

**Department of Legislative Services**  
Maryland General Assembly  
2002 Session

**FISCAL NOTE**

House Bill 1399

(Delegate Finifter)

Judiciary

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**Estates and Trusts - Limitation Period for Refund Claim**

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This bill alters the statute of limitations for filing a claim for a refund of an estate after escheat to the Department of Health and Mental Hygiene (DHMH) or a local board of education.

The limitation period specified in the bill will apply whether a distribution of property occurred before, on, or after the October 1, 2002 effective date of the bill.

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**Fiscal Summary**

**State Effect:** Potential loss of escheat revenues for DHMH and potential increase in general fund revenues from inheritance and estate taxes, depending on the number of additional refund claims, the value of the estate of each refund claim, and the relationship of the heir to the decedent.

**Local Effect:** Potential loss of escheat revenues for local boards of education.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** This bill provides that if property or money of a decedent escheats through intestate succession to DHMH or a county board of education, a claim for a refund made by a relative within the fifth degree living at the death of the decedent or such a relative's personal representative may not be filed more than eight years from the date of distribution of the property.

Where a legatee or heir is not found or resides outside of the United States, the bill provides that if a personal representative has transferred money or property to a county board of education, the legatee or heir, or the personal representative of the legatee or heir, may not file a claim for a refund more than eight years from the date of distribution of the property.

This bill also clarifies the filing deadline for recovering an improper distribution of property by substituting “date” for “time” in the statute of limitations that provides a claim will be barred at the later of: (1) three years from the death of the decedent; or (2) one year from the *date* of distribution of the property. This statute of limitations is subject to the exceptions for escheat proposed in the bill, as well as other exceptions under current law. This provision of the bill is in conformity with a provision of the Uniform Probate Code adopted by 18 states.

**Current Law:** If a decedent had been a recipient of long-term benefits under the Maryland Medical Assistance (Medicaid) Program and has no heirs or no heirs can reasonably be found, then the decedent’s estate must be converted to cash and paid to DHMH. If a decedent was not a Medicaid recipient and has no heirs or no heirs can reasonably be found, then the decedent’s estate must be given to the local board of education. A claim that is afterward filed by an heir for a refund of the money paid to DHMH or board of education may not be filed after the later of: (1) three years after the death of the decedent; or (2) one year after the time of distribution of the property.

In addition, where a legatee or heir is not found or resides outside of the United States and a personal representative has transferred money or property to a county board of education, the legatee or heir may not file a claim for a refund after the later of: (1) three years after the death of the decedent; or (2) one year after the time of distribution of the property.

**Background:** This bill is in response to Chapter 785 of 1998, which limited the time by which a refund must be claimed when property escheats to the later of three years after the decedent’s death or one year after the distribution of the property. (When property escheats, it has been forfeited to the government as a result of the decedent dying without heirs.) Prior to enactment of Chapter 785, claims for refunds could be filed at any time and this caused budgetary difficulty for county boards of education because the amounts received might have been required to be refunded at any time. Testimony by proponents of Chapter 785 asserted that the escheat distributions to county boards of education and DHMH were already subject to the statute of limitations presented by Chapter 785, and that Chapter 785 was merely clarifying current law. However, testimony in favor of

legislation similar to this bill in the 1999 session indicated that Chapter 785 provided more than a codification of existing practice, it substantively changed the law.

Maryland imposes two death taxes -- the inheritance tax and the estate tax. The inheritance tax is applied to the receipt of property from a decedent's estate. As a result of Chapter 497 of 2000, for decedents dying on or after July 1, 2000, all direct beneficiaries and siblings are exempt from the inheritance tax. Direct beneficiaries include grandparents, parents, spouses, children, other lineal descendants, stepparents, and stepchildren, or a corporation if all stockholders are direct beneficiaries. Collateral beneficiaries include nieces and nephews, as well as all other beneficiaries than those above, and they are taxed at the rate of 10%.

The general fund receives 75% of inheritance tax revenues, with the remaining 25% going to the registers of wills. To the extent that inheritance tax and other revenues received by the registers of wills exceed expenditures, the excess inheritance tax collections are remitted back to the general fund.

Maryland's other death tax, the "pick-up" estate tax, applies only if a federal estate tax return is required for the estate of a decedent. Any estate subject to both the estate tax and the inheritance tax may receive a credit against the estate tax for any inheritance tax paid. Inheritance tax reductions would therefore be offset by an increase in the estate tax paid for estates valued greater than \$1 million in tax year 2002 and \$1.5 million in fiscal 2003. The size of the estate subject to the estate tax increases each year until 2009 when only estates with a gross value of greater than \$3.5 million are subject to the estate tax.

**State Fiscal Effect:** DHMH could lose revenues due to the extension of the statute of limitations for filing a claim for a refund after escheat. The amount that could be lost, however, cannot be reliably quantified because DHMH is unable to determine the amount of revenues currently collected from unclaimed estates.

Under current law the amounts paid to the boards of education and to DHMH are not subject to inheritance and estate taxation. Therefore, if an heir later surfaces and files a claim for refund of the money paid to DHMH or a local board of education, inheritance tax and estate revenues could increase depending on the value of the estate and the relationship of the heir to the decedent.

**Local Fiscal Effect:** The amount of revenues that local boards of education could lose due to the extended time limitation to file a claim for refund after escheat cannot be precisely determined. In 1999, however, the Maryland Association of Boards of Education advised that the local boards of education that responded to a survey on an identical bill had received the following funds from unclaimed estates from 1991 to 1998.

## Summary of Local Boards of Education Revenues Due to Unclaimed Estates

<u>Board of Education</u>	<u>Escheat Revenues</u>
Anne Arundel	\$400,000
Baltimore City	\$488,000 (over 2 years)
Caroline	\$14,000 (over 3 years)
Frederick	\$102,000
Howard	\$122,000
Montgomery	\$500,000
Worcester	\$132,000

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### Additional Information

**Prior Introductions:** HB 1110 of 2001 passed the House but received an unfavorable report from the Senate Judicial Proceedings Committee. HB 464 of 2000, an identical bill as amended, passed the House but received an unfavorable report from the Senate Judicial Proceedings Committee. HB 431 of 1999, also an identical bill as amended, was approved by the House, but received an unfavorable report from the Senate Judicial Proceedings Committee.

**Cross File:** None.

**Information Source(s):** Comptroller's Office (Estate Tax Division), Department of Health and Mental Hygiene, Department of Legislative Services

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