

HOUSE BILL 73

Q7
HB 138/06 – W&M

71r0677

By: **Delegates Krebs, Aumann, Beitzel, Dwyer, Eckardt, Elliott, Elmore, Frank, Haddaway, Kach, Shewell, Stocksdale, Weir, and Weldon**

Introduced and read first time: January 22, 2007

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Estate Tax – Family Property Protection Act**

3 FOR the purpose of altering a certain limit on the unified credit used for determining
4 the Maryland estate tax; repealing a requirement that the Maryland estate tax
5 be determined without regard to a certain deduction allowed under the federal
6 estate tax; stating the intent of the General Assembly; providing for the
7 application of this Act; and generally relating to the Maryland estate tax.

8 BY repealing and reenacting, with amendments,
9 Article – Tax – General
10 Section 7–309
11 Annotated Code of Maryland
12 (2004 Replacement Volume and 2006 Supplement)

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

15 **Article – Tax – General**

16 7–309.

17 (a) Notwithstanding an Act of Congress that repeals or reduces the federal
18 credit under § 2011 of the Internal Revenue Code, the provisions of this subtitle in
19 effect before the passage of the Act of Congress shall apply with respect to a decedent
20 who dies after the effective date of the Act of Congress so as to continue the Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 estate tax in force without reduction in the same manner as if the federal credit had
2 not been repealed or reduced.

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

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

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

11 (2) Except as provided in paragraphs (3) through (7) of this subsection,
12 if the federal estate tax is not in effect on the date of the decedent's death, the
13 Maryland estate tax shall be determined using:

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

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

19 (3) (i) Notwithstanding any increase in the unified credit allowed
20 against the federal estate tax [for decedents dying after 2003], the unified credit used
21 for determining the Maryland estate tax may not exceed the applicable credit amount
22 corresponding to an applicable exclusion amount of [\$1,000,000] **\$2,000,000** within
23 the meaning of § 2010(c) of the Internal Revenue Code.

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

27 (iii) **(II)** Unless the federal credit allowable by § 2011 of the
28 Internal Revenue Code is in effect on the date of the decedent's death, the federal
29 credit used to determine the Maryland estate tax may not exceed 16% of the amount
30 by which the decedent's taxable estate, as defined in § 2051 of the Internal Revenue
31 Code, exceeds [\$1,000,000] **\$2,000,000**.

1 (4) (i) With regard to an election to value property as provided in §
2 2032 of the Internal Revenue Code, if a federal estate tax return is not required to be
3 filed:

4 1. an irrevocable election made on a timely filed
5 Maryland estate tax return shall be deemed to be an election as required by § 2032(d)
6 of the Internal Revenue Code;

7 2. the provisions of § 2032(c) of the Internal Revenue
8 Code do not apply; and

9 3. an election may not be made under item 1 of this
10 subparagraph unless that election will decrease:

11 A. the value of the gross estate; and

12 B. the Maryland estate tax due with regard to the
13 transfer of a decedent's Maryland estate.

14 (ii) An election to value property as provided in § 2032 of the
15 Internal Revenue Code for Maryland estate tax purposes must be the same as the
16 election made for federal estate tax purposes.

17 (5) (i) With regard to an election to treat property as marital
18 deduction qualified terminable interest property in calculating the Maryland estate
19 tax, an irrevocable election made on a timely filed Maryland estate tax return shall be
20 deemed to be an election as required by § 2056(b)(7)(B)(i), (iii), and (v) of the Internal
21 Revenue Code.

22 (ii) An election under this paragraph made on a timely filed
23 Maryland estate tax return shall be recognized for purposes of calculating the
24 Maryland estate tax even if an inconsistent election is made for the same decedent for
25 federal estate tax purposes.

26 (6) (i) For purposes of calculating Maryland estate tax, a decedent
27 shall be deemed to have had a qualifying income interest for life under § 2044(a) of the
28 Internal Revenue Code with regard to any property for which a marital deduction
29 qualified terminable interest property election was made for the decedent's
30 predeceased spouse on a timely filed Maryland estate tax return under paragraph (5)
31 of this subsection.

32 (ii) For the purpose of apportioning Maryland estate tax under
33 § 7-308 of this subtitle, any property as to which a decedent is deemed to have had a

1 qualifying income interest for life under subparagraph (i) of this paragraph shall be
2 deemed to be included in both the estate and the taxable estate of the decedent.

3 (7) For purposes of calculating Maryland estate tax, amounts
4 allowable under § 2053 or § 2054 of the Internal Revenue Code as a deduction in
5 computing the taxable estate of a decedent may not be allowed as a deduction or as an
6 offset against the sales price of property in determining gain or loss if the amount has
7 been allowed as a deduction in computing the federal taxable income of the estate or of
8 any other person.

9 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the
10 General Assembly that, before the effective date of any increase in the unified credit
11 allowed against the federal estate tax above the applicable credit amount
12 corresponding to an applicable exclusion amount of \$2,000,000 within the meaning of
13 § 2010(c) of the Internal Revenue Code, the General Assembly will reconsider whether
14 the unified credit used to determine the Maryland estate tax should also be increased
15 to remain consistent with the unified credit allowed for federal estate tax purposes.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 July 1, 2007, and shall be applicable to decedents dying after December 31, 2006.