

# MAINE STATE LEGISLATURE

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DATE: 5/20/15

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TAXATION

Majority

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
122ND LEGISLATURE  
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 586, L.D. 827, Bill, "An Act To Preserve Farmland and Timberland following the Death of an Owner"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 36 MRSA §§4080 and 4081 are enacted to read:

§4080. Election to deduct value of certain property

1. Definitions. As used in this section and section 4081, unless the context otherwise indicates, the following terms have the following meanings.

A. "Eligible farmland" means a tract of land located in the State, including woodland and wasteland, of at least 5 contiguous acres on which a farming or agricultural activity has contributed to a gross annual farming income of at least \$4,000 per year in either one of the 2 calendar years or 3 of the 5 calendar years preceding the death of the owner. The farming or agricultural activity and the income derived from that activity may be earned by either the owner or lessee of the farmland. For the purposes of this paragraph, "gross annual farming income" includes the value of commodities produced for consumption by the farm household.

B. "Eligible timberland" means a tract of land located in this State of at least 10 acres used primarily for the

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growth of trees to be harvested for commercial use or sale. Otherwise eligible timberland may not be excluded from the provisions of this section due to:

- (1) Public recreational use of the land;
- (2) A statutory or governmental restriction that prevents commercial harvesting of trees or requires a primary use of the land other than commercial harvesting;
- (3) A deed restriction, restrictive covenant or organizational charter that prevents commercial harvesting of trees or requires a primary use of the land other than commercial harvesting and was effective prior to January 1, 1982; or
- (4) Past or present mineral exploration on the land.

C. "Member of the decedent's family" or "member of the heir's family" means, with respect to any individual, only:

- (1) An ancestor of the individual;
- (2) The spouse of the individual;
- (3) A lineal descendant of the individual or the individual's spouse, or a lineal descendant of a parent of the individual; or
- (4) The spouse of any lineal descendant under subparagraph (3).

For purposes of this paragraph, a legally adopted child of an individual must be treated as the child of such individual by blood.

D. "Qualified heir" means, with respect to eligible farmland or eligible timberland, a member of the decedent's family who acquired such property or to whom such property passed from the decedent. If an interest in eligible farmland or eligible timberland passes to a trust, all of the current beneficiaries of which are members of the decedent's family, the trust must be treated as a qualified heir for purposes of this section. If a qualified heir disposes of any interest in eligible farmland or eligible timberland to any member of the heir's family, that member must thereafter be treated as the qualified heir with respect to the interest.

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2 2. Election. Notwithstanding any provision of this  
3 chapter, if a timely election is made by the decedent's personal  
4 representative, the federal gross estate must be reduced by:

6 A. The value of eligible farmland and eligible timberland  
7 included, or includable if no federal return is filed, in  
8 the federal gross estate that passes to or for the benefit  
9 of a qualified heir; and

10 B. The value of interests in entities included, or  
11 includable if no federal return is filed, in the federal  
12 gross estate that passes to or for the benefit of a  
13 qualified heir, to the extent that the value of the interest  
14 in the entity is attributable to eligible farmland and  
15 eligible timberland owned by the entity.

16 The election under this subsection must be made on the return of  
17 the tax imposed by this chapter. Such an election, once made, is  
18 irrevocable. The election under this subsection is not effective  
19 unless it is accompanied by a written agreement in the form  
20 prescribed by the assessor signed by each qualified heir who has  
21 an interest, whether or not that qualified heir is in possession  
22 of that interest, in any eligible farmland or eligible timberland  
23 or any entity owning eligible farmland or eligible timberland, or  
24 such qualified heir's legal representative, consenting to the  
25 application of section 4081 to such property.

28 3. Annual return required. When an election is made  
29 pursuant to subsection 2, the qualified heirs must file an annual  
30 return with the assessor on a form prescribed by the assessor.  
31 The return must be filed no later than 60 days after the  
32 anniversary of the decedent's death for each of the 20 years  
33 following the decedent's death. The return must indicate whether  
34 any changes have occurred during the time period covered by the  
35 return that would result in the imposition of additional tax  
36 under section 4081, and such other information as the assessor  
37 may require.

38 4. Application. This section applies to an estate of a  
39 decedent who dies on or after January 1, 2007.

42 §4081. Additional tax on eligible farmland or eligible timberland

44 1. Additional tax. The following provisions govern the  
45 imposition of an additional tax with respect to eligible farmland  
46 or eligible timberland.

