

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 582
Judiciary

(Delegate Carter, *et al.*)

Judicial Proceedings

Estates and Trusts - Real and Leasehold Property - Valuation

This bill allows real and leasehold property in an estate to be valued at the contract sales price for the property, instead of an appraisal at fair market value, if (1) the price is set forth on a settlement statement for an arm's length contract of sale of the property and (2) the settlement on the contract occurs within one year after the decedent's death. The provision does not apply to property assessed for property tax purposes on the basis of its use value.

Fiscal Summary

State Effect: General fund revenues may be affected to the extent the contract sales price valuation method allowed under the bill results in higher or lower valuations of real and leasehold property in estates, potentially reducing probate fees and inheritance taxes collected. State income tax revenues may also be affected, to the extent the availability of the contract sales price valuation method may limit or eliminate capital gains or losses realized on real or leasehold property distributed from an estate.

Local Effect: Local income tax revenues may similarly be affected, but any impact is indeterminate. Local expenditures are not affected.

Small Business Effect: None.

Analysis

Current Law: Within three months of appointment, a personal representative for an estate must prepare and file an inventory of property owned by the decedent at the time of

the decedent's death, indicating the fair market value of each item listed as of the date of the death of the decedent.

With specified exceptions, the personal representative must secure an independent appraisal of each item of property in the inventory. An exception from the appraisal requirement is allowed with respect to real and leasehold property. Instead of obtaining an appraisal, the property may be valued at the full cash value for property tax assessment purposes, unless the property is assessed on the basis of its use value.

A supplemental inventory may be filed whenever the personal representative learns that the value indicated in the original inventory for an item is erroneous or misleading. In addition, at any time before an estate is closed, the State or an interested person may petition the court for a revision of a value assigned to an item of inventory. The court may require a revision as it considers appropriate.

Probate Fees

Probate fees are assessed based on the value of the estate as shown in **Exhibit 1**.

Exhibit 1
Probate Fees

| <u>Value of Estate</u> | <u>Fees</u> |
|---------------------------|-------------|
| Less than \$10,000 | \$50 |
| \$10,000 - \$20,000 | \$100 |
| \$20,000 - \$50,000 | \$150 |
| \$50,000 - \$75,000 | \$200 |
| \$75,000 - \$100,000 | \$300 |
| \$100,000 - \$250,000 | \$400 |
| \$250,000 - \$500,000 | \$500 |
| \$500,000 - \$750,000 | \$750 |
| \$750,000 - \$1,000,000 | \$1,000 |
| \$1,000,000 - \$2,000,000 | \$1,500 |
| \$2,000,000 - \$5,000,000 | \$2,500 |
| \$5,000,000 + | \$2,500* |

* plus .02% of excess over \$5,000,000

Inheritance Tax

The value of property that passes from a decedent, for purposes of the inheritance tax, is the appraised value of the property required to be stated in the inventory required to be filed by the personal representative. The inheritance tax is 10% of the clear value of property (fair market value minus expenses) that passes from a decedent. The inheritance tax does not apply in certain cases, including receipt of property that passes from a decedent to or for the use of specified family members.

Disposition of Probate Fees and Inheritance Taxes

Each month, registers of wills remit to the Comptroller an amount equal to the inheritance tax collected in the preceding month, less a 25% commission that the registers may retain. The salaries of the registers and office expenses are paid with fees and receipts of the office and the excess of fees and receipts over expenses is delivered annually to the Comptroller and deposited in the general fund.

Background: The Estate and Trust Law Section of the Maryland State Bar Association indicates that the price in a contemporaneous sale by an arm's length transaction between disinterested persons can serve as a less expensive and/or more accurate assessment of fair market value than a professional independent appraisal or the full cash value for property tax purposes. A uniform statewide approach does not exist however, among county registers of wills as to whether the valuation method can be used and, if so, within what period after the death of the decedent the sale must have occurred.

State and Local Fiscal Effect: A potential reduction in general fund revenues may occur to the extent individuals use the contract sales price valuation method under circumstances that reduce probate fees, inheritance tax liability associated with real and leasehold property, and an estate's overall value. It cannot be reliably estimated at this time, however, to what extent the use of the contract sales price valuation method may change the value attributed to real and leasehold property in estates and total estate values overall.

