

HOUSE BILL 721

Q7

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CF SB 764

By: **Delegates Afzali, Alston, Arora, Barkley, Barnes, Bates, Cluster, Cullison, Dwyer, Eckardt, Elliott, Feldman, Frank, Gaines, Hough, Ivey, Jacobs, Jameson, Kach, Krebs, Love, Luedtke, McComas, McDermott, McDonough, W. Miller, Myers, Norman, Olszewski, Otto, Parrott, Ready, Ross, Schulz, Serafini, Smigiel, Stifler, Stocksdales, Szeliga, Valderrama, Walker, Washington, and Wood**

Introduced and read first time: February 10, 2011

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Estate Tax – Exclusion of Qualified Agricultural Property**

3 FOR the purpose of altering the determination of the Maryland estate tax under
4 certain circumstances to exclude from the value of the gross estate the value of
5 certain agricultural property; limiting the Maryland estate tax imposed on
6 certain agricultural property above a certain value defining certain terms;
7 providing for the application of this Act; and generally relating to the Maryland
8 estate tax.

9 BY repealing and reenacting, with amendments,
10 Article – Tax – General
11 Section 7–309
12 Annotated Code of Maryland
13 (2010 Replacement Volume)

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

16 **Article – Tax – General**

17 7–309.

18 (a) Notwithstanding an Act of Congress that repeals or reduces the federal
19 credit under § 2011 of the Internal Revenue Code, the provisions of this subtitle in
20 effect before the passage of the Act of Congress shall apply with respect to a decedent
21 who dies after the effective date of the Act of Congress so as to continue the Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 estate tax in force without reduction in the same manner as if the federal credit had
2 not been repealed or reduced.

3 (b) (1) Except as provided in paragraphs (2) through (7) of this subsection
4 **AND SUBSECTION (C) OF THIS SECTION**, after the effective date of an Act of
5 Congress described in subsection (a) of this section, the Maryland estate tax shall be
6 determined using:

7 (i) the federal credit allowable by § 2011 of the Internal
8 Revenue Code as in effect before the reduction or repeal of the federal credit pursuant
9 to the Act of Congress; and

10 (ii) other provisions of federal estate tax law as in effect on the
11 date of the decedent's death.

12 (2) Except as provided in paragraphs (3) through (7) of this subsection
13 **AND SUBSECTION (C) OF THIS SECTION**, if the federal estate tax is not in effect on
14 the date of the decedent's death, the Maryland estate tax shall be determined using:

15 (i) the federal credit allowable by § 2011 of the Internal
16 Revenue Code as in effect before the reduction or repeal of the federal credit pursuant
17 to the Act of Congress; and

18 (ii) other provisions of federal estate tax law as in effect on the
19 date immediately preceding the effective date of the repeal of the federal estate tax.

20 (3) (i) Notwithstanding any increase in the unified credit allowed
21 against the federal estate tax for decedents dying after 2003, the unified credit used
22 for determining the Maryland estate tax may not exceed the applicable credit amount
23 corresponding to an applicable exclusion amount of \$1,000,000 within the meaning of §
24 2010(c) of the Internal Revenue Code.

25 (ii) The Maryland estate tax shall be determined without regard
26 to any deduction for State death taxes allowed under § 2058 of the Internal Revenue
27 Code.

28 (iii) Unless the federal credit allowable by § 2011 of the Internal
29 Revenue Code is in effect on the date of the decedent's death, the federal credit used to
30 determine the Maryland estate tax may not exceed 16% of the amount by which the
31 decedent's taxable estate, as defined in § 2051 of the Internal Revenue Code, exceeds
32 \$1,000,000.

