

# SENATE BILL 182

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SB 99/05 – B&T

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By: **Senators Greenip, Brinkley, Brochin, Colburn, Edwards, Garagiola, Haines, Harris, Hooper, Jacobs, Kittleman, Mooney, Peters, Pipkin, and Simonaire**

Introduced and read first time: January 26, 2007  
Assigned to: Budget and Taxation

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## A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Estate Tax – Unified Credit Effective Exemption Amount and**  
3 **Deduction for State Death Taxes**

4 FOR the purpose of repealing a certain limit on the unified credit used for determining  
5 the Maryland estate tax; repealing a requirement that the Maryland estate tax  
6 be determined without regard to a certain deduction allowed under the federal  
7 estate tax; clarifying a certain limitation on the amount of the Maryland estate  
8 tax; providing for the application of this Act; providing that certain estates may  
9 claim a refund of the Maryland estate tax in certain circumstances; and  
10 generally relating to the Maryland estate tax.

11 BY repealing and reenacting, with amendments,  
12 Article – Tax – General  
13 Section 7–309  
14 Annotated Code of Maryland  
15 (2004 Replacement Volume and 2006 Supplement)

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

18 **Article – Tax – General**

19 7–309.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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6 not been repealed or reduced.

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

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

13                   (ii) other provisions of federal estate tax law, **INCLUDING THE**  
14 **APPLICABLE UNIFIED CREDIT ALLOWED AGAINST THE FEDERAL ESTATE TAX**, as  
15 in effect on the date of the decedent's death.

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

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

22                   (ii) other provisions of federal estate tax law, **INCLUDING THE**  
23 **APPLICABLE UNIFIED CREDIT ALLOWED AGAINST THE FEDERAL ESTATE TAX**, as  
24 in effect on the date immediately preceding the effective date of the repeal of the  
25 federal estate tax.

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

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

1 (iii)] Unless the federal credit allowable by § 2011 of the Internal  
2 Revenue Code is in effect on the date of the decedent's death, the federal credit used to  
3 determine the Maryland estate tax may not exceed 16% of the amount by which the  
4 decedent's taxable estate, as defined in § 2051 of the Internal Revenue Code, exceeds  
5 [\$1,000,000] **THE APPLICABLE EXCLUSION AMOUNT AS DEFINED IN § 2010(C) OF**  
6 **THE INTERNAL REVENUE CODE.**

7 (4) (i) With regard to an election to value property as provided in §  
8 2032 of the Internal Revenue Code, if a federal estate tax return is not required to be  
9 filed:

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

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

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

17 A. the value of the gross estate; and

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

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

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

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

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

7           (ii)   For the purpose of apportioning Maryland estate tax under §  
8 7-308 of this subtitle, any property as to which a decedent is deemed to have had a  
9 qualifying income interest for life under subparagraph (i) of this paragraph shall be  
10 deemed to be included in both the estate and the taxable estate of the decedent.

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

17           SECTION 2. AND BE IT FURTHER ENACTED, That notwithstanding  
18 any other provisions of law, an estate of a decedent who died after December 31, 2003  
19 that has paid the estate tax prior to the enactment of this Act may claim a refund for  
20 all or a portion of the estate tax paid based on the calculation of the estate tax under  
21 this Act.

22           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take  
23 effect July 1, 2007, and shall be applicable to decedents dying after December 31,  
24 2003.