



# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 898

S.P. 286

In Senate, March 8, 2011

### An Act To Reform the Maine Estate Tax

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Reference to the Committee on Taxation suggested and ordered printed.

*Joseph G. Carleton Jr.*

JOSEPH G. CARLETON, JR.  
Secretary of the Senate

Presented by Senator HASTINGS of Oxford.

Cosponsored by Representative KNIGHT of Livermore Falls and

Senators: HILL of York, HOBBS of York, ROSEN of Hancock, WOODBURY of  
Cumberland.

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

2 **Sec. 1. 36 MRSA §135, sub-§1**, as amended by PL 2007, c. 438, §7, is further  
3 amended to read:

4 **1. Taxpayers.** Persons subject to tax under this Title shall maintain such records as  
5 the State Tax Assessor determines necessary for the reasonable administration of this  
6 Title. Records pertaining to taxes imposed by chapters 371 ~~and~~, 575 and 577 and by Part  
7 8 must be retained as long as is required by applicable federal law and regulation.  
8 Records pertaining to the special fuel tax user returns filed pursuant to section 3209,  
9 subsection 2 and the International Fuel Tax Agreement pursuant to section 3209,  
10 subsection 1-B must be retained for 4 years. Records pertaining to all other taxes  
11 imposed by this Title must be retained for a period of at least 6 years. The records must  
12 be kept in such a manner as to ensure their security and accessibility for inspection by the  
13 assessor or any designated agent engaged in the administration of this Title.

14 **Sec. 2. 36 MRSA §144, sub-§2, ¶A**, as enacted by PL 1997, c. 668, §10, is  
15 amended to read:

16 A. Subsection 1 does not apply in the case of sales and use taxes imposed by Part 3,  
17 estate taxes imposed by chapter 575 or 577, income taxes imposed by Part 8 and any  
18 other tax imposed by this Title for which a specific statutory refund provision exists.

19 **Sec. 3. 36 MRSA §4061**, as enacted by PL 1981, c. 451, §7, is amended to read:

20 **§4061. Applicability of provisions**

21 This chapter applies to the estates of persons who die after June 30, 1986 and before  
22 January 1, 2011.

23 **Sec. 4. 36 MRSA c. 577** is enacted to read:

24 **CHAPTER 577**

25 **NEW MAINE ESTATE TAX**

26 **§4101. Applicability of provisions**

27 This chapter applies to the estates of persons who die after December 31, 2010.

28 **§4102. Definitions**

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

31 **1. Federal gross estate.** "Federal gross estate" means the gross estate of a decedent  
32 as determined by the assessor in accordance with the Code.

33 **2. Federal taxable estate.** "Federal taxable estate" means the taxable estate of a  
34 decedent as determined using the applicable provisions of the Code as of the decedent's

1 date of death, except that the state death tax deduction contained in the Code, Section  
2 2058 must be disregarded.

3 **3. Maine elective property.** "Maine elective property" means all property in which  
4 the decedent at the time of death had a qualified income interest for life and with respect  
5 to which the estate of a predeceased spouse of the decedent filed an election to treat such  
6 property as Maine qualified terminable interest property pursuant to this chapter or, if  
7 applicable, chapter 575. The value of Maine elective property is the value determined by  
8 the assessor in accordance with the Code as if such property were includable in the  
9 decedent's federal gross estate pursuant to the Code, Section 2044 and, in the case of  
10 estates that do not incur a federal estate tax, as if the estate had incurred a federal estate  
11 tax.

12 **4. Maine exemption amount.** "Maine exemption amount" means the sum of  
13 \$1,000,000. The estate of a resident having a Maine taxable estate valued at \$1,000,000  
14 or less does not incur a Maine estate tax.

15 **5. Maine qualified terminable interest property.** "Maine qualified terminable  
16 interest property" means property:

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

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

21 C. With respect to which an election is made, on a return timely filed with the  
22 assessor, to treat the property as Maine qualified terminable interest property for  
23 purposes of the tax imposed by this chapter. The amount of property with respect to  
24 which the election is made may not be greater than the amount, if any, by which the  
25 applicable exclusion amount determined as of the date of the decedent's death using  
26 Code, Section 2010(c) in effect on that date exceeds the Maine exemption amount.

