

# DEPARTMENT OF TAXATION

## 2012 Fiscal Impact Statement

1. **Patron** Vivian E. Watts

3. **Committee** House Finance

4. **Title** Estate Tax Reinstated

2. **Bill Number** HB 419

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would effectively reinstate the Virginia estate tax for residents 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 Appropriations Act.

This bill would be effective for the estates of Virginia decedents dying on or after July 1, 2012. The first required minimum staffing standard would be required to be met by July 1, 2013.

### 6. **Budget amendment necessary:** Yes.

ITEM(S): Page 1, Revenue Estimates

273, Department of Taxation, Revenue Administration Services

307, Department of Medical Assistance Services, Medicaid Program Services

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

#### 7a. **Expenditure Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Positions</b></i>	<i><b>Fund</b></i>
2011-12	\$0	0	GF
2012-13	\$7,500	0	GF
2013-14	\$22,239,400	2	GF
2013-14	\$22,106,450	0	NGF
2014-15	\$22,905,743	2	GF
2014-15	\$22,769,643	0	NGF
2015-16	\$23,592,833	2	GF
2015-16	\$23,452,733	0	NGF
2016-17	\$24,300,415	2	GF

2016-17	\$24,156,315	0	NGF
2017-18	\$27,872,647	2	GF
2017-18	\$27,724,547	0	NGF

**7b. Revenue Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Fund</b></i>
2011-12	\$25 million	GF
2012-13	Unknown	GF
2013-14	Unknown	GF
2014-15	Unknown	GF
2015-16	Unknown	GF
2016-17	Unknown	GF
2017-18	Unknown	GF

**8. Fiscal implications:**

Department of Taxation Administrative Impact

Of the total administrative costs provided in the table above, the Department would incur administrative costs of \$7,500 in FY 2013, \$132,950 in FY 2014, \$136,100 in FY 2015, \$140,100 in FY 2016, \$144,100 in FY 2017, and \$148,100 in FY 2018, for the systems and forms changes necessary to implement this bill. The Department would need to hire two additional employees for processing and compliance purposes.

Department of Health Administrative Impact

The Department of Health would be able to absorb the costs of implementing this bill and does not require additional funding.

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 2014, a 9 percent increase over the total nursing hours currently provided nursing home residents statewide, to meet the FY 2014 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 annually for nursing facility inflation and reflects the no inflation policy between FY 2009 and FY 2012. Based on these assumptions, this legislation will result in \$44.2 million (\$22.1 million GF) in additional Medicaid reimbursement for nursing facilities in FY 2014. The requirement of 3.9 daily patient hours by FY 2018 will result in \$55.5 million (\$27.7 million GF) in additional Medicaid reimbursement for nursing facilities in FY 2018; the requirement of 4.1 daily patient hours by FY 2020 will result in \$61.8 million (\$30.9 million GF) in additional costs for nursing facilities in FY 2020. 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, a technical amendment is suggested and no fiscal impact has been calculated for non-Medicaid residents.

#### Revenue Impact

Based on data from Virginia estate tax returns processed during FY 2008 and the \$5.12 million threshold for estates in 2012, this bill would increase revenue in the amount of \$25 million in FY 2013. Provisions of the 2010 federal act will expire after 2012, allowing the federal estate tax to revert to rates and thresholds as of 2001. Although it is extremely unlikely that Congress will allow that to happen, it is not possible to predict how the federal estate tax will be structured after 2012, therefore it is not possible to estimate Virginia's revenue from the estate tax in subsequent years.

If Congress repeals the federal estate tax, the bill provides that the Virginia estate tax would continue based on the federal provisions prior to repeal. Under these circumstances, Virginia revenue would be about \$100 million annually. However, these estimates should be considered very tentative for the following reasons: (i) They are based on FY 2008 data which included revenue from estates of decedents dying over several years (e.g., late or amended returns) and may not reflect all the payments made for a single estate because of payments made in prior or subsequent years; (ii) Estate tax revenue is based on the number of decedents and the value of their assets, but the available data makes it difficult to speculate on inflation or deflation of asset values in the future; (iii) without data from federal estate tax returns, compliance with the Virginia estate tax may be an issue.

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

Department of Taxation  
Department of Health  
Department of Medical Assistance Services

#### **10. Technical amendment necessary: Yes.**

The Department 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, the Department recommends the following technical amendment:

Page 4, Line 229, 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 in 2005 by the Economic Growth and Tax Relief Act of 2001, but the freeze to 1978 in Virginia law 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 federal estate tax through 2012. The 2010 Act reduced the maximum estate tax rate from 45% to 35%, and increased the threshold amount from \$3.5 million to \$5 million. The threshold amount is indexed for inflation for 2012. The Act did not reinstate the federal credit for state estate taxes; therefore, the Virginia estate tax was not reinstated.

The Economic Growth and Tax Relief Act of 2001 was scheduled to sunset in 2010, which would have reinstated the federal tax rules and credits as of 2001. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 extended the 2001 Act for two years, but the federal estate tax is currently scheduled to revert to 2001 rates and credits in 2013. It is unknown what will happen in 2013.

### State Comparison

The majority of states do not currently impose an estate tax. The 22 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, Pennsylvania, Rhode Island, Tennessee, Vermont, and Washington.

### Proposal

This bill would effectively reinstate the Virginia estate tax for residents 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. The Department would be allowed to grant an extension of time for filing the Virginia estate tax return or remitting the tax due. The Department would be required to 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 Appropriations 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, 2013, 3.9 hours by July 1, 2017, and 4.1 hours by July 1, 2019. 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, 2013 and at least 3.3 hours of direct care services per patient by July 1, 2019 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, 2012. The first required minimum staffing standard would be required to be met by July 1, 2013.

cc : Secretary of Finance

Date: 1/21/2012 KLC  
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