

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Reform the Maine Estate Tax**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 36 MRSA §135, sub-§1**, as amended by PL 2007, c. 438, §7, is further amended to read:

**1. Taxpayers.** Persons subject to tax under this Title shall maintain such records as the State Tax Assessor determines necessary for the reasonable administration of this Title. Records pertaining to taxes imposed by chapters 371 and, 575 and 577 and by Part 8 must be retained as long as is required by applicable federal law and regulation. Records pertaining to the special fuel tax user returns filed pursuant to section 3209, subsection 2 and the International Fuel Tax Agreement pursuant to section 3209, subsection 1B must be retained for 4 years. Records pertaining to all other taxes imposed by this Title must be retained for a period of at least 6 years. The records must be kept in such a manner as to ensure their security and accessibility for inspection by the assessor or any designated agent engaged in the administration of this Title.

**Sec. 2. 36 MRSA §144, sub-§2, ¶A**, as enacted by PL 1997, c. 668, §10, is amended to read:

A. Subsection 1 does not apply in the case of sales and use taxes imposed by Part 3, estate taxes imposed by chapter 575 or 577, income taxes imposed by Part 8 and any other tax imposed by this Title for which a specific statutory refund provision exists.

**Sec. 3. 36 MRSA §4061**, as enacted by PL 1981, c. 451, §7, is amended to read:

### **§ 4061. Applicability of provisions**

This chapter applies to the estates of persons who die after June 30, 1986 and before January 1, 2011.

**Sec. 4. 36 MRSA c. 577** is enacted to read:

## **CHAPTER 577**

### **NEW MAINE ESTATE TAX**

#### **§ 4101. Applicability of provisions**

This chapter applies to the estates of persons who die after December 31, 2010.

#### **§ 4102. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Federal gross estate.** "Federal gross estate" means the gross estate of a decedent as determined by the assessor in accordance with the Code.

**2. Federal taxable estate.** "Federal taxable estate" means the taxable estate of a decedent as determined using the applicable provisions of the Code as of the decedent's date of death, except that the state death tax deduction contained in the Code, Section 2058 must be disregarded.

**3. Maine elective property.** "Maine elective property" means all property in which the decedent at the time of death had a qualified income interest for life and with respect to which the estate of a predeceased spouse of the decedent filed an election to treat such property as Maine qualified terminable interest property pursuant to this chapter or, if applicable, chapter 575. The value of Maine elective property is the value determined by the assessor in accordance with the Code as if such property were includable in the decedent's federal gross estate pursuant to the Code, Section 2044 and, in the case of estates that do not incur a federal estate tax, as if the estate had incurred a federal estate tax.

**4. Maine exemption amount.** "Maine exemption amount" means the sum of \$1,000,000. The estate of a resident having a Maine taxable estate valued at \$1,000,000 or less does not incur a Maine estate tax.

**5. Maine qualified terminable interest property.** "Maine qualified terminable interest property" means property:

A. That is eligible to be treated as qualified terminable interest property under the Code, Section 2056(b)(7);

B. For which no election allowable under the Code, Section 2056(b)(7) is made with respect to the federal estate tax; and

C. With respect to which an election is made, on a return timely filed with the assessor, to treat the property as Maine qualified terminable interest property for purposes of the tax imposed by this chapter. The amount of property with respect to which the election is made may not be greater than the amount, if any, by which the applicable exclusion amount determined as of the date of the decedent's death using Code, Section 2010(c) in effect on that date exceeds the Maine exemption amount.

**6. Maine taxable estate.** "Maine taxable estate" means the federal taxable estate of a decedent:

A. Decreased by an amount equal to the value of the Maine qualified terminable interest property in the estate of the decedent;

B. Decreased by the value of all real and tangible personal property owned by the decedent that is situated outside this State;

C. Increased by an amount equal to the value of Maine elective property in respect of the decedent; and

D. Increased by the value of all taxable gifts as defined in the Code, Section 2053 made by the decedent during the one-year period ending on the date of the decedent's death.

**7. Nonresident.** "Nonresident" means a natural person domiciled in a jurisdiction other than this State at the time of death.