27 **6. Maine taxable estate.** "Maine taxable estate" means the federal taxable estate of  
28 a decedent:

29 A. Decreased by an amount equal to the value of the Maine qualified terminable  
30 interest property in the estate of the decedent;

31 B. Decreased by the value of all real and tangible personal property owned by the  
32 decedent that is situated outside this State;

33 C. Increased by an amount equal to the value of Maine elective property in respect of  
34 the decedent; and

35 D. Increased by the value of all taxable gifts as defined in the Code, Section 2053  
36 made by the decedent during the one-year period ending on the date of the decedent's  
37 death.

38 **7. Nonresident.** "Nonresident" means a natural person domiciled in a jurisdiction  
39 other than this State at the time of death.

1           **8. Personal representative.** "Personal representative" means the personal  
2 representative as defined under Title 18-A, section 1-201, subsection (30) of the decedent  
3 or, if there is no personal representative appointed, qualified and acting within this State,  
4 any person who is in the actual or constructive possession of any property included in the  
5 federal gross estate of the decedent.

6           **9. Resident.** "Resident" means a natural person domiciled in this State at the time of  
7 death.

8           **10. Transfer.** "Transfer" includes the passing of property or any interest therein, in  
9 possession or enjoyment, present or future, by inheritance, descent, devise, succession,  
10 bequest, grant, deed, bargain sale, gift or appointment in the manner described in this  
11 chapter.

12           **11. Value.** "Value" means, when determining value for purposes of this chapter,  
13 with respect to an estate or to property included in an estate, including Maine qualified  
14 terminable interest property, the value as determined by the assessor in accordance with  
15 the Code.

16           **§4103. Tax on estate of resident**

17           **1. Imposition of tax.** A tax is imposed upon the transfer of the estate of every  
18 person who dies after December 31, 2010 and who, at the time of death, was a resident  
19 and whose Maine taxable estate exceeds the Maine exemption amount.

20           **2. Computation of tax.** The tax under this section is assessed as follows:

21           **A.** If the amount of the Maine taxable estate that exceeds the Maine exemption  
22 amount does not exceed \$500,000, the tax is 1% of the amount that exceeds the  
23 Maine exemption amount;

24           **B.** If the amount of the Maine taxable estate that exceeds the Maine exemption  
25 amount exceeds \$500,000 but does not exceed \$1,000,000, the tax is 2% of the  
26 amount that exceeds the Maine exemption amount;

27           **C.** If the amount of the Maine taxable estate that exceeds the Maine exemption  
28 amount exceeds \$1,000,000 but does not exceed \$1,500,000, the tax is 3% of the  
29 amount that exceeds the Maine exemption amount;

30           **D.** If the amount of the Maine taxable estate that exceeds the Maine exemption  
31 amount exceeds \$1,500,000 but does not exceed \$2,000,000, the tax is 4% of the  
32 amount that exceeds the Maine exemption amount;

33           **E.** If the amount of the Maine taxable estate that exceeds the Maine exemption  
34 amount exceeds \$2,000,000 but does not exceed \$2,500,000, the tax is 5% of the  
35 amount that exceeds the Maine exemption amount;

36           **F.** If the amount of the Maine taxable estate that exceeds the Maine exemption  
37 amount exceeds \$2,500,000 but does not exceed \$3,000,000, the tax is 6% of the  
38 amount that exceeds the Maine exemption amount;

1 G. If the amount of the Maine taxable estate that exceeds the Maine exemption  
2 amount exceeds \$3,000,000 but does not exceed \$3,500,000, the tax is 7% of the  
3 amount that exceeds the Maine exemption amount;

4 H. If the amount of the Maine taxable estate that exceeds the Maine exemption  
5 amount exceeds \$3,500,000 but does not exceed \$4,000,000, the tax is 8% of the  
6 amount that exceeds the Maine exemption amount;

7 I. If the amount of the Maine taxable estate that exceeds the Maine exemption  
8 amount exceeds \$4,000,000 but does not exceed \$4,500,000, the tax is 9% of the  
9 amount that exceeds the Maine exemption amount;

