

Department of Legislative Services  
 Maryland General Assembly  
 2017 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 1331 (Delegates McMillan and Ghrist)  
 Ways and Means

Estate Fairness Act - Inheritance Tax Repeal

This bill repeals the Maryland inheritance tax.

The bill takes effect July 1, 2017, and applies to decedents dying on or after January 1, 2017.

Fiscal Summary

**State Effect:** Net general fund revenues decrease by \$38.6 million in FY 2018. Future year estimates reflect the projected payment schedule of State inheritance taxes and credits claimed against the estate tax. Nonbudgeted revenues and expenditures used to cover administrative expenses for the registers of wills decrease by about \$17.3 million in FY 2018. General fund expenditures increase by a corresponding amount in order to replace these administrative expenses. Future year estimates reflect projected growth in expenditures.

(\$ in millions)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
GF Revenue	(\$38.6)	(\$41.4)	(\$44.6)	(\$45.7)	(\$46.0)
NonBud Rev.	(\$17.3)	(\$17.5)	(\$17.6)	(\$17.8)	(\$17.9)
GF Expenditure	\$17.3	\$17.5	\$17.6	\$17.8	\$17.9
NonBud Exp.	(\$17.3)	(\$17.5)	(\$17.6)	(\$17.8)	(\$17.9)
Net Effect	(\$55.9)	(\$58.9)	(\$62.3)	(\$63.4)	(\$63.9)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** None.

**Small Business Effect:** Potential meaningful. Small businesses that pay inheritance taxes will benefit from the repeal of the tax.

## Analysis

**Current Law/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. Estates may generally claim a credit against the estate tax for the amount of inheritance taxes paid.

The Maryland inheritance tax is applied to the receipt of property from a decedent's estate. Under Chapter 497 of 2000, direct beneficiaries and siblings are exempt from the inheritance tax. A direct beneficiary includes a child (including stepchild), parent, grandparent, spouse, sibling, other lineal descendants, or a corporation if all stockholders are direct beneficiaries. Collateral beneficiaries include all other beneficiaries and are taxed at the rate of 10%.

Chapter 145 of 2004 altered the definition of "child" and "parent" to include a former stepchild and former stepparent, respectively, so that the inheritance tax would not apply to the receipt of property by a former stepchild or former stepparent. Chapter 145 also extended the exemption for lineal beneficiaries to children and other lineal descendants of a stepchild or former stepchild of the decedent and to the spouses of those individuals. Chapter 30 of 2006 expanded the exemption for property passing to partnerships or limited liability companies if all partners or members are direct beneficiaries of the decedent. Chapter 602 of 2009 expanded the exemption for a primary residence passing to a domestic partner. To qualify for the exemption, the property must have been held in joint tenancy by the decedent and the domestic partner.

Registers of wills are entitled to charge and collect various fees for the performance of their duties, including probate fees for performing various actions in relation to the administration of a decedent's estate, and various other enumerated fees.

A register of wills is also allowed a 25% commission on inheritance tax collected, with the remainder paid into the State Treasury each month. Annually, every register must return to the Comptroller a full and accurate account of the fees and receipts of the register's office and incurred expenses. The excess of fees and receipts over expenses is delivered to the Comptroller with each report and deposited in the general fund. Salaries of the registers are paid semimonthly from the fees and receipts of the office, after deducting the expenses of the office. If the fees and receipts of an office are insufficient in any fiscal year to pay all or a part of the expenses of the office and authorized salary of a register, the deficiency is funded from the taxes remitted to the Comptroller by the register during that fiscal year. If the tax collections for the fiscal year are insufficient, the Comptroller makes up the deficit from excess fees remitted from all other registers.

