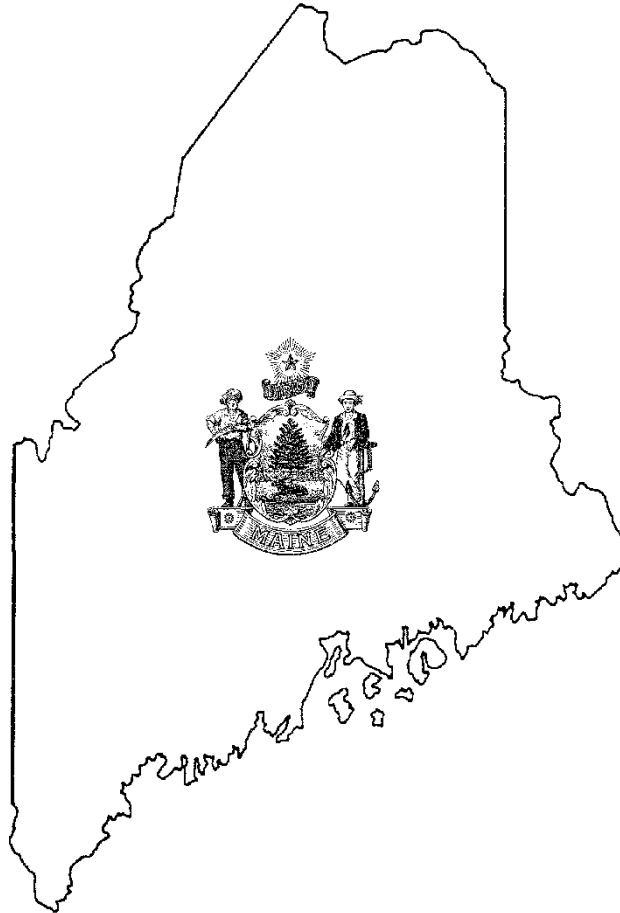


# **MAINE ESTATE TAX FOR DEATHS OCCURRING AFTER 2012**



## **GUIDANCE DOCUMENT**

**Maine Revenue Services, Income/Estate Tax Division**

Rev. 01/24/2020

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# INTRODUCTION

This guidance document covers the Maine estate tax for deaths occurring after December 31, 2012. It is intended to provide information about the Maine estate tax beyond what is available in the filing instructions for the estate tax return. This document also provides assistance in completing the Statement of Value (700-SOV) used to request a lien discharge on Maine real and tangible personal property. For information about the estate tax for deaths prior to 2013, see “Maine Estate Tax through 2012” guidance document.

The federal estate tax, enacted in 1916, is a tax on the transfer of a person’s property at the time of that person’s death. The tax is imposed on the transfer itself rather than on the property or on the privilege of a beneficiary to receive the property. The Maine estate tax was enacted in 1986.

For deaths occurring on or after January 1, 2013, the Maine estate tax exclusion amount has differed from the federal estate tax exclusion amount and varied depending on the year of death (see Part 3). The estate tax rates (8%, 10% and 12%) are applied to estate values in excess of the Maine estate tax exclusion amount.

Only estates worth more than the Maine exclusion amount are subject to the Maine estate tax. The value of an estate includes taxable gifts made by the decedent within one year of death (see Part 5). An estate value is also adjusted by the amount of Maine qualified terminable interest property (“QTIP”) and Maine elective property (see Part 4). The value of an estate must include all assets located in the United States, not just those assets located in Maine. In some cases, estates worth more than the Maine exclusion amount will not be taxable, if enough assets are transferred to a surviving spouse or if there are sufficient allowable deductions (whether marital, Maine QTIP, charitable or others) to reduce the taxable estate below the Maine exclusion amount.

A Maine estate tax return, Form 706ME, must be filed if the gross value of an estate plus adjusted taxable gifts made within one year of death plus Maine elective property is over the applicable Maine exclusion amount or if a federal estate tax return is required to be filed. A Maine estate tax return must be filed in these situations even if the taxable estate is equal to, or less than, the Maine exclusion amount.

