
To: Members of House Judiciary Committee
From: MSBA Estate & Trust Law Section
Date: February 2, 2026
Subject: **HB0017 - Estates and Trusts - Venue for Administrative and Judicial Probate and Application of Inheritance Tax**
Position: **Support**

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports** House Bill 0017 with amendments– **Estates & Trusts – Venue for Administrative and Judicial Probate and Application of Inheritance Tax**. **House Bill 0017** modernizes and clarifies (1) the venue rules for opening estates for non-resident decedents, and (2) the proper situs of intangible personal property for inheritance-tax purposes.

Description of Current Law

Under current venue law in Estates & Trusts § 5-103, the venue for opening a probate estate of a non-Maryland resident decedent depends on where real estate or tangible personal property is located or, if none, the situs of an intangible instrument evidencing a debt. If there is no debt instrument, Maryland law is unclear as to if and where a probate proceeding can be opened. When a non-Maryland decedent dies owning only intangible personal property (e.g. a bank account or brokerage account) with no physical situs, the statute does not clearly indicate if and where probate may be opened in Maryland.

Under Tax Gen. §7–202 and §7–203, Maryland inheritance tax applies when a Maryland decedent leaves property to non-exempt recipients or when a non-Maryland resident leaves Maryland-sitused real estate or tangible personal property to non-exempt recipients. Tax Gen. §7–203 exempts intangible personal property held by non-Maryland resident decedents from another country provided such country employs reciprocal death tax exemptions.

Problem with Current Law

Estate and trust practitioners in the State of Maryland have more and more commonly observed a pattern wherein individuals domiciled outside of the United States die owning United States-based intangible assets such as bank accounts. The families and professional advisors of these decedents who are located in Maryland and tasked with administering the estates of such decedents

are faced with a difficult path to administer these assets using Maryland law. One major difficulty is the hurdle of obtaining the United States-based probate documentation that financial institutions require in order to release decedent-owned assets. When the decedent died domiciled in Maryland or died domiciled outside of Maryland but still within the United States, the personal representatives, the personal representatives (a/k/a executors) of their estates have a clear pathway to open estates and obtain probate documentation from either Maryland or the other State wherein the decedent was domiciled at death and can then present such probate documentation (“Letters of Administration”) to third parties in custody of the decedent’s intangible assets in order to obtain control of the assets. However, when non-Maryland decedents die domiciled *outside of the United States* while owning intangible personal property (e.g. a bank account or brokerage account) within the United States, no clear probate venue exists in Maryland which would enable Personal Representatives to open estates and obtain Letters of Administration for intangible assets. Banks and other financial institutions in the United States typically require United States-issued Letters of Administration in order to authorize access to decedent accounts and often do not recognize corollary instruments issued by other countries. This disconnect leaves the fiduciaries and beneficiaries of the decedent, these individuals often residing in Maryland or seeking professional representation from Maryland-based estate and trust practitioners, without a legal mechanism to obtain control of these intangible assets.

Even if a Personal Representative is successful in advocating that a County Register of Wills open an estate for a Non-Maryland decedent who died domiciled outside of the United States, such practitioner must then contend with inconsistent positions from the various counties regarding whether or the act of opening the estate should subject the decedent’s assets to Maryland inheritance tax. Registers of Wills vary by county as to the position taken regarding applicability of inheritance tax on such non-Maryland decedents. Some counties treat the decedent’s entire estate as being subject to inheritance tax (thus resulting in taxation on intangible personal property even though the decedent was a non-Maryland resident) and some tax only the property with a Maryland physical situs, resulting in a disparate application of inheritance tax based only on where the estate is opened.

How the Legislation (with amendments) Solves the Problem

This legislation (with amendments) clarifies and expands the venue rules by creating four distinct probate venue categories (1) Maryland-domiciled decedents, (2) non-Maryland decedents who were domiciled within the United States at death, (3) non-Maryland decedents who were domiciled outside of the United States at death and previously resided in Maryland, and (4) non-Maryland decedents who were domiciled outside of the United States at death and never resided in Maryland. The legislation makes no changes to probate venue for the first two categories. Under the third category, probate venue is offered for a non-Maryland decedent who previously resided in Maryland in the county in which they previously resided. Additionally, for the fourth category, venue is expanded for a non-Maryland decedent who did not reside in Maryland and died domiciled outside of the United States to include the following circumstances: 1) if a cause of action in favor of the decedent arose in a Maryland county; 2) if the personal representatives resides or works in a



Maryland county; 3) if heirs or beneficiaries reside in a Maryland county; 4) if the decedent held financial accounts with a bank that can be sued in a Maryland county. These bases for jurisdiction were generated to mirror the laws of other states with modern expanded venue rules. The expanded venue options will reduce the administrative burden of opening an estate for non-Maryland decedents who were domiciled outside the United States for the purpose of initiating a lawsuit or for the purpose of administering intangible assets like financial accounts when financial institutions require United States-based Letters of Administration. The legislation clarifies that the opening of an estate for such purposes does not alter the situs of the assets for tax purposes, i.e. that the mere opening of an estate in Maryland for such foreign decedents does not subject the assets to taxation in Maryland.

This legislation further clarifies that the intangible personal property of a non-domiciliary decedent is not subject to inheritance tax in Maryland.

For the reasons stated above, the MSBA **supports HB 0017 and urges a favorable committee report.**

For Further Information, Please Contact:

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