

Chapter 603: MAINE ESTATE TAX AFTER 2012

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**SUMMARY:** This rule explains in further detail the estate tax laws of the State of Maine for estates of decedents dying on or after January 1, 2013.

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**.01 Definitions**

The following definitions apply with respect to this rule and 36 M.R.S., Chapter 577, except as the context may otherwise require.

- A. 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 pursuant to the Internal Revenue Code ( “Code”) § 2010, but more than the Maine exclusion amount under 36 M.R.S. § 4102(5).
- B. Pass-through entity.** “Pass-through entity” means a trust, a corporation that for the applicable tax year is treated as an S corporation under the Code or a general partnership, limited partnership, limited liability partnership, limited liability company or similar entity, that for the applicable tax year is not taxed as a C corporation for federal tax purposes.

- C. **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.
- D. **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.

## .02 Federal laws

Unless specifically provided by Maine law or regulations, Maine Revenue Services generally looks to federal law, including statutes, regulations, statements, policy, and related case law for guidance when interpreting analogous provisions of Maine estate tax law. However, the state death tax deduction contained in Code § 2058 must be disregarded.

## .03 Filing requirements

### A. Forms, statements and certificates

1. **Form 706ME.** If an estate is required to file a Maine estate tax return (Form 706ME), the personal representative must file the return with required attachments within nine months of the decedent’s date of death, unless an extension of time to file has been granted by Maine Revenue Services. If the estate is not required to file federal Form 706, but is required to file Form 706ME, 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~~ Form 706 was required to be filed. A personal representative must file a Form 706ME with a Certificate of Discharge of Estate Tax Lien to request release of the statutory Maine estate tax lien under 36 M.R.S. § 4112 on Maine real property or tangible personal property.
2. **Statement 700-SOV.** Where an estate is not required to file a Maine estate tax return, the personal representative may submit statement 700-SOV after the date of death and request, along with a Certificate of Discharge of Estate Tax Lien, the release of the statutory Maine estate tax lien under 36 M.R.S. § 4112 on real or tangible personal property for estates with no tax liability. This statement does not constitute a return and no Maine estate tax closing letter will be issued.
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 statutory Maine 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 statutory Maine estate tax lien under 36 M.R.S. § 4112 on personal property sourced to Maine.

- B. Attachments.** A personal representative must file attachments required by the State Tax Assessor (“Assessor”). Required attachments may include, but are not limited to, appraisals, wills and trust documents, any estate tax, gift tax, decedent’s income tax or fiduciary income tax return filed with the Internal Revenue Service (“IRS”) or another state or jurisdiction, proof of payment to the IRS or another state or jurisdiction, any document stating a request for an extension of time to file or pay, any applicable Life Insurance Statements (federal Form 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. Restricted Use Appraisals may not be relied on to establish value.
- C. Payment.** Payment of any Maine estate tax due must be paid within nine months of the decedent’s date of death, unless a request for an extension of time to pay has been granted by the Assessor.
- 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 180 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 return. If federal 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 and federal audit packet within 180 days of the change. ~~The personal representative must file a copy of the federal closing letter as an attachment with the amended return.~~ When the federal gross estate has been finally determined by the Internal Revenue Service IRS, a final determination of the Maine estate tax liability may be made for Maine estate tax purposes, notwithstanding the statute of limitations, a Maine estate tax closing letter, or any other determination by the Assessor.
- 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 federal regulations for estates that incur a federal estate tax liability, even if the estate has not incurred a federal estate tax liability.
- F. Extensions**
- 1. Extension of time to file.** The Assessor may allow a reasonable extension of time to file the Maine estate tax return up to eight months from the original due date, 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 Maine estate 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 Assessor may allow a reasonable extension up to eight months from the original due date without extension upon written request of the personal representative. If the required Maine estate tax return is not filed by the time the extension period expires, applicable penalties are calculated as if the Maine estate tax return was due on the original due date without extension.

2. **Extension of time to pay.** In order to receive an extension of time to pay the Maine estate tax, 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 Assessor may mandate a bond or other security. An extension of time to pay may be granted pursuant to 36 M.R.S. § 4108 for a reasonable period of time not to exceed one year from the date fixed for payment. The Assessor may grant successive extensions which in the aggregate may not exceed ten years unless a deferred payment arrangement is made under 36 M.R.S. § 4109. Interest accrues on any amount of tax not paid by the original due date.

