

SENATE BILL 764

Q7

11r2740
CF 11r1245

By: **Senator Young**

Introduced and read first time: February 4, 2011

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Estate Tax – Exclusion of Qualified Agricultural Property**

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 value defining certain terms;
7 providing for the application of this Act; and generally relating to the Maryland
8 estate tax.

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

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

16 **Article – Tax – General**

17 7–309.

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23 not been repealed or reduced.

24 (b) (1) Except as provided in paragraphs (2) through (7) of this subsection
25 **AND SUBSECTION (C) OF THIS SECTION**, after the effective date of an Act of

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Congress described in subsection (a) of this section, the Maryland estate tax shall be
2 determined using:

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

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

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

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

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

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

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

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

29 (4) (i) With regard to an election to value property as provided in §
30 2032 of the Internal Revenue Code, if a federal estate tax return is not required to be
31 filed:

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

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

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

3 A. the value of the gross estate; and

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

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

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

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

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

24 (ii) For the purpose of apportioning Maryland estate tax under §
25 7-308 of this subtitle, any property as to which a decedent is deemed to have had a
26 qualifying income interest for life under subparagraph (i) of this paragraph shall be
27 deemed to be included in both the estate and the taxable estate of the decedent.

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

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

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

3 (III) “QUALIFIED AGRICULTURAL PROPERTY” MEANS REAL
4 OR PERSONAL PROPERTY THAT IS USED PRIMARILY FOR FARMING PURPOSES.

5 (IV) “QUALIFIED RECIPIENT” MEANS AN INDIVIDUAL WHO
6 ENTERS INTO AN AGREEMENT TO USE QUALIFIED AGRICULTURAL PROPERTY
7 FOR FARMING PURPOSES AFTER THE DECEDENT’S DEATH.

8 (2) (I) THE MARYLAND ESTATE TAX SHALL BE DETERMINED
9 BY EXCLUDING FROM THE VALUE OF THE GROSS ESTATE UP TO \$5,000,000 OF
10 THE VALUE OF QUALIFIED AGRICULTURAL PROPERTY THAT PASSES FROM THE
11 DECEDENT TO OR FOR THE USE OF A QUALIFIED RECIPIENT.

12 (II) THE MARYLAND ESTATE TAX IMPOSED ON QUALIFIED
13 AGRICULTURAL PROPERTY IN THE ESTATE MAY NOT EXCEED 5% OF THE
14 AMOUNT BY WHICH THE VALUE OF THE QUALIFIED AGRICULTURAL PROPERTY
15 THAT PASSES FROM THE DECEDENT TO OR FOR THE USE OF A QUALIFIED
16 RECIPIENT EXCEEDS \$5,000,000.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 July 1, 2011, and shall be applicable to decedents dying after December 31, 2010.