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By: **Chairman, Ways and Means Committee (By Request - Departmental - Comptroller)**

Introduced and read first time: February 1, 2006

Assigned to: Ways and Means

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A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Estate Tax**

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; providing for certain elections with respect to the Maryland  
11 estate tax; clarifying when interest must be paid on unpaid Maryland estate tax;  
12 providing for the assessment of a certain penalty for underpayment of the  
13 Maryland estate tax under certain circumstances; providing certain periods of  
14 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  
26 Annotated Code of Maryland  
27 (2004 Replacement Volume and 2005 Supplement)

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

1

**Article - Tax - General**

2 7-301.

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

7 7-302.

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

10 (1) a resident of this State; or

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

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

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

16 7-305.

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

21 (b) [If, after a person files a Maryland estate tax return for an estate, the  
22 federal estate tax on that estate is increased, the person shall file an amended  
23 Maryland estate tax return with the register when the person pays the additional  
24 federal tax.] IF A FEDERAL ESTATE TAX RETURN IS NOT REQUIRED TO BE FILED BUT  
25 A FEDERAL ESTATE TAX RETURN WOULD BE REQUIRED TO BE FILED IF THE  
26 APPLICABLE EXCLUSION AMOUNT UNDER 2010(C) OF THE INTERNAL REVENUE CODE  
27 WERE NO GREATER THAN \$1,000,000, THE PERSON WHO WOULD BE RESPONSIBLE FOR  
28 FILING THE FEDERAL ESTATE TAX RETURN SHALL COMPLETE, UNDER OATH, AND  
29 FILE A MARYLAND ESTATE TAX RETURN WITH THE REGISTER 9 MONTHS AFTER THE  
30 DATE OF THE DEATH OF THE DECEDENT.

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

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

- 1 (II) AFTER-DISCOVERED PROPERTY;
- 2 (III) A CORRECTION TO THE VALUE OF PREVIOUSLY REPORTED  
3 PROPERTY;
- 4 (IV) A CORRECTION TO THE AMOUNT OF PREVIOUSLY CLAIMED  
5 DEDUCTIONS; OR
- 6 (V) ANY OTHER CORRECTION TO A PREVIOUSLY FILED RETURN.

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

13 7-305.1.

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

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

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

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

26 7-306.

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

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

35 (C) IF AN AMENDED MARYLAND ESTATE TAX RETURN IS FILED PURSUANT TO  
36 § 7-305(C) OF THIS SUBTITLE, THE PERSON RESPONSIBLE FOR FILING THE AMENDED  
37 MARYLAND ESTATE TAX RETURN SHALL PAY THE ADDITIONAL MARYLAND ESTATE

1 TAX DEVELOPED ON THE AMENDED MARYLAND ESTATE TAX RETURN TO THE  
2 COMPTROLLER WHEN THE AMENDED MARYLAND ESTATE TAX RETURN IS FILED  
3 WITH THE REGISTER.

4 7-307.

5 (d) If an alternative payment schedule is allowed under subsection (a) of this  
6 section, the person responsible for filing the [federal] MARYLAND estate tax return  
7 UNDER § 7-305 OF THIS SUBTITLE shall pay the tax in accordance with the schedule.  
8 7-308.

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

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

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

26 7-309.

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

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

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

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

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

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

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

11 (3) (i) Notwithstanding any increase in the unified credit allowed  
12 against the federal estate tax for decedents dying after 2003, the unified credit used  
13 for determining the Maryland estate tax may not exceed the applicable credit amount  
14 corresponding to an applicable exclusion amount of \$1,000,000 within the meaning of  
15 § 2010(c) of the Internal Revenue Code.

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

19 (4) (I) [If a federal estate tax return is not required to be filed, the  
20 person responsible for paying the inheritance tax on property that passes from a  
21 decedent under Subtitle 2 of this title is responsible for filing a Maryland estate tax  
22 return and paying the Maryland estate tax imposed on the transfer of the Maryland  
23 estate of the decedent.] WITH REGARD TO AN ELECTION TO VALUE PROPERTY AS  
24 PROVIDED IN § 2032 OF THE INTERNAL REVENUE CODE, IF A FEDERAL ESTATE TAX  
25 RETURN IS NOT REQUIRED TO BE FILED:

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

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

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

33 A. THE VALUE OF THE GROSS ESTATE; AND

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

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

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

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

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

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

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

30 13-601.

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

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

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

1 13-716.

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

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

10 (C) A PENALTY MAY NOT BE IMPOSED UNDER SUBSECTION (A) OF THIS  
11 SECTION UNLESS THE PORTION OF THE UNDERPAYMENT ATTRIBUTABLE TO  
12 SUBSTANTIAL ESTATE TAX VALUATION UNDERSTATEMENT IS GREATER THAN \$5,000.  
13 13-1101.

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

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

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

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

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

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

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

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

27 [(4)] (5) an incomplete return is filed; or

28 [(5)] (6) a report of federal adjustment is not filed within the period  
29 required under § 13-409 of this title.

30 (c) If a report of federal adjustment is filed within the time required under §  
31 13-409 of this title, the tax collector shall assess the financial institution franchise  
32 tax [or], income tax, OR ESTATE TAX within 1 year after the date on which the tax  
33 collector receives the report.

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

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

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
7 effect July 1, 2006, and shall be applicable to all decedents dying after December 31,  
8 2005.