

BY: Budget and Taxation Committee

AMENDMENTS TO SENATE BILL NO. 2
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “Senator Currie” and substitute “Senators Currie, Brinkley, DeGrange, Garagiola, Hogan, Jones, Kasemeyer, Kramer, Lawlah, McFadden, Munson, Ruben, Schrader, and Stoltzfus”.

AMENDMENT NO. 2

On page 1, strike beginning with “altering” in line 3 down through “tax;” in line 4 and substitute “altering a certain definition under the Maryland estate tax; specifying that certain persons are required to file a Maryland estate tax return under certain circumstances; requiring the filing of certain amended Maryland estate tax returns under certain circumstances; authorizing the Comptroller to extend the time to file an estate tax return under certain circumstances; clarifying the due date for payment of the Maryland estate tax; clarifying the apportionment of the Maryland estate tax among certain persons in certain circumstances; providing for certain elections with respect to the Maryland estate tax;”; in line 5, after “tax;” insert “clarifying when interest must be paid on unpaid Maryland estate tax; providing for the assessment of a certain penalty for underpayment of the Maryland estate tax under certain circumstances; providing certain periods of limitations for assessment of the Maryland estate tax under certain circumstances;”; strike beginning with “defining” in line 5 down through “term;” in line 6; in line 9, strike “7-309(b)(3)” and substitute “7-301(b), 7-302, 7-305, 7-306, 7-307(d), 7-308(b), 7-309, 13-601(d), and 13-1101”; and after line 11, insert:

“BY adding to

Article - Tax - General

Section 7-305.1 and 13-716

Annotated Code of Maryland

(2004 Replacement Volume and 2005 Supplement)”.

(Over)

AMENDMENT NO. 3

On page 1, after line 14, insert:

“7-301.

(b) “Estate” means the federal gross estate of a decedent, as determined by Subtitle B of the Internal Revenue Code, AS INCREASED BY ANY PROPERTY NOT OTHERWISE INCLUDED IN THE FEDERAL GROSS ESTATE THAT IS DEEMED TO BE INCLUDED PURSUANT TO § 7-309(B)(6) OF THIS SUBTITLE.

7-302.

Except as provided in § 7-303 of this subtitle, a tax is imposed on the transfer of the Maryland estate of each decedent who, at the time of death, was:

(1) a resident of this State; or

(2) a nonresident of this State whose estate includes[, for purposes of the federal estate tax,] any interest in:

(I) real PROPERTY PERMANENTLY LOCATED IN THIS STATE; or

(II) tangible personal property THAT HAS A TAXABLE SITUS [located] in this State.

7-305.

(a) [The] IF A FEDERAL ESTATE TAX RETURN IS REQUIRED TO BE FILED, THE person responsible for filing the federal estate tax return shall complete, under oath, and file a Maryland estate tax return with the register 9 months after the date of the death of a decedent.

(b) [If, after a person files a Maryland estate tax return for an estate, the federal estate tax on that estate is increased, the person shall file an amended Maryland estate tax return with the register when the person pays the additional federal tax.] IF A FEDERAL ESTATE TAX RETURN IS NOT REQUIRED TO BE FILED BUT A FEDERAL ESTATE TAX RETURN WOULD BE REQUIRED TO BE FILED IF THE APPLICABLE EXCLUSION AMOUNT UNDER 2010(C) OF THE INTERNAL REVENUE CODE WERE NO GREATER THAN \$1,000,000, THE PERSON WHO WOULD BE RESPONSIBLE FOR FILING THE FEDERAL ESTATE TAX RETURN

SHALL COMPLETE, UNDER OATH, AND FILE A MARYLAND ESTATE TAX RETURN WITH THE REGISTER 9 MONTHS AFTER THE DATE OF THE DEATH OF THE DECEDENT.

(C) (1) AFTER A PERSON FILES A MARYLAND ESTATE TAX RETURN, THE PERSON SHALL FILE AN AMENDED MARYLAND ESTATE TAX RETURN WITH THE REGISTER IF THE MARYLAND ESTATE TAX LIABILITY IS INCREASED BECAUSE OF:

(I) A CHANGE IN THE FEDERAL GROSS ESTATE, FEDERAL TAXABLE ESTATE, FEDERAL ESTATE TAX, OR OTHER CHANGE AS DETERMINED UNDER THE INTERNAL REVENUE CODE;

(II) AFTER-DISCOVERED PROPERTY;

(III) A CORRECTION TO THE VALUE OF PREVIOUSLY REPORTED PROPERTY;

(IV) A CORRECTION TO THE AMOUNT OF PREVIOUSLY CLAIMED DEDUCTIONS; OR

(V) ANY OTHER CORRECTION TO A PREVIOUSLY FILED RETURN.

