

Chapter 601: ESTATE TAX

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**SUMMARY:** This rule explains in further detail the estate tax laws of the State of Maine.

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**.01 DEFINITIONS**

The following definitions apply with respect to this rule and 36 M.R.S.A., Chapter 575, except as the context may otherwise require.

- A. Adjusted taxable gifts.** “Adjusted taxable gifts” has the same meaning as in the Internal Revenue Code (“Code”).
- B. Allowable deductions.** “Allowable deductions” means deductions from the federal gross estate as authorized under the Code, in calculating the federal taxable estate, excluding the state death tax deduction. “Allowable deductions” includes deductions taken by a Gap estate ~~or~~ that would have been allowable if the estate had been required to file a federal estate tax return.
- C. Alternate valuation date.** “Alternate valuation date” means the date of valuation of an estate other than the date of death, as determined under the Code. In the case of an estate that does not incur a federal estate tax, but is taxable to Maine, the alternate valuation must be determined under Code § 2032 as if the estate was taxable under federal law.
- D. Federal exclusion.** “Federal exclusion” means the applicable exclusion amount pursuant to the Code. The exclusion amount is the dollar value for which the calculated estate tax is exactly equal to the applicable unified credit.

- E. Federal tentative taxable estate.** “Federal tentative taxable estate” means the federal gross estate less allowable deductions.
- F. Gap estate.** “Gap estate” means the estate of a decedent where the value of the gross estate as of the decedent’s date of death or alternate valuation date is less than or equal to the federal exclusion amount but more than the Maine exclusion amount.
- G. Maine estate tax.** “Maine estate tax” means the amount of tax due in accordance with Title 36 M.R.S.A., Chapter 575 and this rule.
- H. Maine exclusion.** “Maine exclusion” means the applicable federal exclusion amount for Maine estate tax purposes under Title 36 M.R.S.A., Chapter 575. The exclusion amount is the dollar value for which the calculated estate tax is exactly equal to the applicable unified credit.
- I. Maine gross estate.** “Maine gross estate” means the federal gross estate, whether or not a federal estate tax return is required to be filed, modified by the value of Maine qualified terminable interest property and Maine elective property, adjusted for property located outside of Maine as follows. For resident decedents, the Maine gross estate excludes all real and tangible personal property physically located outside of Maine. For nonresident decedents, the Maine gross estate includes only real and tangible personal property, including such property that is part of Maine elective property, located in Maine.
- J. Maine gross estate tax.** “Maine gross estate tax” means the maximum federal credit in accordance with 36 M.R.S.A., Chapter 575.
- K. Pro forma federal Form 706.** “Pro forma federal Form 706” means federal Form 706 prepared as if it were required to be filed federally under the Code.
- L. Qualified domestic trust.** “Qualified domestic trust” has the same meaning as under the Code.
- M. Surviving spouse.** “Surviving spouse” means an individual who outlived the decedent and who was married, according to the laws of Maine, to the decedent at the time of the decedent’s death.
- N. Unified credit.** “Unified credit” has the same meaning as in the Code, §2010.

## **.02 FEDERAL LAW**

Generally, in appropriate circumstances, Maine Revenue Services shall look to federal law, including statutes, regulations, statements, policy and related case law for guidance when interpreting Maine estate tax law.

