

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 187

(Delegate Rosenberg)

Judiciary

Judicial Proceedings

Estates and Trusts - Conservation Easement - Governing Instrument

This bill provides that a personal representative, trustee, or fiduciary may donate, or in the case of a trustee or fiduciary consent to the donation of, a conservation easement on any real property to obtain the benefit of a federal estate tax exclusion if the will or governing instrument *authorizes* the donation of a conservation easement.

The bill applies retroactively to the donation of a conservation easement from an estate of a decedent who died on or after January 1, 1998.

Fiscal Summary

State Effect: To the extent the bill encourages more donations of conservation easements by personal representatives, trustees, or fiduciaries of Maryland estates, general fund revenues from the estate tax would decrease.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: Chapter 603 of 2000 authorized a personal representative, trustee, or fiduciary to donate, or in the case of a trustee or fiduciary consent to the donation of, a conservation easement on any real property in order to obtain the benefit of the estate tax exclusion allowed under § 2031(c) of the Internal Revenue Code if: (1) the will or governing instrument *directs* the donation of a conservation easement on the real

property; or (2) each interested person or beneficiary who has an interest in the real property that would be affected by the conservation easement consents in writing to the donation.

The bill applied retroactively to the donation of a conservation easement from an estate of a decedent who died on or after January 1, 1998.

Section 2031(c) of the Internal Revenue Code

Section 2031(c) of the Internal Revenue Code allows the executor of an estate, in filing a federal estate tax return, to elect to exclude from the federal gross estate (from which deductions are subtracted to arrive at the federal taxable estate) a specified percentage of the value of land subject to a qualified conservation easement, reduced by the amount of any charitable deduction taken with respect to such land, up to an exclusion limitation of \$500,000 (2002 and thereafter). The exclusion is in addition to the reduction in value attributable to the easement. Section 2031(c) was enacted into law in 1997 (Section 508 of Pub. L. No. 105-34) and applies to estates of decedents who died after December 31, 1997.

Maryland Estate Tax

The Maryland estate tax is imposed on the transfer of the Maryland estate of a decedent who, at the time of death, was a resident of Maryland or was a nonresident whose estate included an interest in real or tangible personal property in Maryland. If a federal estate tax return is required to be filed, the person responsible for filing the federal estate tax return is required to file the Maryland estate tax return and pay the Maryland estate tax. For decedents dying before January 1, 2004, the Maryland estate tax was imposed only if a federal estate tax return was required.

For decedents dying on or after January 1, 2004, the Maryland estate tax is imposed if the decedent's taxable estate exceeds \$1 million, regardless of whether a federal estate tax return is required. For an estate that is subject to the Maryland estate tax where no federal estate tax return is required to be filed, the person who would be responsible for filing the federal estate tax return if the applicable exclusion amount under the federal estate tax were no greater than \$1 million is required to file a Maryland estate tax return and pay the Maryland estate tax.

The Maryland taxable estate is the taxable value of the estate as determined under federal estate tax law, determined without regard to any deduction allowed under the federal estate tax for State death taxes paid. Under the federal estate tax, the tax must be paid by

the executor or administrator of an estate, or, if there is no executor or administrator, then by any person in actual or constructive possession of any property of a decedent.

The Maryland Environmental Trust (MET) reports that it accepts roughly 90% of conservation easements donated in the State, consisting of about 35 to 40 easements per year at an average size of about 115 acres. MET estimates maybe one or two of those easements are donated from estates.

State Fiscal Effect: To the extent the bill encourages more donations of conservation easements by personal representatives, trustees, or fiduciaries of Maryland estates, general fund revenues from the estate tax would decrease. Information is not available regarding the effect donation of conservation easements from estates has on Maryland estate taxes under current law. Because the Maryland estate tax is calculated based on the federal taxable estate, any additional donations from Maryland estates that qualified for the federal estate tax exclusion would decrease the value of those taxable estates by value of the easement plus the percentage of the value of the land subject to the conservation easement allowed under the federal exclusion, decreasing the amount of Maryland estate tax collected from those estates.

In fiscal 2006, \$171.5 million of estate taxes was collected in Maryland, and \$172.2 million and \$150.3 million is forecast to be collected in fiscal 2007 and 2008, respectively.

Additional Information

Prior Introductions: None.

Cross File: SB 219 (Senator Frosh) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Natural Resources, Comptroller's Office, Department of Legislative Services

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ncs/jr

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