxing jurisdiction of Massachusetts only to the extent of income derived by the Trustee from the carrying on of a profession, trade or business within Massachusetts. The residence outside of Massachusetts of the grantor, any trustee or any beneficiary, or any or all of such persons, will not remove such a trust from the taxing jurisdiction of Massachusetts.

(2) Method of Taxation of Trusts.

(a) General. Although in Massachusetts the trust and not the beneficiary is the taxpayer, actual tax liability is controlled by the status of the beneficiary. In general, income received by trustees of trusts subject to the taxing jurisdiction of Massachusetts is subject to similar exemptions, deductions and credits, and the same rates of taxation as though received by an individual subject to taxation in Massachusetts. For application of these exemptions, deductions and credits together with special deductions applicable to fiduciaries, see 830 62.10.1(3). Items received by a trustee which would be either exempt in the hands of an individual or would not constitute income to an individual are not taxable to the trust.

Example: A trust subject to the taxing jurisdiction of Massachusetts receives $1,000 in interest from United States Treasury bonds. Since the interest on United States obligations is specifically exempt from taxation by the Massachusetts personal income tax law, the receipt of such interest by the trust does not enter into the trust's computation of taxable income save in the cases of a claim for the interest deduction allowable under M.G.L. c. 62, § 2 or for the purpose of a beneficiary's claim for the exemptions provided in M.G.L. c. 62, §§ 1(h), 5(f), and 8(a) pursuant to M.G.L. c. 62, §§ 12 and 12A or for the special deductions available to fiduciaries. See 830 CMR 62.10.1(3) and 62.10.1(4).

(b) Character of Beneficiaries.

1. Resident Beneficiaries. To the extent that trust income is payable to, or accumulated for the benefit of resident beneficiaries, all of such income is taxable to the trust at the rate applicable to the particular class of income.

2. Non-Resident Beneficiaries. Where trust income is payable to, or accumulated for the benefit of, non-resident beneficiaries, only the net income derived from professions, trade or business carried on within Massachusetts is taxable to the trust.

3. Unborn Persons. Where income of a trust subject to the taxing jurisdiction of Massachusetts is being accumulated for persons unborn, such income is taxable to the trust.

Example: By the terms of a trust subject to the taxing jurisdiction of Massachusetts income is payable to X, a resident of New Hampshire for life, with remainder to X's children. During a year in which X has no children the trust realizes gains on the sale of securities. Such gains are taxable to the trust in their entirety.

4. Unascertained Persons. Where income of a trust subject to the taxing jurisdiction of Massachusetts is being accumulated for unascertained persons, such income is taxable to the trust. The term "unascertained persons" refers to a class of persons who cannot be identified with certainty until the happening of a specified event. The term also applies to those of a class who fulfill some special qualification.

Example: By the terms of a trust subject to the taxing jurisdiction of Massachusetts income is payable to A, B and C, in equal shares, with remainder in equal shares to each as he attains the age of 30. The share of any who die under age 30 is to be added to those of the survivors. Here it cannot be ascertained who will take the remainder until all of A, B and C have either attained 30 or died before attaining that age. Accordingly, gains realized by the trust will be deemed to be income accumulated for the benefit of unascertained persons and taxable in full to the trust.

62.10.1: continued

5. Persons with Uncertain Interests. A remainder interest in a trust which is vested and not subject to being divested by the happening of any contingency expressly mentioned in the trust instrument is not classified as an uncertain interest. Any other type of future interest such as a contingent remainder or a vested remainder subject to being cut off upon the happening of a contingency is an uncertain interest. Where income of a trust subject to the taxing jurisdiction of Massachusetts is being accumulated for a person or persons with uncertain interests, such income is taxable to the trust.

Example: By the terms of a trust subject to the taxing jurisdiction of Massachusetts income is payable to X, a resident of New Hampshire, and on X's death the property is to be distributed to those persons who prove to be heirs of X, but if Y (resident of Vermont) shall have children born during the lifetime of X, then upon X's death the property is to be distributed to Y or, if he does not survive X, to Y's estate. Gains realized by the trust during X's lifetime (Y not having had children) are taxed to the trust as income accumulated for unascertained persons with uncertain interest. If, however, Y has children, gains realized thereafter are not income accumulated for persons with uncertain interests.

6. Rules Applicable to Taxable Years Commencing Prior to January 1, 1957. Where during the taxable year which commences before January 1, 1957 income is being accumulated by an inter vivos trust subject to the taxing jurisdiction of Massachusetts for any class of beneficiary covered by 830 CMR 62.10.1(2)(b)3., the amount of such income taxable to the trust is the proportion of such income represented by the ratio of all trustees resident in Massachusetts to total trustees. For taxable years which begin after December 31, 1956, the rule stated in 830 CMR 62.10.1(2)(b)3. will govern.

7. Revocable Trusts. Where income is being accumulated by a trust subject to the taxing jurisdiction of Massachusetts and such trust is revocable by the grantor alone or by the grantor and any person not having a substantial adverse interest in such trust, such income shall, to the extent received while the grantor was a resident of Massachusetts, be deemed to be income accumulated for a Massachusetts resident and, therefore, is fully taxable to the trust. Income of such a trust which is actually paid to a public charity is not deemed to be exempt.

8. Trusts with Reserved Powers. Where income is being accumulated by a trust subject to the taxing jurisdiction of Massachusetts and where the grantor has reserved the right to alter, amend or terminate the trust in any way except for his own benefit, such income shall, to the extent received by the trust while the grantor was a resident of Massachusetts, be deemed to be income accumulated for a Massachusetts resident and, therefore, is fully taxable to the trust. Income of such a trust which is actually paid to a public charity is not deemed to be exempt.

9. Trust as Where a trust subject to the taxing jurisdiction of Massachusetts has income payable to, or to be accumulated for another trust, the incidence of taxation is to be determined by the character of the beneficiaries of the latter trust.

(3) Deductions and Exemptions.

(a) Business Income Exemption and Family Deductions. A testamentary trust subject to taxation or a "resident inter vivos trust" is not entitled to take the $2,000 exemption against business income except where all of its income is being accumulated for unborn or unascertained persons or persons with uncertain interests. However, a beneficiary of such a trust who is unqualifiedly entitled to business income of the trust may require the trustee to claim his $2,000 exemption and family deductions to the extent that he is entitled to receive such income from the trust and to the extent that such exemption and deductions are not claimed on his individual return, or on the return of any other trust, or of any partnership.

62.10.1: continued

Example: A "resident inter Vivos Trust" has taxable interest and dividends amounting to $10,000, $5,000 of exempt interest and $5,000 in gains from the sale of intangibles. The income of the trust is payable in equal shares to A, a resident of Massachusetts, and B, a resident of Maine. Provided the compensation is actually paid in the year for which the income is computed, the deduction will be 6% of $5,000 or $300. For taxable years beginning after December 31, 1956, the rate of compensation for deduction purposes will be 7% or $350 on the foregoing example.

(4) Estates.

(a) General. The treatment of estates for Massachusetts income tax purposes is substantially the same as that of trusts set forth in 830 CMR 62.10.1(1). Estates subject to the taxing jurisdiction of Massachusetts and those where the decedent died resident in Massachusetts and those where he or she died a non-resident but his or her estate engages in a profession, trade or business within Massachusetts.

(b) Deductions. Executors and administrators are entitled to take for taxable years beginning after December 31, 1956, the same deductions permitted trustees in 830 CMR 62.10.1(3). For other taxable years executors and administrators may not take the deductions for bond premium amortization, surety bond premiums, and safe deposit box rental.

(c) Exemptions. The $2,000 exemption from business income is available only to the executor or administrator of a non-resident estate conducting a profession, trade or business within Massachusetts.

For taxable years beginning after December 31, 1956 beneficiaries of estates may claim on the estate return the same exemption available to beneficiaries of trusts as discussed in 830 CMR 62.10.1(3).

(d) Income of Decedents. Income received by a decedent during his or her lifetime shall be reported by his or her executor, administrator or person in charge of his or her property on Form 1. Income received thereafter shall be reported by his or her estate.

62.17A.2: Restatement of Massachusetts Taxation of S Corporations and Their Shareholders

(1) (a) Purpose of Regulation. 830 CMR 62.17A.2, sets forth the rules that apply to S corporations under the personal income tax provisions of M.G.L. c. 62, and those that apply under the corporate excise provisions of M.G.L. c. 63. It includes Massachusetts law based upon statutory changes and changes in other legal authority since the effective date of the predecessor regulation, 830 CMR 62.17A.1, which was promulgated July 6, 1990.

For federal income tax purposes, a corporation may elect S corporation status if it meets certain requirements under Internal Revenue Code §§ 1361 through 1363, including that the shareholders must consent to the election. Massachusetts recognizes federal S corporation status for purposes of M.G.L. c. 62 and M.G.L. c. 63, and has no separate S corporation election process. Among other things, 830 CMR 62.17A.2 explains the interaction between Federal and Massachusetts S corporation law.

(b) Outline. 830 CMR 62.17A.2 is organized as follows:

1. Purpose of Regulation; Outline; Application of Regulation to Particular Tax Periods;
2. Definitions;
3. General Rules;
4. Taxation of S Corporation Income to Individual Shareholders under M.G.L. c. 62; Distributive Share Income;
5. Shareholder Basis in S Corporation Stock or Indebtedness;
6. Distributions from an S Corporation to its Shareholders;
7. Post-termination Transition Issues Applicable to S Corporation Shareholders;
8. S corporation Entity-level Taxation in Massachusetts;
9. S corporations that are Subject to Combined Reporting.

62.17A.2: continued

(c) Application of Regulation to Particular Tax Periods. 830 CMR 62.17A.2, is generally a restatement of Massachusetts law based upon statutory changes and changes in other legal authority since the effective date of the predecessor regulation, 830 CMR 62.17A.1, which was promulgated July 6, 1990. As such, to the extent that the individual provisions of 830 CMR 62.17A.2 reflect statutory changes occurring since the effective date of 830 CMR 62.17A.1, 830 CMR 62.17A.2 applies to all periods relating back to the effective date of such statutory change. In certain cases, 830 CMR 62.17A.2 relates back to an earlier public written statement issued by the Department of Revenue, and in such cases the rules apply as directed in the earlier statement. Rules relating to the taxation of S corporations that were formerly taxed as corporate trusts, or subject to a separate-entity tax as QSubs, or to S corporations that are financial institutions, apply as of the effective date of St. 2008, c. 173, which is generally applicable to tax years beginning on or after January 1, 2009. *See* St. 2008, c. 173, § 101. For related provisions and effective dates, *see* 830 CMR 63.30.3: *Entity Classification* under St. 2008, c. 173.

The predecessor regulation, 830 CMR 62.17A.1: *Massachusetts Taxation of S Corporations and Their Shareholders*, is hereby superseded. Rules stated in 830 CMR 62.17A.1, such as transitional rules that relate back to the original recognition of S corporations in Massachusetts in 1986, remain applicable to the extent they do not conflict with provisions of 830 CMR 62.17A.2, and to the extent they do not conflict with statutory amendments enacted or Department of Revenue rules announced after the promulgation date of 830 CMR 62.17A.1, namely July 6, 1990.

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62.17A.2: continued

(2) Definitions.

Accumulated Adjustments Account, or AAA, an account similar to that described in Code § 1368(e), but as calculated under Massachusetts law. In general, the AAA is a tracking mechanism for an S corporation's accumulated, undistributed taxable income determined under M.G.L. c. 62. The AAA generally is increased by the income that the S corporation reports to its shareholders as distributive share income, and is decreased by the amount of distributions the S corporation makes to its shareholders. The AAA is an account of the S corporation at the entity level, and is not apportioned among the shareholders. With respect to an entity that for any period was an S corporation for federal purposes, but was not an S corporation for Massachusetts purposes, for example, a corporate trust taxable under the now-repealed M.G.L. c. 62, § 8, the following rules apply: the AAA for such entities generally includes the total amount of the entity's undistributed income that was reported to shareholders federally as distributive share income under 830 CMR 63.39.1, as may be adjusted based on federal/state differences in calculating income, but was not taxable as distributive share income to shareholders in Massachusetts, and instead was actually taxed at the entity level. Income of such an entity that was not taxed at the entity-level is not added to the AAA, but depending on the circumstances, may be subject to inclusion in the Massachusetts Earning and Profits account, as defined in 830 CMR 62.17A.2.

Business Corporation, any corporation, or any other entity as defined in M.G.L. c. 156D, § 1.40, including an S corporation, whether the corporation or other entity may be formed, organized, or operated in or under the laws of the Commonwealth or any other jurisdiction, and whether organized for business or for non-profit purposes, that is classified for the taxable year as a corporation for federal income tax purposes.

