

**Department of Legislative Services**  
 Maryland General Assembly  
 2009 Session

**FISCAL AND POLICY NOTE**

House Bill 157 (Delegate Krebs, *et al.*)  
 Ways and Means

**Maryland Death Taxes - Family Property Protection Act**

This bill repeals provisions relating to the Maryland estate tax that were enacted by Chapter 430 of 2004 (the Budget Reconciliation and Financing Act (BRFA) of 2004) by recoupling Maryland estate tax law to the gradual increases in the unified credit allowed against the federal estate tax; and repealing the provision relating to the deduction for State death taxes allowed under the federal estate tax.

The bill also provides that under specified circumstances the federal credit used to determine the Maryland taxable estate may not exceed 16% of the amount by which a decedent’s taxable estate exceeds the applicable exclusion amount as defined by the Internal Revenue Code.

The bill takes effect July 1, 2009, and applies to decedents dying after December 31, 2008.

**Fiscal Summary**

**State Effect:** General fund revenues decrease by \$48.8 million in FY 2010. Future year revenues reflect increasing unified credit amounts and the current estate tax revenue forecast. Expenditures are not affected.

(\$ in millions)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	(\$48.8)	(\$70.1)	(\$18.9)	\$0	\$0
Expenditure	0	0	0	0	0
Net Effect	(\$48.8)	(\$70.1)	(\$18.9)	\$0	\$0

*Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** None.

**Small Business Effect:** Potential meaningful. Small business, including farms, will significantly reduce State estate taxes.

## Analysis

**Current Law:** The Maryland estate tax is decoupled from the federal estate tax as discussed below.

**Background:** The federal Economic Growth and Tax Reconciliation Act of 2001 provided for the reduction and ultimate repeal of the credit allowed under the federal estate tax for state death taxes paid (federal credit). Maryland, like most states, had an estate tax that was linked directly to the federal credit. Without statutory changes by the General Assembly, the repeal of the federal credit under the 2001 federal tax Act would have automatically repealed the State estate tax because of the link between the State tax and federal credit.

As part of the 2002 BRFA, the Maryland estate tax was partially decoupled from the federal estate tax, thereby continuing the State estate tax notwithstanding the phase out and repeal of the federal credit. The State estate tax is now calculated as if the federal tax Act had not phased out the federal credit; however, it is calculated using other provisions of federal estate tax law in effect on the date of the decedent's death.

### *Unified Credit*

The Maryland estate tax is calculated as the lesser of the federal estate tax after deducting the unified credit or the federal credit, reduced by any inheritance tax paid. The unified credit used to calculate the State estate tax, which effectively sets the threshold for taxability of an estate, is the unified credit in effect as of the decedent's death as set forth in federal law. Under the federal Act, the amount effectively exempted under the unified credit was increased from \$700,000 to \$1.0 million in 2002, and then phased up over a period of years to \$3.5 million in 2009.

The 2002 BRFA did not, however, decouple the Maryland estate tax from the gradual increases in the unified credit allowed against the federal estate tax. As the unified credit increases, the amount of the Maryland estate tax would have declined.

The 2004 BRFA had the effect of freezing the amount of the unified credit at \$345,800 so as to exclude \$1.0 million from the federal estate tax for purposes of the Maryland estate tax calculation. The 2004 BRFA affected the estate tax returns filed for decedents dying after December 31, 2003.

Chapter 225 of 2006 limited the amount of the federal credit used to calculate the Maryland estate tax to 16% of the amount by which the decedent's taxable estate exceeds \$1.0 million.

### *Deduction for State Death Taxes*

By remaining coupled to the federal estate tax base, the decoupled Maryland estate tax incorporated a provision of federal law effective beginning in 2005 that would have allowed a deduction for State death taxes paid, in lieu of the previously allowed credit for State death taxes paid. Allowing the deduction of State death taxes for purposes of determining the State death tax base would have resulted in a circular calculation, because the tax being calculated results in a deduction from the tax base, which then alters the calculation of the tax owed.

The 2004 BRFA required that the Maryland estate tax be determined without regard to the deduction for State death taxes allowed for purposes of the federal estate tax. The 2004 BRFA effectively created an addition modification to the federal taxable estate for Maryland estate tax purposes in the amount deducted for State death taxes paid. A similar addition modification to the federal tax base is required under the Maryland income tax for State and local income taxes for which a deduction is allowed for federal income tax purposes. This provision simplifies the calculation of the Maryland estate tax while preventing additional loss of revenue from the Maryland estate tax.

**State Fiscal Effect:** General fund revenues decrease by \$48.8 million in fiscal 2010 as a result of the bill. The estimated effect of each provision is discussed in greater detail below. As noted, this bill repeals provisions of the Maryland estate tax that were enacted by the 2004 BRFA. However, the revenue loss associated with the bill differs from the revenue increase associated with the 2004 BRFA due to the most recent estate tax revenue forecast by the Board of Revenue Estimates in December 2008.

