

HB1215/183422/2

BY: Delegate Shank

AMENDMENTS TO HOUSE BILL 1215, AS AMENDED

(First Reading File Bill)

AMENDMENT NO. 1

Strike the Committee on Ways and Means Amendment (HB1215/865964/1) in its entirety.

On page 1 of the bill, in line 2, strike “Exemption – Domestic Partners” and substitute “Repeal”; strike beginning with “providing” in line 3 down through “decendent” in line 8 and substitute “repealing the inheritance tax; altering the calculation of the Maryland estate tax; altering certain provisions regarding funding of the registers of wills offices; requiring the Department of Budget and Management, the Comptroller of the Treasury, and the Chief Judge of the Court of Appeals, in cooperation with representatives of the registers of wills, to conduct a certain study and report to the General Assembly on or before a certain date; requiring the Office of the Attorney General, in consultation with the registers of wills, to identify certain provisions of law and submit a certain report to the General Assembly; providing for the application of this Act; and generally relating to the repeal of the inheritance tax”.

AMENDMENT NO. 2

On page 1 of the bill, strike in their entirety lines 9 through 13, inclusive, and substitute:

“BY repealing

Article - Estates and Trusts

Section 2-205(d) and (e), 2-206(n), 2-207, 5-505, and 7-307

Annotated Code of Maryland

(2001 Replacement Volume and 2008 Supplement)

BY repealing

Article - Tax - General

(Over)

Section 1-101(j); 2-701 and 2-702 and the subtitle “Subtitle 7. Inheritance Tax Revenue Distribution”; 7-201 through 7-225, 7-231(a) through (d), 7-232 through 7-234, and the subtitle “Subtitle 2. Inheritance Tax”; 13-511, 13-701(c), 13-805(b), 13-845 and the part “Part VII. Sale of Estate Property”; and 13-906

Annotated Code of Maryland
(2004 Replacement Volume and 2008 Supplement)

BY adding to

Article - Estates and Trusts
Section 2-205(d)
Annotated Code of Maryland
(2001 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, with amendments,

Article - Tax - General
Section 7-304(b)(1), 13-101(c)(2), 13-302(c), 13-510(a), 13-601, 13-603, 13-806,
13-901(d), and 13-1104(d)
Annotated Code of Maryland
(2004 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, with amendments, and transferring

Article - Tax - General
Section 7-228 and 7-231(e)
Annotated Code of Maryland
(2004 Replacement Volume and 2008 Supplement)

to be

Article - Estates and Trusts
Section 2-213
Annotated Code of Maryland
(2001 Replacement Volume and 2008 Supplement)”.

AMENDMENT NO. 3

On page 1 of the bill, in line 15, after “That” insert “Section(s) 2-205(d) and (e), 2-206(n), 2-207, 5-505, and 7-307 of Article – Estates and Trusts of the Annotated Code of Maryland be repealed.”

SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 1-101(j); 2-701 and 2-702 and the subtitle “Subtitle 7. Inheritance Tax Revenue Distribution”; 7-201 through 7-225, 7-231(a) through (d), 7-232 through 7-234, and the subtitle “Subtitle 2. Inheritance Tax”; 13-511, 13-701(c), 13-805(b), 13-845 and the part “Part VII. Sale of Estate Property”; and 13-906 of Article – Tax – General of the Annotated Code of Maryland be repealed.

SECTION 3. AND BE IT FURTHER ENACTED, That”.

AMENDMENT NO. 4

On pages 1 and 2 of the bill, strike in their entirety the lines beginning with line 16 on page 1 through line 12 on page 2, inclusive, and substitute:

“Article – Estates and Trusts

2–205.

(D) (1) THE SALARIES OF THE REGISTERS OF WILLS AND THE COSTS AND EXPENSES OF THE OFFICES OF THE REGISTERS OF WILLS SHALL BE FUNDED THROUGH THE STATE BUDGET.

(2) THE REGISTERS OF WILLS SHALL DEPOSIT THE FEES COLLECTED UNDER § 2-206 OF THIS SUBTITLE TO THE GENERAL FUND OF THE STATE.

(3) FOR EACH FISCAL YEAR, EACH REGISTER OF WILLS SHALL SUBMIT A BUDGET FOR THE REVIEW AND APPROVAL OF THE GENERAL ASSEMBLY.

(4) EACH BUDGET SUBMITTED UNDER THIS SUBSECTION SHALL BE SUBMITTED TO THE COMPTROLLER IN A UNIFORM FORMAT AS PRESCRIBED BY THE SECRETARY OF BUDGET AND MANAGEMENT.

(5) EXPENDITURES FOR THE REGISTERS OF WILLS OFFICES MAY ONLY BE MADE IN ACCORDANCE WITH:

(I) AN APPROPRIATION IN THE ANNUAL STATE BUDGET APPROVED BY THE GENERAL ASSEMBLY; OR

(II) THE BUDGET AMENDMENT PROCEDURE UNDER § 7-209 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

Article – Tax – General

7-304.

