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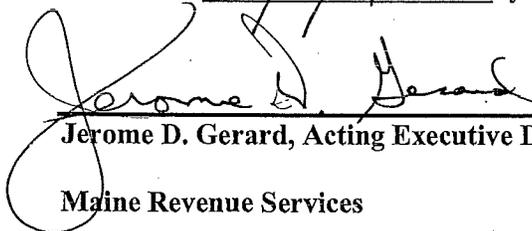
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Federal and Maine Estate Tax Law:

Discharge from Personal Liability of a Personal Representative

Submitted to the Joint Standing Committee on Taxation of the 124th Legislature

On 12/16/09 by



Jerome D. Gerard, Acting Executive Director
Maine Revenue Services

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RYAN LOW
COMMISSIONER

MAINE REVENUE SERVICES

JEROME D. GERARD
ACTING EXECUTIVE DIRECTOR

MEMORANDUM

TO: Joint Standing Committee on Appropriations and Financial Affairs
Joint Standing Committee on Taxation

FROM:  Jerome D. Gerard, Acting State Tax Assessor

DATE: December 8, 2009

SUBJECT: Discharge from Personal Liability of a Personal Representative

Pursuant to Resolve 2009, Chapter 101, Maine Revenue Services hereby submits the attached report on the federal and state law related to the discharge from personal liability of a personal representative for estate tax.

cc: Commissioner Ryan Low

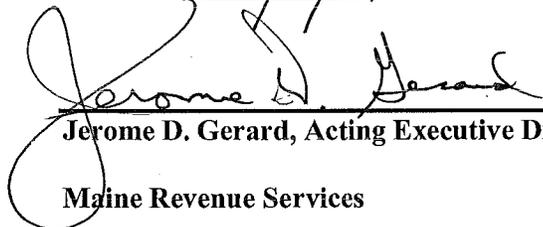
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INTRODUCTION

The Joint Standing Committee on Taxation of the 124th Legislature by resolve requested that the Bureau of Revenue Services (“Maine Revenue Services” or “MRS”) review the law and procedures for the discharge of personal liability of the personal representative related to the federal estate tax due on the value of an estate under the Internal Revenue Code (the “Code”). MRS was tasked to identify the ways in which the requirements and procedures of the federal system differ from those in this State and to report back to the Committee by January 15, 2010.¹

This report discusses federal and state estate tax law and procedures as they apply to the discharge of personal liability of a personal representative for tax liability of an estate.

FEDERAL ESTATE TAX LAW

Federal estate tax is imposed on the transfer of the taxable estate of every deceased resident or citizen of the United States.² An executor (also called a personal representative) is an appointed representative of the estate³, or, if no representative is appointed, any person having constructive control of assets of the estate qualifies as a personal representative.⁴ The personal representative of the estate must pay the federal estate tax imposed under chapter 11 of the Code.⁵ The personal representative also has an obligation to file the decedent’s final federal income tax return and any gift tax return due, paying any tax that may be owed.⁶

¹ 2009 Resolve Ch. 101.

² 26 U.S.C. §2001(a).

³ 26 U.S.C. §6905(b).

⁴ 26 U.S.C. §2203.

⁵ 26 U.S.C. §2002.

⁶ 26 U.S.C. §6901.

A personal representative of an estate may file a request asking that the Internal Revenue Service (“IRS”) relieve the personal representative of personal liability for the decedent’s federal estate tax, gift tax and income tax liability. This process is known as applying for a discharge of personal liability for the federal estate tax.⁷ The personal representative must file a written request asking that the IRS determine the estate tax due.⁸ As soon as possible, but no later than nine months after filing of the request, the IRS must determine the tax due.⁹ Upon payment of that amount and upon a bond, if one is required, the personal representative is entitled to a certificate of discharge from personal liability for any additional estate tax that may be later determined.¹⁰ The estate continues to be liable for any newly -determined tax. The discharge does not relieve the personal representative from an obligation to pay any newly -determined estate tax if the personal representative is in possession of estate property, which is subject to a lien for estate tax.¹¹

Estate tax imposed under the Code is a lien upon the estate.¹² A discharge from personal liability of the personal representative will not release the lien on the estate assets.¹³ Other liens may also arise against the estate assets by operation of law or agreement of the personal representative.¹⁴

To make the request for discharge from personal liability, the personal representative must file Form 5495, Request For Discharge From Personal Liability

⁷ 26 U.S.C. §2204(a); A fiduciary other than a personal representative may also request and receive discharge of personal liability, pursuant to 26 U.S.C. §2204(b).