10 J. If the amount of the Maine taxable estate that exceeds the Maine exemption  
11 amount exceeds \$4,500,000 but does not exceed \$5,000,000, the tax is 10% of the  
12 amount that exceeds the Maine exemption amount;

13 K. If the amount of the Maine taxable estate that exceeds the Maine exemption  
14 amount exceeds \$5,000,000 but does not exceed \$5,500,000, the tax is 11% of the  
15 amount that exceeds the Maine exemption amount; and

16 L. If the amount of the Maine taxable estate that exceeds the Maine exemption  
17 amount exceeds \$5,500,000, the tax is 12% of the amount that exceeds the Maine  
18 exemption amount.

19 **3. Other jurisdiction death tax credit.** A credit against the tax imposed by this  
20 section is allowed for all constitutionally valid estate, inheritance, legacy and succession  
21 taxes actually paid to another jurisdiction upon the value of real or tangible personal  
22 property owned by the decedent or subject to those taxes as a part of or in connection  
23 with the estate and located in that jurisdiction if the value of that property is also included  
24 in the value of the decedent's intangible personal property subject to taxation under this  
25 section. The credit provided by this subsection may not exceed the amount of tax  
26 otherwise due multiplied by a fraction, the numerator of which is the value of the  
27 property located in the other taxing jurisdiction subject to this credit on which tax was  
28 actually paid and the denominator of which is the value of the decedent's federal gross  
29 estate.

30 **§4104. Tax on estate of nonresident**

31 **1. Imposition of tax.** A tax is imposed on the transfer of all real and tangible  
32 personal property situated in this State and owned by a nonresident who dies after  
33 December 31, 2010. When real or tangible personal property has been transferred into a  
34 trust or a limited liability company or other pass-through entity, the tax imposed by this  
35 section applies as if the pass-through entity did not exist and the property was owned  
36 personally by the decedent.

37 **2. Calculation of tax.** The amount of the tax under this section is determined by  
38 computing the tax that would have been due had the decedent been a resident whose total  
39 estate wherever situated was subject to the Maine estate tax and multiplying that amount  
40 by a fraction, the numerator of which is the value on the date of death of the decedent's  
41 real and tangible personal property situated in this State and the denominator of which is  
42 the sum of the decedent's federal gross estate plus the 2 adjustments described in section

1 4102, subsection 6, paragraphs C and D. This calculation of tax is not affected by  
2 whether the specific real or tangible personal property situated in this State is marital  
3 deduction property.

4 **3. Proceeds from sale of property.** Proceeds from the sale of property are taxable  
5 under this section if those proceeds are included in the modified federal gross estate  
6 described in subsection 2 and the sale was made in contemplation of death. A sale of  
7 property made within 6 months prior to the death of the grantor is deemed to be in  
8 contemplation of death within the meaning of this section.

9 **§4105. Personal representative's liability for tax**

10 **1. Payment of tax.** The tax imposed by this chapter must be paid by the personal  
11 representative to the extent of assets subject to the personal representative's control. The  
12 assessor may accept payment of estate taxes in works of art in accordance with Title 27,  
13 chapter 2, subchapter 2.

14 **2. Certification of payment.** A final account of a personal representative of an  
15 estate may not be allowed by the Probate Court unless the personal representative has  
16 filed in the Probate Court a certificate of the assessor showing either that the amount of  
17 tax has been paid, that payment has been secured as provided in section 4108 or that no  
18 tax is due.

19 **§4106. Discharge of personal representative's personal liability**

20 If the personal representative makes a written application, accompanied by a copy of  
21 the final determination of the federal estate tax liability, if any, and other supporting  
22 documentation that the assessor may require, to the assessor for determination of the  
23 amount of the tax and discharge of personal liability for that tax, the assessor, as soon as  
24 possible and in any event within one year after the making of the application or, if the  
25 application is made before the return is filed, within one year after the return is filed, shall  
26 notify the personal representative of the amount of the tax and of any interest on that  
27 amount. The personal representative, on payment of that amount, is discharged from  
28 personal liability for any deficiency in tax subsequently found to be due and is entitled to  
29 a certificate of discharge.

