



Commonwealth of Massachusetts

Department of Revenue

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Massachusetts Estate Tax Instructions **Form M-706**

For every estate with date of death
on or after January 1, 2003

2 General Information

Note: All references to the Internal Revenue Code, the Code or any section of the Code refer to the Internal Revenue Code in effect on December 31, 2000. All references to the federal Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return or to the Instructions for Form 706 refer to the July 1999 revisions of the federal estate tax return and the instructions.

Recent Changes

- The Form M-706 has been revised, and can now be filed by entering information electronically through MassTaxConnect. Filing through MassTaxConnect will result in faster processing, and a quicker generation of the Massachusetts Estate Closing Letter and the Certificate Releasing Massachusetts Estate Tax Lien.
- The Power of Attorney sections on both the M-706 and M-4422 have been eliminated. In order to grant a Power of Attorney, Form M-2848 must be filed.
- The Form M-4768 has been modified to accommodate applications for an extension of time to file and an extension of time to pay. The M-4768A has been eliminated. The requirements to qualify for a valid extension of time to file and to pay remain unchanged.
- New lines have been added to the M-706 which correspond directly to line items on the federal Form 706. (July 1999 revision). These are found on page 2, and in Parts 5 and 6.
- Form M-792 will no longer need to be attached to the M-706 to effect a release of the Massachusetts Estate Lien. Rather, the information provided on the M-706, Part 7 will be used for this purpose. Once any tax due is paid, and the return is accepted as filed, the Massachusetts Estate Tax Closing Letter, as well the Certificate Releasing Massachusetts Estate Lien, will be issued. **Note:** It is important that Part 7 of the M-706 be fully completed for each property needing a lien release. Failure to provide all the information necessary will delay issuance of the Certificate Releasing Massachusetts Estate Lien.

Calculating the Estate Tax

Effective for dates of death on or after January 1, 2003, the Massachusetts estate tax is an amount computed using the credit for state death taxes allowed by section 2011 of the Internal Revenue Code in effect on December 31, 2000. M.G.L. c. 65C, § 2A. Future changes to the federal estate tax law will not affect the Massachusetts estate tax law, as the reference for Massachusetts estate tax purposes is the Internal Revenue Code in effect on December 31, 2000.

The credit for state death taxes is computed using the July 1999 revision of the federal Form 706,

United States Estate (and Generation-Skipping Transfer) Tax Return and is entered on line 15 of that form. Portions of the July 1999 revision of the federal Form 706 are not necessary for the computation of the credit for state death taxes and need not be completed. Completion of the following portions of the July 1999 revision of the federal Form 706 is not required:

- lines 16 through 27 on page 1;
- the computation of the credit for federal gift taxes on pre-1977 gifts (section 2012);
- Schedule P, Credit for Foreign Death Taxes;
- Form(s) 706-CE, Certificate of Payment of Foreign Death Tax;
- Schedule Q, Credit for Tax on Prior Transfers; and
- Schedule R, Generation-Skipping Transfer Tax

The credit for state death taxes computed on line 15 of the July 1999 revision of the federal Form 706 is entered on line 2 of Part 1 of either Form M-706, Massachusetts Estate Tax Return, or Form M-4422, Application for Certificate Releasing Massachusetts Estate Tax Lien. The credit for state death taxes is used to compute the Massachusetts estate tax.

Effect of the Goodridge decision on the Internal Revenue Code in effect on December 31, 2000

Beginning May 16, 2004 Massachusetts law permits same-sex couples to marry. See *Goodridge v. Department of Public Health*, 440 Mass. 309 (2003) and Technical Information Release 04-17, Massachusetts Tax Issues Associated with Same-Sex Marriages. As a result of the Goodridge decision, the term "spouse", for Massachusetts estate tax purposes, includes partners in a same-sex marriage. The following three provisions of the December 31, 2000 Internal Revenue Code reflect the Massachusetts estate tax treatment of spouses in a same-sex marriage.