**8. Personal representative.** "Personal representative" means the personal representative as defined under Title 18A, section 1-201, subsection (30) of the decedent or, if there is no personal representative appointed, qualified and acting within this State, any person who is in the actual or constructive possession of any property included in the federal gross estate of the decedent.

**9. Resident.** "Resident" means a natural person domiciled in this State at the time of death.

**10. Transfer.** "Transfer" includes the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain sale, gift or appointment in the manner described in this chapter.

**11. Value.** "Value" means, when determining value for purposes of this chapter, with respect to an estate or to property included in an estate, including Maine qualified terminable interest property, the value as determined by the assessor in accordance with the Code.

### **§ 4103. Tax on estate of resident**

**1. Imposition of tax.** A tax is imposed upon the transfer of the estate of every person who dies after December 31, 2010 and who, at the time of death, was a resident and whose Maine taxable estate exceeds the Maine exemption amount.

**2. Computation of tax.** The tax under this section is assessed as follows:

**A. If the amount of the Maine taxable estate that exceeds the Maine exemption amount does not exceed \$500,000, the tax is 1% of the amount that exceeds the Maine exemption amount;**

**B. If the amount of the Maine taxable estate that exceeds the Maine exemption amount exceeds \$500,000 but does not exceed \$1,000,000, the tax is 2% of the amount that exceeds the Maine exemption amount;**

**C. If the amount of the Maine taxable estate that exceeds the Maine exemption amount exceeds \$1,000,000 but does not exceed \$1,500,000, the tax is 3% of the amount that exceeds the Maine exemption amount;**

**D. If the amount of the Maine taxable estate that exceeds the Maine exemption amount exceeds \$1,500,000 but does not exceed \$2,000,000, the tax is 4% of the amount that exceeds the Maine exemption amount;**

**E. If the amount of the Maine taxable estate that exceeds the Maine exemption amount exceeds \$2,000,000 but does not exceed \$2,500,000, the tax is 5% of the amount that exceeds the Maine exemption amount;**

F. If the amount of the Maine taxable estate that exceeds the Maine exemption amount exceeds \$2,500,000 but does not exceed \$3,000,000, the tax is 6% of the amount that exceeds the Maine exemption amount;

G. If the amount of the Maine taxable estate that exceeds the Maine exemption amount exceeds \$3,000,000 but does not exceed \$3,500,000, the tax is 7% of the amount that exceeds the Maine exemption amount;

H. If the amount of the Maine taxable estate that exceeds the Maine exemption amount exceeds \$3,500,000 but does not exceed \$4,000,000, the tax is 8% of the amount that exceeds the Maine exemption amount;

I. If the amount of the Maine taxable estate that exceeds the Maine exemption amount exceeds \$4,000,000 but does not exceed \$4,500,000, the tax is 9% of the amount that exceeds the Maine exemption amount;

J. If the amount of the Maine taxable estate that exceeds the Maine exemption amount exceeds \$4,500,000 but does not exceed \$5,000,000, the tax is 10% of the amount that exceeds the Maine exemption amount;

K. If the amount of the Maine taxable estate that exceeds the Maine exemption amount exceeds \$5,000,000 but does not exceed \$5,500,000, the tax is 11% of the amount that exceeds the Maine exemption amount; and

L. If the amount of the Maine taxable estate that exceeds the Maine exemption amount exceeds \$5,500,000, the tax is 12% of the amount that exceeds the Maine exemption amount.

**3. Other jurisdiction death tax credit.** A credit against the tax imposed by this section is allowed for all 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 or subject to those taxes as a part of or in connection with the estate and located in that jurisdiction if the value of that property is also included in the value of the decedent's intangible personal property subject to taxation under this section. The credit provided by this subsection may not exceed the amount of tax otherwise due multiplied by a fraction, the numerator of which is the value of the property located in the other taxing jurisdiction subject to this credit on which tax was actually paid and the denominator of which is the value of the decedent's federal gross estate.

## **§ 4104. Tax on estate of nonresident**

**1. Imposition of tax.** A tax is imposed on the transfer of all real and tangible personal property situated in this State and owned by a nonresident who dies after December 31, 2010. When real or tangible personal property has been transferred into a trust or a limited liability company or other pass-through entity, the tax imposed by this section applies as if the pass-through entity did not exist and the property was owned personally by the decedent.

