

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 359 (Senator Serafini)
 Budget and Taxation

Maryland Estate Tax - Unified Credit

This bill repeals provisions of Chapters 15 and 21 of 2018 which specified that the value of the federal unified credit used to calculate the Maryland estate tax is equal to the amount corresponding to an applicable exclusion amount of \$5.0 million. Beginning on January 1, 2019, the State exclusion amount will equal the amount that can be excluded under the federal estate tax. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: General fund revenues decrease beginning in FY 2020 by \$29.6 million, which reflects the impact of the increase in the value of the federal unified credit. Future year revenue estimates reflect annualization, the estimated payment schedule of State estate taxes, and the estimated increase in the value of the federal unified credit under current law. No effect on expenditures.

(\$ in millions)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	(\$29.6)	(\$40.3)	(\$41.9)	(\$43.7)	(\$46.0)
Expenditure	0	0	0	0	0
Net Effect	(\$29.6)	(\$40.3)	(\$41.9)	(\$43.7)	(\$46.0)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: The State imposes a tax on property that passes at or after the death of an individual through an estate tax and an inheritance tax. In fiscal 2020, estate tax general fund revenues are projected to total \$107.8 million. Estates may generally claim a credit against the estate tax for the amount of inheritance taxes paid.

A Maryland estate tax return is required for every estate with a federal gross estate, plus specified adjustments, that equals or exceeds the Maryland estate tax exclusion amount for the decedent's date of death. An estate with a value that exceeds this exclusion amount must file a return if the decedent, at the date of death, was a Maryland resident or the decedent was a nonresident who owned real or tangible personal property having a taxable situs in Maryland.

For decedents dying in calendar 2018, the amount that can be excluded under the estate tax is equal to \$4.0 million. Beginning on January 1, 2019, the State exclusion amount will equal \$5.0 million, per Chapters 15 and 21 of 2018. Chapters 15 and 21 also established "portability" under the State estate tax by allowing, under specified circumstances, the estate of a married taxpayer to pass along the unused part of the estate tax exclusion amount to the surviving spouse. A surviving spouse may subsequently elect to claim the unused portion of the estate tax exclusion amount of the predeceased spouse.

In addition, unless the federal estate tax credit used to calculate the Maryland estate tax is in effect at the time of a decedent's death, the federal credit used to determine the State estate tax may not exceed 16% of the amount by which a decedent's taxable estate exceeds the applicable exclusion amount.

Special rules apply under the Maryland estate tax for qualified agricultural land. Chapters 448 and 449 of 2012 generally exempt from the State estate tax up to \$5.0 million of qualified agricultural property. In addition, the estate tax imposed on qualified agricultural property included in an estate is generally limited to 5% of the value of the qualified agricultural property that exceeds \$5.0 million.

Background:

Exclusion Amounts and Estate Tax Liability

Whether an estate is required to file a return – and the amount of taxes that must be paid – depend on a number of factors, including the rules by which the estate's property is valued, the tax rate applied, allowable deductions and credits, and the exclusion amount. Generally, the exclusion amount acts as a filing threshold – estates with values below the exclusion amount are not required to file a return and therefore do not have a tax liability. In addition,

the exclusion amount lowers taxes on the remaining estates with values above the amount by providing a credit against taxes owed. Accordingly, an increase in the exclusion amount reduces the number of estates that are required to file a return and reduces taxes on the estates that are required to file a return.

Chapter 612 of 2014 enacted significant changes to the State estate tax by eventually conforming the Maryland estate tax to the value of the unified credit under the federal estate tax. The increase in the amount that could be excluded for Maryland estate tax purposes was phased in over five years, beginning with decedents dying in calendar 2015. The amount that could be excluded under the estate tax is (1) \$1.5 million for a decedent dying in calendar 2015; (2) \$2.0 million for a decedent dying in calendar 2016; (3) \$3.0 million for a decedent dying in calendar 2017; and (4) \$4.0 million for a decedent dying in calendar 2018. Beginning on January 1, 2019, the State exclusion amount would have equaled the amount that can be excluded under the federal estate tax, indexed to inflation.

At the time of enactment, the exclusion amount under federal provisions in effect at the time would have been approximately \$5.7 million in calendar 2019. It was estimated that State estate tax revenues would decrease by about two-thirds once the estate tax was fully conformed to the federal exclusion amount and by a total of \$548.9 million through fiscal 2021.

Recent Federal Legislation Doubled the Federal and State Exclusion Amount

Among other changes, the federal Tax Cuts and Jobs Act of 2017 decreased federal estate taxes by doubling the federal exclusion amount for decedents dying in calendar 2018 through 2025. The Act's estate tax provisions terminate for decedents dying beginning in calendar 2026. Given Chapter 612 of 2014 conformed the State estate exclusion amount beginning with calendar 2019, the federal Act would have also doubled the State exclusion amount for decedents dying in calendars 2019 through 2025. Beginning with decedents dying in calendar 2026, the State exclusion amount would not be impacted by the Act.

Subsequent Maryland Legislation

Chapters 15 and 21 of 2018 decoupled the Maryland estate tax from the increased federal exclusion amount enacted by the Tax Cuts and Jobs Act of 2017. Beginning January 1, 2019, the State exclusion amount equals \$5.0 million.

State Fiscal Effect: Under current law, beginning on January 1, 2019, the value of the federal unified credit used to calculate the Maryland estate tax is equal to \$5.0 million. The bill specifies that the value of the federal unified credit used in the calculation of

Maryland estate taxes will be equal to the federal exclusion amount allowed in the taxable year, which is estimated to be approximately \$11.4 million for 2019, \$11.6 million for 2020, \$11.9 million for 2021, \$12.1 million for 2022, and \$12.4 million for 2023, after being indexed for inflation. As a result, the bill will alter the exclusion amount beginning with decedents dying in calendar 2019. As shown in **Exhibit 1**, altering the exclusion amount will decrease general fund revenues by \$29.6 million in fiscal 2020 and by \$46.0 million in fiscal 2024.

Exhibit 1
State Revenue Impacts
(\$ in Millions)

<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>
(\$29.6)	(\$40.3)	(\$41.9)	(\$43.7)	(\$46.0)

This estimate is based on a microsimulation of changes to the estate tax exclusion amount for recent decedents adjusted for differences in the Maryland estate tax. An estate tax return must be filed within nine months of a decedent's death; as such, it is assumed that 75% of estates remit taxes due in the fiscal year following the date of death, and the remaining amount is paid in the next fiscal year.

Small Business Effect: Small businesses that pay estate taxes will be positively impacted by decreased estate tax liabilities. However, the number of impacted businesses is expected to be minimal. The U.S. Congressional Budget Office estimates that the estates of small business owners comprised about 1% of all federal estate tax returns filed in 2000.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office; Register of Wills; Department of Legislative Services

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