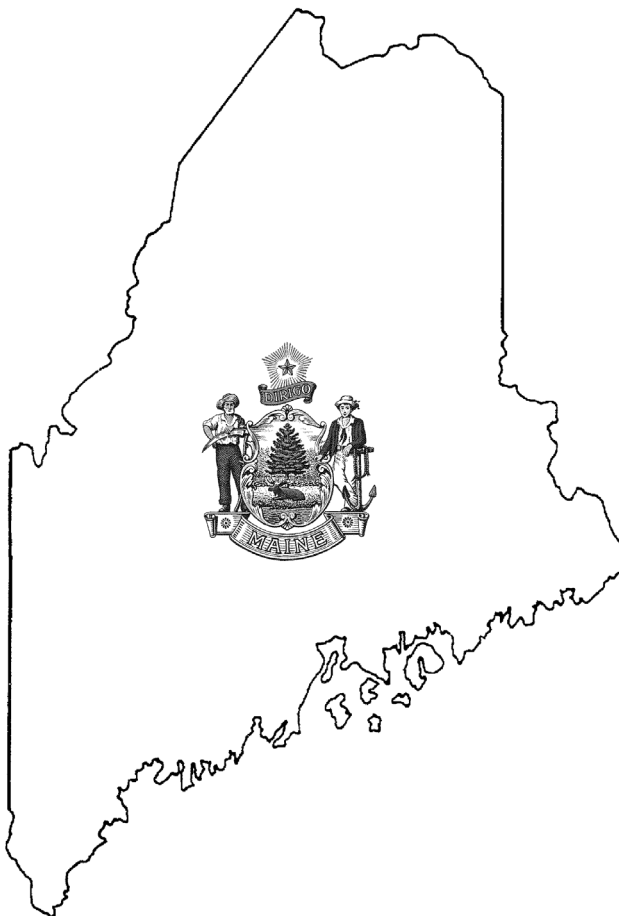


MAINE ESTATE TAX THROUGH 2012



GUIDANCE DOCUMENT

Maine Revenue Services, Income/Estate Tax Division

Rev. 11/12

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INTRODUCTION

This guidance document covers the Maine estate tax for decedents through 2012. Beginning in 2013, there are significant changes to the Maine estate tax. For more information about these changes, see “Maine Estate Tax for 2013 Decedents.”

Annually, approximately 13,000 people die in this state, but very few of these people leave a taxable estate. In any one year, Maine Revenue Services receives fewer than 400 estate tax returns with a tax liability, about 35% - 40% of which result from the deaths of out-of-state residents with property in Maine. For deaths occurring in 2006 - 2012, only those estates worth \$1 million or more are subject to Maine estate tax. In some cases, however, even estates worth more than \$1 million will not be taxable, as long as the assets are transferred to a surviving spouse or are not taxable for other reasons.

Many personal representatives file Maine estate tax returns even though no tax is due. These returns are normally filed as part of a request to remove the estate tax lien that is automatically imposed on all of the estate’s real and tangible property located in Maine. A simplified return, Form 706ME-EZ, may be filed for non-taxable estates with total property (gross estate plus prior taxable gifts) valued at less than \$1 million. In addition to requesting a lien release, this form may be used to request a Certificate of Discharge of Personal Representative Liability. If an estate is taxable, or close to being taxable, you might 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. A professional, however, is not necessary to complete a Maine estate tax return, either Form 706ME-EZ or Form 706ME.

