

# **SB55 Testimony - West FAV.pdf**

Uploaded by: Christopher West

Position: FAV



THE SENATE OF MARYLAND  
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January 19<sup>th</sup>, 2023  
Senate Budget & Taxation Committee  
The Honorable Guy Guzzone  
3 West Miller Senate Building  
Annapolis, Maryland 21401

**Re: Senate Bill – 55 - Maryland Estate Tax – Portability – Time Period for Election**

Dear Chairman Guzzone and Members of the Committee,

It is a great pleasure to appear before the Senate Budget and Tax Committee this afternoon in order to present Senate Bill 55.

Senate Bill 55 deals with a complicated section of the Maryland Estate Tax law, but the bill itself is quite simple and, I hope, uncontroversial.

Under Section 7-309 of the Tax-General Article, a person may take as a credit on that person's estate tax the unused applicable exclusion amount of the person's most recent predeceased spouse. This will have the effect of reducing the estate tax owed by the person taking the credit.

The problem addressed by this bill arises due to the language of Section 7-306 of the Tax-General Article, which specifies the timing for when such a credit must be claimed.

Federal tax law enables people to take similar credits on their federal estate tax returns. Under applicable federal law, if a federal estate tax return is filed solely in order to assert such a claim, the surviving spouse has five years from the date of death of the spouse to file the claim. This five-year period was just promulgated last July. Up until that point, the filing deadline had been two years after the death of the spouse.

Section 7-306 currently is consistent with the federal law, as it existed prior to last July. It provides that the surviving spouse has two years to file a Maryland tax return to make the election to claim the unused exclusion amount of the deceased spouse. The problem is that Maryland's filing deadline is now out of synch with the federal filing deadline. We could just pass a bill conforming Maryland's deadline with the current federal deadline. SB 55, however, takes a different approach and provides that from now on, Maryland's deadline will be identical to the federal deadline. In this way, whenever the federal deadline is changed, Maryland's deadline will be changed automatically and simultaneously.

So, to summarize, Senate Bill 55 is a proactive way of keeping Maryland estate tax filing deadline aligned with the federal estate tax filing deadline. The bill will align Maryland estate tax law with the federal law. Once passed, whenever the federal filing deadline changes, Maryland's deadline will change simultaneously.

I appreciate the Committee's consideration of Senate Bill 55.

# Written testimony SB55 Portability Final.pdf

Uploaded by: Sarah Kahl

Position: FAV

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**To:** Members of Senate Budget and Taxation Committee  
**From:** MSBA Estate & Trust Law Section  
**Date:** January 16, 2023  
**Subject:** **SB 55** – Maryland Estate Tax – Portability – Time Period for Election  
**Position:** **Support**

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The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports** Senate Bill 55– **Maryland Estate Tax – Portability – Time Period for Election. Senate Bill 55**

### **Description of Current Law**

Maryland estate tax portability is the method for spouses to combine their Maryland estate tax exemptions. More specifically, it is a process where a surviving spouse may elect to claim the unused Maryland estate tax exemption of a deceased spouse. Thus, after electing portability, the surviving spouse has his or her own Maryland estate tax exemption, plus the unused Maryland estate tax exemption of his or her deceased spouse. The method of electing portability is to file a Maryland estate tax return. Pursuant to Section 7-305(c) of the Tax General Article, if a surviving spouse files a Maryland estate tax return solely for the purpose of electing Maryland estate tax portability, the surviving spouse must file the Maryland estate tax return within two (2) years from the date of the death of the deceased spouse. The General Assembly enacted the two-year deadline in 2020 to conform with IRS practice for the filing of federal portability-only estate tax returns.

### **Problem Addressed by this Legislation:**

The IRS recently modified the time in which a surviving spouse may elect estate tax portability for federal estate tax purposes. Pursuant to IRS Revenue Procedure 2022-32, effective July 8, 2022, if a federal estate tax return is filed solely for federal estate tax portability, a surviving spouse has five (5) years from the date of death of the spouse within which to timely elect estate tax portability for federal estate tax purposes. Therefore, currently, Maryland law provides two (2) years for Maryland estate tax portability, while the federal government permits five (5) years for federal estate tax portability. This inconsistency creates unnecessary confusion between the Maryland and Federal estate tax practices surrounding the estate tax portability election.

**How this Legislation Solves the Problem:**

The proposed legislation would modify Tax General Section 7-305(c) to provide that in cases where an estate tax return is filed solely to elect Maryland estate tax portability, an election for portability under Maryland law would be timely if filed within the time period prescribed for making a similar portability election on a federal estate tax return. This would remove the inconsistency described above so that the time period for electing estate tax portability for Maryland purposes as well as federal purposes would be the same.

For the reasons stated above, the Estate and Trust Law Section of the MSBA **supports SB 55 and urges a favorable committee report. For Further Information, Please Contact:**

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