

(PRE-FILED)

By: ~~Senator Currie~~ Senators Currie, Brinkley, DeGrange, Garagiola, Hogan, Jones, Kasemeyer, Kramer, Lawlah, McFadden, Munson, Ruben, Schrader, and Stoltzfus

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CHAPTER _____

1 AN ACT concerning

2 **Maryland Estate Tax**

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

23 BY repealing and reenacting, with amendments,
24 Article - Tax - General
25 Section ~~7-309(b)(3)~~ 7-301(b), 7-302, 7-305, 7-306, 7-307(d), 7-308(b), 7-309,

1 13-601(d), and 13-1101
2 Annotated Code of Maryland
3 (2004 Replacement Volume and 2005 Supplement)

4 BY adding to
5 Article - Tax - General
6 Section 7-305.1 and 13-716
7 Annotated Code of Maryland
8 (2004 Replacement Volume and 2005 Supplement)

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

11 **Article - Tax - General**

12 7-301.

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

17 7-302.

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

20 (1) a resident of this State; or

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

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

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

26 7-305.

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

31 (b) [If, after a person files a Maryland estate tax return for an estate, the
32 federal estate tax on that estate is increased, the person shall file an amended
33 Maryland estate tax return with the register when the person pays the additional
34 federal tax.] IF A FEDERAL ESTATE TAX RETURN IS NOT REQUIRED TO BE FILED BUT
35 A FEDERAL ESTATE TAX RETURN WOULD BE REQUIRED TO BE FILED IF THE

1 APPLICABLE EXCLUSION AMOUNT UNDER 2010(C) OF THE INTERNAL REVENUE CODE
2 WERE NO GREATER THAN \$1,000,000, THE PERSON WHO WOULD BE RESPONSIBLE FOR
3 FILING THE FEDERAL ESTATE TAX RETURN SHALL COMPLETE, UNDER OATH, AND
4 FILE A MARYLAND ESTATE TAX RETURN WITH THE REGISTER 9 MONTHS AFTER THE
5 DATE OF THE DEATH OF THE DECEDENT.

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

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

12 (II) AFTER-DISCOVERED PROPERTY;

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

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

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

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

24 7-305.1.

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

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

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

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

1 7-306.

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

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

10 (C) IF AN AMENDED MARYLAND ESTATE TAX RETURN IS FILED PURSUANT TO
11 § 7-305(C) OF THIS SUBTITLE, THE PERSON RESPONSIBLE FOR FILING THE AMENDED
12 MARYLAND ESTATE TAX RETURN SHALL PAY THE ADDITIONAL MARYLAND ESTATE
13 TAX DEVELOPED ON THE AMENDED MARYLAND ESTATE TAX RETURN TO THE
14 COMPTROLLER WHEN THE AMENDED MARYLAND ESTATE TAX RETURN IS FILED
15 WITH THE REGISTER.

16 7-307.

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

20 7-308.

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

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

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

1 ~~7-309.~~

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

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

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

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

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

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

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

24 ~~7-309.~~

25 ~~(b) (3) (4) IN THIS PARAGRAPH, "APPLICABLE EXCLUSION AMOUNT"~~
 26 ~~MEANS THE APPLICABLE EXCLUSION AMOUNT WITHIN THE MEANING OF § 2010(C) OF~~
 27 ~~THE INTERNAL REVENUE CODE.~~

28 ~~{(i)}~~ ~~(H)~~ Notwithstanding any increase in the unified credit
 29 allowed against the federal estate tax for decedents dying after 2003, the unified
 30 credit used for determining the Maryland estate tax may not exceed the applicable
 31 credit amount corresponding to an applicable exclusion amount of ~~{~~\$1,000,000 within
 32 the meaning of § 2010(c) of the Internal Revenue Code~~}~~\$2,000,000.

33 ~~{(ii)}~~ ~~(HH)~~ The Maryland estate tax shall be determined without
 34 regard to any deduction for State death taxes allowed under § 2058 of the Internal
 35 Revenue Code.

36 ~~(IV)~~ (III) UNLESS THE FEDERAL CREDIT ALLOWABLE BY § 2011 OF
 37 THE INTERNAL REVENUE CODE IS IN EFFECT ON THE DATE OF THE DECEDENT'S
 38 DEATH, THE FEDERAL CREDIT USED TO DETERMINE THE MARYLAND ESTATE TAX

1 MAY NOT EXCEED AN AMOUNT EQUAL TO 16% OF THE AMOUNT BY WHICH THE
2 DECEDENT'S ~~ADJUSTED~~ TAXABLE ESTATE, AS DEFINED IN § ~~2011(B)(3)~~ 2051 OF THE
3 INTERNAL REVENUE CODE, EXCEEDS ~~THE LESSER OF \$2,000,000 OR THE APPLICABLE~~
4 ~~EXCLUSION AMOUNT \$1,000,000.~~

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

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

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

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

19 A. THE VALUE OF THE GROSS ESTATE; AND

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

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

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

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

35 (6) (I) FOR PURPOSES OF CALCULATING MARYLAND ESTATE TAX, A
36 DECEDENT SHALL BE DEEMED TO HAVE HAD A QUALIFYING INCOME INTEREST FOR
37 LIFE UNDER § 2044(A) OF THE INTERNAL REVENUE CODE WITH REGARD TO ANY
38 PROPERTY FOR WHICH A MARITAL DEDUCTION QUALIFIED TERMINABLE INTEREST
39 PROPERTY ELECTION WAS MADE FOR THE DECEDENT'S PREDECEASED SPOUSE ON A

1 TIMELY FILED MARYLAND ESTATE TAX RETURN UNDER PARAGRAPH (5) OF THIS
2 SUBSECTION.

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

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

15 13-601.

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

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

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

23 13-716.

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

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

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

35 13-1101.

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

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

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

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

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

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

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

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

11 [(4)] (5) an incomplete return is filed; or

12 [(5)] (6) a report of federal adjustment is not filed within the period
13 required under § 13-409 of this title.

14 (c) If a report of federal adjustment is filed within the time required under §
15 13-409 of this title, the tax collector shall assess the financial institution franchise
16 tax [or], income tax, OR ESTATE TAX within 1 year after the date on which the tax
17 collector receives the report.

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

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

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