

Estate Tax: Maryland

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A Q&A guide to Maryland laws on estate taxation of transfers at death. This Q&A addresses whether a jurisdiction has any estate tax or other similar taxes imposed at death and, for jurisdictions currently imposing a state estate tax, includes an overview of the state estate tax system, the basic exemption amount, the calculation of the gross estate, available deductions, calculating the state estate tax, filing the state estate tax return, and paying the state estate tax.

EXISTENCE OF ESTATE TAX

1. Does your state have an estate tax?

Maryland imposes an estate tax on transfers of assets that exceed the federal applicable exclusion amount, as augmented by Maryland law (Md. Code Ann., Tax-Gen. §§ 7-302 and 7-304).

OVERVIEW OF THE ESTATE TAX

2. To whom does the state estate tax apply in your state?

Maryland imposes a state estate tax on the transfer of the Maryland estate of each decedent who at the time of death was either:

- A resident of Maryland.
- A non-resident of Maryland whose estate includes an interest in real property permanently located in Maryland or tangible personal property with a taxable situs in Maryland.

(Md. Code Ann., Tax-Gen. § 7-302.)

3. How is the state estate tax calculated in your state?

The Maryland estate tax is calculated by:

- Calculating the augmented gross estate by:
 - determining the federal gross estate; and
 - adding in the value of qualified terminable interest property (QTIP) for which an election was previously made by a predeceased spouse.
- Calculating the total deductions by:
 - determining the federal total allowable deductions; and
 - determining the Maryland QTIP election.
- Calculating the Maryland estate tax base by subtracting the total deductions from the augmented gross estate.
- Subtracting the Maryland exclusion amount (also called the Maryland exemption amount) from the Maryland estate tax base. The Maryland exclusion amount is:
 - \$1 million for a decedent dying before January 1, 2015;
 - \$1.5 million for a decedent dying on or after January 1, 2015, but before January 1, 2016;
 - \$2 million for a decedent dying on or after January 1, 2016, but before January 1, 2017;
 - \$3 million for a decedent dying on or after January 1, 2017, but before January 1, 2018; and
 - \$4 million for a decedent dying on or after January 1, 2018, but before January 1, 2019.
 - \$5 million for a decedent dying on or after January 1, 2019.
- Multiplying the result by 16%.
- If the estate contains only property with a Maryland tax situs, calculate the Maryland estate tax liability by taking the lesser of:
 - the above calculation; or
 - the maximum credit for state death taxes.

- If the estate contains property that does not have a tax situs in Maryland calculate the Maryland estate tax liability by taking the lesser of:
 - the Maryland apportioned credit (calculated by multiplying the percentage of the Maryland estate to the augmented gross estate by the maximum credit for state death taxes); or
 - the maximum credit for state death taxes.
- Subtracting any Maryland inheritance tax paid and any death tax paid to another state on assets also included in the Maryland estate.

(Md. Code Ann., Tax-Gen. §§ 7-304 and 7-309 and see the Comptroller of Maryland's form, Maryland Estate Tax Return.)

THE GROSS ESTATE

4. What is included in a decedent's gross estate for tax purposes? Specifically, please discuss what is included in:

- The gross estate of a resident decedent.
- The gross estate of a nonresident decedent.

Maryland does not define the Maryland gross estate. Instead, Maryland uses the federal gross estate with certain deductions and additions to determine the augmented estate. The augmented estate is calculated by:

- Determining the federal gross estate.
- Adding in the value of qualified terminable interest property (QTIP) for which an election was previously made by a predeceased spouse.

(Md. Code Ann., Tax-Gen. § 7-309.)

NONRESIDENT DECEDENT GROSS ESTATE

5. How are assets valued for state estate tax purposes? Specifically please discuss:

- Availability of alternate valuation date.
- Requirements for alternate valuation.

The value of each asset for estate tax purposes is its fair market value on the date of the decedent's death or on the alternate valuation date, if the personal representative elects alternate valuation (26 U.S.C. § 2031(a)). Fair market value is defined as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts" (26 C.F.R. § 20.2031-1).

An appraisal may be necessary to obtain a proper value for an estate asset.

ALTERNATE VALUATION

Because the Maryland augmented estate is calculated using the federal gross estate, if an estate elects to value assets as of the alternate valuation date for federal purposes, those alternate valuation date values also apply for Maryland purposes (see the Comptroller of Maryland's form, Maryland Estate Tax Return). If alternate valuation is not elected on the federal return, alternate valuation cannot apply to the Maryland estate.