Maine tax law imposes an automatic lien on all property subject to the Maine estate tax\*. A Certificate of Discharge of Estate Tax Lien (lien discharge) may be filed with Form 706ME to request the discharge of the automatic lien. Form 706ME must be used to request a discharge of liability with a Certificate of Discharge of Personal Representative Liability. For estates not required to file Form 706ME, a simplified document, the Maine Estate Tax Statement of Value (700-SOV), may accompany a lien discharge to request the release of an automatic lien. If an estate is taxable by Maine, or close to being taxable, you may want to consider enlisting the help of a professional estate tax preparer, who will be able to assemble and file all of the appropriate documents.

\*Note: The automatic lien does not attach to any property passing by right of survivorship to a surviving joint tenant who was the decedent's spouse on the decedent's date of death or to any real or personal property after the property has been sold or disposed of for value by the personal representative, trustee or surviving joint tenant. Also, a lien that attached is automatically released 10 years after the decedent's date of death. It is not necessary to file a Certificate of Discharge of Estate Tax Lien in these instances.

## PART 1 – RESOURCES

Maine Revenue Services has many resources for assisting in the preparation of estate tax returns. Following is a list of publications and contact information.

MRS web site: [www.maine.gov/revenue](http://www.maine.gov/revenue)

Downloadable forms: [www.maine.gov/revenue/forms](http://www.maine.gov/revenue/forms), select Estate Tax

General information: [www.maine.gov/revenue/incomeestate/estate](http://www.maine.gov/revenue/incomeestate/estate)

Maine estate tax rule: [www.maine.gov/revenue/rules](http://www.maine.gov/revenue/rules), select Rule 601 for estates prior to 2013 and Rule 603 for estates beginning in 2013.

Maine estate tax law:

<http://www.mainelegislature.org/legis/statutes/36/title36ch577sec0.html>

Email: [estatetax@maine.gov](mailto:estatetax@maine.gov)

Telephone: 207-626-8480

Fax: 207-624-9694

Maine EZ Pay, to make electronic tax payments: <https://portal.maine.gov/ezpay/welcome.do>

Mail: If sending a check with a return:

Maine Revenue Services

Income/Estate Tax Division

P.O. Box 1065

Augusta, Maine 04332-1065

If not sending a check with a return:

Maine Revenue Services

Income/Estate Tax Division

P.O. Box 1064

Augusta, Maine 04332-1064

General correspondence:  
Maine Revenue Services  
Income/Estate Tax Division  
P.O. Box 1060  
Augusta, Maine 04332-1060

Internal Revenue Services web site: [www.irs.gov](http://www.irs.gov)

## **PART 2 –STATEMENT OF VALUE (700-SOV)**

When an individual dies leaving property located in Maine, an automatic lien is placed on that property. If a decedent owned property in Maine at death, it is often a good idea to file a request for lien release, even if an estate is not subject to the Maine estate tax. Many buyers of property or banks that loan money secured by property will require a lien release prior to final purchase or approval of a loan. Liens that are not released by operation of law must be released by filing a completed lien release request called a Certificate of Discharge of Estate Tax Lien that is approved by Maine Revenue Services. If there is any outstanding Maine estate tax owed, that too must be paid prior to the release of a lien. Once a lien is released, a beneficiary receiving property may sell that property absent the Maine lien.

Maine Revenue Services has designed the Statement of Value (700-SOV) to accompany a Certificate of Discharge of Estate Tax Lien for those estates that are not taxable (estate value plus adjusted taxable gifts made within one year of death and Maine elective property, the total of which is less than the applicable Maine exclusion amount).

If an estate contains any real property (such as a home or land) or tangible personal property (such as a motor home or watercraft), the personal representative may complete the appropriate Certificate of Discharge of Estate Tax Lien form and attach it to the Statement of Value (700-SOV) to request a release of the automatic estate tax lien on that property. The personal representative can contact the registry of deeds in the county where real property is located for help completing the certificate.

### **SECTION A – Completing the Statement**

#### **Demographic Information**

The personal representative (or other preparer) must complete the demographic information. The first four lines are for information about the decedent. The term residency means the state of legal residence (or “domicile”) of the decedent at the date of death. For more information about

domicile status, see Rule 603 at [www.maine.gov/revenue/rules](http://www.maine.gov/revenue/rules) and the “Guidance to Residency Status” at: [www.maine.gov/revenue/incomeestate/guidance](http://www.maine.gov/revenue/incomeestate/guidance).

