Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1214 (Delegate Vitale, *et al.*)
Ways and Means

Maryland Estate Tax - Exclusion - Deceased Spousal Unused Exclusion Amount

This bill establishes "portability" under the State estate tax by allowing under specified circumstances the estate of a married taxpayer to pass along the unused part of the estate tax exclusion amount to the surviving spouse. A surviving spouse may subsequently elect to claim the unused portion of the estate tax exclusion amount of the predeceased spouse, thereby providing the surviving spouse with a larger exclusion amount.

The bill takes effect July 1, 2014, and applies to decedents dying after December 31, 2013.

Fiscal Summary

State Effect: General fund revenues decrease by $0.8 million in FY 2015 due to additional exclusion amounts claimed against the estate tax. Future year estimates reflect increased utilization of deceased spousal unused exclusion amounts by surviving spouses. General fund expenditures increase by $0.1 million beginning in FY 2016 due to implementation costs at the Comptroller's Office.

($ in millions)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
GF Revenue	($0.8)	($1.4)	($1.8)	($2.4)	($3.2)
GF Expenditure	$0	$0.1	$0.1	$0.1	$0.1
Net Effect	($0.8)	($1.5)	($1.9)	($2.5)	($3.3)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill establishes "portability" of the estate tax exclusion amount by allowing a surviving spouse to claim the unused portion of the estate tax exclusion amount of the predeceased spouse, thereby providing the surviving spouse with a larger exclusion amount.

The amount of the exclusion under the estate tax for the surviving spouse is equal to the sum of (1) the exclusion amount in the year in which the return is filed (currently $1.0 million) and (2) the deceased spousal unused exclusion amount. The deceased spousal unused exclusion amount is equal to the unused exclusion amount, up to the maximum exclusion amount.

A deceased spousal unused exclusion amount is available to a surviving spouse only if an election is made on a timely filed estate tax return of the predeceased spouse on which such amount is computed, regardless of whether the estate of the predeceased spouse otherwise is required to file an estate tax return. This election is recognized even if an inconsistent election is made for the decedent for federal estate tax purposes.

Current Law: The State imposes a tax on property that passes at or after the death of an individual through an estate tax and an inheritance tax. In fiscal 2014, estate tax revenues are projected to total $152.7 million and inheritance taxes $50.6 million. Estates may generally claim a credit against the estate tax for the amount of inheritance taxes paid.

The Maryland estate tax is decoupled from the value of the unified credit under the federal estate tax. When calculating Maryland estate tax liability, an estate is required to use the value of a unified credit that may not exceed the amount that corresponds to an applicable exclusion amount of $1.0 million. A surviving spouse may not use any exemption amount that was not used by a predeceased spouse.

An estate is required to determine estate tax liability without regard to the deduction for State death taxes allowed under Section 2058 of the Internal Revenue Code. Unless the federal credit for state death taxes paid is in effect on the date of a decedent's death, the federal credit used to determine the Maryland estate tax may not exceed 16% of the amount by which the decedent's taxable estate exceeds $1.0 million. A Maryland estate tax is imposed on the estate of a decedent without regard to whether or not the federal estate tax is in effect as of the date of the decedent's death.

For decedents dying in calendar 2014, the federal estate tax unified credit is equal to the amount that corresponds to an exemption amount of $5,340,000. This amount is indexed to inflation.

Married couples may claim a marital deduction, which may include property passed to a surviving spouse under a qualified terminable interest property (QTIP) trust if certain conditions are met, including if the spouse has a qualifying income interest for life. A QTIP trust is property which passes from the decedent in which the surviving spouse has a qualifying income interest for life. Such property is treated as passing to the surviving spouse for purposes of the federal estate tax marital deduction.

Maryland law also allows for an election to treat property as marital deduction QTIP in calculating the Maryland estate tax. In order to claim the Maryland QTIP, the trust must meet the federal QTIP requirements other than the requirement that the election, with respect to such property, is made on a federal estate tax form. A QTIP election made on a timely filed Maryland estate tax return is recognized for purposes of calculating the Maryland estate tax even if an inconsistent election was made for the same decedent for federal estate tax purposes.

Background: The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 enacted several changes to the federal estate tax including a new "portability" provision. The portability election allows the estate of a married taxpayer to pass along the unused part of their estate tax exclusion amount to their surviving spouse. A surviving spouse may elect to claim the unused portion of the estate tax exclusion amount of the predeceased spouse, thereby providing the surviving spouse with a larger exclusion amount. This provision eliminates the need for spouses to retitle property and create trusts solely to take full advantage of each spouse's exclusion amount. This deceased spousal unused exclusion amount is available to the surviving spouse only if an election is made on a timely filed estate tax return.

Any federal estate tax exemption amount that remains unused as of the death of a spouse who dies after December 31, 2010 is generally available for use by the surviving spouse as an addition to the surviving spouse's own exemption. The federal portability provision originally applied through calendar 2012, and subsequent federal legislation permanently extended the measure.

State Revenues: The bill will generally allow a surviving spouse to use any exemption amount that was not used by the predeceased spouse beginning with decedents dying after December 31, 2013. The bill may result in significant estate tax savings for married couples (up to a doubling of the exclusion amount) when the first spouse to die is not required to file an estate tax return, there is a lack of estate tax planning, or the stepped up basis upon the death of the surviving spouse offers significant advantages over bypass trusts.

Based on the U.S. Joint Committee on Taxation estimates of portability utilization under the federal estate tax, adjusted for differences in the Maryland estate tax, general fund revenues may decrease by $776,000 in fiscal 2015, $1.4 million in fiscal 2016, $1.8 million in fiscal 2017, $2.4 million in fiscal 2018, and $3.2 million in fiscal 2019.

Revenue losses continue to increase as more estates claim deceased spousal unused exclusion amounts. The full benefits of portability and, therefore, the full fiscal impact will likely not occur until the provision is in effect for at least a decade. Based on the current State exclusion amount and estate tax forecast, general fund revenues may decrease by between $25 million and $50 million annually in fiscal 2025 through 2030.

State Expenditures: A deceased spousal unused exclusion amount is available to a surviving spouse only if an election is made on a timely filed estate tax return of the predeceased spouse on which such amount is computed, regardless of whether the estate of the predeceased spouse otherwise is required to file an estate tax return. The Comptroller's Office advises that it will incur additional costs as a result of hiring one revenue specialist to process the anticipated increase in estate tax returns. As a result, general fund expenditures may increase by $79,700 in fiscal 2016, which reflects the delay in the date of a decedent's death and when a return is filed with the Comptroller's Office. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	1
Salary and Fringe Benefits	$74,708
Operating Expenses	4,956
Total FY 2016 Expenditures	**$79,664**

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, U.S. Joint Committee on Taxation, Department of Legislative Services

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