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HOUSE BILL NO. 1910

Offered January 12, 2005

Prefiled January 7, 2005

A BILL to amend and reenact §§ 58.1-901 and 58.1-902 of the Code of Virginia, relating to the estate tax.

Patron—Baskerville

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-901 and 58.1-902 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-901. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Decedent" means a deceased person.

"Federal credit" means the maximum amount of the credit for state death taxes allowable by § 2011 of the United States Internal Revenue Code of 1954, as amended or renumbered, or successor provision, in respect to a decedent's taxable estate. The term "maximum amount" shall be construed as to take full advantage of such credit as the laws of the United States may allow. In no event, however, shall such amount be less than the federal credit allowable by § 2011 of the Internal Revenue Code as it existed on January 1, 1978.

"Gross estate" means "gross estate" as defined in § 2031 of the United States Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

"Interest in a closely held business" means an "interest in a closely held business" as defined in § 6166 of the United States Internal Revenue Code of 1986, as amended or renumbered, or the successor provision of the laws of the United States.

"Nonresident" means a decedent who was domiciled outside of the Commonwealth of Virginia at his death.

"Personal representative" means the personal representative of the estate of the decedent, appointed, qualified and acting within the Commonwealth, or, if there is no personal representative appointed, qualified and acting within the Commonwealth, then any person in actual or constructive possession of the Virginia gross estate of the decedent.

"Resident" means a decedent who was domiciled in the Commonwealth of Virginia at his death.

"State" means any state, territory or possession of the United States and the District of Columbia.

"Taxable estate" means "taxable estate" as defined in § 2051 of the United States Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

"Value" means "value" as finally determined for federal estate tax purposes under the laws of the United States relating to federal estate taxes.

"Working farm" means an interest in a closely held business that operates as an active trade or business for agricultural purposes.

Any reference in this chapter to the laws of the United States relating to federal estate and gift taxes means the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal estate and gift taxes, as the same may be or become effective at any time or from time to time.

§ 58.1-902. Tax on transfer of taxable estate of residents; amounts; credit; property of resident defined.

A. A 1. For deaths occurring before January 1, 2005, a tax in the amount of the federal credit is imposed on the transfer of the taxable estate of every resident, subject, where applicable, to the credit provided for in subsection B.

2. For deaths occurring on or after January 1, 2005, a tax in the amount of the federal credit is imposed on the transfer of the taxable estate of every resident whose gross estate exceeds \$10 million, subject to, where applicable, the credit provided for in subsection B. However, no tax shall be imposed on a gross estate if the majority of the assets of the total estate are an interest in a closely held business or working farm.

B. If the real and tangible personal property of a resident is located outside of the Commonwealth and is subject to a death tax imposed by another state for which a credit is allowed under § 2011 of the Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States relating to federal estate taxes, the amount of tax due under this section shall be credited with the lesser of:

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HB1910

- 59 1. The amount of the death tax paid the other state and credited against the federal estate tax; or
60 2. An amount computed by multiplying the federal credit by a fraction, the numerator of which is the
61 value of that part of the gross estate over which another state or states have jurisdiction to the same
62 extent to which Virginia would exert jurisdiction under this chapter with respect to the residents of such
63 other state or states and the denominator of which is the value of the decedent's gross estate.
- 64 C. Property of a resident includes:
- 65 1. Real property situated in the Commonwealth of Virginia;
66 2. Tangible personal property having an actual situs in the Commonwealth of Virginia; and
67 3. Intangible personal property owned by the resident regardless of where it is located.