**2. Calculation of tax.** The amount of the tax under this section is determined by computing the tax that would have been due had the decedent been a resident whose total estate wherever situated was subject to the Maine estate tax and multiplying that amount by a fraction, the numerator of which is the value on the date of death of the decedent's real and tangible personal property situated in this State and the denominator of which is the sum of the decedent's federal gross estate plus the 2 adjustments described in section 4102, subsection 6, paragraphs C and D. This calculation of tax is not affected by whether the specific real or tangible personal property situated in this State is marital deduction property.

**3. Proceeds from sale of property.** Proceeds from the sale of property are taxable under this section if those proceeds are included in the modified federal gross estate described in subsection 2 and the sale was made in contemplation of death. A sale of property made within 6 months prior to the death of the grantor is deemed to be in contemplation of death within the meaning of this section.

### **§ 4105. Personal representative's liability for tax**

**1. Payment of tax.** The tax imposed by this chapter must be paid by the personal representative to the extent of assets subject to the personal representative's control. The assessor may accept payment of estate taxes in works of art in accordance with Title 27, chapter 2, subchapter 2.

**2. Certification of payment.** A final account of a personal representative of an estate may not be allowed by the Probate Court unless the personal representative has filed in the Probate Court a certificate of the assessor showing either that the amount of tax has been paid, that payment has been secured as provided in section 4108 or that no tax is due.

### **§ 4106. Discharge of personal representative's personal liability**

If the personal representative makes a written application, accompanied by a copy of the final determination of the federal estate tax liability, if any, and other supporting documentation that the assessor may require, to the assessor for determination of the amount of the tax and discharge of personal liability for that tax, the assessor, as soon as possible and in any event within one year after the making of the application or, if the application is made before the return is filed, within one year after the return is filed, shall notify the personal representative of the amount of the tax and of any interest on that amount. The personal representative, on payment of that amount, is discharged from personal liability for any deficiency in tax subsequently found to be due and is entitled to a certificate of discharge.

### **§ 4107. Tax due date; filing of return and payment of tax**

**1. Date due.** Except as otherwise provided by this chapter, a return required by this section is due 9 months after the date of the decedent's death and any tax due under this chapter is due at the same time. Interest accrues on any amount of tax not paid by the due date.

**2. Return required.** The personal representative shall file a Maine estate tax return whenever:

A. The Code requires that a federal estate tax return be filed; or

B. The federal gross estate, increased by the amount of adjusted taxable gifts made by the decedent after December 31, 1976 and by the aggregate amount of any specific gift tax exemption under former Code, Section 2521 used by the decedent after September 8, 1976 exceed the Maine exemption amount.

The return must be in the form prescribed by the assessor, and it must be accompanied by a copy of the federal estate tax return, if any, and by other supporting documentation that the assessor may require.

**3. No tax liability.** In all cases where a Maine estate tax return is not required to be filed:

A. If the personal representative makes no election pursuant to section 4102, subsection 5, paragraph C, the personal representative, surviving joint tenant of real estate or any other person whose real estate might be subject to a lien for taxes pursuant to this chapter may at any time file with the assessor in the form prescribed by the assessor a statement of the value of the federal gross estate; and

B. If the personal representative makes an election pursuant to section 4102, subsection 5, paragraph C, the personal representative shall make the election on a timely filed return. The return must be in the form prescribed by the assessor, and it must be accompanied by a copy of the federal estate tax return, if any, and other supporting documentation that the assessor may require, including documentation related to an election made pursuant to section 4102, subsection 5, paragraph C.

### **§ 4108. Extension of due date for payment of tax**

The assessor may extend the time for payment of the tax or any part of the tax for a reasonable period of time not to exceed one year from the date fixed for payment and may grant successive extensions. The aggregate of extensions with respect to any estate may not exceed 10 years, unless a longer period is called for by a payment arrangement elected pursuant to section 4109. If an extension is granted, the assessor may require the taxpayer to:

**1. Bond.** Give a bond to the Treasurer of State in an amount the assessor determines necessary; or

**2. Other security.** Deposit with the Treasurer of State bonds or other negotiable obligations of governmental entities with an aggregate value sufficient to adequately secure payment of the tax.

