

HOUSE BILL 219

Q7

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By: **Chair, Ways and Means Committee (By Request – Departmental – Comptroller)**

Introduced and read first time: January 16, 2020

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Estate Tax – Portability**

3 FOR the purpose of authorizing the Comptroller to examine certain Maryland estate tax
4 returns to determine the amount of a deceased spousal unused exclusion election;
5 prohibiting an additional assessment of estate tax if a certain period of limitation
6 has expired; and generally relating to the Maryland estate tax.

7 BY repealing and reenacting, with amendments,

8 Article – Tax – General

9 Section 7–309

10 Annotated Code of Maryland

11 (2016 Replacement Volume and 2019 Supplement)

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

14 **Article – Tax – General**

15 7–309.

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20 without reduction in the same manner as if the federal credit had not been repealed or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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

4 (ii) other provisions of federal estate tax law as in effect on the date
5 of the decedent's death.

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

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

12 (ii) other provisions of federal estate tax law as in effect on the date
13 immediately preceding the effective date of the repeal of the federal estate tax.

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

19 1. \$1,000,000 for a decedent dying before January 1, 2015;

20 2. \$1,500,000 for a decedent dying on or after January 1,
21 2015, but before January 1, 2016;

22 3. \$2,000,000 for a decedent dying on or after January 1,
23 2016, but before January 1, 2017;

24 4. \$3,000,000 for a decedent dying on or after January 1,
25 2017, but before January 1, 2018;

26 5. \$4,000,000 for a decedent dying on or after January 1,
27 2018, but before January 1, 2019; and

28 6. \$5,000,000 for a decedent dying on or after January 1,
29 2019, plus any deceased spousal unused exclusion amount calculated in accordance with
30 paragraph (9) of this subsection.

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

33 (iii) Unless the federal credit allowable by § 2011 of the Internal

1 Revenue Code is in effect on the date of the decedent's death, the federal credit used to
2 determine the Maryland estate tax may not exceed 16% of the amount by which the
3 decedent's taxable estate, as defined in § 2051 of the Internal Revenue Code, exceeds:

- 4 1. \$1,000,000 for a decedent dying before January 1, 2015;
- 5 2. \$1,500,000 for a decedent dying on or after January 1,
6 2015, but before January 1, 2016;
- 7 3. \$2,000,000 for a decedent dying on or after January 1,
8 2016, but before January 1, 2017;
- 9 4. \$3,000,000 for a decedent dying on or after January 1,
10 2017, but before January 1, 2018;
- 11 5. \$4,000,000 for a decedent dying on or after January 1,
12 2018, but before January 1, 2019; and
- 13 6. \$5,000,000 for a decedent dying on or after January 1,
14 2019, plus any deceased spousal unused exclusion amount calculated in accordance with
15 paragraph (9) of this subsection.

16 (4) (i) With regard to an election to value property as provided in § 2032
17 of the Internal Revenue Code, if a federal estate tax return is not required to be filed:

- 18 1. an irrevocable election made on a timely filed Maryland
19 estate tax return shall be deemed to be an election as required by § 2032(d) of the Internal
20 Revenue Code;
- 21 2. the provisions of § 2032(c) of the Internal Revenue Code
22 do not apply; and
- 23 3. an election may not be made under item 1 of this
24 subparagraph unless that election will decrease:
 - 25 A. the value of the gross estate; and
 - 26 B. the Maryland estate tax due with regard to the transfer of
27 a decedent's Maryland estate.

28 (ii) An election to value property as provided in § 2032 of the Internal
29 Revenue Code for Maryland estate tax purposes must be the same as the election made for
30 federal estate tax purposes.

31 (5) (i) With regard to an election to treat property as marital deduction
32 qualified terminable interest property in calculating the Maryland estate tax, an
33 irrevocable election made on a timely filed Maryland estate tax return shall be deemed to

1 be an election as required by § 2056(b)(7)(B)(i), (iii), and (v) of the Internal Revenue Code.

2 (ii) An election under this paragraph made on a timely filed
3 Maryland estate tax return shall be recognized for purposes of calculating the Maryland
4 estate tax even if an inconsistent election is made for the same decedent for federal estate
5 tax purposes.

6 (6) (i) For purposes of calculating Maryland estate tax, a decedent shall
7 be deemed to have had a qualifying income interest for life under § 2044(a) of the Internal
8 Revenue Code with regard to any property for which a marital deduction qualified
9 terminable interest property election was made for the decedent's predeceased spouse on a
10 timely filed Maryland estate tax return under paragraph (5) of this subsection.

11 (ii) For the purpose of apportioning Maryland estate tax under §
12 7-308 of this subtitle, any property as to which a decedent is deemed to have had a
13 qualifying income interest for life under subparagraph (i) of this paragraph shall be deemed
14 to be included in both the estate and the taxable estate of the decedent.