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 IRS web site: www.irs.gov

Downloadable forms: www.maine.gov/revenue/tax-return-forms, select Estate Tax

General information: www.maine.gov/revenue/taxes/income-estate-tax/guidance-documents

Maine estate tax rule: www.maine.gov/revenue/publications/rules, select Rule 601

Maine estate tax law: mainelegislature.org/legis/statutes/36/title36ch575seco.html

Email: estatetax@maine.gov

Telephone: 207-626-8480

Fax: 207-624-9694

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

PART 2 – BACKGROUND

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. From 1986 until 2002, the Maine estate tax was equal to the federal state death tax credit, as calculated on the federal estate tax return, Form 706. Beginning in 2002, the federal estate tax began to phase out, with repeal in 2010 and reintroduction in 2011. In December of 2010, the president signed into law a higher, \$5 million exclusion amount and a lower top tax rate (35%) for 2011 and 2012. The \$5 million exclusion and 35% rate are available to 2010 decedents on an optional basis. The pre-2002 limitations are scheduled to be reinstated at the federal level in 2013. The federal credit for state death tax was phased out from 2002 to 2005. Maine partially decoupled from federal estate tax law, which resulted in some estates being taxable to Maine but not at the federal level. The Maine estate tax under current law will continue at 2009 levels through 2012, regardless of the 2010 federal changes.

Despite Maine's decoupling from federal law, only a small minority of estates are taxed. This guidance document is intended solely as advice to persons seeking information about the Maine estate tax and provides more information than is available in the filing instructions for the estate tax return. If an estate is not taxable, this document will assist the reader in completing the simplified estate tax return, Form 706ME-EZ.

If a decedent owned property in Maine, it is often a good idea to file an estate tax return along with 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. When an individual dies, leaving property located in Maine, an automatic lien is placed on that property. Liens that are not released by operation of law must be released by filing a completed lien release request that is approved by Maine Revenue Services. If there is any outstanding estate tax, 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 a simple form for filing an informational return (Form 706ME-EZ) to accompany a Certificate of Discharge of Estate Tax Lien for those estates that are not taxable (less than \$1 million of gross value plus taxable gifts).

Form 706ME-EZ may also be used for requesting a Certificate of Discharge of Personal Representative Liability. This certificate exempts a personal representative personally from any future estate tax liability of an estate, as long as a return has been filed and any tax due (including interest and penalty) has been paid. The exemption is limited to the liability of the estate for which the individual is the representative and applies only to the individual's capacity as a personal representative. If the individual is also a beneficiary, a liability may still be attached to any property inherited by that individual. The certificate may be downloaded from the MRS web site at the address listed in Part 1 of this document.

If an estate contains any real property (such as a home or land) or tangible personal property (such as a motor home or watercraft) in Maine, the personal representative may complete a Certificate of Discharge of Estate Tax Lien and attach it to Form 706ME-EZ, 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.

PART 3 – COMPLETING FORM 706ME-EZ FOR 2005 – 2012 DECEDENTS

STEP 1 – Demographic Information

The personal representative (or other preparer) must complete the demographic information in Step 1 of the form. The first four lines are for information about the decedent. The term “domicile” means the state of legal residence of the decedent at the date of death. For more information about domicile and residence, see “Guidance to Residency Status” at: www.maine.gov/revenue/taxes/income-estate-tax/guidance-documents and Rule 807 at www.maine.gov/revenue/publications/rules.

It is important to enter the decedent’s permanent address of legal residence, which may be different from the address where the decedent died. For example, if a person who was domiciled in Maine was in New York on a business trip when he/she died, enter the decedent’s home address in Maine and not the hotel address in New York.

Also included in Step 1 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 in Step 1.

STEP 2 – Authorization of a Third Party

Completing this step authorizes Maine Revenue Services to discuss the contents of the return with the estate representative named in this section. Normally, this will be filled in with the preparer’s name (both the firm and the preparer), address and contact information, if a professional preparer is completing the return. 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. All correspondence from Maine

Revenue Services will go to the personal representative listed under Step 1, even if Step 2 is completed.

STEP 3 – Residency Status

The representative must check the appropriate residency box in Step 3. A decedent is a resident of his or her state of domicile at the time of death. For more information about state of domicile, see Rule 601, Rule 807 and the Guidance to Residency Status at the address included in the Step 1 section above.