Also included in this section of the 700-SOV is information about the personal representative. The personal representative, sometimes called an executor, is the person appointed to administer the estate. This person, often a family member, is ordinarily named in the will of the decedent. If the decedent’s will does not designate a personal representative, usually the judge of probate in the county where the will is administered will appoint one. Enter that person’s information in the space provided. If there is more than one personal representative, attach a sheet with the relevant information.

### **Authorization of a Third-Party Representative**

Completing the “Authorized Representative” section allows Maine Revenue Services to discuss the contents of the return with the authorized representative. This section is optional – you are not required to have an authorized representative. If you do wish to designate someone for MRS to contact regarding the estate, you would normally enter the name and firm of the preparer of the 700-SOV, including address and contact information. If this section is left blank, Maine Revenue Services will talk only to the personal representative about the estate and the corresponding tax return, absent a completed power of attorney document (Form 2848-ME). All correspondence from Maine Revenue Services will go to the personal representative, even if this section is completed.

### **Declaration**

When you sign the 700-SOV statement, you are declaring that the gross estate plus the prior year’s taxable gifts made within one year of death plus Maine elective property is worth less than the applicable Maine exclusion amount. The worksheet below is designed to help you calculate the value of the gross estate.



## SECTION B – Valuation Worksheet

The valuation worksheet is not required to be included with the Statement of Value. In some cases, supporting documentation may be requested by Maine Revenue Services.

| Line Number | Assets  | Amount |
|-------------|---|--------|
| 1           | Real estate   |        |
| 2           | Stocks and bonds  |        |
| 3           | Mortgages, notes and cash   |        |
| 4           | Insurance on the decedent's life  |        |
| 5           | Jointly owned property  |        |
| 6           | Other miscellaneous property  |        |
| 7           | Certain transfers during the decedent's life (include revocable trusts) |        |
| 8           | Powers of appointment   |        |
| 9           | Annuities and retirement accounts                                       |        |
| 10          | Trusts or pass-through interests  |        |
| 11          | Adjusted taxable gifts  |        |
| 12          | Maine elective property   |        |
| 13          | Total (add lines 1 through 12)  |        |

### LINE INSTRUCTIONS

#### Line 1: Real estate

Real estate includes all land, buildings and houses that are wholly in the decedent's name (shared real property is included on line 5) located in the United States. Real estate must be included at its fair market value as of the decedent's date of death, unless the alternate valuation date under Internal Revenue Code §2032 is used for all assets. If an alternate valuation date is used, Form 706ME must be completed. There are several ways to determine the value of real estate. For estates that are not close to being valued at over or above the applicable Maine exclusion amount, acceptable valuation methods ordinarily include the municipal property valuation, sales of comparable houses in the neighborhood, or a valuation by a real estate agency. Often realtors will provide valuation estimates for free. **Note: If an estate is taxable, or if an estate is selected for audit, whether ultimately taxable or not, more formal methods may be required**

**to determine fair market value as of the decedent's date of death, such as professional property appraisals.**

The valuation of real estate is reported at full value as of the decedent's date of death, regardless of any mortgage that may be held against the property. If the total value of the federal gross estate plus adjusted taxable gifts made within one year of death and Maine elective property is over the applicable Maine exclusion amount, Form 706ME must be filed. All liabilities, which are included on a separate schedule on federal Form 706, will be subtracted from the gross value of the estate only on Form 706ME, when calculating the taxable estate.

### **Line 2: Stocks and bonds**

Include stocks and bonds that are wholly in the decedent's name (shared property is included on line 5). To obtain the correct amount to enter on this line, contact the broker who maintained the accounts and ask for a date of death valuation. Normally, brokerage houses will perform this service for free. Alternately, the value of the decedent's stocks and bonds may be close to the value stated in the last monthly statement prior to the date of death. The value of stocks and bonds may not be reduced by fees or other charges. Fees and charges, including loans against the account, are allowed only on Form 706ME. Include savings bonds on this line. To determine the value of savings bonds, try an online calculator, such as the one at: [www.savingsbonds.gov/indiv/tools/tools\\_savingsbondcalc.htm](http://www.savingsbonds.gov/indiv/tools/tools_savingsbondcalc.htm).

