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# Guidance Document

## *Qualified Terminable Interest Property*

*An explanation of Maine  
qualified terminable interest property ("QTIP"),  
Maine elective property and how they relate to the Maine estate tax*

# SUMMARY OF MAINE QUALIFIED TERMINABLE INTEREST PROPERTY (“QTIP”) AND MAINE ELECTIVE PROPERTY

A federal Qualified Terminable Interest Property (“QTIP”) election/trust is a popular estate planning tool that allows for a decedent to control the eventual distribution of the trust assets, while at the same time providing more financial security for a surviving spouse during that spouse’s remaining life. A QTIP trust is funded with property that is includible in the federal marital deduction, but for which the ultimate distribution of funds (at the death of the surviving spouse) is determined by the first decedent.

A Maine QTIP election, on the other hand, is made for different purposes. The Maine QTIP election is claimed to maximize the federal estate tax exclusion without incurring immediate Maine tax liability. Beginning with 2005 deaths, estates of decedents with surviving spouses can elect to create a separate Maine QTIP trust, with a value up to the difference between the federal exclusion and the Maine exclusion (36 MRSA § 4062(2-B)). The election postpones Maine estate tax on the Maine QTIP property from the estate of a decedent (first decedent) with a surviving spouse to the estate of the surviving spouse (second decedent). The value of the QTIP trust is included in the federal taxable estate of the first decedent, but is treated as marital deduction property for Maine estate tax purposes.

The Maine QTIP trust/election must qualify as QTIP property under federal law. Additionally, the property included in a Maine QTIP trust may not be part of a federal QTIP election. This summary assumes that the QTIP trust created by the first spouse’s estate is qualified both federally and for Maine purposes and that the surviving spouse is a U.S. citizen.

The usual method for making a Maine QTIP election follows a two-step plan. After the death of the first spouse, an amount equaling the federal exclusion is transferred to the decedent’s federal taxable estate and the remaining assets are transferred to the surviving spouse and included in the marital deduction. The Maine QTIP trust is then funded with property included in the federal taxable estate having a value not exceeding the difference between the federal exclusion amount and the Maine exclusion amount (\$1,000,000 for 2006 - 08). After the election, the Maine taxable estate is equal to the federal taxable estate less the value of the Maine QTIP. Since the amount of the federal taxable estate is exactly equal to the federal exclusion, the estate owes no federal tax. Likewise, the value of the Maine taxable estate is equal to the Maine exclusion amount, so the estate owes no Maine estate tax.

When the second decedent dies, the federal taxable estate is increased by the value of the remaining Maine QTIP (now referred to as Maine elective property) to calculate the Maine taxable estate. It is important to note that the value of a QTIP trust may (and probably will) change from the date of death of the first spouse to the date of death of the surviving spouse.

For example, a husband dies in 2006, leaving behind an estate worth \$5 million. Upon his death, \$1 million is transferred to his children, \$3 million is passed directly to his wife and the remaining \$1 million is transferred to a QTIP-eligible trust. The estate does not make a federal QTIP election for the eligible property, but does make the election for Maine. Since the Maine QTIP trust is considered a direct transfer to the surviving spouse, it is treated as marital deduction property and is not taxable to Maine at this time. Since, however, the QTIP election was not made at the federal level, the eligible property is included as part of the federal taxable estate. Therefore, the husband leaves a federal taxable estate of \$2 million (an amount equal to the federal exclusion amount) and a Maine taxable estate of \$1 million (an amount equal to the Maine exclusion amount), net of the adjustment for the

Maine QTIP property. Thus, the estate tax liability in this example is zero at both the federal and state level.

The wife subsequently dies in 2007. Assume that her total estate consists of \$5 million plus the \$3 million passed directly to her by her husband's estate plus the current value of the Maine QTIP trust (Maine elective property), which has grown to a current value of \$1.2 million. The federal gross estate is equal to \$8 million (\$5 million + \$3 million). The Maine gross estate is equal to \$9.2 million (\$8 million federal gross estate + \$1.2 million Maine elective property).

For estates that include property both in Maine and another state, the gross Maine estate tax is reduced for property not taxable to Maine. The Maine estate tax is determined by multiplying the Maine gross estate tax by a fraction representing the percentage of Maine taxable property. The numerator of this fraction includes the value of property taxable to Maine and the denominator includes the value of the gross estate. For estates with Maine elective property, that property must be included in both the numerator and the denominator of the fraction. The entire value of Maine elective property is included in the denominator, while the numerator must include the value of Maine elective property taxable to Maine.

To illustrate, consider the wife who is the second decedent in the previous example. Her estate consisted of an \$8 million federal gross estate plus \$1.2 million of Maine elective property. She is a resident of Massachusetts at the time of her death and the \$8 million federal estate is made up of \$1 million in Maine property and \$7 million in Massachusetts property. The Maine elective property contains \$200,000 in Maine property. For purposes of calculating the Maine estate tax, the Maine fraction is  $(\$1,000,000 + \$200,000)/(\$9,200,000) = 0.130435$  or 13.0435%.

Maine Revenue Services will follow federal estate tax law in all cases where Maine law does not specifically deviate from federal law. All estates claiming a Maine QTIP election on the estate tax return (Form 706ME) must attach to the return a specific list and description of the Maine QTIP assets. For estates that include Maine elective property, MRS provides a worksheet to help complete Form 706ME. Worksheet 706C can be downloaded from [www.maine.gov/revenue/incomeestate/estate](http://www.maine.gov/revenue/incomeestate/estate), by selecting the link to the appropriate year's forms.