## **.03 FILING REQUIREMENTS**

### **A. Forms**

1. **Form 706ME.** Where the sum of the federal gross estate, adjusted taxable gifts and Maine elective property exceeds the Maine exclusion and where the estate includes property sourced to Maine, a personal representative must file a Maine Estate Tax return (Form 706ME) with required attachments within nine months of the decedent's date of death, unless an extension of time to file has been granted. If the estate is required to file a federal Form 706, a copy of that form, including all schedules and attachments (including Worksheet 706C) must be filed with the Form 706ME. If the estate is not required to file federal Form 706, a pro forma federal Form 706 must be attached to Form 706ME and must include all of the information, schedules and attachments that would be required if a federal return was required to be filed.
  2. **Form 706ME-EZ.** Where the sum of the federal gross estate, adjusted taxable gifts and Maine elective property is equal to or less than the Maine exclusion and where the estate includes property sourced to Maine, the personal representative may file Form 706ME-EZ at any time after date of death. The purpose of the form, along with a certificate of discharge of estate tax lien, is to request the release of the automatic statutory estate tax lien on real or tangible personal property for estates with no tax liability.
  3. **Certificates of Discharge of Estate Tax Lien.** A personal representative must file a Certificate of Discharge of Estate Tax Lien to request release of the automatic estate tax lien on Maine real property. A personal representative must file a Certificate of Discharge of Estate Tax Lien on Tangible Personal Property to request release of the automatic estate tax lien on personal property sourced to Maine.
- B. Attachments.** A personal representative must file attachments required by the State Tax Assessor. Required attachments may include, but are not limited to, appraisals, wills and trust documents, any estate tax, gift tax or fiduciary income tax return filed with the IRS or another state, proof of payment to another state, any document stating a request for an extension of time to file or pay, Life Insurance Statements (federal Forms 712), financial statements, pension or annuity plan documents or statements, bank and brokerage statements, and a detailed list of miscellaneous property and documentation of its value.
- C. Payment.** Payment of all estate tax shown to be due on the return must be paid within 9 months of the decedent's date of death, unless a request for an extension of time to pay has been granted by the State Tax Assessor. See section .03(F)(2) below.
- D. Amended Returns.** If the estate receives or becomes entitled to additional property that was not shown on the Maine estate tax return, the personal representative must file an amended Maine estate tax return within 90 days of the receipt of such property, even if the additional property does not result in an increase in the estate's liability shown on the Maine estate tax return. If Form 706 has been audited by the IRS and the IRS changed any item resulting in an increase in the estate's liability shown on the Maine estate tax return, the personal representative must file an amended Maine estate tax return with a copy of the federal statement of changes packet within 90 days of the change.
- E. Record Retention.** A personal representative must, for Maine estate tax purposes, retain complete records for the same period as required by the Code and regulations for estates that incur a federal estate tax, even if the estate has not incurred a federal estate tax.

**F. Extensions**

1. **Extension to File.** The State Tax Assessor may allow a reasonable extension up to eight months from the date that the Maine estate tax return would have originally been due absent any extension as long as a payment reasonably estimating the tax due has been submitted on or before the original due date. A payment of at least 90% of the tax due must be submitted to avoid late payment penalties. If a federal extension to file has been granted, a Maine extension to file is automatically granted equal to the federal extension period. If the federal extension that was granted is less than eight months, the Assessor may allow an extension up to a total of eight months upon the written request of the personal representative stating the reason for the extension request. If a federal estate tax return is not required, the State Tax Assessor may allow a reasonable extension up to eight months from the date that the return would have originally been due absent any extension upon written request of the personal representative.
2. **Extension to Pay.** In order to receive an extension to pay, the personal representative must request an extension in writing and show that the estate has an inability to pay by the original due date. The State Tax Assessor may mandate a bond or other security. An extension of time to pay will not exceed one year from the date that the tax was originally due, but the State Tax Assessor may grant successive extensions pursuant to 36 M.R.S.A. § 4069. Interest accrues on any amount of tax not paid by the original due date.

**G. Escrow Agreements.** Where appropriate and upon request of the personal representative, the State Tax Assessor may allow an estate to establish an escrow account in favor of Maine Revenue Services in lieu of the tax bond typically required by the probate court to secure the estimated estate tax liability.

**H. More than one personal representative.** If an estate has more than one personal representative, a list containing the name, address, telephone number, and social security number or tax identification number for each personal representative must be attached to the return.