15 (7) For purposes of calculating Maryland estate tax, amounts allowable
16 under § 2053 or § 2054 of the Internal Revenue Code as a deduction in computing the
17 taxable estate of a decedent may not be allowed as a deduction or as an offset against the
18 sales price of property in determining gain or loss if the amount has been allowed as a
19 deduction in computing the federal taxable income of the estate or of any other person.

20 (8) Notwithstanding any contrary definition of "marriage" and "spouse"
21 under any applicable provision of federal law, for purposes of calculating Maryland estate
22 tax under this subsection, the surviving "spouse" of a decedent shall include any individual
23 to whom, at the time of the decedent's death, the decedent was lawfully married as
24 determined under the laws of the State.

25 (9) (i) In this paragraph, "deceased spousal unused exclusion amount"
26 means the applicable exclusion amount in effect at the time of the death of the last
27 predeceased spouse of the decedent under paragraph (3) of this subsection reduced by the
28 taxable estate of the last predeceased spouse:

29 1. as reported on a Maryland estate tax return filed with the
30 Comptroller; or

31 2. as reported on a federal estate tax return, if the last
32 predeceased spouse was not a Maryland resident and no property with a Maryland estate
33 tax situs was includible in the gross estate of the last predeceased spouse.

34 (ii) The deceased spousal unused exclusion amount may not be taken
35 into account under paragraph (3) of this subsection unless:

36 1. if the last predeceased spouse died on or after January 1,
37 2019, a Maryland estate tax return is timely filed for the last predeceased spouse, on which

1 the deceased spousal unused exclusion amount is calculated and an irrevocable election is
2 made that the deceased spousal unused exclusion amount may be taken into account; or

3 2. if the last predeceased spouse died before January 1, 2019,
4 or was not a Maryland resident and no property with a Maryland estate tax situs was
5 includible in the gross estate of the last predeceased spouse, an election was made under §
6 2010(c) of the Internal Revenue Code on the federal estate tax return of the last
7 predeceased spouse.

8 **(III) 1. NOTWITHSTANDING ANY OTHER PROVISION OF THIS**
9 **ARTICLE, THE COMPTROLLER MAY EXAMINE A MARYLAND ESTATE TAX RETURN OF**
10 **A PREDECEASED SPOUSE AFTER THE EXPIRATION OF THE TIME FOR ASSESSING A**
11 **TAX UNDER THIS TITLE HAS EXPIRED UNDER § 13-1101 OF THIS ARTICLE SOLELY**
12 **FOR THE PURPOSES OF DETERMINING THE VALIDITY OF THE DECEASED SPOUSAL**
13 **UNUSED EXCLUSION ELECTION AND THE AMOUNT TO BE TAKEN INTO ACCOUNT**
14 **UNDER PARAGRAPH (3) OF THIS SUBSECTION.**

15 **2. THIS SUBPARAGRAPH MAY NOT BE CONSTRUED TO**
16 **AUTHORIZE THE ASSESSMENT OF ANY ADDITIONAL TAX WITH RESPECT TO THE**
17 **PREDECEASED SPOUSE'S MARYLAND ESTATE TAX RETURN IF THE PERIOD OF**
18 **LIMITATION UNDER § 13-1101 OF THIS ARTICLE HAS EXPIRED.**

19 (c) (1) (i) In this subsection the following words have the meanings
20 indicated.

21 (ii) “Farming purposes” has the meaning stated in § 2032A(e)(5) of
22 the Internal Revenue Code.

23 (iii) “Qualified agricultural property” means real or personal
24 property that is used primarily for farming purposes.

25 (iv) “Qualified recipient” means an individual who enters into an
26 agreement to use qualified agricultural property for farming purposes after the decedent's
27 death.

28 (2) The Maryland estate tax shall be determined by excluding from the
29 value of the gross estate up to \$5,000,000 of the value of qualified agricultural property
30 that passes from the decedent to or for the use of a qualified recipient.

31 (3) If the value of qualified agricultural property that passes from the
32 decedent to or for the use of a qualified recipient exceeds \$5,000,000, the Maryland estate
33 tax imposed on the Maryland estate of the decedent may not exceed the sum of:

34 (i) 16% of the amount by which the decedent's taxable estate,
35 excluding the value of all qualified agricultural property that passes from the decedent to
36 or for the use of a qualified recipient, exceeds the applicable exclusion amount specified

1 under subsection (b) of this section; and

2 (ii) 5% of the amount by which the value of qualified agricultural
3 property that passes from the decedent to or for the use of a qualified recipient exceeds
4 \$5,000,000.

5 (4) (i) The Maryland estate tax shall be recaptured as provided in this
6 paragraph if, within 10 years after the decedent's death, the qualified agricultural property
7 ceases to be used for farming purposes.

8 (ii) The amount of the estate tax imposed under this paragraph shall
9 be the additional Maryland estate tax that would have been payable at the time of the
10 decedent's death but for the provisions under paragraphs (2) and (3) of this subsection.

11 (5) The Comptroller shall adopt regulations to implement this subsection.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
13 1, 2020.