STEP 4 – Estate Information

The personal representative (or other preparer) must complete lines 1 through 3. The worksheet for line 3, total gross estate, is located on page 2 of Form 706ME-EZ. The worksheet is used to calculate the value of the decedent's assets. Once Form 706ME-EZ, lines 1 through 3 are completed, the personal representative must sign the return. If a paid preparer completed the return, that person must also sign the return.

The property included on the worksheet must be included at full value as of the decedent's date of death, no matter where it is located (Maine or out-of-state) and prior to the reduction by any associated debt, such as mortgage debt on a home. The full value of all property is included on this worksheet even if the decedent is not a resident of Maine. **If the federal gross estate column of the worksheet (line 12) totals \$1 million or greater, Form 706ME must be filed instead of Form 706ME-EZ.** The personal representative may subtract debt and allocate Maine and non-Maine property only on Form 706ME, not on Form 706ME-EZ.

What follows is a list of the individual lines on the worksheet for line 3, Form 706ME-EZ and a description of the contents for each line, as well as methods for assigning value to the property on each respective line.

Worksheet for Form 706ME-EZ, Line 3

Maine Estate Tax Information Return for Lien Discharge

If a line from this worksheet contains a dollar amount, proof of value must be included with the decedent's estate tax return. In most cases, the value can be verified with the documents mentioned in the instructions below. In some cases, supporting documentation may be requested by Maine Revenue Services.

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). Real estate must be included at its fair market value as of the decedent's date of death. If the alternate valuation date is used to determine the value of property in an estate, Form 706ME must be used. There are several ways to determine the value of real estate. For estates that are not close to being valued at \$1 million, 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 actual value as of the decedent's date of death, such as professional property appraisals.**

The valuation of real estate is reported on Form 706ME-EZ 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 and Maine elective property is \$1 million or more, 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.

Line 2: Stocks and bonds

This line is for the value of the decedent's investments. 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 taken from 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 on Form 706ME-EZ. Fees and charges 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.

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.

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) 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 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 houses and land, that are owned by both spouses or by the decedent and one or more other persons. This line should also include any other jointly owned assets, such as joint checking accounts. If the decedent owned property with other persons, you may attach a separate sheet of paper listing each owner's name and percentage of ownership.

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 if a federal return was required (see 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 property on line 5. If the decedent gifted any portion of his or her property, enclose the appropriate gift tax returns (including appraisals) that were filed with the IRS in the years of the gifts. Do not include on this line the balance due of any mortgage or other loan secured by the property.

If Form 706ME is filed, an accounting for the division of the value between the decedent and other owners of the property and a reduction for any associated debt will be included as part of that return.

Line 6: Other miscellaneous property

Include on this line any items owned by the decedent at time of death that were not included on another line. 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. Include the value of jointly owned miscellaneous property as part of the line 5 total rather than on this line.

Line 7: 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. Then, at the death of the decedent, the remainder of the trust is distributed to the beneficiaries named in the trust document. During life, the decedent may change, or revoke, all or part of the trust agreement. 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. 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, you should consider enlisting the help of a professional estate tax return preparer.

Line 9: Annuities/retirement assets

Enter on this line the value of any retirement accounts owned by the decedent at death. Retirement accounts include 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 get 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. All assets located in a trust of a Maine resident decedent are included in the estate value, whether or not the estate incurs a liability. 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 any taxable gifts made by the decedent. Taxable gifts are those gifts 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. If the decedent had previously filed Forms 709, attach copies to the Maine estate tax return. The annual gift tax exclusion is adjusted for inflation. The dollar amounts for each year are:

\$13,000 for 2009 through 2012

\$12,000 for 2006 through 2008

\$11,000 for 2002 through 2005

\$10,000 for 2001 and prior years

If taxable gifts have been made within one year of death, Form 706ME-EZ may not be filed; instead, Form 706ME must be completed.