33 (4) (i) With regard to an election to value property as provided in §
34 2032 of the Internal Revenue Code, if a federal estate tax return is not required to be
35 filed:

1 1. an irrevocable election made on a timely filed
2 Maryland estate tax return shall be deemed to be an election as required by § 2032(d)
3 of the Internal Revenue Code;

4 2. the provisions of § 2032(c) of the Internal Revenue
5 Code do not apply; and

6 3. an election may not be made under item 1 of this
7 subparagraph unless that election will decrease:

8 A. the value of the gross estate; and

9 B. the Maryland estate tax due with regard to the
10 transfer of a decedent's Maryland estate.

11 (ii) An election to value property as provided in § 2032 of the
12 Internal Revenue Code for Maryland estate tax purposes must be the same as the
13 election made for federal estate tax purposes.

14 (5) (i) With regard to an election to treat property as marital
15 deduction qualified terminable interest property in calculating the Maryland estate
16 tax, an irrevocable election made on a timely filed Maryland estate tax return shall be
17 deemed to be an election as required by § 2056(b)(7)(B)(i), (iii), and (v) of the Internal
18 Revenue Code.

19 (ii) An election under this paragraph made on a timely filed
20 Maryland estate tax return shall be recognized for purposes of calculating the
21 Maryland estate tax even if an inconsistent election is made for the same decedent for
22 federal estate tax purposes.

23 (6) (i) For purposes of calculating Maryland estate tax, a decedent
24 shall be deemed to have had a qualifying income interest for life under § 2044(a) of the
25 Internal Revenue Code with regard to any property for which a marital deduction
26 qualified terminable interest property election was made for the decedent's
27 predeceased spouse on a timely filed Maryland estate tax return under paragraph (5)
28 of this subsection.

29 (ii) For the purpose of apportioning Maryland estate tax under §
30 7-308 of this subtitle, any property as to which a decedent is deemed to have had a
31 qualifying income interest for life under subparagraph (i) of this paragraph shall be
32 deemed to be included in both the estate and the taxable estate of the decedent.

33 (7) For purposes of calculating Maryland estate tax, amounts
34 allowable under § 2053 or § 2054 of the Internal Revenue Code as a deduction in
35 computing the taxable estate of a decedent may not be allowed as a deduction or as an
36 offset against the sales price of property in determining gain or loss if the amount has
37 been allowed as a deduction in computing the federal taxable income of the estate or of
38 any other person.

1 **(C) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE**
2 **THE MEANINGS INDICATED.**

3 **(II) “FARMING PURPOSES” HAS THE MEANING STATED IN §**
4 **2032A(E)(5) OF THE INTERNAL REVENUE CODE.**

5 **(III) “QUALIFIED AGRICULTURAL PROPERTY” MEANS REAL**
6 **OR PERSONAL PROPERTY THAT IS USED PRIMARILY FOR FARMING PURPOSES.**

7 **(IV) “QUALIFIED RECIPIENT” MEANS AN INDIVIDUAL WHO**
8 **ENTERS INTO AN AGREEMENT TO USE QUALIFIED AGRICULTURAL PROPERTY**
9 **FOR FARMING PURPOSES AFTER THE DECEDENT’S DEATH.**

10 **(2) (I) THE MARYLAND ESTATE TAX SHALL BE DETERMINED**
11 **BY EXCLUDING FROM THE VALUE OF THE GROSS ESTATE UP TO \$5,000,000 OF**
12 **THE VALUE OF QUALIFIED AGRICULTURAL PROPERTY THAT PASSES FROM THE**
13 **DECEDENT TO OR FOR THE USE OF A QUALIFIED RECIPIENT.**

14 **(II) THE MARYLAND ESTATE TAX IMPOSED ON QUALIFIED**
15 **AGRICULTURAL PROPERTY IN THE ESTATE MAY NOT EXCEED 5% OF THE**
16 **AMOUNT BY WHICH THE VALUE OF THE QUALIFIED AGRICULTURAL PROPERTY**
17 **THAT PASSES FROM THE DECEDENT TO OR FOR THE USE OF A QUALIFIED**
18 **RECIPIENT EXCEEDS \$5,000,000.**

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 July 1, 2011, and shall be applicable to decedents dying after December 31, 2010.