

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 954

H. P. 800

House of Representatives, February 20, 1981

Referred to the Committee on Taxation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Nelson of Portland.

Cosponsors: Senator D. Huber of Cumberland, Senator Nancy Clark of Cumberland and Representative Rolde of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Abolish the Maine Inheritance Tax and to Provide for an Estate Tax
Similar to Federal Law.

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

Sec. 1. 36 MRSA § 3402 is amended by adding at the end a new sentence to read:

Chapters 551 to 565 do not apply to the estate of any person whose death occurs after December 31, 1982.

Sec. 2. 36 MRSA c. 575 is enacted to read:

CHAPTER 575

MAINE ESTATE TAX

§ 4061. Applicability of provisions

The provisions of this chapter apply to the estates of persons who die after December 31, 1982.

§ 4062. Definitions

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

1. **Code.** “Code” means the United States Internal Revenue Code, as amended.

2. **Federal gross estate.** “Federal gross estate” means the gross estate of a decedent as determined for the purpose of the federal estate tax under the laws of the United States.

3. **Nonresident.** “Nonresident” means a natural person domiciled in a jurisdiction other than Maine at the time of his death.

4. **Person.** “Person” means any person, corporation, association, partnership, joint stock company or business trust.

5. **Personal representative.** “Personal representative” means the personal representative of the decedent or, if there is no personal representative appointed, qualified and acting within Maine, then any person who is in the actual or constructive possession of any property included in the gross estate of the decedent.

6. **Resident.** “Resident” means a natural person domiciled in Maine at the time of his death.

7. **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.

§ 4063. Tax on estate of resident

1. **Tax imposed.** A tax is imposed upon the transfer of the estate of every person who, at the time of death, was a resident of this State. The amount of this tax is a sum equal to the amount by which the credit for state death taxes allowable to a decedent’s estate under the United States Internal Revenue Code, section 2911, referred to as the “credit,” exceeds the lesser of:

A. The aggregate amount of all constitutionally valid estate, inheritance, legacy and succession taxes actually paid to the several states of the United States, other than this State, in respect of any property owned by the decedent or subject to such taxes as a part of or in connection with his estate; or

B. An amount equal to such proportion of the allowable credit as the value of properties taxable by other states bears to the value of the entire federal gross estate wherever situate.

2. **Values.** All values shall be as finally determined for federal estate tax purposes.

§ 4064. Tax on estate of nonresident

A tax is imposed upon the transfer of real property situate in this State and upon tangible personal property having an actual situs in this State of every person who, at the time of his death, was not a resident of this State. The amount of this

tax shall be a sum equal to the proportion of the credit which the value of Maine real and tangible personal property taxed in this State which qualifies for the credit bears to the value of the decedent's total federal gross estate. All values shall be as finally determined for federal estate tax purposes.

§ 4065. Personal representative's liability for tax

1. **Payment of tax.** The tax imposed by this chapter shall be paid by the personal representative. The Probate Court may authorize a personal representative to sell so much of the property of the estate as will enable him to pay the tax in the same manner as it may authorize him to sell the property for the payment of debts.

The State Tax Assessor may accept payment of estate and inheritance taxes in works of art in accordance with Title 27, chapter 2, subchapter II.

2. **Certification of payment.** No final account of a personal representative of an estate may be allowed by the Probate Court unless and until the personal representative has filed in the Probate Court a certificate of the State Tax Assessor showing either that the amount of tax has been paid, that payment thereof has been secured as provided in section 4069 or that no tax is due.

§ 4066. 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, to the State Tax Assessor for determination of the amount of the tax and discharge of personal liability therefor, the State Tax 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, then within one year after the return is filed, shall notify the personal representative of the amount of the tax and of any interest thereon. The personal representative, on payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing that discharge.

§ 4067. Records; statements and returns; rules

Every person liable for any tax imposed by this chapter, or for the collection thereof, shall keep such records, render such statements, make such returns and comply with such rules as the State Tax Assessor may prescribe.

§ 4068. Tax due date; filing of return

1. **Date due.** The tax imposed by this chapter is due 9 months after the date of the decedent's death. Interest shall accrue on any amount of tax not paid by that date.

2. **Return filed.** In all cases where the United States Internal Revenue Code requires that a federal estate tax return be filed, the personal representative shall pay the tax imposed by this chapter and file a return within 9 months after the decedent's death. The return shall be in the form prescribed by the State Tax Assessor and it shall be accompanied by a copy of the federal estate tax return.

§ 4069. Extension of due date for payment of tax

The State Tax Assessor may extend the time for payment of the tax or any part thereof for a reasonable period of time not to exceed one year from the date fixed for payment and may grant successive extensions, provided that the aggregate of extensions with respect to any estate shall not exceed 10 years. If an extension is granted, he may require the taxpayer:

1. **Bond.** To give a bond to the Treasurer of State in such amount as the State Tax Assessor deems necessary; or

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

§ 4070. Extension of time for filing return

For good cause shown, the State Tax Assessor may grant a reasonable extension of time for filing any return required by this chapter, provided that the taxpayer, on or before that date prescribed for payment of the tax, files a tentative return, in such form as the State Tax Assessor may require, and pays therewith the amount of tax reasonably estimated to be due.

