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SENATE BILL NO. 714

Offered January 22, 2010

A BILL to amend and reenact §§ 58.1-901, 58.1-902, 58.1-905, and 58.1-912 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-901.1, relating to the estate tax and dedication of the revenues collected from such tax.

Patron—Petersen

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-901, 58.1-902, 58.1-905, and 58.1-912 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-901.1 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. *For deaths occurring on or after July 1, 2010, in no event (including for purposes of the computations under § 58.1-901.1) shall such maximum 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 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.

§ 58.1-901.1. *Date of death for decedents dying on or after July 1, 2010.*

For deaths occurring on or after July 1, 2010, solely for purposes of computing the tax due under this article or Article 4 (§ 58.1-931 et seq.) of this chapter, and regardless of whether or not the laws of the United States require that a federal estate tax return be filed, the personal representative shall compute the federal estate tax as if the decedent had died on January 1, 2009.

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

A. 1. 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 July 1, 2010, 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 \$5 million, subject, where applicable, to the credit provided for in subsection B. However, no tax shall be imposed*

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59 on a gross estate if the majority of the assets of the total estate are an interest in a closely held
60 business or working farm.

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

66 1. The amount of the death tax paid the other state and credited against the federal estate tax; or

67 2. An amount computed by multiplying the federal credit by a fraction, the numerator of which is the
68 value of that part of the gross estate over which another state or states have jurisdiction to the same
69 extent to which Virginia would exert jurisdiction under this chapter with respect to the residents of such
70 other state or states and the denominator of which is the value of the decedent's gross estate.

71 C. Property of a resident includes:

72 1. Real property situated in the Commonwealth of Virginia;

73 2. Tangible personal property having an actual situs in the Commonwealth of Virginia; and

74 3. Intangible personal property owned by the resident regardless of where it is located.

75 § 58.1-905. Filing returns; payment of tax due thereon.

76 A. 1. The personal representative of every estate subject to the tax imposed by this chapter who is
77 required by the laws of the United States to file a federal estate tax return shall file with the
78 Department, on or before the date the federal estate tax return is required to be filed: (i) a return for the
79 tax due under this chapter; and (ii) a copy of the federal estate tax return.

80 2. *If the personal representative of any estate subject to the tax imposed by this chapter is not*
81 *required by the laws of the United States to file a federal estate tax return, then the personal*
82 *representative shall file with the Department a return for the tax due under this chapter within the 180*
83 *days immediately following the death of the decedent.*

84 B. 1. If the personal representative has obtained an extension of time for filing the federal estate tax
85 return or paying the federal estate tax or any portion thereof, the filing required by ~~subsection A~~
86 *subdivision A 1* or payment required by subsection C shall be similarly extended until the end of the
87 time period granted in the federal extension. Upon obtaining an extension of time for filing the federal
88 estate tax return, or paying the federal estate tax or any portion thereof, the personal representative shall
89 provide the Department with a true copy of the instrument providing for this extension.

90 2. *For personal representatives described under subdivision A 2, the Department may grant an*
91 *extension of time for filing the state estate tax return or remitting to the Department the tax due*
92 *pursuant to this chapter or any portion of the tax due. The Department shall establish procedures and*
93 *conditions for an extension.*

94 C. The tax due under this chapter shall be paid by the personal representative to the Department not
95 later than the date specified under subsection A or B. If such tax is paid pursuant to subsection B,
96 interest, at a rate equal to the rate of interest established pursuant to § 58.1-15, shall be added for the
97 period between the date when such tax would have been due had no extension been granted and the
98 date of full payment.

99 D. Notwithstanding any other provision of this section, the extensions provided to individual
100 taxpayers under subdivisions 1 and 2 of subsections F and G of § 58.1-344 shall be applicable in the
101 same manner to the tax imposed by this chapter.

102 § 58.1-912. Deposit of funds.

103 All moneys collected pursuant to this chapter shall be paid into the general fund of the state treasury
104 and shall be used, as provided in the general appropriation act, to fund community-based programs of
105 area agencies on aging, increase Medicaid reimbursement rates for hospitals or nursing homes that
106 serve indigent seniors, and fund the cost of existing or additional waivers from the U.S. Department of
107 Health and Human Services to authorize the Commonwealth to cover certain health care services and
108 delivery systems for senior citizens as may be permitted by Title XIX of the Social Security Act.