

SENATE BILL 294

Q7

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By: **Senators Miller, Young, Astle, Benson, Brinkley, Colburn, DeGrange, Dyson, Edwards, Garagiola, Getty, Glassman, Jacobs, Jennings, Kasemeyer, King, Klausmeier, Manno, Mathias, McFadden, Middleton, Montgomery, Peters, Pinsky, Pipkin, Reilly, Robey, Shank, and Stone**
Introduced and read first time: January 26, 2012
Assigned to: Budget and Taxation

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

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2 not been repealed or reduced.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.