

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: xx Penalty Overturned in Full _____Penalty Upheld
 __ Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date: May 9, 2017

Decision Date: May 22, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The appellant appeared at the hearing which was held by telephone on May 9, 2017. The procedures to be followed during the hearing were reviewed with Appellant who was then sworn in. Exhibits were marked and admitted in evidence with no objection from the appellant. Appellant testified. At the end of the hearing, the record was left open until May 26, 2017 to give the appellant time to submit additional evidence. A document was received from the appellant on May 15, 2017. It has been marked as an exhibit and admitted in evidence. The record is now closed.

The hearing record consists of the appellant's testimony and the following documents which were admitted in evidence:

- Exhibit 1: Appeal Case Information from Schedule HC 2016
- Exhibit 2: Statement of Grounds for Appeal-2016 signed and dated by Appellant on February 14, 2017 with letter in support attached
- Exhibit 3: Notice of Hearing sent to Appellant dated April 18, 2017 for May 9, 2017 hearing
- Exhibit 4: Appellant's Form MA1099-HC, dated January, 2017

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FINDINGS OF FACT

The record shows, and I so find:

1. Appellant, who filed a 2016 Massachusetts tax return as a single person with no dependents claimed, was 51 years old in 2016 (Exhibit 1).
2. Appellant lived in Worcester County, MA in 2016 (Exhibit 1).
3. Appellant's Federal Adjusted Gross Income for 2016 was \$29,240 (Exhibit 1).
4. Appellant was employed from January through May, 2016. Before taxes, Appellant earned about \$3,000 a month. Appellant left the job at the end of May and was unemployed until September 14, 2016. The appellant was not offered health insurance through employment at this job (Testimony of Appellant, Exhibit 2 attachment).
5. Appellant had no income from June through mid-September, 2016 (Testimony of Appellant, Exhibit 2 attachment).
6. Appellant had MassHealth coverage in January and February, 2016. The coverage was cancelled because Appellant earned too much. Appellant did not indicate on the Massachusetts tax return for 2016 that Appellant had MassHealth coverage in January and February. After the appellant lost the MassHealth coverage, Appellant tried to find a plan through the Connector, but Appellant felt the plans were not affordable (Testimony of Appellant, Exhibits 1, 2 attachment, 4).
7. Appellant was offered health insurance through the job Appellant started in September, 2016, but Appellant could enroll only after a 90-day probationary period. Appellant enrolled in an insurance plan in November, 2016 (Testimony of Appellant, Exhibit 2 attachment).
8. As of the date of this hearing, Appellant was still insured through employment (Testimony of Appellant).
9. Appellant was uninsured from March through October, 2016. Appellant has been assessed a tax penalty for seven months because the MassHealth coverage Appellant had in 2016 was not reported on Appellant's tax return. The appellant has appealed this assessment, claiming that the cost of purchasing health insurance would have caused a serious deprivation of basic necessities (Exhibits 1, 2, 4, Testimony of Appellant).

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10. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2016 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate affordability and premium schedules adopted by the Board of Directors for the Commonwealth Health Insurance Connector Authority for 2016. Table 2 sets forth income at 300% of the Federal poverty level and Tables 5 and 6 set forth tax penalties in effect for 2016.

11. According to Table 3 of Schedule HC for 2016, the appellant with no dependents claimed, and with an adjusted gross income of \$29,240 could afford to pay \$102 per month for health insurance. According to Table 4, Appellant, age 51 and living in Worcester County, could have purchased insurance for \$314 per month.

12. Private insurance was unaffordable for the appellant in 2016 (Schedule HC for 2015).

13. According to Table 2 of Schedule HC for 2016, Appellant who earned less than \$35,310 per year would have been eligible for the Connector Care program (Table 2 of Schedule HC-2016, Exhibit 1).

14. Appellant did not incur significant and unexpected increases in essential expenses as a result of domestic violence; the death of a spouse, family member, or partner who shared household expenses; the sudden responsibility for providing full care for an aging parent or other family member; or fire, flood, or other natural or man-made disaster in 2016 (Testimony of Appellant).

15. Appellant fell more than thirty days behind in rent payments in 2016 after Appellant became unemployed (Testimony of Appellant).

16. Appellant's telephone was shut-off during 2016 (Testimony of Appellant).

17. Appellant had the following monthly expenses for basic necessities in 2016: rent-\$900; electricity-\$70; heat-\$100; telephone-\$100; food-\$380 on average; gas for car-\$200; car insurance-\$80; clothing-\$40. The appellant paid approximately about \$400 a month for old credit card debt (Testimony of Appellant).

ANALYSIS AND CONCLUSIONS OF LAW

The issue on appeal is whether the tax penalty assessed by the Massachusetts Department of Revenue for 2016 should be waived, either in whole or in part.

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G.L.c. 111M, § 2, also called the “individual mandate,” requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable” under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority. Residents who do not obtain insurance are subject to a tax penalty for “each of the months” that the individual did not have health insurance as required by the individual mandate. There is a three-month grace period to allow the taxpayer to obtain health insurance coverage or to make the transition between health insurance policies. See G. L. c. 111M, sec. 2(b) and for Tax Year 2010, Administrative Bulletin 03-10: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, which interprets the 63-day gap in coverage to be three months. The Connector’s regulations provide for a waiver of the tax penalty in the case of a financial hardship. See 956 CMR 6.08.

On Appellant’s Massachusetts tax return for 2016, Appellant indicated that Appellant had no health insurance from January through October. Appellant has been assessed a tax penalty for seven months only since Appellant is entitled to a three-month grace period after losing coverage. The appellant appealed this assessment, claiming that the cost of purchasing health insurance would have caused a serious deprivation of basic necessities. Exhibits 1 and 2. In fact, there was an error on Appellant’s tax return. Appellant actually had MassHealth coverage in January and February. See Exhibit 4. Because of this, the penalty assessed for those two months is waived. Appellant should only be assessed a penalty for five months, June through October. This assessment is what is under appeal.

To determine if the penalty should be waived in whole or in part, we must consider whether affordable insurance which met minimum creditable coverage standards was available to the appellant through employment, through the private market, or through a government-sponsored program. If affordable insurance was available, we must determine if such insurance was, in fact, not affordable to the appellant because Appellant experienced a financial hardship as defined in 956 CMR 6.08.

According to Table 3 of Schedule HC for 2016, appellant with no dependents claimed, and with an adjusted gross income of \$29,240 could afford to pay \$102 per month for health insurance. According to Table 4, Appellant, age 51 and living in Worcester County, could have purchased insurance for \$314 per month. See 956 CMR 6.05 (1)(2), Schedule HC Tables 3 and 4, and Exhibit 1. Private insurance was not affordable for the appellant.