### **Line 3: Mortgages, notes and cash**

Cash is the amount held in checking, savings or other bank accounts as of the decedent's date of death. Cash value may be obtained either from the decedent's last bank statement or by contacting the bank for a date of death valuation. Include only amounts wholly in the decedent's name (shared property is included on line 5).

Mortgages and notes are amounts owed to the decedent at the time of death by other parties and are valued based on the associated amortization schedules. Do not include amounts owed by the decedent to other parties. Mortgages and notes are structured loan arrangements with an agreement to make payments on a predetermined schedule. For example, if the decedent had sold land to a buyer and there was a written agreement for the buyer to pay for the land over a period

of time, that mortgage amount would be included on this line. The amount to be included is the remainder of the loan that has yet to be paid to the decedent, plus unpaid accrued interest, at the date of death.

#### **Line 4: Insurance on the decedent's life**

If the decedent had a life insurance policy that resulted in a payment to the decedent's estate (not directly to a beneficiary, unless the decedent retained incidents of ownership over the policy) after death, this payment is included in the decedent's estate. The value of the life insurance payment may be substantiated either by federal Form 712 as completed by the insurance company or simply a photocopy of the check sent by the life insurance company.

#### **Line 5: Jointly owned property**

This line will most often contain real estate, such as a house or land, that is owned by both spouses or by the decedent and one or more other people. This line should also include any other jointly owned assets, such as joint checking accounts.

If the decedent jointly owned property with a surviving spouse or another person whose name was added to the deed for convenience or for purposes of avoiding the probate process, include on this line the full value of the property to the extent includible on federal Form 706, Schedule E. Do not divide the value between the decedent and the other owners.

If the decedent and other joint owners received a parcel of real estate or other property as a gift from a third party, enter the appropriate value of the decedent's portion of the property on line 5. If the decedent gifted any portion of his or her property, federal gift tax returns may be required by the Internal Revenue Service for the years of the gifts. Do not include on this line the balance due on any mortgage or other loan secured by the property.

#### **Line 6: Other miscellaneous property**

Include on this line any items wholly owned by the decedent at time of death wherever located in the United States that were not included on another line (shared property is included on line 5). Typical items to include are the contents of a safe deposit box, cars, boats, campers and other

vehicles, coin collections and other personal property. For the vehicles, value may be obtained through the Kelley Blue Book or other such publication. Other valuation procedures may include estimates by the personal representative, using the sale price of similar items as a base.

### **Line 7: Certain transfers during the decedent's life**

The item typically included on this line is a revocable trust. A revocable trust is one that is set up by the decedent and in which the decedent retains full use and enjoyment of the included assets. This type of trust is often used to avoid the probate process. During life, the decedent may change, or revoke, all or part of the trust agreement. At the death of the decedent, the remainder of the trust is distributed to the beneficiaries named in the trust document. The value of a revocable trust must be included in the decedent's gross estate. Include on this line the value of all assets held by a revocable trust. This value can be obtained through a date of death valuation of the trust assets from the trustee.

### **Line 8: Powers of appointment**

This line generally consists of the value of a trust, other than a revocable trust included on line 7, over which the decedent had control. Prior to death, the decedent may have been entitled to the trust proceeds and may have had some control of the trust assets, often a trust set up by a spouse or a parent upon death. Include on this line the value of all assets located in such trusts over which the decedent had control. The value of these trusts can be obtained by a date of death valuation supplied by the trustee. If you are unsure whether certain controls or powers may cause assets to be included in the decedent's estate, consider enlisting the help of a professional estate tax return preparer.

### **Line 9: Annuities and retirement accounts**

Enter on this line the value of annuities and retirement accounts wholly owned by the decedent (shared property is included on line 5). Retirement accounts include pension plans, private annuities, IRAs, 401(k) accounts or some other account or annuity specifically designated for retirement purposes. For the correct value, ask the contract annuity company for a federal Form 712 equivalent or ask the bank for a date of death value. For brokerage IRAs, you may obtain a valuation from the broker.

