SB 312

Department of Legislative Services

Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 312 (Senator Giannetti)
Judicial Proceedings Judiciary

Estates - Elective Share

This bill: (1) defines "net estate;" (2) provides that the net estate and the property allocable to a share of a surviving spouse shall be valued as of the date of distribution; (3) entitles a surviving spouse who takes against a will to a share of income earned on a net estate during a period of administration; (4) provides for an adjustment of an elective share based on a prior distribution to a surviving spouse; (5) alters the time period during which a surviving spouse may make an election to receive an elective share; and (6) specifies who may make payment to a surviving spouse and the method of property valuation if an interest in a specific property is not contributed to the surviving spouse's elective share.

The bill is to be construed prospectively and may not be applied to an estate of a decedent who dies before the bill's October 1, 2003 effective date.

Fiscal Summary

State Effect: Potential minimal increase or decrease in inheritance and/or estate tax revenue (general funds) due to provisions in the bill that could alter the value of a net estate. The exact impact would depend upon the values of affected estates, the nature of transferred property, and the relationships of beneficiaries to decedents. No impact on expenditures.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill defines "net estate" as the property of the decedent passing by testate succession, without a deduction for State or federal estate or inheritance taxes, and reduced by funeral and administration expenses, family allowances, and enforceable claims and debts against the estate. The net estate is required to be valued as of the date of distribution.

A surviving spouse is entitled to a proportionate share of the income earned on the net estate during the period of administration if the surviving spouse elects to take his or her statutory share of the net estate in lieu of property left to him or her by will. The bill also alters the time period during which a surviving spouse may make an election to take an elective share of a net estate from seven months after the date of the first appointment of a personal representative to the later of six months after the appointment of the first personal representative or nine months after the date of a decedent's death.

If specific property is allocable to the surviving spouse's elective share, other beneficiaries under the will, but not the personal representative, may make payment to the surviving spouse in lieu of contributing an interest in that property to the elective share. This bill alters the date on which determination of the payment amount based on fair market value of the property would be based, from the date that the election was made, to the date or dates of distribution.

Current Law: A net estate is the property remaining after the payment of family allowances, expenses, and enforceable claims. 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. Valuation of the net estate is determined as of the date that the election is made.

The deadline for making the election to receive the elective share of a net estate is seven months after the date of the first appointment of a personal representative under a will. Any beneficiary under a will may pay the surviving spouse cash or other property acceptable by the surviving spouse, in lieu of contributing an interest in specific property to the elective share, provided that the payment is equal to the fair market value of the property on the date of the surviving spouse's election to take an elective share.

Maryland imposes two death taxes. 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 all other beneficiaries than those above and are taxed at the rate of 10%.

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. Thus, for estates valued greater than $1,000,000 (the threshold for federal and State estate tax liability in tax year 2003), any inheritance tax reductions are offset by an increase in the estate tax paid.

State Revenues: The provision of the bill that alters the date of valuation of a net estate to the date of distribution could alter the overall value of the net estate. Any alteration in the value of the net estate would have a minimal impact on inheritance tax revenues since in most cases, the remaining beneficiaries (after the spouse) will be lineal descendants of the decedent, and thus exempt from the State inheritance tax. Any alteration in State estate tax revenues is also expected to be minimal.

Additional Information

Prior Introductions: None.

Cross File: HB 240 (Delegates Simmons and Vallario) – Judiciary.

Information Source(s): Register of Wills, Comptroller's Office, Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2003
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