SB 259

Department of Fiscal Services

Maryland General Assembly

FISCAL NOTE

Senate Bill 259 (Senators Frosh and Kelley)
Judicial Proceedings

Maryland Probate Reform Act

This bill makes numerous changes to probate and the inheritance tax.

This bill is effective October 1, 1997, and applies to all persons dying on or after that date.

Fiscal Summary

State Effect: Based on FY 1993 estate data, general fund revenues could decline by $66,000 in FY 1998, and accelerated general fund revenues of approximately $17 million will be received. Expenditures would not be affected.

($ in millions)	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
GF Revenues	$16.9	($0.3)	($0.3)	($0.3)	($0.3)
GF Expenditures	0	0	0	0	0
Net Effect	$16.9	($0.3)	($0.3)	($0.3)	($0.3)

Note: ( ) - decrease; GF - general funds; FF - federal funds; SF - special funds

Local Effect: None.

Small Business Effect: None. This bill does not directly affect small businesses.

Fiscal Analysis

Bill Summary: This bill alters the valuation of estates for inheritance tax purposes. Property in the estate is to be valued at the time of the decedent's death, rather than at the time of distribution. Any real property in the estate may be valued by using the full value from the most recent valuation of the property for property tax purposes, unless an interested person requests an independent appraisal.

The inheritance tax must be paid within six months of the decedent's death. Any additional tax due because of a disqualification of specially valued property must be paid within 30 days of the disqualifying event. Assets of the estate shall be distributed within nine months of the date of the appointment of the personal representative.

"Unsupervised administration" is provided for. In unsupervised administration, the personal representative generally serves without continuing supervision by the court or the Register of Wills. At the written request of any interested person, the court shall review and resolve any matter concerning the estate or its administration, or the authorization for unsupervised administration may be revoked. If after such a revocation, all interested persons consent, the court may allow a return to unsupervised administration. Notice of the closing of an estate must be sent to all interested persons. If no objections to the closing of the estate are filed by interested persons within 60 days after the notice has been issued, the certificate of completion shall be recorded in the administration proceedings record book.

If, in unsupervised administration, a request for court review of a proposed payment to a personal representative or attorney is not made within 20 days after notice of the proposed payment is sent, the payment is not subject to the court's review or approval. The personal representative may notify creditors and all interested persons of any proposed distribution of the estate's property or of any proposed payment. Unless a request for court review is made within 20 days, a proposed distribution or payment is not subject to the court's approval.

Registers of Wills are required to provide along with the newspaper notice of the appointment of a personal representative to the heirs and legatees, general information regarding the duties of a personal representative, how fees are determined, the rights of heirs and legatees, whether the personal representative is subject to continuing court supervision, and the rights of interested persons regarding unsupervised administration.

An addition modification is created for the individual income tax for the expenses claimed on the application to pay the inheritance tax that are allowed as deductions for federal income tax purposes.

Information contained in an application to pay inheritance tax or an inheritance tax information report is considered tax information, and may not be disclosed except to appropriate authorities and in statistical reports in a manner which prohibits the identification of an individual return and the information thereon.

State Revenues: This bill will affect general fund revenues in four ways: the date of death is the valuation date for the inheritance tax base rather than the date of distribution; the inheritance tax is due six months from the date of death, rather than when the estate is closed; real property may be valued using the assessed value rather than an appraised value; and there is an addition modification to income taxes for the amount of any expenses claimed as an expense on an application to pay the inheritance tax which are allowed as a deduction for determining federal taxable income.

All the 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.

Changing Valuation Date to Date of Death

By valuing the estate for inheritance tax purposes at the date of death rather than at the date of distribution, any changes to the value of the estate would not be taxed by the inheritance tax. Assuming that the value of estates generally grow over time, the revenue collected by the inheritance tax would be lower under this provision. Estates opened in fiscal 1993 received income of $79.7 million. Assuming 3% annual growth in income, the income for estates opened in fiscal 1998 would be $92.4 million. At the 2.63% effective inheritance tax rate, the revenue loss attributable to estates opened in fiscal 1998 would be $2.4 million. Aside from the variability of this figure due to timing of deaths, this loss will also be affected by changes in the stock and real estate markets.

Changing Inheritance Tax Due Date

Changing the due date for inheritance tax payments to six months after the date of death instead of the time the distribution of the estate is accounted for will generally result in an acceleration of payments, and therefore a potential increase in interest earnings for the State. The average estate was open 501 days, 319 days longer than six months. The estimated interest earnings from the accelerated inheritance tax payments on estates opened in fiscal 1998 would total $2.5 million. This estimate assumes a 5.4% return on State investments, and also assumes that these funds would not be spent by the State until 501 days after the date of death, on average.

Additionally, because of the accelerated collections, three months of inheritance tax payments will be shifted from fiscal 1999 to fiscal 1998, resulting in a revenue increase in fiscal 1998 of one-quarter of inheritance tax due for estates opened in that year. Based on the representative year of fiscal 1993, this amount could be $17 million, although the amount will vary depending on the number of persons dying between October 1, 1997 and December 31, 1997 and the size of their estates.

Real Property Valuation

In fiscal 1993, there was $659 million of real property in estates. Assuming 2% growth in real property values, there will be an estimated $727 million of real property in estates opened in fiscal 1998. When using the assessed value rather than the appraised (market) value, real property which has been valued by the Department of Assessments and Taxation in the year of death should have 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 (again, 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. The inheritance tax base would then be reduced by approximately 2% of the market value of real property under this bill, or $14.3 million for estates opened in fiscal 1998. At the 2.63% average inheritance tax rate, general fund revenues would decline by an estimated $376,000.

This amount will be offset 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.

Income Tax Addition Modification

The revenue increase attributable to the income tax addition modification is indeterminate. It depends on the expenses claimed as an expense on the application to pay the inheritance tax which are allowed as a deduction for federal income tax purposes. This amount cannot be reliably estimated at this time.

Net Revenue Effect

This bill applies to all persons dying on or after October 1, 1997. Therefore, the first inheritance tax payments under this bill would probably be made on April 1, 1998, and only three months' worth of inheritance tax payments would be made in fiscal 1998. Only 25% of the revenue changes described above would occur in fiscal 1998. The remainder of the changes due to estates opened in fiscal 1998 after October 1, 1997 would occur in fiscal 1999, when the inheritance tax is due. The net fiscal impact of this bill in fiscal 1998 is therefore a revenue loss of approximately $69,000, along with accelerated tax payments of approximately $17 million. In fiscal 1999, when all inheritance tax due would be paid under this bill, the net effect is estimated at a loss of $276,000, increasing at about 1.6% per year based on the above growth rates.

State Expenditures: The Attorney General, in cooperation with the Registers of Wills, would be required to design an application to pay the inheritance tax. Any increase in expenditures can be absorbed within existing budgeted resources.

Information Source(s): Office of the Comptroller (Revenue Administration Division), Department of Assessments and Taxation, Judiciary (Administrative Office of the Courts), Registers of Wills, Department of Fiscal Services

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