Appellant was not offered health insurance through employment until November, 2016. Once Appellant was offered coverage, Appellant enrolled in the plan offered. Appellant, as of the date of this hearing, was still insured. See the testimony of the appellant which I find credible and Exhibit 1.

According to Table 2 of Schedule HC for 2016, Appellant, earning more than

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\$35,310 per year and having no access to employer-sponsored coverage, would have been eligible for the Connector Care program after Appellant lost the MassHealth coverage at the end of February. See Table 2 of Schedule HC-2016 and 956 Code of Massachusetts Regulations 12.00 et. seq.

Since affordable health insurance was available to the appellant, we need to determine whether pursuant to 956 Code of Massachusetts Regulations 6.08, a hardship exception is applicable in this matter. Appellant claimed that the cost of purchasing health insurance would have caused the appellant to suffer a serious deprivation of basic necessities. See Exhibit 2 and 956 CMR 6.08(1)(e).

Appellant had the following monthly expenses for basic necessities: rent- \$900; electricity-\$70; heat-\$100; telephone-\$100; food-\$380 on average; gas for car-\$200; car insurance-\$80; clothing-\$40. The appellant paid approximately about \$400 a month for old credit card debt. See the testimony of the appellant which I find to be credible. These expenses amounted to approximately \$1,870 a month, not taking into account the \$400 a month that the appellant had to pay for old credit card debt.

During the months of June through September, Appellant was unemployed and had no source of income with which to pay the monthly expenses for basic necessities. During October, Appellant was employed, but was just getting over months of unemployment. In addition, Appellant fell behind in rent payments during this period; Appellant's phone was shut off.

Based upon the facts summarized above, I determine that the appellant had a financial hardship such that the cost of purchasing health insurance would have caused a serious deprivation of basic necessities. See 956 CMR 6.08(1)(e), and 6.08 (3) which allows the Connector to consider other issues raised by the appellant when determining hardship; and 6.08(1) (a) and (b) which provide that falling more than 30 days behind in rent and having a basic utility such as telephone shut off constitute a financial hardship.

Appellant's penalty is waived. Appellant experienced a financial hardship such that insurance was unaffordable. I also note that Appellant obtained insurance as soon as Appellant was eligible to enroll through employment. Appellant was still insured as of the date of this hearing.

Appellant should note that any waiver granted here is for 2016 only and is based upon the specific facts I have found to be true and should not assume that the same determination will be made should Appellant be assessed a penalty in the future.

PENALTY ASSESSED

Number of Months Appealed: 7 Number of Months Assessed: 0

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If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Hearing Officer

Cc. Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: ___**X**___ Penalty Overturned in Full ___ ___ Penalty Upheld
 ___ Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date:
May 25, 2017

Decision Date:
May 29, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on May 25, 2017

The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Notice of Hearing dated May 1, 2017. (four pages)

Exhibit 2: Appeal Case Information from form Schedule HC. (one page)

Exhibit 3: Statement of Grounds for Appeal dated March 6, 2017 with documents regarding health insurance. (nine pages)

FINDINGS OF FACT

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The record shows, and I so find:

1. The Appellant is 28 years old and is single. Appellant lives in Franklin County.
2. Appellant is employed in Farm management. Appellant's employer did not offer health insurance in 2016.
3. Appellant does have health insurance in 2017.
4. Appellant had health insurance in 2016 for the months of January through August and November and December. (See 2 1095-B forms, Exhibit 3)
5. The Appellant submitted a written Statement of Appeal dated March 6, 2017, stating that "Other", which in this case was that he had insurance in 2016, except for two months.

ANALYSIS AND CONCLUSIONS OF LAW

G.L c. 111M, § 2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty.

The Appellant submitted a written Statement of Appeal dated March 6, 2017, stating that "Other", which in this case was that he had health insurance in 2016, except for two months.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage "so long as it is deemed affordable" under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level ("FPL") are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release ("TIR") 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$17,655.00 for a single person

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with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at Health Connector website <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Appellant provided proof that Appellant had health insurance for ten months of the year in 2016. Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **UPHELD**, and the 2016 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2016.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

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Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: ___**X**___ Penalty Overturned in Full ___ ___ Penalty Upheld
 ___ Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date:
May 25, 2017

Decision Date:
May 29, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on May 25, 2017

The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Notice of Hearing dated May 1, 2017. (four pages)

Exhibit 2: Appeal Case Information from form Schedule HC. (one page)

Exhibit 3: Statement of Grounds for Appeal dated March 8, 2017 with documents.
(ten pages)

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FINDINGS OF FACT

The record shows, and I so find:

1. The Appellant is 30 years old and is single. Appellant lives in Norfolk County.
2. Appellant is employed in retail sales. Appellant's employer did offer health insurance in 2016 at the rate of approximately \$100.00 per month.
3. Appellant does have health insurance in 2017.
4. The Appellant's monthly expenses totaled \$1,640.00, consisting of rent \$700.00, car payment \$323.00, car insurance \$200.00, car gas \$80.00, student loan \$7.00, food \$160.00, credit card \$120.00, entertainment \$20.00, toiletries \$30.00.
5. The Appellant submitted a written Statement of Appeal dated March 8, 2017, stating that "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.
6. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2016.
7. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant may have been eligible for subsidized health insurance, since Appellants income of \$26,145.00 was less than \$35,310.00. The monthly premium for health insurance available on the private market in Norfolk County for a 29 year old single person with zero dependents was \$143.00. The tables reflect that Appellant could afford \$91.50. This is more than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

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ANALYSIS AND CONCLUSIONS OF LAW

G.L.c. 111M, § 2, also called the “individual mandate”, requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty.

The Appellant submitted a written Statement of Appeal dated March 8, 2017, stating that “During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$17,655.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2016 income was more than 150 percent of the FPL, making him potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to him in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private insurance market. See 2016 Schedule HC Instructions and Worksheets, *supra*.

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Appellant reported a federal AGI of \$26,145.00 in 2016, and Appellant's filing status was single with no dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$91.50 monthly for health insurance. See 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to him from the Premium Tables, at a cost of \$143.00 monthly for coverage with zero dependents and his employer did offer health insurance at a rate of approximately \$100.00 per month, neither of which Appellant could afford. *Id.* at Table 4.

Appellants are subject to the tax penalty unless appellants demonstrate a hardship. 956 Mass. Code Regs. 6.07(1) (2008). To prevail on a hardship appeal, an appellant must establish that "based on all his circumstances, minimum creditable coverage was not affordable to him[er] because [s]he experienced a hardship." *Id.* at 6.08(1).

Appellant is deemed to afford \$91.50 for health insurance coverage because of his income. Private insurance in the market place was \$143.00 per month. On these facts, I find that Appellant has shown that he was precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that he is exempt from a tax penalty for his non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **UPHELD**, and the 2016 penalty assessed is **OVERTURNED**.

