

**Administrative Release No. 30**

**Subject: Maryland Estate Tax**

**I. General**

The Maryland estate tax is a tax due on the transfer of assets from an estate. The tax is based on the maximum credit for state death taxes allowable against the federal estate tax and calculated under §2011 of the Internal Revenue Code. See specific instructions below based on the decedent's year of death. If the federal estate tax is not in effect on the date of the decedent's death, the Maryland estate tax will be based on what would have been the maximum allowable credit for state death taxes, without reduction, in effect on the date immediately preceding the effective date of the federal estate tax repeal.

The inheritance tax **paid** to the Register of Wills is subtracted from the maximum allowable credit and the difference is the Maryland estate tax. If the inheritance tax paid is equal to or exceeds the credit for state death taxes, no Maryland estate tax is due. The credit may be apportioned for estates that have property in more than one state. The instructions for determining the portion of the credit that is due to Maryland are included with the Maryland estate tax return, Form MET1.

**A. For Decedents dying on or before December 31, 2001**

The filing requirement is the same as for the federal estate tax return. The maximum allowable credit for state death taxes from the federal estate tax return is reported on the Maryland estate tax return and used to determine the Maryland estate tax.

**B. For Decedents dying after December 31, 2001 and before January 1, 2004**

The filing requirement is the same as for the federal estate tax return. The Maryland General Assembly enacted legislation during the 2002 legislative session that has partially "de-coupled" Maryland's estate tax law from the Internal Revenue Code and the phase-out of the credit for state death taxes. Beginning with estates of decedents dying after December 31, 2001, the Maryland estate tax is equal to the federal

allowable credit for state death taxes, **without reduction** by any Act of Congress enacted on or after January 1, 2001. The Maryland estate tax continues in force without reduction in the same manner as if the federal credit had not been reduced or repealed.

Table B included with the federal instructions and used to calculate the credit for state death taxes can now be found on Schedule B of the Maryland estate tax return. Use Schedule B to calculate the "de-coupled" Maryland estate tax liability.

**C. For Decedents dying after December 31, 2003 and before January 1, 2005**

Legislation enacted during the 2004 session of the Maryland General Assembly has further "de-coupled" Maryland's estate tax law from amendments to the Internal Revenue Code. The Maryland filing requirement is now based on an estate with a gross estate plus adjusted taxable gifts valued at \$1,000,000 or more and not the federal filing requirement. The Maryland estate tax is still equal to the federal allowable credit for state death taxes, **without reduction** by any Act of Congress enacted on or after January 1, 2001. The Maryland estate tax continues in force without reduction in the same manner as if the federal credit had not been reduced or repealed.

**D. For Decedents dying after December 31, 2004**

In addition to the description for decedents dying after December 31, 2003 in Subsection C of this section, the 2004 Maryland legislation further provided that the Maryland estate tax is now determined without regard to any deduction for state death taxes allowed under §2058 of the Internal Revenue Code. When Congress repealed the credit for state death taxes, it authorized a deduction in its place on the federal estate tax return. This deduction is disallowed when calculating the Maryland estate tax.

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### **E. For Decedents dying after December 31, 2005**

Additional changes to the Maryland estate tax were made during the 2006 Legislative Session of the Maryland General Assembly. For decedents dying after December 31, 2005, the Maryland estate tax cannot exceed 16% of the amount by which the decedent's taxable estate exceeds \$1,000,000. In addition, a decedent's estate is now authorized to make an election on the Maryland estate tax return to treat property as marital deduction qualified terminable interest property for purposes of calculating the Maryland estate tax. An election on the Maryland estate tax return to treat property as marital deduction qualified terminable interest property shall be recognized for purposes of calculating the Maryland estate tax even if an inconsistent election is made for the same decedent for federal estate tax purposes.

### **F. For Decedents dying after December 31, 2009**

The federal estate tax does not apply to decedents dying after December 31, 2009 and before January 1, 2011. Under present federal estate tax law, any decedent dying after December 31, 2010 again may be subject to a federal estate tax.

The changes to the Maryland estate tax enacted by the General Assembly since 2002 anticipated periods of time when the federal estate tax would not be in effect. Thus, the Maryland estate tax, as described in sections I.B. through I.E. remains in effect. For decedents dying after December 31, 2009, estates with a gross estate plus adjusted taxable gifts valued at \$1,000,000 or more continue to be required to file a Maryland estate tax return. The provisions of the Maryland estate tax that became effective for decedents dying after December 31, 2005 (discussed in Section I.E. above) continue to be applicable. During 2010 when the federal estate tax does not apply, the Maryland estate tax is still equal to the federal allowable credit for state death taxes, **without reduction** by any Act of Congress enacted on or after January 1, 2001, and the Maryland estate tax is determined using the other provisions of federal estate tax law as in effect on December 31, 2009.

## **II. Requirement to file return**

The person who is responsible for filing the federal estate tax return or, if a federal return is not required, the duly appointed personal representative

of the decedent's estate, must file the Maryland estate tax return. If there is no personal representative appointed, then the persons in possession of the property of the decedent are required to file the return. The return must be filed if the decedent was a:

- A.** Resident of Maryland at the time of death; or
- B.** Nonresident but owned real property; or tangible personal property having a taxable situs in Maryland, and
- C.** Meets the filing requirements for the year of death as explained in Section I of this release.

