830 CMR 62C.33.1

**62C.33.1: Interest. Penalties, and Application of Payments**

(5) Penalties.

(a) Penalty Under [M.G.L. c. 62C, § 28](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST62CS28&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)) for Failure to File or Filing of Incorrect Return.

1. General Rule. Assessment of penalties under [M.G.L. c. 62C, § 28](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST62CS28&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)) shall be governed by the provisions of [830 CMR 62C.26.1(13) and (14)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1012167&cite=830MADC62C.26.1&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=VP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)).

2. Abatement of Penalty. The Commissioner shall not abate the tax below double the amount for which the person assessed was properly taxable if such person files a fraudulent return; or, having filed an incorrect or insufficient return fails, after notice, to file a proper return unless the taxpayer can affirmatively demonstrate that there was reasonable cause for the lack of a response or for the late response.

(b) Penalties under [M.G.L. c. 62C, § 30](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST62CS30&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)) for Failure to Report Federal Income Tax Changes and under M.G.L. c. 62C. § 30A for Failure to Report Changes in Taxes Due in Certain Other Jurisdictions.

1. General Rule. Assessment of penalties under [M.G.L. c. 62C, § 30](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST62CS30&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)) shall be governed by the provisions of [830 CMR 62C.30.1](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1012167&cite=830MADC62C.30.1&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=VP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)). Penalties under [M.G.L. c. 62C, § 30A](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST62CS30A&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)) shall be governed by the provisions of [830 CMR 62C.30A.1](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1012167&cite=830MADC62C.30A.1&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=VP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)). Other penalties in addition to those imposed under [830 CMR 62C.30.1](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1012167&cite=830MADC62C.30.1&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=VP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)) and [830 CMR 62C.30A.1](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1012167&cite=830MADC62C.30A.1&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=VP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)) may apply.

2. Abatement of Penalty. Abatement of any penalty imposed for failure of a person or an estate to report to the Commissioner a change in federal personal or corporate taxable income or federal taxable estate as a result of a final determination by the federal government that such income or estate is different from that originally reported shall be governed by the provisions of [830 CMR 62C.30.1(7)(b)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1012167&cite=830MADC62C.30.1&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=VP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)). Abatement of any penalty imposed for failure of a person to report to the Commissioner a change in tax due to any other state, territory or possession of the United States, or the Dominion of Canada or any of its provinces, on account of any item of gross income of a Massachusetts resident, where such tax is finally determined on or after December 8, 2005 by that jurisdiction to be less than the tax previously reported, and where such tax was the basis for a credit claimed by the Massachusetts resident under [M.G.L. c. 62, § 6(a)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST62S6&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=SP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)#co_pp_8b3b0000958a4) shall be governed by the provisions of [830 CMR 62C.30A.1(7)(b)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1012167&cite=830MADC62C.30A.1&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=VP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)).

(c) Penalty Under M.G.L. c. 62C. § 33(a), for Failure to File Timely.

1. General Rule. A taxpayer who fails to file a return on or before either the statutory due date of the return or the last day of a valid extension of time to file the return, whichever date is later, is subject to a penalty under [M.G.L. c. 62C, § 33(a)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST62CS33&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=SP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)#co_pp_8b3b0000958a4). The penalty is 1% of the amount of tax required to be shown on the return, and is computed for each month or fraction of a month during which the taxpayer's failure to file the return continues, subject to the limitations in 830 CMR 62C.33.1(5)(c)5.

2. Application of Penalty to Returns. The penalty under [M.G.L. c. 62C, § 33(a)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST62CS33&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=SP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)#co_pp_8b3b0000958a4), is computed only on tax imposed by M.G.L. chs. 60A; 62 through 65C, including double tax assessments under 62C, [§ 28](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST62CS28&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)); 121A, [§ 10](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST65CS10&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)); and 138, § 21; but not on estimated taxes imposed under M.G.L. c. 62B or 63B.

3. Extensions of Time to File Returns. In order to be valid, a request for an extension to file a return must meet the requirements set out in 830 CMR 62C.19.1. Generally, a return required by [M.G.L. c, 62C, §§ 11](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST62CS11&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)) or [12](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST62CS12&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=LQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)) must include at least 50% of the tax due and a request for an extension to file any other return required by M.G.L. c. 62C must include at least 80% of the tax due. The following rules apply when a taxpayer obtains an extension of time to file a return:

a. if the taxpayer obtains a valid extension of time to file and files the return within the time allowed by the extension, the [M.G.L. c. 62C, § 33(a)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST62CS33&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=SP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)#co_pp_8b3b0000958a4) penalty does not apply;

b. if the taxpayer obtains a valid extension of time to file but does not file the return within the time allowed by the extension, the [M.G.L. c. 62C, § 33(a)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST62CS33&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=SP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)#co_pp_8b3b0000958a4) penalty is computed beginning as of the last day of the extension; and

c. if the taxpayer files an application for extension that does not meet the requirements for obtaining a valid extension of time to file, the extension is void and the [M.G.L. c. 62C, § 33(a)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST62CS33&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=SP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)#co_pp_8b3b0000958a4) penalty is computed beginning as of the statutory due date of the return, as if the taxpayer had not filed for any extension.

4. Computation on Unpaid Portion of Amount Required to be Shown. The amount of tax required to be shown on a return is the proper amount of tax ultimately determined to have been due on the statutory due date for the complete period covered by the return. The amount required to be shown consists of both unreported tax determined by the Commissioner to have been due, as well as the tax that is properly reported by the taxpayer as having been due. The penalty under [M.G.L. c. 62C, § 33(a)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST62CS33&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=SP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)#co_pp_8b3b0000958a4), is computed each month on the amount of tax required to be shown on the return, less any portion of the tax that was paid on or before the due date, and less any credits against the tax which are allowable on the return.

5. Limitation on Amount of Penalty. The penalty under [M.G.L. c. 62C, § 33(a)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST62CS33&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=SP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)#co_pp_8b3b0000958a4), ceases to accrue when any of the following events occurs:

a. the return is filed;

b. the aggregate [M.G.L. c. 62C, § 33(a)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000042&cite=MAST62CS33&originatingDoc=I5B86B3023505429CB20313103DF672CA&refType=SP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Category)#co_pp_8b3b0000958a4) penalty totals twenty-five percent of the amount of tax required to be shown on the return, less any portion of the tax that was paid on or before the due date, and less any credits against the tax which are allowable on the return; or

c. the taxpayer fails to file a return and the Commissioner makes an assessment of tax for the tax period that would have been covered by the return.