30 **§4107. Tax due date; filing of return and payment of tax**

31 **1. Date due.** Except as otherwise provided by this chapter, a return required by this  
32 section is due 9 months after the date of the decedent's death and any tax due under this  
33 chapter is due at the same time. Interest accrues on any amount of tax not paid by the due  
34 date.

35 **2. Return required.** The personal representative shall file a Maine estate tax return  
36 whenever:

37 A. The Code requires that a federal estate tax return be filed; or

38 B. The federal gross estate, increased by the amount of adjusted taxable gifts made  
39 by the decedent after December 31, 1976 and by the aggregate amount of any specific

1 gift tax exemption under former Code, Section 2521 used by the decedent after  
2 September 8, 1976 exceed the Maine exemption amount.

3 The return must be in the form prescribed by the assessor, and it must be accompanied by  
4 a copy of the federal estate tax return, if any, and by other supporting documentation that  
5 the assessor may require.

6 **3. No tax liability.** In all cases where a Maine estate tax return is not required to be  
7 filed:

8 A. If the personal representative makes no election pursuant to section 4102,  
9 subsection 5, paragraph C, the personal representative, surviving joint tenant of real  
10 estate or any other person whose real estate might be subject to a lien for taxes  
11 pursuant to this chapter may at any time file with the assessor in the form prescribed  
12 by the assessor a statement of the value of the federal gross estate; and

13 B. If the personal representative makes an election pursuant to section 4102,  
14 subsection 5, paragraph C, the personal representative shall make the election on a  
15 timely filed return. The return must be in the form prescribed by the assessor, and it  
16 must be accompanied by a copy of the federal estate tax return, if any, and other  
17 supporting documentation that the assessor may require, including documentation  
18 related to an election made pursuant to section 4102, subsection 5, paragraph C.

19 **§4108. Extension of due date for payment of tax**

20 The assessor may extend the time for payment of the tax or any part of the tax for a  
21 reasonable period of time not to exceed one year from the date fixed for payment and  
22 may grant successive extensions. The aggregate of extensions with respect to any estate  
23 may not exceed 10 years, unless a longer period is called for by a payment arrangement  
24 elected pursuant to section 4109. If an extension is granted, the assessor may require the  
25 taxpayer to:

26 **1. Bond.** Give a bond to the Treasurer of State in an amount the assessor determines  
27 necessary; or

28 **2. Other security.** Deposit with the Treasurer of State bonds or other negotiable  
29 obligations of governmental entities with an aggregate value sufficient to adequately  
30 secure payment of the tax.

31 **§4109. Extension of time for payment of estate tax when estate consists largely of**  
32 **interest in closely held business**

33 **1. Deferred payment arrangement.** If the United States Internal Revenue Service  
34 has approved a federal estate tax deferral and installment payment arrangement under the  
35 Code, Section 6166, the personal representative may elect a similar deferred payment  
36 arrangement under this section for payment of the tax imposed by this chapter, subject to  
37 acceptance by the assessor. The assessor may approve a deferral and installment  
38 arrangement under similar circumstances and on similar terms with respect to an estate of  
39 a decedent dying after December 31, 2010 that does not incur a federal estate tax.

1            **2. Time and manner of election; rejection by assessor.** An election under this  
2 section may be made by attaching a payment deferral election in a form prescribed by the  
3 assessor to a timely filed Maine estate tax return, in addition to any documentation  
4 required by section 4107 and copies of all documentation required by the United States  
5 Internal Revenue Service and submitted in support of a federal payment deferral.  
6 Documentation submitted to the assessor must clearly indicate the amount of Maine  
7 estate tax and interest to be paid in installments; the number of separate installments; and  
8 the due date of each installment payment. The assessor may reject the election. An  
9 election not rejected in writing by the assessor within 60 days after the election is made is  
10 considered accepted.

