

Department of Legislative Services
Maryland General Assembly
1999 Session

FISCAL NOTE

House Bill 780 (Delegate Finifter. *et al.*)

Judiciary

Estates and Trusts - Spousal Elective Share

This bill changes the method of calculating the share of a decedent's estate that a surviving spouse may elect to receive in lieu of property received under the decedent's will. Under current law, a surviving spouse may take one-third of a net estate, instead of property left by a will, if there is a direct descendent of the decedent. A surviving spouse is allowed to take one-half of a net estate if there is no surviving issue. This bill provides that the elective share is an amount equal to the greater of: (1) the lesser of \$50,000 or one-half of the elective estate; or (2) a percentage of the elective estate (up to 40%) determined by the length of marriage to the decedent.

This Act applies to all decedents who pass away on or after October 1, 1999.

Fiscal Summary

State Effect: Indeterminate effect on revenues beginning in FY 2000. Expenditures would not be affected.

Local Effect: None.

Small Business Effect: None.

Fiscal Analysis

Background: The inheritance tax is assessed either at a direct rate of 1% or a collateral rate of 10%. The rate assessed depends upon the relationship of the decedent to the recipient(s). Estates larger than \$675,000 in size are also subject to an estate tax.

Current law allows a surviving spouse to take a one-third share of a net estate, instead of property left to the spouse by a will, if there is also a surviving issue. A surviving spouse is allowed to take a one-half share of a net estate if there is no surviving issue. Transfers of real property and the first \$100,000 of an estate to a surviving spouse are exempt from the inheritance tax.

Surviving issues are the living lineal or direct descendants of a decedent, except for a lineal descendent of a living lineal descendent (e.g., grandchild). A surviving non-issue lineal beneficiary is a recipient that is not considered a surviving issue, but is subject to the 1% lineal inheritance tax rate (e.g., parent). Any other beneficiaries of an estate would be considered non-issue recipients and would pay the 10% collateral inheritance tax.

State Revenues: This bill could have either a positive or negative impact on State revenues. Depending on whether or not an additional or reduced estate distribution to a spouse exceeds or falls below the \$100,000 spousal exemption, or includes more or less real property, inheritance tax liability could increase or decrease.

Any reduction in the inheritance tax paid on an estate greater than \$675,000 in value could result in an increase in estate taxes paid. Estates subject to a 10% collateral tax rate often result in having no estate taxes due since the 10% rate generally exceeds the maximum allowable State tax credit.

Under this bill, the elective share of an estate that may be taken by a surviving spouse is the greater of: (1) the minimum elective share that is an amount equal to the lesser of \$50,000 or one-half of the elective estate; or (2) an amount equal to a percentage of the elective estate as determined by the length of marriage between the decedent and the spouse as seen in **Exhibit 1**.

Exhibit 1
Distribution for Elective Estates

| Length of Marriage | Elective Estate Percentage |
|--|----------------------------|
| Less than 5 years | 10% |
| At least 5 years but less than 15 years | 20% |
| At least 15 years but less than 25 years | 30% |
| 25 years or more | 40% |

For illustrative purposes, **Exhibit 2** provides an example comparing current law to HB 780 using an estate size of \$1 million and a marriage of 25 years between the decedent and the surviving spouse.

Exhibit 2
Inheritance Tax Example Comparing
House Bill 780 to Current Law

| | Issue(s) (1% Rate) | Non- Issue(s) Lineal (1% rate) | Non- Issue(s) Non Lineal (10% rate) | Spousal Share | Remaining Share | Total Inheritance Tax |
|---------------------------|-----------------------|---|--|------------------|--------------------|-----------------------------|
| Current Law | x | | | \$333,000 | \$667,000 | \$9,000 |
| House Bill 780 | x | | | \$400,000 | \$600,000 | \$9,000 |
| Current Law | | x | | \$500,000 | \$500,000 | \$9,000 |
| House Bill 780 | | x | | \$400,000 | \$600,000 | \$9,000 |
| Current Law | | | x | \$500,000 | \$500,000 | \$54,000 |
| House Bill 780 | | | x | \$400,000 | \$600,000 | \$63,000 |

In this example, inheritance tax collections from estate distributions to a spouse and non-issue non-lineal beneficiaries taxed at a 10% rate would increase by \$9,000, while inheritance taxes are unchanged for the other types of distributions. Increased estate taxes would offset some or all of this loss. The net impact of this bill, if any, would depend on estate values for a given year, the amount of property transferred that is real or personal, the years of marriage for the decedent and spouse, and whether the remaining beneficiaries are

issues, non-issue lineals, or non-lineals.

Information Source(s): Department of Legislative Services, Registers of Wills, Comptroller of the Treasury (Bureau of Revenue Estimates)

Fiscal Note History: First Reader - March 3, 1999

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