Marital deduction: A Massachusetts marital deduction is allowable for property passing from a decedent to his/her surviving same-sex spouse to the same extent that property left to a surviving husband or wife is allowable as a marital deduction provided the requirements of IRC sec. 2056 are met.

Joint property: Spouses in a same-sex marriage are allowed to include in the gross estate of a decedent one-half the value of certain joint interests under IRC sec. 2040(b) in the same manner that a husband and wife are permitted this treatment provided the interest in property meets the requirements of IRC sec. 2040(b)(2).

Gifts to a third party: IRC sec. 2513 permits a gift made by one spouse to any person to be consid-

ered as made one-half by the donor and one-half by the donor's spouse. This election is available to spouses in a same-sex marriage. Although Massachusetts does not have a gift tax, this section can affect the application of related estate tax provisions (i.e., the filing threshold). **Note:** This election requires the filing of pro forma federal gift tax returns with the Massachusetts Estate Tax Unit. Since same-sex marriage is not recognized for federal tax purposes, partners who elect to have a gift of one spouse considered as made one-half by each spouse are required to file pro forma federal Form 709 or Form 709-A in accordance with the filing requirements of IRC sec. 6075(b). A copy of the federal gift tax returns filed with the Internal Revenue Service must also be filed with the pro forma gift tax returns.

Privacy Act Notice

Under the authority of 42 U.S.C. sec. 405(c)(2)(C)(i), and M.G.L. c. 62C, sec. 5, the Department of Revenue has the right to require an individual to furnish his or her Social Security number on a state tax return. This information is mandatory. The Department of Revenue uses Social Security numbers for taxpayer identification to assist in processing and keeping track of returns and in determining and collecting the proper amount of tax due. Under M.G.L. c. 62C, sec. 40, the taxpayer's identifying number is required to process a refund of overpaid taxes. Although tax return information is generally confidential pursuant to M.G.L. c. 62C, sec. 21, the Department of Revenue may disclose return information to other taxing authorities and those entities specified in M.G.L. c. 62C, secs. 21, 22 or 23, and as otherwise authorized by law.

Massachusetts Filing Requirements

The filing thresholds and exempt amounts for Massachusetts estate tax purposes are the following:

Year of death	Threshold/exemption
2003	\$ 700,000
2004	\$ 850,000
2005	\$ 950,000
2006 and thereafter	\$1,000,000

To determine whether a return must be filed for a decedent's estate, add:

1. the adjusted taxable gifts (under section 2001(b)) made by the decedent after December 31, 1976;
2. the total specific exemption allowed under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) for gifts made by the decedent after September 8, 1976; and
3. the decedent's gross estate **valued at the date of death**.

The executor/personal representative must file Form M-706, Massachusetts Estate Tax Return,

for any estate in which the sum of the above three items exceeds the exempt amount for the year of the decedent's death. For further information, see Technical Information Release 02-18, Tax Changes Contained in "An Act Enhancing State Revenues" and Related Acts and DOR Directive 03-2, Issues Arising from Decoupling the Massachusetts Estate Tax from the Federal Estate Tax. In addition, see "Which Estates Must File" on page 2 of the July 1999 revision of the Instructions for Form 706. Beginning with deaths occurring in 2003, the filing thresholds and exempt amounts are lower for Massachusetts estate tax purposes than for federal estate tax purposes.

Adjusted taxable gifts affect the Massachusetts filing threshold but are not added to the taxable estate (page 1, line 4 of the July 1999 revision of the federal Form 706) for the computation of the credit for state death taxes. Adjusted taxable gifts are added to the taxable estate for the computation of tentative tax using Table A, the unified rate schedule, that is on page 12 of the July 1999 revision of the Instructions for Form 706.

