

# HOUSE BILL 1214

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By: **Delegates Vitale, Elliott, Frank, George, Haddaway-Riccio, Krebs, McComas, McConkey, McMillan, Myers, Parrott, Ready, Schulz, Serafini, Smigiel, and Stocksedale**

Introduced and read first time: February 7, 2014

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Estate Tax – Exclusion – Deceased Spousal Unused Exclusion**  
3 **Amount**

4 FOR the purpose of providing that, for the calculation of the Maryland estate tax in  
5 the case of a certain surviving spouse, the applicable exclusion amount includes  
6 the sum of a certain exclusion amount and a certain deceased spousal unused  
7 exclusion amount; prohibiting the surviving spouse from applying the deceased  
8 spousal unused exclusion amount except under certain circumstances; providing  
9 for the application of this Act; defining a certain term; and generally relating to  
10 the Maryland estate tax.

11 BY repealing and reenacting, with amendments,  
12 Article – Tax – General  
13 Section 7–309(b)(1), (2), and (3)  
14 Annotated Code of Maryland  
15 (2010 Replacement Volume and 2013 Supplement)

16 BY adding to  
17 Article – Tax – General  
18 Section 7–309(b)(9)  
19 Annotated Code of Maryland  
20 (2010 Replacement Volume and 2013 Supplement)

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

23 **Article – Tax – General**

24 7–309.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) (1) Except as provided in paragraphs (2) through [(8)] (9) of this  
2 subsection and subsection (c) of this section, after the effective date of an Act of  
3 Congress described in subsection (a) of this section, the Maryland estate tax shall be  
4 determined using:

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

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

10 (2) Except as provided in paragraphs (3) through [(8)] (9) of this  
11 subsection and subsection (c) of this section, if the federal estate tax is not in effect on  
12 the date of the decedent's death, the Maryland estate 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 immediately preceding the effective date of the repeal of the federal estate tax.

18 (3) (i) Notwithstanding any increase in the unified credit allowed  
19 against the federal estate tax for decedents dying after 2003, the unified credit used  
20 for determining the Maryland estate tax may not exceed the applicable credit amount  
21 corresponding to an applicable exclusion amount of \$1,000,000 within the meaning of §  
22 2010(c) of the Internal Revenue Code **PLUS ANY DECEASED SPOUSAL UNUSED**  
23 **EXCLUSION AMOUNT IN ACCORDANCE WITH PARAGRAPH (9) OF THIS**  
24 **SUBSECTION.**

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

28 (iii) Unless the federal credit allowable by § 2011 of the Internal  
29 Revenue Code is in effect on the date of the decedent's death, the federal credit used to  
30 determine the Maryland estate tax may not exceed 16% of the amount by which the  
31 decedent's taxable estate, as defined in § 2051 of the Internal Revenue Code, exceeds  
32 \$1,000,000 **PLUS ANY DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT IN**  
33 **ACCORDANCE WITH PARAGRAPH (9) OF THIS SUBSECTION.**

34 (9) (I) IN THIS PARAGRAPH, "DECEASED SPOUSAL UNUSED  
35 EXCLUSION AMOUNT" MEANS THE LESSER OF:

1                   1.     THE APPLICABLE EXCLUSION AMOUNT UNDER  
2 PARAGRAPH (3) OF THIS SUBSECTION; OR

3                   2.     THE UNUSED EXCLUSION AMOUNT OF THE LAST  
4 PREDECEASED SPOUSE.

5                   (II)    FOR PURPOSES OF CALCULATING MARYLAND ESTATE  
6 TAX, IN THE CASE OF A SURVIVING SPOUSE, THE APPLICABLE EXCLUSION  
7 AMOUNT IS THE SUM OF:

8                   1.     THE APPLICABLE EXCLUSION AMOUNT UNDER  
9 PARAGRAPH (3) OF THIS SUBSECTION; AND

10                  2.     THE DECEASED SPOUSAL UNUSED EXCLUSION  
11 AMOUNT.

12                  (III) 1.    A DECEASED SPOUSAL UNUSED EXCLUSION  
13 AMOUNT MAY NOT BE TAKEN INTO ACCOUNT BY A SURVIVING SPOUSE UNDER  
14 SUBPARAGRAPH (II) OF THIS PARAGRAPH UNLESS THE PERSON RESPONSIBLE  
15 UNDER § 7-305 OF THIS SUBTITLE FOR FILING THE MARYLAND ESTATE TAX  
16 RETURN FOR THE ESTATE OF THE DECEASED SPOUSE TIMELY FILES A  
17 MARYLAND ESTATE TAX RETURN ON WHICH THE AMOUNT IS CALCULATED AND  
18 MAKES AN IRREVOCABLE ELECTION ON THAT RETURN THAT THE AMOUNT MAY  
19 BE TAKEN INTO ACCOUNT.

20                  2.     AN ELECTION UNDER THIS SUBPARAGRAPH MADE  
21 ON A TIMELY FILED MARYLAND ESTATE TAX RETURN SHALL BE RECOGNIZED  
22 FOR PURPOSES OF CALCULATING THE MARYLAND ESTATE TAX EVEN IF AN  
23 INCONSISTENT ELECTION IS MADE FOR THE SAME DECEDENT FOR FEDERAL  
24 ESTATE TAX PURPOSES.

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