An individual may only elect alternate valuation for federal estate tax purposes if the election results in a reduced federal estate tax (26 U.S.C. § 2032(c)). Therefore, alternate valuation is not available to a Maryland estate unless both:

- A federal estate tax return is filed.
- Alternate valuation reduces the federal estate tax.

ESTATE TAX EXEMPTION

6. Is there an exemption from estate tax in your state? Specifically please discuss:

- Whether the estate tax exemption in your state is tied to the federal exemption.
- The amount of the exemption in your state.
- How the exemption amount is determined in your state.

The Maryland estate tax exemption (also referred to as the Maryland estate tax exclusion) is not currently tied to the federal exemption. The Maryland exemption is scheduled to increase for several years until it re-couples with the federal exemption amount. The exemption amounts are:

- In 2017, \$3 million.
- In 2018, \$4 million.
- In 2019 and beyond, \$5 million.

The Maryland estate tax exemption amount is not adjusted by prior use of the federal applicable exemption on taxable gifts made in prior years. (Md. Code Ann., Tax-Gen. § 7-309.) The Maryland estate tax exemption amount is not adjusted for inflation.

For more information on the Maryland estate tax exemption amount, see Question 3.

7. Can a deceased spouse's unused exemption (DSUE) be ported to a surviving spouse in your state?

Beginning in 2019, Maryland will allow portability of a deceased spouse's unused exemption amount (also referred to as a deceased spouse's unused exclusion amount in Maryland) to a surviving spouse (Md. Code Ann., Tax-Gen. § 7-309(b)(9)). This means that until 2019, the use of traditional tax savings vehicles, such as credit shelter trusts, remains an important estate planning concept in Maryland to prevent the loss of the first spouse to die's exemption amount at the state level.

DEDUCTIONS FROM GROSS ESTATE

8. Discuss the most common deductions that are available in your state for tax purposes.

Maryland generally follows the federal estate tax law in determining which deductions are permitted for calculating the taxable estate, except regarding the deduction for state death taxes (Md. Code Ann., Tax-Gen. § 7-309). The deductions from the gross estate authorized by the Code are:

- Administration expenses, debts, and claims (26 U.S.C. § 2053 and see Question 8: Administration Expenses, Debts, and Claims).

- Losses from casualty or theft during the administration of the estate (26 U.S.C. § 2054 and see Question 8: Losses).
- The marital deduction (26 U.S.C. §§ 2056 and 2056(A) and see Question 8: Marital Deduction).
- The charitable deduction (26 U.S.C. § 2055 and see Question 8: Charitable Deduction).
- State death taxes, to the extent they are applicable (26 U.S.C. § 2058 and see Question 8: State Death Taxes).

ADMINISTRATION EXPENSES, DEBTS, AND CLAIMS

This category of deductions includes items, such as:

- Funeral and administration expenses.
- Claims against the estate, including mortgages on property included in the gross estate.
- Fees for attorneys, accountants, and appraisers.
- Personal representative's commissions.
- Income tax liability.

To be deductible, administrative expenses must be:

- Incurred on behalf of the estate, not the beneficiaries.
- Allowable by local law.
- Actually incurred in the collection of assets, payment of debts, and distribution of property to the persons entitled to it.

(26 U.S.C. § 2053 and 26 C.F.R. § 20.2053-3.)

LOSSES

Losses incurred during the settlement of estates arising from fires, storms, shipwrecks, other casualties, or theft, when these losses are not compensated by insurance or otherwise, are deductible (26 U.S.C. § 2054).

MARITAL DEDUCTION

The unlimited marital deduction allows a decedent to transfer assets to the decedent's US citizen spouse free of estate tax (26 U.S.C. § 2056). The estate receives a deduction for assets passing from the decedent to the decedent's surviving spouse. The assets remaining at the time of the surviving spouse's death that are still owned by the surviving spouse are then included as part of the surviving spouse's estate. This deduction allows for a significant deferral and potential savings of estate tax.

Not all transfers to a surviving spouse qualify for the estate tax marital deduction. To qualify, an asset:

- Must be included in the decedent's gross estate.
- Cannot be otherwise deductible under another provision.
- Must pass at death from the decedent to the spouse.
- Cannot be a non-qualified terminable interest.

