

SENATE BILL 795

Q7

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By: **Senators Garagiola, Brochin, King, Kittleman, Klausmeier, Madaleno,
Manno, Mathias, Peters, Pugh, and Robey**

Introduced and read first time: February 3, 2012

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Estate Tax – Exemption for Family Farm or Small Business**

3 FOR the purpose of altering the determination of the Maryland estate tax to exclude
4 from the value of the gross estate the value of certain agricultural property;
5 providing for the recapture of certain Maryland estate tax under certain
6 circumstances; requiring the Comptroller to adopt certain regulations; altering
7 the determination of the Maryland estate tax to exclude from the value of the
8 gross estate the value of certain interest in a small business; defining certain
9 terms; providing for the application of this Act; and generally relating to the
10 Maryland estate tax.

11 BY repealing and reenacting, with amendments,
12 Article – Tax – General
13 Section 7–309
14 Annotated Code of Maryland
15 (2010 Replacement Volume and 2011 Supplement)

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

18 **Article – Tax – General**

19 7–309.

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25 not been repealed or reduced.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

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

31 (4) (i) With regard to an election to value property as provided in §
32 2032 of the Internal Revenue Code, if a federal estate tax return is not required to be
33 filed:

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

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

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

5 A. the value of the gross estate; and

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

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

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

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

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

26 (ii) For the purpose of apportioning Maryland estate tax under §
27 7-308 of this subtitle, any property as to which a decedent is deemed to have had a
28 qualifying income interest for life under subparagraph (i) of this paragraph shall be
29 deemed to be included in both the estate and the taxable estate of the decedent.

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

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

3 **(II) “CHILD” HAS THE MEANING STATED IN § 7–203(B) OF**
4 **THIS TITLE.**

5 **(III) “FARMING PURPOSES” HAS THE MEANING STATED IN §**
6 **2032A(E)(5) OF THE INTERNAL REVENUE CODE.**

7 **(IV) “PARENT” HAS THE MEANING STATED IN § 7–203(B) OF**
8 **THIS TITLE.**

9 **(V) “QUALIFIED AGRICULTURAL PROPERTY” MEANS REAL**
10 **OR PERSONAL PROPERTY THAT IS USED PRIMARILY FOR FARMING PURPOSES.**

11 **(VI) “QUALIFIED RECIPIENT” MEANS:**

12 1. **A SPOUSE, PARENT, OR GRANDPARENT OF THE**
13 **DECEDENT;**

14 2. **A CHILD OF THE DECEDENT OR A LINEAL**
15 **DESCENDANT OF A CHILD OF THE DECEDENT;**

16 3. **A SPOUSE OF A CHILD OF THE DECEDENT OR A**
17 **SPOUSE OF A LINEAL DESCENDANT OF A CHILD OF THE DECEDENT;**

18 4. **A BROTHER OR SISTER OF THE DECEDENT; OR**

19 5. **A LIMITED LIABILITY COMPANY THAT IS AT LEAST**
20 **80% OWNED BY FAMILY MEMBERS SPECIFIED IN ITEMS 1 THROUGH 4 OF THIS**
21 **SUBPARAGRAPH.**

22 **(VII) “SMALL BUSINESS” MEANS A CORPORATION,**
23 **PARTNERSHIP, SOLE PROPRIETORSHIP, OR OTHER BUSINESS ENTITY,**
24 **INCLUDING ITS AFFILIATES, THAT:**

25 1. **IS INDEPENDENTLY OWNED AND OPERATED;**

26 2. **IS NOT DOMINANT IN ITS FIELD; AND**

27 3. **EMPLOYS 50 OR FEWER FULL–TIME EMPLOYEES.**

1 **(2) (I) THE MARYLAND ESTATE TAX SHALL BE DETERMINED**
2 **BY EXCLUDING FROM THE VALUE OF THE GROSS ESTATE UP TO \$3,000,000 OF**
3 **THE VALUE OF QUALIFIED AGRICULTURAL PROPERTY THAT PASSES FROM THE**
4 **DECEDENT TO OR FOR THE USE OF A QUALIFIED RECIPIENT.**

5 **(II) 1. THE MARYLAND ESTATE TAX SHALL BE**
6 **RECAPTURED AS PROVIDED IN THIS SUBPARAGRAPH IF THE QUALIFIED**
7 **AGRICULTURAL PROPERTY IS SOLD BY A QUALIFIED RECIPIENT WITHIN 5 YEARS**
8 **OF THE DEATH OF THE DECEDENT TO A PERSON THAT IS NOT A QUALIFIED**
9 **RECIPIENT.**

10 **2. THE AMOUNT OF THE ESTATE TAX IMPOSED**
11 **UNDER THIS SUBPARAGRAPH SHALL BE THE ADDITIONAL MARYLAND ESTATE**
12 **TAX THAT WOULD HAVE BEEN PAYABLE AT THE TIME OF THE DECEDENT'S**
13 **DEATH BUT FOR THE PROVISIONS UNDER SUBPARAGRAPH (I) OF THIS**
14 **PARAGRAPH.**

15 **3. THE COMPTROLLER SHALL ADOPT REGULATIONS**
16 **TO PROVIDE FOR THE RECAPTURE OF THE ESTATE TAX UNDER THIS**
17 **SUBPARAGRAPH.**

18 **(3) THE MARYLAND ESTATE TAX SHALL BE DETERMINED BY**
19 **EXCLUDING FROM THE VALUE OF THE GROSS ESTATE UP TO \$3,000,000 OF THE**
20 **VALUE OF ANY INTEREST IN A SMALL BUSINESS THAT PASSES FROM THE**
21 **DECEDENT TO OR FOR THE USE OF:**

22 **(I) A SPOUSE, PARENT, OR GRANDPARENT OF THE**
23 **DECEDENT;**

24 **(II) A CHILD OF THE DECEDENT OR A LINEAL DESCENDANT**
25 **OF A CHILD OF THE DECEDENT;**

26 **(III) A SPOUSE OF A CHILD OF THE DECEDENT OR A SPOUSE**
27 **OF A LINEAL DESCENDANT OF A CHILD OF THE DECEDENT;**

28 **(IV) A BROTHER OR SISTER OF THE DECEDENT; OR**

29 **(V) A LIMITED LIABILITY COMPANY THAT IS AT LEAST 80%**
30 **OWNED BY FAMILY MEMBERS SPECIFIED IN ITEMS (I) THROUGH (IV) OF THIS**
31 **PARAGRAPH.**

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