If the above conditions are met, a state tax return must be filed even if no tax is due. If the estate is not required to file a federal estate tax return, but is required to file a Maryland estate tax return, a pro forma federal return, Form 706, must be prepared as though the federal return were required. Maryland estate tax forms may be obtained by calling the Estate Tax Section at (410) 260-7850; visiting the Comptroller's Webpage at [www.marylandtaxes.com](http://www.marylandtaxes.com); or writing to:

Comptroller of Maryland  
Revenue Administration Division  
Estate Tax Section  
P.O. Box 828  
Annapolis, Maryland 21404-0828

## **III. Due date**

### **A. Return filing due date**

The return is due to be filed within nine months after the date of death. The return is to be filed with the Register of Wills office for the county in which the estate is being administered. In the case of nonresident decedents, the return must be filed with the Register of Wills in the jurisdiction where the Maryland property is located. For decedents dying after December 31, 2008, the return may be filed either with the Register Wills, or directly with Comptroller. If filed directly with the Comptroller, Certification of Inheritance Tax must be submitted on a separate document provided by the Register of Wills.

### **B. Payment**

Payment of the estate tax is made to the Comptroller of Maryland and not to the Register of Wills. The payment may be sent with a Maryland estate tax remittance form or may be sent with a letter. The letter must provide the decedent's name,

social security number, date of death, and county in which the estate is being probated. Payment should be sent to: Comptroller of Maryland, Revenue Administration Division, Estate Tax Section, P.O. Box 828, Annapolis, Maryland 21404-0828.

#### **IV. Extensions**

The Comptroller may extend the time to file an estate tax return up to 6 months; if the person required to file the estate tax return is out of the United States, up to 1 year. An application Form MET1-E must be filed with the Comptroller on or before the statutory due date and should include: a copy of the federal extension request, Form 4768, if applicable, remittance of the estimated Maryland estate tax; or a request for an alternative payment schedule.

#### **V. Payment Agreements**

##### **A. Alternative payment schedules**

An estate that is unable to make a full payment of the tax due on the due date may request an alternative payment schedule. The alternative payment schedule must be requested by the person responsible for filing the return and paying the tax or that person's authorized agent.

**B.** The request for an alternative payment schedule must be made in writing and include the following information:

1. The Maryland estate tax return

Exception: In the case of an extension, the alternative payment schedule must be based on the amount that is estimated to be due.

2. The proposed alternative payment schedule, based on one of the following options:

(a) A deferral of payment for up to one year. Additional deferrals may be considered on a year-by-year basis. If there is an agreement to defer the payment, then at the end of the deferral period, unless the applicant reapplies for and is granted an additional deferral, payment in full is due.

(b) An installment schedule for periodic payments. If a payment installment schedule is for more than one year, the applicant is required to certify annually that the conditions and circumstances that existed at the time the alternate payment schedule was requested have not materially or significantly changed. Any

significant change in the conditions and/or circumstances may result in a reevaluation and the terms of the installment schedule may be changed by the Comptroller.

3. A reasonable estimate of the Maryland estate tax liability, if the Maryland estate tax return is not included with the application for an alternate payment schedule. The estimate must include any information that supports the amount of the Maryland estate tax liability.

4. An inventory of the assets comprising the gross estate. The inventory should be itemized by the type of asset, valuation, and location.

5. The names and addresses of all persons responsible for filing the return and paying the tax.

6. A description of all sources and amounts of income to the estate.

7. Evidence that the real estate is being actively marketed where the real estate comprises a majority of the assets of the estate. This must include a realtor listing agreement, a letter from the realtor, etc. The request should include an explanation with evidence supporting a decision not to sell real property in order to pay the tax liability. For example, evidence of income to pay the liability from mortgages, loans, business income, etc.

**8. For those estates subject to filing a federal estate tax return,** the status and balance of the federal estate tax liability and whether the Internal Revenue Service has allowed an alternative payment.

9. Certification that no distributions have been made or will be made before taxes are paid.

##### **C. Consent to lien**

Any request for an alternative payment schedule which is approved by the Comptroller shall be deemed to include consent on behalf of the applicant to the filing of a tax lien against the estate in any Maryland jurisdiction where there may be real or personal property and where the decedent resided. The Comptroller may require additional security from the person(s) responsible for filing the return and paying the tax or beneficiaries in the form of a bond with a surety approved by the Comptroller's Office. Failure to provide adequate security will be grounds for rejecting any alternative payment plan.

#### **D. Notification**

An applicant will be provided with a written notification of the Comptroller's decision within a reasonable period of time after receipt of the alternative payment schedule application, unless additional information is required.

#### **E. Interest on tax due**

Interest will accrue at the statutory rate on the unpaid liability from the statutory due date to the date of the payment.

#### **F. Appeal**

If the application for an alternative payment plan is not approved by the Comptroller, the applicant may appeal the denial to the Maryland Tax Court within 30 days of the written notification of denial.

