

CHAPTER 193

TAXATION

HOUSE BILL 12-1042

BY REPRESENTATIVE(S) Pace, Brown, Casso, Fields, Pabon, Vigil, Wilson;
also SENATOR(S) Schwartz, Guzman.

AN ACT

CONCERNING A STATE INCOME TAX CREDIT RELATED TO THE PORTION OF COLORADO ESTATE TAXES PAID THAT ARE ATTRIBUTABLE TO AGRICULTURAL LAND.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) In the absence of an amendment to federal law, the Colorado estate tax will be collected on the estates of decedents on or after January 1, 2013;

(b) In the case of a farm or ranch, most of the value is in the land and not in liquid assets;

(c) Estate tax liability can force people who inherit a farm to sell a portion of the agricultural land in order to pay the taxes that are owed;

(d) The state cannot effectively reduce the Colorado estate tax because it is a pick-up tax, which means that if the state tax decreases, there is a corresponding increase in the federal tax owed;

(e) Offering a related but separate income tax credit to the beneficiaries of an estate is a way to provide some relief to people who inherit land used in a farm or ranch without changing estate tax liability; and

(f) Accordingly, the intended purpose of the tax expenditure contained in this act is to reduce the income taxes owed by a person who inherits agricultural land located within the state.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 2. In Colorado Revised Statutes, **add** 39-22-534 as follows:

39-22-534. Credit for estate taxes paid - agricultural land - recapture - definitions. (1) (a) EXCEPT AS SET FORTH IN SUBSECTION (3) OF THIS SECTION, FOR INCOME TAX YEARS SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (1), A PERSON WHO INHERITS AGRICULTURAL LAND LOCATED WITHIN THE STATE IS ALLOWED A CREDIT IN AN AMOUNT EQUAL TO THE AMOUNT OF ESTATE TAXES PAID PURSUANT TO ARTICLE 23.5 OF THIS TITLE THAT ARE ATTRIBUTABLE TO THE TRANSFER OF SUCH AGRICULTURAL LAND. A TAXPAYER MUST CLAIM THE CREDIT FOR THE INCOME TAX YEAR IN WHICH THE ESTATE TAXES ARE PAID. FOR PURPOSES OF THIS SECTION, THE VALUE OF THE AGRICULTURAL LAND IS THE CURRENT ASSESSED VALUATION. IF MORE THAN ONE PERSON INHERITS THE AGRICULTURAL LAND, THE TAX CREDIT IS APPORTIONED AMONG ALL BENEFICIARIES.

(b) THE CREDIT SHALL NOT APPLY UNTIL THE FIRST INCOME TAX YEAR:

(I) AFTER CONGRESS ENACTS A LAW DELAYING TO A DATE AFTER DECEMBER 31, 2012, THE SUNSET OF THE AMENDMENTS TO SECTION 26 U.S.C. 2011 THAT WERE INCLUDED IN THE "ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001", PUBLIC LAW 107-16; AND

(II) THAT AN ESTATE TAX IS OWED PURSUANT TO ARTICLE 23.5 OF THIS TITLE.

(2) IF THE AMOUNT OF THE CREDIT EXCEEDS THE INCOME TAXES OWED BY THE TAXPAYER, THE DEPARTMENT OF REVENUE SHALL REFUND THE EXCESS AMOUNT TO THE TAXPAYER.

(3) (a) IF, WITHIN TEN YEARS FROM THE DATE THE INCOME TAX CREDIT CREATED BY THIS SECTION IS CLAIMED, THE PROPERTY THAT WAS THE BASIS OF THE CREDIT IS NO LONGER CLASSIFIED AS AGRICULTURAL LAND FOR PROPERTY TAX PURPOSES, THE CREDIT SHALL BE DISALLOWED AND, WITHIN THIRTY DAYS OF THE CHANGE IN USE, THE TAXPAYER WHO RECEIVED THE TAX CREDIT SHALL FILE AN AMENDED COLORADO INCOME TAX RETURN FOR THE TAX YEAR THAT THE CREDIT WAS CLAIMED. INTEREST SHALL BE DUE ON THE TAXES OWED FROM THE DUE DATE OF THE ORIGINAL RETURN. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THE ANNUAL RATE OF INTEREST FOR AN AMOUNT OWED PURSUANT TO THIS SUBSECTION (3) FOR A GIVEN YEAR SHALL BE EQUAL TO THE RATE OF INFLATION FOR THE PRIOR YEAR.

(b) NOTWITHSTANDING THE PROVISIONS OF SECTION 39-21-107 (2), THE ASSESSMENT OF THE TAX DUE AS A RESULT OF ANY DISALLOWANCE OF THE CREDIT ALLOWED BY THIS SECTION, PLUS ANY PENALTY OR INTEREST, SHALL BE MADE WITHIN ELEVEN YEARS OF THE DUE DATE OF THE RETURN CLAIMING THE CREDIT. IF THE TAXPAYER DOES NOT FILE THE AMENDED RETURN WITHIN THE PRESCRIBED THIRTY-DAY PERIOD, THEN THE STATUTE OF LIMITATIONS SHALL BE TOLLED FROM THE END OF SUCH THIRTY-DAY PERIOD UNTIL THE DATE THAT SUCH AMENDED RETURN IS FILED WITH THE EXECUTIVE DIRECTOR OR UNTIL THE EXECUTIVE DIRECTOR DISCOVERS SUCH DETERMINATION OR CHANGE, WHICHEVER OCCURS FIRST.

(4) AS USED IN THIS SECTION:

(a) "AGRICULTURAL LAND" HAS THE SAME MEANING AS SET FORTH IN SECTION 39-1-102.

(b) "RATE OF INFLATION" MEANS THE ANNUAL PERCENTAGE CHANGE IN THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, CONSUMER PRICE INDEX FOR DENVER-BOULDER-GREELEY, ALL ITEMS, ALL URBAN CONSUMERS, OR ITS SUCCESSOR INDEX.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2012, if adjournment sine die is on May 9, 2012); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2012 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 21, 2012