The July 1999 revision of the Instructions for Form 706 has information concerning adjusted taxable gifts in the "Instructions for Part 2. Lines 4 and 9" on page 4 and in the "Worksheet TG-Taxable Gifts Reconciliation" and the "Line 4 Worksheet-Adjusted Taxable Gifts Made After 1976" on page 5. See the "Instructions for Part 2. Line 12" for information concerning gifts made after September 8, 1976 and before January 1, 1977.

The executor/personal representative of a nonresident decedent who owned or transferred, for less than full and adequate consideration, real estate or tangible personal property located in Massachusetts must file a Form M-706, Massachusetts Estate Tax Return, if the sum of the three items described above exceeds the exempt amount for the year of the decedent's death. The estate of a nonresident decedent may have a Massachusetts filing requirement even if the value of the Massachusetts real or tangible personal property is less than the exempt amount for the year of the decedent's death. The estate tax for the estate of a nonresident decedent with Massachusetts property is computed in Part 3 of Form M-706 or Form M-4422. The gross value of the real property and tangible personal property in Massachusetts is used in the calculation. **Do not reduce the value of the decedent's Massachusetts property by the amount of any mortgage or lien.** The percentage of the estate in Massachusetts that is computed on line 4 in Part 3 of Form M-706 or Form M-4422 should be calculated to six decimal places. The estate of a nonresident decedent must also file Form M-NRA, Massachusetts Nonresident Decedent Affidavit. The gross values of all real and/or tangible personal property having an actual situs in

Massachusetts and included in the decedent's gross estate are listed on line 26 of Form M-NRA.

Definition of an Executor

For purposes of the Massachusetts estate tax, an executor/personal representative is defined as the executor/personal representative or administrator of the decedent's estate, or, if there is no executor/personal representative or administrator appointed, qualified and acting within the Commonwealth, then any person in actual or constructive possession of any property of the decedent. M.G.L. c. 65C, § 6(a).

Due Dates and Extensions

The Massachusetts estate tax return, with all required documents, and the payment for the tax, if any, must be filed within nine months after the date of the decedent's death.

Requests for an extension of time to file or to pay must be made prior to the due date of the return on Form M-4768, Massachusetts Estate Tax Extension Application. An extension of time to file shall only be granted if the application is accompanied by the estimated tax payment unless the estate is also requesting an extension of time to pay the estate tax. An extension of time to file is void if the total amount paid before the due date of the return is less than 80% of the tax finally determined to be due unless the estate was granted an extension of time to pay the estate tax.

Payment of Tax and Filing the Return

New: Payments can now be made online at mass.gov/masstaxconnect. Also, credit cards are now accepted for estate tax payments.

Payment of the estate tax can also be made by a check payable to the Commonwealth of Massachusetts. Enter the decedent's full name and Social Security number in the memo portion of the check. The executor/personal representative signing the return is personally liable for payment of any tax shown on the return if it is not otherwise paid. The return and the tax payment should be sent to the Massachusetts Estate Tax Unit, PO Box 7023, Boston, MA 02204.

Interest and Penalties

Interest on any unpaid tax accrues from the original due date of the return which is nine months after the date of the decedent's death. The Department determines the quarterly interest rate on underpayments pursuant to M.G.L. c. 62C, § 32. The interest rate for underpayments is the Federal short-term rate determined under Section 6621(b) of the Internal Revenue Code, as amended and in effect for the taxable year, plus four percentage points, compounded daily. Effective July

1, 2003, the interest rate on overpayments pursuant to M.G.L. c. 62C, § 40 is the Federal short-term rate determined under Section 6621(b) of the Internal Revenue Code, as amended and in effect for the taxable year, plus two percentage points, simple interest. The interest rates for underpayments and overpayments may change quarterly and are announced in a quarterly Technical Information Release.

The penalty for failure to file Form M-706 by the due date, or within an authorized extension of time, is 1% per month (or fraction thereof) to a maximum of 25% of the tax as finally determined to be due. M.G.L. c. 62C, § 33(a). The penalty for failure to pay the tax reported as due on Form M-706, by the due date, or within an authorized extension of time, is 1% per month (or fraction thereof) to a maximum of 25% of the tax reported to be due. M.G.L. c. 62C, § 33(b).