Line 12: Total Gross Estate

Add lines 1 through 11. Enter the amount from column B on line 3 of the return. If this amount is \$1 million or greater, or if the estate contains any Maine elective property at all, Form 706ME-EZ cannot be used and Form 706ME (including federal pro forma Form 706) must be filed.

Line 13: Marital Deduction – Bequests to Surviving Spouse

Enter on this line the value of property included on line 12 that is passed to the surviving spouse.

EXAMPLES

Below are examples of estates and how to complete Form 706ME-EZ.

Example #3.1

John Smith, a resident of Maine dies in 2012, 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 \$1 million, the personal representative may file Form 706ME-EZ to obtain a lien release for the home and camp properties.

On the worksheet for Form 706ME-EZ, the home and camp are included on line 1 (Real Estate), the bank account is entered on line 3 (Mortgages, Notes and Cash) and the life insurance proceeds are included on line 4 (Insurance on the decedent's life). Along with Form 706ME-EZ and valuation documents, a Certificate of Discharge of Estate Tax Lien must be filed to obtain a lien release for the home and camp. If the two properties are located in the same county, they can be included on one certificate. If, however, the properties are in two different counties, it will probably be more advantageous for the personal representative to include each property on a separate certificate. By applying for two separate discharges, the personal representative is

able to supply each county administrator with the appropriate paperwork for the property located in that county.

Example #3.2

The facts are the same as in the first example, except John has left a surviving spouse, Susan.

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, but in this case there is a surviving spouse, Susan. John willed everything to Susan. Since, as in the first example, the total value of all assets is less than \$1 million, the personal representative may file Form 706ME-EZ to obtain a lien release for the home and camp properties.

The personal representative may complete the worksheet on the back of Form 706ME-EZ the same as in the first example, except for one difference. The total from line 11 of the worksheet (\$550,000) is also entered on line 13 (Marital Deduction). This line represents the value of the assets transferred to the surviving spouse.

Downloadable copies of Form 706ME-EZ, the Certificate of Discharge of Estate Tax Lien and other forms are located at www.maine.gov/revenue/tax-return-forms.

For further information, call 207-626-8480, email estatetax@maine.gov or write: Maine Revenue Services, Income/Estate Tax Division, P.O. Box 9107, Augusta, ME 04332-9107.

PART 4 – APPLICATION OF EXCLUSION AMOUNTS

Beginning in 2002, Maine decoupled from federal estate tax law changes, including the increase in exclusion amounts and the phase out of the state death tax deduction. For decedents in 2010 through 2012, the Maine estate tax is determined based on the federal law applicable to decedents dying in 2009. All other calculations, such as property valuation, are to be based on the version of the Internal Revenue Code (“Code”) in effect on the date of death. The intent of Maine law is to tax estates in the same manner as they would have been taxed prior to the 2010 phase-out of the federal estate tax.

The taxability of an estate is determined by the applicable exclusion amount. Generally, if an estate’s value is the same or greater than the exclusion amount, the estate is taxable; if the value is below the exclusion amount, the estate is not taxable. Different exclusion amounts are now used in determining the taxability of an estate for federal and state tax purposes. 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 elective property and/or prior taxable gifts as defined by Maine law. For a discussion on prior taxable gifts, see Part 6. The tentative federal tax is calculated on the aggregate value of the taxable estate and adjusted taxable gifts (line 5 on federal Form 706). The tentative federal tax on the sum of the taxable estate and adjusted taxable gifts is then reduced by the amount of the gift taxes paid or payable on post-1976 gifts. This reduced tax total results in the amount of federal estate tax to which credits are applied to determine the net estate tax payable.

Maine’s estate tax law provides, in part, that the adjusted taxable estate is to be determined using the applicable Code provisions. Those provisions require that the value of the federal gross estate of the decedent plus the value of adjusted taxable gifts be used in determining the taxability of an estate for Maine purposes. Maine law further adjusts this total by adding Maine elective property to the total federal gross estate and adjusted taxable gifts. If this total equals or exceeds \$1,000,000, the estate is taxable to Maine.