Code, with respect to personal income taxation under M.G.L. c. 62, the federal Internal Revenue Code, as modified in M.G.L. c. 62, and particularly in M.G.L. c. 62, § 1(c); and with respect to corporate level taxation under M.G.L. c. 63, the federal Internal Revenue Code, in effect for the taxable year, as more fully defined in M.G.L. c. 63.

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

Common Ownership, for purposes of the income measure of the corporate excise as determined under M.G.L. c. 63, §§ 2B or 32D, when one or more S corporation shareholders own, in the aggregate, directly or indirectly, more than 50% of the total combined voting control or more than 50% of the total value of shares of two or more corporations. Stock is owned by a person under Common Ownership if the person owns the stock directly or if ownership may be attributed to the person under the constructive ownership rules of Code § 318. Note: Common Ownership differs in certain respects from the definition of the term Common Ownership applied for purposes of combined reporting under M.G.L. c. 63, § 32B. *See* 830 CMR 63.32B.2(2): *Definitions*: Common Ownership. One significant difference between the two definitions is that for purposes of combined reporting a single shareholder must either directly or indirectly own 50% or more of two or more corporations for there to be common ownership. *See* 830 CMR 63.32B.2(2): *Definitions*: Commonly Owned or Common Ownership. This requirement applicable to combined reporting does not apply to 830 CMR 62.17A.2(2): Common Ownership. In addition, for purposes of 830 CMR 62.17A.2 both an owner's voting rights in stock owned and the value of stock owned are relevant to the determination of voting control, whereas in the context of combined reporting only voting rights are considered. *See* 830 CMR 63.32B.2(2): *Definitions*: Common Ownership.

Example (2.1). S Corporation X and S corporation Y are owned by A, B, and C, with each owner having a ⅓ interest. S Corporation X and S corporation Y exhibit common ownership within the meaning of 830 CMR 62.17A.2. However, S corporation X and S corporation Y do not meet the definition of 830 CMR 63.32B.2(2): *Definitions*: Common Ownership, because no single shareholder owns or is considered to own 50% or more of each S corporation.

62.17A.2: continued

Example (2.2). Individual A owns 40% of the stock of S corporation X, 30% of the stock of S corporation Y, and 40% of the stock of S corporation Z. Individual B owns 20% of the stock of X, 40% of the stock of Y, and no stock in Z. No other stockholder owns more than 5% of the stock of each S corporation, X, Y, and Z. There is no other common stockholder among X, Y, and Z, and there is no other constructive ownership of the stock under Code § 318. X and Y exhibit common ownership because together Individual A and Individual B own more than 50% of each of them. Z does not share common ownership with X and Y because there is no combination of owners that hold more than 50% of the stock of Z. While X and Y have common ownership for purposes of 830 CMR 62.17A.2, there is no common ownership under 830 CMR 62.32B(2): *Combined Reporting*, since no single common owner of X and Y directly or indirectly owns stock representing more than 50% of the voting control of each corporation. *See* 830 CMR 63.32B.2(2): Common Ownership.

Example (2.3). Husband owns 30% of the stock of S corporation Y and 0% of the stock of S corporation Z. Wife owns 0% of the stock of Y and 10% of the stock of Z. Unrelated Investor owns 30% of the stock of Y and 41% of the stock of Z. No other stockholder owns more than 5% of the stock of each S corporation Y and Z, with the result that there is no other common owner between Y and Z. Y and Z are under common ownership under this definition because of the application of the constructive ownership rules of Code § 318. The stock holdings of Husband and Wife, although under separate legal ownership, are considered as being owned by both spouses under Code § 318. When combined, the voting power of Husband, Wife, and Unrelated Investor is greater than 50% for both Y and Z. Y and Z are not under common ownership for purposes of 830 CMR 63.32B.2: *Combined Reporting*, because no single common owner of Y and Z owns stock representing more than 50% of the voting control of each corporation.

Example (2.4). Shareholder A owns 60% of the value of shares in S corporation X, but only holds 40% of the voting control in X. Shareholder A owns 55% of the value of shares of S corporation Y, but holds only 30% of the voting control of the corporation. X and Y meet the requirement of common ownership under 830 CMR 62.17A.2, because greater than 50% of the value of shares is owned by the same owner or owners. However, X and Y are not under common ownership through A's ownership interest in the context of 830 CMR 63.32B.2 *Combined Reporting*, because Shareholder A does not own more than 50% of the voting control in X or Y.

Distributive Share, the shareholder's aggregate daily portion of each item of income, loss, deduction, or credit determined by the shareholder's daily percentage of ownership of shares of stock in an S corporation.

DOR, the Massachusetts Department of Revenue.

Financial Institution, an entity that is a financial institution within the meaning of M.G.L. c. 63, § 1.

Gross Income, with respect to taxes imposed under M.G.L. c. 63, gross income as defined in M.G.L. c. 63, §§ 1 and 30.3; and with respect to taxes imposed under M.G.L. c. 62, Massachusetts gross income as defined in M.G.L. c. 62, § 2.

Massachusetts Earnings and Profits, an account that is increased and decreased based on the current and accumulated earnings and profits of an S corporation, without regard to apportionment, for any taxable year. As a general principle, the Massachusetts Earnings and Profits account includes:

(a) corporate earnings for any period where the S corporation was a C corporation for federal and/or Massachusetts purposes;

(b) in the case where an S corporation has acquired or merged with a C corporation with the S corporation as the surviving entity, those corporate earnings attributable to the former C corporation; and

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(c) any other earnings and profits of any S corporation for any taxable year, including, with respect to an entity that for any period was an S corporation for federal purposes, but was not an S corporation for Massachusetts purposes, for example, a corporate trust taxable under the now-repealed M.G.L. c. 62, § 8, the entity's undistributed pre-apportioned income that was not taxed in Massachusetts, including such amounts that accrued under the circumstances described in 830 CMR 62.8.2(4)(b).

For transition rules applicable to S corporations after the enactment of St. 1986, c. 488, § 39, *see* 830 CMR 62.17A.1(10)(c). The Massachusetts Earnings and Profits account does not include distributive share income for any period the entity was treated as an S corporation for Massachusetts purposes under M.G.L. c. 62, § 17A. Massachusetts earnings and profits include items that are required to be taken into account by the S corporation, or that are otherwise attributed to the S corporation, under the applicable Code sections, such as in a corporate acquisition under Code § 381, to the extent consonant with Massachusetts law.

Net Operating Loss (NOL), the amount by which the deductions allowed to an S corporation under M.G.L. c. 63, § 30.4, including the dividends-received deduction allowed under M.G.L. c. 63, § 38(a)(1), and excluding any deductions for net operating loss, exceed gross income for the taxable year under M.G.L. c. 63. A net operating loss does not include a capital loss.

Pass-through Entity, an entity whose income, loss, deductions and credits flow through to its members for Massachusetts tax purposes, including:

(a) a general partnership;
(b) limited partnership;
(c) limited liability partnership;
(d) limited liability company that is treated as a partnership for Massachusetts tax purposes;
(e) an S corporation;
(f) an estate not taxed at the entity level; and
(g) a trust not taxed at the entity level, including a grantor-type trust.

QSub, a federal qualified subchapter S subsidiary, as defined in the Code, in effect for the taxable year.

S Corporation, an entity described at Code § 1361 and in effect for the taxable year.

Tiered Structure, a pass-through entity that has a pass-through entity as a member.

Total Receipts, gross receipts or sales (including income) realized in a taxable year less returns and allowances, including service charges, carrying charges, and any other charges included in sales prices. Total receipts include sales taxes or other excises where the sales tax or excise is imposed directly on the taxpayer, but not where such taxes or excises are simply collected by the S corporation and remitted to the taxing authority. Total receipts include dividends, interest, all tax-exempt income, royalties, capital gain net income, gross rents, deemed receipts, recognized built-in gain, other passive income, reimbursed costs, the income includable in the taxable year that is attributable to an installment transaction as defined in M.G.L. c. 62, § 63, the S corporation's *pro rata* share of the total receipts of any pass-through entity in which the S corporation holds an interest, and all other income. Consistent with the above, total receipts include Category one income, which generally refers to income to the S corporation that is taxed at the entity level for federal income tax purposes, as defined in 830 CMR 62.17A.2(8)(b)1., as well as Category two income, as defined in 830 CMR 62.17A.2(8)(b)1. Similarly, total receipts include both Massachusetts source income and non-Massachusetts source income. The cost of goods sold or the cost of operations shall not be deductible in determining total receipts. Total receipts include any deemed income that is attributed under the Code to an S corporation that takes part in an election under Code § 338(h)(10).

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Unitary Business, a group of two or more corporations related through common ownership, as defined in 830 CMR 62.17A.2, that are sufficiently interdependent, integrated or interrelated through their activities so as to provide mutual benefit and produce a significant sharing or exchange of value among them or a significant flow of value between the separate parts. The term unitary business shall be construed to the broadest extent permitted under the Constitution of the United States. Unitary Business generally corresponds to the definition of a unitary business as applied for purposes of combined reporting under M.G.L. c. 63, §32B. *See* 830 CMR 63.32B.2(2): *Definitions*: Unitary Business. Also, this definition is further explained at 830 CMR 63.32B.2(3): *Unitary Presumptions and Inferences*, except to the extent that the term Common Ownership in 830 CMR 62.17A.2, differs from 830 CMR 63.32B.2(2): *Definitions*: Common Ownership.

Example (2.5). A group of three shareholders owns six S corporations, (S1 - S6), and as to each of the six corporations this ownership meets the definition of common ownership. Each S corporation operates as a separate franchise of a single restaurant chain. Each of the restaurants maintains its own set of books and has a separate on-site manager. The six corporations are presumed to be engaged in a unitary business, because business activities conducted by corporations under common ownership that are in the same general line of business will generally constitute a unitary business. *See* 830 CMR 63.32B.2(3)(b): *Likely Unitary Situations*.

(3) General Rules.

(a) Relationship Between Federal S Corporation Provisions and Massachusetts Law. While Massachusetts taxation of S corporations and their shareholders has many parallels to the federal rules that apply income tax to S corporations and their shareholders, Massachusetts has distinct rules that apply to shareholders under the personal income tax provisions of M.G.L. c. 62, and that apply to the corporate entity under the corporate excise provisions of M.G.L. c. 63. Under Massachusetts law, S corporation shareholders pay an income tax determined by the income of the S corporation, and in many cases the S corporation itself is subject to a separate tax at the entity level. These two taxes are separate and distinct obligations, and payment of one is not a substitute for payment of the other.

(b) S Corporation Shareholder-level Taxation. The taxation of S corporation shareholders for Massachusetts personal income tax purposes under M.G.L. c. 62 is generally modeled on the federal rules that apply to S corporations under the Code. S corporation income, losses, deductions, and allowable credits are calculated by the entity using rules set forth under M.G.L. c. 62, but then these items are passed through to shareholders as their distributive share. The obligation to pay tax on a shareholder's distributive share exists whether or not the entity actually makes a distribution of the income to its shareholders. Non-resident shareholders of S corporations that are doing business in Massachusetts are also obligated to pay an income tax on their distributive share, as determined under 830 CMR 62.5A.1: *Non-resident Income Tax*. Shareholders are subject to tax on their distributive share income irrespective of whether the S corporation is subject to an entity-level tax under M.G.L. c. 63.

(c) S Corporation Entity-level Taxation. The application of the entity-level taxation provisions of M.G.L. c. 63 varies depending on the entity type. S corporations are most commonly taxable under M.G.L. c. 63, §§ 39 and 32D. An S corporation that is a financial institution is subject to the separate tax provisions under M.G.L. c. 63, §§ 2, 2A, and 2B. An S corporation that is a security corporation is subject to the entity-level excise under M.G.L. c. 63, § 38B. For general exclusions from taxation under M.G.L. c. 63, §§ 39 and 32D, *see* M.G.L. c. 63, § 68C. In every case, the S corporation's entity-level taxation under M.G.L. c. 63 is separate from the S corporation's shareholder-level taxation under 830 CMR 62.17A.2(3)(b).

