

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 523
Budget and Taxation

(Senator Robey, *et al.*)

Inheritance Tax - Exemptions - Domestic Partners

This bill exempts from the State inheritance tax the receipt of property passing from a decedent to • a domestic partner of the decedent; or • a domestic partner of a child of the decedent or a domestic partner of a lineal descendent of a child of the decedent if the domestic partner provides evidence of a domestic partnership. The bill also provides that the State inheritance tax does not apply to the receipt of property of a holocaust victim by a domestic partner if the domestic partner provides proof of the domestic partnership.

A domestic partner is defined as an individual in a relationship between two individuals who • are at least age 18; • are not related; • are not married or in a civil union or in a domestic partnership with another individual; • agree to be in a relationship of mutual interdependence; • and share a common residence.

The bill takes effect July 1, 2008 and applies to all decedents dying after July 1, 2008.

Fiscal Summary

State Effect: Potential decrease in State general fund revenues. Expenditures would not be affected.

Local Effect: None

Small Business Effect: Minimal.

Analysis

Current Law: The Maryland inheritance tax is applied to the receipt of property from a decedent's estate. Under Chapter 497 of 2000, for decedents dying on or after July 1, 2000, direct beneficiaries and siblings are exempt from the inheritance tax. Direct beneficiaries include parents, grandparents, spouses, children, other lineal descendants, stepparents, and stepchildren, 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 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 from the Maryland inheritance tax for property passing to partnerships or limited liability companies (LLCs) if all partners or members are direct beneficiaries of the decedent.

Background: Exhibit 1 shows State inheritance tax collections since fiscal 2001 and reflects the changes made to the inheritance tax since the enactment of Chapter 497 of 2000.

Exhibit 1 State Inheritance Tax Collections Fiscal 2001-2009

| <u>Fiscal Year</u> | <u>Collections</u> |
|--------------------|--------------------|
| 2001 | \$65,438,000 |
| 2002 | 50,583,000 |
| 2003 | 46,620,000 |
| 2004 | 42,494,000 |
| 2005 | 43,900,000 |
| 2006 | 50,406,000 |
| 2007 | 47,775,000 |
| 2008 (estimated) | 53,691,000 |
| 2009 (estimated) | 55,533,000 |

State Fiscal Effect: State general fund revenues would decrease to the extent that properties are transferred from a decedent to a domestic partner or former domestic partner. However, the amount of any decrease depends on the number of domestic partnerships or former domestic partnerships that exist in Maryland, the number of partners that own property, the number that subsequently transfer property after death, and the value of each property or estate. However, the number of property transfers from a deceased domestic partner to another domestic partner, or other specified individuals, occurring each year cannot be reliably estimated.

As a point of reference, an exemption for property valued at \$100,000 that is passed from a deceased domestic partner to another domestic partner would result in a general fund revenue decrease of \$10,000 (\$100,000 x 10% tax rate). However, because this bill exempts the passing of property from a deceased domestic partner to another domestic partner for purposes of the Maryland inheritance tax, it could also have the effect of reducing the amount of inheritance taxes paid for purposes of calculating the Maryland estate tax. As a result, Maryland estate taxes could increase by some amount for those estates subject to that tax.

According to the U.S. Census Bureau, approximately 5.5% of households in Maryland are comprised of unmarried partners; same sex couples account for 0.7% of households and opposite sex couples account for 4.8% of households. This information is based on the 2006 American Community Survey.

Additional Information

Prior Introductions: None.

Cross File: HB 668 (Delegate Hixson, *et al.*) – Ways and Means.

Information Source(s): Comptroller's Office, U.S. Census Bureau, Department of Legislative Services

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mll/hlb

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