Required Documents

All estates that are required to file a Massachusetts estate tax return must submit the following documents:

- Form M-706, Massachusetts Estate Tax Return;
- the July 1999 revision of the federal Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, with all attachments described in the instructions for that form; and
- a check, payable to the Commonwealth of Massachusetts, for the Massachusetts estate tax, if any, that is due with the decedent's full name and Social Security number entered in the memo portion of the check.

New: Payments can now be made online at mass.gov/masstaxconnect. Also, credit cards are now accepted for estate tax payments.

Computation of the Credit for State Death Taxes (Code § 2011)

The credit for state death taxes is computed using the taxable estate from line 3 of the July 1999 revision of the federal Form 706. The federal taxable estate is reduced by \$60,000 and the credit is computed using the rates contained in Table B, Computation of Maximum credit for State Death Taxes. Table B and the Table B Worksheet are on page 12 of the July 1999 revision of the Instructions for Form 706.

If the credit for state death taxes computed using Table B is **greater than** the amount computed on line 14 of the federal Form 706, enter the amount from line 14 on line 15. The amount entered on line 15 may not be more than the amount entered on line 14. For further information on the limitation based on the amount of the tax, see IRC § 2011(e). In the calculation of the amount on line 14, the applicable credit amount entered on line 11 of the

July 1999 revision of the federal Form 706 is the amount allowed by the December 31, 2000 Code that is different than the applicable credit amount allowed by current federal estate tax law. The applicable credit amounts for the July 1999 revision of the federal Form 706 are the following:

Year of death	Credit amount
2003	\$229,800
2004	\$287,300
2005	\$326,300
2006 and thereafter	\$345,800

See the instructions for Line 11, Unified Credit (Applicable credit amount) on page 4 of the July 1999 revision of the Instructions for Form 706.

Marital Deduction for Qualified Terminable Interest Property (“QTIP”)

An estate may elect to claim a marital deduction for Qualified Terminable Interest Property or property interests. The QTIP election allowed by IRC § 2056(b)(7) is made by listing the qualified terminable interest property on Schedule M of the July 1999 revision of the federal Form 706 and deducting its value. In addition, the estate must answer the question regarding the QTIP election on page 2, line 7 of Form M-706, Massachusetts Estate Tax Return. The executor or other fiduciary is not required to make the same QTIP election for federal estate tax purposes in order to make the election for Massachusetts purposes. The “Description of property interests passing to surviving spouse” section of Schedule M of the federal Form 706 must clearly indicate the property for which a Massachusetts only QTIP election is made. **The election is irrevocable.** See the instructions for Schedule M, Bequests, etc., to Surviving Spouse that begin on page 27 of the July 1999 revision of the federal Form 706.

Section 2044 of the December 31, 2000 Code includes the value of the property for which a previous section 2056(b)(7) election was made in the gross estate of the surviving spouse. Section 2044 property is reported on Schedule F, Other Miscellaneous Property of the July 1999 revision of the federal Form 706. As a result of different federal and Massachusetts QTIP elections in the estate of the first-to-die spouse, the value of the QTIP property included in the estate of the second-to-die spouse may be different for federal and Massachusetts estate tax purposes. See the instructions for Schedule F that are on page 20 of the July 1999 revision of the federal Form 706.

For further information regarding section 2056(b)(7) property and section 2044 property, see “Issue 1” of DOR Directive 03-2, Issues Arising from Decoupling the Massachusetts Estate Tax from the Federal Estate Tax.

Massachusetts Estate Tax Lien on Real Estate

The Commonwealth automatically acquires a lien against all Massachusetts real estate included in a decedent’s gross estate. Unless the tax is paid in full, the lien is valid for 10 years from the decedent’s date of death. M.G.L. c. 65C, § 14.