(b) (1) Except as otherwise provided in this subsection, the Maryland estate tax is the amount[, if any, by which] OF the federal credit [exceeds the total of death taxes other than the Maryland estate tax that:

(i) are imposed by a state on property included in the Maryland estate;

(ii) are allowable in computing the federal credit; and

(iii) except as provided in § 13-906 of this article, have actually been paid out of the Maryland estate and received by the appropriate unit of this State].

13-101.

(c) (2) "Tax collector" includes:

(i) the Comptroller; AND

(ii) the Department, with respect to:

1. the financial institution franchise tax; and

2. the public service company franchise tax[; and

(iii) the registers of wills, with respect to the inheritance tax].

13-302.

(c) If a person fails to comply with a subpoena or fails to testify on any matter on which the person lawfully may be interrogated, on petition of a tax collector, a circuit court [or, if the subpoena is issued under authority of an orphans' court, the orphans' court] may pass an order directing compliance with the subpoena or compelling testimony.

13-510.

(a) Except as provided in subsection (b) of this section and subject to § 13-514 of this subtitle, within 30 days after the date on which a notice is mailed, a person or governmental unit that is aggrieved by the action in the notice may appeal to the Tax Court from:

(Over)

(1) a final assessment of tax, interest, or penalty under this article;

(2) a final determination on an application for revision or claim for refund under § 13-508 of this subtitle;

~~[(3) an inheritance tax determination by a register or by an orphans' court other than a circuit court sitting as an orphans' court;]~~

~~[(4) (3) a denial of an alternative payment schedule for [inheritance tax or] Maryland estate tax;~~

~~[(5) (4) a final determination on a claim for return of seized property under § 13-839 or § 13-840 of this title; or~~

~~[(6) (5) a disallowance of a claim for refund under § 13-904 of this title.~~

13-601.

(a) Except as otherwise provided in this section, if a person or governmental unit fails to pay a tax imposed under this article on or before the date on which the tax is due, the tax collector shall assess interest on the unpaid tax from the due date to the date on which the tax is paid.

(b) Except as provided in [subsections (c)(2) and (d)] **SUBSECTION (C)** of this section, the date on which the tax is due is determined without regard to any extension of time to file a return.

~~[(c) Interest on unpaid inheritance tax begins:~~

~~(1) 30 days after the date on which the tax is determined;~~

(2) on the original due date, if there is no formal administration of the estate and the tax is not paid within 30 days after the date on which the tax bill is mailed; or

(3) 30 days after the original due date, if an alternative payment schedule for inheritance tax is allowed.]

[(d)] (C) Interest on unpaid Maryland estate tax begins 9 months after the date of the death of a decedent and applies to all Maryland estate tax that is not paid by that date, including a payment made in accordance with an alternative payment schedule.

[(e)] (D) Interest on unpaid Maryland generation-skipping transfer tax begins on the date the Maryland generation-skipping transfer tax return is due and applies to tax that is not paid by that date, including an increase in Maryland generation-skipping transfer tax due to a change in federal generation-skipping transfer tax made after a payment of Maryland generation-skipping transfer tax.

[(f)] (E) An overpayment of sales and use tax stops the accrual of interest on a sales and use tax deficiency to the extent of the overpayment as of the date the overpayment is made.

13-603.

(a) Except as otherwise provided in this section, if a claim for refund under § 13-901(a)(1) or (2) or [(d)(1)(i) or (2)] (D) of this title is approved, the tax collector shall pay interest on the refund from the 45th day after the claim is filed in the manner required in Subtitle 9 of this title to the date on which the refund is paid.

(b) A tax collector may not pay interest on a refund if the claim for refund is:

(Over)

(1) made under any provision other than § 13-901(a)(1) or (2) or [(d)(1)(i) or (2)] (D) of this title;

(2) based on:

(i) an error or mistake of the claimant not attributable to the State or a unit of the State government;

(ii) withholding excess income tax; OR

(iii) an overpayment of estimated financial institution franchise tax or estimated income tax; or

[(iv) an overpayment of Maryland estate tax based on an inheritance tax payment made after payment of Maryland estate tax; or]

(3) made for Maryland estate tax or Maryland generation-skipping transfer tax more than 1 year after the event on which the claim is based.

13-806.

[(a)] Unless another date is specified by law [and except for a lien under subsection (b) of this section], a lien arises on the date of notice that the tax is due and continues to the date on which the lien is:

(1) satisfied; or

(2) released by the tax collector because the lien is:

(i) unenforceable by reason of lapse of time; or

(ii) uncollectible.

[(b) (1) Except as otherwise provided in this subsection, a lien for unpaid inheritance tax:

(i) arises on the date of distribution; and

(ii) continues for 4 years.