⁸ 26 U.S.C. §§2204(a) and 6905(a).

⁹ Id.

¹⁰ Id.

¹¹ I.R.S. Publication 559 (2008).

¹² 26 U.S.C. §6324(a)(1).

¹³ 26 U.S.C. §6324(a)(3).

¹⁴ 26 U.S.C. §§6324A, 6324B and 6325.

Under Internal Revenue Code Section 2204 or 6905, and the relevant income, estate and gift tax returns must have been filed prior to the request.¹⁵ Within nine months, the IRS must notify the personal representative of the amount of tax due or discharge the personal representative from liability.¹⁶

MAINE ESTATE TAX LAW

A tax is imposed on the value of the estate of every Maine resident upon death. When there is a Maine estate tax liability, the personal representative must file a return within nine months after the decedent's death and pay the tax imposed by Title 36, chapter 575.¹⁷ Any tax due "shall be paid by the personal representative to the extent of assets subject to his control."¹⁸ The personal representative also is responsible for the tax liability associated with nonexempt conveyances, nonexempt gifts and beneficial interests accrued by survivorship.¹⁹ Under 36 M.R.S.A. § 4062(5), a personal representative is defined as "the personal representative 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 gross estate of the decedent."

The personal representative may file a request asking that MRS relieve the personal representative of personal liability for the Maine estate tax. The personal representative must file a written application, including a copy of the final federal determination of estate tax liability and any other information that the State Tax Assessor

¹⁵ See Attachment 1.

¹⁶ I.R.S. Publication 559 (2008).

¹⁷ 36 M.R.S.A. § 4068.

¹⁸ 36 M.R.S.A. § 4065(1).

¹⁹ 36 M.R.S.A. § 4078.

(the “Assessor”) may require, requesting a determination of the estate tax due.²⁰ As soon as possible, but no later than one year following the request, or, if the request was made before the filing of the estate tax return, then within one year of the filing of the return, MRS must notify the personal representative of the tax and any interest due.²¹ Upon payment of that amount, the personal representative is entitled to a certificate of discharge from personal liability for any additional estate tax liability found to be due.²² The estate remains liable for any additional estate tax liability. The discharge does not relieve the personal representative from an obligation to file an amended estate tax return within 90 days of the receipt or entitlement to any additional property resulting in an increase in the estate’s tax liability as shown on the return filed with the Assessor.²³

A lien for all taxes, interest and penalties owed applies against all property of the decedent that was subject to the Maine estate tax.²⁴ The lien continues until the property is sold or disposed of for value by certain parties or until the tax is paid and the Assessor issues a certificate of lien discharge.²⁵

To make the request for discharge from personal liability, the personal representative must file a Certificate of Discharge of Personal Representative Liability.²⁶ The relevant estate tax return and other documents, including a copy of the final federal determination, must have been filed prior to or with the request. Within one year, MRS will complete the relevant section and issue the signed Certificate of Discharge of Personal Representative Liability.²⁷

²⁰ 36 M.R.S.A. § 4066.

²¹ Id.

²² Id.

²³ 36 M.R.S.A. § 4075.

²⁴ 36 M.R.S.A. § 4072.

²⁵ Id.

²⁶ See Attachment 2.

²⁷ Id.

CONCLUSION

Both the Code and Title 36 contain provisions to require that the taxing agency determine tax due and to relieve a personal representative of liability for the estate's tax liability upon payment. One difference between the two systems is the slightly longer period that the Assessor has to determine the amount due and issue the Certificate of Discharge of Personal Representative Liability. The longer determination period is required by the mandate in Title 36 that the personal representative submit a final federal determination of the federal estate tax before receiving the discharge by the Assessor. In some circumstances, the personal representative may be required to obtain a bond to comply with federal law. The federal system also consolidates the request by the personal representative for discharges from estate tax and the decedent's income and gift tax liabilities into one process; since Maine does not have a gift tax, the Maine discharge only applies to the Maine estate tax.

