

Chapter 601: ESTATE TAX

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, 2011 but before January 1, 2013.

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.01 Definitions

The following definitions apply with respect to this rule and 36 M.R.S., 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”) and other applicable federal law, less taxable gifts made within one year prior to the date of death of the decedent.
- 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 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, except the deduction for state taxes.
- 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., Chapter 575 and this rule.
- H. **Maine exclusion.** “Maine exclusion” means the applicable federal exclusion amount for Maine estate tax purpose. The exclusion amount is the dollar value for which the calculated estate tax is exactly equal to the applicable unified credit under Title 36 M.R.S., Chapter 575. For estates of decedents dying after December 31, 2012, the Maine exclusion amount is \$2,000,000.
- I. **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.
- J. **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.
- K. **Unified credit.** “Unified credit” has the same meaning as in Code § 2010 as of December 31, 2000. The termination provision contained in Code § 2210 must be disregarded.

.02 Federal laws

- A. **Generally.** 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 the Code § 2058 must be disregarded. The termination provision contained in the Code § 2210 must be disregarded. The Maine estate tax determined under 36 M.R.S., Chapter 575, for an estate of a decedent dying after December 31, 2009, but before January 1, 2013, must be

determined in accordance with the law applicable to decedents dying during calendar year 2009.

- B. **Final federal determination.** Except as noted below, 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 before January 1, 2003, that issue is finally determined for Maine estate tax purposes. For estates of decedents dying on or after January 1, 2003, but before July 1, 2008, when the federal government issues a final determination as to the inclusion in the federal gross estate of any item or the amount claimed as a deduction from the gross estate, that issue is finally determined for Maine estate tax purposes. For estates of decedents dying on or after July 1, 2008, but before July 1, 2009, the State Tax Assessor (“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 or amended return was filed or was due to be filed, whichever is later. For estates of decedents dying on or after July 1, 2009, the Assessor is not bound by a final federal determination on the inclusion in the federal gross estate of any item of property or interest and the allowance of any item of deduction from the federal gross estate and may determine the issue for Maine estate tax purposes within one year of the date the return or amended return was filed or was due to be filed, whichever is later.

.03 Filing requirements

A. Forms

1. **Form 706ME.** Where the sum of the federal gross estate and adjusted taxable gifts exceeds the Maine exclusion or if the estate contains Maine elective property or Maine qualified terminable interest property 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 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 estate includes property sourced to Maine and Form 706 ME is not required, the personal representative may file Form 706ME-EZ at any time after date of death. The purpose of the form,

filed 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 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 IRS or another state, proof of payment to another state, any document stating a request for an extension of time to file or pay, any applicable 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 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 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 Maine estate tax 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 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.
 - 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 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 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 date that the return would have originally been due absent any extension granted 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 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 Assessor may grant successive extensions pursuant to 36 M.R.S. § 4069. 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 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 Administrative expenses

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

.05 Gifts

Generally, adjusted taxable gifts are added to the federal gross estate and Maine elective property in order to determine whether the estate has exceeded the Maine exclusion. 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 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 when made on or after January 1, 2008, will be included in the decedent's estate in accordance with 36 M.R.S. § 4062.

.06 Valuation

- A. Determination.** The Assessor may, for Maine estate tax purposes, independently determine the value of the assets of an estate 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, 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 Code § 2032. The Assessor may, for Maine estate tax purposes, independently determine the value of the assets 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 property to Maine

- 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 on the date of the decedent's death.
 - 2. 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.
 - 3. 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 and other cash accounts, except as provided by .07(C) and (D) below.

4. **Gifts.** The value of gifts made by the decedent within one year prior to death included in the decedent's estate by 36 M.R.S. § 4062(2) is sourced consistent with .07(A) (1), (2), and (3) above.

- B. **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 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 important 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 critical 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.

C. **Residents.** For a resident decedent's estate, all real and tangible personal property of the decedent that is located in Maine as of the date of the decedent's death, plus all intangible property owned by the decedent as of date of death, are 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 M.R.S. § 4063.

D. **Nonresidents**

1. **Generally.** For a nonresident decedent's estate, all real and tangible personal property situated in Maine as of the date of the decedent's death is sourced to Maine.
2. **Real or tangible personal property transferred to a trust or other pass-through entity.** 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 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.

3. **Allocation of debt.** For nonresident decedents, the Maine estate tax is applied to the total value of the real and tangible personal property treated as owned by the decedent situated in Maine as of the date of the decedent's death. If Maine real property is encumbered, only the direct debt against the property (i.e., the debt used for the purchase, repair, maintenance or improvement of that property) is an allowable deduction.

.08 Qualified terminable interest and Maine elective property

- A. **Qualified terminable interest property.** Beginning with deaths in 2005, an estate 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 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. For estates of decedents dying on or after January 1, 2010 but before January 1, 2011, the total allowable Maine QTIP under Maine law is \$2.5 million. This represents the difference between the Maine estate tax exclusion amount of \$1,000,000 and the federal estate tax exclusion amount of \$3.5 million as of 2009. For estates of decedents dying on or after January 1, 2011, the total allowable Maine QTIP under Maine law is calculated based on the federal exclusion amount as of the decedent’s actual date of death.
- 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

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 assets of an estate remains personally liable for the 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 estate tax due, may receive the discharge from liability as to any 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.

.11 Liens and lien releases

Except as otherwise provided by law, an automatic lien for 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 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.
- 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 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.

.12 Application date

This Rule applies to estates of decedents dying on or after January 1, 2011. This Rule does not apply to estates of decedents dying on or after January 1, 2013.

STATUTORY AUTHORITY: 36 M.R.S. §112

EFFECTIVE DATE:

January 7, 2008 – filing 2008-3
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