**.04 MAINE GROSS ESTATE**

- A. Final federal determination.** When the federal government issues a final determination as to the inclusion in the federal gross estate of any item, the amount claimed as a deduction from the gross estate, or the federal credit for estates of decedents dying ~~prior to~~ after January 1, 2003 but before July 1, 2008, that issue is finally determined for Maine estate tax purposes. For estates of decedents dying on or after July 1, 2008 but before January 1, 2010, the State Tax Assessor is not bound by a final federal determination on the above issues and may determine the issue for Maine estate tax purposes within two years of the date the return was filed or was due to be filed, whichever is later.
- B. Sourcing of property.** Property is sourced to the Maine gross estate in accordance with section .07 below.
- C. Administrative expenses.** If a gap estate has administrative expenses included in the calculation of the pro forma federal Form 706 that are also included in the estate's federal

fiduciary return (Form 1041) for calculating the income tax for the estate, the estate must make an addition modification equal to the amount of the administrative expense deduction to the Maine fiduciary income tax return on Form 1041ME.

## **.05 GIFTS**

Generally, adjusted taxable gifts are added to the federal tentative taxable estate and Maine elective property in order to determine whether the estate has exceeded the Maine exclusion. As appropriate, the State Tax Assessor will disregard the gift and treat the decedent as the owner of the property. For instance, the State Tax Assessor will disregard gifts where a gift has not been completed, incidents of ownership were retained by the decedent, or where the gift otherwise would be disregarded under the Code, federal regulations, or policy.

## **.06 VALUATION**

- A. Determination.** The State Tax Assessor may, for Maine estate tax purposes, independently determine the value of an estate in accordance with the Code and federal regulations and policy even if there is a final federal determination with respect to the valuation of the assets of the estate. Generally, the value of the gross estate of the decedent is determined by the fair market value of all the decedent's assets at the time of death. The fair market value means the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion and both having reasonable knowledge of the relevant facts.
- B. Alternate valuation date.** The personal representative of an estate may elect to value the estate using the alternate valuation date as determined under the Code, § 2032. The State Tax Assessor may, for Maine estate tax purposes, independently determine the value of an estate on the alternate valuation date in accordance with the Code and federal regulations and policy even if there is a final federal determination with respect to the valuation of the assets of the estate.

## **.07 SOURCING OF ESTATE PROPERTY**

### **A. Property**

- 1. Real property.** Real property is sourced to the taxing jurisdiction in which it is physically located, regardless of whether the decedent was a Maine resident or nonresident.
- 2. Tangible personal property.** Tangible personal property is sourced to the taxing jurisdiction in which it was situated at the date of death. If an item of tangible personal property is temporarily situated in a taxing jurisdiction for repair or other temporary purpose, that item will be sourced to the taxing jurisdiction to which it is intended to be located after such repair or purpose.
- 3. Intangible property.** Intangible property is sourced to the taxing jurisdiction of the decedent's domicile. Intangible property includes, but is not limited to, bank

accounts, stocks, bonds and other cash accounts, except as provided by .07(C) and (D).

- B. Domicile.** The taxing jurisdiction in which an individual is domiciled is that individual's permanent legal residence. See the Maine Revenue Services publication *Guidance to Residency Status* for additional information.
- C. Residents.** For a resident decedent's estate, all real and tangible personal property located in Maine plus all intangible property is sourced to Maine. A credit may be allowed against the estate tax of a resident decedent's estate for constitutionally valid estate, inheritance, legacy and succession taxes actually paid to another jurisdiction upon the value of real or tangible personal property owned by the decedent, subject to such tax and included in the value of the decedent's intangible personal property subject to taxation under 36 MRSA 4063.

**D. Nonresidents**

- 1. Generally.** For a nonresident decedent's estate, all real and tangible personal property situated in Maine is sourced to Maine. If real or tangible personal property situated in Maine is sold by a decedent within six months prior to the date of death the proceeds are sourced to Maine in a nonresident decedent's gross estate.
- 2. Real or tangible personal property transferred to a trust or other pass-through entity.** Where a nonresident decedent during life transferred real or tangible personal property situated in Maine into a trust, limited liability company or other pass-through entity, the State Tax Assessor will look beyond the form of the transfer to the substance of the transaction to determine whether the decedent had an interest in the real or tangible personal property situated in Maine at the date of death. As appropriate, the State Tax Assessor will disregard the transfer and treat the decedent as the owner of the real or tangible personal property located in Maine.

