

## Chapter 518

(House Bill 1031)

AN ACT concerning

**Estate Tax and Income Tax – ~~Qualifying Income Interest for Life Marital Deduction~~ and Subtraction Modification for Health Insurance ~~and Medical Expenses~~**

FOR the purpose of ~~altering the qualifications for a qualified income interest for life under the Maryland estate tax to include individuals recognized as married by the State~~ providing that, for purposes of calculating Maryland estate tax, the surviving spouse of a decedent shall include any individual to whom, at the time of the decedent's death, the decedent was lawfully married under State law; providing a subtraction modification under the Maryland income tax for ~~the costs of health insurance and other medical expenses incurred by an individual on behalf of another adult individual under certain circumstances;~~ certain costs incurred by a taxpayer to provide health insurance for the taxpayer's spouse; providing that the subtraction may not exceed a certain amount; providing for the application of this Act; and generally relating to the calculation of the Maryland estate tax for certain individuals and an income tax subtraction modification for ~~the costs of~~ certain health insurance ~~and other medical expenses incurred on behalf of another adult individual~~ costs.

BY repealing and reenacting, with amendments,  
 Article – Tax – General  
 Section 7-309~~(b)(6)~~(b)  
 Annotated Code of Maryland  
 (2010 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, without amendments,  
 Article – Tax – General  
 Section 10-208(a)  
 Annotated Code of Maryland  
 (2010 Replacement Volume and 2012 Supplement)

BY adding to  
 Article – Tax – General  
 Section 10-208(t)  
 Annotated Code of Maryland  
 (2010 Replacement Volume and 2012 Supplement)

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

## Article – Tax – General

7-309.

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

~~(H) FOR PURPOSES OF CALCULATING MARYLAND ESTATE TAX UNDER THIS PARAGRAPH, A QUALIFYING INCOME INTEREST FOR LIFE SHALL INCLUDE THOSE OF INDIVIDUALS RECOGNIZED BY THE STATE AS LAWFULLY MARRIED.~~

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

(b) (1) Except as provided in paragraphs (2) through [(7)] (8) of this subsection and subsection (c) of this section, after the effective date of an Act of Congress described in subsection (a) of this section, the Maryland estate tax shall be determined using:

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

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

(2) Except as provided in paragraphs (3) through [(7)] (8) of this subsection and subsection (c) of this section, if the federal estate tax is not in effect on the date of the decedent's death, the Maryland estate tax shall be determined using:

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

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

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

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

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

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

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

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

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

A. the value of the gross estate; and

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

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

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

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

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

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

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

**(8) NOTWITHSTANDING ANY CONTRARY DEFINITION OF "MARRIAGE" AND "SPOUSE" UNDER ANY APPLICABLE PROVISION OF FEDERAL LAW, FOR PURPOSES OF CALCULATING MARYLAND ESTATE TAX UNDER THIS SUBSECTION, THE SURVIVING "SPOUSE" OF A DECEDENT SHALL INCLUDE ANY INDIVIDUAL TO WHOM, AT THE TIME OF THE DECEDENT'S DEATH, THE DECEDENT WAS LAWFULLY MARRIED AS DETERMINED UNDER THE LAWS OF THE STATE.**

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

10-208.

(a) In addition to the modification under § 10-207 of this subtitle, the amounts under this section are subtracted from the federal adjusted gross income of a resident to determine Maryland adjusted gross income.

**(T) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE SUBTRACTION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES 100% OF THE COSTS OF HEALTH INSURANCE ~~AND OTHER MEDICAL EXPENSES THAT AN INDIVIDUAL~~ A TAXPAYER INCURS ON BEHALF OF ANOTHER INDIVIDUAL IF THE**

OTHER INDIVIDUAL; AND TAXPAYER ARE RECOGNIZED BY THE STATE AS  
LAWFULLY MARRIED.

~~(I) IS NOT A DEPENDENT, AS DEFINED UNDER § 152 OF THE  
INTERNAL REVENUE CODE;~~

~~(II) IS AT LEAST 18 YEARS OF AGE; AND~~

~~(III) RESIDES IN THE SAME HOUSEHOLD AS THE INDIVIDUAL  
CLAIMING THE SUBTRACTION MODIFICATION.~~

~~(2) THE SUBTRACTION UNDER THIS SUBSECTION MAY NOT  
EXCEED \$5,000 FOR ANY TAXABLE YEAR.~~

(2) THE SUBTRACTION UNDER PARAGRAPH (1) OF THIS  
SUBSECTION MAY NOT EXCEED THE COST OF A HEALTH INSURANCE PREMIUM  
THAT:

(I) IS PAID BY THE TAXPAYER OR THE EMPLOYER OF THE  
TAXPAYER TO PROVIDE COVERAGE FOR THE TAXPAYER'S SPOUSE; AND

(II) IS SUBJECT TO FEDERAL INCOME TAX UNDER THE  
INTERNAL REVENUE CODE.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be applicable to decedents dying after December 31, 2012, and Section 2 of this Act shall be applicable to all taxable years beginning after December 31, 2012.

SECTION 4. AND BE IT FURTHER ENACTED, That, ~~except as provided in~~ subject to Section 3 of this Act, this Act shall take effect July 1, 2013 ~~and shall be applicable to all taxable years beginning after December 31, 2012.~~

Approved by the Governor, May 16, 2013.