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(d) Issues that Affect an S Corporation that is Subject to Taxation on Its Income at Both the Shareholder and the Entity Level. The taxation of S corporation income under the personal income tax provisions of M.G.L. c. 62 and the entity-level provisions of M.G.L. c. 63 is similar in that both statutes derive their definition of gross income from the Code. Also, certain rules that apply to determine income may be applicable both for purposes of shareholder taxation and for purposes of entity-level taxation. Due to statutory differences between M.G.L. c. 62 and M.G.L. c. 63, however, gross income determined under M.G.L. c. 62 may differ from gross income determined under M.G.L. c. 63. 830 CMR 62.17A.2 generally evaluates rules for shareholder taxation under M.G.L. c. 62 in separate sections from rules that apply to an S corporation's entity-level taxation under M.G.L. c. 63. Where practical or necessary, a rule may be stated twice, under the shareholder-level taxation rules, and again under the entity-level taxation rules. A statement or example identifying a rule in one part of 830 CMR 62.17A.2, for example under the M.G.L. c. 62 provisions, but not repeated in another part, for example, the M.G.L. c. 63 provisions, should not be read to imply that the rule is not applicable in both places.

(e) Tax Credits that are Available under Both M.G.L. c. 62 and M.G.L. c. 63. There are certain tax credits that are available both to M.G.L. c. 62 and to M.G.L. c. 63 taxpayers. No credit may be applied against both the entity-level and the shareholder-level tax. An available credit amount may not be divided, with part being used at the corporate level and another part being passed through to shareholders. An S corporation that is eligible for such credits must choose in each taxable year that it generates a credit whether the credit is to be passed through to its shareholders under the provisions of M.G.L. c. 62, or instead to be applied against the S corporation's corporate excise under M.G.L. c. 63. Once an S corporation has made this choice for a given taxable year through its filings and reporting to shareholders, that choice is binding with respect to the credit amount attributable to that taxable year. Any unused credit amount from that year must carry forward to the extent allowable with regard to the statutory credit at issue, and be taken in future taxable years either by the shareholders or by the entity according to the original filings and reporting of the taxable year in which the credit was generated.

Example (3)(e). An S corporation (S) has a project that qualifies for the Economic Development Incentive Program (EDIP) credit, which is available for five years. In year one S places $100,000 of qualifying assets in service and generates $5,000 EDIP. S claims $3,000 of the EDIP in year one and has a carryover to year two of $2,000. Because S claimed the credit, none of the $2,000 can be claimed by the shareholders in any taxable year. In year two, S places $120,000 of qualifying assets in service and generates a credit of $6,000. The corporation chooses to pass through to its shareholders this $6,000 credit, to be applied against their individual income tax obligations under M.G.L. c. 62. S is eligible to use the $2,000 of carryover from year one in year two against its corporate excise obligations under M.G.L. c. 63, but it cannot use any of the $6,000 credit generated in year two against its corporate excise. The shareholders may use the $6,000 of EDIP in year two and in later years to the extent allowed under general EDIP rules.

(f) Taxable Year.

1. S Corporation's Taxable Year for Entity-level Taxation. Massachusetts generally follows the relevant federal income tax rules for purposes of the determination of an S corporation's taxable year for purposes of the S corporation's entity-level taxation under M.G.L. c. 63. An S corporation that adopts or elects a taxable year under the provisions of the Code is deemed to have adopted or elected the same taxable year for Massachusetts purposes.

2. S Corporation Shareholder's Taxable year. An S corporation shareholder's taxable year is defined in M.G.L. c. 62, §§ one and 62. A shareholder of an S corporation shall take into account the shareholder's distributive share of items of income, loss, deduction, or credit for the shareholder's taxable year in which the taxable year of the S corporation ends.

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Example (3)(f). Shareholder A disposes of her interest in an S corporation in the middle of a taxable year. All affected shareholders, within the meaning of Code § 1377(a)(2)(B), generally Shareholder A and those who acquire his or her shares, consent under the method described in Code § 1377(a)(2)(A). The entity continues in existence as an S corporation. As under federal law the S corporation's taxable year for purposes of M.G.L. c. 62 is treated as two taxable years, the first of which ends on the date of termination. In such a case, each affected shareholder's distributive share is calculated as provided under the Code for each short year, as such distributive share may be modified under M.G.L. c. 62. *See* Code § 1377(a). In contrast, note that for purposes of the entity-level excise applicable to the S corporation under M.G.L. c. 63, there is only one taxable year on the facts in this example.

3. Taxable Year Accounting in the Case of a Decedent Shareholder. In filing a return on behalf of a shareholder of an S corporation who dies before the end of the S corporation's taxable year, the filer shall take into account the shareholder's distributive share of the S corporation's items of income, loss, or deduction by multiplying those items by a ratio of the number of days to the date of death to the number of days in the year. Upon the death of an S corporation shareholder, the estate may be treated as a successor shareholder under the provisions of Code § 1361(b)(1)(B). An estate shareholder in an S corporation shall account for its distributive share of income, loss, or deduction of the S corporation from the date of death.

(g) Accounting Method. The accounting method applicable to S corporations with respect to calculating tax liability under M.G.L. c. 62, including the distributive share of income of its shareholders, is the method detailed in M.G.L. c. 62, § 62. The accounting method applicable to S corporations with respect to calculating tax liability under M.G.L. c. 63, is the method of accounting that the S corporation has adopted or elected under the provisions of the Code.

(h) Relation to Former Corporate Trusts That are Now S Corporations. Prior to tax years beginning on or after January 1, 2009, Massachusetts applied special rules for the taxation of certain S corporations that were treated in Massachusetts as corporate trusts, under the now-repealed M.G.L. c. 62, § 8. In particular, the corporate trust's income generally was taxed at the entity level and not passed through as taxable income to the shareholders. The separate taxation rules for corporate trusts were repealed in Massachusetts with the passage of St. 2008, c. 173, § 19, generally effective for taxable years beginning on or after January 1, 2009. St. 2008, c. 173, § 101. As a result, distributive share income of S corporations that were formerly taxed under M.G.L. c. 62, § 8 is subject to shareholder-level tax in Massachusetts notwithstanding the legal form of the entity's organization.

(4) Taxation of S Corporation Income to Individual Shareholders under M.G.L. c. 62; Distributive Share Income.

(a) In General. The Massachusetts rules that attribute S corporation income to shareholders, particularly under M.G.L. c. 62, § 17A, are similar to the federal rules that require an S corporation to calculate income or loss, using the corporation's items of income, loss and deduction, and then attribute that income or loss to its shareholders. Shareholders pay the personal income tax under M.G.L. c. 62 based on the amount of taxable income that is earned by the S corporation, attributed to the shareholder as distributive share income. The S corporation shareholder is taxed on this income whether or not any amount is actually distributed to the shareholder.

Shareholders are allowed to claim certain tax credits against their personal income tax liabilities. *See* 830 CMR 62.17A.2(4)(g). Such allowable credits are calculated by the S corporation at the entity level, and are reported to shareholders to be used in determining the shareholders' personal income tax liabilities. *See* 830 CMR 62.17A.2(3)(e)(credits may be taken at the individual shareholder level, or the S corporation entity level, but not at both levels).

The taxation of an S corporation shareholder under M.G.L. c. 62 is separate and distinct from the taxation of an S corporation at the entity level under M.G.L. c. 63. An S corporation shareholder is taxable on its distributive share regardless of any S corporation entity-level tax obligation in Massachusetts.

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(b) Determining a Shareholder's Distributive Share of Income. An S corporation shareholder's distributive share of income is calculated under the general rules that apply to the taxation of income under M.G.L. c. 62. The starting point for determining distributive share income is the S corporation's federal items of ordinary income (or loss), capital gains, and other income. Massachusetts then requires state-specific adjustments as described in 830 CMR 62.17A.2(4). The shareholder's distributive share of the S corporation's items of income, loss, or deduction is passed through to the shareholder as if such items were realized directly by the shareholder.

(c) Character of Pass-through Items. The character of any item of income, loss, deduction, or credit of an S corporation included in a shareholder's distributive share is determined under the provisions of M.G.L. c. 62 as if realized or incurred directly by the shareholder.

With respect to a non-resident S corporation shareholder, the character of an item does not determine the source of the income for purposes of determining whether the item is subject to Massachusetts tax. For the sourcing rules that apply to non-resident shareholders, *see* 830 CMR 62.17A.2(4)(i).

Example (4)(c). S corporation X provides professional services, does business only in Massachusetts, and has a taxable year that is a calendar year. During its taxable year X earns $10 million from the provision of professional services; buys a capital asset on January 30th that it sells it at a profit on November 1st; and, sells a second capital asset that it has held for more than one year. Under the provisions of M.G.L. c. 62, § 2, the earnings from X's provision of its professional services are Part B income (*see* M.G.L. c. 62, § 2(b)(2)), and are reported and taxable to X's shareholders as Part B income. The gain from the sale of the capital asset that X purchased on January 30th and sold on November 1st is Part A income (*see* M.G.L. c. 62, § 2(b)(1)), and is reported to and taxable to X's shareholders as Part A income. The gain from the sale of the capital asset held for more than one year is Part C income (*see* M.G.L. c. 62, § 2(b)(3)), and is reported to and taxable to X's shareholders as Part C income.

(d) Treatment of Capital Gains. Capital gains and losses that flow through to the shareholders of an S corporation and are taxable under M.G.L. c. 62 shall be taken into account by the shareholders in proportion to each shareholder's ownership share in the S corporation. The member's ownership share is determined under the Code.

(e) Deductions Taken in Determining a Shareholder's Distributive Share, and Limitations of Losses.

1. General Rule. In calculating a shareholder's distributive share, an S corporation is allowed only those expense deductions that a sole proprietor would be allowed. M.G.L. c. 62, § 2(d)(1). Deductions that are itemized by an individual for federal income tax purposes are not allowed. M.G.L. c. 62 § 2(d). Also, a deduction for a net operating loss carryover is not allowed in calculating a shareholder's distributive share. M.G.L. c. 62, § 2(d)(1)(C).

Example (4)(e)(1). S Corporation A is not engaged in a trade or business, and has an investment interest expense deduction that is allowed for federal tax purposes. The investment interest expense deduction of A as it may be allowed under federal law must be disregarded in computing the Massachusetts tax liability of A's shareholders since investment interest does not qualify as a deductible business expense under M.G.L. c. 62.

2. Passive Investment Income and Built-in Gains. If an S corporation is taxed at the entity level on income under Code §§ 1374 and 1375, such income is also taxed at the entity level under Massachusetts law. *See* 830 CMR 62.17A.2(8)(b)1. (Category one income). When calculating a shareholder's distributive share, such income is reduced by the entity-level tax paid at the federal and state level that is attributable to the shareholder's portion of the income so taxed. This rule is similar to that set forth at Code § 1366(f).

3. Limitation on Losses and Deductions for Shareholder-level Taxation Under M.G.L. c. 62.

a. Net Operating Losses (NOLs). Under the personal income tax provisions of M.G.L. c. 62, a net operating loss carryforward is not allowed, and therefore must be disregarded in computing distributive share income. For treatment of NOLs with respect to the entity-level tax under M.G.L. c. 63, §§ 32D and 39, *see* 830 CMR 62.17A.2(8)(c)3.

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b. Deductions Limited by Shareholder Basis in Stock. The deductions computed under M.G.L. c. 62 that can be taken into account by the shareholder of an S corporation may not exceed the sum of the adjusted Massachusetts basis of the shareholder's stock in the S corporation and the shareholder's adjusted basis in any indebtedness of the S corporation to the shareholder. 830 CMR 62.17A.2(4)(e)3.b. is similar to the rule set forth at Code § 1366(d).

(f) Treatment of Installment Sales.

1. Effect of an Installment Sale by the S Corporation. The determination of whether a sale or a deemed sale by an S corporation is treated as an installment sale is made at the S corporation entity level, and is binding on all shareholders. Once a transaction is determined to be treated as an installment sale, the installment transactions statute, M.G.L. c. 62, § 63 and 830 CMR 62.63.1, govern the responsibilities of the S corporation and its shareholders. In particular, 830 CMR 62.63.1(10) states the installment transaction rules that apply to flow-through entities, including S corporations and their shareholders.

With respect to a non-resident shareholder, two different rules apply depending on the residence of the shareholder at the time of the sale or deemed sale by the S corporation that is treated as an installment sale. If the non-resident shareholder was a Massachusetts resident at the time of the sale or deemed sale, then the shareholder is treated as a resident with respect to income derived from such sale or deemed sale. Pursuant to the authority in M.G.L. c. 62, § 5A(b), such a shareholder is not permitted to apportion the income from the sale or deemed sale, but rather must report the full amount of such income as taxable Massachusetts source income, and is entitled to its proportionate share of the credit for taxes paid to another jurisdiction as it directly relates to such income, and under the terms that apply to credits for taxes paid to another jurisdiction, as set forth in 830 CMR 62.17A.2(4)(g)2.

