

# SENATE BILL 892

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EMERGENCY BILL

4lr1909

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By: **Senator Middleton**

Introduced and read first time: January 31, 2014

Assigned to: Budget and Taxation

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## A BILL ENTITLED

AN ACT concerning

### **Maryland Estate Tax – Transfer of Qualified Agricultural Property by a Qualified Recipient**

FOR the purpose of clarifying that a certain recapture of the Maryland estate tax occurs only when certain property ceases to be used for farming purposes; establishing that a qualified recipient is not subject to a certain recapture of the estate tax if certain real property is used in a certain manner for a certain period of time; establishing that certain individuals are responsible for paying a certain recapture of the estate tax; clarifying that a qualified recipient may transfer qualified agricultural property to another qualified recipient; prohibiting the Comptroller from disqualifying an individual as a qualified recipient based on the individual's relation to a decedent; prohibiting certain prior acts of the General Assembly from being construed in a certain manner; providing for the application of this Act; making this Act an emergency measure; and generally relating to the Maryland estate tax.

BY repealing and reenacting, with amendments,

Article – Tax – General

Section 7–309(c)

Annotated Code of Maryland

(2010 Replacement Volume and 2013 Supplement)

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

#### **Article – Tax – General**

7–309.

(c) (1) (i) In this subsection the following words have the meanings indicated.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(ii) “Farming purposes” has the meaning stated in § 2032A(e)(5) of the Internal Revenue Code.

(iii) “Qualified agricultural property” means real or personal property that is used primarily for farming purposes.

(iv) “Qualified recipient” means an individual who enters into an agreement to use qualified agricultural property for farming purposes after the decedent’s death.

(2) The Maryland estate tax shall be determined by excluding from the value of the gross estate up to \$5,000,000 of the value of qualified agricultural property that passes from the decedent to or for the use of a qualified recipient.

(3) If the value of qualified agricultural property that passes from the decedent to or for the use of a qualified recipient exceeds \$5,000,000, the Maryland estate tax imposed on the Maryland estate of the decedent may not exceed the sum of:

(i) 16% of the amount by which the decedent’s taxable estate, excluding the value of all qualified agricultural property that passes from the decedent to or for the use of a qualified recipient, exceeds \$1,000,000; and

(ii) 5% of the amount by which the value of qualified agricultural property that passes from the decedent to or for the use of a qualified recipient exceeds \$5,000,000.

(4) (i) The Maryland estate tax shall be recaptured as provided in this paragraph **ONLY** if, within 10 years after the decedent’s death, the qualified agricultural property ceases to be used for farming purposes.

(ii) The amount of the estate tax imposed under this paragraph shall be the additional Maryland estate tax that would have been payable at the time of the decedent’s death but for the provisions under paragraphs (2) and (3) of this subsection.

**(III) A QUALIFIED RECIPIENT WHO ACQUIRES OWNERSHIP OF QUALIFIED AGRICULTURAL PROPERTY FROM ANOTHER QUALIFIED RECIPIENT IS SUBJECT TO THE RECAPTURE OF THE ESTATE TAX UNDER THIS PARAGRAPH ONLY IF THE QUALIFIED AGRICULTURAL PROPERTY CEASES TO BE USED FOR FARMING PURPOSES WITHIN 10 YEARS OF THE DATE OF THE DEATH OF THE DECEDENT.**

**(IV) ESTATE TAX RECAPTURED UNDER THIS PARAGRAPH SHALL BE RECAPTURED FROM THE LAST QUALIFIED RECIPIENT TO OWN THE QUALIFIED AGRICULTURAL PROPERTY.**

**(5) (I) A QUALIFIED RECIPIENT MAY TRANSFER OWNERSHIP OF QUALIFIED AGRICULTURAL PROPERTY TO ANOTHER QUALIFIED RECIPIENT.**

**(II) THE COMPTROLLER MAY NOT DISQUALIFY AN INDIVIDUAL AS A QUALIFIED RECIPIENT BECAUSE THE INDIVIDUAL IS NOT A RELATIVE OF THE DECEDENT.**

**(6)** The Comptroller shall adopt regulations to implement this subsection.

SECTION 2. AND BE IT FURTHER ENACTED, That the provisions enacted under Chapters 448 and 449 of the Acts of 2012 may not be construed to infer that a transfer of qualified agricultural property, as defined under § 7-309(c) of the Tax – General Article, made prior to the effective date of this Act is subject to an estate tax recapture under § 7-309(c)(4) of the Tax – General Article unless the qualified agricultural property is not being used for farming purposes within 10 years of the death of the decedent.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect estates of decedents dying after December 31, 2011.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.