Massachusetts Filing Requirement to Obtain a Release of Lien

When the filing of a Massachusetts Estate Tax Return is required to obtain a release of this lien because the size of the estate equals or exceeds the Massachusetts filing threshold for the year of the decedent’s death, an executor must file Form M-706. The filing must be accompanied by a copy of the recorded deed, certificate of title or the probate instrument that created the decedent’s interest and a copy of the July 1999 revision of the federal estate tax return, Form 706, with all attachments described in the instructions for that form. If the estate is required to file a current federal Form 706, submit a copy of that return with any required attachments that are not included with the July 1999 version of the federal Form 706. The estate of a nonresident decedent must submit Form M-NRA, Massachusetts Nonresident Decedent Affidavit.

When a sale of real estate or a mortgage commitment is pending, the Estate Tax Unit will expedite the release of the estate tax lien. The estate may request the release of lien on Form M-4422, Application for Certificate Releasing Massachusetts Estate Tax Lien, if (1) the date for filing the estate tax return has not yet passed, **and** (2) Form M-706 cannot be completed prior to the date of the sale, a copy of the purchase and sale agreement or the mortgage commitment must be submitted with the Form M-4422. If the estate is filing the Form M-706 and a sale of real estate or a mortgage commitment is pending, a copy of the purchase and sale agreement or the mortgage commitment should be submitted at the time of filing the Form M-706. If the estate previously filed Form M-706 and a sale of real estate or a mortgage commitment is pending, a copy of the purchase and sale agreement or the mortgage commitment should be submitted with a letter explaining that the M-706 was previously filed.

New: Form M-4422 can now be filed on line at mass.gov/masstaxconnect. This is the quickest and easiest way to obtain the Massachusetts Certificate Release of Estate Lien.

Releasing the Lien If There Is No Massachusetts Filing Requirement

If a Massachusetts Estate Tax Return is not required to be filed because the size of the estate does not equal or exceed the Massachusetts filing threshold for the year of the decedent’s death, an affidavit of the executor or other fiduciary, subscribed to under the pains and penalties of perjury, recorded in the appropriate registry of deeds accurately stating that the gross estate of the decedent does not necessitate a Massachusetts estate tax filing, shall release the gross estate of the lien imposed by M.G.L. c. 65C, § 14.

For further information, see “Issue 2” of DOR Directive 03-2, Issues Arising from Decoupling the Massachusetts Estate Tax from the Federal Estate Tax.

Report of Federal Estate Tax Changes

Federal estate tax changes must be reported within two months of receipt of a final determination (for example, the federal closing letter, agreed upon federal audit changes, agreed upon IRS Appeals Office changes, Tax Court decision, etc.) of the federal estate tax change(s). An amended Form M-706 should be used to report any change(s). The Form M-706 is an “amended” return when the box on page 1 of the return is checked. For further information regarding what constitutes a federal change, see Technical Information Release 99-14, Expanded Definition of “Federal Change.” Attach a copy of the final federal determination and pay any additional Massachusetts estate tax, interest and penalty, if any, due as a result of the change. The change(s) must relate to an entry that was reported on the July 1999 revision of the federal Form 706.

If a refund is indicated as a result of the federal estate tax change and a Massachusetts Estate Tax Closing Letter has previously been issued, an amended M-706 must be filed within one year of receipt of the final federal determination. The change(s) must relate to an entry that was reported on the July 1999 revision of the federal Form 706.

Line by Line Instructions

Part 1. Tentative Massachusetts Estate Tax

Line 1. Enter the total value of the decedent's gross estate from the July 1999 revision of the federal Form 706, page 1, line 1. Do not reduce the gross value by the amount of any property subject to a power of appointment upon which an inheritance tax on future interests has been settled and paid pursuant to M.G.L. c. 65, § 14.

Line 2. Enter the total allowable deductions (from page 1, line 2 of U.S. Form 706 with a revised date July 1999 or from Part 6, line 11 of this return).

Line 3. Subtract line 2 from line 1.

