

HOUSE BILL 157

Q7

9lr1156

By: **Delegates Krebs, Bates, Boteler, Dwyer, George, Haddaway, Howard, Miller, Riley, Schuh, Sossi, Stifler, and Stocksdale**
Introduced and read first time: January 26, 2009
Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Death Taxes – Family Property Protection Act**

3 FOR the purpose of repealing 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; providing for the application of this Act; and generally relating to the
7 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 2008 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
21 estate tax in force without reduction in the same manner as if the federal credit had
22 not been repealed or reduced.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

20 (3) [(i) Notwithstanding any increase in the unified credit allowed
21 against the federal estate tax for decedents dying after 2003, the unified credit used
22 for determining the Maryland estate tax may not exceed the applicable credit amount
23 corresponding to an applicable exclusion amount of \$1,000,000 within the meaning of §
24 2010(c) of the Internal Revenue Code.

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

28 (iii)] Unless the federal credit allowable by § 2011 of the Internal
29 Revenue Code is in effect on the date of the decedent's death, the federal credit used to
30 determine the Maryland estate tax may not exceed 16% of the amount by which the
31 decedent's taxable estate, as defined in § 2051 of the Internal Revenue Code, exceeds
32 **[\$1,000,000] THE APPLICABLE EXCLUSION AMOUNT CORRESPONDING TO THE**
33 **APPLICABLE UNIFIED CREDIT UNDER PARAGRAPH (1) OR (2) OF THIS**
34 **SUBSECTION.**

35 (4) (i) With regard to an election to value property as provided in §
36 2032 of the Internal Revenue Code, if a federal estate tax return is not required to be
37 filed:

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

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

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

8 A. the value of the gross estate; and

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

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

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

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

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

29 (ii) For the purpose of apportioning Maryland estate tax under
30 § 7-308 of this subtitle, any property as to which a decedent is deemed to have had a
31 qualifying income interest for life under subparagraph (i) of this paragraph shall be
32 deemed to be included in both the estate and the taxable estate of the decedent.

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 July 1, 2009, and shall be applicable to decedents dying after December 31, 2008.