DEPARTMENT OF TAXATION
2009 Fiscal Impact Statement

1. Patron David L. Englin

2. Bill Number HB 2376

House of Origin:
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee House Finance

4. Title Estate Tax; Reinstated to Fund Certain Programs.

5. Summary/Purpose:

This bill would effectively reinstate the Virginia estate tax for residents whose gross estates exceed $5 million by requiring that the maximum amount of the federal credit for state estate taxes be equal to the federal credit as it existed on January 1, 1978. The estate tax would not 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.

This bill would require that one-third of the increase in revenue be distributed annually to each of the following programs: the Tuition Assistance Grant Program, the Virginia Preschool Initiative, and the Healthy Families Virginia Program. In the event one or more of these programs no longer exists, the portion of the revenue that would have been distributed to that program would remain in the General Fund.

This bill would be effective for the estates of Virginia decedents dying on or after January 1, 2009.

6. Fiscal Impact Estimates are: Tentative. (See Line 8.)

6b. Revenue Impact:

Fiscal Year	***Dollars***	***Fund***
2008-09	$0	GF
2009-10	$25.5 million	GF
2010-11	$102 million	GF
2011-12	$102 million	GF
2012-13	$102 million	GF
2013-14	$102 million	GF
2014-15	$102 million	GF

7. Budget amendment necessary: Yes.
<u>Page 1, Revenue Estimate</u>

8. Fiscal implications:

Administrative Costs

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as “routine,” and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not “routine.” Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

Revenue Impact

As amended, the annual revenue gain for this bill would be $102 million. In Fiscal Year 2010, the gain would be $25.5 million, or one-quarter of that amount, because of the current nine month lag between the date of death and the due date of the estate tax return that is allowed under federal law. The federal requirement to file will not be applicable for those whose date of death occurs in or after January 1, 2010. At that point, this bill, as amended, would require the Virginia return to be filed within 180 days of the date of death. However, because Fiscal Year 2010 will still be affected by the federal rules, as people may still be filing federal returns as late as September of 2010, this estimate accounts for the nine month delay.

9. Specific agency or political subdivisions affected:

Department of Taxation
State Council of Higher Education
Department of Education
Department of Social Services

10. Technical amendment necessary: Yes.

Under current law, the Virginia estate tax return is required to be filed at the time the federal estate tax return is filed. However, if the federal estate tax expires in 2010 as expected, there would be no due date for the Virginia estate tax return. Therefore, to clarify when the Virginia estate tax return would be required to be filed and how any extensions would operate, the following technical amendment is suggested:

Page 2, Line 66, after is located.
Insert: D. 1. If the personal representative of any estate subject to the tax imposed by this chapter is not required by the laws of the United States to file a federal estate tax return, then the personal representative shall file with the Department a return for the tax due under this chapter within the 180 days immediately following the death of the decedent.

2. The Department may grant an extension of time for filing the state estate tax return or remitting to the Department the tax due pursuant to this chapter, or any portion of the tax due. The Department shall establish procedures and conditions for an extension.

11. Other comments:

Legislative History

The 2006 Acts of Assembly, Chapter 4, effectively repealed the Virginia estate tax by equating the Virginia estate tax to the current amount of the federal credit allowable for state estate taxes. As there is no federal credit for state estate taxes allowed at this time, there is also no Virginia estate tax.

Prior to the 2006 legislation, Virginia imposed a “pick-up” estate tax that was equal to the maximum amount of the federal credit for state estate taxes as it existed on January 1, 1978. The federal credit for state estate taxes was eliminated by the Economic Growth and Tax Relief Act of 2001 in 2005, but the freeze to 1978 preserved the Virginia estate tax. By striking the language tying the tax to 1978, the 2006 Acts of Assembly, Chapter 4, effectively repealed the Virginia estate tax.

Under the Economic Growth and Tax Relief Act of 2001, the threshold amount of the federal taxable estate was increased over time. The amount was $1.5 million for 2004 and 2005, $2 million for 2006 through 2008, and $3.5 million for 2009. Any estate with a value less than the applicable amount is not subject to the federal estate tax. In addition, the federal estate tax will not be applicable in 2010.

The federal law that eliminated the credit for state estate taxes is scheduled to expire after 2010, which would mean that the Virginia estate tax would be reinstated when the federal credit was again allowed. While Congress is expected to address this issue before 2011, the nature of its action cannot be predicted.

Proposal

This bill would effectively reinstate the Virginia estate tax for residents whose gross estates exceed $5 million by requiring that the maximum amount of the federal credit for state estate taxes be equal to the federal credit as it existed on January 1, 1978. The estate tax would not 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.

As amended, this bill would require the personal representative of any estate subject to the Virginia estate tax that is not required to file a federal estate tax return to file a Virginia estate tax return within the 180 days immediately following the death of the decedent. As amended, this bill would allow TAX to grant an extension of time for filing the Virginia estate tax return or remitting the tax due. TAX would also establish procedures and conditions for an extension.

Currently, personal representatives have nine months to file a federal return. This requirement will be eliminated for those dying on or after January 1, 2010 because of the change in federal law. Therefore, the Virginia estate tax return will be due within nine months for the estates of those dying on or after July 1, 2009 but before January 1, 2010, and, as amended, within 180 days for those dying on or after January 1, 2010.

"Interest in a closely held business" would be defined as an interest as a proprietor in a trade or business carried on as a proprietorship or an interest as a partner in a partnership carrying on a trade or business, if 20 percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent, such partnership had 45 or fewer partners, or stock in a corporation carrying on a trade or business if 20 percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent, or such corporation had 45 or fewer shareholders.

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

This bill would require that one-third of the increase in revenue be distributed annually to each of the following programs: the Tuition Assistance Grant Program, the Virginia Preschool Initiative, and the Healthy Families Virginia Program. In the event one or more of these programs no longer exists, the portion of the revenue that would have been distributed to that program would remain in the General Fund.

This bill would be effective for the estates of Virginia decedents dying on or after January 1, 2009.

Similar Bills

House Bill 1895 is similar to this bill, but would apply the tax to estates of $3.5 million or more effective July 1, 2009 and the increase in revenue from the tax would be used to fund staffing standards in nursing homes, which would require a minimum amount of direct care services to each resident per 24-hour period.

Senate Bill 1133 is similar to this bill, but would apply the tax to estates of $5 million or more effective July 1, 2009 and the increase in revenue from the tax would be used to fund community-based programs of area agencies on aging, increasing Medicaid reimbursement rates for hospitals or nursing homes that serve indigent seniors, and funding the cost of existing or additional waivers from the United States Department of Health and Human Services to authorize the Commonwealth to cover certain health care services and delivery systems for senior citizens.

cc : Secretary of Finance

Date: 1/25/2009 JKL
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