

**DEPARTMENT OF TAXATION
2010 Fiscal Impact Statement**

1. **Patron** Frank M. Ruff, Jr.

2. **Bill Number** SB 692

House of Origin:

 Introduced

 Substitute

 Engrossed

3. **Committee** House Finance

4. **Title** Tax in Lieu of Probate Tax

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would impose a tax when a list of heirs is recorded related to real property belonging to an intestate decedent, provided that the real property was not included in a grant of administration for the estate of the decedent. The tax imposed would be \$0.10 for every \$100 of the value of the real property transferred, or fraction thereof. The value of the real property would be the value at the time the deed listing the heir as the owner of the property was recorded. The tax would not be imposed if the value of the estate of the decedent was \$15,000 or less.

This bill would provide that no such deed would be admitted to record without certification being attached by the clerk of the court in the locality in which the deed was first recorded, stating that the probate tax had been paid. All taxes collected under this section would be required to be promptly deposited into the state treasury.

Finally, this bill would allow localities to impose a tax on the recordation of the list of heirs in the amount of one third of the state tax.

The effective date of this bill is not specified.

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

7. **Budget amendment necessary:** No.

8. Fiscal implications:

Administrative Costs

This bill would have no administrative impact for TAX. Local clerks of the Circuit Court may incur some implementation costs.

Revenue Impact

This bill would result in an unknown increase in General Fund revenues. There would be a positive local revenue impact to the extent that localities impose this additional tax.

9. Specific agency or political subdivisions affected:

Department of Taxation
Virginia Local Circuit Courts

10. Technical amendment necessary: No.

11. Other comments:

Current Law

When a decedent dies, Virginia law requires the personal representative of a decedent or other qualified person to furnish the court or clerk a list of heirs under oath in accordance with a form provided to each clerk of court. The list of heirs must be furnished to the clerk of the circuit court in the city or county where real estate belonging to the decedent is located and where the personal representative has qualified. If no personal representative qualifies within thirty days following the death of the property owner, any heir of the decedent who died intestate may come forward to file the list of heirs.

A list of heirs provides evidence regarding who is entitled to the estate of a decedent that dies without a will, but it does not specifically convey or transfer a decedent's estate to his or her heirs.

A probate tax is imposed on the probate of most wills and grants of administration, and applies to property in Virginia. No tax is imposed on estates valued at \$15,000 or less. The tax is assessed at a rate of ten cents per \$100 on estates valued at more than \$15,000, including the first \$15,000 of assets. For example, the tax on an estate valued at \$16,000 is \$16.00. Localities may also impose a local probate tax equal to 1/3 of the state probate tax.

Proposed Legislation

This bill would impose a tax when a list of heirs is recorded related to real property belonging to an intestate decedent, provided that the real property was not included in a grant of administration for the estate of the decedent. The tax imposed would be \$0.10 for every \$100 of the value of the real property transferred, or fraction thereof. The value of the real property would be the value at the time the deed listing the heir as the owner of the property was recorded. The tax would not be imposed if the value of the estate of the decedent was \$15,000 or less.

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Finally, this bill would allow localities to impose a tax on the recordation of the list of heirs in the amount of one third of the state tax.

The administration of the tax imposed by this bill would require local clerks of the courts to collect a tax on property belonging to decedents whose estates were not subject to Virginia probate tax because no one qualified to administer the estate. In such cases, the first document seen by the clerk may be a deed in which the heirs sell the decedent's real estate. This bill would require the clerks to investigate such deeds to determine if the proper probate tax was paid and, if not, collect the tax proposed by this bill.

The effective date of this bill is not specified.

cc : Secretary of Finance

Date: 2/18/2010 TG
SB692FE161