

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0444.01 Ed DeCecco x4216

HOUSE BILL 12-1042

HOUSE SPONSORSHIP

Pace,

SENATE SPONSORSHIP

(None),

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill establishes an income tax credit for a person who inherits agricultural land located within the state that is equal to the portion of Colorado estate taxes attributable to the transfer of the land. The tax credit is subject to the following requirements:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- ! If more than one person inherits the land, the credit is apportioned among all beneficiaries;
- ! If the credit exceeds the income taxes owed, the excess is refundable to the taxpayer; and
- ! If the land is reclassified in the 10 years after the credit is claimed, the taxpayer is required to repay the credit, with interest, to the state as part of an amended income tax return.

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

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

4 (a) In the absence of an amendment to federal law, the Colorado
5 estate tax will be collected on the estates of decedents on or after January
6 1, 2013;

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

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

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

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

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

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

1 follows:

2 **39-22-534. Credit for estate taxes paid - agricultural land -**
3 **recapture - definitions.** (1) EXCEPT AS SET FORTH IN SUBSECTION (3) OF
4 THIS SECTION, FOR INCOME TAX YEARS COMMENCING ON OR AFTER
5 JANUARY 1, 2013, A PERSON WHO INHERITS AGRICULTURAL LAND
6 LOCATED WITHIN THE STATE IS ALLOWED A CREDIT IN AN AMOUNT EQUAL
7 TO THE AMOUNT OF ESTATE TAXES PAID PURSUANT TO ARTICLE 23.5 OF
8 THIS TITLE THAT ARE ATTRIBUTABLE TO THE TRANSFER OF SUCH
9 AGRICULTURAL LAND. A TAXPAYER MUST CLAIM THE CREDIT FOR THE
10 INCOME TAX YEAR IN WHICH THE ESTATE TAXES ARE PAID. FOR PURPOSES
11 OF THIS SECTION, THE VALUE OF THE AGRICULTURAL LAND IS THE
12 CURRENT ASSESSED VALUATION. IF MORE THAN ONE PERSON INHERITS THE
13 AGRICULTURAL LAND, THE TAX CREDIT IS APPORTIONED AMONG ALL
14 BENEFICIARIES.

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

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

1 PURSUANT TO THIS SUBSECTION (3) FOR A GIVEN YEAR SHALL BE EQUAL TO
2 THE RATE OF INFLATION FOR THE PRIOR YEAR.

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

14 (4) AS USED IN THIS SECTION:

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

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

22 **SECTION 3. Act subject to petition - effective date.** This act
23 takes effect at 12:01 a.m. on the day following the expiration of the
24 ninety-day period after final adjournment of the general assembly (August
25 7, 2012, if adjournment sine die is on May 9, 2012); except that, if a
26 referendum petition is filed pursuant to section 1 (3) of article V of the
27 state constitution against this act or an item, section, or part of this act

1 within such period, then the act, item, section, or part will not take effect
2 unless approved by the people at the general election to be held in
3 November 2012 and, in such case, will take effect on the date of the
4 official declaration of the vote thereon by the governor.