PENALTY ASSESSED

Number of Months Appealed: ___12___ Number of Months Assessed: ___0___

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2016

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NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Cc: Connector Appeals Unit

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FINAL APPEAL DECISION

Appeal Decision: ___ Penalty Overturned in Full Penalty Upheld
 ___ Penalty Overturned in Part

Hearing Issue: Appeal of the 2016 Tax Year Penalty

Hearing Date:
May 25, 2017

Decision Date:
May 29, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The Appellant appeared at the hearing, which was held by telephone on May 25, 2017

The hearing record consists of the Appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Notice of Hearing dated May 1, 2017. (four pages)

Exhibit 2: Appeal Case Information from form Schedule HC. (one page)

Exhibit 3: Statement of Grounds for Appeal dated March 8, 2017 with documents. (ten pages)

FINDINGS OF FACT

The record shows, and I so find:

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1. The Appellant is 38 years old and is single. Appellant lives in Bristol County.
2. Appellant is employed in teaching sports. Appellant's employer does not offer health insurance.
3. Appellant does not have health insurance in 2017.
4. Appellant stated that Appellant lost her job and her new job pays less and does not offer health insurance. Appellant lost her roommate in 2015 and had less help in paying the mortgage on her house. One of Appellant's dogs became sick and Appellant had to pay medical bills for the dog's care.
5. The Appellant's monthly expenses totaled \$3,777.00, consisting of mortgage \$1,600.00, heat and electricity \$130.00, internet and cable \$170.00 cell phone \$87.00, car insurance \$130.00, car gas \$60.00, food \$400.00, credit card \$900.00, entertainment \$20.00, loan for car repairs \$50.00, dog expense \$250.00.
6. The Appellant submitted a written Statement of Appeal dated March 2, 2017, stating that "During 2016, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.
7. I take administrative notice of the information set forth in tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 & 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2016. Table 1 sets forth the income eligibility standards for various family sizes at 150% of the federal poverty level and Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized health insurance program. See Mass. G.L. c. 118H, s.3(a)(1). Tables 5 and 6 set forth the tax penalties for 2016.
8. Based on the appellant's federal adjusted gross income and the above referenced tables, I find the appellant would not have been eligible for subsidized health insurance, since Appellants income of \$46,350.00 was more than \$35,310.00. The monthly premium for health insurance available on the private market in Bristol County for a 37 year old single person with zero dependents was \$221.00. The tables reflect that Appellant could afford \$293.55. This is less than what the appellant is deemed to afford. (Tables 2, 3 & 4 of the Schedule HC Instructions)

CONNECTOR APPEALS UNIT

ANALYSIS AND CONCLUSIONS OF LAW

G.L. c. 111M, § 2, also called the “individual mandate”, requires every adult resident of Massachusetts to obtain insurance coverage “[s]o long as it is deemed affordable.” Residents who do not obtain insurance are subject to a tax penalty.

The Appellant submitted a written Statement of Appeal dated March 2, 2017, stating that “During 2015, the expense of purchasing health insurance would have caused a serious deprivation of food, shelter, clothing or other necessities.

The Health Care Reform Act of 2006 requires every adult resident of Massachusetts to obtain and maintain creditable insurance coverage “so long as it is deemed affordable” under the schedule established by the board of the Connector. Mass. Gen. Laws ch. 111M, § 2(a). Massachusetts residents who fail to indicate on their state tax returns that they obtained the mandated creditable coverage are subject to a tax penalty for each month in which that the individual did not have creditable health insurance. *Id.* at § 2(b). However, individuals with incomes up to 150 percent of the Federal Poverty Level (“FPL”) are not subject to any penalty for non-compliance with the individual mandate. See Massachusetts Department of Revenue Technical Information Release (“TIR”) 13-1, available at <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-1.html>. For 2016, 150 percent of the FPL was \$17,655.00 for a single person with zero dependents. *Id.* In addition, a lapse in coverage of 63 days or less is not subject to the section 2(b) penalty. See Administrative Bulletin 03-10 (Dec. 7, 2010), available at <https://www.mahealthconnector.org/portal/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/Health%2520Care%2520Reform/Regulations/documents/Administrative%20Information%20Bulletin%2003-10.pdf>; see also 830 Mass. Code Regs. 111M.2.1(5)(c) (2008). Thus, no penalty is imposed for lapses in coverage consisting of three or fewer consecutive calendar months. *Id.*

Since Appellant’s 2016 income was more than 150 percent of the FPL, making Appellant potentially subject to an individual mandate penalty, the threshold issue to be addressed is whether creditable health insurance coverage was affordable to Appellant in 2016. In determining affordability, consideration is given first to the amount Appellant is deemed able to afford for health insurance premiums under the Affordability Schedule and second to the cost of health insurance that was available through employer-sponsored plans, government-subsidized programs or on the private

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insurance market. *See* 2016 Schedule HC Instructions and Worksheets, *supra*.

Appellant reported a federal AGI of \$46,350.00 in 2016, and Appellant's filing status was single with no dependents. EX 2. According to the Affordability Schedule established by the Connector's board and included in the Instructions and Worksheets of the 2016 Massachusetts Schedule HC, Appellant could afford to pay \$293.55 monthly for health insurance. *See* 2016 Schedule HC Instructions and Worksheets, *supra* at Table 3. Private insurance would have been available to Appellant from the Premium Tables, at a cost of \$221.00 monthly for coverage with zero dependents and Appellant's employer did not offer health insurance. *Id.* at Table 4.

Appellants are subject to the tax penalty unless appellants demonstrate a hardship. 956 Mass. Code Regs. 6.07(1) (2008). To prevail on a hardship appeal, an appellant must establish that "based on all his circumstances, minimum creditable coverage was not affordable to him[er] because [s]he experienced a hardship." *Id.* at 6.08(1).

Appellant is deemed to afford \$293.55 for health insurance coverage because of Appellant's income. Private insurance in the market place was \$221.00 per month. On these facts, I find that Appellant has not shown that Appellant was precluded from purchasing affordable health insurance during 2016. 956 Mass. Code Regs. 6.08(3) (2008). Accordingly, I conclude that Appellant is not exempt from a tax penalty for Appellant's non-compliance with the individual mandate.

Accordingly, Appellant's appeal is **DENIED**, and the 2016 penalty assessed is **UPHELD**.

PENALTY ASSESSED

Number of Months Appealed: ___12___ Number of Months Assessed: ___12___

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2016 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2016.