Chapter 612 of 2014 enacted significant changes to the State estate tax by eventually conforming the Maryland estate tax to the value of the unified credit under the federal

estate tax. The increase in the amount that can be excluded for Maryland estate tax purposes is phased in over five years, beginning with decedents dying in calendar 2015. Beginning on January 1, 2019, the State exclusion amount will equal the amount that can be excluded under the federal estate tax, indexed to inflation – that amount is estimated to be \$5.7 million in calendar 2019. State estate tax revenues will decrease by about two-thirds once the State estate tax is fully conformed to the federal exclusion amount and by a total of \$548.9 million through fiscal 2021.

**State Fiscal Effect:** The bill repeals the inheritance tax for decedents dying on or after January 1, 2017. As a result, net general fund revenues decrease by \$38.6 million in fiscal 2018. The net general fund revenue loss reflects a decrease in inheritance tax revenues of \$52.1 million, partially offset by a \$13.6 million increase in estate tax revenues. Estates may generally claim a credit against the estate tax for the amount of inheritance taxes paid. An estate, however, may only claim the amount of inheritance taxes paid up to the estate tax liability imposed. The estimated net revenue loss is based on projected inheritance tax revenues and the following facts and assumptions:

- There is a six-month lag between the date of a decedent’s death and when inheritance taxes are paid.
- Any inheritance taxes claimed as a credit against the estate tax are claimed within the same fiscal year.
- For decedents dying in calendar 2007, 2010, and 2011, an average of \$32.8 million in inheritance taxes was claimed against the estate tax. Of the amount claimed by these estates, the amount that could be claimed was equal to a little less than two-thirds or an average of \$20.7 million annually.
- Future credit amounts decrease based on the forecasted decrease in estate tax revenues.

**Appendix 1** shows the fiscal impact of the bill in fiscal 2018 through 2022.

Repealing the inheritance tax will eliminate revenues that cover administrative expenses for the registers of wills. The registers of wills incur expenses related to the administration of a decedent’s estate, other than administration of the inheritance tax. As a result, nonbudgeted revenues and expenditures decrease by \$17.3 million and general fund expenditures increase by \$17.3 million in fiscal 2018, as shown in Appendix 1. To the extent that certain personnel at registers of wills offices are dedicated exclusively to the administration of the inheritance tax, general fund expenditures may increase by less than estimated.

## **Additional Information**

**Prior Introductions:** SB 244 of 2014 received a hearing in the Senate Budget and Taxation Committee, but no further action was taken.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 27, 2017  
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**Appendix 1 – Fiscal Impact of Legislation  
(\$ in Millions)**

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	<b><u>FY 2018</u></b>	<b><u>FY 2019</u></b>	<b><u>FY 2020</u></b>	<b><u>FY 2021</u></b>	<b><u>FY 2022</u></b>
<b><u>Revenues</u></b>					
<b>General Fund Revenues</b>					
Estate Tax	\$13.6	\$11.3	\$8.5	\$7.9	\$7.9
Inheritance Tax	(52.1)	(52.7)	(53.1)	(53.5)	(54.0)
<b>General Fund Total</b>	<b>(\$38.6)</b>	<b>(\$41.4)</b>	<b>(\$44.6)</b>	<b>(\$45.7)</b>	<b>(\$46.0)</b>
<b>Nonbudgeted Revenues</b>					
Register of Wills	(17.3)	(17.5)	(17.6)	(17.8)	(17.9)
<b>Total Revenues</b>	<b>(\$55.9)</b>	<b>(\$58.9)</b>	<b>(\$62.3)</b>	<b>(\$63.4)</b>	<b>(\$63.9)</b>
<b><u>Expenditures</u></b>					
<b>General Fund Expenditures</b>					
Register of Wills	17.3	17.5	17.6	17.8	17.9
<b>Nonbudgeted Expenditures</b>					
Register of Wills	(17.3)	(17.5)	(17.6)	(17.8)	(17.9)
<b>Total Expenditures</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>
<b>Net Effect</b>	<b>(\$55.9)</b>	<b>(\$58.9)</b>	<b>(\$62.3)</b>	<b>(\$63.4)</b>	<b>(\$63.9)</b>