
By: **The Speaker (By Request - Administration) and Delegates Aumann, Bartlett, Bates, Benson, Bohanan, Boschert, Boteler, Cluster, Cryor, DeBoy, Donoghue, Dwyer, Eckardt, Edwards, Elliott, Elmore, Frank, Gilleland, Glassman, Haddaway, Hogan, Impallaria, Jennings, Kach, Kelly, Kohl, Krebs, Leopold, Mayer, McComas, McConkey, McDonough, McKee, McMillan, Miller, Moe, Myers, O'Donnell, Parrott, Shank, Shewell, Smigiel, Sossi, Stocksdales, Stull, Trueschler, Weir, Weldon, and Zirkin**

Introduced and read first time: January 25, 2006
Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Estate Tax Modernization Act**

3 FOR the purpose of altering a certain definition under the Maryland estate tax;
4 specifying that certain persons are required to file a Maryland estate tax return
5 under certain circumstances; requiring the filing of certain amended Maryland
6 estate tax returns under certain circumstances; authorizing the Comptroller to
7 extend the time to file an estate tax return under certain circumstances;
8 clarifying the due date for payment of the Maryland estate tax; clarifying the
9 apportionment of the Maryland estate tax among certain persons in certain
10 circumstances; repealing a limit on the unified credit used for determining the
11 Maryland estate tax; clarifying when interest must be paid on unpaid Maryland
12 estate tax; providing for the assessment of a certain penalty for underpayment
13 of the Maryland estate tax under certain circumstances; providing certain
14 periods of limitations for assessment of the Maryland estate tax under certain
15 circumstances; providing for the application of this Act; and generally relating to
16 the Maryland estate tax.

17 BY repealing and reenacting, with amendments,
18 Article - Tax - General
19 Section 7-301(b), 7-302, 7-305, 7-306, 7-307(d), 7-308(b), 7-309, 13-601(d),
20 and 13-1101
21 Annotated Code of Maryland
22 (2004 Replacement Volume and 2005 Supplement)

23 BY adding to
24 Article - Tax - General
25 Section 7-305.1 and 13-716

1 Annotated Code of Maryland
2 (2004 Replacement Volume and 2005 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
4 MARYLAND, That the Laws of Maryland read as follows:

5 **Article - Tax - General**

6 7-301.

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

11 7-302.

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

14 (1) a resident of this State; or

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

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

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

20 7-305.

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

25 (b) [If, after a person files a Maryland estate tax return for an estate, the
26 federal estate tax on that estate is increased, the person shall file an amended
27 Maryland estate tax return with the register when the person pays the additional
28 federal tax.] THE PERSON WHO WOULD BE RESPONSIBLE FOR FILING THE FEDERAL
29 ESTATE TAX RETURN SHALL COMPLETE, UNDER OATH, AND FILE A MARYLAND
30 ESTATE TAX RETURN WITH THE REGISTER 9 MONTHS AFTER THE DATE OF THE
31 DEATH OF THE DECEDENT.

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

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

4 (II) AFTER-DISCOVERED PROPERTY;

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

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

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

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

16 7-305.1.

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

18 (B) (1) SUBJECT TO § 13-601 OF THIS ARTICLE, THE COMPTROLLER MAY
19 EXTEND THE TIME TO FILE AN ESTATE TAX RETURN UP TO 6 MONTHS, OR IF THE
20 PERSON REQUIRED TO FILE THE ESTATE TAX RETURN IS OUT OF THE UNITED
21 STATES, UP TO 1 YEAR.

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

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

29 7-306.

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

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

1 (C) IF AN AMENDED MARYLAND ESTATE TAX RETURN IS FILED PURSUANT TO
2 § 7-305(C) OF THIS SUBTITLE, THE PERSON RESPONSIBLE FOR FILING THE AMENDED
3 MARYLAND ESTATE TAX RETURN SHALL PAY THE ADDITIONAL MARYLAND ESTATE
4 TAX DEVELOPED ON THE AMENDED MARYLAND ESTATE TAX RETURN TO THE
5 COMPTROLLER WHEN THE AMENDED MARYLAND ESTATE TAX RETURN IS FILED
6 WITH THE REGISTER.

7 7-307.

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

11 7-308.