CONNECTOR APPEALS UNIT

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

Cc: Connector Appeals Unit

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: x Penalty Overturned in Full
 _____ Penalty Upheld
 _____ Penalty Overturned in Part

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: December 1, 2016

Decision Date: May 12, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on December 1, 2016. The hearing record was left open at the conclusion of the testimony to permit the appellant to submit additional evidence regarding the benefits offered by the appellant's out-of-state health insurance plan. The appellant failed, however, to submit any additional evidence by the deadline. Accordingly, the evidence consists of the appellant's testimony and the following documents which were admitted into evidence at the hearing:

- Exhibit 1: Appeal Case Information from Schedule HC
- Exhibit 2: Statement of Grounds for Appeal - 2015 (June 3, 2016)
- Exhibit 2A: Typewritten letter from appellant (June 6, 2016)
- Exhibit 2B: Letter from appellant's health insurer (June 6, 2016)
- Exhibit 3: Notification of Hearing (November 7, 2016)

FINDINGS OF FACT

The record shows¹, and I so find:

¹ The findings are all taken from the appellant's testimony, unless an exhibit is specifically cited.

CONNECTOR APPEALS UNIT

1. During 2015, the appellant was 22/23 and single with no dependents. The appellant lived in Suffolk County, Massachusetts.
2. During 2015, the appellant was a graduate student and was insured under their father's health insurance plan with a Florida insurer through the father's employer.² The appellant started working full-time in October 2015, and enrolled in their employer's Massachusetts health insurance plan starting in November 2015. (Testimony & Exhibit 2A)
3. Although afforded the opportunity to do so, the appellant presented no evidence as to whether their Florida health insurance complied with Massachusetts minimum creditable coverage (MCC) standards and, if it did not, the extent to which the benefits were non-compliant.
4. The appellant filed their 2015 income tax return as single with no dependents. The appellant's adjusted gross income was \$37,471. The appellant reported on their Schedule HC, filed with the 2015 income tax return, that the appellant had MCC-compliant coverage during November and December (only), and they were assessed a seven-month penalty. (Exhibit 1)
5. The appellant filed a Statement of Grounds for Appeal - 2015, dated June 3, 2016, stating as the ground for appeal "Other" and attaching a letter dated June 6, 2016, setting forth the circumstances described above and a letter from their Florida health insurance carrier. The appellant also stated in this letter that they had MCC coverage for 2015 under their Florida health insurance plan, relying on the Florida insurer's letter. I find that this letter establishes that the appellant was covered by health insurance during 2015, but not that the coverage complied with MCC standards. (Exhibits 2, 2A & 2B)

ANALYSIS AND CONCLUSIONS OF LAW

Mass.G.L c. 111M, §2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain insurance coverage that complies with MCC standards, "[s]o long as it is deemed affordable." Residents who do not obtain such insurance are subject to a tax penalty.

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply because they had compliant coverage during the entire year.

The appellant had the burden of proving that they had MCC-compliant insurance. Since, as I have found, the appellant failed to establish this fact, I conclude that their Florida health insurance was not MCC-compliant.

² Although it is technically not the correct usage, "they," "them" etc. will be used to refer to the appellant rather than "he," "him" etc. or "she," "her" etc. to help maintain the confidentiality of the appellant's identity.

CONNECTOR APPEALS UNIT

Appellant was insured by an MCC-compliant insurer for only part of the year. Appellant did not have such insurance in the months of January to October, a total of 10 months. According to Mass.G.L. c. 111M, §2, residents are permitted a 63-day gap between periods of coverage without facing a penalty. This 63-day gap in coverage is interpreted under Administrative Bulletin 03-11: Guidance Regarding M.G.L. c. 111M and M.G.L. c. 176Q, as implemented by 956 CMR 6.00, to be three months. As a result, gaps of three months are not subject to penalty. Thus, the appellant is appealing the penalty of seven months.

The issue becomes whether the appellant should be excused from failing to meet the individual mandate requirements during the time that the appellant was covered by their father's Florida insurer. The appellant was a graduate student who was still covered by their father's health insurance since they were under 26. As soon as the appellant started a full-time job, they enrolled in their Massachusetts employer's plan and secured compliant health insurance. Under these circumstances, and notwithstanding the appellant's failure to introduce evidence of the scope of their health insurance benefits, I conclude that the penalty should be waived in full.

PENALTY ASSESSED

Number of Months Appealed: 7 Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2015.

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: x Penalty Overturned in Full

_____ Penalty Upheld

_____ Penalty Overturned in Part

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: December 1, 2016

Decision Date: April 27, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The appellant appeared at the hearing, which was held by telephone on December 1, 2016. The hearing record consists of the appellant's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC

Exhibit 2: Statement of Grounds for Appeal - 2015 (June 8, 2016)

Exhibit 2A: Typewritten letter from appellant (June 8, 2016)

Exhibit 2B: Letter from appellant to Connector (April 5, 2015)

Exhibit 2C: "Results" printout

Exhibit 2D: Memo from Connector dismissing appeal regarding government-subsidized benefits (March 25, 2015)

Exhibit 2E: Fax cover sheet transmitting documents (February 8, 2015)

CONNECTOR APPEALS UNIT

- Exhibit 2F: Fax cover sheet transmitting document (March 2, 2015)
- Exhibit 2G: Affidavit regarding appellant's residence (March 2, 2015)
- Exhibit 2H: Acknowledgment Notice regarding appellant's voter registration (January 28, 2015)
- Exhibit 2I: Letter regarding marketplace coverage (September 17, 2014)
- Exhibit 2J: Miscellaneous materials (4 pp.)
- Exhibit 2K: Business card of health insurance outreach/enrollment worker
- Exhibit 2L: 2015 Schedule HC
- Exhibit 3: Notification of Hearing (November 7, 2016)

FINDINGS OF FACT

The record shows¹, and I so find:

1. The appellant moved to Norfolk County, Massachusetts from New Hampshire in February 2015. During 2015, the appellant was 62/63. (Testimony & Exhibit 2A)
2. The appellant was unemployed during all of 2015, except for some temporary work in December.
3. In January 2015, in anticipation of moving to Massachusetts, the appellant started to investigate MassHealth coverage. The appellant submitted an application on January 21, 2015, but information proving the appellant's identity, such as a voter identification card or U.S. passport or passport card, was requested by the Connector in order to process the application. On February 8, 2015, the appellant faxed a copy of their passport and an acknowledgment of their voter registration from their town.² (Testimony & Exhibits 2A, 2B, 2E & 2H)
4. By letter dated February 12, 2015, the Connector requested further information proving the appellant's residence in Massachusetts. On March 2, 2015, the appellant faxed a notarized affidavit supporting the appellant's residency. (Testimony & Exhibits 2A, 2B, 2F & 2G)
5. After submitting this additional information, the appellant did not receive any determination of eligibility from the Connector. The appellant called the Connector multiple times and sent a lengthy

¹ The findings are all taken from the appellant's testimony, unless an exhibit is specifically cited.

