

HOUSE No. 3915

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, September 21, 2017.

The committee on Revenue to whom were referred the petition (accompanied by bill, Senate, No. 1584) of Kathleen O'Connor Ives, John W. Scibak, Steven S. Howitt, Keiko M. Orrall and other members of the General Court for legislation to establish estate tax valuation for farms, the petition (accompanied by bill, House, No. 2618) of Stephen Kulik and others relative to farmland land transfer estate taxes, and the petition (accompanied by bill, House, No. 3323) of Kate Hogan and others for legislation to establish estate tax valuation for farms, reports recommending that the accompanying bill (House, No. 3915) ought to pass.

For the committee,

JAY R. KAUFMAN.

HOUSE No. 3915

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to establish estate tax valuation for farms.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 6F of chapter 62 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the word “under,” in line 52, the following
3 words:- subsections (a) or (c) of.

4 SECTION 2. Section 5 of chapter 65C, as so appearing, is hereby amended by striking
5 out subsection (c) and inserting in place thereof the following subsections:-

6 (c) If the gross estate of a decedent, dying on or before December 31, 2018, includes real
7 property devoted to use as a farm for farming purposes, the estate may elect to value such
8 property in accordance with section 2032A of the Code, in effect on January 1, 1985. If a federal
9 return is required to be filed, such election shall be consistent with the election made for federal
10 estate tax purposes. All the substantive and procedural provisions of said section 2032A shall,
11 insofar as pertinent and consistent, apply to such election. The commissioner shall promulgate
12 regulations to carry out the provisions of this subsection.

13 (d)(1) As used in this subsection, the following words shall have the following
14 meanings:-

15 "Applicable date", the date upon which the 10 year period that the estate shall be liable
16 for assessment under paragraph (4) of this subsection begins. For qualifying agricultural land and
17 associated land, the applicable date shall be the date of death of the decedent. For qualifying non-
18 committed land, the applicable date shall be 2 years from the date of death of the decedent.

19 "Associated land", land under the same ownership as and contiguous to qualifying
20 agricultural land and which, as of the date of death of the decedent, is not committed to
21 residential, industrial or commercial use. Land shall be deemed contiguous if it is separated from
22 other land under the same ownership only by a public or private way or waterway. Land under
23 the same ownership shall be deemed contiguous if it is connected to other land under the same
24 ownership by an easement for water supply. Any such land in excess of 100 per cent of the
25 acreage of qualifying agricultural land shall be deemed qualifying non-committed land.

26 "Closely held agricultural land", qualifying agricultural land, associated land and
27 qualifying non-committed land for which an election is made under this subsection.

28 "Qualifying agricultural land", land which meets the definition of forest land under
29 chapter 61, land actively devoted to agricultural, horticultural or agricultural and horticultural
30 uses under chapter 61A or recreational land under chapter 61B that is also used for farming or
31 agriculture, as defined in section 1A of chapter 128, and has been devoted to such use or uses for
32 at least 2 of the tax years immediately preceding the death of the decedent; provided, however,
33 that the land need not be classified by municipal assessors as forest land under chapter 61, land
34 actively devoted to agricultural, horticultural or agricultural and horticultural uses under chapter

35 61A or recreational land under chapter 61B to qualify for valuation as closely held agricultural
36 land under this subsection.

37 “Qualifying non-committed land”, land which is not qualifying agricultural land and is
38 not committed to residential, industrial or commercial use, including associated land in excess of
39 100 per cent of the acreage of qualifying agricultural land.

40 “Savings”, the difference between the estate taxes paid as a result of an election made
41 under this subsection and the estate taxes that would have otherwise been paid had the election
42 not been made.

43 (2) If the gross estate of a decedent, dying on or after January 1, 2019, includes real
44 property that is qualifying agricultural land, associated land or qualifying non-committed land,
45 the estate may elect to value such property, or any portion thereof, as closely held agricultural
46 land pursuant to the valuation set by the farmland valuation advisory commission established
47 pursuant to section 11 of chapter 61A for the fiscal year of the most recent growing season. The
48 value of closely held agricultural land as determined pursuant to such election shall only be for
49 the purposes of computing the tax due under this chapter. Such election shall be subject to the
50 provisions of paragraphs (3) through (6), inclusive, of this subsection.

51 (3) Unless the property is restricted by a non-development covenant that: (i) is approved
52 by the commissioner of agriculture, (ii) is for the purposes of maintaining the land in agricultural
53 use, (iii) precludes non-agricultural development of the land, (iv) is recorded at the registry of
54 deeds in the counties or districts in which the property is located and (v) does not expire within
55 10 years of the applicable date, the commissioner shall forthwith cause to be recorded in the
56 registry of deeds of the counties or districts in which the property is situated a statement which

57 shall constitute a lien upon the land covered by election under this subsection. The statement
58 shall include the owner or owners of record, the savings as a result of such election, the fair
59 market value of the property and a description of the land adequate for identification. Unless
60 such a statement is recorded the lien shall not be effective with respect to a bona fide purchaser
61 or other transferee without actual knowledge of such lien. Upon application by any record owner,
62 such liens shall be released by the commissioner with respect to any property upon the facts
63 being established by their records or by affidavits or otherwise that all assessments have been
64 paid, or it being more than 10 years past the applicable date, no assessment being due. All
65 recording fees paid under this subsection whether for statements of liens, certificates, releases or
66 otherwise shall be borne by the owner of record of the land.

