

The Tax - General Article Review Committee notes, for consideration of the General Assembly, that the current procedures for prepayment of inheritance tax are cumbersome. In the vast majority of cases, the tax is prepaid. Registers view the procedures, based on actual practice, to be an election not to prepay the tax, rather than the statutorily prescribed "application to prepay the ... tax". If prepayment is not made, the State must wait for its money, and the person in whom the property ultimately vests generally is responsible for a considerably higher inheritance tax. The General Assembly may wish to consider making prepayment of the inheritance tax for subsequent interests mandatory, absent a determination by a court that it is unlikely that the interest will vest in the possession of an applicant for exemption.

Defined terms: "County" § 1-101

"Inheritance tax" § 1-101

"Less than absolute interest" § 7-201

"Person" § 1-101 "Property" § 1-101

"Property that passes from a decedent" § 7-201

"Register" § 7-101 "Subsequent interest" § 7-201

7-220. EFFECTS OF PREPAYMENT ON SUBSEQUENT INVASION OF CORPUS.

(A) IN GENERAL.

EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, IF THE TOTAL INHERITANCE TAX DETERMINED ON ALL INTERESTS IN PROPERTY IS PAID WHEN DUE AND EQUALS THE INHERITANCE TAX THAT WOULD HAVE BEEN DUE IF AN ABSOLUTE INTEREST IN THE PROPERTY PASSED FROM THE DECEDENT, ADDITIONAL INHERITANCE TAX IS NOT DUE BECAUSE OF A SUBSEQUENT INVASION OF THE CORPUS BY OR FOR ANY PERSON UNDER THE TERMS OF THE INSTRUMENT THAT CREATED THE PROPERTY INTERESTS.

(B) EXCEPTION.

(1) IF THE TAX RATE APPLICABLE TO THE PERSON INVADING THE CORPUS EXCEEDS THE TAX RATE ALREADY PAID ON THE PROPERTY, ADDITIONAL INHERITANCE TAX SHALL BE DUE ON THE PROPERTY WITHDRAWN.

(2) THE AMOUNT OF ADDITIONAL INHERITANCE TAX DUE UNDER PARAGRAPH (1) OF THIS SUBSECTION IS THE DIFFERENCE BETWEEN THE INHERITANCE TAX THAT WAS PAID ON THE PROPERTY AND THE INHERITANCE TAX THAT WOULD HAVE BEEN DUE ON THE PROPERTY IF DETERMINED AT THE HIGHER RATE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 81, § 161(d).

In subsection (a) of this section, the words "when due" are added to clarify that not only full, but timely, payment is required.