11            **3. Interest and penalties.** The amount of Maine estate tax deferred under this  
12 section is subject to interest pursuant to section 186. Interest payable on the unpaid tax  
13 attributable to a 5-year deferral period pursuant to the Code, Section 6166 must be paid  
14 annually. Interest payable on any unpaid tax attributable to any period after the 5-year  
15 deferral period must be paid annually at the same time as, and as part of, each installment  
16 payment of the tax. If any payment of principal or interest under this section is not made  
17 on or before the due date, the penalties provided by section 187-B apply.

18            **§4110. Extension of time for filing return**

19            **1. General.** The assessor may grant a reasonable extension of time for filing a return  
20 required by this chapter on terms and conditions as the assessor may require as long as  
21 payment reasonably estimating the tax due has been made on or before the original  
22 payment due date. Except as provided in subsection 2, an extension for filing any return  
23 may not exceed 8 months.

24            **2. Federal extension.** When an extension of time is granted within which to file a  
25 federal estate tax return, the due date for filing the Maine estate tax return is  
26 automatically extended for an equivalent period, as long as payment reasonably  
27 estimating the tax due has been made on or before the original payment due date.

28            **§4111. Effect of federal determination**

29            **1. Final federal determination.** Except as provided in subsection 2, a final federal  
30 determination as to any of the following issues also determines the same issue for  
31 purposes of the tax under this chapter:

32            **A.** The inclusion in the federal gross estate of any item of property or interest in  
33 property; and

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

35            **2. State determination of certain estates.** The assessor is not bound by a final  
36 federal determination under subsection 1 if the assessor determines the issue for purposes  
37 of the tax under this chapter within one year of the date the return was filed or the date  
38 the return is due, whichever is later.

39            **3. Items entering computation of tax.** If there has been a final federal  
40 determination with respect to a decedent's federal estate tax, any item, but not its value,

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

3 **4. Definition.** For purposes of this section, "final federal determination" means:

4 A. A decision by the United States Tax Court or a judgment, decree or other order by  
5 any court of competent jurisdiction that has become final;

6 B. A final disposition by the United States Secretary of the Treasury or the  
7 secretary's delegate of a claim for a refund. The disposition is deemed to have  
8 occurred:

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

11 (2) As to items of the claim that are disallowed or as to items applied by the  
12 United States Secretary of the Treasury or the secretary's delegate as an offset  
13 against the claim, upon expiration of the time for instituting suit for refund with  
14 respect to those items, unless suit is instituted before the expiration of that time,  
15 or upon filing with the assessor a written statement that suit will not be instituted;

16 C. A closing agreement made under the Code, Section 7121;

17 D. An assessment pursuant to a waiver of restrictions on assessment or a notification  
18 in writing issued by the United States Secretary of the Treasury or the secretary's  
19 delegate that the federal estate tax return has been accepted as filed, unless the  
20 personal representative notifies the assessor that a claim for refund of federal estate  
21 taxes has been or will be filed; or

22 E. An assessment pursuant to a compromise entered into by the personal  
23 representative and the United States Secretary of the Treasury or the secretary's  
24 delegate.

25 **§4112. Lien for taxes**

26 All property subject to taxes under this chapter, in whatever form of investment it  
27 may happen to be, is charged with a lien for all taxes, interest and penalties that are or  
28 may become due on that property. The lien does not attach to any real or personal  
29 property after the property has been sold or disposed of for value by the personal  
30 representative, trustee or surviving joint tenant. Upon payment of those taxes, interest  
31 and penalties due under this chapter or upon determination that no tax is due, the assessor  
32 shall upon request execute a discharge of the tax lien for recording in the appropriate  
33 registry or registries of deeds.

34 **§4113. Authority of State Tax Assessor**

35 The assessor shall collect all taxes, interest and penalties provided by chapter 7 and  
36 by this chapter and may institute proceedings of any nature necessary or desirable for that  
37 purpose, including proceedings for the removal of personal representatives and trustees  
38 who have failed to pay the taxes due from estates in their hands.

1           The assessor may enforce the collection of any taxes secured by bond in a civil action  
2 brought on the bond regardless of the fact that some other official may be named as  
3 obligee in the bond.