(2) If the property is subject to a special valuation under § 7-211 of this article, a lien:

(i) arises on the date on which the interest in the property vests in possession; and

(ii) continues for 4 years.

(3) If the unpaid inheritance tax is attributable to the disqualification of property that was qualified for special valuation or exemption under § 7-211 of this article, the lien:

(i) arises on the date on which the decedent died; and

(ii) continues for 20 years.]

13-901.

(d) A claim for refund of Maryland estate tax or Maryland generation-skipping transfer tax may be filed by a claimant required to pay the tax if:

(1) the Maryland estate tax is decreased as a result of:

(i) a decrease in the federal estate tax on the estate; or

(Over)

[(ii) an inheritance tax payment made after a Maryland estate tax payment; or]

(2) the Maryland generation-skipping transfer tax is decreased as a result of a decrease in the federal generation-skipping transfer tax on the generation-skipping transfer.

13-1104.

(d) A claim for refund of Maryland estate tax[, inheritance tax,] or Maryland generation-skipping transfer tax may not be filed after 3 years from the date of the event that caused the refund.

SECTION 4. AND BE IT FURTHER ENACTED, That Section(s) 7-228 and 7-231(e) of Article – Tax – General of the Annotated Code of Maryland be repealed and reenacted, with amendments, and transferred to be Section(s) 2-213 of Article – Estates and Trusts of the Annotated Code of Maryland, to read as follows:

Article – Estates and Trusts

[7-231.] 2-213.

[(e)] (A) For an estate of a nonresident decedent, the register shall cooperate with the domiciliary taxing authorities and give them any information requested about the estate.

[7-228.]

[(a)] (B) For an estate of a nonresident decedent, if the death taxes and interest and penalties on the death taxes due to a domiciliary state or a political subdivision of a domiciliary state are not paid or secured, the unit responsible for

collecting the death taxes in the domiciliary state or subdivision may petition and receive from the court in this State that granted letters of administration for the estate an order for:

(1) [an] **AN** accounting of the property in this State; and

(2) [payment] **PAYMENT** of the death taxes and interest and penalties on the death taxes.

[(b)] (C) The personal representative of an estate of a nonresident decedent is not entitled to approval for a final accounting or discharge until the personal representative files with the court that granted letters of administration for the estate:

(1) [proof] **PROOF** that all death taxes and the interest and penalties on the death taxes have been paid to or secured for the domiciliary taxing authorities; or

(2) [the] **THE** consent of the domiciliary taxing authorities to the final accounting or discharge.

[(c)] (D) This section [and § 7-231(e) of this subtitle] shall be construed liberally to ensure that the domiciliary state of a nonresident decedent receives the death taxes and the interest and penalty on the death taxes due to that state from the estate of the decedent.

SECTION 5. AND BE IT FURTHER ENACTED, That, on or before December 1, 2009, the Department of Budget and Management, the Comptroller of the Treasury, and the Chief Judge of the Court of Appeals, in cooperation with representatives of the registers of wills, jointly shall conduct a study and report to the budget committees of the General Assembly, in accordance with § 2-1246 of the State Government Article, on the appropriate long-range mechanisms for funding and budgetary control and oversight of the registers of wills offices in light of the repeal of the inheritance tax as

(Over)

provided under this Act. The report shall include recommendations as to whether the budgets of the registers of wills offices should be included in the budget for the Executive Branch or the Judicial Branch of government and the appropriate level of budgetary oversight and shall include drafts of any legislative changes necessary to implement the recommendations.

SECTION 6. AND BE IT FURTHER ENACTED, That, on or before December 1, 2009, the Office of the Attorney General, in consultation with the registers of wills, shall identify any provisions of the Estates and Trust Article or other provisions of the Annotated Code of Maryland that are rendered inaccurate or obsolete as a result of this Act and, in accordance with § 2-1246 of the State Government Article, shall submit a report to the General Assembly on its findings with recommendations for any amendments to the Annotated Code of Maryland.”.

AMENDMENT NO. 5

On page 2 of the bill, in line 13, strike “2.” and substitute “7.”; in line 14, after “and” insert “, except as otherwise provided in this section.”; and in the same line, after “2009.” insert “Those statutes in effect on June 30, 2009, shall govern the administration, on and after July 1, 2009, of estates of persons who died before July 1, 2009, and shall govern the imposition, rate, administration, collection, enforcement, and distribution, on and after July 1, 2009, of the inheritance tax on property passing from persons who died before July 1, 2009. The repeal of §§ 2-206(n) and 2-207 of the Estates and Trusts Article under this Act and the changes to § 2-205 of the Estates and Trusts Article under this Act shall be applicable to fiscal years beginning on or after July 1, 2010. On and after July 1, 2010, the registers of wills shall deposit any inheritance tax revenue collected to the General Fund of the State.”.