

## Article - Tax - General

§7-308.

(a) (1) In this section the following words have the meanings indicated.

(2) “Fiduciary” means a personal representative or trustee.

(3) “Person” includes any government, political subdivision, or governmental unit.

(4) “Person interested in the estate” means any person who is entitled to receive or has received, from a decedent while alive or by reason of the death of a decedent, any property or interest in property included in the taxable estate of the decedent.

(5) “Tax” means the federal estate tax and the Maryland estate tax and interest and penalties imposed in addition to the taxes.

(b) (1) The tax shall be apportioned among all persons interested in the estate. Except as otherwise provided in this subsection, the apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose.

(2) (i) If any part of the estate consists of property the value of which is deemed includible in the estate under § 7-309(b)(6) of this subtitle, the amount of Maryland estate tax apportioned to the person or persons receiving that property shall be the amount by which the total tax under this subtitle that has been paid exceeds the total tax under this subtitle that would have been payable if the value of that property had not been deemed includible in the estate.

(ii) Any tax apportioned under this paragraph shall be apportioned among all persons receiving that property in the proportion that the value of the property received by each person bears to the total value of all such property.

(c) (1) The court shall determine the apportionment of the tax. If there are no administration proceedings, the court of the county where the decedent was domiciled at death shall determine the apportionment of the tax on the application of the person required to pay the tax.

(2) If the court finds that it is inequitable to apportion interest and penalties as provided in this section because of special circumstances, the court may direct apportionment in the manner that it finds equitable.

(3) The expenses reasonably incurred by any fiduciary and by any other person interested in the estate in connection with the determination of the amount and apportionment of the tax shall be apportioned as provided in subsection (b) of this section and charged and collected as a part of the tax apportioned. If the court finds that

it is inequitable to apportion the expenses as provided in subsection (b) of this section, the court may direct an equitable apportionment.

(4) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

(5) In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this section, the determination of the court is prima facie correct.

(d) (1) The fiduciary or other person required to pay the tax may withhold, from any property of the decedent that is in the possession of the person and is distributable to any person interested in the estate, the amount of tax attributable to that person's interest. If the property in the possession of the fiduciary or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the fiduciary or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the fiduciary or other person required to pay the tax, the person may recover from any person interested in the estate the amount of the tax apportioned to that person in accordance with this section.

(2) If property held by the fiduciary or other person required to pay the tax is distributed before the final apportionment of the tax, the person may require the distributee to provide a bond or other security for the apportionment liability in the form and amount required by the fiduciary or other person, with the approval of the court.

(3) If the fiduciary or other person required to pay the tax transfers any property included in the estate to another person, other than a bona fide purchaser for value, the transferee is jointly and severally liable with the transferor for the amount of tax apportioned to the transferor under this section, less the value, at the time of the transfer, of any consideration given by the transferee for the property.

(e) (1) In making an apportionment, allowances shall be made for any exemptions granted and for any deductions and credits allowed by the law imposing the tax.

(2) Any exemption or reduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing that relationship or receiving the gift. If an interest is subject to a prior present interest that is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.

(3) Any credit for property previously taxed, any credit for state death taxes, and any credit for gift taxes or death taxes of a foreign country inure to the

proportionate benefit of all persons liable to apportionment.

(4) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar gift or bequest is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death taxes imposed on and deductible from the property, the property is not included in the computation for which this section provides and, to that extent, an apportionment may not be made against the property. This paragraph does not apply if the result deprives the estate of a deduction otherwise allowable under § 2053 (d) of the Internal Revenue Code, relating to deduction for state death taxes on transfers for public, charitable or religious uses.

(f) An interest in income, an estate for years, an estate for life, or any other temporary interest in any property or money is not subject to apportionment between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or money subject to the temporary interest and remainder.

(g) The fiduciary or other person required to pay the tax need not institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to that person until the expiration of the 6 months next following the payment of any tax. If the fiduciary or other person required to pay the tax cannot collect from any person interested in the estate the amount of tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

(h) Subject to this subsection, a fiduciary acting in another state or a person required to pay the tax who is resident in another state may institute an action in a court of this State and may recover a proportionate amount of the federal estate tax or an estate tax payable to another state or of a death duty due by an estate to another state from a person interested in the estate who either is resident in this State or owns property in this State subject to attachment or execution. For the purpose of the action, the determination of apportionment by the court having jurisdiction of the administration of the estate in the other state is prima facie correct. This subsection applies only if the state in which the determination of apportionment was made affords a substantially similar remedy.

(i) The provisions of this section that are uniform with statutes enacted in other states shall be construed to make uniform the laws of those states that enact the uniform provisions.

(j) This section may be cited as the “Maryland Uniform Estate Tax Apportionment Act”.

(k) Except as otherwise provided in the will or other controlling instrument, this section applies to the apportionment of, and contribution to, the federal and Maryland estate taxes.