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HOUSE BILL NO. 2157

Offered January 13, 2021

Prefiled January 12, 2021

A *BILL to amend and reenact §§ 58.1-901, 58.1-902, 58.1-903, 58.1-904, 58.1-905, and 58.1-912 of the Code of Virginia, relating to reinstatement of the estate tax.*

Patrons—Watts and Lopez

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-901, 58.1-902, 58.1-903, 58.1-904, 58.1-905, and 58.1-912 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-901. Definitions.

As used in this chapter, unless the context clearly shows otherwise, ~~the term or phrase:~~

"Decedent" means a deceased person.

"Federal credit" means the maximum amount of the credit for state death taxes allowable by § 2011 of the United States Internal Revenue Code of 1954, as amended or renumbered, or successor provision, in respect to a decedent's taxable estate. The term "maximum amount" shall be construed as to take full advantage of such credit as the laws of the United States may allow. *For deaths occurring on and after July 1, 2021, however, in no event shall such maximum amount be less than the federal credit allowable by § 2011 of the Internal Revenue Code as it existed on January 1, 1978.*

"Gross estate" means "gross estate" as defined in § 2031 of the United States Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

"Interest in a closely held business" means the same as that term is defined in § 6166 of the Internal Revenue Code of 1986, as amended or renumbered, or the successor provision of the laws of the United States.

"Nonresident" means a decedent who was domiciled outside of the Commonwealth of Virginia at his death.

"Personal representative" means the personal representative of the estate of the decedent, appointed, qualified and acting within the Commonwealth, or, if there is no personal representative appointed, qualified and acting within the Commonwealth, then any person in actual or constructive possession of the Virginia gross estate of the decedent.

"Resident" means a decedent who was domiciled in the Commonwealth of Virginia at his death.

"State" means any state, territory or possession of the United States and the District of Columbia.

"Taxable estate" means "taxable estate" as defined in § 2051 of the United States Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States.

"Value" means "value" as finally determined for federal estate tax purposes under the laws of the United States relating to federal estate taxes.

"Working farm" means an interest in a closely held business that operates as an active trade or business for agricultural purposes.

Any reference in this chapter to the laws of the United States relating to federal estate and gift taxes means the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal estate and gift taxes, as the same may be or become effective at any time or from time to time. *If any such provision is repealed and no successor is enacted, then the reference to such provision in this chapter shall be given the meaning of such provision as it existed immediately prior to its repeal.*

§ 58.1-902. Tax on transfer of taxable estate of residents; amounts; credit; property of resident defined.

A. A tax in the amount of the federal credit is imposed on the transfer of the taxable estate of every resident, subject, where applicable, to the credit provided for in subsection B. *However, for deaths occurring on and after July 1, 2021, no tax shall 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.*

B. If the real and tangible personal property of a resident is located outside of the Commonwealth and is subject to a death tax imposed by another state for which a credit is allowed under § 2011 of the Internal Revenue Code of 1954, as amended or renumbered, or the successor provision of the laws of the United States relating to federal estate taxes, the amount of tax due under this section shall be credited with the lesser of:

1. The amount of the death tax paid the other state and credited against the federal estate tax; or

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2. An amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which another state or states have jurisdiction to the same extent to which Virginia would exert jurisdiction under this chapter with respect to the residents of such other state or states and the denominator of which is the value of the decedent's gross estate.

C. Property of a resident includes:

1. Real property situated in the Commonwealth of Virginia;
2. Tangible personal property having an actual situs in the Commonwealth of Virginia; and
3. Intangible personal property owned by the resident regardless of where it is located.

§ 58.1-903. Tax on transfer of taxable estate of nonresidents; property of nonresident defined.

A. A tax in an amount computed as provided in this section is imposed on the transfer of every nonresident's taxable estate located in the Commonwealth of Virginia. *However, for deaths occurring on and after July 1, 2021, no tax shall be imposed on a gross estate of nonresidents if the majority of the assets of the total estate are an interest in a closely held business or working farm.*

The tax shall be an amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which Virginia has jurisdiction for estate tax purposes and the denominator of which is the value of the decedent's gross estate.

B. For purposes of this section, property located in the Commonwealth of Virginia which is taxable to a nonresident shall include:

1. Real property and real property interests located in the Commonwealth of Virginia including mineral interests, royalties, production payments, leasehold interests, or working interests in oil, gas, coal, or any other minerals; and

2. Tangible personal property having an actual situs in the Commonwealth of Virginia.

§ 58.1-904. Tax upon estates of alien decedents.

A. A tax in an amount computed as provided in this section is imposed upon the transfer of real property and tangible personal property having an actual situs in the Commonwealth of Virginia and upon intangible personal property physically present within the Commonwealth of every person who at the time of death was not a resident of the United States. *However, for deaths occurring on and after July 1, 2021, no tax shall be imposed on a gross estate of an alien decedent if the majority of the assets of the total estate are an interest in a closely held business or working farm.*

The tax shall be an amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which Virginia has jurisdiction for estate tax purposes and the denominator of which is the decedent's gross estate taxable by the United States wherever situated.

B. Resident aliens of the United States shall be subject to the tax imposed by this chapter under § 58.1-903 when the decedent, at the time of death, was not a resident of Virginia but was a resident of the United States. A resident alien who, at the time of death, was a resident of Virginia and a resident of the United States shall be subject to the tax imposed by this chapter under § 58.1-902.

C. For purposes of this section, stock in a corporation organized under the laws of the Commonwealth shall be deemed physically present within the Commonwealth.

§ 58.1-905. Filing returns; payment of tax due thereon.

A. 1. The personal representative of every estate subject to the tax imposed by this chapter who is required by the laws of the United States to file a federal estate tax return shall file with the Department, on or before the date the federal estate tax return is required to be filed, (i) a return for the tax due under this chapter; and (ii) a copy of the federal estate tax return.

2. *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, the personal representative shall file with the Department a return for the tax due under this chapter within the 270 days immediately following the death of the decedent.*

B. 1. If the personal representative has obtained an extension of time for filing the federal estate tax return or paying the federal estate tax or any portion thereof, the filing required by ~~subsection A~~ subdivision A 1 or payment required by subsection C shall be similarly extended until the end of the time period granted in the federal extension. Upon obtaining an extension of time for filing the federal estate tax return, or paying the federal estate tax or any portion thereof, the personal representative shall provide the Department with a true copy of the instrument providing for this extension.

2. *For personal representatives described under subdivision A 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 such extension.*

C. The tax due under this chapter shall be paid by the personal representative to the Department not later than the date specified under subsection A or B. If such tax is paid pursuant to subsection B, interest, at a rate equal to the rate of interest established pursuant to § 58.1-15, shall be added for the period between the date when such tax would have been due had no extension been granted and the

121 date of full payment.

122 D. Notwithstanding any other provision of this section, the extensions provided to individual
123 taxpayers under subdivisions 4 and 2 of subsections F 1 and 2 and G 1 and 2 of § 58.1-344 shall be
124 applicable in the same manner to the tax imposed by this chapter.

125 **§ 58.1-912. Deposit of funds.**

126 ~~All~~ Prior to July 1, 2021, all moneys collected pursuant to this chapter shall be paid into the general
127 fund of the state treasury. On and after July 1, 2021, all moneys collected pursuant to this chapter shall
128 be used for health care purposes as provided in the general appropriation act.