

**Letter of Information – House Bill 179 – Maryland Estate Tax – Portability – Time
Period for Election**

*Ways and Means Committee
February 9, 2023*

This bill applies retroactively and affects any decedents dying on or after July 1, 2018.

The Comptroller wishes to call to the Committee's attention the fact that, despite the retroactive application, this bill does not allow the estates of decedents dying between July 1, 2018 and December 31, 2018 to claim a Maryland-only deceased spousal unused exclusion ("DSUE").

- Under Tax-Gen. § 7-309(b)(9), the DSUE may not be taken into account for predeceased spouses dying before January 1, 2019 unless the estate makes an election on the federal estate tax return. In other words, there is no Maryland-only DSUE election available to these decedents' estates.
- This bill does not amend § 7-309(b). Rather, this bill amends § 7-305, which establishes the time period for making a Maryland-only DSUE election.

As currently written, this bill would not authorize the Comptroller to accept Maryland-only DSUE elections for decedents dying during the 6-month span between July 1, 2018 and December 31, 2018.

To avoid confusion for taxpayers and practitioners, the Comptroller recommends Section 2 of the bill be amended as follows:

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect any decedents dying on or after ~~July 1, 2018~~ **JANUARY 1, 2019**.

As always, the Comptroller's Office is willing and available to discuss these concerns or any questions you may have at your convenience. Please contact Justin Hayes, Legislative Director at jhayes@marylandtaxes.gov or 410-260-7696.