### *Unified Credit*

As discussed above, the 2002 BRFA decoupled the calculation of the Maryland estate tax liability from part of the calculation of the federal estate tax liability. However, the 2002 BRFA did not decouple the Maryland estate tax from the gradual increases in the unified credit allowed against the federal estate tax. The 2004 BRFA had the effect of freezing the amount of the unified credit at \$345,800 so as to exclude \$1,000,000 from the federal estate tax for purposes of the Maryland estate tax calculation. However, the bill “unfreezes” the amount of the unified credit and recouples it to the gradual increases allowed against the federal estate tax.

The following estimate is based on actual estate tax returns filed for individuals dying between October 1, 2005 and September 30, 2007. Each year was calculated alternatively with the decoupled current unified credit under the Maryland estate tax (\$345,800) and the credit amount allowed under federal law. The difference, as a percentage of current law, was applied to the official estimates of estate tax revenues. It

is assumed that 75% of revenues from those dying in a particular calendar year will come in the following fiscal year and the balance in the next fiscal year. **Exhibits 1 and 2** show the estimate in greater detail.

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**Exhibit 1**  
**Estimated Percentage Increase Due to Limiting Unified Credit Exemption Amount**

<b>Year of Death</b>	<b>Exclusion Amount Under Current Law</b>	<b>Exclusion Amount Under HB 157</b>	<b>Unified Credit Under Current Law</b>	<b>Unified Credit Under HB 157</b>	<b>Estimated Percent of Revenue Decrease</b>
2009	1,000,000	3,500,000	345,800	1,455,800	-45.8%
2010	1,000,000	3,500,000	345,800	1,455,800	-45.8%
2011*	1,000,000	1,000,000	345,800	345,800	0.0%
2012*	1,000,000	1,000,000	345,800	345,800	0.0%
2013*	1,000,000	1,000,000	345,800	345,800	0.0%

\*Exclusion and unified credit amounts under the bill revert to federal law in effect prior to enactment of the 2001 federal tax bill.

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**Exhibit 2**  
**General Fund Revenue Decrease Resulting from Recoupling of Unified Credit (\$ Millions)**

<b>Fiscal Year</b>	<b>Current Estate Tax Estimate<sup>1</sup></b>	<b>General Fund Revenue Decrease</b>
2010	\$127.2	\$43.6
2011	137.0	62.7
2012	147.4	16.9
2013	158.7	0
2014	170.7	0

<sup>1</sup>Bureau of Revenue Estimates

### *Deduction for State Death Taxes*

By recoupling to the federal estate tax base, the “decoupled” Maryland estate tax will incorporate a provision of federal law effective beginning in 2005 that will allow a deduction for State death taxes paid in lieu of the previously allowed credit for State death taxes paid. Allowing the deduction of State death taxes for purposes of determining the State death tax base will result in a circular calculation, because the tax being calculated results in a deduction from the tax base, which then alters the calculation of the tax owed. When the federal provision allowing a deduction for State death taxes takes effect, a series of calculations will be required to calculate the Maryland estate tax.

The bill repeals an addition modification that was created under the 2004 BRFA to the federal taxable estate for Maryland estate tax purposes in the amount deducted for State death taxes paid. (A similar addition modification to the federal tax base is required under the Maryland income tax for State and local income taxes for which a deduction is allowed for federal income tax purposes.)

Under prior law, beginning with estates in which the decedent died on or after January 1, 2005, State estate tax revenues would have declined due to the provision of a federal deduction for State death taxes. For an individual return, the value of the deduction would depend on the highest marginal rate to which the estate is subject, which can range up to 16%. On an aggregate basis, the impact on the State will depend on the number and size of estates for which estate tax was paid in the given fiscal year.

The Department of Legislative Services and the Comptroller’s Office examined estate tax returns for individuals dying in calendar 2002 and found that the potential revenue loss resulting from the pre-2004 BRFA calculation – as proposed by the bill – of the Maryland estate tax was a little over 10%. In fiscal 2010 estimated estate tax revenues could decline by approximately \$5.2 million. In fiscal 2011, estimated estate tax revenues could decline by \$7.4 million.

### *Total Effect of HB 157*

**Exhibit 3** shows the total fiscal effect resulting from the bill.

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**Exhibit 3**  
**Total Revenue Decrease of House Bill 157**  
**(\$ in Millions)**

	<u><b>FY 2010</b></u>	<u><b>FY 2011</b></u>	<u><b>FY 2012</b></u>
Unified Credit	\$43.6	\$62.7	\$16.9
Deduction for State Death Taxes	<u>5.2</u>	<u>7.4</u>	<u>2.0</u>
<b>Total</b>	<b>\$48.8</b>	<b>\$70.1</b>	<b>\$18.9</b>

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**Additional Information**

**Prior Introductions:** SB 386 of 2008, a similar bill, received a hearing in the Senate Budget and Taxation Committee but no further action was taken.

**Cross File:** SB 675 (Senator Greenip, *et al.*) - Budget and Taxation.

**Information Source(s):** Comptroller's Office, Department of Legislative Services

**Fiscal Note History:** First Reader - February 17, 2009

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