48 A. With respect to any eligible farmland or eligible  
49 timberland for which an election is made under section 4080,  
50 a tax is imposed on any qualified heir if any of the

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following disqualifying events occurs within 20 years of the decedent's death:

(1) The qualified heir transfers more than 10% by value of the eligible farmland or eligible timberland included in the decedent's estate to any person other than a member or members of the decedent's family or to an entity that is not more than 50% owned or controlled by a member or members of the decedent's family;

(2) The qualified heir transfers more than 10% by value of the ownership interest in any entity owning eligible farmland or eligible timberland included in the decedent's estate to any person other than a member or members of the decedent's family or to an entity that is not more than 50% owned or controlled by a member or members of the decedent's family; or

(3) The eligible farmland or eligible timberland ceases to satisfy the definition of eligible farmland or eligible timberland provided in section 4080.

Each qualified heir shall file a return in the form prescribed by the assessor and pay the additional tax, to the extent of the heir's interest in the eligible farmland or eligible timberland or to the extent of the heir's interest in any entity owning eligible farmland or eligible timberland. The return is due on the 15th day of the 4th month following the anniversary date of the decedent's death that follows the calendar year in which any disqualifying event specified in this paragraph occurs.

B. The tax imposed on each qualified heir by this section equals the applicable percentage of the amount of Maine estate tax that would have been due with respect to all of the eligible farmland or eligible timberland includable in the decedent's estate if the election under section 4080 had not been made, plus interest thereon calculated under section 186, multiplied by a fraction, the numerator of which is the value of the qualified heir's interest in the eligible farmland or eligible timberland or the qualified heir's interest in any entity owning eligible farmland or eligible timberland and the denominator of which is the value of the eligible farmland or eligible timberland includable in the decedent's estate if the election under section 4080 had not been made.

The amount of Maine estate tax that would have been due with respect to all of the eligible farmland or eligible timberland includable in the decedent's estate if the

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election under section 4080 had not been made equals the amount by which the tax imposed by this chapter without excluding the eligible farmland or eligible timberland or the decedent's interest in any entity owning eligible farmland or eligible timberland exceeds the amount of tax imposed on the decedent's estate excluding the eligible farmland or eligible timberland or the decedent's interest in any entity owning eligible farmland or eligible timberland.

As used in this paragraph, "applicable percentage" means:

(1) One hundred percent if the disqualifying event occurs on a date that is 10 years or less after the decedent's death;

(2) Fifty percent if the disqualifying event occurs on a date that is more than 10 years but less than or equal to 12 years after the decedent's death;

(3) Forty percent if the disqualifying event occurs on a date that is more than 12 years but less than or equal to 14 years after the decedent's death;

(4) Thirty percent if the disqualifying event occurs on a date that is more than 14 years but less than or equal to 16 years after the decedent's death;

(5) Twenty percent if the disqualifying event occurs on a date that is more than 16 years but less than or equal to 18 years after the decedent's death; or

(6) Ten percent if the disqualifying event occurs on a date that is more than 18 years but less than or equal to 20 years after the decedent's death.

The additional tax due under this section is the personal liability of each qualified heir.

2. Application. This section applies to an estate of a decedent who dies on or after January 1, 2007.'

**SUMMARY**

This amendment changes the definitions in the bill of "eligible farmland" and "eligible timberland." The amendment provides for recapture of a portion of the estate tax exemption if the land is not maintained as eligible farmland or eligible timberland for at least 20 years after the death of the decedent

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and requires annual returns to be filed for that period to verify continued compliance. The amendment changes the effective date of the new exemption to apply to deaths occurring after January 1, 2007.

FISCAL NOTE REQUIRED  
(See attached)

**COMMITTEE AMENDMENT**



# 122nd MAINE LEGISLATURE

LD 827

LR 1617(02)

An Act To Preserve Farmland and Timberland following the Death of an Owner

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Taxation

Fiscal Note Required: Yes

## Fiscal Note

	2005-06	2006-07	Projections 2007-08	Projections 2008-09
<b>Net Cost (Savings)</b>				
General Fund	\$0	\$0	\$3,251,256	\$4,433,293
<b>Appropriations/Allocations</b>				
General Fund	\$0	\$0	\$99,677	\$104,877
<b>Revenue</b>				
General Fund	\$0	\$0	(\$3,151,579)	(\$4,328,416)

### Fiscal Detail and Notes

This bill is expected to reduce General Fund revenue by \$3,151,579 in fiscal year 2007-08 and \$4,328,416 in fiscal year 2008-09. Maine Revenue Services will also require annual General Fund appropriations of approximately \$100,000 in the 2008-2009 biennium for the administrative costs associated with this change.