MAINE STATE LEGISLATURE

The following document is provided by the

LAW AND LEGISLATIVE DIGITAL LIBRARY

at the Maine State Law and Legislative Reference Library
http://legislature.maine.gov/lawlib

122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document	No. 1264
S.P. 444	In Senate, March 15, 2005

An Act To Amend Maine's Estate Tax Law

Reference to the Committee on Taxation suggested and ordered printed.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.
Cosponsored by Representative WOODBURY of Yarmouth.

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

Sec. 1. 36 MRSA §4062, sub-§1-A, as amended by PL 2003, c. 673, Pt. D, §1, is repealed and the following enacted in its place:

1-A. Federal credit. "Federal credit" has the following meanings:

A. For the estates of decedents dying after December 31, 2002, "federal credit" means the maximum credit for state death taxes determined under the Code, Section 2011 as of December 31, 2002 exclusive of the reduction of the maximum credit contained in the Code, Section 2011(b)(2); the period of limitations under the Code, Section 2011(c); and the termination provision contained in the Code, Section 2011(f). The federal taxable estate is to be determined using the applicable Code as of the date of the decedent's death, except that:

(1) The state death tax deduction contained in the Code, Section 2058 is to be disregarded;

(2) The unified credit is to be determined under the Code, Section 2010 as of December 31, 2000;

(3) For the estates of decedents dying after December 31, 2004, the federal taxable estate must be decreased by an amount equal to the value of Maine qualified terminable interest property in the estate of the decedent; and

(4) For the estates of decedents dying after December 31, 2004, the federal taxable estate must be increased by an amount equal to the value of Maine elective property in respect of the decedent; and

B. For the estates of all other decedents, "federal credit" means the maximum credit for state death taxes determined under the Code, Section 2011.

Sec. 2. 36 MRSA §4062, sub-§§2-A and 2-B are enacted to read:

2-A. Maine elective property. "Maine elective property" means all property in which the decedent at the time of death had a qualified income interest for life and with respect to which, for purposes of determining the tax imposed by this chapter on the estate of a predeceased spouse of the decedent, the federal taxable estate of such predeceased spouse was decreased pursuant

to subsection 1-A, paragraph A, subparagraph (3). The value of Maine elective property is the value finally determined by the assessor in accordance with the Code as if such property were includable in the decedent's federal gross estate pursuant to the Code, Section 2044 and, in the case of estates that do not incur a federal estate tax, as if the estate had incurred a federal estate tax.

2-B. Maine qualified terminable interest property. "Maine qualified terminable interest property" means property:

A. That is eligible to be treated as qualified terminable interest property under the Code, Section 2056(b)(7);

B. For which no election allowable under the Code, Section 2056(b)(7) is made with respect to the federal estate tax; and

C. With respect to which an election is made, on a return filed timely with the assessor, to treat the property as Maine qualified terminable interest property for purposes of the tax imposed by this chapter. The amount of property with respect to which such election is made may not be greater than the amount, if any, by which the applicable exclusion amount determined as of the date of the decedent's death using the Code, Section 2010(c) in effect on that date exceeds the applicable exclusion amount determined as of the date of the decedent's death using the Code, Section 2010(c) in effect on December 31, 2000. The value of Maine qualified terminable interest property is the value finally determined by the assessor in accordance with the Code and, in the case of estates that do not incur a federal estate tax, as if the estate had incurred a federal estate tax.

Sec. 3. 36 MRSA §4068, sub-§3, as amended by PL 2003, c. 673, Pt. D, §6 and affected by §9, is repealed and the following enacted in its place:

3. No tax liability. In all cases where there is no Maine estate tax liability:

A. If the personal representative makes no election pursuant to section 4062, subsection 2-B, 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 assessor in the form prescribed by the assessor a statement of the value of the federal gross estate; and

B. If the personal representative makes an election pursuant
to section 4062, subsection 2-B, the personal representative
shall make such election on a timely filed return. The
return must be in the form prescribed by the assessor and it
must be accompanied by a copy of the federal estate tax
return, if any, and other supporting documentation that the
assessor may require, including documentation related to an
election made pursuant to section 4062, subsection 2-B.

Sec. 4. Application. Those sections of this Act that repeal
and replace the Maine Revised Statutes, Title 36, section 4062,
subsection 1-A and section 4068, subsection 3 and enact Title 36,
section 4062, subsections 2-A and 2-B apply to estates of
decedents dying on or after January 1, 2005.

SUMMARY

This bill allows for a special estate tax election at the
state level so that the estate of an individual with a surviving
spouse may fully fund the taxable estate with an amount equal to
the federal exclusion without changing the taxable nature of the
estate for Maine purposes.