

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 443

(Delegate Ivey, *et al.*)

Ways and Means

Budget and Taxation

Inheritance Tax - Exemption - Surviving Spouses of Predeceasing Descendants

This bill exempts from the State inheritance tax the receipt of property that passes from a decedent to a surviving spouse of (1) a deceased child of the decedent; or (2) a deceased lineal descendent of a child of the decedent, if the surviving spouse has not remarried.

The bill takes effect July 1, 2010, and applies to all decedents dying on or after July 1, 2010.

Fiscal Summary

State Effect: General fund revenues may decrease significantly beginning in FY 2011. Expenditures are not affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: The Maryland inheritance tax is applied to the receipt of property from a decedent's estate. Under Chapter 497 of 2000, for decedents dying on or after July 1, 2000, direct beneficiaries and siblings are exempt from the inheritance tax. A direct beneficiary includes a child (including stepchild), parent, grandparent, spouse, sibling, other lineal descendants, or a corporation if all stockholders are direct beneficiaries. Collateral beneficiaries include all other beneficiaries and are taxed at the rate of 10%.

Chapter 145 of 2004 altered the definition of "child" and "parent" to include a former stepchild and former stepparent, respectively, so that the inheritance tax would not apply

to the receipt of property by a former stepchild or former stepparent. Chapter 145 also extended the exemption for lineal beneficiaries to children and other lineal descendants of a stepchild or former stepchild of the decedent and to the spouses of those individuals.

Chapter 30 of 2006 expanded the exemption for property passing to partnerships or limited liability companies (LLCs) if all partners or members are direct beneficiaries of the decedent.

Chapter 602 of 2009 expanded the exemption for a primary residence passing to a domestic partner. To qualify for the exemption, the property must have been held in joint tenancy by the decedent and the domestic partner.

Background: The inheritance tax does not apply to the receipt of property that passes from a decedent to a spouse of a child of the decedent (who would be the son- or daughter-in-law of the decedent) or a spouse of a lineal descendant of a child of the decedent. In cases where the child of the decedent dies, the inheritance tax applies to the property that is passed to the surviving spouse of the child.

Current law exempts from the inheritance tax property received by most relatives of a decedent. The Register of Wills advises that inheritance tax revenues are typically paid by nephews and nieces of the decedent as well as unrelated persons. The Board of Revenue Estimates projects that inheritance taxes will total about \$50 million annually in fiscal 2010 and 2011.

State Fiscal Effect: State general fund revenues will decrease beginning in fiscal 2011 to the extent that properties are transferred from a decedent to a spouse of a predeceasing descendant. However, the amount of any decrease depends on these transfers and cannot be reliably estimated. The Register of Wills and Comptroller's Office do not collect inheritance tax data and were unable to provide a fiscal estimate on the bill.

As a point of reference, an exemption for property valued at \$100,000 would result in a general fund revenue decrease of \$10,000 (\$100,000 x 10% tax rate). However, exempting the passing of property from a decedent to specified individuals for purposes of the Maryland inheritance tax could also have the effect of reducing the amount of inheritance taxes paid for purposes of calculating the Maryland estate tax if a Maryland estate tax return is required to be filed. As a result, Maryland estate taxes could increase by some amount for those estates subject to that tax.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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Analysis by: Robert J. Rehrmann

Direct Inquiries to:
(410) 946-5510
(301) 970-5510