- G. **Escrow agreements.** At the request of the personal representative, the Assessor may allow, under terms the Assessor may require, 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 Maine estate tax liability or in exchange for the discharge of the Maine estate tax lien on estate property so that the property may be sold to pay the Maine estate tax.

#### **.04 Administrative expenses**

If a gap estate included administrative expenses in the calculation of the pro forma federal Form 706, and those expenses are also deducted on the estate's federal fiduciary income tax return (Form 1041), the estate must make an addition modification on the Maine fiduciary income tax return (Form 1041ME). The addition modification must equal the administrative expenses deducted on federal Form 1041 that are also deducted on the pro forma federal Form 706.

#### **.05 Gifts**

The Assessor will disregard a gift and treat the decedent as the owner of the property 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 IRS procedure or policy. In addition, where the decedent, within one year prior to the date of death, made taxable gifts as defined under the Code, the value of those taxable gifts will be included in the decedent's estate in accordance with 36 M.R.S. § 4102. The value of taxable gifts is determined by the Assessor in accordance with the Code.

## **.06 Valuation**

- A. Determination.** For Maine estate tax purposes, the value with respect to an estate or to property included in an estate, including Maine qualified terminable interest property (“QTIP”), is the value as determined by the Assessor in accordance with the Code, federal regulations and policy even if there is a final federal determination with respect to the valuation of the assets of the estate. Generally under federal law and thus, Maine law, the value of the federal gross estate of the decedent and property in the gross estate 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 to buy or to sell and both having reasonable knowledge of the relevant facts.
- B. Alternate valuation date.** The personal representative of an estate who has elected to value the estate for federal purposes using the alternate valuation date as determined under Code § 2032 must use the same valuation date for Maine estate tax. An estate may not elect alternate valuation for Maine purposes and date of death valuation for federal tax purposes. A Maine gap estate that, notwithstanding the federal exclusion amount, would have otherwise qualified for the election under federal law may elect alternate valuation by checking the appropriate box on the pro forma federal Form 706. Once made, the election to use alternate valuation may not be revoked. The election may be made on a late-filed return, provided it is filed not later than one year after the due date including extensions actually granted.

## **.07 Sourcing**

- A. 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 on the date of the decedent's death.
- B. Tangible personal property.** Tangible personal property is sourced to the taxing jurisdiction in which it was situated at the date of the decedent's 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.

- C. **Intangible property.** Intangible property is sourced to the taxing jurisdiction of the decedent's domicile as of the date of the decedent's death. Intangible property includes, but is not limited to, bank accounts, stocks, bonds, brokerage and other cash accounts, except as otherwise provided by this rule.
- D. **Gifts.** Taxable gifts made by the decedent within one year prior to death included in the decedent's estate by 36 M.R.S. § 4102(7) are sourced consistent with .07(A), (B) and (C) above and (E) below on the date the gift was made.
- E. **Real or tangible personal property owned by a pass-through entity in the estate of a nonresident.** For estates of nonresidents, when real or tangible personal property is owned by a pass-through entity, the entity must be disregarded and the property must be treated as personally owned by the decedent where the entity does not actively carry on a business for the purpose of profit and gain; the ownership of the property in the entity was not for a valid business purpose; or the property was acquired by other than a bona fide sale for full and adequate consideration and the decedent retained a power with respect to or interest in the property that would bring the real or tangible personal property located in this State within the decedent's adjusted federal gross estate. 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.

## .08 Domicile

The word "domicile" is a common-law (i.e., judge-made law) term that the Maine courts, not the Legislature or Maine Revenue Services, have defined. Under the Maine common law, "domicile" means the place (A) where a person resides, and (B) where that person intends to remain and, whenever absent, intends to return. Thus, according to the Maine courts, domicile has two components: residence and the intent to remain or return, if absent. The intent to move in the future is not sufficient to establish domicile. Once an individual's domicile is established in Maine, it continues here until domicile is established elsewhere. An individual alleging a change in domicile has the burden to show that domicile was established in another state or country.