Probate fees are determined based on the value of an estate. Inheritance tax liability is determined based on the value of property listed in an inventory. General fund revenues are generated from inheritance tax collections and the excess fees from the registers of wills that are remitted to the Comptroller. Fiscal 2008 revenues and expenditures of the registers are shown in **Exhibit 2**.

To the extent the use of the contract sales price valuation method in this bill limits or eliminates capital gains or losses that may otherwise be realized upon the eventual sale of the property for a higher or lower price than the appraised or property tax assessment

value, State and local income tax revenues may fluctuate. The extent of any fluctuation cannot be reliably estimated at this time.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, Judiciary (Administrative Office of the Courts), Register of Wills, Maryland State Bar Association (Estate and Trust Law Section), Department of Legislative Services

Fiscal Note History: First Reader - March 10, 2009
mlm/kdm Revised - House Third Reader - March 27, 2009

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Exhibit 2
Revenues and Expenses at the Registers of Wills
Fiscal 2008

| <u>County</u> | <u>Probate Fees</u> | <u>Total Revenues Collected</u> | <u>Taxes Remitted to the State</u> | <u>Revenues Retained by Registers</u> | <u>Excess Fees to General Fund</u> |
|-----------------|---------------------|---------------------------------|------------------------------------|---------------------------------------|------------------------------------|
| Allegany | \$107,648 | \$853,937 | \$559,663 | \$294,274 | -\$105,729 |
| Anne Arundel | 657,740 | 5,601,735 | 3,686,249 | 1,915,486 | 465,525 |
| Baltimore City | 545,971 | 5,912,286 | 4,000,443 | 1,911,843 | -38,877 |
| Baltimore | 1,353,177 | 15,935,727 | 10,869,251 | 5,066,476 | 2,770,106 |
| Calvert | 114,026 | 1,082,562 | 724,730 | 357,832 | -49,594 |
| Caroline | 49,271 | 389,802 | 255,319 | 134,483 | -156,994 |
| Carroll | 222,991 | 2,431,895 | 1,647,750 | 784,144 | 394,351 |
| Cecil | 111,959 | 1,387,543 | 949,386 | 438,157 | -14,980 |
| Charles | 115,869 | 806,166 | 515,320 | 290,846 | -279,451 |
| Dorchester | 61,119 | 344,306 | 212,055 | 132,251 | -170,353 |
| Frederick | 226,255 | 2,222,848 | 1,489,217 | 733,630 | 140,749 |
| Garrett | 41,967 | 463,700 | 316,004 | 147,696 | -154,470 |
| Harford | 233,976 | 2,268,685 | 1,518,304 | 750,382 | 234,044 |
| Howard | 248,642 | 3,182,207 | 2,183,807 | 998,401 | 464,406 |
| Kent | 67,057 | 521,764 | 338,085 | 183,679 | -72,493 |
| Montgomery | 1,441,409 | 15,762,373 | 10,652,645 | 5,109,729 | 2,333,437 |
| Prince George's | 709,470 | 4,995,859 | 3,185,874 | 1,809,985 | -305,420 |
| Queen Anne's | 71,943 | 1,075,689 | 750,407 | 325,282 | -71,193 |
| St. Mary's | 110,386 | 899,632 | 588,979 | 310,653 | -109,682 |
| Somerset | 26,361 | 346,586 | 240,062 | 106,525 | -187,244 |
| Talbot | 141,222 | 1,039,868 | 671,514 | 368,354 | -118,343 |
| Washington | 209,954 | 2,387,229 | 1,621,364 | 765,864 | 286,883 |
| Wicomico | 111,671 | 1,162,608 | 784,052 | 378,556 | -39,294 |
| Worcester | 94,244 | 1,965,176 | 1,393,722 | 571,454 | 224,509 |
| Total | \$7,074,331 | \$73,040,181 | \$49,154,199 | \$23,885,982 | \$5,439,892 |