

# HOUSE BILL 722

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By: **Delegates Afzali, Fisher, George, and Serafini**

Introduced and read first time: February 4, 2013

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Estate Taxes – Qualified Family–Owned Business Property – Exclusion**

3 FOR the purpose of altering the determination of the Maryland estate tax under  
4 certain circumstances to exclude from the value of the gross estate the value of  
5 certain family–owned business property; limiting the Maryland estate tax  
6 imposed on certain family–owned business property above a certain amount;  
7 providing for the recapture of certain Maryland estate tax under certain  
8 circumstances; requiring the Comptroller to adopt certain regulations; providing  
9 for the application of this Act; defining certain terms; and generally relating to  
10 the Maryland estate tax.

11 BY repealing and reenacting, without amendments,  
12 Article – Tax – General  
13 Section 7–309(a)  
14 Annotated Code of Maryland  
15 (2010 Replacement Volume and 2012 Supplement)

16 BY repealing and reenacting, with amendments,  
17 Article – Tax – General  
18 Section 7–309(b)  
19 Annotated Code of Maryland  
20 (2010 Replacement Volume and 2012 Supplement)

21 BY adding to  
22 Article – Tax – General  
23 Section 7–309(d)  
24 Annotated Code of Maryland  
25 (2010 Replacement Volume and 2012 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
27 MARYLAND, That the Laws of Maryland read as follows:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Tax – General**

2 7–309.

3 (a) Notwithstanding an Act of Congress that repeals or reduces the federal  
4 credit under § 2011 of the Internal Revenue Code, the provisions of this subtitle in  
5 effect before the passage of the Act of Congress shall apply with respect to a decedent  
6 who dies after the effective date of the Act of Congress so as to continue the Maryland  
7 estate tax in force without reduction in the same manner as if the federal credit had  
8 not been repealed or reduced.

9 (b) (1) Except as provided in paragraphs (2) through (7) of this subsection  
10 and [subsection (c)] **SUBSECTIONS (C) AND (D)** of this section, after the effective date  
11 of an Act of Congress described in subsection (a) of this section, the Maryland estate  
12 tax shall be determined using:

13 (i) the federal credit allowable by § 2011 of the Internal  
14 Revenue Code as in effect before the reduction or repeal of the federal credit pursuant  
15 to the Act of Congress; and

16 (ii) other provisions of federal estate tax law as in effect on the  
17 date of the decedent's death.

18 (2) Except as provided in paragraphs (3) through (7) of this subsection  
19 and [subsection (c)] **SUBSECTIONS (C) AND (D)** of this section, if the federal estate  
20 tax is not in effect on the date of the decedent's death, the Maryland estate tax shall be  
21 determined using:

22 (i) the federal credit allowable by § 2011 of the Internal  
23 Revenue Code as in effect before the reduction or repeal of the federal credit pursuant  
24 to the Act of Congress; and

25 (ii) other provisions of federal estate tax law as in effect on the  
26 date immediately preceding the effective date of the repeal of the federal estate tax.

27 (3) (i) Notwithstanding any increase in the unified credit allowed  
28 against the federal estate tax for decedents dying after 2003, the unified credit used  
29 for determining the Maryland estate tax may not exceed the applicable credit amount  
30 corresponding to an applicable exclusion amount of \$1,000,000 within the meaning of §  
31 2010(c) of the Internal Revenue Code.

32 (ii) The Maryland estate tax shall be determined without regard  
33 to any deduction for State death taxes allowed under § 2058 of the Internal Revenue  
34 Code.

1 (iii) Unless the federal credit allowable by § 2011 of the Internal  
2 Revenue Code is in effect on the date of the decedent's death, the federal credit used to  
3 determine the Maryland estate tax may not exceed 16% of the amount by which the  
4 decedent's taxable estate, as defined in § 2051 of the Internal Revenue Code, exceeds  
5 \$1,000,000.

6 (4) (i) With regard to an election to value property as provided in §  
7 2032 of the Internal Revenue Code, if a federal estate tax return is not required to be  
8 filed:

9 1. an irrevocable election made on a timely filed  
10 Maryland estate tax return shall be deemed to be an election as required by § 2032(d)  
11 of the Internal Revenue Code;

12 2. the provisions of § 2032(c) of the Internal Revenue  
13 Code do not apply; and

14 3. an election may not be made under item 1 of this  
15 subparagraph unless that election will decrease:

16 A. the value of the gross estate; and

17 B. the Maryland estate tax due with regard to the  
18 transfer of a decedent's Maryland estate.

19 (ii) An election to value property as provided in § 2032 of the  
20 Internal Revenue Code for Maryland estate tax purposes must be the same as the  
21 election made for federal estate tax purposes.

22 (5) (i) With regard to an election to treat property as marital  
23 deduction qualified terminable interest property in calculating the Maryland estate  
24 tax, an irrevocable election made on a timely filed Maryland estate tax return shall be  
25 deemed to be an election as required by § 2056(b)(7)(B)(i), (iii), and (v) of the Internal  
26 Revenue Code.

27 (ii) An election under this paragraph made on a timely filed  
28 Maryland estate tax return shall be recognized for purposes of calculating the  
29 Maryland estate tax even if an inconsistent election is made for the same decedent for  
30 federal estate tax purposes.

31 (6) (i) For purposes of calculating Maryland estate tax, a decedent  
32 shall be deemed to have had a qualifying income interest for life under § 2044(a) of the  
33 Internal Revenue Code with regard to any property for which a marital deduction  
34 qualified terminable interest property election was made for the decedent's  
35 predeceased spouse on a timely filed Maryland estate tax return under paragraph (5)  
36 of this subsection.

