

Department of Legislative Services  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**

Senate Bill 353

(Senator Forehand)

Judicial Proceedings

Judiciary

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**Estates - Small Estate Administration - Eligibility Thresholds**

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This bill increases the eligibility thresholds for small estate administration from \$30,000 to \$50,000, for estates in general, and from \$50,000 to \$100,000 for an estate for which the surviving spouse is the sole legatee or heir of the decedent. The bill also makes nonsubstantive changes to provisions regarding fees for small estate administration that do not materially change current fees. The bill applies prospectively only and does not have any effect on or application to any estate opened before the bill takes effect.

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**Fiscal Summary**

**State Effect:** General fund revenues may decrease to the extent the raised eligibility thresholds cause distributions of property from estates valued between \$30,000 and \$50,000 to be exempt from the inheritance tax, due to the estates being administered as small estates. The amount of the decrease may be relatively minimal but cannot be reliably estimated at this time.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** If the property of a decedent subject to administration in Maryland is established to have a value of \$30,000 or less as of the date of the death, the estate may be administered as a small estate. In addition, if the surviving spouse is the sole legatee or heir of the decedent and the property of the decedent subject to administration in Maryland is established to have a value of \$50,000 or less as of the date of the death of the decedent, the estate may be administered as a small estate. The value of the estate is

determined by the fair market value of property less debts of record secured by the property, as of the date of death, to the extent that insurance benefits are not payable to the lien holder or secured party for the secured debt.

Property of the decedent discovered after a petition is filed for administration of a small estate must be reported immediately by supplemental petition. If after-discovered property increases the gross value of all the decedent's property to more than \$30,000, or more than \$50,000 if all the decedent's property subject to administration in Maryland is transferred to the decedent's spouse, then the administration of the estate may not proceed as a small estate administration. It must proceed, instead, under the other provisions of the estates of decedents law.

Property distributed from an estate that qualifies for administration as a small estate is exempt from the 10% inheritance tax.

**Background:** Small estate administration can allow for estates below the statutory thresholds to be administered in a simplified manner and shorter timeframe in comparison to administration of a regular estate. The inheritance tax also does not apply to property distributed from a small estate, though property distributed from an estate not administered as a small estate may, in many cases, also qualify for other exemptions from the inheritance tax, such as an exemption for property passing to lineal relatives, a spouse, or siblings. Lower fees also apply to an estate with a value of \$5,000 or less.

The eligibility thresholds for small estate administration were last changed by Chapter 118 of 2000, which increased the threshold for estates in general from \$20,000 to \$30,000 and created the separate threshold of \$50,000 for estates for which the surviving spouse is the sole legatee or heir.

**State Fiscal Effect:** General fund revenues may decrease to the extent the raised eligibility thresholds cause distributions of property from estates valued between \$30,000 and \$50,000, to be exempt from inheritance taxes due to distribution under small estate procedures. The increase of the threshold for estates where the spouse is the sole legatee or heir (from \$50,000 to \$100,000) will not affect inheritance tax revenues since property distributed from those estates would be exempt from the inheritance tax under the exemption for distributions to lineal relatives, a spouse, or siblings.

Information is not readily available about how many estates on average fall within that range each year, or how much of the property distributed from the estates is subject to the inheritance tax (*i.e.*, not qualifying under another exemption). The amount by which general fund expenditures may decrease on average annually, therefore, cannot be reliably determined at this time.

In many cases, distributions from estates of less than \$50,000 may be largely or entirely distributions to lineal relatives, a spouse, or siblings, and would already be exempt from the inheritance tax. A brief search of a sample of estates in Montgomery County resulted in 4 out of 134 estates having a value falling within the range of \$30,000 to \$50,000 and none of the property distributed from those estates was subject to inheritance tax, suggesting that any decrease in revenue may be relatively minimal.

According to a recent Board of Revenue Estimates report, the estimated revenue from the 10% inheritance tax in fiscal 2013 is \$51.6 million.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 318 (Delegate Feldman) - Judiciary.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Register of Wills; Comptroller's Office; Allan J. Gibber, Esq., *Gibber on Estate Administration*, 5<sup>th</sup> Edition; Department of Legislative Services

**Fiscal Note History:** First Reader - February 14, 2012  
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