**Line 10: Trusts or pass-through interests**

For all decedents, enter the value of the individual assets located in trusts and pass-through entities not included on another line on this worksheet. Include on this line the value, at date of death, of the decedent's share of any pass-through entity.

**Line 11: Adjusted taxable gifts**

Enter on this line the value of taxable gifts made by the decedent in the 12-month period before death. Taxable gifts are those made by the decedent to any one person in any one year that exceed the annual federal gift tax exclusion. If a person gives an amount in excess of the exclusion to any one person in any one year, federal gift tax Form 709 should have been filed. The annual gift tax exclusion (\$15,000 for 2019) is adjusted for inflation.

**Line 12: Maine elective property**

Enter on this line the value of Maine elective property. If the decedent had a predeceased spouse who made a Maine QTIP election, include on this line the current value of that Maine QTIP. See Part 4 for more information on the Maine QTIP and Maine elective property.

**Line 13: Total**

Add lines 1 through 12. If the amount on this line is greater than the Maine exclusion amount, Form 706ME must be filed.

**EXAMPLE**

Below is an example of an estate and how to complete the Statement of Value 700-SOV and the valuation worksheet.

John Smith, a resident of Maine dies in 2019, leaving a home, a summer camp, a bank account balance and a life insurance policy. The value of these items at date of death is as follows.

|                |                |
|----------------|----------------|
| Home           | \$175,000      |
| Camp           | 75,000         |
| Bank Account   | 200,000        |
| Life Insurance | <u>100,000</u> |
| Gross Estate   | \$550,000      |

This total represents the entirety of John's assets and there was no surviving spouse to whom these assets could be left. Since the total value of all assets is less than the Maine exclusion for 2019, the personal representative may file the Statement of Value and the Certificate of Discharge of Estate Tax Lien to obtain a lien release for the home and camp properties.

The personal representative may complete the valuation worksheet on page 9 to help with valuing John's assets. The worksheet is generally not a required submission with the Statement of Value. On the valuation worksheet, include the home and camp on line 1 (Real estate), the bank account on line 3 (Mortgages, notes and cash) and the life insurance proceeds on line 4 (Insurance on the decedent's life). Along with the Statement of Value, a Certificate of Discharge of Estate Tax Lien must be filed to obtain lien releases for the home and camp. If the two properties are located in the same county, they can be included on one certificate. If the properties are in two different counties, the personal representative should submit each property on a separate certificate. By applying for two separate discharges, the personal representative is able to supply each county registry of deeds with the appropriate paperwork for the property located in that county.

Downloadable copies of The Statement of Value, the Certificate of Discharge of Estate Tax Lien and other forms are located at [www.maine.gov/revenue/forms](http://www.maine.gov/revenue/forms).

For further information, call 207-626-8480, email [estatetax@maine.gov](mailto:estatetax@maine.gov) or write: Maine Revenue Services, Income/Estate Tax Division, P.O. Box 1060, Augusta, ME 04332-1060.

## **PART 3 – APPLICATION OF THE EXCLUSION AMOUNT**

Beginning with 2013 decedents, Maine applies a three-tiered Maine estate tax rate structure (8%, 10% and 12%) on the amount of the taxable estate exceeding the Maine exclusion amount. Different exclusion amounts may apply in determining the taxability of an estate for federal and state tax purposes. (See table on page 16.) The values of the federal taxable estate and the Maine taxable estate, for purposes of determining the taxability of an estate, may also differ if the Maine taxable estate includes Maine QTIP property, Maine elective property and/or taxable gifts completed within one year of the date of death.

Maine's estate tax law defines the Maine taxable estate as the federal taxable estate decreased by any Maine QTIP and increased by Maine elective property and taxable gifts made within one year prior to the date of death. If this total exceeds the Maine exclusion amount, the estate is subject to the Maine estate tax.

