

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 337

(Senator Frosh)

Judicial Proceedings

Judiciary

Estates and Trusts - Construction of References in Will or Trust to Federal Estate Tax or Generation-Skipping Transfer Tax

This emergency bill requires that specified words, phrases, and provisions (generally relating to or based upon the federal estate tax or generation-skipping transfer tax laws) that are included in specified wills or trusts (those of deceased persons who die after December 31, 2009 and before January 1, 2011) be deemed to refer to the federal estate tax or generation-skipping transfer tax laws as applied to estates of persons dying or generation-skipping transfers made on December 31, 2009. The bill establishes exceptions and a provision limiting its applicability if a federal estate tax or generation-skipping transfer tax becomes applicable before January 1, 2011. The bill also allows the personal representative or any interested person under a will or other instrument to bring a proceeding to determine whether references to the federal estate tax and generation-skipping transfer tax laws should be construed with respect to the law as it existed after December 31, 2009.

Fiscal Summary

State Effect: None. General fund revenues are not anticipated to be materially impacted by the bill's provisions. Any increase in the workload of the Judiciary can be handled with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: Under the Economic Growth and Tax Relief Reconciliation Act of 2001, the federal estate tax does not apply to the estates of deceased persons dying after December 31, 2009, and the generation-skipping transfer tax does not apply to generation-skipping transfers after December 31, 2009. The Act itself will terminate December 31, 2010, at which point the federal estate and generation-skipping transfer tax laws as they existed prior to the enactment of Economic Growth and Tax Relief Reconciliation Act of 2001 will apply. (Pub. L. 107-16 (H.R. 1836) §§ 501 and 901)

The Estate and Trust Law Section of the Maryland State Bar Association indicates that many estate planning documents use formula allocations that refer to the federal estate tax or federal generation-skipping transfer tax and related terms to take advantage of exemptions from those taxes. A formula allocation may, for example, leave the maximum amount that can pass free of the federal estate tax to a deceased person's children or to a family trust and the remainder to the person's spouse.

The Estate and Trust Law Section indicates that the repeal of the federal estate and generation-skipping transfer taxes in 2010 may lead to unintended distributions of estates with planning documents referring to those taxes. For example, with the federal estate tax repealed, in the scenario described above, the entire estate will pass free of the federal estate tax, potentially causing the entire estate to be passed to the children or family trust, with none passed to the spouse.

State and Local Fiscal Effect: Affected estates may be distributed differently under the provisions of this bill; in some cases causing an increase in estate tax revenues accruing to the State and in others a reduction of revenues. The overall impact, however, is likely negligible and will not materially affect State general fund revenues.

Additional Information

Prior Introductions: None.

Cross File: HB 449 (Delegate Carter) - Judiciary.

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

Fiscal Note History: First Reader - February 10, 2010
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