#### **G. Senate Bill 396 (Chapter 554, Acts of 2010) – Pilot Program for Payment Deferral for Qualified Agricultural Property**

For decedents dying after December 31, 2010, the Maryland General Assembly has enacted a provision that adds a new subsection to Title 7 of the Tax-General Article relating to alternate payment schedules for Maryland estate tax imposed on agricultural and personal property used for farming purposes. The new Section 7-307(e) provides for a payment deferral of 3 years from the due date for Maryland estate tax imposed on property passing from a decedent to or for the use of an individual who enters into an agreement to use the property for farming purposes after the decedent's death. The amount that may be deferred is determined by multiplying the percentage of property of the gross estate that is used for farming purposes times the estate tax due. The amount of tax deferred under this section may not exceed \$375,000 as to any decedent.

If a payment deferral is allowed, the deferred estate tax shall be paid without interest in accordance with a payment schedule prescribed by the Comptroller over a 3 year period beginning in the 4<sup>th</sup> year after the due date.

To be eligible for the payment deferral, a qualified recipient must file an application and enter into an agreement in a form specified by the Comptroller to use the qualified agricultural property for farming purposes after the decedent's death and file periodic reports or allow periodic inspections as required by the Comptroller. This

Act took effect on July 1, 2010 and will be applicable to decedents dying after December 31, 2010. However, the Act will remain effective only for a period of 4 years and, at the end of June 30, 2014, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

To make an application for deferred payment of tax on qualified agricultural property, file MET1 DAG, with the MET 1 and the pro forma federal Form 706.

#### **H. Senate Bill 513 (Chapter 241, Acts of 2011) – Maryland Estate Tax – Payment Deferral for Qualified Agricultural Property – Extension of Payment Deferral**

A new subsection under § 7-307 of the Tax-General Article authorizes the Comptroller to grant an extension of the deferred payment period described in § G above, if the qualified recipient has a pending application to put the land on which the deferred estate tax is due under a permanent land conservation easement with the Maryland Agricultural Land Preservation Foundation, the Rural Legacy Board, or a similar easement purchase program.

#### **VI. Refunds**

A claim for refund of Maryland estate tax may be filed with the Comptroller by a claimant required to pay the tax if:

**A.** An erroneous amount of tax has been paid or collected, or

**B.** The Maryland estate tax is decreased as the result of:

1. Action taken by the Internal Revenue Service or the estate or

2. An inheritance tax payment made after a Maryland estate tax payment.

An amended MET1 return is required to be filed to claim a refund of previously paid Maryland estate tax.

The claim must be supported by documents evidencing the estate tax overpayment, i.e., IRS closing letter or examination changes; or inheritance tax receipts.

If a person is required to pay additional inheritance tax to the Register of Wills and the payment would result in a refund of previously paid

Maryland estate tax, the person(s) responsible for filing the return and paying the tax may request the Comptroller to pay the anticipated estate tax refund directly to the Register of Wills to be applied against the inheritance tax liability. Use Comptroller's form MET 2ADJ.

If an inheritance tax refund would result in an increase in the Maryland estate tax imposed on an estate, the claimant may request the Register of Wills to pay the inheritance tax refund directly to the Comptroller. Use Register of Wills' form RW1140.

Forms are available from the Comptroller and the Registers of Wills.

## **VII. Amended return**

After a Maryland estate tax return has been filed, an amended Maryland estate tax return shall be filed with the Register of Wills if the Maryland estate tax liability is increased because of:

1. a change in the federal gross estate, federal taxable estate, federal estate tax, or other change as determined under the Internal Revenue Code;
2. after-discovered property;
3. a correction to the value of previously reported property;
4. a correction to the amount of previously claimed deductions; or
5. any other correction to a previously filed return.

The amended return shall be filed within 90 days after the later to occur of the date of the event that caused the increase in the Maryland estate tax liability or the date on which the person required to file an amended Maryland estate tax return learned or reasonably should have learned of the increase in the Maryland estate tax liability. Use Form MET1 and check the box for "amended". Payment of any additional tax, interest and/or penalty is made to the Comptroller of Maryland at the same time the return is filed.

## **VIII. Interest and Penalty**

Interest accrues at the statutory rate on any portion of the Maryland estate tax liability not satisfied by the statutory due date nine (9) months from date of death.

A late payment penalty of up to 10% is charged on any payment of Maryland estate tax not paid by the due date.

A penalty of 25% is charged for failure to comply within the time prescribed in a Notice and Demand for the filing of a return and the payment of the tax.

A penalty of 25% shall be charged for the underpayment of Maryland estate tax if the underpayment exceeds \$5,000 and is attributable to a "substantial estate tax valuation understatement". A "substantial estate tax valuation understatement" is defined as a valuation at 60% or less of the amount determined to be the correct value.

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Revenue Administration Division  
Revenue Administration Center  
Annapolis, Maryland 21411-0001

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or **1-800-MD TAXES**

**taxhelp@comp.state.md.us**

**www.marylandtaxes.com**

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