

# SENATE BILL 658

Q3, Q7

3lr1826  
CF HB 1031

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By: **Senators King, Brinkley, Currie, Ferguson, Garagiola, Manno,  
Montgomery, Raskin, ~~and Robey~~ Robey, Jones-Rodwell, and McFadden**

Introduced and read first time: February 1, 2013

Assigned to: Budget and Taxation

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 17, 2013

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Estate Tax and Income Tax – ~~Qualifying Income Interest for Life Marital~~**  
3 **Deduction and Subtraction Modification for Health Insurance ~~and Medical~~**  
4 **Expenses**

5 FOR the purpose of ~~altering the qualifications for a qualified income interest for life~~  
6 ~~under the Maryland estate tax to include individuals recognized as married by~~  
7 ~~the State~~ providing that, for purposes of calculating Maryland estate tax, the  
8 surviving spouse of a decedent shall include any individual to whom, at the time  
9 of the decedent's death, the decedent was lawfully married under State law;  
10 providing a subtraction modification under the Maryland income tax for ~~the~~  
11 costs of health insurance and other medical expenses incurred by an individual  
12 on behalf of another adult individual under certain circumstances; certain costs  
13 incurred by a taxpayer to provide health insurance for the taxpayer's spouse;  
14 providing that the subtraction may not exceed a certain amount; providing for  
15 the application of this Act; and generally relating to the calculation of the  
16 Maryland estate tax for certain individuals and an income tax subtraction  
17 modification for ~~the costs of certain~~ health insurance ~~and other medical~~  
18 expenses incurred on behalf of another adult individual costs.

19 BY repealing and reenacting, with amendments,  
20 Article – Tax – General  
21 Section 7-309~~(b)(6)~~ (b)  
22 Annotated Code of Maryland  
23 (2010 Replacement Volume and 2012 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, without amendments,  
 2 Article – Tax – General  
 3 Section 10–208(a)  
 4 Annotated Code of Maryland  
 5 (2010 Replacement Volume and 2012 Supplement)

6 BY adding to  
 7 Article – Tax – General  
 8 Section 10–208(t)  
 9 Annotated Code of Maryland  
 10 (2010 Replacement Volume and 2012 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article – Tax – General**

14 7–309.

15 ~~(b) (6) (i) For purposes of calculating Maryland estate tax, a decedent~~  
 16 ~~shall be deemed to have had a qualifying income interest for life under § 2044(a) of the~~  
 17 ~~Internal Revenue Code with regard to any property for which a marital deduction~~  
 18 ~~qualified terminable interest property election was made for the decedent's~~  
 19 ~~predeceased spouse on a timely filed Maryland estate tax return under paragraph (5)~~  
 20 ~~of this subsection.~~

21 ~~(ii) FOR PURPOSES OF CALCULATING MARYLAND ESTATE~~  
 22 ~~TAX UNDER THIS PARAGRAPH, A QUALIFYING INCOME INTEREST FOR LIFE~~  
 23 ~~SHALL INCLUDE THOSE OF INDIVIDUALS RECOGNIZED BY THE STATE AS~~  
 24 ~~LAWFULLY MARRIED.~~

25 ~~[(ii)] (iii) For the purpose of apportioning Maryland estate tax~~  
 26 ~~under § 7–308 of this subtitle, any property as to which a decedent is deemed to have~~  
 27 ~~had a qualifying income interest for life under [subparagraph] SUBPARAGRAPHS (i)~~  
 28 ~~AND (ii) of this paragraph shall be deemed to be included in both the estate and the~~  
 29 ~~taxable estate of the decedent.~~

30 (b) (1) Except as provided in paragraphs (2) through [(7)] (8) of this  
 31 subsection and subsection (c) of this section, after the effective date of an Act of  
 32 Congress described in subsection (a) of this section, the Maryland estate tax shall be  
 33 determined using:

34 (i) the federal credit allowable by § 2011 of the Internal  
 35 Revenue Code as in effect before the reduction or repeal of the federal credit pursuant  
 36 to the Act of Congress; and

1 (ii) other provisions of federal estate tax law as in effect on the  
2 date of the decedent's death.

3 (2) Except as provided in paragraphs (3) through [(7)] (8) of this  
4 subsection and subsection (c) of this section, if the federal estate tax is not in effect on  
5 the date of the decedent's death, the Maryland estate tax shall be determined using:

6 (i) the federal credit allowable by § 2011 of the Internal  
7 Revenue Code as in effect before the reduction or repeal of the federal credit pursuant  
8 to the Act of Congress; and

9 (ii) other provisions of federal estate tax law as in effect on the  
10 date immediately preceding the effective date of the repeal of the federal estate tax.

11 (3) (i) Notwithstanding any increase in the unified credit allowed  
12 against the federal estate tax for decedents dying after 2003, the unified credit used  
13 for determining the Maryland estate tax may not exceed the applicable credit amount  
14 corresponding to an applicable exclusion amount of \$1,000,000 within the meaning of §  
15 2010(c) of the Internal Revenue Code.

16 (ii) The Maryland estate tax shall be determined without regard  
17 to any deduction for State death taxes allowed under § 2058 of the Internal Revenue  
18 Code.

19 (iii) Unless the federal credit allowable by § 2011 of the Internal  
20 Revenue Code is in effect on the date of the decedent's death, the federal credit used to  
21 determine the Maryland estate tax may not exceed 16% of the amount by which the  
22 decedent's taxable estate, as defined in § 2051 of the Internal Revenue Code, exceeds  
23 \$1,000,000.