Where a decedent was domiciled at the date of death is a question of fact in which objective factors exhibiting the decedent's actual location and intent may be relevant. Factors that may be relevant or excluded in determining a decedent's domicile at the date of death include those relevant or excluded in determining income tax domicile (for more information see MRS Rule 807(.03) and (.04) Me. Dep't of Admin. & Fin. Servs., Bur. of Rev. Servs., 18-125 C.M.R., ch. 807-§§ 03 and 04), as well as the locations of significant relatives or an appointed attorney-in-fact for health care or financial decisions. Where

the decedent qualified for financial assistance for health care, where the decedent had a contract for residence or care at a residential living facility, or where the decedent qualified as a statutory resident for income tax purposes may all be factors to be considered in determining domicile.

Maine Revenue Services considers all of an individual's relevant facts and circumstances allowed by Maine law when it determines where that individual is domiciled. Although the individual's intent to remain or return is a factor in determining domicile, an individual's statement as to his or her intent is not necessarily determinative. Evidence of the decedent's intent may be found in many decisions made by that individual. The decedent may have retained the ability to make such decisions and determine his or her domicile even though the decedent was deemed incapable of making, or chose not to make, other decisions. Actions by a person who was responsible for an incapacitated individual's affairs may be considered when determining the decedent's intent to remain. When a guardian has been appointed and chooses the incapacitated individual's place of abode pursuant to authority as a guardian, the intent of the guardian for the individual to remain or return to a particular location becomes a factor in the determination of the incapacitated person's domicile. Evidence of the guardian's intent may be found in relevant statements and actions.

#### **.09 Qualified terminable interest and Maine elective property**

- A. Qualified terminable interest property.** On an original timely-filed Maine estate tax return, the personal representative of a decedent with a surviving spouse may elect treatment for assets that are eligible to be treated as qualified terminable interest property ("QTIP") under Code § 2056(b)(7). A Maine QTIP election may not be made on an amended Maine estate tax return unless ~~the such~~ amended return is filed on or before the due date of the original Maine estate tax return plus extensions. The allowable Maine QTIP deduction may not be less than zero or greater than the amount by which the federal applicable exclusion amount under the Code, ~~Section §~~ 2010 exceeds the Maine exclusion amount. For the purposes of this subsection, "federal applicable exclusion amount" does not include any deceased spousal unused exclusion amount under the Code, ~~Section §~~ 2010. 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.
- B. Maine elective property.** If a decedent was predeceased by a spouse whose estate elected a deduction for a Maine QTIP, the value of 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 taxable estate of the surviving spouse to calculate the Maine taxable estate. If the value of 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. The value of Maine elective property is determined by the Assessor in accordance with the Code.

#### **.10 Qualified domestic trusts**

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, and pay any additional tax liability.

#### **.11 Liability**

A personal representative, trustee, grantee, donee, or other beneficial recipient of assets of an estate remains personally liable for any Maine estate taxes until those taxes are paid. A personal representative may request a discharge of personal liability by filing a Certificate of Discharge of Personal Representative Liability and upon payment of any Maine estate tax due along with filing the Form 706ME, may receive the discharge from liability as to any Maine estate tax subsequently determined to be due. The estate, trustee, grantee, donee, or other beneficial recipient of assets of the estate remains liable for any Maine estate tax subsequently determined to be due.

#### **.12 Liens and lien releases**

Except as otherwise provided by law, an automatic lien for Maine estate taxes, interest and penalties attaches to all Maine property (real and personal) owned by a decedent at death. The 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. The lien continues until it is released by the ~~State Tax~~ Assessor, except that:

- A. The lien is automatically released by operation of law when the personal representative of the estate, the trustee of a trust or surviving joint tenant of the property, each acting in the capacity of a fiduciary of the estate, transfers the property for value as defined pursuant to 36 M.R.S., Chapter 577. However, the lien continues to attach to any property that is transferred for less than its value or when transferred by any other party.
- B. The lien is automatically released by operation of law ten years after the decedent's date of death.

When a personal representative of an estate files a completed Certificate of Discharge of Estate Tax Lien, the Assessor will release the lien upon an initial showing by the estate that all taxes, interest, and penalties have been paid by filing Form 706ME showing any tax due has been paid or submitting Statement 700-SOV representing that no Maine estate tax is due.



**.13 Application date**

This Rule applies to estates of decedents dying on or after January 1, 2013.

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STATUTORY AUTHORITY: 36 M.R.S. § 112

EFFECTIVE DATE:

October 15, 2013 – filing 2013-250

April 28, 2015 – filing 2015-078