HB 219

Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 219 (Chair, Ways and Means Committee)(By Request - Departmental - Comptroller)

Ways and Means Budget and Taxation

Maryland Estate Tax - Portability

This departmental bill authorizes the Comptroller to examine the Maryland estate tax return of a predeceased spouse in order to validate (1) a deceased spousal unused exclusion (DSUE) election and (2) the amount of DSUE exclusion claimed by an estate. The bill does not provide the Comptroller authority to impose an additional tax on the estate of the predeceased spouse beyond that provided under current law. In addition, the bill conforms State law to federal law by requiring an individual to file a Maryland estate tax return within two years after the date of death of a decedent if the return is filed solely for the purpose of making a DSUE election and clarifies the calculation of the DSUE amount in the event that the last predeceased spouse was a Maryland resident who died before January 1, 2019. **The bill takes effect June 1, 2020.**

Fiscal Summary

State Effect: The bill is not expected to materially impact State finances.

Local Effect: None.

Small Business Effect: The Comptroller's Office has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law:

Deceased Spousal Exclusion Amount

Under the federal and State estate tax, an estate may exclude a certain amount of the estate from taxation. Under the federal estate tax, the estates of decedents may elect to transfer any unused exclusion to the surviving spouse. The amount received by the surviving spouse is called the DSUE amount. If the executor of the decedent's estate elects transfer, or portability, of the DSUE amount, the surviving spouse can apply the DSUE amount received from the estate of his or her last deceased spouse.

Chapters 15 and 21 of 2018 established portability under the State estate tax by allowing, under specified circumstances, the estate of a married taxpayer to pass along the DSUE 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.

Federal and State Assessment Limitations

In general, the Internal Revenue Service (IRS) may examine a federal tax return and assess a tax within three years after the return was filed. Notwithstanding this limitation, the IRS may after three years examine the estate tax return of a predeceased spouse to make a determination with respect to the amount of a DSUE amount.

Subject to specified exceptions, the Comptroller may not assess a tax under the estate tax after three years from the later of the date the return was filed or due. The Comptroller may assess a tax at any time if (1) a false return with the intent to evade the tax is filed; (2) a willful attempt is made to evade the tax; (3) a return is not filed as required; (4) certain amended returns are not filed; (5) an incomplete return is filed; or (6) certain returns are not filed as required pursuant to federal tax law changes.

Background: 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 2021, estate tax general fund revenues are projected to total $109.2 million. Estates may generally claim a credit against the estate tax for the amount of inheritance taxes paid.

A Maryland estate tax return is required for every estate with a federal gross estate, plus specified adjustments, that equals or exceeds the Maryland estate tax exclusion amount for the decedent's date of death. An estate with a value that exceeds this exclusion amount must file a return if the decedent, at the date of death, was a Maryland resident or the decedent was a nonresident who owned real or tangible personal property having a taxable situs in Maryland.

Chapters 15 and 21 of 2018 decoupled the Maryland estate tax from the increased federal exclusion amount enacted by the Tax Cuts and Jobs Act of 2017. Beginning January 1, 2019, the State exclusion amount equals $5.0 million plus any DSUE amount claimed by an estate.

State Fiscal Effect: The bill authorizes the Comptroller to examine the Maryland estate tax return of a predeceased spouse to determine the validity of a DSUE election and the DSUE amount claimed by an estate. In addition, the bill establishes certain procedures for claiming and calculating the DSUE amount. The Comptroller's Office advises that the bill will allow the office to efficiently implement portability in a manner that is consistent with procedures at the federal level and will reduce the administrative burden of administering portability in the State. In addition, general fund revenues may increase to the extent the bill increases estate tax compliance.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Comptroller's Office; Department of Legislative Services

Fiscal Note History: First Reader - February 2, 2020
rh/rjr Third Reader - March 14, 2020
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Maryland Estate Tax- Portability

BILL NUMBER: HB 219

PREPARED BY: Anne Klase

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

_**X**_ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

____ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

N/A