

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1110

H. P. 940

House of Representatives, March 4, 1981

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

EDWIN H. PERT, Clerk of the House

Presented by Representative Brenerman of Portland.

Cosponsors: Representative Davis of Monmouth, Representative C. W.

Smith of Mars Hill and Senator Wood of York.

STATE OF MAINE

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

AN ACT to Replace the Inheritance Act with a Maine Estate Tax.

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 June 30, 1981.

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

CHAPTER 575

MAINE ESTATE TAX

§ 4061. **Applicability**

This chapter applies to the estates of persons who die after June 30, 1981.

§ 4062. **Definitions**

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

1. **Code.** "Code" means the United States Internal Revenue Code, as amended and in effect on January 1, 1981.

2. Federal gross estate. "Federal gross estate" means the federal gross estate defined in the code.

3. Maine adjusted gross estate. "Maine adjusted gross estate" means the Maine gross estate less any deductions for funeral expenses, claims against the estate, indebtedness on property and administrative expenses allowable under section 4064.

4. Maine gross estate. "Maine gross estate" means the federal gross estate, whether or not a federal estate tax return is required to be filed under the code, less the value of real property and tangible personal property having an actual situs outside the State.

5. Resident. "Resident" means a person domiciled in Maine at the time of his death.

6. Taxable estate. "Taxable estate" means the Maine gross estate less any exemptions and deductions allowable under this chapter.

§ 4063. Tax on estate of resident

1. Imposition of tax. A tax computed in accordance with the following table is imposed on the transfer of the taxable estate of every deceased resident of this State.

If the taxable estate is:		The estate tax shall be:
equal to or more than,	but less than,	
\$0	\$100,000	6% of the taxable estate
\$100,000	\$500,000	\$6,000 plus 8% of the excess over \$100,000
\$500,000 or more		\$38,000 plus 10% of the excess over \$500,000

2. Excess of credit added to tax. If the maximum credit for state death taxes allowable to the estate of a deceased resident against the federal estate tax, as computed according to the rate schedule found in the United States Internal Revenue Code, Section 2011, based upon an amount equal to the sum of the Maine taxable estate and the amount of any life insurance proceeds deducted under section 4064, exceeds the tax imposed under subsection 1, the amount of the excess shall be added to the tax imposed under subsection 1.

§ 4064. Deductions

1. Deductions allowable. The deductions allowable in computing the taxable estate are those described in the United States Internal Revenue Code, Sections 2053 to 2057 and which are attributable to property included in the Maine gross estate. The marital deduction described in the United States Internal Revenue

Code, Section 2056 shall not exceed the greater of \$70,000 or 50% of the Maine adjusted gross estate. A deduction shall also be allowed on the aggregate value of life insurance proceeds upon the life of the decedent up to the value of \$150,000.

2. Waiver of claim. If the right to claim any deduction otherwise allowable is waived for federal estate tax purposes, that right shall be considered waived for Maine estate tax purposes.

§ 4065. Exemptions

The estate of every resident decedent shall be allowed an exemption in accordance with the following table:

For decedents dying in fiscal year:	The exemption is:
1981-82	\$ 30,000
1982-83	42,500
1983-84	57,000
1984-85	72,500
1985-86	95,000
1986-87	127,500
1987-88	190,000
1988-89 and thereafter	340,000

§ 4066. Taxation of nonresident estates

1. Tax imposed. A tax is imposed on the transfer of a nonresident decedent's real property and tangible personal property having an actual situs in the State, if the property would have been included in the Maine gross estate had the decedent been a resident.

2. Computation of tax. The tax imposed shall be an amount which bears the same ratio to the tax that would be due if the decedent had been a resident as the value of all real property and tangible personal property having an actual situs in the State, the transfer of which is subject to tax under subsection 1, bears to the value of the decedent's Maine gross estate determined as if he had been a resident.

3. Alternate computation. If a federal estate tax return is not required to be filed, the tax imposed may be computed, in lieu of the computation provided in subsection 2, by taking 8% of the gross value of all real property and tangible personal property having an actual situs in the State.

§ 4067. Valuation; gross estate

Property in the Maine gross estate shall be valued as of the date of death of the decedent; provided that if an alternate valuation has been elected for purposes of the federal estate tax in accordance with the United States Internal Revenue Code, Section 2032, the property in the Maine gross estate shall be valued as of the dates used for federal estate tax valuation purposes.

§ 4068. Executor's liability for tax

1. **Payment of tax.** The tax imposed by this chapter shall be paid by the executor. The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified and acting within the State, then any person in actual or constructive possession of any property of the decedent. The Probate Court may authorize an executor to sell so much of the property of the estate as will enable him to pay such tax in the same manner as it may authorize him to sell the property for the payment of debts.

The State Tax Assessor shall 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 an executor of an estate may be allowed by the Probate Court unless and until the executor 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 4072 or that no tax is due.

