

# DEPARTMENT OF TAXATION

## 2010 Fiscal Impact Statement

1. **Patron** David L. Englin

3. **Committee** House Finance

4. **Title** Reinstate the Estate Tax

2. **Bill Number** HB 275

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

**5. Summary/Purpose:**

This bill would reinstate the Virginia estate tax. In the event that a federal credit for state estate taxes existed at the time of the decedent's death, the Virginia estate tax would be equal to the maximum amount of the federal credit. In the event that no federal credit for state estate taxes existed at the time of the decedent's death, the Virginia estate tax would be one-half of the maximum amount of the federal credit for state estate taxes as it existed on January 1, 1978.

This bill would be effective for the estates of Virginia decedents dying on or after July 1, 2010.

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

**7. Budget amendment necessary:** Yes.

Page 1, Revenue Estimate

**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

In Fiscal Year 2008, the most recent year for which estate tax return data is available, estate tax revenue totaled \$153 million. At that time, the estate tax threshold under federal law meant that the estate tax was imposed on estates valued at \$2 million or more. Currently, there is no federal estate tax applicable for 2010. Beginning in 2011, the federal estate tax will be imposed on estates valued at \$1 million or more.

Based on current law set to take effect in 2011 which provides an estate tax threshold set at \$1 million and brings back the federal credit for state estate taxes, the revenue gain for this bill may exceed \$153 million on an annual basis. However, the revenue impact of this bill would depend on whether there are changes to the current federal threshold for the estate tax or the federal credit.

Currently, there is pending federal legislation that would continue the estate tax as it was in 2009, which would impose the tax on estates valued at \$3.5 million or more and allow no federal credit for state estate taxes. If Congress passed such legislation, the Virginia estate tax would be equal to one-half of the credit as it existed in 1978. This would create an annual revenue gain of \$60 million, based on data from estate tax returns processed during Fiscal Year 2008 for estates valued at \$3.5 million or more.

### **9. Specific agency or political subdivisions affected:**

Department of Taxation

### **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, there is no federal estate tax applicable in 2010. Without a federal estate tax return due, there is 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 1, Line 33, 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.

## **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. Currently, there is no federal estate tax applicable for 2010.

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

Congress has begun to take action on this matter, however. The House of Representatives passed H.R. 4154 on December 3, 2009. This bill would amend the Internal Revenue Code to establish a permanent \$3.5 million exclusion amount for decedents dying after December 31, 2009. H.R. 4154 would not, however, reinstate a federal credit for state estate taxes. This bill received a first reading in the Senate on December 24, 2009, but there has been no further action.

### State Comparison

As of January 9, 2010, more than two thirds of states did not have an estate tax. The 14 states that have an estate tax in effect are: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Ohio, Oregon, Rhode Island, Vermont, and Washington.

### Proposal

This bill would reinstate the Virginia estate tax. In the event that a federal credit for state estate taxes existed at the time of the decedent's death, the Virginia estate tax would be equal to the maximum amount of the federal credit. In the event that no federal credit for state estate taxes existed at the time of the decedent's death, the Virginia estate tax would be one-half of the maximum amount of the federal credit for state estate taxes as it existed on January 1, 1978.

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#### Similar Bills

**House Bill 223** is similar to this bill, but the tax would be equal to the federal credit for state estate taxes as it existed on January 1, 1978, effective July 1, 2010 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.

cc : Secretary of Finance

Date: 1/24/2010 JKM  
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