

# HOUSE BILL 276

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By: **Delegates Afzali, Arentz, Bates, Frank, Glass, McComas, Norman, Parrott, Schuh, and Schulz**

Introduced and read first time: January 20, 2014

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Estate Tax – Qualified Family–Owned Business Interests – 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 interests; providing that the Maryland estate  
6 tax imposed may not exceed a certain amount under certain circumstances;  
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 2013 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 2013 Supplement)

21 BY adding to  
22 Article – Tax – General  
23 Section 7–310  
24 Annotated Code of Maryland  
25 (2010 Replacement Volume and 2013 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Tax – General**

4 7–309.

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10 not been repealed or reduced.

11 (b) (1) Except as provided in paragraphs (2) through (8) of this subsection  
12 and subsection (c) of this section **AND § 7–310 OF THIS SUBTITLE**, after the effective  
13 date of an Act of Congress described in subsection (a) of this section, the Maryland  
14 estate tax shall be determined using:

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

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

20 (2) Except as provided in paragraphs (3) through (8) of this subsection  
21 and subsection (c) of this section **AND § 7–310 OF THIS SUBTITLE**, if the federal  
22 estate tax is not in effect on the date of the decedent's death, the Maryland estate tax  
23 shall be determined using:

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

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

29 (3) (i) Notwithstanding any increase in the unified credit allowed  
30 against the federal estate tax for decedents dying after 2003, the unified credit used  
31 for determining the Maryland estate tax may not exceed the applicable credit amount  
32 corresponding to an applicable exclusion amount of \$1,000,000 within the meaning of §  
33 2010(c) of the Internal Revenue Code.

34 (ii) The Maryland estate tax shall be determined without regard  
35 to any deduction for State death taxes allowed under § 2058 of the Internal Revenue  
36 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 (8) Notwithstanding any contrary definition of “marriage” and  
12 “spouse” under any applicable provision of federal law, for purposes of calculating  
13 Maryland estate tax under this subsection, the surviving “spouse” of a decedent shall  
14 include any individual to whom, at the time of the decedent’s death, the decedent was  
15 lawfully married as determined under the laws of the State.

16 **7–310.**

17 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
18 MEANINGS INDICATED.

19 (2) “CONTROLLED GROUP” HAS THE MEANING PROVIDED IN §  
20 267(F)(1) OF THE INTERNAL REVENUE CODE.

21 (3) “MATERIAL PARTICIPATION” MEANS PARTICIPATION IN  
22 SATISFACTION OF THE STANDARDS CONTAINED IN 26 C.F.R. 1.469–5T.

23 (4) “MEMBER OF THE FAMILY”, WITH RESPECT TO A DECEDENT,  
24 MEANS ONLY:

25 (I) AN ANCESTOR OF THE DECEDENT;

26 (II) THE SPOUSE OF THE DECEDENT;

27 (III) A LINEAL DESCENDANT OF THE DECEDENT, THE  
28 DECEDENT’S SPOUSE, OR A PARENT OF THE DECEDENT;

29 (IV) THE SPOUSE OF ANY LINEAL DESCENDANT DESCRIBED  
30 IN ITEM (III) OF THIS PARAGRAPH;

31 (V) A LEGALLY ADOPTED CHILD OF THE DECEDENT; OR

1                   **(VI) A TRUST:**

2                   **1. THAT IS ORGANIZED UNDER AND GOVERNED BY**  
3 **THE LAWS OF THE UNITED STATES OR A STATE;**

4                   **2. OF WHICH AT LEAST ONE TRUSTEE IS AN**  
5 **INDIVIDUAL CITIZEN OF THE UNITED STATES OR A DOMESTIC CORPORATION;**

6                   **3. THAT EITHER HOLDS OR IS TO RECEIVE A**  
7 **QUALIFIED FAMILY-OWNED BUSINESS INTEREST; AND**

8                   **4. IN WHICH ALL PRESENT INTERESTS ARE HELD BY**  
9 **MEMBERS OF THE FAMILY OF THE DECEDENT DESCRIBED IN ITEMS (I)**  
10 **THROUGH (V) OF THIS PARAGRAPH.**

11                   **(5) “PERSONAL HOLDING COMPANY INCOME” HAS THE MEANING**  
12 **PROVIDED IN § 543(A) OF THE INTERNAL REVENUE CODE.**

13                   **(6) (I) “QUALIFIED FAMILY-OWNED BUSINESS INTEREST”**  
14 **MEANS:**

15                   **1. AN INTEREST AS A PROPRIETOR IN A TRADE OR**  
16 **BUSINESS CARRIED ON AS A PROPRIETORSHIP; OR**

17                   **2. AN INTEREST IN AN ENTITY CARRYING ON A**  
18 **TRADE OR BUSINESS IF:**

19                   **A. AT LEAST:**

20                   **I. 50% OF THE ENTITY IS OWNED DIRECTLY OR**  
21 **INDIRECTLY BY THE DECEDENT AND MEMBERS OF THE DECEDENT’S FAMILY;**

22                   **II. 70% OF THE ENTITY IS OWNED DIRECTLY OR**  
23 **INDIRECTLY BY MEMBERS OF TWO FAMILIES; OR**

24                   **III. 90% OF THE ENTITY IS OWNED DIRECTLY OR**  
25 **INDIRECTLY BY MEMBERS OF THREE FAMILIES; AND**

26                   **B. FOR PURPOSES OF ITEMS II AND III OF ITEM A OF**  
27 **THIS ITEM, AT LEAST 30% OF THE ENTITY IS OWNED BY THE DECEDENT AND**  
28 **MEMBERS OF THE DECEDENT’S FAMILY.**



