

Maine Estate Tax Law Updates 2013 ©

By: Robert E. Danielson, Esq. with assistance
From Dino Serafini

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- 2. Maine Estate Tax Law for deaths occurring on or after January 1, 2013**
- 3. The Surviving Spouse and the Maine QTIP/No State Portability**
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1. Maine Estate Tax Law: an overview:

- Maine is one of a handful of states that still collect a state death tax. The estates of Maine residents, as well as the estates of nonresidents who own real estate, tangible property, and/or one or more business entities located in Maine, are subject to an estate tax. Such a tax applies 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.

2. Maine Estate Tax Law for deaths occurring after January 1, 2013:

(Title 36 M.R.S. §4101 et seq.)

- The new Maine Estate Tax Law makes significant changes to the previous situation. Most notably, effective for deaths on or after January 1, 2013, the Maine Estate Tax exemption doubles from \$1 million to \$2 million per decedent. The state estate tax rate structure is also modified and improved by the new legislation. In the past, the method by which the state estate tax was calculated resulted in a "cliff effect" wherein an estate that was just over the exemption amount would end up paying a much higher effective tax rate than an estate that was well over the exemption amount.
- As a result of the comprehensive restructuring done in the spring of 2011, Maine's estate tax statute changed dramatically and now includes a true exemption and new tax rates. The calculation was simplified and eliminated the regressive nature of the two-tiered calculation under prior Maine law; the tax is now calculated only on the amount of estate assets in excess of the exemption, starting at a rate of 8% on assets over \$2 million and up to \$5 million, with a 10% rate on additional assets between \$5 million and \$8 million and a 12% tax rate on amount in excess of \$8 million. Taxable gifts made within one year of death are added back to the estate tax base.
- Under the new legislation, the rates are:

Estates of 2013 Decedents					
1		2	3	4	
If Maine taxable estate is		subtract	Multiply	Add:	
More than:	BUT	From Maine adjusted taxable estate:	result by:		
	Not more than:				
\$0	\$2,000,000	\$0	0.00%	\$0	
\$2,000,000	\$5,000,000	\$2,000,000	8.00%	\$0	
\$5,000,000	\$8,000,000	\$5,000,000	10.00%	\$240,000	
\$8,000,000		\$8,000,000	12.00%	\$540,000	

- Compared to the prior law's inequitable cliff effect and top rate of 16%, this is a much more favorable structure for taxpayers.
- The new Maine QTIP rules encompass the entire gap between a lower Maine exemption and a higher federal exemption. The cap for a Maine QTIP in 2011 was \$2.5 MM.
- The Maine taxable estate is defined as the federal taxable estate, decreased by the Maine QTIP property, increased by any Maine elective property and taxable gifts made within one year of death. If the total exceeds \$2MM, the estate is subject to Maine estate tax.
 - Note: This means that other than gifts made within one year of death, completed gifts made during one's lifetime will escape Maine estate tax at death.
- Maine does not tax real or personal property owned by a Maine resident but located out of state but taxes intangibles located anywhere.
- Maine Revenue Services no longer requires the use of the 2009 pro forma federal estate tax return to accompany its tax returns, and the state death tax credit calculation is no longer a consideration. Instead, Maine Revenue Services permits the filing of a contemporaneous federal estate tax return if the federal estate tax laws remain appropriately pertinent.
- When there is no federal tax liability, no Maine estate tax return is required but a personal representative who wishes to make a filing to discharge the estate tax lien on real or tangible property under 36 M.R.S. § 4112 merely files a Statement of Value ("SOV") (Form 700-SOV); this will permit the personal representative in those estates under the return filing threshold to file a simple declaration that the entire value of the estate as adjusted for taxable gifts and the Maine Elective Property is under the filing threshold. (See guidance Document-DOR- Maine Estate Tax for Death occurring after 2012).
- Maine Revenue Services remains able to challenge the values of assets reported, even if a federal determination letter is received. Further, the State has one year after the final federal determination to challenge the inclusion of an asset in the estate for the allowance of deductions (36 M.R.S. § 4111). The Personal

Representative of an estate is responsible for payment of the tax up to the value of the assets he or she controls (36 M.R.S. § 4105), but the Personal Representative can discharge his or her liability even before obtaining a closing letter, by filing an application requesting a determination of the tax under 36 M.R.S. § 4106 that will limit the liability to one year of exposure.

3. The Surviving Spouse and Maine “QTIP”/ Portability

A. The Maine Qualified Terminal Interest Property (“QTIP”)

- The Maine QTIP election is created by Will or Trust.
- The Maine QTIP election is claimed to maximize the federal estate tax exclusion without incurring immediate Maine tax liability. If the federal exclusion amount is higher than the state exclusion amount, estates of decedents with surviving spouses can elect to create a separate Maine QTIP trust, with a value up to the difference between the federal exclusion and the Maine exclusion (36 M.R.S. § 4062(2-B)).
 - Note: This is an expansion of the prior Maine QTIP exclusion.
- The election postpones Maine estate tax on the Maine QTIP property from the estate of a decedent with a surviving spouse until the death of that spouse. The value of the Maine QTIP trust is included in the federal taxable estate of the first decedent, but is treated as having passed to the surviving spouse for Maine estate tax purposes.
- The property included in a Maine QTIP election must qualify as QTIP property under federal law. Additionally, the property included in a Maine QTIP trust may not be part of a federal QTIP election. For a Maine QTIP election to be valid.
- The method for making a Maine QTIP election follows a two-step plan. After the death of the first spouse, an amount equal to the federal exclusion is transferred to the decedent’s federal taxable estate and the remaining assets are transferred to the surviving spouse and included in the marital deduction. The Maine QTIP trust is then funded with property included in the federal taxable estate having a value not exceeding the difference between the federal exclusion amount and the Maine exclusion amount. After the election, the Maine taxable estate is equal to the federal taxable estate less the value of the Maine QTIP. If the value of the Maine taxable estate is equal to or less than 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.
 - Note: There is some discussion as to whether Maine will tax the QTIP amount if the surviving spouse moves out of the State of Maine after the death of his or her spouse and no Maine estate tax return is ever filed at his/her death.

