

HOUSE BILL 268

Q7
HB 165/21 – W&M

3lr1721

By: **Delegate Wilkins**

Introduced and read first time: January 25, 2023

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Estate Tax – Unified Credit**

3 FOR the purpose of altering a certain limit on the unified credit used for determining the
4 Maryland estate tax for decedents dying on or after a certain date; altering a certain
5 limitation on the amount of the Maryland estate tax for decedents dying on or after
6 a certain date; and generally relating to the Maryland estate tax.

7 BY repealing and reenacting, without amendments,
8 Article – Tax – General
9 Section 7–309(a) and (b)(1), (2), and (9)
10 Annotated Code of Maryland
11 (2022 Replacement Volume)

12 BY repealing and reenacting, with amendments,
13 Article – Tax – General
14 Section 7–309(b)(3)
15 Annotated Code of Maryland
16 (2022 Replacement Volume)

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

19 **Article – Tax – General**

20 7–309.

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25 without reduction in the same manner as if the federal credit had not been repealed or

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 reduced.

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

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

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

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

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

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

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

23 1. \$1,000,000 for a decedent dying before January 1, 2015;

24 2. \$1,500,000 for a decedent dying on or after January 1,
25 2015, but before January 1, 2016;

26 3. \$2,000,000 for a decedent dying on or after January 1,
27 2016, but before January 1, 2017;

28 4. \$3,000,000 for a decedent dying on or after January 1,
29 2017, but before January 1, 2018;

30 5. \$4,000,000 for a decedent dying on or after January 1,
31 2018, but before January 1, 2019; [and]

32 6. \$5,000,000 for a decedent dying on or after January 1,
33 2019, **BUT BEFORE JULY 1, 2023**, plus any deceased spousal unused exclusion amount
34 calculated in accordance with paragraph (9) of this subsection; **AND**

1 **7. \$1,000,000 FOR A DECEDENT DYING ON OR AFTER**
2 **JULY 1, 2023, PLUS ANY DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT**
3 **CALCULATED IN ACCORDANCE WITH PARAGRAPH (9) OF THIS SUBSECTION.**

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

6 (iii) Unless the federal credit allowable by § 2011 of the Internal
7 Revenue Code is in effect on the date of the decedent's death, the federal credit used to
8 determine the Maryland estate tax may not exceed 16% of the amount by which the
9 decedent's taxable estate, as defined in § 2051 of the Internal Revenue Code, exceeds:

10 1. \$1,000,000 for a decedent dying before January 1, 2015;

11 2. \$1,500,000 for a decedent dying on or after January 1,
12 2015, but before January 1, 2016;

13 3. \$2,000,000 for a decedent dying on or after January 1,
14 2016, but before January 1, 2017;

15 4. \$3,000,000 for a decedent dying on or after January 1,
16 2017, but before January 1, 2018;

17 5. \$4,000,000 for a decedent dying on or after January 1,
18 2018, but before January 1, 2019; [and]

19 6. \$5,000,000 for a decedent dying on or after January 1,
20 2019, **BUT BEFORE JULY 1, 2023**, plus any deceased spousal unused exclusion amount
21 calculated in accordance with paragraph (9) of this subsection; **AND**

22 **7. \$1,000,000 FOR A DECEDENT DYING ON OR AFTER**
23 **JULY 1, 2023, PLUS ANY DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT**
24 **CALCULATED IN ACCORDANCE WITH PARAGRAPH (9) OF THIS SUBSECTION.**

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:

32 A. the last predeceased spouse was not a Maryland resident

1 and no property with a Maryland estate tax situs was includible in the gross estate of the
2 last predeceased spouse; or

3 B. the last predeceased spouse died before January 1, 2019,
4 and no Maryland estate tax return was required to be filed with respect to the predeceased
5 spouse's estate.

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

8 1. if the last predeceased spouse died on or after January 1,
9 2019, a Maryland estate tax return is timely filed for the last predeceased spouse, on which
10 the deceased spousal unused exclusion amount is calculated and an irrevocable election is
11 made that the deceased spousal unused exclusion amount may be taken into account; or

12 2. if the last predeceased spouse died before January 1, 2019,
13 or was not a Maryland resident and no property with a Maryland estate tax situs was
14 includible in the gross estate of the last predeceased spouse, an election was made under §
15 2010(c) of the Internal Revenue Code on the federal estate tax return of the last
16 predeceased spouse.

17 (iii) 1. Notwithstanding any other provision of this article, the
18 Comptroller may examine a Maryland estate tax return of a predeceased spouse after the
19 time for assessing a tax under this title has expired under § 13-1101 of this article solely
20 for the purposes of determining the validity of the deceased spousal unused exclusion
21 election and the amount to be taken into account under paragraph (3) of this subsection.

22 2. This subparagraph may not be construed to authorize the
23 assessment of any additional tax with respect to the predeceased spouse's Maryland estate
24 tax return if the period of limitation under § 13-1101 of this article has expired.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
26 1, 2023.