

# 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

AN ACT concerning

### **Estate Tax – Qualified Family–Owned Business Interests – Exclusion**

FOR the purpose of altering the determination of the Maryland estate tax under certain circumstances to exclude from the value of the gross estate the value of certain family–owned business interests; providing that the Maryland estate tax imposed may not exceed a certain amount under certain circumstances; providing for the recapture of certain Maryland estate tax under certain circumstances; requiring the Comptroller to adopt certain regulations; providing for the application of this Act; defining certain terms; and generally relating to the Maryland estate tax.

BY repealing and reenacting, without amendments,

Article – Tax – General

Section 7–309(a)

Annotated Code of Maryland

(2010 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,

Article – Tax – General

Section 7–309(b)

Annotated Code of Maryland

(2010 Replacement Volume and 2013 Supplement)

BY adding to

Article – Tax – General

Section 7–310

Annotated Code of Maryland

(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.



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

**Article – Tax – General**

7–309.

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to continue the Maryland estate tax in force without reduction in the same manner as if the federal credit had not been repealed or reduced.

(b) (1) Except as provided in paragraphs (2) through (8) of this subsection and subsection (c) of this section **AND § 7–310 OF THIS SUBTITLE**, 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 (8) of this subsection and subsection (c) of this section **AND § 7–310 OF THIS SUBTITLE**, 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.

**7–310.**

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

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

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

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

**(I) AN ANCESTOR OF THE DECEDENT;**

**(II) THE SPOUSE OF THE DECEDENT;**

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

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

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

**(VI) A TRUST:**

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

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

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

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

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

**(6) (I) "QUALIFIED FAMILY-OWNED BUSINESS INTEREST" MEANS:**

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

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

**A. AT LEAST:**

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

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

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

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

(II) “QUALIFIED FAMILY-OWNED BUSINESS INTEREST” DOES NOT INCLUDE:

1. ANY INTEREST IN A TRADE OR BUSINESS IF THE PRINCIPAL PLACE OF BUSINESS OF THE TRADE OR BUSINESS IS NOT LOCATED IN THE STATE;

2. ANY INTEREST IN AN ENTITY IF THE STOCK OR DEBT OF THE ENTITY OR A CONTROLLED GROUP OF WHICH THE ENTITY WAS A MEMBER WAS READILY TRADABLE ON AN ESTABLISHED SECURITIES MARKET AT ANY TIME WITHIN 3 YEARS OF THE DATE OF THE DECEDENT’S DEATH;

3. ANY INTEREST IN A TRADE OR BUSINESS IF MORE THAN 35% OF THE ADJUSTED ORDINARY GROSS INCOME OF THE TRADE OR BUSINESS FOR THE TAXABLE YEAR THAT INCLUDES THE DATE OF THE DECEDENT’S DEATH WOULD QUALIFY AS PERSONAL HOLDING COMPANY INCOME IF THE TRADE OR BUSINESS WAS A CORPORATION; OR

4. THE PORTION OF AN INTEREST IN A TRADE OR BUSINESS THAT IS ATTRIBUTABLE TO:

A. CASH OR MARKETABLE SECURITIES, OR BOTH, IN EXCESS OF THE REASONABLY EXPECTED DAY-TO-DAY WORKING CAPITAL NEEDS OF THE TRADE OR BUSINESS; AND

B. ANY OTHER ASSETS OF THE TRADE OR BUSINESS, OTHER THAN ASSETS USED IN THE ACTIVE CONDUCT OF A TRADE OR BUSINESS, THAT PRODUCE, OR ARE HELD FOR THE PRODUCTION OF, PERSONAL HOLDING COMPANY INCOME OR FOREIGN PERSONAL HOLDING COMPANY INCOME, AS DEFINED IN § 954 OF THE INTERNAL REVENUE CODE.

(7) “QUALIFIED RECIPIENT” MEANS:

(I) A MEMBER OF THE DECEDENT’S FAMILY WHO ACQUIRES A QUALIFIED FAMILY-OWNED BUSINESS INTEREST OR TO WHOM IS PASSED A QUALIFIED FAMILY-OWNED BUSINESS INTEREST; OR

(II) ANY EMPLOYEE OF THE TRADE OR BUSINESS TO WHICH THE QUALIFIED FAMILY-OWNED BUSINESS INTEREST RELATES IF THE EMPLOYEE HAS BEEN EMPLOYED BY SUCH TRADE OR BUSINESS FOR A PERIOD OF AT LEAST 10 YEARS BEFORE THE DATE OF THE DECEDENT’S DEATH.

(B) THIS SECTION SHALL APPLY IF:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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