In the case of a non-resident shareholder who was a non-resident at the time of the sale or deemed sale, where income derived from an installment sale is subject to apportionment, the apportionment percentage that applies to such income in each year that it is taxable, irrespective of the year in which payment is actually received, is the S corporation's apportionment percentage from the year of the sale. The S corporation's apportionment percentage is determined under M.G.L. c. 62, § 17A(b).

Example (4)(f)(1). S corporation S is a calendar-year corporation that does business in multiple taxing jurisdictions and is 100% owned by M, a Massachusetts resident. On December 15, 2010, S sells off the majority of its assets and realizes a gain of $100 million. S elects installment sale treatment. Because S has elected installment sale treatment, $40 million of its realized gain is taken into account in its taxable year ending December 31, 2010. The remaining $60 million in gain is to be taken into account ratably over the next three years. On January 1, 2011, M changes her residency to Florida. Because M was a resident at the time of the sale of S's assets, M is treated as a resident with respect to all income that is derived from the sale. Thus, 100% of the income that is taken into account ratably over the period that M is a Florida resident is taxed in Massachusetts. M is entitled to take her proportionate share of the credit for taxes paid to another jurisdiction that directly relates to the income that derives from the installment sale income for the transaction dated December 15, 2010, under the terms that apply to credits for taxes paid to another jurisdiction, as set forth in 830 CMR 62.17A.2(4)(g)2.

Example (4)(f)(2). Same facts as in Example (4)(f)(1), except that on December 15, 2010, the date of the sale that is subject to installment sale treatment, M is a non-resident residing in Florida. All of M's income that is attributable to the installment sale is subject to the allocation and apportionment rules at 830 CMR 62.17A.2(4)(i). The determination of whether any gain should be reported to Massachusetts by M is based on the facts and circumstances in the year of the sale. If the income was Massachusetts source income in the year of the sale it will remain Massachusetts source income in subsequent years. Allocable items of income are determined based on the allocation rules that apply in the year of the sale and are reportable in their entirety to M as Massachusetts source income. Items subject to apportionment are apportioned to Massachusetts and are taxable to M using S's apportionment percentage for the year of the sale. With respect to both Example (4)(f)(1) and Example (4)(f)(2), because the total receipts derived from the installment sale under these facts exceed the $6 million threshold for income measure taxation at the entity level for each year from 2010 through 2013, S is subject to entity-level taxation on the gain from the installment sale in each of those years, under 830 CMR 62.17A.2(8).

2. Applicability to the Sale of a Shareholder's Stock in an S Corporation. 830 CMR 62.17A.2(4)(f) does not apply to a shareholder's sale of S corporation stock, except where such a sale is treated as a deemed sale of assets by the S corporation, as in a transaction described at Code § 338(h)(10).

(g) Credits Available to S Corporation Shareholders.

1. General Rule. A shareholder of an S corporation may be entitled to a proportionate share of the Massachusetts personal income tax credits under M.G.L. c. 62, § 6 that are calculated by the S corporation. Some Massachusetts tax credits are allowed both to corporate-level taxpayers under M.G.L. c. 63, and to personal income taxpayers under M.G.L. c. 62. However, 830 CMR 62.17A.2(3)(e) applies, namely that a credit may not be applied against both an entity-level and a shareholder-level tax, and a credit may not be divided, part being used at the corporate level, and part being passed through to the S corporation's shareholders to be used at the individual level.

Example (4)(g)(1). S corporation S is eligible for the Economic Development Incentive Program (EDIP) credit for its taxable year. The EDIP credit set forth in M.G.L. c. 62, § 6(g) and M.G.L. c. 63, § 38N, is among those credits that may be taken either by S's shareholders and applied against a shareholder's income tax under M.G.L. c. 62, or by S itself to apply against its entity-level tax. Therefore this credit is subject to the general rule at 830 CMR 62.17A.2(3)(e). If the EDIP credit is taken by individual shareholders, all amounts relevant to the calculation of the credit are attributed to S's shareholders and are taken into account in determining the shareholders' credit for the taxable year during which the taxable year of S ends. If S's shareholders take the credit with respect to property, S must maintain adequate records to specifically identify that property and to distinguish it from property with respect to which S has taken any credit. If S's shareholders take the credit and do not use the full amount of the credit generated in a taxable year, the shareholders may carry over the unused amount of the credit to succeeding taxable years. Amounts carried over by a shareholder may be applied only to offset that shareholder's tax liability. If recapture of the credit is later required, each shareholder that took the credit must recapture. For rules related to the EDIP credit that may be taken against S's corporation's entity-level tax, *see* 830 CMR 62.17A.2(8)(a).

2. Credits for Taxes Paid to Another Jurisdiction.

a. A resident shareholder may claim the credit under M.G.L. c. 62, § 6(a) for taxes paid to another jurisdiction for a taxable year if the S corporation pays a tax during the shareholder's taxable year and if the conditions set forth in 830 CMR 62.17A.2(4)(g)2.a.i. through iv. and 830 CMR 62.17A.2(4)(g)2.b, are met. For the credit to apply:

i. The tax must be imposed by another state, territory, or possession of the United States, or the Dominion of Canada or its provinces;

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ii. The tax must be measured by income earned by the S corporation, the distributive share of which is required to be included in the shareholders' Massachusetts gross income. For the credit to be allowed, the income tax paid by the S corporation must be based on an item of Massachusetts gross income and the tax must be imposed on the apportionable net income of the entity that flows through to the Massachusetts shareholders, subject to all other requirements and limitations described in M.G.L. c. 62, § 6(a) and 830 CMR 62.17A.2(4)(g). Individuals are not allowed a credit for gross receipts-based taxes paid to another jurisdiction either by the S corporation or by the shareholder, because these taxes are not based on net income, as required under M.G.L. c. 62, § 6(a);

Example (4)(g)(2)(a). S corporation M does business in Massachusetts and owns an office building in State A. State A fully allocates the rental income of $100,000 to itself, and M's shareholders pay their proportionate share of the tax attributable to that rental income to State A. The total amount of such tax paid on this rental income to State A is $10,000. Massachusetts residents own 60% of the total value of shares of M. The rental income is included in the Massachusetts income reported to M shareholders as distributive share income. Massachusetts resident M shareholders are allowed to take the credit for taxes paid to the other jurisdiction, each member taking his or her proportionate share of the credit, in accordance with 830 CMR 62.17A.2(4)(g)2.b. The total credit taken by all Massachusetts resident shareholders may not exceed $6,000, that is 60% (representing total share ownership of Massachusetts resident shareholders) multiplied by the total amount of tax paid to State A, namely $10,000. In accordance with 830 CMR 62.17A.2(4)(g)2.d., non-resident M shareholders are not allowed the credit, but rather pay tax as determined after the application of the allocation and apportionment rules set forth at 830 CMR 62.17A.2(4)(i), and in the Non-resident Income Tax regulation, 830 CMR 62.5A.1(6).

iii. The S corporation must not deduct any portion of the tax paid to another jurisdiction in computing distributive share income for Massachusetts purposes;
iv. The S corporation must provide each shareholder with the names of each applicable jurisdiction to which an income tax was paid, the amount income that was subject to an income tax in the other jurisdiction, and the amount of income tax that was paid to that jurisdiction.

b. A resident shareholder seeking to claim the credit under M.G.L. c. 62, § 6(a) must apply the same proportionate share percentage the S corporation uses in calculating that shareholders distributive share of income to the income tax amount that was paid to the foreign jurisdiction. Thus, the total credit amount that can be taken by the resident shareholders is limited to the residents' total proportionate share percentage multiplied by the total tax amount paid to other jurisdictions.

Example (4)(g)(2)(b). S corporation has five resident shareholders and five non-resident shareholders. Each shareholder owns a 10% interest in the S corporation. The S corporation pays taxes measured by its income in several other states, for a total tax paid to other jurisdictions of $10,000. Each resident shareholder is allowed a credit in an amount that represents a 10% share of the total eligible tax paid to the other jurisdictions. Thus each resident shareholder is allowed a credit of $1,000.

c. An eligible resident shareholder must include with the shareholder's return the information from the S corporation listing the amount of the shareholder's distributive share of each tax paid by the S corporation for which a credit for taxes paid to another jurisdiction is allowable under M.G.L. c. 62, § 6(a), as well as the name of the taxing jurisdiction to which each tax was paid.

d. Non-residents are not eligible for the credit for taxes paid to another jurisdiction, but rather are taxed on Massachusetts source income, as more fully set out in 830 CMR 62.17A.2(4)(i) and 830 CMR 62.5A.1.

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(h) State and Federal Differences Relating to an S Corporation Shareholder's Distributive Share Income. The definition of Massachusetts gross income in M.G.L. c. 62, § 2 is based on the definition of gross income in the Code. As a general rule, M.G.L. c. 62, § 1(c) refers to the Code in effect on a specific date, but for certain other purposes, M.G.L. c. 62 refers to the Code as amended and in effect for the current tax year. In addition, Massachusetts has its own items of loss, deduction, and credit, which may not correspond to those of the Code. Thus, distributive share income may be calculated differently for state and federal purposes. The following provisions state Massachusetts rules and also provide illustrations of differences between the state and federal calculation of shareholder distributive share income. It is not a comprehensive statement of state and federal differences.

1. Bonus Depreciation Decoupling. Massachusetts personal income tax provisions are decoupled from the federal bonus depreciation rules at Code § 168(k), and thus the distributive share calculation shall not take into account the federal depreciation allowance under Code § 168(k). *See* M.G.L. c. 62, § 2(d)(1)(N).

2. Interest on Government Bonds. Interest income received by an S corporation from U.S. debt obligations is included in taxable distributive share income to shareholders for federal purposes. This interest income is not taxable in Massachusetts to S corporation shareholders. M.G.L. c. 62, § 2(a)(2)(A). In contrast, non-Massachusetts state and municipal bond interest is *not* taxed to S corporation shareholders by the U.S. government, but is taxable in Massachusetts to S corporation shareholders. M.G.L. c. 62, § 2(a)(1)(A). *See also* Code § 103. An S corporation must adjust its net income figure to be reported to shareholders to reflect these differences.

3. Qualified Production Activities. Under federal law, an S corporation passes through to its shareholders the deduction for qualified production activities under Code § 199. Massachusetts law decouples from the qualified production activities income deduction. Thus, the deduction that is passed through to shareholders for federal purposes is not passed through in computing the distributive share for Massachusetts purposes. M.G.L. c. 62, § 2(d)(1)(O).

(i) Taxation of Non-resident and Part-year Resident Shareholders of Massachusetts S Corporations.

1. General Rule of Non-resident Shareholder Taxation. Except as otherwise provided, a non-resident shareholder of an S corporation is subject to tax under M.G.L. c. 62, § 5A on the shareholder's distributive share of the S corporation's income, loss, deductions, or credits from sources within Massachusetts, including all items allocated to Massachusetts, and all income apportioned to Massachusetts. M.G.L. c. 62, § 17A(b); *see* 830 CMR 62.5A.1. The activities of the S corporation are attributed to all its shareholders, whether or not they are residents. Thus, if a non-resident has an ownership interest in an S corporation that is engaged in the conduct of a trade or business in Massachusetts, or derives income from the ownership of real or tangible personal property in Massachusetts or otherwise receives income taxable to a non-resident under M.G.L. c. 62, § 5A, the non-resident is treated as if conducting those activities in his or her individual capacity. The S corporation must inform each non-resident shareholder at year-end of the shareholder's distributive share of income, losses, deductions, or credits apportioned to and taxable in Massachusetts, as well as each shareholder's proportionate share of allocable income.

2. Allocable Income. Other than with respect to income derived from real or tangible personal property, as stated in 830 CMR 62.17A.2(4)(i)4., where an S corporation recognizes an allocable item of income, as that term is defined in 830 CMR 63.38.1(2), that income is allocated to Massachusetts (*i.e.*, and not apportioned to the state) if the S corporation's commercial domicile is in Massachusetts. *See* 830 CMR 63.38.1(3)(c): *Treatment of an Allocable Item of Income*. If the corporation's commercial domicile is not in Massachusetts, the allocable income is neither allocated nor apportioned to Massachusetts.

3. Apportionment of S Corporation Distributive Share Income of Non-resident S Corporation Shareholders.

a. In General. An S corporation with non-resident shareholders that does business both within and without Massachusetts and that realizes income from sources within Massachusetts that are derived from or effectively connected with a trade or business, must calculate its income to be apportioned according to the applicable statutory formula, such as that under M.G.L. c. 63, §§ 2A, 38, and 42, or other applicable statutory apportionment formula.