(2) THE AMENDED RETURN SHALL BE FILED WITHIN 90 DAYS AFTER THE LATER TO OCCUR OF THE DATE OF THE EVENT THAT CAUSED THE INCREASE IN THE MARYLAND ESTATE TAX LIABILITY OR THE DATE ON WHICH THE PERSON REQUIRED TO FILE AN AMENDED MARYLAND ESTATE TAX RETURN LEARNED OR REASONABLY SHOULD HAVE LEARNED OF THE INCREASE IN THE MARYLAND ESTATE TAX LIABILITY.

7-305.1.

(A) THIS SECTION DOES NOT APPLY TO AN AMENDED ESTATE TAX RETURN.

(B) (1) SUBJECT TO § 13-601 OF THIS ARTICLE, THE COMPTROLLER MAY

(Over)

EXTEND THE TIME TO FILE AN ESTATE TAX RETURN UP TO 6 MONTHS, OR IF THE PERSON REQUIRED TO FILE THE ESTATE TAX RETURN IS OUT OF THE UNITED STATES, UP TO 1 YEAR.

(2) AN ESTATE THAT IS AFFORDED A LATER DUE DATE FOR FILING THE FEDERAL ESTATE TAX RETURN UNDER THE INTERNAL REVENUE CODE SHALL BE AFFORDED THE SAME LATER DUE DATE FOR FILING THE MARYLAND ESTATE TAX RETURN.

(3) A REQUEST FOR AN EXTENSION OF TIME TO FILE THE MARYLAND ESTATE TAX RETURN SHALL BE FILED ON A FORM PRESCRIBED BY THE COMPTROLLER.

7-306.

(A) Except as provided in § 7-307 of this subtitle, the person responsible for filing the [federal] MARYLAND estate tax return UNDER § 7-305 OF THIS SUBTITLE shall pay the Maryland estate tax to the Comptroller [when the Maryland estate tax return is filed with the register] NO LATER THAN 9 MONTHS AFTER THE DATE OF THE DEATH OF THE DECEDENT.

(B) AN EXTENSION OF TIME TO FILE THE MARYLAND ESTATE TAX RETURN GRANTED BY THE COMPTROLLER UNDER § 7-305.1 OF THIS SUBTITLE DOES NOT EXTEND THE TIME FOR REMITTING THE MARYLAND ESTATE TAX.

(C) IF AN AMENDED MARYLAND ESTATE TAX RETURN IS FILED PURSUANT TO § 7-305(C) OF THIS SUBTITLE, THE PERSON RESPONSIBLE FOR FILING THE AMENDED MARYLAND ESTATE TAX RETURN SHALL PAY THE ADDITIONAL MARYLAND ESTATE TAX DEVELOPED ON THE AMENDED MARYLAND ESTATE TAX RETURN TO THE COMPTROLLER WHEN THE AMENDED MARYLAND ESTATE TAX RETURN IS FILED WITH THE REGISTER.

7-307.

(d) If an alternative payment schedule is allowed under subsection (a) of this section, the person responsible for filing the [federal] MARYLAND estate tax return UNDER § 7-305 OF THIS SUBTITLE shall pay the tax in accordance with the schedule.

7-308.

(b) (1) The tax shall be apportioned among all persons interested in the estate. [The] EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose.

(2) (I) IF ANY PART OF THE ESTATE CONSISTS OF PROPERTY THE VALUE OF WHICH IS DEEMED INCLUDIBLE IN THE ESTATE UNDER § 7-309(B)(6) OF THIS SUBTITLE, THE AMOUNT OF MARYLAND ESTATE TAX APPORTIONED TO THE PERSON OR PERSONS RECEIVING THAT PROPERTY SHALL BE THE AMOUNT BY WHICH THE TOTAL TAX UNDER THIS SUBTITLE THAT HAS BEEN PAID EXCEEDS THE TOTAL TAX UNDER THIS SUBTITLE THAT WOULD HAVE BEEN PAYABLE IF THE VALUE OF THAT PROPERTY HAD NOT BEEN DEEMED INCLUDIBLE IN THE ESTATE.

(II) ANY TAX APPORTIONED UNDER THIS PARAGRAPH SHALL BE APPORTIONED AMONG ALL PERSONS RECEIVING THAT PROPERTY IN THE PROPORTION THAT THE VALUE OF THE PROPERTY RECEIVED BY EACH PERSON BEARS TO THE TOTAL VALUE OF ALL SUCH PROPERTY.

7-309.

(a) Notwithstanding an Act of Congress that repeals or reduces the federal credit under § 2011 of the Internal Revenue Code, the provisions of this subtitle in effect before the passage of the Act of Congress shall apply with respect to a decedent who dies after the effective date of the Act of Congress so as to continue the Maryland estate tax in force without reduction in the same manner as if the federal credit had not been repealed or reduced.

