

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

House Bill 858
 Judiciary

(Delegate Waldstreicher)

Judicial Proceedings

Estates and Trusts - Modified Administration and Inheritance Tax

This bill makes certain changes with respect to modified administration of an estate relating to (1) criteria specific to trusts that must be met in order to qualify to elect for modified administration; (2) after-discovered property in estates settled and distributed through modified administration; and (3) prepayment of inheritance tax on subsequent interests in property distributed from an estate under modified administration. The bill applies only prospectively.

Fiscal Summary

State Effect: The bill does not directly affect State finances or operations.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Election for Modified Administration

The bill allows a personal representative to file an election for modified administration of an estate where a trust is a residuary legatee if each person who has a current interest in the trust is exempt from inheritance tax under specified provisions of the Tax-General Article (which include exemptions for specified family members and nonprofit organizations). This replaces an existing requirement that in order to elect for modified administration, all trustees of each trust that is a residuary legatee must be limited to the decedent's personal representative, surviving spouse, and children.

After-discovered Property

The bill also establishes procedures for administration of after-discovered property under modified administration. If the personal representative discovers property of the decedent after the time for filing a verified final report under modified administration, the personal representative must (1) file a verified final report under modified administration with respect to the after-discovered property within 60 days of the discovery of the property and (2) make final distribution of the after-discovered property within 90 days of the discovery.

Prepayment of Inheritance Tax for a Subsequent Interest

Finally, the bill allows for an application to prepay the inheritance tax for a subsequent interest in property that passes from a decedent to be filed with the register of wills of the county where the *information report*, rather than the inventory, was filed.

Current Law:

Election for Modified Administration

An election for modified administration may be filed by a personal representative of an estate within three months from the date of appointment of the personal representative if certain criteria are met, including that:

- all residuary legatees of a testate decedent (those receiving property under a will) and the heirs at law of an intestate decedent (those receiving property from a deceased person without a will) are limited to the personal representative and individuals or entities exempt from inheritance tax under specified provisions of the Tax-General Article (which include exemptions for specified family members and nonprofit organizations);
- all trustees of each trust that is a residuary legatee are limited to the decedent's personal representative, surviving spouse, and children;
- the estate is solvent and sufficient assets exist to satisfy all testamentary gifts;
- a verified final report under modified administration is filed within 10 months of the date of appointment;
- final distribution of the estate can occur within 12 months from the date of appointment; and
- all residuary legatees of a testate decedent and the heirs at law of an intestate decedent consent to a modified administration.

After-discovered Property

The statute does not address the administration of after-discovered property under modified administration.

Prepayment of Inheritance Tax for a Subsequent Interest

Within a reasonable time after the valuation of a less than absolute interest in property that passes from a decedent, an application to prepay the inheritance tax for a subsequent interest in the same property may be filed with the register of wills of the county where the inventory was filed. Under modified administration, however, an inventory is not required to be filed. The filing of the verified final report takes the place of a formal inventory and account. An information report, however, is required.

Background: The Estate and Trust Law Section of the Maryland State Bar Association indicates that, while subject to an expedited timetable, modified administration requires fewer and less extensive filings and can be significantly less costly and burdensome for an estate. Regarding the election of modified administration when the residuary legatee is a trust, the bill is intended to align those trust requirements with the requirements applicable to other permissible residuary legatees under modified administration by basing them on whether the trust beneficiaries with a current interest are exempt from inheritance tax under those specified provisions of the Tax-General Article.

Additional Information

Prior Introductions: None.

Cross File: SB 170 (Senator Forehand) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Register of Wills, Maryland State Bar Association (Estate and Trust Law Section), Department of Legislative Services

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