62.17A.2: continued

b. No Further Apportionment at the Non-resident Shareholder Level. The allocated or apportioned income, as described in 830 CMR 62.17A.2(4)(i), that is reported to a non-resident S corporation shareholder is the Massachusetts source income amount that must be reported on the return. This amount is not subject to any other apportionment method that might otherwise apply to the non-resident under 830 CMR 62.5A.1.

4. Income Derived From Real or Tangible Personal Property. Income of an S corporation that is derived from the ownership or disposition of an interest in real or tangible personal property located in Massachusetts is taxable in Massachusetts. If the real or tangible personal property is part of the trade or business of the S corporation, it is includible in the S corporation's income that is subject to apportionment, and is passed through to shareholders as distributive share income. If the real or tangible personal property is not part of the trade or business of the S corporation, the income derived from the property is allocated, not apportioned, to Massachusetts, and is reported to the S corporation's shareholders as such. A non-resident shareholder is taxable in Massachusetts on the full amount of such allocated income. *See* 830 CMR 62.5A.1(3)(d).

5. Non-resident Shareholder Sale of S Corporation Shares. A non-resident shareholder who sells shares in an S corporation may be subject to tax in Massachusetts on the income from the sale. *See e.g.*, 830 CMR 62.5A.1(3)(c)3.: *Shares of Stock Issued by a Corporation as Compensation*, and 830 CMR 62.5A.1(3)(c)8.: *Sale of a Business or an Interest in a Business*.

6. Filing Requirements for Part-year Residents that are S Corporation Shareholders. If during the taxable year a shareholder of an S corporation that is subject to taxation in Massachusetts changes status from a non-resident to a resident, or from resident to non-resident, the shareholder is required to account separately for each period.

a. Determination of Income for Portion of the Year that the Shareholder is a Resident. The shareholder's items of income, loss, deduction, or credit for the portion of the taxable year that the shareholder is a resident are calculated on a daily basis. An S corporation may approximate the amount of distributive share income for the part-year period of residency by multiplying the shareholder's distributive share for the full taxable year by a ratio of the number of days of residency to the number of days in the shareholder's taxable year.

b. Determination of Income for Portion of the Year that the Shareholder is a Non-resident. The shareholder's items of income, loss, deduction, or credit for the portion of the taxable year that the shareholder is a non-resident are determined by multiplying the shareholder's distributive share of those items by a ratio of the number of days of non-residency to the number of days in the shareholder's taxable year, and then applying the S corporation's apportionment ratio to the extent such income is subject to apportionment under 830 CMR 62.17A.2(4)(i).

Example (4)(i). S corporation Y has income of $5,000,000 for the taxable year. Y has a Massachusetts apportionment percentage of 60% for the taxable year. Shareholder B has a 20% ownership interest in Y. B resides in Massachusetts from January 1st through March 31st of the taxable year, then moves out of state. B's distributive share income from Y is $1,000,000 for the taxable year. The calculation of B's Massachusetts tax liability for the taxable year is as follows:

For the period of residency, January 1st through March 31st, the income taxable to Massachusetts is based on the formula at 830 CMR 62.17A.2(4)(i)6.a., namely, first determining the portion of the distributive share income that is attributable to the period of residency, in this case 90 days divided by 365 = 24.66%. Then, B's distributive share of $1,000,000 is multiplied by 24.66% to yield $246,600, B's distributive share income that is taxable to Massachusetts for the period of residency.

For the period of non-residency, April 1st through December 31st, the income taxable to Massachusetts is based on the formula at 830 CMR 62.17A.2(4)(i)6.b., namely, first determining the portion of the distributive share income that is attributable to the period of non-residency, in this case 275 days divided by 365 = 75.34%. Then, B's distributive share of $1,000,000 is multiplied by 75.34% to yield $753,400, B's Massachusetts source income for the period of non-residency, which must then be multiplied by Y's apportionment percentage of 60%, to yield $452,040 of Massachusetts source income taxable to B during the period of non-residency.

62.17A.2: continued

(5) Shareholder Basis in S Corporation Stock or Indebtedness.

(a) S Corporation Shareholder Basis in S Corporation Stock, in General. An S corporation shareholder's basis in the S corporation's stock is generally determined by taking into account the provisions of the Code, including, without limitation, §§ 1012, 1014, 1015, and 1367, except as modified by statute or regulation, or other public written statement. As more specifically explained in 830 CMR 62.17A.2(5) and (6) (concerning the effect of S corporation distributive share and distributions on a shareholder's basis in the S corporation's stock), a shareholder's basis is generally increased by the shareholder's distributive share of the S corporation's income and is generally decreased by distributions from the S corporation to the shareholder.

(b) Initial Basis Adjustment in Shares to Account for Periods Before the Enactment of St. 1986, c. 488, § 39. Shareholders of entities that were S corporations for federal purposes before the recognition in Massachusetts of S corporation status in 1986 were required to adjust their stock basis to reflect the difference in basis that resulted from federal S corporation basis adjustments for pre-1986 taxable years, which adjustments would have been inapplicable in Massachusetts during the pre-1986 period. *See* 830 CMR 62.17A.1(8). Entities to whom this adjustment applies must use the rules in St. 1986, c. 488, § 39, as codified at M.G.L. c. 62, § 17A, and in 830 CMR 62.17A.1(8).

(c) Current Basis Adjustments. A shareholder's Massachusetts basis in the stock of an S corporation must be adjusted at least annually to the extent that the S corporation's items of income, loss, or deduction are included in the shareholder's computation of income taxable under M.G.L. c. 62 for the taxable year. Items of income, loss, or deduction are calculated under M.G.L. c. 62, and thus may differ from income, loss or deduction as calculated under the Code for federal purposes. Once items of income, loss, or deduction are determined under Massachusetts law, a shareholder must apply the rules at Code § 1367, which state the mechanics for determining current basis adjustments, to determine Massachusetts basis adjustments on accounts of such items.

1. Effect on Basis of Certain Federal Deductions that are Disallowed in Massachusetts. Certain items are deductible by an S corporation for federal purposes when calculating distributive share income and are not deductible when calculating distributive share income under M.G.L. c. 62. In cases where a federal deduction is not allowed in Massachusetts, the federally-allowed deduction that results in a decrease in basis in a shareholder's stock for federal purposes will also result in a decrease in basis of a shareholder's S corporation stock for Massachusetts purposes.

2. Effect on Basis of Certain Federal Deductions where Massachusetts Permits a Similar Deduction, but on a Different Schedule. Certain items that are deductible by an S corporation for federal purposes when calculating distributive share income represent amounts for which Massachusetts generally allows a deduction, but on a different schedule. In such a case, the federally-allowed deduction that results in a decrease in basis in a shareholder's stock for federal purposes will not result in a decrease in basis of a shareholder's S corporation stock for Massachusetts purposes. To illustrate, as stated in 830 CMR 62.17A.2(4)(h)1., Massachusetts personal income tax provisions are decoupled from the federal bonus depreciation rules at Code § 168(k). The depreciation amount represents an expenditure that is capitalized for both federal and state purposes and recovered over time, but on a different schedule for federal and state tax purposes. The taking of the bonus depreciation deduction at the federal level will not result in a decrease in the Massachusetts basis in shares for an S corporation shareholder. Instead, basis for Massachusetts purposes will be adjusted based on the depreciation timetable permitted under Massachusetts law. *See* M.G.L. c. 62, § 2(d)(1)(N).

(d) Transfers of Stock or Indebtedness. In a transaction in which the basis of the stock or indebtedness to the transferee carries over from the transferor, the adjustments and modifications to Massachusetts basis described in 830 CMR 62.17A.2(5) and (6) as to any part of a shareholder's interest in such stock or indebtedness of the S corporation continue to apply.

(e) Special Rules for Adjustment to Basis in Indebtedness. An S corporation shareholder may have made loans to the S corporation and in such a case will have a basis in his or her interest in the indebtedness to the S corporation. Massachusetts generally follows the federal rules for adjustment to basis in indebtedness under Code § 1367(b)(2). *See also* Treas. Reg. § 1.1367-2. However, to the extent that there are federal and Massachusetts differences in calculating income or loss, *see* 830 CMR 62.17A.2(4)(h), that would have an effect on the basis adjustment, an S corporation shareholder's basis in an S corporation's indebtedness may differ from his or her federal basis.

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(f) Special Rules for Shareholders in S Corporations that were Formerly Taxed as Corporate Trusts under the Repealed M.G.L. c. 62, § 8. Certain S corporations were formerly taxed as corporate trusts under M.G.L. c. 62, § 8, which has been repealed. *See* St. 2008, c. 173, § 19. The relevant tax provisions of M.G.L. c. 62, § 8 last applied to corporate trusts for tax years beginning on or before December 31, 2008. Shareholders of S corporations that were formerly taxed under the repealed provisions of M.G.L. c. 62, § 8 are required to make a basis calculation as to their shares for periods commencing on the first day the entity became subject to taxation under M.G.L. c. 63, following the rules in 830 CMR 63.30.3(3)(d)4.a. (which applies particularly to the treatment of tax-free earnings and profits of the former corporate trust). Shareholders of an entity that formerly was treated as a corporate trust under M.G.L. c. 62, § 8, but that was simultaneously an S corporation for federal income tax purposes will often have a Massachusetts basis in their shares that differs, possibly significantly, from their federal basis. *See* 830 CMR 63.30.3(4)(a)2.

(6) Distributions from an S Corporation to its Shareholders.

(a) General Rule Regarding Distributions From an S Corporation to its Shareholders. Unless otherwise excluded from gross income, actual distributions of cash or property by an S corporation with respect to its stock are included in the income of shareholders in a manner similar to that described in Code § 1368. Income, losses and deductions computed according to M.G.L. c. 62 are used to adjust Massachusetts basis, Massachusetts accumulated adjustments accounts, and Massachusetts Earnings and Profits. A taxable distribution is included in a shareholder's Massachusetts gross income in the taxable year it is received or constructively received.

(b) Massachusetts Accumulated Adjustments Accounts. Every S corporation must maintain a Massachusetts accumulated adjustments account (AAA) as defined in 830 CMR 62.17A.2(2) for purposes of determining the proper tax treatment of distributions, whether or not it is required to do so under Code § 1368. Except as to those S corporations that are subject to the rules otherwise provided in 830 CMR 62.17A.1, on the first day of the first taxable year for which the corporation is an S corporation for Massachusetts purposes, the balance of the AAA is the balance of the AAA for federal purposes.

(c) Massachusetts Earnings and Profits. Every S corporation must maintain a Massachusetts Earnings and Profits account as defined in 830 CMR 62.17A.2(2) for purposes of determining the proper tax treatment of distributions during taxable years that an entity is treated as an S corporation for Massachusetts purposes, and also for taxable years it was not treated as such.

(d) Overview of the Tax Consequences of Distributions and the Application of Distributions Against S Corporation Massachusetts Accounts and Stock Basis. The general effect of a distribution from an S corporation to a shareholder is to require the application of a cascading set of rules that determine whether and how the distribution is taxable to the shareholder, and the effect of the distribution on the shareholder's basis in his or her stock.

As explained in more detail in the specific rules below, an S corporation's distribution to its shareholders is taken first from the S corporation's AAA, which account contains amounts that have been previously reported to the S corporation's shareholders as distributive share income and that has been taxed to such shareholders. Because such amounts have been previously taxed, have not been distributed to the S corporation's shareholders, and have increased such shareholders' basis in the S corporation stock, distributions from the AAA are tax-free to these shareholders, and correspondingly decrease the shareholders' basis in the S corporation stock. Distributions from AAA in excess of basis are generally treated as a taxable gain from the sale or exchange of property.

An S corporation may also have earnings and profits that derive from a period that the S corporation was previously a C corporation or from an acquisition by the S corporation of a C corporation that has earnings and profits. After the AAA is fully depleted, the next distributions from the S corporation to its shareholders are taken from the Massachusetts Earnings and Profits account. These distributions are taxable to the S corporation shareholders as dividends and have no effect on basis. In such cases, once the Massachusetts Earnings and Profits account is fully depleted, the same rules apply to shareholders of S corporations that have no Earnings and Profits account: further distributions from the S corporation to its shareholders are made tax-free to the shareholders to the extent of the shareholders' basis in shares, and the distributions reduce the shareholders' basis in the shares. Once an S corporation shareholder's basis in shares is fully depleted, any further distribution from the S corporation to its shareholders is treated as taxable gain from the sale or exchange of property.