ATTACHMENT 1:

Federal Form 5495 – Request for Discharge From
Personal Liability Under Internal Revenue Code Section
2204 or 6905

ATTACHMENT 2:

Maine Revenue Services Certificate of Discharge of
Personal Representative Liability

Federal and Maine Estate Tax Law:

Discharge from Personal Liability of a Personal Representative

Submitted to the Joint Standing Committee on Taxation of the 124th Legislature

On _____ by

Jerome D. Gerard, Acting Executive Director

Maine Revenue Services

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ATTACHMENT 1:

Federal Form 5495 – Request for Discharge From
Personal Liability Under Internal Revenue Code Section

2204 or 6905

**Request for Discharge From Personal Liability Under
 Internal Revenue Code Section 2204 or 6905**

▶ See instructions on back.

| | | | |
|--|--|---------------------------------|------------------------|
| Decedent's name | | Date of death | Social security number |
| Requester's name | | Kind of Tax | |
| Title | | <input type="checkbox"/> Income | |
| Number, street, and room or suite no. (If a P.O. box, see instructions.) | | <input type="checkbox"/> Gift | |
| City, town, or post office, state, and ZIP code | | <input type="checkbox"/> Estate | |
| | | Daytime phone number | |

Tax Returns for Which Discharge From Personal Liability is Requested

| Form Number | Tax Period Ended | SSN/EIN on Return | Name and Address Shown on Return | Service Center Where Filed | Date Filed |
|-------------|------------------|-------------------|----------------------------------|----------------------------|------------|
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If applicable, provide the name of the decedent's spouse (surviving or deceased) _____ Spouse's social security number _____

I have attached the items checked to help expedite action on my request.

Copies of returns listed above.

Copies of letters of administration or letters testamentary.

Other (describe): _____

I request a discharge from personal liability for any deficiency for the kind of tax and periods shown above, as provided by section 2204 or 6905 of the Internal Revenue Code.

Sign Here

Under penalties of perjury, I declare that I have examined this request, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

I certify that I have never been assessed any penalties for civil fraud for any federal or state tax matter nor have I been charged with, indicted for, or convicted of fraud. If you cannot certify this statement, attach a detailed statement explaining the circumstances under which you were assessed a penalty, charged with, indicted for, or convicted of fraud.

▶ Signature of requester _____ Date _____ Identifying number _____

Information and Instructions

General Information

Ordinarily, the IRS has 3 years after an income tax, gift tax, or estate tax return has been filed to assess tax and demand payment of any deficiency. The executor representing a decedent's estate or a fiduciary of a decedent's trust may request a discharge from personal liability for the decedent's income, gift, and estate taxes. Nine months, or 6 months in the case of a fiduciary's request, after the IRS's receipt of the request for discharge or the earlier payment of any amount determined by the IRS to be owed, the executor or fiduciary will be discharged from personal liability for any deficiency in such tax thereafter found to be due. In certain instances where the date for payment of the estate tax has been extended, the IRS may require a bond as a condition for discharge.

An executor means the executor or administrator of a decedent, who was appointed, qualified, and acting within the United States.

When To File

Do not file Form 5495 requesting a discharge from income or gift tax liability until after you file the tax returns listed on the front of this form. If you are requesting a discharge from personal liability for the estate tax, you may attach this form to Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, or you may file this form any time during the 3-year period following the date the Form 706 is filed. You must submit a separate request for discharge from personal liability for any tax returns filed after this Form 5495.

Where To File

Send your request to the Internal Revenue Service Center where you filed the returns listed on the front of this form. If you are requesting taxes reported on multiple returns filed at different Service Centers, you must mail separate Forms 5495 to each Service Center to receive a discharge from liability for each type of tax. If an estate tax return was filed, file Form 5495 for all taxes at the address where the estate tax return was filed.

What To File

This Form 5495 provides spaces for all information required to process a request for discharge from personal liability under IRC section 2204 or 6905. Attach to your request the information and documentation requested on Form 5495. If you are submitting this request with your estate tax return, you will not be required to provide an additional copy. If, however, this form is filed after Form 706, then a copy of pages 1-3 and Schedules A through I of Form 706 must be attached. If you are a fiduciary requesting discharge from personal liability under section 2204, check the "Other" box and include a copy of the trust instrument(s), a list of assets transferred from this decedent to the trust, and any other relevant information. If you prefer to use your own format, your written request must list the same information as requested on this form and include the applicable attachments.

Privacy Act and Paperwork Reduction Act Notice.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. We collect this information under the authority of Internal Revenue Code sections 2204 and 6905. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax. This information is needed to determine eligibility for the requested discharge from personal liability. You are not required to request discharge from personal liability; however, if you do so you are required to provide the information requested on this form. Failure to provide the information may delay or prevent processing your request; providing false information may subject you to penalties. Section 6109 requires you to provide the requested taxpayer identification numbers.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103. However, section 6103 allows or requires the Internal Revenue Service to disclose or give such information to the Department of Justice for civil and criminal litigation; to cities, states, the District of Columbia, and U.S. commonwealths and possessions to administer their tax laws; and to other countries under a tax treaty. We may also disclose this information to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

The time needed to complete and file this form and related schedules will vary depending on individual circumstances. The estimated average times are:

| | |
|---|----------------|
| Recordkeeping | 5 hr., 30 min. |
| Learning about the law or the form | 1 hr., 30 min. |
| Preparing the form | 4 hr., 27 min. |
| Copying, assembling, and sending the form to the IRS | 48 min. |

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the tax form to this address. Instead, see *Where To File*.

