

# HOUSE BILL 444

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CF SB 294

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By: **The Speaker (By Request – Administration) and Delegates Afzali, Bohanan, Cane, Clagett, Conway, Glass, Hershey, Hough, Jacobs, Jameson, A. Kelly, Krebs, Lafferty, Love, Luedtke, McComas, Murphy, Otto, Parrott, Ready, and Schulz**

Introduced and read first time: February 1, 2012

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Family Farm Preservation Act of 2012**

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 amount; defining certain terms;  
7 providing for the recapture of certain Maryland estate tax under certain  
8 circumstances; requiring the Comptroller to adopt certain regulations; providing  
9 for the application of this Act; and generally relating to the Maryland estate tax.

10 BY repealing and reenacting, with amendments,  
11 Article – Tax – General  
12 Section 7–309  
13 Annotated Code of Maryland  
14 (2010 Replacement Volume and 2011 Supplement)

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

17 **Article – Tax – General**

18 7–309.

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

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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2 not been repealed or reduced.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

1 been allowed as a deduction in computing the federal taxable income of the estate or of  
2 any other person.

3 (C) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE  
4 THE MEANINGS INDICATED.

5 (II) "FARMING PURPOSES" HAS THE MEANING STATED IN §  
6 2032A(E)(5) OF THE INTERNAL REVENUE CODE.

7 (III) "QUALIFIED AGRICULTURAL PROPERTY" MEANS REAL  
8 OR PERSONAL PROPERTY THAT IS USED PRIMARILY FOR FARMING PURPOSES.

9 (IV) "QUALIFIED RECIPIENT" MEANS AN INDIVIDUAL WHO  
10 ENTERS INTO AN AGREEMENT TO USE QUALIFIED AGRICULTURAL PROPERTY  
11 FOR FARMING PURPOSES AFTER THE DECEDENT'S DEATH.

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

16 (3) IF THE VALUE OF QUALIFIED AGRICULTURAL PROPERTY  
17 THAT PASSES FROM THE DECEDENT TO OR FOR THE USE OF A QUALIFIED  
18 RECIPIENT EXCEEDS \$5,000,000, THE MARYLAND ESTATE TAX IMPOSED ON THE  
19 MARYLAND ESTATE OF THE DECEDENT MAY NOT EXCEED THE SUM OF:

20 (I) 16% OF THE AMOUNT BY WHICH THE DECEDENT'S  
21 TAXABLE ESTATE, EXCLUDING THE VALUE OF ALL QUALIFIED AGRICULTURAL  
22 PROPERTY THAT PASSES FROM THE DECEDENT TO OR FOR THE USE OF A  
23 QUALIFIED RECIPIENT, EXCEEDS \$1,000,000; AND

24 (II) 5% OF THE AMOUNT BY WHICH THE VALUE OF  
25 QUALIFIED AGRICULTURAL PROPERTY THAT PASSES FROM THE DECEDENT TO  
26 OR FOR THE USE OF A QUALIFIED RECIPIENT EXCEEDS \$5,000,000.

27 (4) (I) THE MARYLAND ESTATE TAX SHALL BE RECAPTURED  
28 AS PROVIDED IN THIS PARAGRAPH IF, WITHIN 10 YEARS AFTER THE  
29 DECEDENT'S DEATH, THE QUALIFIED AGRICULTURAL PROPERTY CEASES TO BE  
30 USED FOR FARMING PURPOSES.

31 (II) THE AMOUNT OF THE ESTATE TAX IMPOSED UNDER  
32 THIS PARAGRAPH SHALL BE THE ADDITIONAL MARYLAND ESTATE TAX THAT  
33 WOULD HAVE BEEN PAYABLE AT THE TIME OF THE DECEDENT'S DEATH BUT FOR  
34 THE PROVISIONS UNDER PARAGRAPHS (2) AND (3) OF THIS SUBSECTION.

1                   **(III) THE COMPTROLLER SHALL ADOPT REGULATIONS TO**  
2 **PROVIDE FOR THE RECAPTURE OF THE ESTATE TAX UNDER THIS PARAGRAPH.**

3                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 July 1, 2012, and shall be applicable to decedents dying after December 31, 2011.