(b) (1) Except as provided in paragraphs (2) [and (3)] THROUGH (7) of this subsection, after the effective date of an Act of Congress described in subsection (a) of this section, the Maryland estate tax shall be determined using:

(Over)

(i) the federal credit allowable by § 2011 of the Internal Revenue Code as in effect before the reduction or repeal of the federal credit pursuant to the Act of Congress; and

(ii) other provisions of federal estate tax law as in effect on the date of the decedent's death.

(2) Except as provided in [paragraph (3)] PARAGRAPHS (3) THROUGH (7) of this subsection, if the federal estate tax is not in effect on the date of the decedent's death, the Maryland estate tax shall be determined using:

(i) the federal credit allowable by § 2011 of the Internal Revenue Code as in effect before the reduction or repeal of the federal credit pursuant to the Act of Congress; and

(ii) other provisions of federal estate tax law as in effect on the date immediately preceding the effective date of the repeal of the federal estate tax.”.

AMENDMENT NO. 4

On page 1, strike line 15 in its entirety; in line 16, strike “(b)”; strike beginning with “(I)” in line 16 down through “CODE.” in line 18; in line 19, strike the brackets; in the same line, strike “(II)”; in line 22, strike the bracket; in line 23, strike “] \$2,000,000”; in line 24, strike the brackets; in the same line, strike “(III)”; and in line 27, strike “(IV)” and substitute “(III)”.

On page 2, in line 1, after the first “THE” insert “FEDERAL CREDIT USED TO DETERMINE THE”; in the same line, strike “AN AMOUNT EQUAL TO”; in line 2, strike “ADJUSTED”; in line 3, strike “2011(B)(3)” and substitute “2051”; and strike beginning with the second “THE” in line 3 down through “AMOUNT” in line 4 and substitute “\$1,000,000”.

AMENDMENT NO. 5

On page 2, after line 4, insert:

“(4) (I) [If a federal estate tax return is not required to be filed, the person responsible for paying the inheritance tax on property that passes from a decedent under Subtitle 2 of this title is responsible for filing a Maryland estate tax return and paying the Maryland estate tax imposed on the transfer of the Maryland estate of the decedent.] WITH REGARD TO AN

ELECTION TO VALUE PROPERTY AS PROVIDED IN § 2032 OF THE INTERNAL REVENUE CODE, IF A FEDERAL ESTATE TAX RETURN IS NOT REQUIRED TO BE FILED:

1. AN IRREVOCABLE ELECTION MADE ON A TIMELY FILED MARYLAND ESTATE TAX RETURN SHALL BE DEEMED TO BE AN ELECTION AS REQUIRED BY § 2032(D) OF THE INTERNAL REVENUE CODE;

2. THE PROVISIONS OF § 2032(C) OF THE INTERNAL REVENUE CODE DO NOT APPLY; AND

3. AN ELECTION MAY NOT BE MADE UNDER ITEM 1 OF THIS SUBPARAGRAPH UNLESS THAT ELECTION WILL DECREASE:

A. THE VALUE OF THE GROSS ESTATE; AND

B. THE MARYLAND ESTATE TAX DUE WITH REGARD TO THE TRANSFER OF A DECEDENT'S MARYLAND ESTATE.

(II) AN ELECTION TO VALUE PROPERTY AS PROVIDED IN § 2032 OF THE INTERNAL REVENUE CODE FOR MARYLAND ESTATE TAX PURPOSES MUST BE THE SAME AS THE ELECTION MADE FOR FEDERAL ESTATE TAX PURPOSES.

(5) (I) WITH REGARD TO AN ELECTION TO TREAT PROPERTY AS MARITAL DEDUCTION QUALIFIED TERMINABLE INTEREST PROPERTY IN CALCULATING THE MARYLAND ESTATE TAX, AN IRREVOCABLE ELECTION MADE ON A TIMELY FILED MARYLAND ESTATE TAX RETURN SHALL BE DEEMED TO BE AN ELECTION AS REQUIRED BY § 2056(B)(7)(B)(I), (III), AND (V) OF THE INTERNAL REVENUE CODE.

(II) AN ELECTION UNDER THIS PARAGRAPH MADE ON A TIMELY FILED MARYLAND ESTATE TAX RETURN SHALL BE RECOGNIZED FOR PURPOSES OF CALCULATING THE MARYLAND ESTATE TAX EVEN IF AN INCONSISTENT ELECTION IS MADE FOR THE SAME DECEDENT FOR FEDERAL ESTATE

(Over)

TAX PURPOSES.

