

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 179
Ways and Means

(Delegate Cardin)

Budget and Taxation

Maryland Estate Tax - Portability - Time Period for Election

This bill alters the period of time within which a person is required to file a Maryland estate tax return for the purpose of allowing a surviving spouse to take into account the deceased spousal unused exclusion amount to be consistent with the time for making a federal election. The Comptroller must adopt regulations necessary to ensure that the time period for making the election on a Maryland estate tax return is identical to a similarly situated federal estate tax return. **The bill takes effect July 1, 2023, and applies retroactively to decedents dying on or after January 1, 2019.**

Fiscal Summary

State Effect: Potential general fund revenue decrease beginning in FY 2024. Expenditures for administrative updates can be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: Under the federal and State estate tax, an estate may exclude a certain amount of the estate from taxation. Under the federal estate tax, the estates of decedents may elect to transfer any unused exclusion to the surviving spouse. The amount received by the surviving spouse is called the DSUE amount. If the executor of the decedent's estate elects transfer, or portability, of the DSUE amount, the surviving spouse can apply the DSUE amount received from the estate of his or her last deceased spouse.

Chapters 15 and 21 of 2018 established portability under the State estate tax by allowing, under specified circumstances, the estate of a married taxpayer to pass along the DSUE 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.

Chapter 111 of 2020 conformed State law to federal law by requiring an individual to file a Maryland estate tax return within two years after the date of death of a decedent if the return is filed solely for the purpose of making a DSUE election and clarifies the calculation of the DSUE amount in the event that the last predeceased spouse was a Maryland resident who died before January 1, 2019.

State Fiscal Effect: The bill conforms State law to federal law by requiring an individual to file a Maryland estate tax return within the same time period as allowed under federal law after the date of death of a decedent if the return is filed solely for the purpose of making a DSUE election. Federal law currently allows an individual to file a federal estate tax return five years after the date of death of a decedent if the return is filed solely for the purpose of making a DSUE election. As a result, general fund revenues may decrease to the extent that the extended time period allowed for filing a State estate tax return enables more individuals to use the DSUE election.

The Comptroller's Office advises that the agency will incur additional expenditures to update forms and instructions, issue regulations, and process the returns filed for the DSUE election. However, the agency reports that this can be accomplished with existing resources.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 55 (Senator West) - Budget and Taxation.

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

Fiscal Note History: First Reader - January 17, 2023
rh/jrb Third Reader - March 17, 2023
Revised - Amendment(s) - March 17, 2023

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