TESTIMONY OF
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Before the Joint Standing Committee on Taxation
Hearing Date: May 17, 2023

LD *1338* – "*An Act to Amend the Maine Exclusion Amount in the Estate Tax*"

Senator Grohoski, Representative Perry, and members of the Taxation Committee – good morning, my name is Michael Allen, Associate Commissioner for Tax Policy in the Department of Administrative and Financial Services. I am testifying at the request of the Administration Against LD *1338*, "*An Act to Amend the Maine Exclusion Amount in the Estate Tax.*"

This bill increases the Maine estate tax by reducing the Maine estate tax exclusion amount, creates an additional special exclusion amount for certain estates, and provides that the increased estate tax revenue be transferred to the Maine State Housing Authority to support affordable housing. This bill creates unnecessary complexity to the Maine estate tax return. In addition, while States have varied over time in the degree of difference between the respective state and federal exclusion amounts, Maine would be the first state that we are aware of to reduce the state-level estate tax exclusion amount since the repeal of the federal State Death Tax Credit in 2001. Table A, attached, attached to this testimony, lists the federal and Maine exclusion amounts for the years 2011 through 2023.

The bill before you is complex. For decedents dying on or after January 1, 2024, the bill reduces the Maine estate tax exclusion amount ("Maine exclusion amount") from $5,600,000 to $2,000,000 and creates an additional exclusion amount, up to $3,800,000, for family farms and aquaculture, fishing, and wood harvesting businesses. The additional exclusion applies to farmland or depreciable machinery and equipment used in commercial agricultural production, commercial aquacultural production, commercial fishing, or commercial wood harvesting that is inherited by a family member and remains in commercial use for 5 years following transfer. Beginning in 2025, the $2,000,000 exclusion amount and the $3,800,000 additional exclusion amount are annually adjusted for inflation, for estates of decedents who die in the succeeding calendar year. The additional exclusion amount is subject to recapture if the underlying property fails to meet eligibility requirements at any time during the five-year period.

Beginning January 1, 2024, the revenue generated by the reduction in the Maine exclusion amount in 36 M.R.S. § 4102, sub-§ 5, ¶ D must be transferred monthly to the Maine State Housing Authority to be used to support housing, twenty-five percent of which must be used to support affordable housing for veterans.

Only estates worth more than the Maine exclusion amount are subject to the Maine estate tax. The current Maine estate tax exclusion is $5,600,000, which adjusted for inflation is $6,410,000 for 2023 decedents. There are three Maine estate tax rates applicable to the Maine taxable estate exceeding the Maine exclusion amount (8%, 10%, and 12%). Currently, the federal exclusion amount is $12,920,000.

Maine conforms to the special federal treatment of property used in farming or other trades or businesses. Internal Revenue Code, Section 2032A allows special valuation of qualified use property. To qualify for the special federal treatment, the property must be used "primarily" in farming or other business activity for 5 of 8 years preceding the death of the decedent and, to avoid recapture, 10 years following the death of the decedent. Also, for federal purposes, at least 50% of a decedent's estate must consist of real/personal property used in farming or other trade or business.

The Administration notes that the bill significantly increases the complexity and the number of taxpayers subject to the Maine estate tax, increases the reporting requirements for taxpayers and tax preparers, and increases MRS staff processing and auditing activity. At the same time, this proposal is much more generous than the special federal treatment of property used in farming or other trade or business. Due to the broader scope of this proposal, many more estates will qualify for the additional Maine estate tax exclusion for farmland or depreciable property and equipment than would qualify for the federal estate tax benefits. In addition, as the bill is written, qualifying estates may be eligible for both the special valuation treatment under the Internal Revenue Code, Section 2032A and the increased Maine exclusion amount with respect to the same property.

There are numerous other technical comments on the bill that can be provided if the Committee decides to move forward with the bill.

The estimated revenue impact of the bill is a tax increase of approximately $17 million per year.

The estimated administrative costs continue to be under consideration. As written, the bill may result in additional staffing requirements to process and audit affected tax returns.

The Administration looks forward to working with the Committee on the bill; representatives from MRS will be here for the Work Session to provide additional information and respond in detail to the Committee's questions.

Table A

Federal and Maine Estate Tax Exclusion Amounts (2011 – 2023)

	Federal Estate Tax Exclusion	Maine Estate Tax Exclusion
2023	$12,920,000	$6,410,000
2022	$12,060,000	$6,010,000
2021	$11,700,000	$5,870,000
2020	$11,580,000	$5,800,000
2019	$11,400,000	$5,700,000
2018	$11,180,000	$5,600,000
2017	$5,490,000	$5,490,000
2016	$5,450,000	$5,450,000
2015	$5,430,000	$2,000,000
2014	$5,340,000	$2,000,000
2013	$5,250,000	$2,000,000
2012	$5,120,000	$1,000,000
2011	$5,000,000	$1,000,000