² Although it is technically not the correct usage, "they," "them" etc. will be used to refer to the appellant rather than "he," "him" etc. or "she," "her" etc. to help maintain the confidentiality of the appellant's identity.

CONNECTOR APPEALS UNIT

letter dated April 5, 2015, to no avail. The appellant's online account stated "pending awaiting to prove residency." (Testimony & Exhibits 2A & 2B)

6. The appellant began full-time employment in 2016 and enrolled in their employer's health plan as soon as they became eligible. (Testimony & Exhibit 2A)

7. The appellant filed their 2015 income tax return as single with no dependents. The appellant's annual adjusted gross income was \$23,050. The appellant reported on their Schedule HC, filed with their 2015 income tax return, that the appellant had no health insurance during 2015, and the appellant was assessed a 12-month penalty. (Exhibit 1)

8. The appellant filed a Statement of Grounds for Appeal - 2015, dated June 8, 2016, stating as the ground for appeal "Other" and "see all attached documentation." The appellant submitted documentation describing the circumstances set forth above. (Exhibits 2 & Exhibits 2A-2K)

9. I take administrative notice of the information set forth in Tables 1 through 6 in the Department of Revenue Schedule HC Health Care Instructions and Worksheets (Schedule HC Instructions). Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors of the Commonwealth Health Insurance Connector Authority for 2015. Table 2 sets forth the income eligibility standards for various family sizes at 300 per cent of the federal poverty level, which is the income eligibility standard for the government-subsidized Commonwealth Care health insurance program. See Mass.G.L. c. 118H, §3(a)(1). Tables 5 and 6 set forth the tax penalties in effect for 2015.

10. Health insurance is potentially available through three sources in Massachusetts: (1) a government-subsidized program; (2) an employer-sponsored health plan; or (3) a private health plan for individuals. Looking at government-subsidized insurance first, the appellant was income-eligible for MassHealth or ConnectorCare, although their unsuccessful efforts to enroll are described above. Employer-sponsored health insurance was not an option since the appellant was unemployed. Looking finally at private health plans, the appellant was deemed able to afford \$52 per month for health insurance. A private health plan for a 62/63 year old in Norfolk County would have cost \$306 per month for an individual, and accordingly was not affordable. (Tables 2, 3 & 4 of the Schedule HC Instructions)

ANALYSIS AND CONCLUSIONS OF LAW

Mass.G.L. c. 111M, §2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty.

Appellant submitted a statement of grounds for this appeal, claiming that the individual mandate penalty did not apply here because they had attempted to apply for MassHealth and submitted all the requested information, but received no determination.

CONNECTOR APPEALS UNIT

Appellant was a resident of Massachusetts for only part of the year, starting in February 2015. A part-year resident's obligation to obtain health insurance begins on the first day of the third month following the beginning of residency, or May 1 in this case. This alone would reduce the appellant's penalty to eight months.

As discussed above, the only affordable health insurance option for the appellant was a government-subsidized program, for which the appellant was income-eligible. Based on the appellant's unsuccessful efforts to obtain coverage, however, this was not a viable option. The appellant obtained health insurance in 2016 as soon as it was available through their employer. Under these circumstances, I conclude that the penalty should be waived in full.

PENALTY ASSESSED

Number of Months Appealed: 12 Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2015 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2015.

CONNECTOR APPEALS UNIT

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

CONNECTOR APPEALS UNIT

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full

Penalty Upheld

Penalty Overturned in Part

Hearing Issue: Appeal of the 2011 Tax Year Penalty

Hearing Date: February 8, 2017

Decision Date: May 12, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 CMR 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Mass. General Laws Chapter 111M, Section 4 and 956 CMR 6.07.

HEARING RECORD

The appellants are a married couple (Husband and Wife). Husband appeared on their behalf at the hearing, which was held by telephone on February 8, 2017. The hearing record consists of Husband's testimony and the following documents which were admitted into evidence:

Exhibit 1: Appeal Case Information from Schedule HC

Exhibit 2: Statement of Grounds for Appeal - 2011 (October 7, 2016)

Exhibit 2A: Statement of Appeal of Appellants for Tax Year 2011

Exhibit 2B: Husband's Employer's Salaried PPO Plan - Active for 2016

Exhibit 3: Final Appeal Decision for TY2012 (PA12-1817) (June 13, 2016)

Exhibit 4: Final Appeal Decision for TY2013 (PA13-1854) (December 9, 2016)

Exhibit 5: Notification of Hearing (January 19, 2017)

FINDINGS OF FACT

CONNECTOR APPEALS UNIT

The record shows¹, and I so find:

1. During 2011, the appellants were married and lived in Worcester County, Massachusetts. Husband was 56/57 and Wife was 57/58. They had three grown children. (Testimony & Exhibit 1)
2. Since October 2008, Husband has worked for a state agency in New York. He found this job approximately four years after being laid off from a prior job based in Massachusetts, and he took it because it came close to matching his former salary. He spends the work week in New York, and he commutes back and forth to Massachusetts, where Wife lives, on weekends. The cost of renting an apartment in New York and commuting to Massachusetts is approximately \$22,000 per year. (Testimony & Exhibit 2A)
3. Husband and Wife were enrolled in Husband's employer's health insurance plan. In order to keep seeing their doctors in Massachusetts, they enrolled in a PPO plan which was the most expensive option offered by his employer. Husband paid \$375 per month for the premium, and the total value of the plan was estimated to be about \$22,000-25,000 per year. It was a candidate for the "Cadillac Tax" under the Patient Protection and Affordable Care Act. The plan did not, however, meet Massachusetts Minimum Creditable Coverage (MCC) standards because it did not cover immunizations during 2011.² All other preventive care and screening services were covered. None of the plans offered by Husband's employer was MCC-compliant. (Exhibits 2A & 4)
4. The appellants reported on their Schedule HC, filed with their 2011 income tax return, that they had no MCC-compliant health insurance during 2011, and they were each assessed a 12-month penalty. (Exhibit 1)
5. The appellants submitted a Statement of Grounds for Appeal - 2011, dated October 7, 2016, stating as the ground for their appeal that during 2011, "[they] purchased health insurance that did not meet [MCC] standards, but it was close to or substantially met those requirements, and [they] felt that [their] circumstances prevented [them] from buying other insurance that met the requirements." They also submitted a letter stating that they had health insurance that substantially met MCC requirements, that their health insurance was the best offered by Husband's employer, that their health insurance benefits vastly exceeded MCC requirements in almost every way, and that it would be unreasonable to require them to obtain a duplicative policy that met MCC standards in addition to their employer-sponsored plan or to obtain another plan that was lesser in almost all respects than their employer-sponsored plan. (Exhibits 2 & 2A)

ANALYSIS AND CONCLUSIONS OF LAW

Mass.G.L c. 111M, §2, also called the "individual mandate", requires every adult resident of Massachusetts to obtain insurance coverage "[s]o long as it is deemed affordable." Residents who do not obtain insurance are subject to a tax penalty.

