

Massachusetts Proposes Withholding Tax on High-Value Real Estate Transactions by Non-Resident Sellers

Description

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The Massachusetts Department of Revenue (“DOR”) has proposed a new regulation, 830 CMR 62B.2.4, which introduces a significant change to the taxation of real estate transactions within the Commonwealth by non-resident sellers. The regulation mandates a withholding tax on the sale or transfer of Massachusetts real estate by non-resident sellers when the gross sales price exceeds \$1 million. This measure is designed to ensure the collection of personal income tax or corporate excise tax from out-of-state transferors who may not otherwise file or pay taxes in Massachusetts. The proposed non-resident seller tax is similar to tax structures already in place in states such as Rhode Island.

Under the proposed rule, the responsibility for the tax withholding falls on the closing agent, who must withhold the appropriate tax amount and remit it to the DOR within ten days following the closing date. The withholding amount is generally based on the net gain from the sale. The applicable withholding rates range from 5% to 9% depending on the nature of the transferor. For example, the corporate withholding rate of 8% is applicable to out-of-state corporate transferors.

There are several exemptions to the withholding requirement. Massachusetts residents, corporations with a continuing business presence in the state and pass-through entities are generally exempt, provided they submit a Transferor’s Certification to the closing agent at or before the closing. Additional variations to the regulation may apply to transactions such as like-kind exchanges and installment sales, among others.

While the tax is only applicable to out-of-state sellers, all sellers will be required to complete and submit a Transferor’s Certification at closing. Therefore, closing agents and sellers of high-value real estate transactions in Massachusetts should carefully review the structure of their deals to determine whether the new withholding rule will apply. This regulation introduces new and significant responsibilities for closing agents, including a strict 10-day deadline for tax remittance following the closing. Although this legislation is yet to take effect, the DOR anticipates it will become effective in the second half of 2025; therefore closing agents should monitor the regulation’s progression and proactively assess how it may affect upcoming transactions. Once in effect, early planning and preparation will be essential to ensure timely and compliant closings.

Please engage attorneys [Jay Peabody](#), [Allison Fleet](#), and [Kelley J. Decena](#) should you have any questions or concerns regarding this new proposed regulation.

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