

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 591

(Senator Garagiola, *et al.*)

Budget and Taxation

Maryland Estate Tax

This bill increases the amount that may be excluded from the Maryland estate tax by increasing the limit on the unified credit used to determine the Maryland estate tax to the amount corresponding to a \$2.0 million exclusion amount under the federal estate tax.

The bill takes effect July 1, 2010, and applies to decedents dying after December 31, 2009.

Fiscal Summary

State Effect: General fund revenues decrease by \$22.6 million in FY 2011. Future year revenues reflect the increased unified credit amount and the current estate tax revenue forecast. Expenditures are not affected.

(\$ in millions)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	(\$22.6)	(\$28.5)	(\$30.0)	(\$31.5)	(\$33.0)
Expenditure	0	0	0	0	0
Net Effect	(\$22.6)	(\$28.5)	(\$30.0)	(\$31.5)	(\$33.0)

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

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law: The bill increases the amount that may be excluded from the Maryland estate tax by increasing the limit on the unified credit used to determine the Maryland estate tax to the amount corresponding to a \$2.0 million exclusion amount under the federal estate tax; thereby increasing the value of the unified credit to \$780,800.

Under current law, the unified credit is based on the exclusion amount and is currently equal to the amount corresponding to a \$1.0 million exclusion amount under the federal estate tax and is equal to \$345,800.

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 \$1.0 million. The bill increases this limitation to \$2.0 million.

The Maryland estate tax is decoupled from the federal estate tax and is calculated separately as discussed below.

Background: The federal Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001 provided for the reduction and ultimate repeal of the credit allowed under the federal estate tax for state estate 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. EGTRRA phased out the federal estate tax beginning in 2001, primarily by increasing the amount of an estate that is exempt from taxation and by reducing the top marginal tax rate. In 2010, the federal estate tax is temporarily repealed. Beginning in 2011, EGTRRA terminates and the estate tax is reinstated in a similar manner as had been in effect before EGTRRA.

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.

State Fiscal Effect: The bill increases the amount of the unified credit to \$780,800 so as to exclude \$2.0 million from the federal estate tax for purposes of the Maryland estate tax calculation. 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. As a result, general fund revenues decrease by \$22.6 million in fiscal 2011. **Exhibits 1** shows the estimate in greater detail.

Exhibit 1
Estimated Percentage Increase Due to Limiting Unified Credit Exemption
Amount to \$2.0 Million

Year of Death	Exclusion Amount Under Current Law	Exclusion Amount Under Bill	Unified Credit Under Current Law	Unified Credit Under Bill	Estimated Percent of Revenue Decrease
2010	\$1,000,000	\$2,000,000	\$345,800	\$780,800	26.7%
2011	1,000,000	2,000,000	345,800	780,800	26.7%
2012	1,000,000	2,000,000	345,800	780,800	26.7%
2013	1,000,000	2,000,000	345,800	780,800	26.7%
2014	1,000,000	2,000,000	345,800	780,800	26.7%
2015	1,000,000	2,000,000	345,800	780,800	26.7%

Small Business Impact: A limited number of small businesses subject to the estate tax will benefit from reduced estate taxes. As with the general public, most owners of family farms and small businesses are unlikely to owe estate taxes. The Congressional Budget Office estimated that nationwide about 2.1% of farmers and 2.4% of small-business owners who died in 2005 had federal estate tax returns filed.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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