

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE
 Revised

Senate Bill 785

(Senators Robey and Madaleno)

Budget and Taxation

Ways and Means

Inheritance Tax - Exemption - Domestic Partners

This bill exempts from the State inheritance tax the receipt of an interest in a joint primary residence that: (1) at the time of the death was held in joint tenancy by the decedent and the domestic partner; and (2) passes from the decedent to or for the use of the domestic partner.

The bill takes effect July 1, 2009 and applies to all decedents dying on or after July 1, 2009.

Fiscal Summary

State Effect: Potential decrease in general fund revenues. Based on limited available data, general fund revenues may decrease by \$975,000 annually beginning in FY 2010. Revenue losses may be significantly higher than estimated. Expenditures are not affected.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	(\$975,000)	(\$975,000)	(\$975,000)	(\$975,000)	(\$975,000)
Expenditure	0	0	0	0	0
Net Effect	(\$975,000)	(\$975,000)	(\$975,000)	(\$975,000)	(\$975,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None

Small Business Effect: Minimal.

Analysis

Current Law: The Maryland inheritance tax is applied to the receipt of property from a decedent's estate. Under Chapter 497 of 2000, for decedents dying on or after July 1, 2000, direct beneficiaries and siblings are exempt from the inheritance tax. Direct beneficiaries include parents, grandparents, spouses, children, other lineal descendants, stepparents, and stepchildren, or a corporation if all stockholders are direct beneficiaries. Collateral beneficiaries include all other beneficiaries and are taxed at the rate of 10%.

Chapter 145 of 2004 altered the definition of "child" and "parent" to include a former stepchild and former stepparent, respectively, so that the inheritance tax would not apply to the receipt of property by a former stepchild or former stepparent. Chapter 145 extended the exemption for lineal beneficiaries to children and other lineal descendants of a stepchild or former stepchild of the decedent and to the spouses of those individuals.

Chapter 30 of 2006 expanded the exemption from the Maryland inheritance tax for property passing to partnerships or limited liability companies (LLCs) if all partners or members are direct beneficiaries of the decedent.

Definition of Domestic Partnership

A domestic partnership means a relationship between two individuals who (1) are at least 18 years old; (2) are not related to each other by blood or marriage within four degrees of consanguinity under civil law rule; (3) are not married or in a civil union or domestic partnership with another individual; and (4) agree to be in a relationship of mutual interdependence in which each individual contributes to the maintenance and support of the other individual and the relationship, even if both individuals are not required to contribute equally to the relationship.

An individual who asserts a domestic partnership may be required to provide an affidavit signed under penalty of perjury by two individuals stating that they have established a domestic partnership and proof of any two of the following documents:

- joint liability of the individuals for a mortgage, lease, or loan;
- the designation of one of the individuals as the primary beneficiary under a life insurance policy on the life of the other individual or under a retirement plan of the other individual;
- the designation of one of the individuals as the primary beneficiary of the will of the other individual;

- a durable power of attorney for health care or financial management granted by one of the individuals to the other individual;
- joint ownership or lease by the individuals of a motor vehicle;
- a joint checking account, joint investments, or a joint credit account;
- a joint renter's or homeowner's insurance policy;
- coverage on a health insurance policy;
- joint responsibility for child care, such as guardianship or school documents; or
- a relationship or cohabitation contract.

Background: Exhibit 1 shows State inheritance tax collections since fiscal 2001 and reflects the changes made to the inheritance tax since the enactment of Chapter 497 of 2000.

Exhibit 1
State Inheritance Tax Collections
Fiscal 2001-2009
(\$ in Millions)

<u>Fiscal</u>	<u>Collections</u>	<u>Fiscal</u>	<u>Collections</u>
2001	\$65.4	2006	\$50.4
2002	50.6	2007	47.8
2003	46.6	2008	48.4
2004	42.5	2009	49.7
2005	43.9		

State Fiscal Effect: State general fund revenues will decrease to the extent that properties are transferred from a decedent to a domestic partner. However, the amount of any decrease depends on the number of domestic partnerships or former domestic partnerships that exist in Maryland, the number of partners that own property, the number that subsequently transfer property after death, and the value of each property or estate.

As a point of reference, an exemption for property valued at \$100,000 that is passed from a deceased domestic partner to another domestic partner would result in a general fund revenue decrease of \$10,000 (\$100,000 x 10% tax rate). However, because this bill exempts the passing of property from a deceased domestic partner to another domestic partner for purposes of the Maryland inheritance tax, it could also have the effect of reducing the amount of inheritance taxes paid for purposes of calculating the Maryland estate tax if a Maryland estate tax return is required to be filed. As a result, Maryland estate taxes could increase by some amount for those estates subject to that tax.

According to the U.S. Census Bureau, in 2007 16,213 same-sex couples cohabitated together in Maryland – 7,732 female partners cohabitating together and 8,481 male partners cohabitating together. In addition, 103,882 unmarried opposite sex couples cohabitated together in Maryland in 2007.

Based on limited data, net general fund revenues may decrease by \$975,000 annually beginning in fiscal 2010. Revenue losses may be significantly higher than estimated.

Additional Information

Prior Introductions: None.

Cross File: HB 1215 (Delegate Hixson, *et al.*) - Ways and Means.

Information Source(s): Comptroller's Office, Department of Legislative Services

Fiscal Note History: First Reader - March 13, 2009
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