- The value of the QTIP Trust will fluctuate and possibly increase from the date of death of the first spouse to the date of death of the second spouse. That does not affect the amount of tax owed on the second spouse's death.
- 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, the Personal Representative 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.

B. No State Portability

- Although portability is available for estates of decedents for federal estate and gift tax purposes, currently no state allows portability of a deceased spouse's state exclusion/threshold amount to the surviving spouse. If spouses want to simplify their estate plans by leaving everything to their surviving spouse and opt for portability, the deceased spouse's estate will not be able to take advantage of the state's estate tax exclusion/threshold amount. This will increase the amount of state estate taxes incurred by the surviving spouse's estate.
- For example, assume a Maine couple had a combined estate of \$3 million and, for simplicity, established estate plans that left everything to the surviving spouse. On the death of the first spouse, all of the assets of the deceased spouse pass to the surviving spouse, and the deceased spouse's executor makes the portability election for federal estate tax purposes. There is no federal or Maine estate because of the unlimited marital deductions. But on the death of the surviving spouse, the surviving spouse's estate would be \$3 million, which would be subject to a Maine estate tax of \$80,000. If the couple had used traditional marital deduction planning, the couple could eliminate all state estate taxes. On the first spouse's death, that spouse's estate would fund a credit shelter trust with the \$2 million, thereby resulting in no Maine estate tax. On the death of the surviving spouse, the surviving spouse's estate would include only \$1 million, which would not be subject to a Maine estate tax.
- Therefore in Maine, planning with portability can be disadvantageous and result in the surviving spouse's estate paying larger state estate tax or an estate tax that could have been avoided.

4. Nonresident concerns:

- The new Maine estate tax retains a symmetry in the manner of calculating the Maine estate tax for residents and nonresidents alike; for nonresidents that calculation

remains a proportional calculation that would seek to tax only the value of certain real estate and tangible personal property located in Maine. (36 M.R.S. § 4104).

- First, the initial tax is calculated as if the decedent were a Maine resident. That initial tax is then multiplied by a fraction, the numerator of which is the value of the Maine real estate and tangible personal property in the adjusted federal gross estate, and the denominator of which is the total adjusted gross federal estate.
- If a 2013 nonresident decedent had a Federal taxable estate valued at \$5 million, including a \$500,000 home in Maine, the calculation would be as follows:

Gross Federal Estate		\$5,000,000
Initial Tax	(8% of \$3,000,000)	\$240,000
Maine % of Gross Estate	10%=($\$500,000 \div \$5,000,000$)	
Maine Estate Tax		\$24,000

- It does not matter if the Maine property passes to a spouse, whether by bequest, formula or joint tenancy, because the full tax is calculated and then the proportion applies whether or not the property in Maine is the subject of a marital deduction. The goal is to render the estate tax eligible for a federal marital deduction or a Maine QTIP election to reduce the Maine taxable estate to \$2 million or less. It is important to remember that there may be a Maine estate tax liability on Maine real estate owned by a nonresident couple when the first spouse dies, even if they owned the Maine property as joint tenants and may have expected that the marital deduction would avoid the Maine estate tax.
- Maine Revenue will still look through pass-through entities owning Maine property and tax a nonresident decedent. Now, however, the look-through provision will only apply if the entity does not actively carry on a for-profit business, the ownership by the pass-through was not for a legitimate business purpose, or the property was acquired by other than a bona fide sale and the decedent retained an interest in the Maine property. Maine will still impose state estate tax on nonresident owner of Maine property who merely shifts the ownership of the property to a pass-through entity in an attempt to make it non-Maine property for tax purposes. (It would be a non-Maine property absent this statute because the decedent would own an intangible asset—a membership interest in the pass-through, which would be sited to his own state of domicile, rather than tangible property sited to its location.) The state will not tax any property held in a pass-through for a legitimate business purpose.

5. Effect on Same-Sex Couples:

- DOMA was a federal law that required same sex spouses to be treated as unmarried for purposes of federal law, including but not limited to federal tax matters regardless of the recognition of same sex marriage under a number of state laws.
- In *Windsor* (*Windsor v. U.S.*, 833 F.Supp.2d 394 (S.D.N.Y.2012), *aff'd.* 699 F.3d 169 (2nd Cir Oct. 18, 2012) *aff'd.* 570 U.S. ___ (June 26, 2013). the Supreme Court held that Section 3 of DOMA was unconstitutional.
- Maine is one of the fifteen (15) states that currently recognize same-sex marriages. In Maine the effect of *U.S v. Windsor* results in same-sex couples benefitting from

federal and state benefits and exemptions in the same way as a heterosexual married couple for all purposes.

PowerPoint Slides to Follow...

Maine Estate Tax Law Updates



Law Offices of Robert E. Danielson
Robert E. Danielson, Esq.
65 West Commercial Street, Suite 106
Portland, Maine 04101
www.danielsonlawoffice.com

Overview



- ∞ Estate Tax Law
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- ∞ The Surviving Spouse and the Maine QTIP/No Portability
- ∞ Nonresident Concerns
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If Maine taxable estate is		subtract		Multiply	Add:
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\$0		\$2,000,000	\$0	0.00%	\$0
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Maine Estate Tax Calculation for deaths occurring after January 1, 2013



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The Surviving Spouse and the Maine QTIP



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Nonresident Estate Tax Calculation



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