24 (4) (i) With regard to an election to value property as provided in §  
25 2032 of the Internal Revenue Code, if a federal estate tax return is not required to be  
26 filed:

27 1. an irrevocable election made on a timely filed  
28 Maryland estate tax return shall be deemed to be an election as required by § 2032(d)  
29 of the Internal Revenue Code;

30 2. the provisions of § 2032(c) of the Internal Revenue  
31 Code do not apply; and

32 3. an election may not be made under item 1 of this  
33 subparagraph unless that election will decrease:

34 A. the value of the gross estate; and

1                   B. the Maryland estate tax due with regard to the  
2 transfer of a decedent's Maryland estate.

3                   (ii) An election to value property as provided in § 2032 of the  
4 Internal Revenue Code for Maryland estate tax purposes must be the same as the  
5 election made for federal estate tax purposes.

6                   (5) (i) With regard to an election to treat property as marital  
7 deduction qualified terminable interest property in calculating the Maryland estate  
8 tax, an irrevocable election made on a timely filed Maryland estate tax return shall be  
9 deemed to be an election as required by § 2056(b)(7)(B)(i), (iii), and (v) of the Internal  
10 Revenue Code.

11                   (ii) An election under this paragraph made on a timely filed  
12 Maryland estate tax return shall be recognized for purposes of calculating the  
13 Maryland estate tax even if an inconsistent election is made for the same decedent for  
14 federal estate tax purposes.

15                   (6) (i) For purposes of calculating Maryland estate tax, a decedent  
16 shall be deemed to have had a qualifying income interest for life under § 2044(a) of the  
17 Internal Revenue Code with regard to any property for which a marital deduction  
18 qualified terminable interest property election was made for the decedent's  
19 predeceased spouse on a timely filed Maryland estate tax return under paragraph (5)  
20 of this subsection.

21                   (ii) For the purpose of apportioning Maryland estate tax under §  
22 7-308 of this subtitle, any property as to which a decedent is deemed to have had a  
23 qualifying income interest for life under subparagraph (i) of this paragraph shall be  
24 deemed to be included in both the estate and the taxable estate of the decedent.

25                   (7) For purposes of calculating Maryland estate tax, amounts  
26 allowable under § 2053 or § 2054 of the Internal Revenue Code as a deduction in  
27 computing the taxable estate of a decedent may not be allowed as a deduction or as an  
28 offset against the sales price of property in determining gain or loss if the amount has  
29 been allowed as a deduction in computing the federal taxable income of the estate or of  
30 any other person.

31                   **(8) NOTWITHSTANDING ANY CONTRARY DEFINITION OF**  
32 **"MARRIAGE" AND "SPOUSE" UNDER ANY APPLICABLE PROVISION OF FEDERAL**  
33 **LAW, FOR PURPOSES OF CALCULATING MARYLAND ESTATE TAX UNDER THIS**  
34 **SUBSECTION, THE SURVIVING "SPOUSE" OF A DECEDENT SHALL INCLUDE ANY**  
35 **INDIVIDUAL TO WHOM, AT THE TIME OF THE DECEDENT'S DEATH, THE**  
36 **DECEDENT WAS LAWFULLY MARRIED AS DETERMINED UNDER THE LAWS OF THE**  
37 **STATE.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
2 read as follows:

3 10-208.

4 (a) In addition to the modification under § 10-207 of this subtitle, the  
5 amounts under this section are subtracted from the federal adjusted gross income of a  
6 resident to determine Maryland adjusted gross income.

7 (T) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE  
8 SUBTRACTION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES 100% OF  
9 THE COSTS OF HEALTH INSURANCE AND OTHER MEDICAL EXPENSES THAT AN  
10 INDIVIDUAL A TAXPAYER INCURS ON BEHALF OF ANOTHER INDIVIDUAL IF THE  
11 OTHER INDIVIDUAL, AND TAXPAYER ARE RECOGNIZED BY THE STATE AS  
12 LAWFULLY MARRIED.

13 ~~(I) IS NOT A DEPENDENT, AS DEFINED UNDER § 152 OF THE~~  
14 ~~INTERNAL REVENUE CODE;~~

15 ~~(II) IS AT LEAST 18 YEARS OF AGE; AND~~

16 ~~(III) RESIDES IN THE SAME HOUSEHOLD AS THE INDIVIDUAL~~  
17 ~~CLAIMING THE SUBTRACTION MODIFICATION.~~

18 ~~(2) THE SUBTRACTION UNDER THIS SUBSECTION MAY NOT~~  
19 ~~EXCEED \$5,000 FOR ANY TAXABLE YEAR.~~

20 (2) THE SUBTRACTION UNDER PARAGRAPH (1) OF THIS  
21 SUBSECTION MAY NOT EXCEED THE COST OF A HEALTH INSURANCE PREMIUM  
22 THAT:

23 (I) IS PAID BY THE TAXPAYER OR THE EMPLOYER OF THE  
24 TAXPAYER TO PROVIDE COVERAGE FOR THE TAXPAYER'S SPOUSE; AND

25 (II) IS SUBJECT TO FEDERAL INCOME TAX UNDER THE  
26 INTERNAL REVENUE CODE.

27 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall  
28 be applicable to decedents dying after December 31, 2012, and Section 2 of this Act  
29 shall be applicable to all taxable years beginning after December 31, 2012.

30 SECTION 4. AND BE IT FURTHER ENACTED, That, ~~except as provided in~~  
31 ~~subject to~~ Section 3 of this Act, this Act shall take effect July 1, 2013 ~~and shall be~~  
32 ~~applicable to all taxable years beginning after December 31, 2012.~~