

SENATE BILL 790

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By: **Senators Garagiola, DeGrange, Dyson, and Lenett**

Introduced and read first time: February 10, 2010

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Estate Tax – Exclusions for Family Farms Subject to Agricultural**
3 **Preservation Easements**

4 FOR the purpose of altering the determination of the Maryland estate tax under
5 certain circumstances to exclude from the value of the gross estate the value of
6 certain property subject to certain agricultural preservation easements;
7 requiring a phased-in implementation of the exclusion for certain property
8 subject to certain agricultural preservation easements; providing that a certain
9 exclusion applies to certain property for which a certain application is initiated
10 within a certain period of time after the decedent's death; authorizing a person
11 to submit an application for a payment deferral under certain circumstances;
12 requiring payment of the Maryland estate tax in accordance with an alternative
13 payment schedule under certain circumstances; defining certain terms;
14 providing for the application of this Act; and generally relating to the Maryland
15 estate tax.

16 BY repealing and reenacting, without amendments,
17 Article – Tax – General
18 Section 7-309(a)
19 Annotated Code of Maryland
20 (2004 Replacement Volume and 2009 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article – Tax – General
23 Section 7-309(b)(1) and (2)
24 Annotated Code of Maryland
25 (2004 Replacement Volume and 2009 Supplement)

26 BY adding to
27 Article – Tax – General
28 Section 7-309(c)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2004 Replacement Volume and 2009 Supplement)

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

5 **Article – Tax – General**

6 7–309.

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12 not been repealed or reduced.

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

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

20 (ii) other provisions of federal estate tax law as in effect on the
21 date of the decedent’s death.

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

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

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

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

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

1 (III) "FARMING PURPOSES" HAS THE MEANING STATED IN §
2 2032A(E)(5) OF THE INTERNAL REVENUE CODE.

3 (IV) "PARENT" HAS THE MEANING STATED IN § 7-203(B) OF
4 THIS TITLE.

5 (V) "QUALIFIED AGRICULTURAL PROPERTY" MEANS REAL
6 OR PERSONAL PROPERTY THAT IS USED PRIMARILY FOR FARMING PURPOSES.

7 (2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE
8 MARYLAND ESTATE TAX SHALL BE DETERMINED BY EXCLUDING FROM THE
9 VALUE OF THE GROSS ESTATE THE VALUE OF ANY QUALIFIED AGRICULTURAL
10 PROPERTY THAT:

11 (I) IS SUBJECT TO A PERPETUAL AGRICULTURAL
12 PRESERVATION EASEMENT THAT HAS BEEN GRANTED TO:

13 1. THE MARYLAND AGRICULTURAL LAND
14 PRESERVATION FOUNDATION;

15 2. A LOCAL AGRICULTURAL LAND PRESERVATION
16 PROGRAM THAT HAS BEEN APPROVED BY THE MARYLAND AGRICULTURAL
17 LAND PRESERVATION FOUNDATION;

18 3. THE MARYLAND ENVIRONMENTAL TRUST; OR

19 4. THE RURAL LEGACY PROGRAM; AND

20 (II) PASSES FROM THE DECEDENT TO OR FOR THE USE OF:

21 1. A SPOUSE, PARENT, OR GRANDPARENT OF THE
22 DECEDENT;

23 2. A CHILD OF THE DECEDENT OR A LINEAL
24 DESCENDANT OF A CHILD OF THE DECEDENT;

25 3. A SPOUSE OF A CHILD OF THE DECEDENT OR A
26 SPOUSE OF A LINEAL DESCENDANT OF A CHILD OF THE DECEDENT;

27 4. A BROTHER OR SISTER OF THE DECEDENT; OR

28 5. A LIMITED LIABILITY COMPANY THAT IS AT LEAST
29 80% OWNED BY FAMILY MEMBERS SPECIFIED IN ITEMS 1 THROUGH 4 OF THIS
30 ITEM.