4           **§4114. Amount of tax determined**

5           The assessor shall determine the amount of tax due and payable under this chapter  
6 upon any estate or part of that estate. If, after determination and certification of the full  
7 amount of the tax upon an estate or any interest in or part of an estate, the estate receives  
8 or becomes entitled to property in addition to that shown in the estate tax return filed with  
9 the assessor or the United States Internal Revenue Service changes any item increasing  
10 the estate's liability shown in the Maine estate tax return filed with the assessor, the  
11 personal representative shall within 180 days of any receipt, entitlement or change file an  
12 amended Maine estate tax return. The assessor shall determine the amount of additional  
13 tax and shall certify the amount due, including interest and penalties, to the person by  
14 whom the tax is payable.

15           **§4115. Authority to make refunds**

16           **1. Refund.** A personal representative or responsible party otherwise liable for the  
17 tax imposed by this chapter may request a refund of any tax imposed by this chapter  
18 within 3 years from the date the Maine estate tax return was filed or 3 years from the date  
19 the tax was paid, whichever period expires later. A claim for refund must be submitted to  
20 the assessor in writing and must state the specific grounds upon which the claim is  
21 founded. The claimant may in writing request an informal conference regarding the  
22 claim for refund pursuant to section 151.

23           **2. Limitation on payment of interest.** Interest may not be paid by the assessor on  
24 an overpayment of the tax imposed by this chapter that is refunded within 60 days after  
25 the date prescribed or permitted by extension of time for filing the Maine estate tax return  
26 or within 60 days after the return is filed or within 60 days after a return requesting a  
27 refund of the overpayment is filed, whichever is later.

28           **§4116. Appointment of personal representative on probate delay**

29           If, upon the death of a person leaving an estate that may be liable to pay tax under  
30 this chapter, a will is not offered for probate or an application for administration is not  
31 made within 6 months after the date of death or if the personal representative does not  
32 qualify within that period, the Probate Court, upon application by the assessor, may  
33 appoint a personal representative. Nothing may prevent the assessor from petitioning for  
34 appointment within 6 months after the date of death, if in the opinion of the assessor that  
35 action is necessary.

36           **§4117. Persons liable**

37           Personal representatives, trustees, grantees or donees under nonexempt conveyances  
38 or nonexempt gifts made during the life of the grantor or donor and persons to whom  
39 beneficial interests accrue by survivorship are liable for the taxes imposed by this chapter  
40 with interest, as provided, until the taxes are paid. For purposes of this section,

1 "nonexempt conveyances" and "nonexempt gifts" mean any transfer to a person that is  
2 includable in the federal gross estate of the decedent and with respect to which no  
3 deduction is allowed in computing the federal estate tax liability.

4 If the tax or any part of the tax is paid or collected out of that part of the estate  
5 passing to or in possession of any person other than the personal representative in that  
6 capacity, that person is entitled to a reimbursement out of any part of the estate still  
7 undistributed or by a just and equitable contribution by the person whose interest in the  
8 estate of the decedent would have been reduced if the tax had been paid before the  
9 distribution of the estate or whose interest in the estate is subject to an equal or prior  
10 liability for the payment of tax, debts or other charges against the estate.

11 **§4118. Civil action by state; bond**

12 Personal representatives are liable to the State on their administration bonds for all  
13 taxes assessable under this chapter and interest on those taxes. If no administration bond  
14 is otherwise required and except as otherwise provided in this section, the judge of  
15 probate, notwithstanding any provision of Title 18-A, shall require a bond payable to the  
16 judge or the judge's successor sufficient to secure the payment of all estate taxes and  
17 interest conditioned in substance to pay all estate taxes due to the State from the estate of  
18 the deceased with interest thereon. A bond to secure the payment of estate taxes is not  
19 required when the judge of probate finds that any estate tax due and to become due the  
20 State is reasonably secured by the lien upon real estate as provided in this chapter or by  
21 any other adequate security. An action for the recovery of estate taxes and interest lies on  
22 either of the bonds.

23 **SUMMARY**

24 This bill provides a different method of calculation of the Maine estate tax. Instead  
25 of calculating the estate tax based on prior federal law, the bill establishes a progressive  
26 rate structure for estates that exceed an exemption amount of \$1,000,000 for persons who  
27 die after December 31, 2010.