DEPARTMENT OF TAXATION
2011 Fiscal Impact Statement

1. Patron Algie T. Howell, Jr.

2. Bill Number HB 2476

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

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

3. Committee House Finance

4. Title Estate Tax; Reinstate to Fund Nursing Home Staffing Standards

5. Summary/Purpose:

This bill would effectively reinstate the Virginia estate tax for residents whose gross estates exceed $3 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.

All moneys collected would first be required to 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. Any remaining moneys would be used as provided in the general appropriation act.

This bill would be effective for the estates of Virginia decedents dying on or after July 1, 2011. The first required minimum staffing standard would be required to be met by July 1, 2012.

6. Budget amendment necessary: Yes.
ITEM(S): Page 1, Revenue Estimates
262, Department of Taxation

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

7a. Expenditure Impact:

Fiscal Year	*Dollars*	*Positions*	*Fund*
2010-11	$7,500	0	GF
2011-12	$15,000	0	GF
2012-13	$22,799,492	2	GF
2012-13	$22,674,542		NGF
2013-14	$23,482,878	2	GF
2013-14	$23,354,778		NGF
2014-15	$24,187,522	2	GF
2014-15	$24,055,422		NGF
2015-16	$24,917,184	2	GF
2015-16	$24,777,084		NGF

2016-17	$28,577,114	2	GF
2016-17	$28,437,014		NGF

7b. Revenue Impact:

Fiscal Year	***Dollars***	***Fund***
2010-11	$0	GF
2011-12	$25 million	GF
2012-13	$102 million	GF
2013-14	$102 million	GF
2014-15	$102 million	GF
2015-16	$102 million	GF
2016-17	$102 million	GF

8. Fiscal implications:

Department of Taxation Administrative Impact

Of the total administrative costs provided in the table above, TAX would incur administrative costs of $7,500 in FY 2011, $15,000 in FY 2012, $124,950 in FY 2013, $128,100 in FY 2014, $132,100 in FY 2015, $136,100 in FY 2016 and $140,100 in FY 2017, for the systems and forms changes necessary to implement this bill. In addition to these costs, TAX would need to hire two additional P14 or full-time equivalent employees for processing and compliance purposes.

Department of Medical Assistance Services ("DMAS") Expenditure Impact

Using calendar year 2005 nursing home wage survey data and cost report data on nursing home days, DMAS calculates that approximately 67 percent of nursing homes will have to add a total of 2.6 million nursing hours by FY 2013, a 9 percent increase over the total nursing hours currently provided nursing home residents statewide, to meet the FY 2013 staffing standard. Since Medicaid pays for approximately 65% of nursing home days, Medicaid would incur costs related to approximately 1.8 million additional nursing hours.

The average cost in 2005 for each additional nursing hour worked was $17.70. The staffing cost was adjusted 5% annually for inflation until FY 2012 which reflects no inflation and 3% thereafter. Based on these assumptions, this legislation will result in $45.3 million ($22.7 million GF) in additional Medicaid reimbursement for nursing facilities in FY 2013. The requirement of 3.9 by FY 2017 will result in $56.9 million ($28.4 million GF) in additional Medicaid reimbursement for nursing facilities in FY 2017; the requirement of 4.1 by FY 2019 will result in $63.4 million ($31.7 million GF) in additional costs for nursing facilities in FY 2019. Medicaid expenditures would potentially increase prior to the deadlines for the higher requirements if facilities attempt to achieve the higher staffing standard before it is actually required.

As written, the bill would also have a non-Medicaid fiscal impact requiring the Commonwealth to subsidize nursing homes for the increased cost of meeting the higher standards for non-Medicaid residents. For a similar bill last year, the Patron indicated that she did not intend that the bill have a non-Medicaid fiscal impact. Therefore, no fiscal impact has been calculated for non-Medicaid residents.

Revenue Impact

Based on data from estate tax returns processed during FY 2008, this bill would increase revenue in the amount of $25.5 million in FY 2012, and $102.0 million in subsequent years**.** This estimate assumes that Congress will continue the federal estate tax in its present form. The federal estate tax is currently set to expire December 31, 2011.

This bill would impose the estate tax on estates with a gross value of $3 million or more, although the federal estate tax is limited to estates of $5 million or more. Therefore, this bill would require estates between $3 and $5 million to file a Virginia estate tax return even though no federal return is required.

The estimates based on FY 2008 data should be considered very tentative. In addition to estimating the number of decadents in a year and the value of their assets, the available data makes it difficult to speculate on inflation or deflation of asset values in the future. The FY 2008 does not reflect payments made in prior or subsequent years on a single estate; therefore, the payment in FY 2008 may only reflect a portion of total taxes paid.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Health
Department of Medical Assistance Services

10. Technical amendment necessary: Yes.

TAX understands it was the Patron's intent that this bill would only fund the Medicaid costs associated with meeting the staffing standards for nursing homes established by this bill. Therefore, TAX recommends the following technical amendment:

Page 4, Line 220, after funding
Insert: the Medicaid cost of meeting

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.

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 extended the estate taxes for two years, through 2011. The Act reduced the maximum estate tax rate from 45% to 35%, and increased the threshold amount from $3.5 million to $5 million. The Act did not reinstate the federal credit for state estate taxes; therefore, the Virginia estate tax was not reinstated.

State Comparison

As of January 28, 2011, over half of the states did not have an estate tax. The 21 states that have an estate tax in effect are: Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Ohio, Oregon, Rhode Island, Vermont, Tennessee and Washington.

Proposal

This bill would effectively reinstate the Virginia estate tax for residents whose gross estates exceed $3 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.

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 270 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.

"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 first be required to 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. Any remaining moneys would be used as provided in the general appropriation act.

The bill would require the Board of Health to promulgate regulations to establish staffing standards in nursing homes. These new regulations would require that the minimum amount of direct care services to each resident per 24-hour period would be 3.5 hours per patient per day by July 1, 2012, 3.9 hours by July 1, 2016, and 4.1 hours by July 1, 2018. Any facility that fails to maintain staffing levels sufficient to provide at least three hours of direct care services per patient per day by July 1, 2012 and at least 3.3 hours of direct care services per patient by July 1, 2018 would be ineligible to accept new patients.

Under the normal skilled nursing facilities reimbursement methodology, DMAS would not increase reimbursement to nursing facilities until at least a year after the nursing facilities have increased their staffing levels and the costs are reflected in their cost reports. Nursing facilities cannot absorb these types of significant cost increases and the expenditure estimates above assume the reimbursement would be adjusted prospectively when the staffing requirements are enacted.

This bill would be effective for the estates of Virginia decedents dying on or after July 1, 2011. The first required minimum staffing standard would be required to be met by July 1, 2012.

cc : Secretary of Finance

Date: 1/29/2011 TG
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