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(e) Specific Rules on the Consequences of Distributions From an S Corporation to its Shareholders. Unless a distribution occurs in a post-termination transition period as defined in 830 CMR 62.17A.2(7) and the post-termination transition rules require otherwise, each distribution of property (including cash) from an S corporation shall be applied to reduce the AAA, the Massachusetts Earnings and Profits account, and Massachusetts adjusted shareholder basis in the S corporation shares according to rules set forth below. For adjustment to basis in a post-termination transition year, *see* 830 CMR 62.17A.2(7). For S corporations that were formerly treated as corporate trusts, *see* 830 CMR 62.17A.2(6)(f).

1. S Corporations with No Massachusetts Earnings and Profits. Each distribution of property (including cash) from an S corporation that has no Massachusetts Earnings and Profits shall have the following tax consequences and shall be applied to reduce the Massachusetts accumulated adjustments account and Massachusetts adjusted shareholder basis in shares, in the following order:

a. The distribution shall not be included in the shareholder's gross income to the extent that it does not exceed the shareholder's Massachusetts adjusted basis in the S corporation stock, as determined under 830 CMR 62.17A.2(5) and (6); the Massachusetts adjusted basis of the stock and the AAA shall be reduced by the amount of the distribution.

b. If the amount of the distribution exceeds the shareholder's Massachusetts adjusted basis in the S corporation stock, such excess is treated as gain from the sale or exchange of property.

2. S Corporations with Massachusetts Earnings and Profits. Each distribution of property (including cash) from an S corporation that has Massachusetts Earnings and Profits shall have the following tax consequences and shall be applied to reduce the AAA, the Massachusetts Earnings and Profits account, and the shareholder's Massachusetts adjusted basis in the S corporation stock, in the following order:

a. The portion of the distribution that does not exceed the Massachusetts accumulated adjustments account shall not be included in gross income to the extent it does not exceed the shareholder's Massachusetts adjusted basis in the S corporation stock. The Massachusetts adjusted basis in the S corporation stock and the Massachusetts accumulated adjustments account shall be reduced by the amount of the distribution;

b. In the event that a distribution exceeds Massachusetts adjusted basis but does not exceed the Massachusetts Accumulated Adjustment Account, the amount of such distribution shall be treated as taxable gain on the sale or exchange of property;

c. To the extent a distribution exceeds the AAA but such excess distribution does not exceed accumulated Massachusetts Earnings and Profits, the amount of such excess distribution shall be taxable as a dividend to the extent of the Massachusetts Earnings and Profits account. The Massachusetts Earnings and Profits account to the extent thereof will be reduced by the amount of the distribution;

d. After applying the rules in 830 CMR 62.17A.2(6)(e)(2)a. through c., where the AAA and the Massachusetts Earnings and Profits account are fully depleted, but the shareholder has an adjusted basis in the S corporation shares that is greater than zero, further amounts distributed are tax-free to the extent of any remaining shareholder's Massachusetts adjusted basis in the S corporation stock; such basis shall be reduced by the amount of the distribution; and

e. After applying the rules in 830 CMR 62.17A.2(6)(e)(2)a. through d., where the AAA and the Massachusetts Earnings and Profits account are fully depleted, and the shareholder has a zero basis in the S corporation shares, all additional amounts distributed shall be treated by the shareholder as gain from the sale or exchange of property.

3. Massachusetts generally follows the federal election to treat certain distributions as dividends, as provided in Code § 1368(e)(3); this election may not be made solely for Massachusetts purposes.

62.17A.2: continued

(f) Rules for S Corporations That Were Formerly Treated as Corporate Trusts. Prior to tax years beginning on or after January 1, 2009, certain entities were subject to taxation as corporate trusts under the now-repealed M.G.L. c. 62, § 8. *See* St. 2008, c. 173. Entities that were formerly taxed as corporate trusts at the entity level are subject to special rules with respect to the taxation of their tax-free earnings and profits. *See* 830 CMR 62.17A.2(3)(h), 830 CMR 63.30.3(3)(d): *Corporate Trusts*. Rules for recognizing income to S corporation shareholders that derives from these tax-free earnings and profits are set forth in 830 CMR 63.30.3(3)(d), (4)(a), (4)(a)2., (4)(c)2. The tax-free earnings and profits amounts attributable to each S corporation shareholder do not become a part of the AAA or the Massachusetts Earnings and Profits account. Rather, distributions from the S corporation are treated first as paid from tax-free earnings and profits until this account is exhausted. Such payments are taxable to shareholders as described in 830 CMR 63.30.3: *Entity Classification Under St. 2008, c. 173*, and neither reduce nor increase the AAA or the Massachusetts Earnings and Profits account. The effect of such distributions on a shareholder's basis is explained in 830 CMR 63.30.3: *Entity Classification Under St. 2008, c. 173*, particularly at 830 CMR 63.30(3)(d)4. and (4)(a)2: *Change from a Corporate Trust to a Corporation*.

(7) Post-termination Transition Issues Applicable to S Corporation Shareholders.

(a) Post-termination Transition Period. If an S corporation ceases to qualify as an S corporation, Massachusetts follows the federal rules that allow distributions from the former S corporation to be treated under the distribution rules for S corporations for a period of time. *See e.g.*, Code §§ 1371(e), 1377(b).

1. Timing of Pass-through Items in the Post-termination Transition Period. A shareholder of an entity that ceases to qualify for S corporation treatment under Code § 1362 is subject to tax under M.G.L. c. 62 on the S corporation's items of income, loss, or deduction as provided under the rules of Code § 1366(a) and 830 CMR 62.17A.2(4). The shareholder shall recognize and report such items, in the shareholder's taxable year in which the taxable year of the S corporation ends.

2. Cash Distribution in the Post-termination Transition Period. Under the rules of Code § 1371(e), any distribution of money by an S corporation with respect to its stock during the post-termination transition period shall reduce the shareholder's Massachusetts adjusted basis to the extent of the Massachusetts accumulated adjustments account. Distributions other than of cash during the post-transition period must follow the rules that apply to distributions from C corporations, and are not given special treatment.

(b) Effect on a Shareholder's Basis in the S Corporation Stock From a Distribution by the S Corporation in a Post-termination Period. If the AAA is not fully depleted at the end of a post-termination transition period, as defined at 830 CMR 62.17A.2(7)(a), it has no further effect, and is treated as part of the successor C corporation's paid-in capital. Any distributions from the entity after the end of the post-termination transition period are subject to the rules for distributions from the C corporation successor. No additional basis adjustment to the S corporation shareholder's shares is required or allowed when the undistributed Massachusetts accumulated adjustments account balance is added to paid-in capital.

(8) S Corporation Entity-level Taxation in Massachusetts.

(a) General. An S corporation that meets the requisite jurisdictional requirements is subject to a corporate excise at the entity level in Massachusetts. The components of the excise differ based on whether the entity is taxed as a corporation subject to M.G.L. c. 63, §§ 32D and 39, a financial institution subject to M.G.L. c. 63, § 1 through 2B, or an entity subject to another provision of M.G.L. c. 63.

Each of the various statutory sections under which an S corporation may be taxed at the entity level under M.G.L. c. 63 has its own requirements. Except as otherwise provided by statute or 830 CMR 62.17A.2, rules that apply to C corporations with respect to calculating the entity-level excise generally also apply to S corporations. For example, the determination of the Massachusetts basis of an S corporation in its assets generally follows the same rules as the determination of the Massachusetts basis of a C corporation in its assets. *See* M.G.L. c. 63, § 31N.

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For S corporations that are subject to the entity-level excise under M.G.L. c. 63, §§ 32D and 39, each of the three components of the excise potentially apply, namely the income measure, the non-income measure, and the minimum excise. For S corporations that are financial institutions and that are subject to the entity-level excise under M.G.L. c. 63, § 1 through 2B, the two components of the financial institution excise potentially apply, namely the income measure and the minimum excise.

S corporations that are not subject to the entity-level excise at M.G.L. c. 63, §§ 1 through 2B or 32D and 39 are otherwise subject to an entity-level excise under M.G.L. c. 63, for example, security corporations, which are subject to M.G.L. c. 63, § 38B.

An S corporation is generally allowed to use credits against its entity-level excise in the same manner and subject to the same limitations that other corporations taxable under the various provisions of M.G.L. c. 63 are allowed to use such credits. However, as stated in 830 CMR 62.17A.2(3)(e), no credit may be applied against both the entity-level excise and the shareholder-level tax. Similarly, an available credit may not be divided, part being used at the entity level and part being used at the shareholder level.

The taxation of an S corporation at the entity level is separate and distinct from the taxation of an S corporation's shareholders on their distributive share income, as set forth in M.G.L. c. 62, § 17A, and 830 CMR 62.17A.2 (1) through (7). Payment of an entity-level corporate excise does not satisfy the obligation of an S corporation's shareholders to pay an income tax on their distributive share of income, and vice-versa.

(b) Rules Generally Applicable to Entities Taxable Under M.G.L. c. 63, §§ 1 and 2B (Financial Institutions) and 32D and 39 (Certain Business Corporations) for Determining the Income Measure of the Excise.

1. Two Categories of Income, with Separate Rules for Each. There are two categories of income that are subject to the income measure of the excise as measured under M.G.L. c. 63, §§ 2B and 32D.

Category One income is that income of an S corporation that is taxable at the entity level under the Code; for example, built-in gains of an S corporation taxable under Code § 1374, or excess net passive income of an S corporation that has accumulated earnings and profits for a taxable year and that has gross receipts more than 25% of which are passive investment income, taxable under Code § 1375. Category 1 income is taxed at the rate that would apply if the S corporation were a C corporation. M.G.L. c. 63, §§ 2B(a)(1) and 32D(a)(i).

Category Two income is that income of an S corporation that is not Category one income. Category two income is subject to the income measure excise as calculated under M.G.L. c. 63, § 2B(a)(2) through (5) or § 32D(a)(ii). This income is subject to the income measure excise only if the total receipts of the S corporation (and certain affiliates of the S corporation) are $6 million or greater. *See* M.G.L. c. 63, §§ 2B(a)(2) through (5), 32D(a)(ii). With respect to this income, the rate of tax depends on the level of receipts; one rate of tax applies to an entity with receipts of at least $6,000,000 and below $9,000,000, and another rate of tax applies to an entity with receipts of $9,000,000 or more. When computing its tax, the S corporation must generally calculate its income in the same manner as other corporations subject to M.G.L. c. 63, §§ 1 through 2A (financial institutions) and §§ 30 and 39 (certain categories of business corporations), and must subtract its Category one income from its Category two net income.

The following sections state additional rules that apply to the taxation of Category two income.

2. Method for Determining Total Receipts, Aggregation Rules. In order to determine whether an S corporation must pay an entity-level excise measured by Category two income, the S corporation must first determine whether its total receipts meet the $6 million total receipts threshold for such taxation. For purposes of this calculation, if the S corporation owns one or more QSubs, its total receipts must be computed by combining them with those of its QSubs, irrespective of whether the S corporation and its QSubs are engaged in a unitary business. Also, if the S corporation is engaged in a unitary business with one or more other S corporations or pass-through entities (such as an LLC or partnership), its total receipts must be aggregated with the receipts of:

a. such other S corporations, including any QSubs owned by them; and

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b. other pass-through entities with which the S corporation is engaged in a unitary business, including entities that are owned by other pass-through entities in a tiered-ownership or similar structure. However, the total receipts of two or more corporations, including one or more entities subject to the aggregation rules of 830 CMR 62.17A.2(8)(b)2. shall not include receipts derived from intercompany transactions between such entities.

Further, an S corporation's total receipts must be aggregated with the receipts of any other corporation with which the S corporation is engaged in a unitary business, including any C corporation that the Commissioner finds was established for the purpose of avoiding the total receipts thresholds of $6,000,000 and $9,000,000. The Commissioner will presume that any entity created after the formation of the S corporation was organized to reduce the total receipts of an S corporation with which it has common ownership and with which it engages in a unitary business.

The aggregate total receipts of all such entities as set forth in the previous paragraphs is the total receipts amount that is attributed to each entity individually to determine whether and at which rate each S corporation in the group is subject to the excise on Category two income. *See* 830 CMR 62.17A.2(8)(c).

Example (8)(b). Husband and Wife own S Corporation that produces and markets computer software designed to organize hospital patient records. Husband and Wife also own a Partnership that studies the methodology used in various Massachusetts hospitals for patient record keeping, with a goal of finding the most efficient methods and for translating these to computer code. Receipts in the S corporation are less than six million dollars. However, S Corporation and Partnership are engaged in a unitary business. The receipts of both S Corporation and Partnership must be combined in order to determine whether S Corporation is subject to the entity-level excise under M.G.L. c. 63, § 32D.