## HISTORY OF FEDERAL AND MAINE EXCLUSION AMOUNTS

|           | Federal Estate Tax Exclusion | Maine Estate Tax Exclusion |
|-----------|------------------------------|----------------------------|
| 2020      | \$11,580,000                 | \$5,800,000                |
| 2019      | \$11,400,000                 | \$5,700,000                |
| 2018      | \$11,180,000                 | \$5,600,000                |
| 2017      | \$5,490,000                  | \$5,490,000                |
| 2016      | \$5,450,000                  | \$5,450,000                |
| 2015      | \$5,430,000                  | \$2,000,000                |
| 2014      | \$5,340,000                  | \$2,000,000                |
| 2013      | \$5,250,000                  | \$2,000,000                |
| 2012      | \$5,120,000                  | \$1,000,000                |
| 2011      | \$5,000,000                  | \$1,000,000                |
| 2010      | None/Optional at \$5 million | \$1,000,000                |
| 2009      | \$3,500,000                  | \$1,000,000                |
| 2008      | \$2,000,000                  | \$1,000,000                |
| 2007      | \$2,000,000                  | \$1,000,000                |
| 2006      | \$2,000,000                  | \$1,000,000                |
| 2005      | \$1,500,000                  | \$950,000                  |
| 2004*     | \$1,500,000                  | \$850,000                  |
| 2003*     | \$1,000,000                  | \$700,000                  |
| 2002*     | \$1,000,000                  | Conformity**               |
| 2000-2001 | \$675,000                    | Conformity**               |
| 1999      | \$650,000                    | Conformity**               |
| 1998      | \$625,000                    | Conformity**               |
| 1987-1997 | \$600,000                    | Conformity**               |
| 1986      | \$500,000                    | Conformity**               |

\* From 1986 through 2002, Maine's estate tax was based on the federal state death tax credit, except that Maine did not conform to the phase-down of the federal state death tax credit that began in 2002. From 2003 through 2012, the Maine estate tax was based on a Maine state death tax credit amount calculated on the basis of the Maine exclusion amount.

\*\* From 1986 through 2002, Maine conformed to the federal exclusion amounts through the use of the federal state death tax credit for Maine estate tax purposes.



## MAINE ESTATE TAX TABLES

**Table A - Estates of Decedents dying after 2012 but before 2016**

| 1                          |     |                | 2                                   | 3          | 4                  |
|----------------------------|-----|----------------|-------------------------------------|------------|--------------------|
| If Maine taxable estate is |     |                | subtract                            | Multiply   |                    |
| More than:                 | BUT | Not more than: | from Maine adjusted taxable estate: | result by: | Add the following: |
| \$0                        |     | \$2,000,000    | \$0                                 | 0%         | \$0                |
| \$2,000,000                |     | \$5,000,000    | \$2,000,000                         | 8%         | \$0                |
| \$5,000,000                |     | \$8,000,000    | \$5,000,000                         | 10%        | \$240,000          |
| \$8,000,000                |     |                | \$8,000,000                         | 12%        | \$540,000          |

**Table B - Estates of Decedents dying in 2016**

| 1                          |     |                | 2                                   | 3          | 4                  |
|----------------------------|-----|----------------|-------------------------------------|------------|--------------------|
| If Maine taxable estate is |     |                | subtract                            | Multiply   |                    |
| More than:                 | BUT | Not more than: | from Maine adjusted taxable estate: | result by: | Add the following: |
| \$0                        |     | \$5,450,000    | \$0                                 | 0%         | \$0                |
| \$5,450,000                |     | \$8,450,000    | \$5,450,000                         | 8%         | \$0                |
| \$8,450,000                |     | \$11,450,000   | \$8,450,000                         | 10%        | \$240,000          |
| \$11,450,000               |     |                | \$11,450,000                        | 12%        | \$540,000          |

**Table C - Estates of Decedents dying in 2017**

| 1                          |     |                | 2                                   | 3          | 4                  |
|----------------------------|-----|----------------|-------------------------------------|------------|--------------------|
| If Maine taxable estate is |     |                | subtract                            | Multiply   |                    |
| More than:                 | BUT | Not more than: | from Maine adjusted taxable estate: | result by: | Add the following: |
| \$0                        |     | \$5,490,000    | \$0                                 | 0%         | \$0                |
| \$5,490,000                |     | \$8,490,000    | \$5,490,000                         | 8%         | \$0                |
| \$8,490,000                |     | \$11,490,000   | \$8,490,000                         | 10%        | \$240,000          |
| \$11,490,000               |     |                | \$11,490,000                        | 12%        | \$540,000          |