(26 U.S.C. § 2056.)

A personal representative can make an election on a Maryland Estate tax return for a terminable interest left to a spouse to be treated as a qualified terminable interest for Maryland purposes and not for federal purposes. This allows for a marital deduction for Maryland purposes, but not for federal purposes. In other words, a married couple can defer both Maryland and federal estate tax until

the second spouse dies while using all of the first spouse's federal estate tax exemption. (Md. Code Ann., Tax-Gen. § 7-309(b)(5).)

With portability being available for federal estate tax purposes and becoming available for Maryland purposes in 2019, the Maryland State QTIP election has become less useful. Currently, when a decedent's estate is smaller than the federal exclusion amount but larger than the Maryland exclusion amount, the executor can choose between:

- Electing a federal QTIP election on amounts above the Maryland exclusion amount.
- Electing federal portability on a federal estate tax return (deferring Maryland estate tax until the second spouse dies).
- Electing a Maryland state QTIP election on amounts above the Maryland exclusion amount on the Maryland estate tax return, and both:
 - fully funding a credit shelter trust (or any type of trust that does not qualify for the marital deduction, and will not be included in the surviving spouse's taxable estate); and
 - electing federal portability for any remaining unused exclusion amount.

Making a federal QTIP election (and portability election) to defer Maryland estate tax is generally more valuable than the benefits of a Maryland state QTIP election. The federal election allows the Maryland estate tax to be deferred after the first spouse's death and allow those assets to receive a second step-up in basis on the surviving spouse's death.

However, a personal representative may wish to make a Maryland state QTIP election to defer the Maryland estate tax if it is likely that the value of the deceased spouse's assets will appreciate significantly and result in the surviving spouse having a taxable estate for federal and state estate tax purposes, if the surviving spouse made a federal QTIP election and portability election. If the deceased spouse's assets were used to fund a trust where a Maryland state QTIP election was made (or no federal or state QTIP election was made), the federal and Maryland estate tax is deferred after the first spouse's death and the appreciation of the deceased spouse's assets is not included in the taxable estate of the surviving spouse. A personal representative should give careful consideration to the potential capital gains tax and the potential federal and state estate tax.

Electing portability carries its own risks, including the risk of losing the deceased spouse's DSUE amount if the surviving spouse remarries and is predeceased by a later spouse (26 U.S.C. § 2010(c)(4)(B)(i) and 26 C.F.R. § 20.2010-3).

No estate tax marital deduction is permitted for outright transfers to a noncitizen spouse. A limited marital deduction instead may be available to the extent that the decedent transfers assets to a qualified domestic trust (QDOT) for the benefit of the noncitizen surviving spouse. (26 U.S.C. §§ 2056(d) and 2056A.)

For more information on federal estate tax issues, see Practice Note, Federal Estate Tax.

CHARITABLE DEDUCTION

An estate receives a deduction for the value of bequests to public, charitable, and religious organizations or entities, including qualified

charitable trusts and foundations established by the decedent (26 U.S.C. § 2055). This deduction is limited to the extent of the value of the property transferred to the charity (26 C.F.R. § 20.2055-3).

To qualify for the charitable deduction, a transfer must be of property that is both:

- Included in the decedent's gross estate.
- Transferred from the decedent to a qualified organization. (26 C.F.R. § 20.2055-1(a).)

STATE DEATH TAXES

There is a deduction available for federal estate tax purposes for death taxes paid to any state regarding property included in the federal gross estate (26 U.S.C. § 2058). However, for Maryland purposes, there is no deduction available for estate tax paid to Maryland. There is also not a deduction available for estate taxes paid on real property and tangible property located outside of Maryland. (Md. Code Ann., Tax-Gen. § 7-309(b)(3)(ii).)

APPLICABLE CREDITS AGAINST ESTATE TAX

9. Are there any applicable credits available against estate tax in your state?

There are no state-specific applicable credits available against the Maryland estate tax. However, the Maryland estate tax is reduced by:

- The amount of Maryland inheritance tax paid.
- The death taxes paid to another estate on assets included in the Maryland Estate.

(Md. Code Ann., Tax-Gen. § 7-304(b)(1).) Although Maryland does not label these reductions as credits against the estate tax, they act like credits.

TAX RATE

10. What are the estate tax rates in your state?

The state estate tax rate is 16% in Maryland (Md. Code Ann., Tax-Gen. § 7-309(b)(3)(iii)). However, an estate may not always pay that rate, as explained in more detail in Question 3.

