

Chapter 21

(House Bill 308)

AN ACT concerning

Maryland Estate Tax – Unified Credit

FOR the purpose of altering a certain limit on the unified credit used for determining the Maryland estate tax for decedents dying on or after a certain date; altering a certain limitation on the amount of the Maryland estate tax for decedents dying on or after a certain date; providing that, for the calculation of the Maryland estate tax in the case of a certain decedent spouse, the applicable exclusion amount includes the sum of a certain exclusion amount and a certain deceased spousal unused exclusion amount; providing that a certain deceased spousal unused exclusion amount may not be taken into account except under certain circumstances; defining a certain term; making a conforming change; and generally relating to the Maryland estate tax.

BY repealing and reenacting, without amendments,
Article – Tax – General
Section 7–309(a)
Annotated Code of Maryland
(2016 Replacement Volume and 2017 Supplement)

BY repealing and reenacting, with amendments,
Article – Tax – General
Section 7–309(b)(1), (2), and (3)
Annotated Code of Maryland
(2016 Replacement Volume and 2017 Supplement)

BY adding to
Article – Tax – General
Section 7–309(b)(9)
Annotated Code of Maryland
(2016 Replacement Volume and 2017 Supplement)

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

Article – Tax – General

7–309.

(a) Notwithstanding an Act of Congress that repeals or reduces the federal credit under § 2011 of the Internal Revenue Code, the provisions of this subtitle in effect before the passage of the Act of Congress shall apply with respect to a decedent who dies after the

effective date of the Act of Congress so as to continue the Maryland estate tax in force without reduction in the same manner as if the federal credit had not been repealed or reduced.

(b) (1) Except as provided in paragraphs (2) through ~~(8)~~ **(9)** of this subsection and subsection (c) of this section, after the effective date of an Act of Congress described in subsection (a) of this section, the Maryland estate tax shall be determined using:

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

(ii) other provisions of federal estate tax law[, including the applicable unified credit allowed against the federal estate tax,] as in effect on the date of the decedent's death.

(2) Except as provided in paragraphs (3) through ~~(8)~~ **(9)** of this subsection and subsection (c) of this section, if the federal estate tax is not in effect on the date of the decedent's death, the Maryland estate tax shall be determined using:

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

(ii) other provisions of federal estate tax law[, including the applicable unified credit allowed against the federal estate tax,] as in effect on the date immediately preceding the effective date of the repeal of the federal estate tax.

(3) (i) Notwithstanding any increase in the unified credit allowed against the federal estate tax for decedents dying after 2003, the unified credit used for determining the Maryland estate tax for a decedent [dying before January 1, 2019,] may not exceed the applicable credit amount corresponding to an applicable exclusion amount, within the meaning of § 2010(c) of the Internal Revenue Code, of:

1. \$1,000,000 for a decedent dying before January 1, 2015;
2. \$1,500,000 for a decedent dying on or after January 1, 2015, but before January 1, 2016;
3. \$2,000,000 for a decedent dying on or after January 1, 2016, but before January 1, 2017;
4. \$3,000,000 for a decedent dying on or after January 1, 2017, but before January 1, 2018; [and]

5. \$4,000,000 for a decedent dying on or after January 1, 2018, but before January 1, 2019; AND

6. \$5,000,000 FOR A DECEDENT DYING ON OR AFTER JANUARY 1, 2019, PLUS ANY DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT CALCULATED IN ACCORDANCE WITH PARAGRAPH (9) OF THIS SUBSECTION.

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

(iii) Unless the federal credit allowable by § 2011 of the Internal Revenue Code is in effect on the date of the 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, as defined in § 2051 of the Internal Revenue Code, exceeds:

1. \$1,000,000 for a decedent dying before January 1, 2015;
2. \$1,500,000 for a decedent dying on or after January 1, 2015, but before January 1, 2016;
3. \$2,000,000 for a decedent dying on or after January 1, 2016, but before January 1, 2017;
4. \$3,000,000 for a decedent dying on or after January 1, 2017, but before January 1, 2018; ~~AND~~
5. \$4,000,000 for a decedent dying on or after January 1, 2018, but before January 1, 2019; and
6. [the applicable exclusion amount corresponding to the applicable unified credit under paragraph (1) or (2) of this subsection] **\$5,000,000** for a decedent dying on or after January 1, 2019, **PLUS ANY DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT CALCULATED IN ACCORDANCE WITH PARAGRAPH (9) OF THIS SUBSECTION.**

(9) (I) IN THIS PARAGRAPH, "DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT" MEANS THE APPLICABLE EXCLUSION AMOUNT IN EFFECT AT THE TIME OF THE DEATH OF THE LAST PREDECEASED SPOUSE OF THE DECEDENT UNDER PARAGRAPH (3) OF THIS SUBSECTION REDUCED BY THE TAXABLE ESTATE OF THE LAST PREDECEASED SPOUSE:

1. AS REPORTED ON A MARYLAND ESTATE TAX RETURN FILED WITH THE COMPTROLLER; OR

2. AS REPORTED ON A FEDERAL ESTATE TAX RETURN, IF THE LAST PREDECEASED SPOUSE WAS NOT A MARYLAND RESIDENT AND NO PROPERTY WITH A MARYLAND ESTATE TAX SITUS WAS INCLUDIBLE IN THE GROSS ESTATE OF THE LAST PREDECEASED SPOUSE.

(ii) THE DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT MAY NOT BE TAKEN INTO ACCOUNT UNDER PARAGRAPH (3) OF THIS SUBSECTION UNLESS:

1. IF THE LAST PREDECEASED SPOUSE DIED ON OR AFTER JANUARY 1, 2019, A MARYLAND ESTATE TAX RETURN IS TIMELY FILED FOR THE LAST PREDECEASED SPOUSE, ON WHICH THE DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT IS CALCULATED AND AN IRREVOCABLE ELECTION IS MADE THAT THE DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT MAY BE TAKEN INTO ACCOUNT; OR

2. IF THE LAST PREDECEASED SPOUSE DIED BEFORE JANUARY 1, 2019, OR WAS NOT A MARYLAND RESIDENT AND NO PROPERTY WITH A MARYLAND ESTATE TAX SITUS WAS INCLUDIBLE IN THE GROSS ESTATE OF THE LAST PREDECEASED SPOUSE, AN ELECTION WAS MADE UNDER § 2010(C) OF THE INTERNAL REVENUE CODE ON THE FEDERAL ESTATE TAX RETURN OF THE LAST PREDECEASED SPOUSE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2018.

Enacted under Article II, § 17(b) of the Maryland Constitution, April 5, 2018.