**Table D - Estates of Decedents dying in 2018**

| 1                          |     |                | 2                                   | 3                   | 4                  |
|----------------------------|-----|----------------|-------------------------------------|---------------------|--------------------|
| If Maine taxable estate is |     |                | subtract                            |                     |                    |
| More than:                 | BUT | Not more than: | from Maine adjusted taxable estate: | Multiply result by: | Add the following: |
| \$0                        |     | \$5,600,000    | \$0                                 | 0%                  | \$0                |
| \$5,600,000                |     | \$8,600,000    | \$5,600,000                         | 8%                  | \$0                |
| \$8,600,000                |     | \$11,600,000   | \$8,600,000                         | 10%                 | \$240,000          |
| \$11,600,000               |     |                | \$11,600,000                        | 12%                 | \$540,000          |

**Table E - Estates of Decedents dying in 2019**

| 1                          |     |                | 2                                   | 3                   | 4                  |
|----------------------------|-----|----------------|-------------------------------------|---------------------|--------------------|
| If Maine taxable estate is |     |                | subtract                            |                     |                    |
| More than:                 | BUT | Not more than: | from Maine adjusted taxable estate: | Multiply result by: | Add the following: |
| \$0                        |     | \$5,700,000    | \$0                                 | 0%                  | \$0                |
| \$5,700,000                |     | \$8,700,000    | \$5,700,000                         | 8%                  | \$0                |
| \$8,700,000                |     | \$11,700,000   | \$8,700,000                         | 10%                 | \$240,000          |
| \$11,700,000               |     |                | \$11,700,000                        | 12%                 | \$540,000          |

**Table F - Estates of Decedents dying in 2020**

| 1                          |     |                | 2                                   | 3                   | 4                  |
|----------------------------|-----|----------------|-------------------------------------|---------------------|--------------------|
| If Maine taxable estate is |     |                | subtract                            |                     |                    |
| More than:                 | BUT | Not more than: | from Maine adjusted taxable estate: | Multiply result by: | Add the following: |
| \$0                        |     | \$5,800,000    | \$0                                 | 0%                  | \$0                |
| \$5,800,000                |     | \$8,800,000    | \$5,800,000                         | 8%                  | \$0                |
| \$8,800,000                |     | \$11,800,000   | \$8,800,000                         | 10%                 | \$240,000          |
| \$11,800,000               |     |                | \$11,800,000                        | 12%                 | \$540,000          |

## **PART 4 – MAINE QUALIFIED TERMINABLE INTEREST PROPERTY AND MAINE ELECTIVE PROPERTY**

A federal qualified terminable interest property (“QTIP”) election/trust is a popular estate planning tool that allows a decedent to control the eventual distribution of assets, while at the same time providing some 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.

Maine QTIP election is claimed to maximize the federal estate tax exclusion without incurring immediate Maine tax liability. The Maine QTIP is only available when the federal exclusion amount is higher than the Maine exclusion amount. If the federal exclusion amount is higher than the Maine exclusion amount, 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 Maine exclusion (36 M.R.S.A. § 4102(6)) amounts. The election postpones Maine estate tax on the Maine QTIP property from the estate of a decedent with a surviving spouse until the death of that spouse. The value of the Maine QTIP trust is included in the federal taxable estate of the first decedent, but is treated as having passed to the surviving spouse for Maine estate tax purposes.

The property included in a Maine QTIP 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. For a Maine QTIP election to be valid, the QTIP trust created by the first spouse’s estate must be qualified both federally and for Maine purposes and the surviving spouse must be 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 equal to 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. After the election, the Maine taxable estate is equal to the

federal taxable estate less the value of the Maine QTIP. If the value of the Maine taxable estate is equal to the Maine exclusion amount, the estate will owe no Maine estate tax.

When the second spouse 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. Please 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.

Generally, Maine Revenue Services will follow federal estate tax law where Maine law does not specifically deviate from federal law or where federal law would be appropriate to apply in a specific context. All estates claiming a Maine QTIP election on an estate tax return (Form 706ME) must attach to the return a specific list and description of the Maine QTIP assets.

