

MAINE STATE LEGISLATURE

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(New Title)
New Draft of H. P. 940, L. D. 1110
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1658

H. P. 1544

House of Representatives, May 26, 1981

Reported by Representative Day from the Committee on Taxation. Printed
under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

**AN ACT to Phase Down the Inheritance Tax and to Replace the Inheritance Tax
with an Estate Tax Equal to the Federal Credit for State Death 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:

This chapter and chapters 553 to 565 do not apply to the estate of any person whose death occurs after June 30, 1986.

Sec. 2. 36 MRSA § 3462, first sentence, as amended by PL 1975, c. 384, is further amended to read:

Property which shall so pass to or for the use of the following persons who shall be designated as Class A, to wit: Husband, wife, lineal ancestor, lineal descendent, adopted child, stepchild, adoptive parent, wife or widow of a natural or adopted son or **stepson of a decedent**, husband or widower of a natural or adopted daughter or **stepdaughter** of a decedent, grandchild who is the natural or adopted child of a natural or adopted child or **stepchild** of a decedent, ~~shall be~~ is subject to a tax upon the value ~~thereof of the property~~, in excess of the exemption ~~hereinafter~~ provided in this section; of 5% of ~~such~~ that value in excess of ~~said~~ the exemption as does not exceed \$50,000; of 6% of ~~such~~ the value as exceeds ~~said~~ \$50,000 and does not exceed \$100,000; of 8% of ~~such~~ the value as exceeds \$100,000 and does not exceed \$250,000; and of 10% of ~~such~~ the value as exceeds \$250,000.

Sec. 3. 36 MRSA § 3462, 3rd sentence, as amended by PL 1975, c. 384, is further amended to read:

The value exempt from taxation to or for the use of a father, mother, child, adopted child, stepchild or adoptive parent, or grandchild who is the natural or adopted child of a natural or adopted deceased child or ~~deceased stepchild~~ of a decedent, ~~shall in each case be~~ is \$25,000.

Sec. 4. 36 MRSA § 3462, last sentence, as amended by PL 1975, c. 384, is repealed and the following enacted in its place:

The value exempt to or for the use of any other person falling within Class A, those being, grandparent and other lineal ancestors of remoter degrees, wife or widow of a natural or adopted son or stepson of a decedent, or husband or widower of a natural or adopted daughter or stepdaughter of a decedent, grandchild who is the natural or adopted child of a natural or adopted living child or living stepchild of a decedent and other lineal descendants of remoter degrees, in each case is \$2,000.

Sec. 5. 36 MRSA § 3471 is enacted to read:

§ 3471. Phase down of tax

Notwithstanding any other provision of chapters 551 to 565, the total inheritance tax payable in the estate of a decedent whose death occurs after June 30, 1981, is that percentage of the inheritance tax which would otherwise be due under this chapter determined in accordance with the following:

1. Death before July 1, 1982. Eighty-five percent in the case of decedents whose deaths occur after June 30, 1981, and before July 1, 1982;
2. Death before July 1, 1983. Seventy-five percent in the case of decedents whose deaths occur after June 30, 1982, and before July 1, 1983;
3. Death before July 1, 1984. Sixty-five percent in the case of decedents whose deaths occur after June 30, 1983, and before July 1, 1984;
4. Death before July 1, 1985. Fifty-five percent in the case of decedents whose deaths occur after June 30, 1984, and before July 1, 1985; and
5. Death before July 1, 1986. Forty-five percent in the case of decedents whose deaths occur after June 30, 1985, and before July 1, 1986.

Sec. 6. 36 MRSA § 3681, as amended by PL 1973, c. 224, § 1, is repealed and the following enacted in its place:

§ 3681. Due date

Except as otherwise provided in sections 3524 and 3636, the tax imposed by chapters 551 to 567 shall be payable at the expiration of 12 months from the date of death of the decedent in the case of decedents whose deaths occur prior to July 1, 1981, and 9 months from the date of death of the decedent in the case of decedents whose deaths occur after June 30, 1981. The State Tax Assessor may for cause extend the time of payment.

Sec. 7. 36 MRSA c. 575 is enacted to read:

CHAPTER 575

MAINE ESTATE TAX

§ 4061. Applicability of provisions

This chapter applies to the estates of persons who die after June 30, 1986.

§ 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, Title 26, United States Code.