For estates of decedents dying in 2009 - 2012, Maine's definition of federal gross estate includes taxable gifts made within one year prior to the date of death. This inclusion in federal gross estate does not change the taxable threshold of an estate, but it does change the value of the estate that is taxable to Maine.

If the \$1,000,000 taxable threshold value is reached by an estate, Form 706ME must be filed; Form 706ME-EZ is not allowed for those estates. The Maine taxable value of an estate includes adjustments for Maine QTIP allowance, Maine elective property and taxable gifts made within one year of death.

PART 5 – 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 for 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.

A Maine QTIP election, on the other hand, is made for different purposes. The Maine QTIP election is claimed to maximize the federal estate tax exclusion without incurring immediate Maine tax liability. The Maine QTIP is most useful when the federal exclusion amount is higher than the Maine exclusion. Beginning with 2005 deaths, estates of decedents with surviving spouses can elect to create a separate Maine QTIP trust, with a value up to the difference between the federal exclusion and the Maine exclusion (36 M.R.S.A. § 4062(2-B)). 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.

For estates of decedents dying in 2010, the maximum allowable Maine QTIP is limited to \$2,500,000, the difference between federal and Maine exclusions in 2009. A Maine QTIP election of up to \$2,500,000 can be made for a 2010 decedent even if the option to not file a federal estate tax return is exercised. The Maine QTIP limitation for 2010 decedents is not affected by the federal estate tax law changes enacted in December, 2010.

For estates of decedents dying in 2011 - 2012, the Maine QTIP amount can equal the difference between the Maine exclusion and the federal exclusion amounts. For 2011 decedents, the

maximum Maine QTIP amount is \$4 million. For 2012 decedents, the maximum Maine QTIP amount is \$4,120,000.

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 (\$1,000,000 for 2006-2008, \$2,500,000 for 2009- 2010, \$4,000,000 for 2011 and \$4,120,000 for 2012). 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.

For example, a husband dies in 2011, leaving behind an estate worth \$10,000,000. Upon his death, \$5,000,000 is passed directly to his wife and the remaining \$5,000,000 is transferred to a QTIP-eligible trust. The estate does not make a federal QTIP election for the eligible property, but does make the election for Maine of \$4,000,000 of the QTIP-eligible property. Since the Maine QTIP trust is considered a direct transfer to the surviving spouse, it is treated as marital deduction property and is not taxable to Maine at this time. Since, however, the QTIP election was not made at the federal level, the eligible property is included as part of the federal taxable estate. Therefore, the husband leaves a federal taxable estate of \$5,000,000 (property

transferred to the QTIP-eligible trust, but not claimed as a QTIP) and a Maine taxable estate of \$1,000,000 (\$5,000,000 federal taxable estate - \$4,000,000 Maine QTIP), net of the adjustment for the Maine QTIP property. Thus, the estate tax liability in this example is zero at both the federal and state levels.

The wife subsequently dies in 2012. Assume that her total estate consists of \$5,000,000 plus the \$5,000,000 passed directly to her by her husband's estate plus the current value of the Maine QTIP trust (Maine elective property), which has diminished to a current value of \$3,000,000. The federal gross estate is equal to \$10,000,000 (\$5,000,000 + \$5,000,000). The Maine gross estate is equal to \$13,000,000 (\$10,000,000 federal gross estate + \$3,000,000 Maine elective property).

Representatives of 2010 decedents are allowed an option regarding the federal estate tax. A representative may elect to apply the federal estate tax or to exclude the estate from taxation. For 2010 decedents whose representatives opt to exclude the estate from federal tax, Maine allows a pro forma federal QTIP election for qualified property not included in a Maine QTIP. Property included in a Maine QTIP election, property included in a pro forma federal QTIP election and all other property considered marital deduction property must be included in the value of the estate of the surviving spouse, for purposes of the Maine estate tax.