### **§ 4109. Extension of time for payment of estate tax when estate consists largely of interest in closely held business**

**1. Deferred payment arrangement.** If the United States Internal Revenue Service has approved a federal estate tax deferral and installment payment arrangement under the Code, Section 6166, the personal representative may elect a similar deferred payment arrangement under this section for payment of the tax imposed by this chapter, subject to acceptance by the assessor. The assessor may approve a deferral and installment arrangement under similar circumstances and on similar terms with respect to an estate of a decedent dying after December 31, 2010 that does not incur a federal estate tax.

**2. Time and manner of election; rejection by assessor.** An election under this section may be made by attaching a payment deferral election in a form prescribed by the assessor to a timely filed Maine estate tax return, in addition to any documentation required by section 4107 and copies of all documentation required by the United States Internal Revenue Service and submitted in support of a federal payment deferral. Documentation submitted to the assessor must clearly indicate the amount of Maine estate tax and interest to be paid in installments; the number of separate installments; and the due date of each installment payment. The assessor may reject the election. An election not rejected in writing by the assessor within 60 days after the election is made is considered accepted.

**3. Interest and penalties.** The amount of Maine estate tax deferred under this section is subject to interest pursuant to section 186. Interest payable on the unpaid tax attributable to a 5year deferral period pursuant to the Code, Section 6166 must be paid annually. Interest payable on any unpaid tax attributable to any period after the 5year deferral period must be paid annually at the same time as, and as part of, each installment payment of the tax. If any payment of principal or interest under this section is not made on or before the due date, the penalties provided by section 187B apply.

#### **§ 4110. Extension of time for filing return**

**1. General.** The assessor may grant a reasonable extension of time for filing a return required by this chapter on terms and conditions as the assessor may require as long as payment reasonably estimating the tax due has been made on or before the original payment due date. Except as provided in subsection 2, an extension for filing any return may not exceed 8 months.

**2. Federal extension.** When an extension of time is granted within which to file a federal estate tax return, the due date for filing the Maine estate tax return is automatically extended for an equivalent period, as long as payment reasonably estimating the tax due has been made on or before the original payment due date.

#### **§ 4111. Effect of federal determination**

**1. Final federal determination.** Except as provided in subsection 2, a final federal determination as to any of the following issues also determines the same issue for purposes of the tax under this chapter:

- A. The inclusion in the federal gross estate of any item of property or interest in property; and
- B. The allowance of any item claimed as a deduction from the federal gross estate.

**2. State determination of certain estates.** The assessor is not bound by a final federal determination under subsection 1 if the assessor determines the issue for purposes of the tax under this chapter within one year of the date the return was filed or the date the return is due, whichever is later.

**3. Items entering computation of tax.** If there has been a final federal determination with respect to a decedent's federal estate tax, any item, but not its value, entering into the computation of the tax is deemed to have been the subject of the final federal determination, whether or not specifically adjusted thereby.

**4. Definition.** For purposes of this section, "final federal determination" means:

A. A decision by the United States Tax Court or a judgment, decree or other order by any court of competent jurisdiction that has become final;

B. A final disposition by the United States Secretary of the Treasury or the secretary's delegate of a claim for a refund. The disposition is deemed to have occurred:

(1) As to items of the claim that are allowed, upon allowance of a refund or upon disallowance of the claim by reason of offsetting items; and

(2) As to items of the claim that are disallowed or as to items applied by the United States Secretary of the Treasury or the secretary's delegate as an offset against the claim, upon expiration of the time for instituting suit for refund with respect to those items, unless suit is instituted before the expiration of that time, or upon filing with the assessor a written statement that suit will not be instituted;

C. A closing agreement made under the Code, Section 7121;

D. An assessment pursuant to a waiver of restrictions on assessment or a notification in writing issued by the United States Secretary of the Treasury or the secretary's delegate that the federal estate tax return has been accepted as filed, unless the personal representative notifies the assessor that a claim for refund of federal estate taxes has been or will be filed; or

E. An assessment pursuant to a compromise entered into by the personal representative and the United States Secretary of the Treasury or the secretary's delegate.

### **§ 4112. Lien for taxes**

All property subject to taxes under this chapter, in whatever form of investment it may happen to be, is charged with a lien for all taxes, interest and penalties that are or may become due on that property. The lien does not attach 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. Upon payment of those taxes, interest and penalties due under this chapter or upon determination that no tax is due, the assessor shall upon request execute a discharge of the tax lien for recording in the appropriate registry or registries of deeds.