1 **(3) THE EXCLUSION UNDER PARAGRAPH (2) OF THIS SUBSECTION**
2 **SHALL BE IMPLEMENTED AS FOLLOWS:**

3 **(I) FOR DECEDENTS DYING AFTER DECEMBER 31, 2009,**
4 **BUT BEFORE JANUARY 1, 2011, 20% OF THE VALUE OF ANY QUALIFIED**
5 **AGRICULTURAL PROPERTY SHALL BE EXCLUDED FROM THE VALUE OF THE**
6 **GROSS ESTATE;**

7 **(II) FOR DECEDENTS DYING AFTER DECEMBER 31, 2010,**
8 **BUT BEFORE JANUARY 1, 2012, 40% OF THE VALUE OF ANY QUALIFIED**
9 **AGRICULTURAL PROPERTY SHALL BE EXCLUDED FROM THE VALUE OF THE**
10 **GROSS ESTATE;**

11 **(III) FOR DECEDENTS DYING AFTER DECEMBER 31, 2011,**
12 **BUT BEFORE JANUARY 1, 2013, 60% OF THE VALUE OF ANY QUALIFIED**
13 **AGRICULTURAL PROPERTY SHALL BE EXCLUDED FROM THE VALUE OF THE**
14 **GROSS ESTATE;**

15 **(IV) FOR DECEDENTS DYING AFTER DECEMBER 31, 2012,**
16 **BUT BEFORE JANUARY 1, 2014, 80% OF THE VALUE OF ANY QUALIFIED**
17 **AGRICULTURAL PROPERTY SHALL BE EXCLUDED FROM THE VALUE OF THE**
18 **GROSS ESTATE; AND**

19 **(V) FOR DECEDENTS DYING AFTER DECEMBER 31, 2013,**
20 **100% OF THE VALUE OF ANY QUALIFIED AGRICULTURAL PROPERTY SHALL BE**
21 **EXCLUDED FROM THE VALUE OF THE GROSS ESTATE.**

22 **(4) (I) IF THE QUALIFIED AGRICULTURAL PROPERTY IS NOT**
23 **SUBJECT TO THE PERPETUAL AGRICULTURAL PRESERVATION AGREEMENT ON**
24 **THE DATE OF THE DECEDENT'S DEATH, THE EXCLUSION UNDER PARAGRAPH (2)**
25 **OF THIS SUBSECTION APPLIES TO ANY QUALIFIED AGRICULTURAL PROPERTY**
26 **FOR WHICH AN APPLICATION FOR A PERPETUAL AGRICULTURAL**
27 **PRESERVATION EASEMENT IS INITIATED WITHIN 9 MONTHS AFTER THE DEATH**
28 **OF THE DECEDENT, AS PROVIDED UNDER THIS PARAGRAPH.**

29 **(II) IF THE PERSON RESPONSIBLE FOR FILING THE**
30 **MARYLAND ESTATE TAX RETURN CAN PROVIDE EVIDENCE THAT AN**
31 **APPLICATION FOR A PRESERVATION EASEMENT HAS BEEN SUBMITTED TO AN**
32 **ENTITY UNDER SUBSECTION (C)(2)(I) OF THIS SECTION AND IS STILL PENDING,**
33 **THE PERSON MAY SUBMIT AN APPLICATION FOR A PAYMENT DEFERRAL AS**
34 **PROVIDED UNDER § 7-307 OF THIS SUBTITLE.**

1 **(III) 1. IF THE APPLICATION FOR A PRESERVATION**
2 **EASEMENT IS APPROVED, THE MARYLAND ESTATE TAX SHALL BE DETERMINED**
3 **AS PROVIDED UNDER PARAGRAPHS (2) AND (3) OF THIS SUBSECTION.**

4 **2. IF THE APPLICATION FOR A PRESERVATION**
5 **EASEMENT IS DENIED, THE MARYLAND ESTATE TAX SHALL BE PAID IN**
6 **ACCORDANCE WITH AN ALTERNATIVE PAYMENT SCHEDULE ALLOWED BY THE**
7 **COMPTROLLER.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 July 1, 2010, and shall be applicable to decedents dying after December 31, 2009.