¹ The findings are all taken from the testimony, unless an exhibit is specifically cited.

² Since 2014, the appellants' plan has provided coverage for immunizations.

CONNECTOR APPEALS UNIT

Appellants submitted this appeal, claiming that the individual mandate penalty did not apply to them because they had employer-sponsored health insurance with a very rich benefit package that was noncompliant with MCC standards in an insubstantial way, and Husband's employer did not offer a compliant plan.

I conclude that the penalty should be waived in full. The appellants were unable to enroll in an MCC-compliant plan through Husband's employer, and they selected the most expensive option that was available with an excellent benefit package. The non-compliance from MCC standards was minimal, and so their health insurance substantially complied with MCC standards. The non-compliance has now been corrected.

PENALTY ASSESSED

Number of Months Appealed: 24 Number of Months Assessed: 0

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2011 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2011.

CONNECTOR APPEALS UNIT

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

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1. DOR Appeal Case Information from Schedule HC (1 page);
2. Appellants' Statement of Grounds for Appeal Form – 2015;
3. Appellants' List of 2015 Living Expenses (1 page)
4. Father's Letter in Support of Appeal (1 page, dated 11/15/16);
5. Appellants' 2015 IRS Form 1040 Joint Tax Return with Attachments (13 pages, dated 10/11/16);
6. Appointment of Appeals Authorized Representative and Fax Cover Sheet (2 pages, dated 3/27/17); and
7. Health Connector's Notice of Hearing (3 pages; dated 3/2/17).

FINDINGS OF FACT

I make the following findings of fact based on the testimony and exhibits and reasonable inferences from the evidence, applying the preponderance of the evidence standard.

1. I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellants on Schedule HC as part of the Appellants' 2015 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2014 Massachusetts Schedule HC Health Care Instructions and Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2014. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2015.¹

¹ The DOR Instructions are published online at the Department of Revenue website <http://www.mass.gov/dor/2015ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2015.

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3. DOR assessed an 8 month penalty against the Husband and an 8 month penalty against the Wife (total penalty = 16 months) on the Appellants' 2015 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Husband and Wife each had health insurance coverage in January 2015 but not for any of the remaining months in 2015. Exhibit 1. I find that the DOR's assessment is factually correct, based on both Exhibit 1 and on the hearing testimony. (The penalty calculation is 12 months minus 1 month insured = 11 months uninsured minus the 3-month administrative grace period = 8 penalty months per person.)

4. Both Husband and Wife signed and filed an appeal dated November 5, 2016, from the 2015 tax penalty assessment, but they did not check any ground for their appeal on the Statement of Ground for Appeal form. Exhibit 2.

5. At the beginning of 2015 the Husband was 57 years old (the Wife is younger), and the Appellants resided in [name of city or town omitted] in Bristol County, Massachusetts. Exhibit 1.

6. The Appellants' 2015 tax return was filed as a married couple with no dependents and reports \$47,072 in federal adjusted gross income (AGI). Exhibit 1. See also Exhibit 5, at line 37 (same).

7. The Appellant's 2015 AGI is slightly less than 300% of the federal poverty level for a two-person household (\$47,190). DOR Table 2.

8. Under DOR Table 3, the Appellants could afford to pay \$282 per month for health insurance in 2015. (The calculation is 7.20% multiplied by \$47,072 AGI = \$3,389.18 per year divided by 12 months = \$282.43 per month.)

9. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellants \$611 per month for coverage for a married couple with no dependents based on the Husband's age (55+ age bracket) and location in Massachusetts.

10. The Appellants presented estimates of their monthly living expenses that totaled \$7,503 per month or \$90,036 per year. The listed expenses appear to be reasonable (no backup documentation was presented) even though the expenses exceed their \$47,072 federal adjusted income for 2015. See Exhibit 3. See also Exhibit 5,

Massachusetts Health Connector Appeals Unit

Schedule A at line 10 (\$28,016 home mortgage interest paid compared to the \$46,260 mortgage payments reported for 2015 under Exhibit 3 (the mortgage payments include principal plus interest and tax payments)).

11. The Appellants have sustained financial reverses in recent years. They have used donations (or loans) from family members -- including an unspecified amount from the Wife's father -- to meet their expenses. Testimony and Exhibit 4 (father's letter).

12. The Appellants' federal adjusted gross income for 2014 (the year prior to this appeal) was \$72,682. Testimony.

13. The Husband was formerly self-employed as the proprietor of an irrigation and sprinkler business that closed at the end of 2014. The Husband was not employed in 2015, but he was not eligible for unemployment insurance benefits. Testimony. See also Exhibit 5, at line 7 (no wages reported) and at line 19 (no unemployment compensation reported).

14. The Wife is self-employed in a hair design business. Her income declined in 2015 because she reduced her working hours to care for her mother in the final year of her life. Testimony and Exhibit 4. See also Exhibit 5, at line 7 (no wages reported).

15. Most of the Appellants' household income in 2015 came from a piece of rental property. Exhibit 5, at line 17 (\$43,249). The Wife's business reported a \$2,177 loss for 2015. Exhibit 5, at line 12. See also Exhibit 5, Schedule C, at lines 7 and 29 (\$35,510 gross income less \$37,687 expenses).

16. Neither of the Appellants had health insurance through their businesses. Testimony and Exhibit 5, at line 29. The source of their health insurance coverage in January 2015 (see Exhibit 1), the cost of the insurance, and the reasons it was not continued after January – apart from the Husband's statement in the appeal hearing that it was not affordable – is unclear on the hearing record. (The Husband testified that his Wife was more familiar with the health insurance coverage, but she did not participate in the appeal hearing.)

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ANALYSIS AND CONCLUSIONS OF LAW

The case is before me on the Appellants' appeal from the Department of Revenue's (DOR) assessment of a tax penalty against both Husband and Wife as neither of them had health insurance coverage for the months of February through December 2015. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all Massachusetts residents, age 18 and older, "shall obtain and maintain" health insurance coverage, as long as it is "deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).² Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards ("MCC") in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 and 5.03.

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual mandate. Mass. General Laws c. 111M, sec. 2(b). There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector's Administrative Bulletin 03-10, applying Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2015 that the Appellant signed and filed in this case. See Exhibit 2.

In this case, it is undisputed that both Husband and Wife had health insurance coverage in January 2015 but not for the remainder of 2015. The Appellants seek relief from the penalty imposed by the Department of Revenue based on financial hardship.