(6) (I) FOR PURPOSES OF CALCULATING MARYLAND ESTATE TAX, A DECEDENT SHALL BE DEEMED TO HAVE HAD A QUALIFYING INCOME INTEREST FOR LIFE UNDER § 2044(A) OF THE INTERNAL REVENUE CODE WITH REGARD TO ANY PROPERTY FOR WHICH A MARITAL DEDUCTION QUALIFIED TERMINABLE INTEREST PROPERTY ELECTION WAS MADE FOR THE DECEDENT'S PREDECEASED SPOUSE ON A TIMELY FILED MARYLAND ESTATE TAX RETURN UNDER PARAGRAPH (5) OF THIS SUBSECTION.

(II) FOR THE PURPOSE OF APPORTIONING MARYLAND ESTATE TAX UNDER § 7-308 OF THIS SUBTITLE, ANY PROPERTY AS TO WHICH A DECEDENT IS DEEMED TO HAVE HAD A QUALIFYING INCOME INTEREST FOR LIFE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE DEEMED TO BE INCLUDED IN BOTH THE ESTATE AND THE TAXABLE ESTATE OF THE DECEDENT.

(7) FOR PURPOSES OF CALCULATING MARYLAND ESTATE TAX, AMOUNTS ALLOWABLE UNDER § 2053 OR § 2054 OF THE INTERNAL REVENUE CODE AS A DEDUCTION IN COMPUTING THE TAXABLE ESTATE OF A DECEDENT MAY NOT BE ALLOWED AS A DEDUCTION OR AS AN OFFSET AGAINST THE SALES PRICE OF PROPERTY IN DETERMINING GAIN OR LOSS IF THE AMOUNT HAS BEEN ALLOWED AS A DEDUCTION IN COMPUTING THE FEDERAL TAXABLE INCOME OF THE ESTATE OR OF ANY OTHER PERSON.

13-601.

(d) Interest on unpaid Maryland estate tax begins 9 months after the date of the death of a decedent and applies to ALL MARYLAND ESTATE tax that is not paid by that date, including[:

(1) an increase in Maryland estate tax due to a change in federal estate tax made after a payment of Maryland estate tax; and

(2)] a payment made in accordance with an alternative payment schedule.

13-716.

(A) THE COMPTROLLER SHALL ASSESS A PENALTY OF 25% OF THE AMOUNT OF THE UNDERPAYMENT OF TAX WHICH IS ATTRIBUTABLE TO ANY SUBSTANTIAL ESTATE TAX VALUATION UNDERSTATEMENT.

(B) FOR PURPOSES OF THIS SECTION, THERE IS A SUBSTANTIAL ESTATE TAX VALUATION UNDERSTATEMENT IF THE VALUE OF ANY PROPERTY CLAIMED, OR THAT SHOULD HAVE BEEN CLAIMED, ON ANY RETURN OF TAX IMPOSED BY TITLE 7, SUBTITLE 3 OF THIS ARTICLE IS 60% OR LESS OF THE AMOUNT DETERMINED TO BE THE CORRECT AMOUNT OF THAT VALUATION.

(C) A PENALTY MAY NOT BE IMPOSED UNDER SUBSECTION (A) OF THIS SECTION UNLESS THE PORTION OF THE UNDERPAYMENT ATTRIBUTABLE TO SUBSTANTIAL ESTATE TAX VALUATION UNDERSTATEMENT IS GREATER THAN \$5,000.

13-1101.

(a) Except as otherwise provided in this section, an assessment of financial institution franchise tax [or], income tax, OR ESTATE TAX may not be made after 3 years from the later of:

- (1) the date that the return is filed; or
- (2) the date that the return is due.

(b) An assessment of financial institution franchise tax [or], income tax, OR ESTATE TAX may be made at any time if:

- (1) a false return is filed with the intent to evade the tax;
- (2) a willful attempt is made to evade the tax;
- (3) a return is not filed as required under TITLE 7, Title 8, or Title 10 of this

(Over)

article;

(4) AN AMENDED ESTATE TAX RETURN IS NOT FILED AS REQUIRED UNDER TITLE 7 OF THIS ARTICLE;

[(4)] (5) an incomplete return is filed; or

[(5)] (6) a report of federal adjustment is not filed within the period required under § 13-409 of this title.

(c) If a report of federal adjustment is filed within the time required under § 13-409 of this title, the tax collector shall assess the financial institution franchise tax [or], income tax, OR ESTATE TAX within 1 year after the date on which the tax collector receives the report.

(d) (1) Subject to the provisions of paragraph (2) of this subsection, an assessment of income tax OR ESTATE TAX arising out of an amended return shall be made within 3 years after the date that the amended return is filed.

(2) An assessment of income tax under paragraph (1) of this subsection shall be related to changes made by the amended items in the return.”.