

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE
Revised

House Bill 762 (Delegate Vallario)

Judiciary

Referred to Judicial Proceedings & Budget and Taxation

Estates - Taxation, Fees, and Procedures

This enrolled bill exempts from the inheritance tax income accrued on probate assets after the date of death, including both gains and losses. The bill also alters the fee structure and procedures for the administration of an estate.

The bill is effective January 1, 1998 and applies to estates of those who die on or after that date.

Fiscal Summary

State Effect: Indeterminate general fund revenue loss. Expenditures would not be affected.

Local Effect: None.

Small Business Effect: Minimal impact on small estate planning businesses. Such businesses will be affected by the increase in the various fees detailed in the bill. These businesses could pass the additional costs along to their clients or may absorb the costs thus reducing their profits.

Fiscal Analysis

Bill Summary: This bill exempts from the inheritance tax property passed from a decedent to any one person if the property has a value of less than \$1,000, as well as income, including gains and losses, accrued on probate assets after the death of the decedent.

The bill raises certain fees that a register of wills is allowed to charge for administering an estate. The fees for entering the appointment of a guardian, approval of sureties, and

recording bonds and guardian accounts are repealed and replaced with a single, higher fee for all filing and entries regarding a guardianship proceeding. A fee of \$20 is added for all proceedings involving a foreign personal representative equaling 1% of the gross value of the estate, but not exceeding \$100.

The bill also alters the form petitioners must file for administrative or judicial probate. Small estates valued at under \$20,000 are subject to a separate petition form. The bill establishes that the value of a small estate is the fair market value of the property less debts of record secured by the property. Also, the bill allows real property to be valued at the most recent new market value as determined by the Department of Assessments and Taxation (SDAT) instead of by an outside appraisal at the time of death, as long as the property is not valued by SDAT based on its use.

Additionally, the bill raises the allowance for funeral expenses paid by the estate without first obtaining a court order. Also allowed without court approval is the payment of commissions to personal representatives and attorney's fees, provided that the payments do not exceed the amount allowed for compensation under the Maryland code and that all creditors of the estate consent in writing to the payment.

The bill also eliminates the authority of the Motor Vehicle Administration to transfer the title of a decedent's motor vehicle to the entitled individual, without administration if the estate consists of not more than two motor vehicles. The authority of the U.S. Coast Guard or Department of Natural Resources to transfer the registration of a boat valued at \$5,000 or less without administration is eliminated as well.

State Revenues: All estimates in this fiscal note are based on a 1995 report of the Department of Fiscal Services, *An Examination of Maryland's Inheritance Tax*. This study analyzed files opened in fiscal 1993, which is considered to be a representative year. The inherent variability of death tax revenue, however, implies that these estimates are subject to fluctuation from year to year.

Exempting Estate Income from Inheritance Tax

Exempting property that is income accrued on probate assets from the inheritance tax would also reduce general fund revenue. It is estimated that \$1.4 million in revenue would be lost in the first year with a 5% growth rate in outgoing years. Revenue losses would be realized in the same manner as described above with 60% loss in the first year of an estate, 30% in the second year and 10% in the third year. However, a portion of the decreased revenue would be offset by an increase in revenue from the estate tax for estates exceeding \$600,000. Over 94% of estate income is received by estates over \$600,000, so the net revenue loss would be about \$79,000 attributable to estates opened in fiscal 1998.

Fees and Estate Valuation

The bill raises fees for a variety of duties performed by a register of wills. The fees for entering the appointment of a guardian, approval of sureties, and recording bonds and guardian accounts are repealed and replaced with a single fee of \$20 for all filing and entries regarding a guardianship proceeding. This will raise fee revenue collected by the registers of wills by approximately \$50,200 annually, allowing for a 5% growth rate in future years.

The bill also alters how small estates are valued. Current law considers an estate to be small if it has a gross value of \$20,000 or less. However, the bill changes this to the net value (fair market value of the property of an estate less any debts secured by the property). Under the bill, a larger number of estates will be considered small and will therefore be exempt from the inheritance tax and subject to lower probate fees. The loss in general fund revenue is expected to be approximately \$25,000 annually.

The value of some real property would be determined differently for death tax purposes. Rather than having the real property of an estate appraised, the full cash value as determined by SDAT can be used, if the property is not use-valued property. When using the assessed value rather than the appraised (market) value, real property which has been valued by the SDAT in the year of death should have about the same value under either approach. Property valued in the year before death would have a full assessed value about 2% lower than the appraised value (assuming an increase in real property values of 2% per year). Likewise, property valued two years before death would have a full assessed value about 4% lower than the appraised value. Thus, the average full assessed value of real property would be about 98% of the appraised value. Some portion of the inheritance tax base would then be reduced by approximately 2% of the market value of real property under this bill. The revenue loss from this change cannot be reliably estimated at this time, as it depends on the amount of use-valued and non-use-valued property in estates.

The loss would be offset by an indeterminate amount because the basis of the real property will be lower for income tax purposes. Therefore, when the property is sold, the gain will be higher, and income tax revenues would increase. Any such increase depends on when the property is sold, which cannot be reliably estimated at this time.

Information Source(s): Register of Wills, Comptroller of the Treasury (Revenue Administration Division), State Department of Assessments and Taxation, Department of Transportation (Motor Vehicle Administration), Department of Fiscal Services

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