² The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

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To start, the Appellants' position is supported by the objective standards set forth in the DOR tables. DOR Table 2 reflects that the Appellants' 2015 federal adjusted gross income was slightly less than 300% of the federal poverty level.³ Under DOR Tables 3 and 4 the Appellants could afford to pay \$282 per month for health insurance, but the premium would be \$611 per month. See, e.g., Findings of Facts, Nos. 7, 8 and 9, above.

The Appellants' financial hardship assertion is supported by other evidence submitted in support of their appeal. The principal evidence is that their household income had declined substantially from 2014 to 2015 due to the failure of the Husband's business and to the lowered earnings in 2015 from the Wife's business due to the time she devoted to the care of her mother during a fatal illness. This evidence is, in turn, supported by the evidence that the Appellants' expenses exceeded their earned income in 2015 and by the evidence that the Appellants had obtained financial support from family members. See, e.g., Findings of Fact, Nos. 6, 10, 11, 12 and 15, above.

Based on all the evidence in the hearing record, I conclude that it is appropriate to waive the entire penalty assessed against both Husband and Wife for 2015 under the Health Connector's financial hardship regulation. See 956 Code Mass. Regs. 6.08 (1) (e) (Appellants "experienced financial circumstances such that the expense of purchasing health insurance . . . would have caused [them] to experience a serious deprivation of food, shelter, clothing or other necessities.").

I add that the Appellants should not assume that penalties would similarly be waived for future years if an appeal is filed. In the first place, the Appellants' financial circumstances were in transition in 2015 and further changes in the future are likely. In addition, the Appellants should be prepared to make a showing that they attempted to obtain government-sponsored health insurance and demonstrate the result of that

³ Thus, the Appellants appear to be border-line eligible for government-subsidized health insurance. It is likely that a Health Connector financial eligibility determination would be complicated by the fact that neither of the Appellants had any wages and that the gross receipts from their self-employment and rental property were adjusted by business expenses. See, e.g., Exhibit 5 (federal tax return) and Findings of Fact, Nos. 13, 14 and 15, above. There is no evidence in the hearing record of an actual application or of an eligibility determination for health insurance coverage through either MassHealth or the Health Connector.

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application and to show the cost of the health insurance in comparison to their ability to pay the premium.

PENALTY ASSESSED

Number of Months Appealed: (Husband) 8 Number of Months Assessed: 0

Number of Months Appealed: (Wife) 8 Number of Months Assessed: 0

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

NOTIFICATION OF ASSESSMENT

The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2014 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2015.

Cc: Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

Massachusetts Health Connector Appeals Unit

FINAL APPEAL DECISION

Appeal Decision: Penalty Overturned in Full Penalty Upheld
 Penalty Overturned in Part

Hearing Issue: Appeal of the 2015 Tax Year Penalty

Hearing Date: May 8, 2017

Decision Date: May 22, 2017

AUTHORITY

This hearing was conducted pursuant to the Massachusetts General Laws, Chapter 111M, Chapter 176Q, Chapter 30A and 801 Code of Massachusetts Regulations 1.02 and the rules and regulations promulgated thereunder.

JURISDICTION

Any person aggrieved by the assessment or potential assessment of the individual mandate penalty may file an appeal, pursuant to the provisions of Massachusetts General Laws chapter 111M, section 4 and 956 Code of Massachusetts Regulations 6.07.

HEARING RECORD

The Appellant appeared for the hearing, which I conducted by telephone. A document was submitted on behalf of the Massachusetts Department of Revenue (DOR) prior to the hearing (Exhibit 1). The hearing record consists of the Appellant's testimony under oath and the following documents that were admitted into evidence as exhibits, including documents that the Appellant faxed to the Health Connector Appeals Unit after the close of the testimony pursuant to my Open Record Order (duplicate copies of documents are omitted).

Massachusetts Health Connector Appeals Unit

1. DOR Appeal Case Information from Schedule HC (1 page);
2. Utility Shut Off Notice, with Appellant's Handwritten Comments (1 page, dated 4/16/15);
3. Utility Shut Off Notice, with Appellant's Handwritten Comments (1 page, dated 6/18/15);
4. Appellant's Pre-Hearing Fax Cover Sheet (1 page, dated 5/8/17);
5. Health Connector's Notice of Hearing (3 pages; dated 4/18/17);
6. Hearing Officer's Open Record Order (1 page, dated 5/8/17)
7. Appellant's Post-Hearing Fax Cover Sheet with Appellant's Handwritten Comments (1 page, dated 5/8/17);
8. Appellant's Post Office Certified Mail Receipts (1 page, dated 3/28/17);
9. Appellant's Statement of Grounds for Appeal – 2015, with Appellant's Handwritten Comments (2 pages, dated 2/28/17);
10. Comcast Final Notice of Disconnection (1 page, dated 8/7/15); and
11. Appellant's Letter in Support of Appeal, with Appellant's Handwritten Comment (2 pages, dated 2/28/17);

FINDINGS OF FACT

I make the following findings of fact based on the testimony and exhibits and reasonable inferences from the evidence, applying the preponderance of the evidence standard.

1. I adopt the facts set forth in Exhibit 1 as my own findings of fact. Exhibit 1 is a computer printout prepared by the Massachusetts Department of Revenue (DOR) that extracts information submitted by the Appellant on Schedule HC as part of the Appellant's 2015 Massachusetts income tax return. The information in Exhibit 1 is consistent with the testimony and other documentary evidence at the hearing.

2. I take administrative notice of the financial information set forth in Tables 1 through 6 in the DOR 2014 Massachusetts Schedule HC Health Care Instructions and

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Worksheets. Tables 3 and 4 incorporate the affordability schedules adopted by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector) for 2014. See 956 Code Mass. Regs. 6.05. Table 2 sets forth income eligibility standards for various family sizes at 300% of the federal poverty level, which is the income eligibility standard for the ConnectorCare government subsidized health insurance program. Tables 5 and 6 set forth the tax penalties in effect for 2015.¹

3. DOR assessed a 5 month penalty on the Appellant's 2015 Massachusetts personal income tax return. Exhibit 1. The basis for the penalty assessment is that the Appellant was insured for the months of January – April 2015 (4 months) but not for the months of May – December 2015 (8 months). I find that the DOR's assessment is factually correct, based on Exhibit 1, on the Appellant's hearing testimony, and on the Appellant's letter in support of his appeal (Exhibit 11). (The penalty calculation is 12 months minus 4 months insured = 8 months uninsured minus the 3-month administrative grace period = 5 penalty months.)

4. At the beginning of 2015 the Appellant was 55 years old and resided in [name of city or town omitted] in Essex County, Massachusetts. Exhibit 1.

5. The Appellant's 2015 tax return was filed as a single person with no dependents and reports \$36,000 in federal adjusted gross income (AGI). Exhibit 1.