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

To illustrate, consider the wife who is the second decedent in the previous example. Her estate consisted of the \$10,000,000 federal gross estate plus \$3,000,000 of Maine elective property. She is a resident of Massachusetts at the time of her death and the \$10,000,000 federal estate is made up of \$2,000,000 in Maine property and \$8,000,000 in Massachusetts property. The

Maine elective property contains \$200,000 in Maine property. For purposes of calculating the Maine estate tax, the Maine fraction is $(\$2,000,000 + \$200,000)/(\$13,000,000) = 0.169231$ or 16.923%.

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 gross estate of \$10 million had prior taxable gifts totaling \$500,000. The decedent funds the taxable estate with \$3 million, leaving the remaining \$7 million to his wife. In order to take full advantage of the federal and Maine exclusion amounts, the decedent must fund the Maine QTIP with \$2,500,000, bringing the taxable estate down to \$500,000 and the taxable estate plus prior taxable gifts to \$1,000,000.

PART 6 – TAXABLE GIFTS

Beginning with deaths in 2009, 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 is indexed for inflation. For gifts made in 2009 – 2012, the exclusion amount is \$13,000 and for 2008 the exclusion is \$12,000. Gifts made prior to January 1, 2008, will not be included in the Maine taxable estate, but will be considered in the Maine estate tax calculation.

To determine if gift property is Maine taxable property, use the same guidelines as with all other property. For Maine resident decedents, all property except real and tangible personal property located outside Maine at the time of the gift is Maine taxable property. For nonresident decedents, real and tangible personal property located in Maine at the time of the gift is Maine taxable property.

For example, in 2010 a Maine resident makes a cash gift of \$100,000 to a relative who lives in Massachusetts. If that Maine resident then dies within one year of making that gift, the cash is included in the Maine taxable estate and is counted as Maine taxable property. Likewise, if a nonresident gives to a family member a boat worth \$100,000 that is located at the nonresident's summer camp in Maine, that boat is included in the nonresident's Maine taxable property if he or she dies within one year of the gift. This is true even if the person receiving the boat moves it to another state.

EXAMPLE #6.1

Phil, a Massachusetts resident, makes gifts to his two children in 2010; to his daughter, Pat, he gives \$50,000 cash and to his son, Pete, he gives a painting worth \$50,000. The painting is, at the time of the gift, hanging on a wall of Phil's vacation home in Maine. The two gifts are completed on August 15, 2010. Pat is a Maine resident and Pete is a resident of North Carolina.

Pat deposits her \$50,000 in her local bank. Pete has his new gift shipped to his home in North Carolina. In April 2011, Phil files a gift tax return, showing \$74,000 in taxable gifts, as follows:

Cash to Pat (\$50,000 less \$13,000 exclusion):	\$37,000
Painting to Pete (\$50,000 less \$13,000 exclusion):	<u>\$37,000</u>
	<u>\$74,000</u>

In June, 2011, Phil dies, leaving the following items in his estate:

Massachusetts house:	\$ 500,000
Property in MA house	\$ 500,000
Life insurance:	\$1,000,000
IRA:	\$ 750,000
Other investments:	\$2,250,000
Maine house & property:	<u>\$ 400,000</u>
Total	<u>\$5,400,000</u>

Phil's Maine estate includes the property above plus the \$74,000 in gifts made less than one year prior to his death. Assuming Phil's estate has no deductions, the gross estate will be the same as the taxable estate. The Maine taxable estate is equal to:

Federal estate:	\$5,400,000
Prior year's taxable gifts:	<u>\$ 74,000</u>
Maine taxable estate	<u>\$5,474,000</u>

The Maine gross estate tax is calculated using Form 706ME, Table A and associated worksheet to be \$447,680. The percentage of Maine property is then calculated:

Maine property = Maine house & property plus Gift to Pete
= \$400,000 + \$37,000 = \$437,000

Percentage of Maine property = Maine property/total estate = \$437,000/\$5,474,000 =
0.079832

$$\begin{aligned} \text{Maine estate tax} &= \text{Maine gross estate tax} \times \text{percentage of Maine property} \\ &= \$447,680 \times 0.079832 = \underline{\underline{\$35,739}} \end{aligned}$$

PART 7 – 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.