1           **(1) THE DECEDENT WAS A CITIZEN OR RESIDENT OF THE UNITED**  
2 **STATES;**

3           **(2) THE EXECUTOR FILES A WRITTEN AGREEMENT SIGNED BY**  
4 **EACH INDIVIDUAL WHO HAS AN INTEREST IN ANY PROPERTY DESIGNATED IN**  
5 **THE AGREEMENT AND THAT STATES THE SIGNATORIES CONSENT TO THE**  
6 **REQUIREMENTS UNDER THIS SECTION; AND**

7           **(3) DURING THE 8-YEAR PERIOD PRECEDING THE DATE OF THE**  
8 **DECEDENT'S DEATH THERE HAVE BEEN PERIODS TOTALING 5 YEARS OR MORE**  
9 **DURING WHICH:**

10                   **(I) THE QUALIFIED FAMILY-OWNED BUSINESS INTERESTS**  
11 **WERE OWNED BY THE DECEDENT OR A MEMBER OF THE DECEDENT'S FAMILY;**  
12 **AND**

13                   **(II) THE DECEDENT OR A MEMBER OF THE DECEDENT'S**  
14 **FAMILY ACTIVELY PARTICIPATED IN THE PRODUCTION, MANAGEMENT, OR**  
15 **OPERATION OF THE BUSINESS TO WHICH SUCH INTERESTS RELATE.**

16           **(C) THE MARYLAND ESTATE TAX SHALL BE DETERMINED BY**  
17 **EXCLUDING FROM THE VALUE OF THE GROSS ESTATE UP TO \$5,000,000 OF THE**  
18 **VALUE OF QUALIFIED FAMILY-OWNED BUSINESS INTERESTS OF THE DECEDENT**  
19 **THAT ARE ACQUIRED BY OR PASSED TO ANY QUALIFIED RECIPIENT.**

20           **(D) IF THE VALUE OF QUALIFIED FAMILY-OWNED BUSINESS INTERESTS**  
21 **OF THE DECEDENT THAT ARE ACQUIRED BY OR PASSED TO ANY QUALIFIED**  
22 **RECIPIENT EXCEEDS \$5,000,000, THE MARYLAND ESTATE TAX IMPOSED ON THE**  
23 **MARYLAND ESTATE OF THE DECEDENT MAY NOT EXCEED THE SUM OF:**

24                   **(1) 16% OF THE AMOUNT BY WHICH THE DECEDENT'S TAXABLE**  
25 **ESTATE, EXCLUDING THE VALUE OF ALL QUALIFIED FAMILY-OWNED BUSINESS**  
26 **INTERESTS OF THE DECEDENT WHICH ARE ACQUIRED BY OR PASSED TO ANY**  
27 **QUALIFIED RECIPIENT, EXCEEDS \$1,000,000; AND**

28                   **(2) 5% OF THE AMOUNT BY WHICH THE VALUE OF THE QUALIFIED**  
29 **FAMILY-OWNED BUSINESS INTERESTS OF THE DECEDENT WHICH ARE**  
30 **ACQUIRED BY OR PASSED TO ANY QUALIFIED RECIPIENT EXCEEDS \$5,000,000.**

31           **(E) (1) THE MARYLAND ESTATE TAX SHALL BE RECAPTURED AS**  
32 **PROVIDED IN THIS SUBSECTION IF, WITHIN 10 YEARS AFTER THE DECEDENT'S**  
33 **DEATH:**

1                   **(I) DURING ANY PERIOD OF 8 YEARS ENDING AFTER THE**  
2 **DATE OF THE DECEDENT'S DEATH AND BEFORE THE DATE OF THE DEATH OF**  
3 **THE QUALIFIED RECIPIENT, PERIODS AGGREGATING MORE THAN 3 YEARS**  
4 **OCCUR DURING WHICH:**

5                   **1. IF THE QUALIFIED FAMILY-OWNED BUSINESS**  
6 **INTEREST WAS HELD BY THE DECEDENT, THERE WAS NO MATERIAL**  
7 **PARTICIPATION BY THE DECEDENT OR ANY MEMBER OF THE DECEDENT'S**  
8 **FAMILY IN THE OPERATION OF THE BUSINESS; AND**

9                   **2. IF THE QUALIFIED FAMILY-OWNED BUSINESS**  
10 **INTEREST WAS HELD BY ANY QUALIFIED RECIPIENT, THERE WAS NO MATERIAL**  
11 **PARTICIPATION BY THE QUALIFIED RECIPIENT OR ANY MEMBER OF THE**  
12 **QUALIFIED RECIPIENT'S FAMILY IN THE OPERATION OF THE BUSINESS;**

13                   **(II) THE QUALIFIED RECIPIENT DISPOSES OF ANY PORTION**  
14 **OF THE QUALIFIED FAMILY-OWNED BUSINESS INTEREST OTHER THAN BY A**  
15 **DISPOSITION TO A MEMBER OF THE FAMILY OF THE QUALIFIED RECIPIENT OR**  
16 **THROUGH A QUALIFIED CONSERVATION CONTRIBUTION UNDER § 170 OF THE**  
17 **INTERNAL REVENUE CODE; OR**

18                   **(III) THE PRINCIPAL PLACE OF BUSINESS OF A TRADE OR**  
19 **BUSINESS OF THE QUALIFIED FAMILY-OWNED BUSINESS INTEREST CEASES TO**  
20 **BE LOCATED IN THE STATE.**

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

25                   **(F) THE COMPTROLLER SHALL ADOPT REGULATIONS TO IMPLEMENT**  
26 **THIS SECTION.**

27                   **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**  
28 **July 1, 2014, and shall be applicable to decedents dying after December 31, 2013.**