

SENATE BILL 294

Q7

2lr1483
CF HB 444

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~~ Stone, Forehand, Jones-Rodwell, Kittleman, and Simonaire**

Introduced and read first time: January 26, 2012

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 20, 2012

CHAPTER _____

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**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 7-309.

2 (a) Notwithstanding an Act of Congress that repeals or reduces the federal
3 credit under § 2011 of the Internal Revenue Code, the provisions of this subtitle in
4 effect before the passage of the Act of Congress shall apply with respect to a decedent
5 who dies after the effective date of the Act of Congress so as to continue the Maryland
6 estate tax in force without reduction in the same manner as if the federal credit had
7 not been repealed or reduced.

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

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

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

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

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

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

25 (3) (i) Notwithstanding any increase in the unified credit allowed
26 against the federal estate tax for decedents dying after 2003, the unified credit used
27 for determining the Maryland estate tax may not exceed the applicable credit amount
28 corresponding to an applicable exclusion amount of \$1,000,000 within the meaning of §
29 2010(c) of the Internal Revenue Code.

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

33 (iii) Unless the federal credit allowable by § 2011 of the Internal
34 Revenue Code is in effect on the date of the decedent's death, the federal credit used to
35 determine the Maryland estate tax may not exceed 16% of the amount by which the
36 decedent's taxable estate, as defined in § 2051 of the Internal Revenue Code, exceeds
37 \$1,000,000.

1 (4) (i) With regard to an election to value property as provided in §
2 2032 of the Internal Revenue Code, if a federal estate tax return is not required to be
3 filed:

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

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

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

11 A. the value of the gross estate; and

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

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

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

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

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

32 (ii) For the purpose of apportioning Maryland estate tax under §
33 7-308 of this subtitle, any property as to which a decedent is deemed to have had a
34 qualifying income interest for life under subparagraph (i) of this paragraph shall be
35 deemed to be included in both the estate and the taxable estate of the decedent.

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

7 (C) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE
8 THE MEANINGS INDICATED.

9 (II) "FARMING PURPOSES" HAS THE MEANING STATED IN §
10 2032A(E)(5) OF THE INTERNAL REVENUE CODE.

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

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

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

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

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

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

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

1 **(ii) THE AMOUNT OF THE ESTATE TAX IMPOSED UNDER**
 2 **THIS PARAGRAPH SHALL BE THE ADDITIONAL MARYLAND ESTATE TAX THAT**
 3 **WOULD HAVE BEEN PAYABLE AT THE TIME OF THE DECEDENT’S DEATH BUT FOR**
 4 **THE PROVISIONS UNDER PARAGRAPHS (2) AND (3) OF THIS SUBSECTION.**

5 ~~**(iii) (5)**~~ **THE COMPTROLLER SHALL ADOPT REGULATIONS**
 6 **TO ~~PROVIDE FOR THE RECAPTURE OF THE ESTATE TAX UNDER THIS~~**
 7 **~~PARAGRAPH~~ IMPLEMENT THIS SUBSECTION.**

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.