If the trust, limited liability company or other pass-through entity in which the decedent has an interest does not actively carry on a business for the purpose of profit and gain, the entity will be disregarded for the purpose of including real and tangible personal property located in Maine in the Maine gross estate of the decedent.

Where a decedent transferred real or tangible personal property situated in Maine to a trust, limited liability company or other pass-through entity, the Assessor will determine whether the transfer was for a valid business purpose by looking at the economic realities of the transfer. Tax avoidance is not considered a valid business purpose.

Where a trust, limited liability company or other pass-through entity acquired real or tangible personal property situated in Maine other than from a bona fide sale for full and adequate consideration and the decedent retained a power or interest in the property which would bring the real or tangible personal property located in Maine within the decedent's federal gross estate, the Assessor will

disregard the entity and treat the property as personally owned by the decedent for purposes of valuing the estate and sourcing the real or tangible personal property located in Maine to Maine.

3. **Allocation of debt.** For nonresident decedents, the Maine estate tax is applied to the total value of the real and tangible personal property situated in Maine. If Maine real property is encumbered, only the direct debt against the property (debt used for the purchase, repair, maintenance or improvement of that property) is an allowable reduction of the value of that property.

## **.08 QUALIFIED TERMINABLE INTEREST AND MAINE ELECTIVE PROPERTY**

- A. **Qualified Terminable Interest Property.** Beginning with deaths in 2005, an estates-of a decedent with a surviving spouse may elect an estate deduction for assets that are eligible to be treated as qualified terminable interest property (“QTIP”) under the Code, § 2056(b)(7). The maximum allowable Maine QTIP deduction is the difference between the decedent’s federal exclusion amount or, if no federal return is required, the pro forma federal exclusion amount and the Maine exclusion amount. The Maine QTIP may not include property designated as federal QTIP property, nor may it include property included in adjusted taxable gifts. Maine QTIP property is tax-deferred for Maine estate tax purposes until the death of the surviving spouse. At the death of the surviving spouse, the remaining Maine QTIP property is revalued and is identified as Maine elective property which must be included in the surviving spouse’s taxable estate.
- B. **Maine Elective Property.** If a decedent was predeceased by a spouse whose estate elected a deduction for a Maine QTIP, the remaining property in the Maine QTIP must be included in the value of the estate of the surviving spouse as Maine elective property. The value of the Maine elective property is measured at the death of the surviving spouse and is added to the federal tentative taxable estate of the surviving spouse to calculate the Maine taxable estate. If the estate of the surviving spouse is based on the alternate valuation date, then the same alternate valuation date is to be used for valuation of the Maine elective property.

## **.09 QUALIFIED DOMESTIC TRUSTS “QDOT”**

If a federal Form 706-QDT is required, the estate must also file an amended Maine estate tax return, showing the taxable distribution as an increase to the predeceased spouse’s estate.

## **.10 LIABILITY**

A personal representative, trustee, grantee, donee or other beneficial recipient of the assets of an estate remains personally liable for the tax debt on the assets of an estate until that debt is paid.

## **.11 LIENS AND LIEN RELEASES**

An automatic lien for estate taxes, interest and penalties attaches to all Maine property owned by a decedent at death. The lien continues indefinitely until it is released.

When a personal representative of an estate files a completed Certificate of Discharge of Estate Tax Lien, the State Tax Assessor will release the lien upon a showing by the estate that all taxes, interest, and penalties have been paid or a determination by Maine Revenue Services that no tax is due.

The lien is released by operation of law only when the personal representative of the estate, a trustee, or surviving joint tenant of the property transfers the property for value as defined pursuant to Chapter 575. However, the lien continues to attach to any property that is transferred for less than its value or when transferred by any other party.

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STATUTORY AUTHORITY: 36 M.R.S.A. §112.

EFFECTIVE DATE:

January 7, 2008 – filing 2008-3

October 27, 2008