3. Taxable Year Issues Related to Group Members When Determining Total Receipts.
a. Choosing a Principal Group Member. It is possible that a group of entities that is required to combine the total receipts of each group member in order to determine whether and at what rate an S corporation each member of the group is subject to the entity-level excise will have different taxable years. In such cases the group must perform its total receipts calculation based on the taxable year of one group member (the "principal group member").

The principal group member is the group member that the group reasonably expects will have the largest amount of total receipts subject to the income measure excise under M.G.L. c. 63, §§ 2, 2B or 32D and 39 on a recurring basis. Once the group identifies the principal group member, that group member is the principal group member for as long as that member is subject to the income measure excise.
b. Method for Determining Total Receipts for a Group of Entities. Where more than one entity in a group must combine its total receipts and the taxable year differs as to one or more group members, those members' accounting periods must be adjusted, generally following the principles of fiscalization that apply in the context of combined reporting as set forth at 830 CMR 63.32B.2(12): *Tax Returns; Taxable Year; Fiscalization; Mid-year Entry or Departure*. The group must use this method in a reasonable and consistent way, such that it will not materially distort the total receipts of the group members. The Commissioner reserves the right to adjust the method of fiscalization used by the group.

4. Determining an S Corporation's Total Receipts in a Short Taxable Year.
a. Annualized Method. Except as allowed under 830 CMR 62.17A.2(8)(b)4.b., in computing its total receipts for a taxable year consisting of fewer than 12 months, an S corporation must annualize its total receipts for the taxable year by taking the average income for the number of months in the short taxable year, and multiplying the result by 12.
b. Actual 12-month Receipts Method. In the case of a company that terminates its business, for example, by sale or dissolution, and as a result has a taxable year consisting of fewer than 12 months, such taxpayer may elect to count actual receipts of the corporation for the 12-month period ending on the closing date of the short taxable year.

62.17A.2: continued

(c) Rules Specific to Calculating the Income Measure of the Excise for Category Two Income for Corporations Subject to M.G.L. c. 63, §§ 32D and 39.

1. General. An S corporation subject to the entity-level tax under M.G.L. c. 63, §§ 32D and 39 must pay an excise on its Category two income if its total receipts for the taxable year are $6 million or more. It must calculate the income measure using the following rules.

2. Rate of Excise Under M.G.L. c. 63, § 32D(a)(ii). There are two rates that apply to the taxation of an S corporation's Category two income measured under M.G.L. c. 63 § 32D(a)(ii):

a. If the S corporation's actual and deemed total receipts for the taxable year are $9,000,000 or more, the income measure rate is derived by subtracting the rate applicable to Part B taxable income for that taxable year pursuant to M.G.L. c. 62, § 4(b) from the income measure rate applicable to C corporations under M.G.L. c. 63, § 39(a)(2).

b. If the S corporation's total receipts for the taxable year are at least $6,000,000 but less than $9,000,000, the rate is ⅔ of the rate set forth in 830 CMR 62.17A.2(8)(c)2.a.

3. Net Operating Loss Carryforward Deduction with Respect to S Corporations Subject to Tax under M.G.L. c. 63, §§ 32D and 39.

a. S Corporations are Generally Allowed to Take Net Operating Loss (NOL) Carryforward Deductions, Subject to Some Restrictions. An S corporation subject to tax under M.G.L. c. 63, §§ 32D and 39 pursuant to 830 CMR 62.17A.2(8)(c) is generally allowed to deduct, on a carryforward basis, a net operating loss (NOL) incurred in a prior taxable year from its Category two income (but not from its Category one income), under M.G.L. c. 63, § 30.5. *See generally* 830 CMR 63.30.2. The deduction is available to the extent that it would be allowed to a C corporation under the provisions of M.G.L. c. 63, § 30.5 and 830 CMR 63.30.2: *Net Operating Loss Deductions and Carryover*. NOL carryforwards have no effect on, and shall not be taken into account in, the calculation of a shareholder's distributive share income or loss under M.G.L. c. 62. *See* 830 CMR 63.17A.2(4)(e)3.a. Further, an S corporation that is subject to tax under M.G.L. c. 63, § 2 shall not be entitled to deduct an NOL carry forward. In no case can an NOL deduction be carried back.

b. Limitation on NOL Carryforward Deduction Where an S Corporation Has Category One Income. Category one income is a net-income amount of the S corporation determined under the Code. M.G.L. c. 63, § 32D(a)(i). From this net income figure certain federal loss carryforward amounts have already been deducted. *See* Code §§ 1374(b), (d), Treas. Reg. § 1.1374-5. To the extent that an S corporation's Massachusetts NOL carryforward includes one or more amounts that were previously deducted from Category one income under Code § 1374(b), (d), and Treas. Reg. § 1.1374-5, such NOL amounts may not be deducted by the S corporation from its Category two income.

c. i. Specific Rules for Carrying Forward NOL Deductions. An S corporation that is entitled to deduct carryforward NOLs is allowed to carry forward an NOL for a prior taxable year, subject to the general rules that apply to carry forwards, whether or not the S corporation was subject to the entity-level excise on Category two income in such year. The determination as the amount to carry forward must be made using the carryforward calculation set forth in 830 CMR 62.17A.2(8)(c)3.c.ii. A net operating loss shall not be carried back; thus, for example, a taxpayer that sustains a loss in a taxable year may not amend a prior year's return to claim that loss.

ii. Carryforward Calculation. In order to properly determine the allowable NOL carryforward amount that an S corporation may use, the S corporation must calculate its apportioned net income or loss for each relevant taxable year, whether or not it is subject to the income measure on its Category two income for such year. Any loss amount carried forward must be reduced by the S corporation's post-apportionment positive income amounts in succeeding taxable years for the carryforward period as determined under M.G.L. c. 63, § 30.5, and increased by its post-apportionment loss amounts incurred in such succeeding taxable years.

62.17A.2: continued

Example (8)(c)(3). In year one, S corporation S is subject to M.G.L. c. 63, § 32D and has total receipts of $3 million, and is not subject to the income measure excise. S has no Category one income. S performs a *pro forma* calculation of its income measure as if it were subject to the income measure as calculated under M.G.L. c. 63, §§ 32D and 39, and arrives at a post-apportioned loss figure of $100,000. In years two and three, S corporation continues to have total receipts below $6 million, and thus is not subject to the income measure for those years. The pro forma calculation for year two results in a post-apportioned loss figure of $20,000. The *pro forma* calculation for year three results in a post-apportionment income figure of $70,000. In year four, S has total receipts of $7 million, and is thus liable for the income measure excise as calculated under M.G.L. c. 63, §§ 32D and 39. The cumulative loss amount of S for the period year one through year three that may be carried forward to year four is $50,000, calculated as follows: $100,000 (year one loss) plus $20,000 (year two loss) minus $70,000 (year three income).

d. Carryforward Rules When an S Corporation Acquires a C Corporation. The following rules apply when an S corporation acquires a C corporation. 830 CMR 62.17A.2(8)(c)3.d. is unrelated to the rules that apply to an S corporation merger or restructuring that results from the application of St. 2008, c. 173, relating to changes in entity classification under Massachusetts law. *See* 830 CMR 63.30.3: *Entity Classification Under St. 2008, c. 173*.

i. S Corporation Acquires a C Corporation, Elects QSub status for the Acquired Corporation. Where an S corporation acquires a C corporation and elects to treat the acquired entity as a QSub, the transaction is treated as a liquidation of the C corporation into the parent S corporation. In such a case, the net operating losses attributable to the former C corporation cannot be carried forward, and therefore are not available to the S corporation.

ii. S corporation acquires a C corporation, with no QSub election. Where an S corporation acquires a C corporation and does not elect to treat the acquired entity as a QSub, the net operating losses attributable to the acquired C corporation continue to reside with and are available to the C corporation, to the extent otherwise allowed under Massachusetts law.

4. Treatment of Income Derived From a Code § 338(h)(10) Election. An S corporation that is subject to an election made under Code § 338(h)(10) recognizes gain or loss with respect to the transaction as if it sold all of its assets in a single transaction. The S corporation in such a case will make a final return for the period ending as of the close of the date of the sale. All income attributable to the deemed sale of assets is reportable by the S corporation as income subject to the entity-level excise under M.G.L. c. 63, §§ 32D and 39.

(d) Rules Specific to Calculating the Income Measure Excise for Category Two Income for Financial Institutions Subject to M.G.L. c. 63, §§ 2B(a)(2) Through (4).

1. General. An S corporation that is a financial institution and thus is subject to the entity-level tax under M.G.L. c. 63, §§ 2B(a)(2) through (4) must pay an excise on its Category two income if its total receipts for the taxable year are $6 million or more. It must calculate the income measure using 830 CMR 62.17A.2(8)(d)2. Financial institutions are not eligible to deduct losses incurred in prior years.

2. Rate of Excise Under M.G.L. c. 63, §§ 2B(a)(2) Through (4). There are two rates that apply to the taxation of an S corporation's Category two income taxable under M.G.L. c. 63, § 2B(a)(2) through (4):

a. If the S corporation's total receipts for the taxable year are $9,000,000 or more, the income measure rate is derived by subtracting the rate applicable to Part B taxable income for that year in M.G.L. c. 62, § 4(b) from the rate applicable to financial institutions in that taxable year in M.G.L. c. 63, § 2.

b. If the S corporation's total receipts for the taxable year are at least $6,000,000 but less than $9,000,000, the income measure rate is ⅔ of the rate set forth in 830 CMR 62.17A.2(8)(d)2.a.

62.17A.2: continued

3. Treatment of Income Derived From a Code § 338(h)(10) Election. An S corporation that is subject to an election made under Code § 338(h)(10) recognizes gain or loss with respect to the transaction as if it sold all of its assets in a single transaction. The S corporation in such a case will make a final return for the period ending as of the close of the date of the sale. All income attributable to the deemed sale of assets is reportable by the S corporation as income subject to the entity-level excise under M.G.L. c. 63, §§ 1 through 2B.

(9) S Corporations That Are Subject to Combined Reporting.

(a) Income Measure Filing Requirements. An S corporation (including its QSubs) that is doing business in Massachusetts is subject to combined reporting within the meaning of M.G.L. c. 63, § 32B when it is engaged in a unitary business with one or more other corporations, including one or more S corporations that are subject to combined reporting. *See generally* 830 CMR 63.32B.2: Combined Reporting; *see also* 830 CMR 63.32B.2(4)(a): *General*. In such cases, if the S corporation is subject to the income measure excise, it is required to be included in the combined report and to compute its net income subject to tax and its income measure consistent with the rules for combined reporting. *See generally* 830 CMR 63.32B.2(7): *Apportionment of Income Computation; Tax Computation Where No Apportionment*, and (7)(l): Example 8 (discussing the rules that apply when an S corporation is to file as a member of a combined group).

Where an S corporation is not itself subject to the income measure excise, it is nonetheless required to be included in a combined report if it is engaged in a unitary business with one or more other corporations that are subject to the income measure excise and any member of such group that is a C corporation. In contrast, in any instance where an S corporation is engaged in a unitary business only with one or more other S corporations, and the aggregate gross receipts of such corporations is less than $6 million (that is, no corporation in the combined group is liable for the income measure excise), the group is not required to file a combined report.

An S corporation is not subject to combined reporting unless it is engaged in a unitary business with one or more other corporations. Therefore, in any case in which an S corporation owns one or more QSubs but is not engaged in a unitary business with one or more other corporations apart from its ownership of these QSubs, the S corporation is not subject to combined reporting, because a QSub is not treated as an entity separate from its parent for Massachusetts corporate excise purposes.

(b) Net Operating Loss Issues in the Case of an S Corporation Member of a Combined Group.

1. General Rules with Respect to NOLs Where a Combined Group Contains One or More S Corporations. An S corporation subject to M.G.L. c. 63, § 32D included in a combined report can share NOL carry forwards with other members of the combined group, to the extent such sharing would be allowed if the taxpayer were a C corporation. *See* 830 CMR 63.32B.2(8): *Net Operating Loss Carry Forwards*. In such cases, the NOL attributable to and carried forward by the S corporation member of the combined group must be calculated according to the carryforward calculation rules set forth at 830 CMR 62.17A.2(8)(c)3. However, an S corporation that is a financial institution subject to M.G.L. c. 63, § 2B is not allowed to carry forward an NOL or to use an NOL carryforward where the loss being carried forward was generated by another combined group member.

