



August 22, 2022

Office of the State Auditor
Attn: The Honorable Suzanne Bump
Massachusetts State House, Room 230
Boston, MA 02133
auditor@sao.state.ma.us

Subj: Chapter 62F Excess State Tax Revenues

Dear Auditor Bump:

As working individuals and families across the country struggle to come to terms with runaway inflation, Massachusetts' financial stability stands at a crucial crossroads. Fortunately, Massachusetts voters foresaw such a scenario, and established legal protections in advance. Now it is imperative that the law they adopted be obeyed.

In 1986, Massachusetts voters passed Chapter 62F to protect working individuals and families from the type of runaway tax-and-spend practices that had contributed to the financial turmoil of the preceding decade. Chapter 62F provides immediate and automatic tax relief by requiring the government to return excessive amounts taken from them when there is a tax revenue surplus, based on the clear terms of chapter 62F.

As you know, under § 6 of that statute, your Office is responsible for reviewing state budget reports regarding whether state tax revenues exceed allowable state tax revenues. If revenues exceed legally applicable limits, the state "shall" issue "[tax] credit[s] equal to the total amount of such excess" to all Massachusetts taxpayers. *Id.*

The Executive Office for Administration and Finance has announced that the Commonwealth will end Fiscal Year 2022 ("FY22") with a \$1.9 billion budget surplus. These estimates make clear that there will be an excess of allowable state tax revenues under chapter 62F, which *requires* a tax credit to be applied to "all taxpayers on a proportional basis." *Id.*

As you are well aware, your office's role in the carefully wrought process under chapter 62F is first, to "review ... for completeness and accuracy" the Commissioner of Revenue's report on the FY22 budget, and second, "on or before the third Tuesday of September, [to] independently determine whether net state tax revenues for the immediately preceding fiscal year exceeded the allowable state tax revenues for said fiscal year." *Id.* at § 5(a)-(b). We trust that your office will conduct that review process fairly, accurately, and according to the statutory deadline, to ensure that Massachusetts taxpayers receive the tax relief to which they are entitled under chapter 62F.

Ms. Suzanne Bump
August 22, 2022
Page 2 of 2

We also note that chapter 62F permits 24 named taxpayers in the Commonwealth to bring an action in the Supreme Judicial Court or Superior Court to enforce the provisions of that law. *Id.* at § 7. If such an action is necessary and successful, the plaintiff taxpayers can seek the tax credits to which they are entitled under the statute, as well as an award of reasonable attorneys' fees and other costs incurred for bringing suit.

The Goldwater Institute is a nonpartisan public policy and research organization dedicated to principles of limited government, individual liberty, and economic freedom, including taxpayer rights. Through its Scharf-Norton Center for Constitutional Litigation, the Institute brings public interest litigation when its or its clients' objectives are implicated.

The New England Legal Foundation is a nonprofit public interest law firm, incorporated in Massachusetts in 1977 and headquartered in Boston. NELF is dedicated to defending economic and property rights, upholding the rule of law by seeking to ensure government's full compliance with its constitutional and statutory duties, and protecting free enterprise.

The voters of the Commonwealth enacted chapter 62F in 1986 to provide a hard limit on the amount Massachusetts can tax its residents and a hard limit on government spending. We hope and expect that state officials will comply with the law and provide greatly needed tax relief to its citizens.

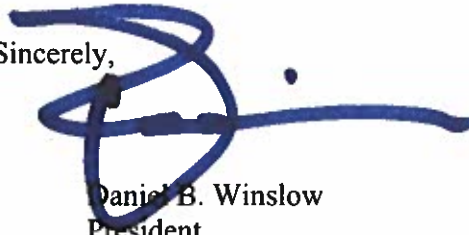
Should it become clear, however, that Massachusetts officials seek to evade the plain requirements of chapter 62F, we will uphold the will of Massachusetts voters by seeking to enforce these critically important, and statutorily guaranteed, fiscal safeguards.

Should you have any concerns regarding this matter, please do not hesitate to contact me at (602) 462-5000 or jriches@goldwaterinstitute.org.



Jon Riches
Vice President for Litigation
Stephen Silverman
Senior Attorney
Scharf-Norton Center for Constitutional
Litigation at the GOLDWATER INSTITUTE

Sincerely,



Daniel B. Winslow
President
Ben Robbins
Senior Staff Attorney
NEW ENGLAND LEGAL FOUNDATION

cc. Mr. Geoffrey Snyder, Commissioner, Massachusetts Department of Revenue