FILING THE STATE ESTATE TAX RETURN

11. Which estates must file a state estate tax return?

An estate must file a Maryland estate tax return whenever the gross estate exceeds the Maryland exclusion amount. This means that a state estate tax return may be due even if no tax is due because the deductions available to the estate bring the net estate value below the exclusion amount. (Md. Code Ann., Tax-Gen. § 7-305.)

12. What forms are required to file a state estate tax return?

Maryland estates filing a state estate tax return must file:

- A Maryland Estate tax return (MET-1).

- A complete federal estate tax return, Form 706, even if a federal return is not required to be filed with the Internal Revenue Service.

(Md. Code Ann., Tax Gen. § 7-305 and Maryland Estate Tax Return (MET-1), General Instructions, page 8).

13. Where is the state estate tax return filed?

The personal representative must file the Maryland estate tax return with the Comptroller of Maryland at:

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

(See the Comptroller of Maryland, Paying the Maryland Estate Tax.)

14. Who is responsible for filing the state estate tax return on behalf of the estate?

The person responsible for filing the federal estate tax return is responsible for filing the Maryland estate tax return. If a federal estate tax return is not required to be filed, then the person responsible for filing the federal estate tax return, if it was required, is responsible for filing the Maryland estate tax return. (Md. Code Ann., Tax-Gen. § 7-305.)

The personal representative of an estate in Maryland is responsible for payment of the estate tax (26 U.S.C. § 2002). If there is no personal representative appointed, every person in actual or constructive possession of any property of the decedent must make and file a return (see the section entitled "Executor" on the Internal Revenue Service's Instructions for Form 706).

15. What is the due date for filing the state estate tax return?

The due date to file a Maryland estate tax return is nine months after the decedent's death (Md. Code Ann., Tax-Gen. § 7-305).

If a person does not file a required Maryland estate tax return, the tax collector mails the person a notice and demand for the return that requires the person to file the return and to pay the tax within 30 days after the date on which the notice is mailed. (Md. Code Ann., Tax-Gen. § 13-303).

A penalty of 25% is assessed for failure to file the return within the required period in a notice and demand for a return (Md. Code Ann., Tax-Gen. § 13-708(a)).

16. Is an extension available for filing the state estate tax return? Specifically, please discuss:

- How to apply for a filing extension.
- How many filing extensions are available.

The Maryland Comptroller may extend the time to file an estate tax return for up to six months or, if the person required to file the estate tax return is out of the US, up to one year. Only one extension is available. If the IRS grants an estate an extension for filing the

federal estate tax return, the time for filing the Maryland estate tax return is likewise extended (Md. Code Ann., Tax-Gen. § 7-305.1).

To apply for an extension of the time to file the Maryland estate tax return alone, the personal representative must file Form MET 1E-Application for Extension of Time to File the Maryland Estate Tax Return with the Comptroller on or before the statutory due date. The application should include both:

- A copy of the federal extension request Form 4768 (if applicable).
- Either:
 - remittance of the estimated Maryland estate tax; or
 - a request for an alternative payment schedule.

17. Discuss the circumstances in which a state estate tax return may be required where a federal return is not.

A Maryland state estate tax return may be required when a federal estate tax return is not required:

- If the value of the estate exceeds the Maryland filing threshold, but is lower than the federal filing threshold (see Question 6).
- To elect a state only QTIP election (Md. Code Ann., Tax-Gen. § 7-309(b)(5) and see Question 8: Marital Deduction).

PAYING THE TAX

18. When must the state estate tax be paid?

The Maryland state estate tax must be paid no later than nine months after the decedent's death (Md. Code Ann., Tax-Gen. § 7-306(a)).

The Comptroller may allow an alternative payment schedule for the estate tax (Md. Code Ann., Tax-Gen. § 7-307). For more information regarding payment agreements, see Section VI of Comptroller of Maryland: Maryland Estate Tax Administrative Release No. 30.

19. Is an extension available for paying the state estate tax?

Specifically please discuss:

- How to apply for an extension for paying the estate tax.
- How many extensions for paying the estate tax are available.

There is no extension available to pay the Maryland state estate tax, unless the extension is made under an alternative payment schedule, as specified by the Comptroller (Md. Code Ann., Tax-Gen. §§ 7-306, 7-307). An approved extension to file the Maryland estate tax return does not extend the time for payment of the Maryland estate tax. (Md. Code Ann., Tax-Gen. § 7-306).