2. Restrictions on Loss Sharing with Respect to Category One Income. An S corporation in combined reporting is generally able to share NOL carryforward losses of other group members in the manner of a C corporation under 830 CMR 63.32B.2(8): *Net Operating Loss Carry Forwards*, and the sharing rules at 830 CMR 63.32B.2(8)(b): *Sharing of NOL Carry Forwards*, however, an S corporation member of a combined group may not take an NOL carryforward deduction when computing its income measure excise on Category one income. See 830 CMR 62.17A.2(8)(c)3.a. *See* also Code § 1374(b), (d), Treas. Reg. § 1.1374-5.

(c) Non-income Measure; Minimum Excise. An S corporation that is included in a combined report is subject in its own right to the non-income measure excise or the minimum excise, as applicable, and must file accordingly. *See* M.G.L. c. 63, §§ 32D and 39.

62.17A.2: continued

(d) Effect of a Combined Report on an S Corporation's Calculation of its Shareholders' Distributive Share Income. An S corporation included in a combined report cannot apply the provisions related to combined reporting at 830 CMR 63.32B.2: Combined Reporting or 830 CMR 62.17A.2(9) for purposes of determining a shareholder's distributive share of income. *See* 830 CMR 62.17A.2(4). Rather, the income or loss for such a shareholder is determined by the S corporation using the provisions of M.G.L. c. 62 and the Code, without regard to the entity's combined reporting obligations. *See* 830 CMR 62.17A.2(4). The amount of such income to be apportioned to Massachusetts in the case of a non-resident shareholder taxable under M.G.L. c. 62, § 5A is also determined without reference to the combined reporting provisions. *See generally* 830 CMR 63.32B.2(7): *Apportionment of Income Computation; Tax Computation Where No Apportionment*, and (7)(l): Example 8 (discussing the rules that apply as to the taxation of S corporation shareholders, including non-resident shareholders, when an S corporation is to file as a member of a combined group).

62.63.1: Installment Transactions

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

(a) Statement of Purpose. 830 CMR 62.63.1 explains the scope and effect of the Massachusetts installment transaction provision, M.G.L. c. 62, § 63, as to taxpayers who are treated as electing installment sale treatment for federal income tax purposes under section 453 of the Code.

(b) Outline of Topics. 830 CMR 62.63.1 is organized as follows:

1. Statement of Purpose, Outline of Topics, Effective Date
2. Definitions
3. Transition Rules
4. Massachusetts Gain At Least $1 million
5. Massachusetts Gain Less Than $1 million
6. Contingent Payments
7. Modifications to Federal Gross Income
8. Tax Rate Applicable to Installment Payments
9. Nonresidents; Interest on Installment Obligation
10. Flow-through Entities
11. Elections; Form of Security

(c) Effective Date. 830 CMR 62.63.1 takes effect on July 14, 2006 and applies to transactions occurring during tax years beginning on or after January 1, 2005.

(2) Definitions. For purposes of 830 CMR 62.63.1, the following terms shall have the following meanings, unless the context requires otherwise:

Code, the Internal Revenue Code, as adopted under M.G.L. c. 62, § 1(c).

Commissioner, the Commissioner of Revenue.

Flow-through Entity, a trust, partnership, S corporation, limited liability company or other entity the income, loss, deductions, credits, and other tax items of which are generally allocated or otherwise attributed on a current basis to the entity's members, partners, shareholders, or beneficiaries for Massachusetts income tax purposes, with such items generally retaining their character and treated as if received, accrued, paid, or incurred directly by such members, partners, shareholders or beneficiaries.

Installment Sale Treatment, the determination of taxable income from a transaction treated as an installment sale for federal income tax purposes in accordance with the installment method as described in § 453 of the Code.

Installment Transaction, a transaction that is treated as an installment sale for federal income tax purposes under section 453 of the Code and that would, but for such section and M.G.L. c. 62, § 63, result in Massachusetts gain for the taxable year of the transaction that is equal to or greater than $1,000,000.

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Massachusetts Gain, the entire gain that would be recognized from a transaction and included in Massachusetts gross income as determined under M.G.L. c. 62, § 2 (without regard to the modifications that apply under M.G.L. c. 62, § 63).

Taxpayer, an individual, partnership, trust, estate, limited liability company, S corporation or other entity or their members subject to the income tax imposed by M.G.L. c. 62.

(3) Transition Rules.

(a) Installment Sale Treatment for Tax Years Beginning Prior to January 1, 2005. Under M.G.L. c. 62, § 63, as in effect for installment sales for tax years prior to January 1, 2005, taxpayers who were treated as electing installment sale treatment under section 453 of the Code were not automatically entitled to equivalent treatment under the Massachusetts personal income tax provisions. In order to qualify for installment sale treatment for Massachusetts income tax purposes, taxpayers were required to file a separate Massachusetts installment sale election and were required to post security with the Commissioner if the Massachusetts personal income tax deferred was at least $1,500. Taxpayers who were treated as electing installment sale treatment under section 453 of the Code for tax years beginning prior to January 1, 2005, must continue to apply M.G.L. c. 62, § 63 as in effect for such years to such transactions and must apply the Massachusetts personal income tax rate applicable to the year of the installment sale to all gains attributable to subsequent installment sale payments subject to M.G.L. c. 62, § 2(b)(3), without regard to subsequent statutory changes in the personal income tax rate for M.G.L. c. 62, § 2(b)(3).

(b) Gain Already Recognized. A taxpayer with a Massachusetts gain from a transaction treated as an installment sale under section 453 of the Code occurring in a tax year beginning, prior to January 1, 2005, who did not elect installment sale treatment for Massachusetts purposes but who did not elect out of federal installment sale treatment, will not have to recognize gain that has already been recognized for Massachusetts income tax purposes when such gain is later recognized federally on a deferred basis under the installment method.

(c) Security Requirements. A taxpayer required to post security with respect to transactions occurring in a tax year beginning prior to January 1, 2005 must continue to adhere to the prior security requirements. Such requirements are unaffected by the new $1 million Massachusetts gain threshold.

(4) Massachusetts Gain at Least $1 Million.

(a) Federal Election In; Massachusetts Election In; Security. Taxpayers who are treated as electing installment sale treatment for federal income tax purposes under section 453 of the Code, and who wish to receive installment sale treatment for Massachusetts income tax purposes, must file a separate Massachusetts installment sale election if their Massachusetts gain for the entire transaction is equal to or greater than $1 million. Taxpayers with more than one such installment transaction (each giving rise to Massachusetts gain equal to or greater than $1 million) in a given tax year must elect or choose not to elect under this section for all such transactions as a group. Taxpayers filing such election must post security with the Commissioner as provided for in 830 CMR 62.63.1(11).

(b) Federal Election In; Massachusetts Election Out. Taxpayers who are treated as electing installment sale treatment for federal income tax purposes under section 453 of the Code may file an election out of Massachusetts installment sale treatment if their Massachusetts gain for the entire transaction is equal to or greater than $1 million. If no election is made under 830 CMR 62.63.1(4)(a) (along with the requisite posting of security), a taxpayer will be considered to have elected out of Massachusetts installment sale treatment.

(c) Federal Election Out; Automatic Massachusetts Election Out. Taxpayers who elect out of installment sale treatment for federal income tax purposes under section 453 of the Code are automatically treated as electing out of Massachusetts installment sales treatment. Such taxpayers are not allowed to elect Massachusetts installment sales treatment.

(5) Massachusetts Gain less than $1 Million.

(a) Federal Election In; Automatic Massachusetts Election In. Taxpayers who are treated as electing installment sale treatment for federal income tax purposes under section 453 of the Code are automatically treated as electing Massachusetts installment sales treatment if their Massachusetts gain for the entire transaction is less than $1 million. Such taxpayers are not allowed to elect out of Massachusetts installment sales treatment.

62.63.1: continued

(b) Federal Election Out; Automatic Massachusetts Out. Taxpayers who elect out of installment sale treatment for federal income tax purposes under § 453 of the Code are automatically treated as electing out of Massachusetts installment sales treatment. Such taxpayers are not allowed to elect Massachusetts installment sales treatment.

(6) Contingent Payments. In determining the amount of Massachusetts gain for the entire transaction for purposes of 830 CMR 62.63.1(4) and (5), contingent payments shall be presumed to be valued at their stated maximum selling price for the transaction, and contingent payment transactions that do not state a maximum selling price shall be presumed to give rise to a Massachusetts gain for the entire transaction of at least $1 million, unless a separate Massachusetts determination of the value of contingent payments or of the maximum selling price is made by the taxpayer and such determination is submitted to and approved by the Commissioner for purposes of determining the amount of Massachusetts gain for the entire transaction under 830 CMR 62.63.1(4) and (5).

(7) Modifications to Federal Gross Income. In each taxable year that the taxpayer has gain subject to Massachusetts income tax from an installment transaction under M.G.L. c. 62, § 63, the federal gross income of such taxable year shall be modified for the purpose of applying M.G.L. c. 62, § 2 as follows:

(a) the federal gross income shall be increased by the excess of the federal adjusted basis of the property disposed of in the transaction over the Massachusetts adjusted basis of such property; and

(b) the federal gross income shall be decreased by the excess of the Massachusetts adjusted basis of the property disposed of in the transaction over the federal adjusted basis of such property; and

(c) similar modifications under M.G.L. c. 62, § 6F apply generally to modifying federal gross income under M.G.L. c. 62, § 2, regardless of qualification as an installment transaction under M.G.L. c. 62, § 63, however, no modification shall be made under 830 CMR 62.63.1(7) to the extent that such modification would duplicate a modification required under M.G.L. c. 62, § 6F.

(8) Tax Rate Applicable to Installment Sale Gain. Massachusetts gain included in income pursuant to an installment sale under 830 CMR 62.63.1(4)(a) and (5)(a) is subject to the Massachusetts personal income tax rate applicable to the particular tax year in which such gain is included in income, except as may otherwise be expressly provided by statute. Thus, the rate applicable to income included in the year of the sale may differ from the rate applicable to income attributable to installments received in subsequent years in the event of a statutory change to the personal income tax rates.

(9) Nonresidents; Interest on Installment Obligation.

(a) A nonresident taxpayer who receives installment sale treatment for Massachusetts income tax purposes under 830 CMR 62.63.1(4)(a) and (5)(a) with respect to gain recognized on the sale of Massachusetts real estate or other property subject to tax in accordance with M.G.L. c. 62, § 5A shall be subject to Massachusetts tax with respect to all gain and other income, including interest and original issue discount, recognized on account of such transaction in all applicable tax years.

(b) A resident taxpayer who receives installment sale treatment for Massachusetts income tax purposes with respect to gain recognized on any installment sale, and who becomes a nonresident in a tax year subsequent to the tax year of the transaction, shall be subject to Massachusetts tax with respect to all gain and other income, including interest and original issue discount recognized on account of such transactions in all applicable tax years.

62.63.1: continued

(10) Flow-through Entities. In the case of a flow-through entity disposing of property in a transaction receiving installment sale treatment for Massachusetts income tax purposes under 830 CMR 62.63.1(4)(a) and (5)(a), it is the flow-through gain recognized by each partner, shareholder, member or beneficiary of an entity that applies in determining the amount and timing of Massachusetts gain for the entire transaction under 830 CMR 62.63.1(4) and (5). Each individual partner, shareholder, member or beneficiary is separately subject to the election and security requirements under 830 CMR 62.63.1(4), (5) and (11). The Massachusetts apportionment percentage, if any, applicable to the year of an installment sale subject to 830 CMR 62.63.1(4)(a) and (5)(a) applies to all gains recognized by non-residents that are attributable to subsequent installment sale payments. *See* 830 CMR 62.5A.1(6): *Non-resident Income Tax*.

Example: A partnership consisting of three partners having identical ⅓ interests sells Massachusetts real estate and the sale results in $2.1 million of recognized Massachusetts gain in the aggregate. Each partner recognizes $700,000 of Massachusetts gain for purposes of determining the amount and timing of Massachusetts gain for the entire transaction under 830 CMR 62.63.1(4) and (5). Therefore, each partner is separately subject to 830 CMR 62.63.1(5) and the security requirements under 830 CMR 62.63.1(11) do not apply.

(11) Elections; Form of Security. Any taxpayer making an election pursuant to 830 CMR 62.63.1 must do so in the form and manner prescribed by the Commissioner. Any taxpayer filing an election for Massachusetts installment sale treatment under 830 CMR 62.63.1(4)(a) must post security with the Commissioner of such kind and in such amount as the Commissioner may determine necessary to secure payment of the total tax.

REGULATORY AUTHORITY

830 CMR 62.00: M.G.L. c. 14, § 6(1); c. 62, §§ 63M and 63, c. 62C, § 3 and c. 63, § 38EE.

NON-TEXT PAGE