Line 4. Adjustable taxable gifts (from page 1, line 4 of U.S. Form 706 with a revision date of July 1999).

Line 5. Add lines 3 and 4.

Line 6. Credit for state death taxes (from page 1, line 15 of U.S. Form 706 with a revision date of July 1999).

Part 2. Computation of Tax for Estate of Massachusetts Resident Decedent with Property in Another State

Line 1. Enter the amount from Part 1, line 1.

Line 2. Enter the amount from Part 1, line 2.

Line 3. Enter the amount of estate or inheritance taxes actually paid to other states that would qualify for the federal estate tax state death tax credit allowed by the December 31, 2000 Internal Revenue Code. Attach documentation of the amount(s) paid.

Line 4. Enter the gross value of real estate and tangible personal property situated in other states. **Do not reduce the gross value by the amount of any mortgages, liens or debts.** Attach a schedule of the non-Massachusetts property and identify the schedule(s) of the July 1999 revision of the federal Form 706 where the non-Massachusetts property is reported.

Line 5. Divide Part 2, line 4 by Part 2, line 1. The result should be computed to six decimal places.

Line 6. Multiply Part 2, line 2 by Part 2, line 5.

Line 7. Enter the **smaller** of Part 2, line 3 or Part 2, line 6.

Line 8. Subtract Part 2, line 7 from Part 2, line 2. Enter the result in Part 2, line 8 and in Part 4, line 1.

Part 3. Computation of Tax for Estate of Nonresident Decedent with Massachusetts Property

Line 1. Enter the amount from Part 1, line 1.

Line 2. Enter the amount from Part 1, line 2.

Line 3. Enter the total gross value of all real and/or tangible personal property having an actual situs in Massachusetts and included in the decedent's gross estate from line 26 of Form M-NRA, Massachusetts Nonresident Decedent Affidavit. Do not deduct the value of any mortgage or lien.

Line 4. Divide Part 3, line 3 by Part 3, line 1. The result should be computed to six decimal places.

Line 5. Multiply Part 3, line 2 by Part 3, line 4. Enter the result in Part 3, line 5 and in Part 4, line 1.

Part 4. Massachusetts Estate Tax Due

Line 1. Enter the amount from Part 1, line 6 **or** Part 2, line 8 **or** Part 3, line 5, whichever applies.

Line 2. Enter the amount of any late file and/or late pay penalties. The penalty for failure to file a tax return by the due date is 1% of the tax due, per month (or fraction thereof) up to a maximum of 25%. The penalty for late payment is 1% of the tax due, per month (or fraction thereof) up to a maximum of 25%.

Line 3. Interest on any unpaid tax accrues from the original due date of the return. See "Interest and Penalties" on page 3.

Line 4. Add lines 1 through 3. This is the total amount due.

Line 5. Enter the total of all previous payments made with any extension(s). Attach a copy of Form M-4768, Application for Estate Tax Extension.

Line 6. Enter the total of all previous payments but not payments made with any extension(s). Attach copies of prior filings with payment dates and amounts.

Line 7. Add lines 5 and 6. This is the total payments made.

Line 8. If line 4 is smaller than line 7, subtract line 4 from line 7. This is the amount of your refund. If line 4 is larger than line 7, omit line 8 and complete line 9. If lines 4 and 7 are equal, enter "0" in line 8 and omit line 9.

Line 9. If line 4 is larger than line 7, subtract line 7 from line 4. If there is a balance owed the Commonwealth of Massachusetts and enter the decedent's full name and Social Security number in the memo portion of the check. Include any interest and penalties owed by the estate with the payment. If there is a refund owed the estate, it will be refunded to the estate.

Estate Tax Information

For further estate tax information, please call the Estate Tax Unit at (617) 887-6930.

All estate tax forms and instructions are available on the Department's website. In addition, Technical Information Releases and Directives issued by the Department of Revenue are published at the Rulings and Regulations section of the Department's website: www.mass.gov/dor.