An alternative payment schedule may be:

- A payment deferral for up to one year (with additional deferrals considered on a year-by-year basis).
- An installment payment plan (if for more than one year, the applicant must certify annually that circumstances at the time the alternative payment schedule was requested have not materially changed).

(Md. Code Ann., Tax-Gen. § 7-307(b) and see Paying the Maryland Estate Tax.)

The request for an alternative payment schedule must include:

- A Maryland estate tax return.
- The proposed alternative payment schedule.
- A reasonable estimate of the Maryland estate tax liability
- An itemized inventory of the gross estate assets.
- The names and addresses of persons responsible for filing the return and paying the tax, and the authorized agent.
- A description of all sources and amounts of estate income.
- Where real estate comprises a majority of estate assets, certain specific evidence:
 - that the real estate is being actively marketed; or
 - supporting a decision not to sell the property to pay the tax liability (for example, evidence of income to pay the liability from mortgages, loans, business income).
- Where the estate is subject to filing a federal estate tax return, the status and balance of the federal tax liability and whether the IRS allowed alternative payment.
- Certification that no distributions have been or will be made before taxes as paid.

Requests for alternative payment schedules should be sent to:

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

(See Paying the Maryland Estate Tax.)

20. Discuss any interest or penalty assessed for late tax payments of state estate tax.

Interest accrues at the statutory rate on any portion of the Maryland estate tax liability not satisfied by the statutory due date (Md. Code Ann., Tax-Gen. § 13-601(d)). The statutory interest rate for 2017 is 12% (Md. Code Ann., Tax-Gen. § 13-604(b)). Practitioners should advise their clients to make a payment of the tax reasonably estimated to be due within nine months of the decedent's date of death, even if they are requesting an extension of the time to pay (see Question 19).

A penalty not exceeding 10% of the unpaid tax is assessed if the tax is paid after the due date (Md. Code Ann., Tax-Gen. § 13-701(a)). A penalty of 25% is assessed for failure to file the return and pay the tax due within the required period in a notice and demand for a return (Md. Code Ann., Tax-Gen. § 13-708(a)).

The Comptroller also assesses a penalty of 25% of the amount of the underpayment of tax that is attributable to any substantial estate tax valuation understatement. A substantial estate tax valuation understatement occurs if the value of any property reported (or that should have been reported) is 60% or less of the amount determined to be the correct amount of that valuation. The underpayment penalty cannot be assessed unless the portion of the underpayment attributable to substantial estate tax valuation is greater than \$5,000. (Md. Code Ann., Tax-Gen. § 13-716.)

21. How is the state estate tax due allocated among the estate beneficiaries?

Unless the governing instrument directs otherwise, Maryland estate tax liability is paid in the proportion that the value of the property received by the beneficiary bears to the total value of the property received by all the beneficiaries. This includes probate and nonprobate beneficiaries. (Md. Code Ann., Tax Gen. § 7-308).

The most frequently used alternative to the default apportionment rule in Maryland is to direct that estate taxes are to be paid from the estate's residue. If the taxes are to be paid out of the residue, then the residuary beneficiaries bear the burden of the estate taxes on assets passing to all pre-residuary beneficiaries.

22. Who is liable if the state estate tax is not paid?

If the individual required to pay the tax cannot collect from any person interested in the estate the amount of tax apportioned to that person, the amount not recoverable is equitably apportioned among

the other persons interested in the estate subject to apportionment (Md. Code Ann., Tax Gen. § 7-308(g).)

OTHER TRANSFER TAXES PAYABLE AT DEATH**23. Are there any other taxes that apply to the transfer of assets on death in your state? For answer, include a brief description of the tax.**

Maryland imposes an inheritance tax of 10% of the fair market value (less expenses) of the property that passes from a decedent to anyone other than a parent, sibling, spouse, or descendant (Md. Code Ann., Tax Gen. §§ 7-203 and 7-204). The Maryland estate tax is reduced by the amount of Maryland inheritance tax paid (Md. Code Ann., Tax-Gen. § 7-304(b)(1) and see Applicable Credits Against Estate Tax).

Maryland also imposes a generation skipping tax that is equal to the federal credit, which has been repealed. Therefore, Maryland does not currently impose a generation-skipping tax.

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