6. The Appellant's 2015 AGI is more than 300% of the federal poverty level for a one-person household (\$35,010). DOR Table 2.

7. Under DOR Table 3, the Appellant could afford to pay \$216 per month for health insurance in 2015. (The calculation is 7.20% multiplied by \$36,000 AGI = \$2,592 per year divided by 12 months = \$216 per month.)

8. Under DOR Table 4 (Region 2), health insurance coverage would have cost the Appellant \$306 per month for individual coverage at his age (55+ age bracket) and location in Massachusetts.

¹ The DOR Instructions are published online at <http://www.mass.gov/dor/2015ScheduleHCInstructions> and are also available in the state income tax forms supplied to taxpayers. See also DOR Technical Information Release (TIR) 12-7: Individual Mandate Penalties for Tax Year 2015.

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9. In 2015 the Appellant was self-employed as a full-time caretaker for an elderly person (his father). He does not receive health insurance benefits through his employment. Testimony and Exhibit 11.

10. In 2015 the Appellant received two notices from National Grid to disconnect his gas service for nonpayment of his utility bills: a notice dated April 16, 2015, for a \$806.73 overdue balance (Exhibit 2) and a notice dated June 18, 2015, for a \$294.98 overdue balance (Exhibit 3). In addition the Appellant received a notice dated August 7, 2015, from Comcast to disconnect his telephone and internet service due to a past due balance of \$189.48 and total balance due of \$359.25. Exhibit 10.

12. The Appellant had been insured by MassHealth for number of years prior to 2015. Testimony and Exhibit 11.

13. I credit the Appellant's testimony that during the open enrollment period in Fall 2014 he reenrolled in MassHealth for 2015 and that he thought he was enrolled in health insurance coverage for 2015. See also Exhibit 11. The Appellant's testimony is consistent with the information supplied by the Department of Revenue that shows that the Appellant was insured for the months of January through April 2015. See Exhibit 1.

14. In mid-2015 the Appellant learned that he was no longer insured by MassHealth, and he contacted the Health Connector about coverage. I credit the Appellant's testimony that the Health Connector's customer service representative informed him that he no longer qualified for MassHealth because his income was now greater than the financial eligibility standards and that he could not enroll in a Health Connector insurance plan until January 2017 due to the constraints imposed by the open enrollment period. See Exhibit 9 (listing "other" as a ground for appeal and attaching the Appellant's detailed letter in support of appeal (Exhibit 11, page 2)). The Appellant regained health insurance coverage through the Health Connector as of February 2017. Exhibit 11, page 2, and Testimony.

ANALYSIS AND CONCLUSIONS OF LAW

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The case is before me on the Appellant's appeal from the Department of Revenue's (DOR) assessment of a tax penalty because the Appellant did not have health insurance coverage every month 2015. The issue to be decided is whether the penalty should be waived, either in whole or in part. See Exhibits 1 and 2.

I begin by summarizing the legal rules that underlie this appeal. The tax penalty was enacted by the Massachusetts Legislature to encourage compliance with what is known as the "individual mandate" under the Massachusetts Health Care Reform Act of 2006. The individual mandate requires that all Massachusetts residents, age 18 and older, "shall obtain and maintain" health insurance coverage, as long as it is "deemed affordable" under the schedule set by the board of directors for the Commonwealth Health Insurance Connector Authority (Health Connector or Connector). Mass. Gen. Laws c. 111M, sec. 2 (a).² Any health insurance policy must also satisfy the Massachusetts minimum credible coverage standards ("MCC") in order to avoid the penalty. Mass. Gen. Laws c. 111M, sec. 2 (b). See also 956 Code Mass. Regs. 5.01 and 5.03.

If these requirements are not met, a tax penalty is assessed for "each of the months" that the person did not have health insurance, as required by the individual mandate. Mass. General Laws c. 111M, sec. 2(b). There is, however, a three-month grace period for any lapse in coverage to allow the taxpayer to make the transition between health insurance policies. Connector's Administrative Bulletin 03-10, applying Mass. Gen. Laws c. 111M, sec. 2 (b). See also DOR Instructions, at page HC-3. The Connector's regulations also provide for a "hardship" appeal from the assessment of a penalty. 956 Code Mass. Regs. 6.07 and 6.08. The grounds for a hardship appeal are summarized in the Statement of Grounds for Appeal – 2015 that the Appellant signed and filed in this case. See Exhibit 2.

The gist of the Appellant's argument in support of his appeal is that he made a "good faith effort to reenroll for 2015 and believed that I was enrolled in coverage." Exhibit 11, page 2. Once the Appellant learned that he was no longer covered by MassHealth his effort to enroll in government-sponsored health insurance through the Health Connector was unsuccessful until the beginning of 2017 due to the open enrollment period limitations. Even though the Appellant apparently no longer satisfied the financial eligibility standards for MassHealth coverage, the objective standards set forth in DOR Tables 3 and 4 indicate that he was not able to afford health insurance

² The schedule is reprinted in DOR Tables 3 and 4 referred to in this Decision.

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without a government subsidy in 2015. See, e.g., Findings of Fact, Nos. 7, 8 and 12-14, above.

Against this backdrop I elect to resolve this appeal favorably to the Appellant on the narrowest available grounds. The Appellant presented two written notices warning that his gas service would be terminated for nonpayment of his bills plus a written warning that his telephone/internet service would be terminated for nonpayment. Each of these notices was issued during the eight month period in 2015 for which the DOR assessed a penalty because the Appellant was no longer insured. See, e.g., Findings of Fact, Nos. 3 and 10, above. Consequently, I will waive the entire penalty assessed under the Health Connector's financial hardship regulations. See 956 Code Mass. Regs. 6.08 (1) (b) ("received a shut- off notice [for] essential utilities (gas, electric, oil, water, or telephone)"). See also 956 Code Mass. Regs. 6.08 (1) (e) ("[Appellant] experienced financial circumstances such that the expense of purchasing health insurance . . . would have caused him to experience a serious deprivation of food, shelter, clothing or other necessities.").

PENALTY ASSESSED

Number of Months Appealed: 5 Number of Months Assessed: 0

NOTIFICATION OF YOUR RIGHT TO APPEAL TO COURT

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court within thirty (30) days of your receipt of this decision.

NOTIFICATION OF ASSESSMENT

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The Connector has notified the Department of Revenue that, pursuant to its decision, you should be assessed a penalty for Tax Year 2014 for the amount equal to one half of the lowest cost health insurance plan available to you for each month you have been assessed the penalty, as listed above, plus applicable interest back to the due date of the return without regard to extension.

If the number of months assessed is zero (0) because your penalty has been overturned, the Connector has notified the Department of Revenue that you should NOT be assessed a penalty for Tax Year 2015.

Cc: Connector Appeals Unit