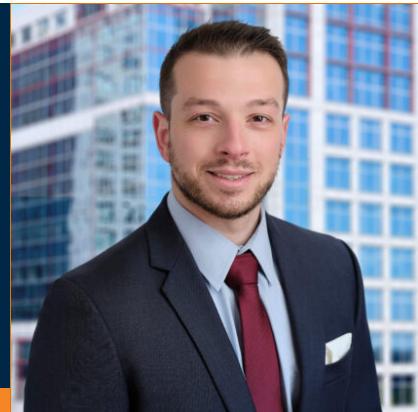


Client Alert: New Massachusetts Withholding Requirements for \$1M+ Real Estate Sales

By Michael Cronin on October 9, 2025



Beginning November 1, 2025, real estate closing attorneys, escrow agents, title agents, and any others who serve as settlement agents in connection with Massachusetts real estate transactions will be responsible for implementing new Massachusetts state tax withholding requirements. The Massachusetts Department of Revenue recently enacted 830 CMR 62B.2.4, which requires settlement agents to withhold and remit funds to the Department of Revenue from real estate transactions that meet the following requirements:

1. The property is located in Massachusetts;
2. The gross sale price is over \$1,000,000; and
3. The Seller does not qualify for certain exemptions to withholding under the new regulations.

If the preceding three requirements are met, the settlement agent at closing (i.e., the party responsible for collecting and disbursing funds in connection with the closing) must withhold funds from the Seller and pay those funds over to the Department of Revenue as a pre-payment against the Seller's potential tax liability.

Exempt Parties

If the subject property is in Massachusetts and the gross sales price is over \$1,000,000, the Seller must qualify for an exemption under 830 CMR 62B.2.4(4) to avoid withholding at closing. The exemptions are intended to excuse Massachusetts residents and Massachusetts-based businesses that have a continuing presence in the Commonwealth and that are already subject to filing a Massachusetts state tax return. The withholding requirements generally target out-of-state Sellers who may receive Massachusetts-based income as a result of the sale of real estate, but who may not file a Massachusetts tax return to properly report the income in Massachusetts. Thus, the exemptions under the law are enumerated as follows:

- Sellers who are residents of Massachusetts (as defined in M.G.L. c. 62 § 1(f) and [as further described here](#)).
- Certain entities whose income, gains, losses, deductions, and credits flow through to members for MA tax purposes and are already subject to [withholding requirements under M.G.L. c. 62B § 2](#) (e.g., companies filing membership tax returns);
- Publicly traded partnerships;
- A corporation with a continuing Massachusetts business presence, or a member of a combined group where one member of such group has a continuing Massachusetts presence; and
- The Federal or Massachusetts government, or any political subdivision or agency thereof.

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- Notably, disregarded entities, such as single-member limited liability companies, are not subject to withholding requirements because they are entirely disregarded for tax purposes. Such disregarded entities would request an exemption based on the personal exemption status of the single member (e.g., the single member is a Massachusetts resident).

Withholding Amounts

Under the new regulations, a non-exempt Seller may choose between one of two calculations to determine the applicable withholding amount. If more than one person owns the property transferred, each Seller will be subject to the withholding requirement, regardless of their individual proceeds from the sale, so long as the total sale price is over one million dollars.

1. Standard Calculation. The "standard" withholding calculation is 4% of the "Gross Sales Price" for each Seller, where Gross Sales Price is defined as the sum of: (i) cash paid or to be paid to the Seller; (ii) the fair market value of any other property transferred to Seller as a part of the transaction; and (iii) the outstanding amount of liability assumed by the Buyer as a part of the transaction.
2. Alternative Withholding Calculation. The "alternative" withholding calculation is defined in 830 CMR 62B.2.4(3)(c) as the Seller's "Estimated Net Gain" (defined in the regulations) from the sale multiplied by the Seller's applicable tax rate under M.G.L. c. 62 § 4(b). If the Seller elects the alternative withholding calculation, they **must** provide the withholding agent with certification of their Estimated Net Gain and applicable tax rate on a reporting and certification form to be issued by the Department of Revenue. Failure to affirmatively elect the alternative withholding calculation will subject the Seller to the standard calculation.

Requirements of the Seller

Any Seller of Massachusetts real estate with a value over One Million Dollars, regardless of their exemption status, **must** provide the Withholding Agent with a **transferor's certification form** that includes the following information:

1. Any applicable exemptions to withholding that the Seller claims;
2. Information necessary for the withholding agent to determine the withholding amount, including an election to use the Alternative Withholding Calculation, if desired; and
3. Any other representations that the withholding amount is reduced or not required pursuant to the terms of the regulation.

Failure by an exempt Seller to submit a transferor's certification claiming exemption will result in that Seller losing their exemption status. You can find instructions for completing and calculating withholding amounts [here](#).

Responsibilities of the Withholding Agent

The withholding agent must submit the withholding return to the Department of Revenue along with any transferor's exemption certifications and remit the withholding tax amount, if any, to the Department of Revenue **within 10 days of the closing**.

Michael Cronin is an associate in RIW's **Corporate Department** and represents commercial clients in the purchase and sale of commercial properties, leasing, financing, as well as licensing and zoning projects. His practice includes advocacy before zoning and planning boards and representing clients in negotiations for acquisitions, sales, and leases of commercial properties. Michael can be reached at mpc@riw.com.

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