67 Property restricted by an agricultural preservation restriction as defined by section 31 of
68 chapter 184 and signed by the commissioner of agriculture shall be deemed to be restricted by a
69 non-development covenant that (i) is approved by the commissioner of agriculture, (ii) is for the
70 purposes of maintaining the land in agricultural use, (iii) precludes non-agricultural development
71 of the land, (iv) is recorded at the registry of deeds in the counties or districts in which the
72 property is located and (v) does not expire within 10 years of the applicable date.

73 (4)(i) When land valued as closely held agricultural land under this subsection, within a
74 period of 10 years from the applicable date, is sold for other use or no longer qualifies as closely
75 held agricultural land, the owner or owners shall immediately notify the commissioner of such
76 sale or change of use and an assessment shall be due the commonwealth. Such assessment shall
77 be calculated with interest based on the date of sale for other use or based on the last date of use
78 as closely held agricultural land as follows:

79 The assessment shall be equal to 100 per cent of the savings if such date is within 1 year
80 of the applicable date; 90 per cent of the savings if such date is within 2 years, but more than 1
81 year, of the applicable date; 80 per cent of the savings if such date is within 3 years, but more
82 than 2 years, of the applicable date; 70 per cent of the savings if such date is within 4 years, but
83 more than 3 years, of the applicable date; 60 per cent of the savings if such date is within 5 years,
84 but more than 4 years, of the applicable date; 50 per cent of the savings if such date is within 6
85 years, but more than 5 years, of the applicable date; 40 per cent of the savings if such date is
86 within 7 years, but more than 6 years, of the applicable date; 30 per cent of the savings if such
87 date is within 8 years, but more than 7 years, of the applicable date; 20 per cent of the savings if
88 such date is within 9 years, but more than 8 years, of the applicable date; 10 per cent of the
89 savings if such date is within 10 years, but more than 9 years, of the applicable date; and no
90 assessment shall be due if such date is more than 10 years from the applicable date.

91 Such assessment shall also include interest calculated at a simple interest rate of 5 per
92 cent per annum on the savings from the applicable date.

93 There shall be an additional assessment equal to 30 per cent of the savings if the date of
94 sale for other use or the last date of use while qualified as closely held agricultural land occurs
95 within 1 year of the applicable date; and 15 per cent of the savings if such date occurs within 2
96 years, but more than 1 year, of the applicable date.

97 (ii) If an election has been made with respect to qualifying non-committed land which, on
98 the applicable date, fails to meet the definition of forest land under chapter 61, land actively
99 devoted to agricultural, horticultural or agricultural and horticultural uses under chapter 61A or
100 recreational land under chapter 61B that is also used for farming or agriculture, as defined in

101 section 1A of chapter 128, an assessment shall be due the commonwealth and payable by the
102 owner or owners within 30 days of the applicable date; provided, however, that the land need not
103 be classified by municipal assessors as forest land under chapter 61, land actively devoted to
104 agricultural, horticultural or agricultural and horticultural uses under chapter 61A or recreational
105 land under chapter 61B. Such assessment shall be equal to the sum of (A) 100 per cent of the
106 savings; (B) interest calculated at a simple interest rate of 5 per cent per annum on the savings
107 from the date of death of the decedent; and (C) an additional assessment equal to 30 per cent of
108 the savings.

109 (iii) Notwithstanding this paragraph, there shall be no assessment if the land involved, or
110 a lesser interest in the land, is acquired for a natural resource by the commonwealth or by a
111 nonprofit conservation organization; provided, however, that if any portion of the land is sold or
112 converted to commercial, residential or industrial use within 10 years after the applicable date by
113 a nonprofit conservation organization, an assessment shall be imposed against the nonprofit
114 conservation organization in the amount that would have been imposed at the time of acquisition
115 of the subject parcel by the nonprofit conservation organization had the transaction been subject
116 to an assessment or, in the case of qualifying non-committed land acquired by a nonprofit
117 conservation organization before the applicable date, the amount that would have been imposed
118 on the applicable date under clause (ii) of this paragraph.

119 (iv) In the case of sale for other use of closely held agricultural land, other than
120 qualifying non-committed land sold for other use before the applicable date, assessments
121 imposed by this subsection shall be due and payable by the grantor at the time of transfer of the
122 property by deed or other instrument of conveyance. In the case of qualifying non-committed
123 land sold for other use before the applicable date, assessments imposed by this subsection shall

124 be due and payable by the grantor on the applicable date. In the case of change to a non-
125 qualifying use, assessments imposed by this subsection shall be due and payable by the owner or
126 owners within 30 days of the of the last date of use as closely held agricultural land, regardless of
127 the date on which the commissioner was notified by said owner or owners of such change of use.

128 (v) An assessment shall be imposed on only that portion of land on which the use has
129 changed. If, by conveyance or other action of the owner thereof, a portion of land which is
130 valued as closely held agricultural land under this subsection is separated for other use, the land
131 so separated shall be subject to liability for assessment, interest and additional assessment under
132 this paragraph based on the proportion which the acreage of the land so separated bears to the
133 total acreage of land valued as closely held agricultural land under this subsection.

134 (5) All buildings located on land which is valued as closely held agricultural land under
135 this subsection and all land occupied by a dwelling or regularly used for family living shall not
136 be valued as provided under this subsection.

137 (6) The commissioner shall promulgate regulations to carry out the provisions of this
138 subsection.