1 (ii) For the purpose of apportioning Maryland estate tax under §  
2 7-308 of this subtitle, any property as to which a decedent is deemed to have had a  
3 qualifying income interest for life under subparagraph (i) of this paragraph shall be  
4 deemed to be included in both the estate and the taxable estate of the decedent.

5 (7) For purposes of calculating Maryland estate tax, amounts  
6 allowable under § 2053 or § 2054 of the Internal Revenue Code as a deduction in  
7 computing the taxable estate of a decedent may not be allowed as a deduction or as an  
8 offset against the sales price of property in determining gain or loss if the amount has  
9 been allowed as a deduction in computing the federal taxable income of the estate or of  
10 any other person.

11 (D) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE  
12 THE MEANINGS INDICATED.

13 (II) 1. "QUALIFIED FAMILY-OWNED BUSINESS  
14 PROPERTY" MEANS REAL OR PERSONAL PROPERTY THAT IS USED PRIMARILY  
15 FOR A BUSINESS THAT:

16 A. IS OWNED WHOLLY BY MEMBERS OF THE SAME  
17 FAMILY PRIOR TO THE DECEDENT'S DEATH;

18 B. IS LOCATED IN THIS STATE; AND

19 C. WAS OWNED BY THE DECEDENT PRIOR TO THE  
20 DECEDENT'S DEATH OR IN WHICH THE DECEDENT MATERIALLY PARTICIPATED  
21 PRIOR TO THE DECEDENT'S DEATH.

22 2. "QUALIFIED FAMILY-OWNED BUSINESS  
23 PROPERTY" INCLUDES ANY ASSET LEASED TO A BUSINESS OWNED WHOLLY BY  
24 MEMBERS OF THE SAME FAMILY PRIOR TO THE DECEDENT'S DEATH.

25 (III) "QUALIFIED RECIPIENT" MEANS AN INDIVIDUAL WHO  
26 ENTERS INTO AN AGREEMENT TO USE QUALIFIED FAMILY-OWNED BUSINESS  
27 PROPERTY FOR BUSINESS PURPOSES AFTER THE DECEDENT'S DEATH.

28 (2) THE MARYLAND ESTATE TAX SHALL BE DETERMINED BY  
29 EXCLUDING FROM THE VALUE OF THE GROSS ESTATE UP TO \$5,000,000 OF THE  
30 VALUE OF QUALIFIED FAMILY-OWNED BUSINESS PROPERTY THAT PASSES FROM  
31 THE DECEDENT TO OR FOR THE USE OF A QUALIFIED RECIPIENT.

32 (3) IF THE VALUE OF QUALIFIED FAMILY-OWNED BUSINESS  
33 PROPERTY THAT PASSES FROM THE DECEDENT TO OR FOR THE USE OF A  
34 QUALIFIED RECIPIENT EXCEEDS \$5,000,000, THE MARYLAND ESTATE TAX

1 IMPOSED ON THE MARYLAND ESTATE OF THE DECEDENT MAY NOT EXCEED THE  
2 SUM OF:

3 (I) 16% OF THE AMOUNT BY WHICH THE DECEDENT'S  
4 TAXABLE ESTATE, EXCLUDING THE VALUE OF ALL QUALIFIED FAMILY-OWNED  
5 BUSINESS PROPERTY THAT PASSES FROM THE DECEDENT TO OR FOR THE USE  
6 OF A QUALIFIED RECIPIENT, EXCEEDS \$1,000,000; AND

7 (II) 5% OF THE AMOUNT BY WHICH THE VALUE OF  
8 QUALIFIED FAMILY-OWNED BUSINESS PROPERTY THAT PASSES FROM THE  
9 DECEDENT TO OR FOR THE USE OF A QUALIFIED RECIPIENT EXCEEDS  
10 \$5,000,000.

11 (4) (I) THE MARYLAND ESTATE TAX SHALL BE RECAPTURED  
12 AS PROVIDED IN THIS PARAGRAPH IF, WITHIN 10 YEARS AFTER THE  
13 DECEDENT'S DEATH:

14 1. THE QUALIFIED FAMILY-OWNED BUSINESS  
15 PROPERTY CEASES TO BE USED FOR BUSINESS PURPOSES;

16 2. THERE WAS NO MATERIAL PARTICIPATION BY THE  
17 QUALIFIED RECIPIENT OR ANY MEMBER OF THE QUALIFIED RECIPIENT'S  
18 FAMILY IN THE OPERATION OF THE BUSINESS; OR

19 3. THE QUALIFIED FAMILY-OWNED BUSINESS  
20 PROPERTY IS NO LONGER DEVOTED TO THE SAME BUSINESS.

21 (II) THE AMOUNT OF THE ESTATE TAX IMPOSED UNDER  
22 THIS PARAGRAPH SHALL BE THE ADDITIONAL MARYLAND ESTATE TAX THAT  
23 WOULD HAVE BEEN PAYABLE AT THE TIME OF THE DECEDENT'S DEATH BUT FOR  
24 THE PROVISIONS UNDER PARAGRAPHS (2) AND (3) OF THIS SUBSECTION.

25 (5) THE COMPTROLLER SHALL ADOPT REGULATIONS TO  
26 IMPLEMENT THIS SUBSECTION.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
28 July 1, 2013, and shall be applicable to decedents dying after December 31, 2012.