For estates of decedents who die prior to 2013, Maine follows the federal unified credit restriction for estates of decedents who were nonresidents and 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 to \$13,000 and this credit replaces the credit under IRC § 2010 when calculating the tax for the estate of a nonresident who was not a U.S. citizen. Since, for estates of decedents through 2012, Maine follows the unified credit calculated for federal purposes under the Code as of December 31, 2000, Maine will also allow only the limited \$13,000 unified credit replacement for purposes of calculating the Maine estate tax. Sometimes, the limitation may be higher than the \$13,000 reported in the Code because it may be covered in a tax treaty between the U.S. and the appropriate country. The IRS web site contains links to tax treaties from many different countries (go to: www.irs.gov/businesses/international/article/0,,id=96739,00.html). The appropriate section of the U.S.-Canadian treaty is Article XXIX B.

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. § 4064 and MRS Rule 601.07(D).

Section C – Gap Estates: Administrative Expenses

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 is 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. Upon the issuance of the letters of authority, the personal representative will fund the escrow account and send a letter to MRS with the account's 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.

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:

Dennis M. Doiron, Director, Income/Estate Tax Division
Maine Revenue Services
P.O. Box 1068
Augusta, ME 04332-1068

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 8:00 AM and 5:00 PM Monday through Friday, except holidays.

MAINE ESTATE TAX TABLE

Table A Estates of Decedents Through 2012

1			2	3	4
If adjusted taxable estate is			subtract the	Multiply	
at least:	BUT	less than:	following amount from	result	Add:
<u> </u>		<u> </u>	<u>adjusted taxable</u>	<u>by:</u>	
			<u>estate:</u>		
\$0		\$40,000	\$0	0.0%	\$0
\$40,000		\$90,000	\$40,000	0.8%	\$0
\$90,000		\$140,000	\$90,000	1.6%	\$400
\$140,000		\$240,000	\$140,000	2.4%	\$1,200
\$240,000		\$440,000	\$240,000	3.2%	\$3,600
\$440,000		\$640,000	\$440,000	4.0%	\$10,000
\$640,000		\$840,000	\$640,000	4.8%	\$18,000
\$840,000		\$1,040,000	\$840,000	5.6%	\$27,600
\$1,040,000		\$1,540,000	\$1,040,000	6.4%	\$38,800
\$1,540,000		\$2,040,000	\$1,540,000	7.2%	\$70,800
\$2,040,000		\$2,540,000	\$2,040,000	8.0%	\$106,800
\$2,540,000		\$3,040,000	\$2,540,000	8.8%	\$146,800
\$3,040,000		\$3,540,000	\$3,040,000	9.6%	\$190,800
\$3,540,000		\$4,040,000	\$3,540,000	10.4%	\$238,800
\$4,040,000		\$5,040,000	\$4,040,000	11.2%	\$290,800
\$5,040,000		\$6,040,000	\$5,040,000	12.0%	\$402,800
\$6,040,000		\$7,040,000	\$6,040,000	12.8%	\$522,800
\$7,040,000		\$8,040,000	\$7,040,000	13.6%	\$650,800
\$8,040,000		\$9,040,000	\$8,040,000	14.4%	\$786,800
\$9,040,000		\$10,040,000	\$9,040,000	15.2%	\$930,800
\$10,040,000			\$10,040,000	16.0%	\$1,082,800