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To: Members of House Ways and Means Committee
From: MSBA Estate & Trust Law Section
Date: January 31, 2023
Subject: **HB100** – Inheritance Tax Rate – Beneficiaries of Limited Means
Position: Support with Amendment

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports with amendment** House Bill 100– **Inheritance Tax Rate – Beneficiaries of Limited Means**

Description of Current Law

Maryland inheritance tax applies a ten percent (10%) tax to certain beneficiaries of an estate who are not close relatives of the decedent. These individuals are most often nephews, nieces, domestic partners, and friends. In the case of a beneficiary inheriting a residence, there is a limited exemption for domestic partners owning the property jointly. In the case of a beneficiary inheriting a farm, there is a limited exemption for property passing to a niece or nephew if the property has a perpetual conservation easement.

Unless the decedent otherwise specifies, the inheritance tax is generally paid from the beneficiary's inheritance and is typically due when the Register of Wills assesses the amount due during the process of estate administration. A property qualifying as farmland may be entitled to a special valuation.

Problem Addressed by this Legislation:

If a beneficiary receives only real property and is not subject to an exemption, the property may have to be sold to pay the inheritance tax.



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How this Legislation Solves the Problem:

House Bill 100 would provide a reduced rate of inheritance tax for certain beneficiaries of limited means to the extent those beneficiaries inherit a primary residence or agricultural land. A beneficiary of limited means is defined to include individuals with adjusted gross income not exceeding \$125,000, or \$250,000 for an individual filing jointly with a spouse, a surviving spouse, or head of household,

To be eligible for the reduced rate, the beneficiary would have to intend to take the residence as their primary residence or to maintain the agricultural land such that it would continue to be assessed on the basis of farm or agricultural use.

Proposed Amendments

The Estate and Trust Section of the Maryland State Bar Association seeks to ensure that the taxation of estates and beneficiaries in Maryland is equitable and unambiguous. HB 100, as initially drafted, provides that some beneficiaries are entitled to a lower rate of tax if certain real property is “intended” to be used a particular way. The incorporation of an intent test causes two issues. First, it is not clear to what extent the beneficiary will be bound by their expressed intent. If they change their minds immediately after expressing such intent and sell the property, they will have received a tax benefit that other beneficiaries of similar means inheriting other types of property would not receive. Second, a tax that is assessed based on a subjective level of intent professed by a beneficiary provides an incentive to defraud the taxing authority, in this case the Register of Wills.

For these reasons, the Estate and Trust Section urges an amendment to HB 100 to impose an objective standard that would need to apply for a beneficiary to receive a reduced rate. We understand an amendment is currently in process that would (1) eliminate the proposed benefits associated with inheriting agricultural land and (2) limit the proposed benefits associated with inheriting a residence to beneficiaries who already list the residence as their primary residence. We anticipate that such an amendment would satisfy our concerns about an objective test.



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For the reasons stated above, the Estate and Trust Law Section of the MSBA cannot support the bill without the amendments described above. Accordingly, the Section **supports HB100 with amendments and urges a favorable committee report only if HB100 is so amended. For Further Information, Please Contact:**

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