If the decedent made taxable gifts prior to death, you must be careful to select the proper amount with which to fund the Maine QTIP trust. The Maine QTIP must be enough to reduce the taxable estate plus taxable gifts to the Maine exclusion amount. For example, a decedent with a 2019 date of death and a gross estate of \$10 million had prior year taxable gifts totaling \$500,000. The decedent funds the federal taxable estate with \$7 million, leaving the remaining \$3 million to his wife. In order to take full advantage of the Maine exclusion amount, the decedent must fund the Maine QTIP with \$1,800,000, bringing the taxable estate down to \$5,200,000 and the taxable estate plus prior taxable gifts to \$5,700,000.

## **PART 5 – TAXABLE GIFTS**

Maine law requires that the Maine taxable estate include taxable gifts made within one year of death. Taxable gifts are those gifts that are considered taxable for federal gift tax purposes. To be considered taxable, a gift must exceed the annual gift tax exclusion. This exclusion (\$15,000 for gifts made in 2018 and 2019) is indexed for inflation.

## **PART 6 – MISCELLANEOUS ISSUES**

### **Section A – Noncitizens**

If you are filing a federal Form 706-QDT for a Maine decedent with a noncitizen surviving spouse, you must also file an amended Maine estate tax return, Form 706ME, including a copy of the federal Form 706-QDT. A distribution from a qualified domestic trust that triggers the necessity of filing a federal Form 706-QDT estate tax return will also increase the Maine taxable estate and the Maine estate tax. This requirement applies to all estates of Maine decedents with surviving spouses who are not citizens of the United States.

According to IRC § 2102, the unified credit generally allowed for estates of nonresidents who were not citizens of the United States is limited and replaces the credit under IRC § 2010 when calculating the tax for the estate of a nonresident who was not a U.S. citizen. For decedents dying after 2012, the federal credit is not part of the Maine estate tax calculation. Noncitizen decedents dying after 2012 with Maine property will be taxed in the same manner as other nonresidents.

### **Section B – Asset Valuation**

If a nonresident decedent owns an interest in a pass-through entity, the entity structure may be disregarded and the estate taxed on the underlying assets. For information regarding nonresident ownership interests of pass-through entities, see 36 M.R.S.A. § 4104 and MRS Rule 603.

### **Section C – Administrative Expenses for Gap Estates**

Maine law requires that if administrative expenses under IRC § 642(g) are claimed on a federal fiduciary income tax return and also on a Maine estate tax return, those expenses must be added back to income for purposes of the Maine fiduciary return. See 36 M.R.S.A. § 5122(1)(Y).

### **Section D – Probate Security**

If the probate court requires security to ensure that the Maine estate tax will be paid, a bond may be required. In lieu of a required bond, MRS allows an estate to establish an escrow account in favor of MRS. An escrow account may also be established in favor of MRS by a personal

representative seeking early approval of Certificate of Discharge of Estate Tax Lien for sale of real estate prior to the filing of the Maine estate tax return.

A personal representative may complete this agreement prior to being formally appointed. Once the issuance of the letters of authority, the personal representative will fund the escrow account and send a letter to MRS with the account information.

MRS requires that two original Estate Tax Escrow Agreements be completed and mailed to the address stated below. One agreement will be retained at MRS and the other will be mailed to the personal representative. This Agreement may be executed in any number of counterparts, each of which shall be an original as against any party whose signature appears on such counterpart and all of which together shall constitute one and the same instrument. This Agreement shall become binding when one or more counterparts of this Agreement, individually or taken together, shall bear the signatures of all the Parties reflected in this Agreement as signatories.

To authorize a third party to discuss the Estate Tax Escrow Agreement with MRS, the personal representative must complete Form 2848-ME, filing that form with the Estate Tax Escrow Agreement at the following address:

Director, Income/Estate Tax Division  
Maine Revenue Services  
P.O. Box 1060  
Augusta, ME 04332-1060

The director of the Income/Estate Tax Division reserves the right to reject any Estate Tax Escrow Agreement. Under certain circumstances, the director may ask the estate to make a full payment directly to the State of Maine.

If you have any questions pertaining to the Estate Tax Escrow Agreement call (207) 626-8480 between 9:00 AM and 4:00 PM Monday through Friday, except holidays.