### **§ 4113. Authority of State Tax Assessor**



The assessor shall collect all taxes, interest and penalties provided by chapter 7 and by this chapter and may institute proceedings of any nature necessary or desirable for that purpose, including proceedings for the removal of personal representatives and trustees who have failed to pay the taxes due from estates in their hands.

The assessor may enforce the collection of any taxes secured by bond in a civil action brought on the bond regardless of the fact that some other official may be named as obligee in the bond.

#### **§ 4114. Amount of tax determined**

The assessor shall determine the amount of tax due and payable under this chapter upon any estate or part of that estate. If, after determination and certification of the full amount of the tax upon an estate or any interest in or part of an estate, the estate receives or becomes entitled to property in addition to that shown in the estate tax return filed with the assessor or the United States Internal Revenue Service changes any item increasing the estate's liability shown in the Maine estate tax return filed with the assessor, the personal representative shall within 180 days of any receipt, entitlement or change file an amended Maine estate tax return. The assessor shall determine the amount of additional tax and shall certify the amount due, including interest and penalties, to the person by whom the tax is payable.

#### **§ 4115. Authority to make refunds**

**1. Refund.** A personal representative or responsible party otherwise liable for the tax imposed by this chapter may request a refund of any tax imposed by this chapter within 3 years from the date the Maine estate tax return was filed or 3 years from the date the tax was paid, whichever period expires later. A claim for refund must be submitted to the assessor in writing and must state the specific grounds upon which the claim is founded. The claimant may in writing request an informal conference regarding the claim for refund pursuant to section 151.

**2. Limitation on payment of interest.** Interest may not be paid by the assessor on an overpayment of the tax imposed by this chapter that is refunded within 60 days after the date prescribed or permitted by extension of time for filing the Maine estate tax return or within 60 days after the return is filed or within 60 days after a return requesting a refund of the overpayment is filed, whichever is later.

#### **§ 4116. Appointment of personal representative on probate delay**

If, upon the death of a person leaving an estate that may be liable to pay tax under this chapter, a will is not offered for probate or an application for administration is not made within 6 months after the date of death or if the personal representative does not qualify within that period, the Probate Court, upon application by the assessor, may appoint a personal representative. Nothing may prevent the assessor from petitioning for appointment within 6 months after the date of death, if in the opinion of the assessor that action is necessary.

#### **§ 4117. Persons liable**

Personal representatives, trustees, grantees or donees under nonexempt conveyances or nonexempt gifts made during the life of the grantor or donor and persons to whom beneficial interests accrue by survivorship are liable for the taxes imposed by this chapter with interest, as provided, until the taxes are

paid. For purposes of this section, "nonexempt conveyances" and "nonexempt gifts" mean any transfer to a person that is includable in the federal gross estate of the decedent and with respect to which no deduction is allowed in computing the federal estate tax liability.

If the tax or any part of the tax is paid or collected out of that part of the estate passing to or in possession of any person other than the personal representative in that capacity, that person is entitled to a reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the person whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest in the estate is subject to an equal or prior liability for the payment of tax, debts or other charges against the estate.

#### **§ 4118. Civil action by state; bond**

Personal representatives are liable to the State on their administration bonds for all taxes assessable under this chapter and interest on those taxes. If no administration bond is otherwise required and except as otherwise provided in this section, the judge of probate, notwithstanding any provision of Title 18A, shall require a bond payable to the judge or the judge's successor sufficient to secure the payment of all estate taxes and interest conditioned in substance to pay all estate taxes due to the State from the estate of the deceased with interest thereon. A bond to secure the payment of estate taxes is not required when the judge of probate finds that any estate tax due and to become due the State is reasonably secured by the lien upon real estate as provided in this chapter or by any other adequate security. An action for the recovery of estate taxes and interest lies on either of the bonds.

### **SUMMARY**

This bill provides a different method of calculation of the Maine estate tax. Instead of calculating the estate tax based on prior federal law, the bill establishes a progressive rate structure for estates that exceed an exemption amount of \$1,000,000 for persons who die after December 31, 2010.