§ 4071. Effect of federal determination

1. **Final federal determination.** A final federal determination as to any of the following issues shall also determine 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;

B. The allowance of any item claimed as a deduction from the federal gross estate;

C. The value or amount of any such item;

D. The value of the federal gross estate generally; or

E. The amount of the credit for state death taxes allowable to the decedent's estate.

2. **Meaning of final determination.** For purposes of this section a final federal determination means:

A. A decision by the tax court or a judgment, decree or other order by any court of competent jurisdiction which has become final;

B. A final disposition by the United States Secretary of the Treasury or his delegate of a claim for a refund, which disposition is deemed to have occurred:

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

(2) As to items of the claim which are disallowed, or as to items applied by the United States Secretary of the Treasury or his 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 State Tax Assessor a written statement that suit will not be instituted;

C. A closing agreement made under the United States Internal Revenue 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 his delegate that the federal estate tax return has been accepted as filed, unless the personal representative notifies the State Tax Assessor that a claim for refund of federal estate taxes has been or will be filed; or

E. Any assessment pursuant to a compromise entered into by the personal representative and the United States Secretary of the Treasury or his delegate.

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 entering into the computation of the tax is deemed to have been the subject of the final federal determination, whether or not specifically adjusted.

§ 4072. 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 due, or becoming due. In the case of personal property, the lien shall not attach to personal property sold or disposed of for value. In the case of real estate, the lien may be discharged by the payment of all taxes, interest and penalties due. Upon payment the State Tax Assessor shall execute for recording in the appropriate registry or registries of deeds.

§ 4073. State Tax Assessor to administer law; absence or disability

The assessment and collection of estate taxes and the enforcement and administration of all the provisions of law relating thereto are vested in the State Tax Assessor.

§ 4074. Authority of State Tax Assessor

The State Tax 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 such proceedings as may be necessary or desirable for the removal of personal representatives and trustees who have failed to pay the taxes due from estates in their hands.

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

The State Tax Assessor shall pay over all receipts from these taxes, interest and penalties to the Treasurer of State daily.

§ 4075. Amount of tax determined

The State Tax Assessor shall determine the amount of tax due and payable upon any estate or part thereof. If after determination and certification of the full amount of the tax upon an estate or any interest therein or part thereof, the estate shall receive or become entitled to property in addition to that shown in the estate tax return filed with the State Tax Assessor, the personal representative shall immediately notify the State Tax Assessor who shall, upon being thus or otherwise informed, determine the amount of additional tax, if any, due and payable thereon and shall certify the amount to the person by whom the tax is payable, including interest and penalties.

§ 4076. Preparation of forms and making of rules by State Tax Assessor

The State Tax Assessor shall prepare all blanks, forms, books and papers necessary for or incident to the securing of full information with reference to all estates and may prescribe and establish such rules of practice and procedure, not inconsistent with law, as may be desirable in the economical and efficient administration of this chapter.

The State Tax Assessor may summon and examine on oath, for the purpose of determining the taxability of any estate or of determining the value of the estate or assessing taxes thereon, any person having knowledge or means of knowledge as to any material fact touching the nature, valuation or taxation of any property which may be subject to this chapter and may require the production of all books, papers or other documents within the control of any witness.

Any examination on oath conducted by the State Tax Assessor may, in his discretion, be reduced to writing, and false swearing therein shall be deemed perjury and be punishable as such.

Any Judge of Probate and any Justice of the Superior Court, upon application of the State Tax Assessor, may compel the attendance of witnesses and the giving of testimony before the State Tax Assessor in the same manner, to the same extent and subject to the same penalties as if before the court.

§ 4077. Appointment of personal representative on probate delay

If, upon the decease of a person leaving an estate which may be liable to pay an estate tax, 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 State Tax Assessor, may appoint a personal representative. Nothing prevents the State Tax Assessor from petitioning for appointment within 6 months after the date of death, if in the opinion of the State Tax Assessor, the action is necessary.

§ 4078. Persons liable

Personal representatives, trustees or grantees or donees under nonexempt

conveyances or nonexempt gifts made during the life of the grantor or donor and persons to whom beneficial interests shall accrue by survivorship are liable for the taxes imposed by this chapter with interest, as provided, until the taxes have been paid. For purposes of this section, the terms "nonexempt conveyances" and "nonexempt gifts" mean any transfer to a person which is includible 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 thereof 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 his capacity as such, 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.

§ 4079. Civil action by State; bond

A civil action may be maintained in the name of the State against a personal representative, trustee, grantee or donee for the recovery of all taxes imposed by this chapter, with interest thereon. Personal representatives are liable to the State on their administration bonds for all taxes assessable under the chapter and interest thereon. Whenever an administration bond is not otherwise required, the Judge of Probate, notwithstanding Title 18-A, sections 3-603 to 3-606, unless he finds that any estate tax due and to become due the State is reasonably secured by the lien upon real estate provided in this chapter, shall require, and if he does so find he may require, a bond payable to him or his 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. An action for the recovery of estate taxes and interest shall lie on either of the bonds.

STATEMENT OF FACT

This bill is an effort to bring the death tax laws of this State into conformance with the laws of a growing number of states which levy a death tax equal to the credit for state death taxes allowed a decedent's estate under the federal estate tax. The bill also represents an effort to provide a more efficient method of collecting death taxes. The bill would reduce the number of returns processed and substantially shorten the processing time for each return, thus greatly reducing administrative staff needs and costs.

The tax under the proposed bill would be imposed upon the entire estate, which would then be liable for its payment. The relationship of individual beneficiaries to the decedent would not be considered in computing the amount of tax. As noted, the amount of the Maine tax would be equal to the credit allowed by the Federal

Government against the federal estate tax. The amount of this credit must be stated on the federal estate tax return filed by a decedent's estate and is subject to determination in the audit of the federal estate tax return by the federal estate tax auditors.

Under the bill, the Maine death tax imposed on the estates of virtually all Maine decedents would be less than that which is currently levied under the Maine inheritance tax. No estate would be required to pay more tax than under the present inheritance tax. There would be no Maine death tax imposed on any estate which pays no federal estate tax. The system of death taxation proposed by this bill has been adopted by over 10 states. It is believed that the adoption of such a death tax system by Maine would substantially slow the exodus of older Maine residents to states having such a system of death taxation.