ATTACHMENT 2:

Maine Revenue Services Certificate of Discharge of
Personal Representative Liability

**MAINE REVENUE SERVICES CERTIFICATE OF DISCHARGE
OF PERSONAL REPRESENTATIVE LIABILITY**

Decedent information: Date: ___ / ___ / ___

Name: First _____ MI _____ Last _____

Social security number: _____ - _____ - _____ Date of death: ___ / ___ / ___

Address: Street _____

City _____ State _____ ZIP code _____

Maine resident: _____ Nonresident: _____

Personal representative information:

Name: First _____ MI _____ Last _____

Social security number: _____ - _____ - _____ Tel.: _____ - _____ - _____

Address: Street _____

City: _____ State _____ ZIP code _____

Email: _____

Date Maine estate tax return was filed: ___ / ___ / ___

Federal return filed? Yes ___ No ___ If not, please state why no federal return has been filed: 1. Gross estate federal filing threshold not met ___ 2. Other ___

Required supporting documentation attached to this Application? Yes ___ No ___

I certify all Maine estate tax in respect of the above-named decedent has been paid in full, together with any applicable interest and penalty accrued to the date of my signature below, and further, I request a discharge from personal liability for any deficiency in Maine estate tax subsequently found to be due. Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief the information contained herein is true, correct and complete.

Signature: _____ Date: ___ / ___ / ___

I, the State Tax Assessor, hereby certify:

1. That the Maine estate tax liability, including any applicable interest and penalty, in respect of the above-named decedent determined to be due has been paid; and
2. That the personal representative listed above, but not the estate, is hereby discharged from personal liability for any deficiency in Maine estate tax, with any interest and penalty thereon, subsequently found to be due in respect of the above named decedent.

Date signed: ___ / ___ / ___ Assessor: _____

Return to:

Mail this application to:

Maine Revenue Services
Income/Estate Tax Division
P.O. Box 1068
Augusta, Maine 04332-1068

INSTRUCTIONS

- In all cases, a Maine estate tax return must be either included with this application or filed with Maine Revenue Services prior to submission of the application.
- If the estate is taxable at the federal level, attach a copy of the final determination of federal estate tax liability.
- If the estate is not taxable federally, but a federal return was filed, attach a copy of the final determination of federal estate tax liability.
- If the estate is not taxable for federal purposes and no federal return is filed, no final federal determination is necessary.
- In all cases where another state's estate tax return is required or filed, a copy of that state's return must be attached to the Maine estate tax return.
- If a final federal determination is received before the Maine estate tax return is filed, **the final federal determination is considered part of the Maine return and must be submitted in order for the return to be complete.** If the final federal determination is received after the original Maine return is filed, an amended Maine return is required, showing all changes made by the IRS. If no changes were made and the Maine estate tax liability does not change, a copy of the final federal determination must be submitted to Maine Revenue Services for this application to be complete.
- For Maine estate tax purposes, final federal determination generally means that a federal estate closing letter has been received. For a complete definition of final federal determination, see 36 MRSA § 4071(2).
- Maine Revenue Services will issue the certificate of discharge of personal liability within one year after the timely filing of the Certificate of Discharge of Personal Representative Liability. A certificate is timely filed only if it is complete, all required federal and Maine estate tax original or amended returns have been filed, and the Maine estate tax, along with any applicable interest and penalty, determined to be due has been paid in full.
- Maine Revenue Services will issue a certificate of discharge to a personal representative of an estate that is determined to have no estate tax liability, if a complete and accurate Form 706ME-EZ has been filed.

Note: This discharge only applies to the personal representative listed on this form in his or her capacity as personal representative for the estate of the decedent listed on this application and does not release the individual from any other responsibility to the State of Maine. This discharge of liability does not release from liability any person other than the personal representative in his or her capacity as personal representative.

If you would like this discharge mailed to someone other than the personal representative listed on page 1, complete the "Return to:" area at the bottom left corner of the form.

For more information, see 36 MRSA § 4066 & MRS Rule 601.