

SENATE BILL 646

Q7

8lr1736
CF HB 308

By: **Senators Madaleno, Kasemeyer, Astle, Benson, Conway, Currie, Feldman, Ferguson, Guzzone, Kagan, Kelley, King, Lee, Manno, McFadden, Middleton, Oaks, Peters, Pinsky, Ramirez, Robinson, Rosapepe, Smith, Young, and Zucker**

Introduced and read first time: February 1, 2018

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 12, 2018

CHAPTER _____

1 AN ACT concerning

2 **Maryland Estate Tax – Unified Credit**

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

13 BY repealing and reenacting, without amendments,
14 Article – Tax – General
15 Section 7–309(a)
16 Annotated Code of Maryland
17 (2016 Replacement Volume and 2017 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Tax – General
20 Section 7–309(b)(1), (2), and (3)

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 Annotated Code of Maryland
2 (2016 Replacement Volume and 2017 Supplement)

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

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

10 **Article – Tax – General**

11 7–309.

12 (a) Notwithstanding an Act of Congress that repeals or reduces the federal credit
13 under § 2011 of the Internal Revenue Code, the provisions of this subtitle in effect before
14 the passage of the Act of Congress shall apply with respect to a decedent who dies after the
15 effective date of the Act of Congress so as to continue the Maryland estate tax in force
16 without reduction in the same manner as if the federal credit had not been repealed or
17 reduced.

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

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

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

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

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

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

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

6 1. \$1,000,000 for a decedent dying before January 1, 2015;

7 2. \$1,500,000 for a decedent dying on or after January 1,
8 2015, but before January 1, 2016;

9 3. \$2,000,000 for a decedent dying on or after January 1,
10 2016, but before January 1, 2017;

11 4. \$3,000,000 for a decedent dying on or after January 1,
12 2017, but before January 1, 2018; [and]

13 5. \$4,000,000 for a decedent dying on or after January 1,
14 2018, but before January 1, 2019; AND

15 **6. \$5,000,000 FOR A DECEDENT DYING ON OR AFTER**
16 **JANUARY 1, 2019, PLUS ANY DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT**
17 **CALCULATED IN ACCORDANCE WITH PARAGRAPH (9) OF THIS SUBSECTION.**

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

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

24 1. \$1,000,000 for a decedent dying before January 1, 2015;

25 2. \$1,500,000 for a decedent dying on or after January 1,
26 2015, but before January 1, 2016;

27 3. \$2,000,000 for a decedent dying on or after January 1,
28 2016, but before January 1, 2017;

29 4. \$3,000,000 for a decedent dying on or after January 1,
30 2017, but before January 1, 2018;

31 5. \$4,000,000 for a decedent dying on or after January 1,
32 2018, but before January 1, 2019; and

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

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

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

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

17 **(II) THE DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT**
18 **MAY NOT BE TAKEN INTO ACCOUNT UNDER PARAGRAPH (3) OF THIS SUBSECTION**
19 **UNLESS:**

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

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

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
33 1, 2018.