
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**

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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