

STANDARD NO. 708, Continued

PROBLEM:

When the record discloses or the examiner is aware that a record owner died, under what circumstances may the examiner certify passage of title to real estate as unencumbered by the Maine inheritance tax lien, the Maine estate tax lien, and the federal estate tax lien?

RECOMMENDATIONS:

1. Maine Inheritance Tax Lien. The Maine inheritance tax lien no longer applies to any real estate.

See DISCUSSION 1 below.
2. Maine Estate Tax Lien. The Maine estate tax lien applies only to estates of persons who die after June 30, 1986. See 36 M.R.S. § 4061. However, the Maine estate tax lien does not attach to any property passing by right of survivorship to a surviving joint tenant who was the decedent's spouse on the decedent's date of death. See 36 M.R.S. §§ 4072 and 4112. If the personal representative, trustee or surviving joint tenant has sold or disposed of or is selling or disposing of the real property **for value** such grantee takes free of the Maine estate tax lien. The Maine estate tax lien that attaches is released 10 years after the decedent's date of death. If the conveyance is made by a Personal Representative by Deed of Distribution, by a Trustee for no consideration, by a surviving joint tenant for no consideration, or by an heir or devisee, the estate tax lien remains an encumbrance unless 10 years have elapsed since the decedent's date of death or unless the lien shall have been discharged as evidenced by a certificate from the State Tax Assessor recorded in the registry of deeds. See 36 M.R.S. § 4112.
 - 2A. Trusts. Notwithstanding the foregoing sentence, for trusts if more than ten years have elapsed since the earlier of the death of the settlor-owner of the trust or the recording of the trust deed any estate tax owed should not be considered an encumbrance on the subject premises unless an instrument of record reveals the continuing validity of the Maine estate tax lien.

See DISCUSSION 2A below.
 - 2B. Retained Life Interests and Gifts. The Maine estate tax lien applies to real estate that was formerly owned by the decedent, who during lifetime had granted the real estate and (1) retained up to death a life estate or other life interest, such as a lease, or (2) made such gift of an interest in real estate less than one year from date of death but does not include the value of taxable gifts made prior to January 1, 2008. See 36 M.R.S. § 4062(2) and § 4102(1). See Discussion 2B below.
 - 2C. Pass-Through Entities. The Maine estate tax lien applies to real property owned by a pass through entity when a nonresident member of a pass-through entity dies but only under the circumstances set forth in DISCUSSION 2C below.

STANDARD NO. 708, Continued

See DISCUSSION 2 below.

3. Federal Estate Tax Lien. Where death occurred within ten years prior to search, the possibility of a lien for federal estate taxes should be investigated. Under § 6324(a) of the Internal Revenue Code, the estate tax lien attaches at the date of death to every part of the decedent's gross estate and does not require filing of any notice of lien. However, § 6324(a) provides in pertinent part:

Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, to **a purchaser or holder of a security interest** shall be divested of the lien . . . and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, or transferee of any such person, except any part transferred to a purchaser or a holder of a security interest.

In situations not entitled to such protection under § 6324(a), evidence as to (1) whether the estate of such party-in-interest is subject to federal estate taxes and (2) whether any estate taxes were paid, should be obtained, if possible, and appropriate curative action taken, if necessary.

See DISCUSSION 3 below.

DISCUSSION:

1. Maine Inheritance Tax Lien. Prior to its repeal effective on April 2, 1998, 36 M.R.S. § 3404, the section which imposed the inheritance tax lien, provided in pertinent part: "If the lien shall not have been terminated as set forth, it shall in any event expire 10 years after decedent's death, unless further extended by the filing of a lien certificate, as to any property **in the hands of a purchaser for value.**" (Emphasis added.) Thereafter and until November 1, 2017, the examiner was cautioned that if the property was not in the hands of a purchaser for value, the expiration of 10 years following the death of the decedent would not result in expiration of the Maine inheritance tax lien. As of November 1, 2017, inheritance tax liens no longer have any force and effect. 36 M.R.S. § 175A, sub-§5.
- 2A. Maine Estate Tax Lien - Trusts. The property in a trust may be subject to the Maine estate tax lien if the settlor-owner of the trust has died. For pending transactions from the trust, if there is a reasonable inference of death of the settlor-owner of the trust, the examiner may need to obtain non-record evidence in the absence of any record indication that the Maine estate tax lien is inapplicable to the real estate being searched. However, ten years after the settlor-owner of the trust has died, any estate tax owed should not be considered an encumbrance on the subject premises unless an instrument of record reveals the continuing validity of the Maine estate tax lien. For all other transactions, other than pending transactions from the trust, absent express record evidence of the recording of a Maine estate tax lien on the trust property being searched,

STANDARD NO. 708, Continued

the examiner may certify title to the real estate being searched as unencumbered by any Maine estate tax lien. See 36 M.R.S. § 4072 for estates prior to 2013 and § 4112 for estates after 2012.

- 2B. Maine Estate Tax Lien — Retained Life Interests and Gifts. When the grantor conveys the real estate and retains a life estate, life lease, or other life interest, the entire value of the conveyed real estate is generally subject to Maine (and federal) estate tax liens. Gifts of real estate made by the decedent within one year of date of death are subject to the “claw-back” provision of the Maine estate tax and subject to the Maine estate tax lien. See 36 M.R.S. 4062(2) for estates prior to 2013 and § 4102(1) for estates after 2012.
- 2C. Maine Estate Tax Lien — Pass-Through Entities. The Maine estate tax lien attaches to real property owned by a pass-through entity when a nonresident member of a pass-through entity dies but only under the following circumstances:
- [1] the entity does not actively carry on a business for the purpose of profit and gain;
 - [2] the ownership of the property in the entity was not for a valid business purpose; or
 - [3] the property was acquired by other than a bona fide sale for full and adequate consideration and the decedent retained a power with respect to or interest in the property that would bring the real property located in this State within the decedent’s federal gross estate.

See 36 M.R.S. § 4064 for the tax for decedents who die before 2002 and after 2002 but before 2013 for the tax and 36 M.R.S. § 4072 for the lien. See 36 M.R.S. § 4104 for the tax for decedents who die after 2012 and 36 M.R.S. § 4112 for the lien. “‘Member’ means an individual or other owner of a pass-through entity.” 36 M.R.S. § 5250-B(1)(A). “‘Pass-through entity’ means a corporation that for the applicable tax year is treated as an S corporation under the Code and a general partnership, limited partnership, limited liability partnership, limited liability company or similar entity that for the applicable tax year is not taxed as a C corporation for federal tax purposes ... [but] does not include a financial institution subject to tax under chapter 819.” 36 M.R.S. § 5250-B(1)(C). Neither the categorization of an entity as a “pass-through entity” nor the residency of a deceased former member of such an entity are facts which can be ascertained by an examination of the record. In addition, the circumstances enumerated above

STANDARD NO. 708

where the State of Maine would assert an estate tax lien against the entity's property are not of record and cannot be readily ascertained with any degree of certainty. Therefore, absent record title notice of an estate tax lien filed by Maine Revenue Service or actual knowledge by the title examiner of an estate tax owed that would result in a lien against the property of an entity, the examiner may certify passage of title to real estate from an entity as unencumbered by the Maine estate tax lien.

3. Federal Estate Tax Lien: The examiner is cautioned to note that, unlike the Maine estate tax and Maine inheritance tax, a conveyance for value by the personal representative remains subject to the federal estate tax lien. See § 6324(a)(2). However, the federal estate tax lien terminates ten years from date of death. See § 6324(a)(1).

First adopted June 4, 1991; Amended May 21, 2002, May 18, 2010, September 17, 2013, November 19, 2014, and May 22, 2018