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 this State, 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 this State 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. Amount. 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 Code, Section 2011 as amended as of December 31, 1980, in this chapter sometimes 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 that decedent or subject to those taxes as a part of or in connection with his estate; or

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

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 situated 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 is 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 to the extent of assets subject to his control.

The State Tax Assessor may accept payment of estate 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 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 for that tax, 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 on that amount. The personal representative, on payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax found, after that, 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 of that tax, 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 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.

3. **No federal return.** In all cases where the Code does not require that a federal estate tax return be filed, the personal representative, surviving joint tenant of real estate or any other person whose real estate might be subject to a lien for taxes pursuant to this chapter may at any time file with the State Tax Assessor in the form prescribed by the State Tax Assessor a statement of the value of the federal gross estate.

§ 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. The aggregate of extensions with respect to any estate may 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 adequately secure 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 with that return 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 United States 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. The disposition shall be 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 such 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 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 shall be deemed to have been the subject of the final federal determination, whether or not specifically adjusted thereby.

§ 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 which are or may become due on that property. The lien does not attach to any real or personal property after the property has been sold or disposed of for value by the personal representative or trustee. Upon payment of those taxes, interest and penalties due under this chapter, or upon determination that no tax is due, the

State Tax Assessor shall upon request execute a discharge of the tax lien for recording in the appropriate registry or registries of deeds.

§ 4073. State Tax Assessor to administer law

The assessment and collection of estate taxes and the enforcement and administration of all the related provisions of law 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 on the bond regardless of the fact that some other official may be named as obligee in the bond.

The State Tax Assessor shall pay over all receipts from those 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 of that estate. If, after determination and certification of the full amount of the tax upon an estate or any interest in or part of an estate, 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 forthwith notify the State Tax Assessor who shall upon being informed, by the notice or otherwise, 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 such estate or assessing taxes on the estate, 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 in it 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 that court.

§ 4077. Appointment of personal representative on probate delay

If, upon the death 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 may 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.

§ 4078. Persons liable

Personal representatives, trustees, 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 are paid. For purposes of this section, the terms "nonexempt conveyances" and "nonexempt gifts" mean any transfer to a person which is includable 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 of the tax 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 this chapter and interest on those taxes. Whenever no administration bond is otherwise required, the Judge of Probate, notwithstanding any provisions of 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. He 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.

Sec. 8. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of section 6 of this Act.

	1981-82	1982-83
FINANCE AND ADMINISTRATION, DEPARTMENT OF		
Bureau of Taxation		
Positions	(1)	(1)
Personal Services	\$15,000	\$15,000
Capital Expenditures	500	—
	<hr/>	<hr/>
Total	\$15,500	\$15,000

FISCAL NOTE

Advancing the due date for inheritance tax from 12 months to 9 months combined with the phase down of the tax will result in an increase in revenue in fiscal year 1981-82 of approximately \$2,800,000. These factors combined with the more equitable treatment of stepchildren will result in a revenue loss in fiscal year 1982-83 of \$2,582,000. The overall effect for the biennium is an increase in revenue of \$187,500 after the funds appropriated for the Bureau of Taxation are deducted.

STATEMENT OF FACT

This new draft provides for a 5-year phase down of the current inheritance tax. Beginning in July of 1986, the inheritance tax would be repealed and a Maine death tax would be levied equal to the credit for state death taxes allowable to a decedent's estate under the federal estate tax. The new draft would provide a more efficient method of collecting death taxes and would reduce the number of returns processed by about 90%, thus greatly reducing administrative staff needs and costs. The system of death taxation which would apply after June 30, 1986, under this new draft has been adopted by over 10 states. The adoption of this new draft would substantially slow the exodus of older Maine residents to states having death taxes lower than the current Maine inheritance tax.

This legislation also provides for an advance in the due date of the tax from 12 months following death to 9 months following death and contains provisions for equity in the treatment of stepchildren.

Mechanically, the parts of this new draft are:

Section 1: The repeal of the inheritance tax for deaths occurring after June 30, 1986;

Sections 2, 3 and 4: Provisions for equity in treatment of stepchildren;

Section 5: The schedule for phasing down the present inheritance tax;

Section 6: The replacement of the 12-month due date with a 9-month due date;

Section 7: The repeal and replacement of the current estate tax provisions with an estate tax equal to the federal credit for state death taxes; and

Section 8: An appropriation section.