§ 4069. Discharge of executor's personal liability

If the executor 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 for 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 executor of the amount of the tax. The executor, 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.

§ 4070. 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.

§ 4071. Tax due date; filing of return

1. **Due date.** 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 federal gross estate of the decedent exceeds \$30,000 in the case of a decedent dying in fiscal year 1981-82; \$42,500 in the case of a decedent dying in fiscal year 1982-83; \$57,000 in the case of a decedent dying in fiscal year 1983-84; \$72,500 in the case of a decedent dying in fiscal year 1984-85; \$95,000 in the case of a decedent dying in fiscal year 1985-86; \$127,500 in the case of a decedent dying in fiscal year 1986-87; \$175,000 in the case of a decedent

dying in fiscal year 1987-88 and thereafter, the executor shall pay the tax and file a return within 9 months of 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 return if a federal return is required to be filed pursuant to the United States Internal Revenue Code, Section 6018.

§ 4072. Extension of due date for payment of tax

The State Tax Assessor may extend the time for payment of the tax for a reasonable period of time not to exceed one year from the date fixed for payment. 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 adequately secure payment of the tax.

§ 4073. 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, filed 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.

§ 4074. 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; or
- D. The value of the federal gross estate generally.

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

- A. A decision by the tax court of 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. The 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 Code, Section 7021;

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 executor 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 executor 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 shall be deemed to have been the subject of the final federal determination, whether or not specifically adjusted.

§ 4075. 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 to become 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 on the taxable estate. Upon that payment, the State Tax Assessor shall execute a discharge of the lien.

§ 4076. 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 shall be vested in the State Tax Assessor.

§ 4077. 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 is given authority to institute proceedings of any nature necessary or desirable for that purpose, including such proceedings as may be necessary or desirable for the removal of executors, administrators and trustees who have failed to pay the taxes due from estates in their hands.

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

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

§ 4078. Value of property determined

The value of the property upon which the tax is computed shall be determined by the State Tax Assessor.

§ 4079. 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 disclosed to 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.

§ 4080. 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.

§ 4081. Examination of witnesses; attendance

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 is deemed perjury and is 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.

§ 4082. Appointment of administrator 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 executor or

administrator does not qualify within that period, the Probate Court, upon application by the State Tax Assessor, may appoint an administrator. Nothing shall prevent 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 that action is necessary.

§ 4083. Settlement where computation impossible or persons unknown

In case it is impossible either to determine the persons entitled to an interest or to compute the present value of any interest, the State Tax Assessor may, and to promote the early settlement of taxes shall, endeavor to, with the approval of the Attorney General, effect such settlement of the tax as he deems reasonable in the best interest of the State, and payment of the sum so agreed upon shall be full satisfaction of that tax. Executors, administrators and trustees may compromise the amount of tax with the State Tax Assessor.

§ 4084. Persons liable

Administrators, executors, trustees or grantees or donees under conveyances or gifts made during the life of the grantor or donor, and persons to whom beneficial interests shall accrue by survivorship shall be liable for the taxes imposed by this chapter with interest, as provided, until the taxes have been paid.

§ 4085. Civil action by State; bond

A civil action may be maintained in the name of the State against an administrator, executor, trustee, grantee or donee for the recovery of all taxes imposed by this chapter, with interest thereon. Administrators and executors shall be liable to the State on their administration bonds for all taxes assessable under the chapter and interest thereon. Whenever no administration bond is otherwise required, the Judge of Probate, notwithstanding Title 18-A, sections 3-603 to 3-606, may, and unless he finds that any estate tax due and to become due the State is reasonably secured by the lien upon real estate as provided in this chapter, shall 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

The purpose of this bill is to provide an estate tax, effective July 1, 1981, in lieu of the present inheritance tax, that will gradually provide revenues equivalent to an estate tax based on the federal estate tax credit over an 8-year period. At that point Maine would be able to switch to a system of estate tax based on the federal estate tax credit without significant loss of revenue.

By adopting the rate schedule in Title 36, section 4063, the amount of revenue in the first year will be approximately equal to the amount that is and would be

accrued under the present inheritance and estate tax. Due to the 9-month filing provision of this estate tax as opposed to the 12-month provisions of the present law, revenues accrued to the State during fiscal year 1981-82 will be accelerated.

This bill also:

1. Provides exemptions of \$30,000 for fiscal year 1981-82 increasing to \$340,000 for fiscal year 1988-89 and thereafter;
2. Adds a provision for a lien for taxes due; and
3. Reallocates general administrative provisions from the current law.

It is estimated that fiscal year 1981-82 revenues would have a one-time increase of \$2,638,000.

As the estate tax is phased down to approach the federal-state tax credit, the General Fund revenues received from the estate tax will decrease as follows:

In: 1982-83	\$1,348,000
1983-84	\$1,333,120
1984-85	\$1,314,280
1985-86	\$1,346,200
1986-87	\$1,324,200
1987-88	\$1,351,000