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

18 (2) (I) IF ANY PART OF THE ESTATE CONSISTS OF PROPERTY, THE
19 VALUE OF WHICH IS DEEMED INCLUDIBLE IN THE ESTATE UNDER § 7-309(B)(5) OF
20 THIS SUBTITLE, THE AMOUNT OF MARYLAND ESTATE TAX APPORTIONED TO THE
21 PERSON OR PERSONS RECEIVING THAT PROPERTY SHALL BE THE AMOUNT BY
22 WHICH THE TOTAL TAX UNDER THIS SUBTITLE THAT HAS BEEN PAID EXCEEDS THE
23 TOTAL TAX UNDER THIS SUBTITLE THAT WOULD HAVE BEEN PAYABLE IF THE VALUE
24 OF THAT PROPERTY HAD NOT BEEN DEEMED INCLUDIBLE IN THE ESTATE.

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

29 7-309.

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

36 (b) (1) Except as provided in paragraphs (2) [and (3)] THROUGH (5) of this
37 subsection, after the effective date of an Act of Congress described in subsection (a) of
38 this section, the Maryland estate tax shall be determined using:

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

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

6 (2) Except as provided in [paragraph (3)] PARAGRAPHS (3) THROUGH (5)
7 of this subsection, if the federal estate tax is not in effect on the date of the decedent's
8 death, the Maryland estate tax shall be determined using:

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

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

14 (3) (i) [Notwithstanding any increase in the unified credit allowed
15 against the federal estate tax for decedents dying after 2003, the] THE unified credit
16 used for determining the Maryland estate tax [may not exceed] SHALL BE EQUAL TO
17 the applicable credit amount corresponding to [an] THE applicable exclusion amount
18 [of \$1,000,000 within the meaning of] AS DEFINED IN § 2010(c) of the Internal
19 Revenue Code, IN EFFECT ON THE DATE OF THE DECEDENT'S DEATH.

20 (ii) The Maryland estate tax shall be determined without regard to
21 any deduction for State death taxes allowed under § 2058 of the Internal Revenue
22 Code.

23 (4) (I) [If a federal estate tax return is not required to be filed, the
24 person responsible for paying the inheritance tax on property that passes from a
25 decedent under Subtitle 2 of this title is responsible for filing a Maryland estate tax
26 return and paying the Maryland estate tax imposed on the transfer of the Maryland
27 estate of the decedent.] FOR PURPOSES OF CALCULATING MARYLAND ESTATE TAX, A
28 DECEDENT SHALL BE DEEMED TO HAVE HAD A QUALIFYING INCOME INTEREST FOR
29 LIFE UNDER § 2044(A) OF THE INTERNAL REVENUE CODE WITH REGARD TO ANY
30 PROPERTY FOR WHICH A MARITAL DEDUCTION QUALIFIED TERMINABLE INTEREST
31 PROPERTY ELECTION WAS MADE FOR THE DECEDENT'S PREDECEASED SPOUSE ON A
32 TIMELY FILED MARYLAND ESTATE TAX RETURN UNDER PARAGRAPH (5) OF THIS
33 SUBSECTION.

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

39 (5) FOR PURPOSES OF CALCULATING MARYLAND ESTATE TAX,
40 AMOUNTS ALLOWABLE UNDER § 2053 OR § 2054 OF THE INTERNAL REVENUE CODE AS
41 A DEDUCTION IN COMPUTING THE TAXABLE ESTATE OF A DECEDENT MAY NOT BE

1 ALLOWED AS A DEDUCTION OR AS AN OFFSET AGAINST THE SALES PRICE OF
2 PROPERTY IN DETERMINING GAIN OR LOSS IF THE AMOUNT HAS BEEN ALLOWED AS
3 A DEDUCTION IN COMPUTING THE FEDERAL TAXABLE INCOME OF THE ESTATE OR
4 OF ANY OTHER PERSON.

5 13-601.

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

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

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

13 13-716.

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

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

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

25 13-1101.

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

29 (1) the date that the return is filed; or

30 (2) the date that the return is due.

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

33 (1) a false return is filed with the intent to evade the tax;

34 (2) a willful attempt is made to evade the tax;

1 (3) a return is not filed as required under TITLE 7, Title 8, or Title 10 of
2 this article;

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

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

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

8 (c) If a report of federal adjustment is filed within the time required under §
9 13-409 of this title, the tax collector shall assess the financial institution franchise
10 tax [or], income tax, OR ESTATE TAX within 1 year after the date on which the tax
11 collector receives the report.

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

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

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
18 effect July 1, 2006, and shall be applicable to all decedents dying after December 31,
19 2005.