DEPARTMENT OF TAXATION
2010 Fiscal Impact Statement

1. Patron J. Chapman Petersen

2. Bill Number SB 714

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

3. Committee Senate Finance

4. Title Estate Tax; Reinstate to Fund Community-Based Programs.

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

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 were an interest in a closely held business or a working farm.

All moneys collected would be required to 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.

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.)

6b. Revenue Impact:

Fiscal Year	*Dollars*	*Fund*
2009-10	$0	GF
2010-11	$ 51.0 million	GF
2011-12	$ 76.5 million	GF
2012-13	$ 102.0 million	GF
2013-14	$ 102.0 million	GF
2014-15	$ 102.0 million	GF
2015-16	$ 102.0 million	GF

7. Budget amendment necessary: Yes.
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Fiscal implications:

Administrative Costs

TAX has not assigned any administrative costs to the reinstatement of the estate tax 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

The annual revenue gain from this bill would be $102.0 million per year. In order to account for the lag between the date of death and the due date of the estate tax return, the revenue gain would be $51.0 million for Fiscal Year 2011 and $76.5 million for Fiscal Year 2012. For Fiscal Year 2013 and after, the revenue gain for this bill would be $102.0 million annually.

This bill would require that the increased revenue would be allocated to the Department of Medical Assistance Services and the Department for the Aging through an appropriation.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Medical Assistance Services
Department for the Aging

10. Technical amendment necessary: No.

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. 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 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 were an interest in a closely held business or a working farm.

For the personal representative of any estate subject to the Virginia estate tax that is not required to file a federal estate tax return, a Virginia estate tax return would be required to be filed within the 180 days immediately following the death of the decedent. TAX would be allowed 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.

Personal representatives have nine months after the date of death to file a federal return. This requirement is not applicable to those dying on or after January 1, 2010 but before January 1, 2011 because there is currently no federal estate tax return due for 2010. Therefore, the Virginia estate tax return would be due within 180 days for those dying on or after July 1, 2010 but before January 1, 2011. The federal estate tax is scheduled to return in 2011; therefore, the Virginia estate tax return would be due nine months after the date of death for those dying on or after January 1, 2011.

"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.

All moneys collected would be required to 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.

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

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.

House Bill 275 is similar to this bill, but the tax would be equal to the maximum amount of the federal credit if such a credit existed; and, if no federal credit existed, the Virginia tax would be one-half of the maximum amount of the federal credit as it existed on January 1, 1978, effective for the estates of Virginia decedents dying on or after July 1, 2010.

cc : Secretary of Finance

Date: 1/28/2010 JKM
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