DEPARTMENT OF TAXATION
2013 Fiscal Impact Statement

1. Patron Vivian E. Watts

2. Bill Number HB 1457

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

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

3. Committee House Finance

4. Title Estate Tax Reinstated

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 treated as if it is equal to the federal credit as it existed on January 1, 1978. The Virginia 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 from the Virginia estate tax would first be required to be used to fund staffing standards in nursing homes, which would require that a minimum amount of direct care services be provided to each resident per 24-hour period. Five percent of the remaining moneys would be designated through the General Appropriations Act to fund home-based and community-based services to enable older adults and people with disabilities to remain in home settings. Any remaining moneys would be used as provided in the General Appropriations Act.

This bill would be effective for the estates of Virginia decedents dying on or after July 1, 2013. The first required minimum staffing standard for nusing homes would be required to be met by July 1, 2014.

6. Budget amendment necessary: Yes.
ITEM(S): Page 1, Revenue Estimates
273, Department of Taxation, Revenue Administration Services
294, Department of Health, Health Research, Planning, and Coordination
307, Department of Medical Assistance Services, Medicaid Program Services

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

7a. Expenditure Impact:

Fiscal Year	***Dollars***	***Positions***	***Fund***
2012-13	$0	0	GF
2013-14	$304,450	4	GF
2014-15	$23,074,743	4	GF
2014-15	$22,769,643	0	NGF
2015-16	$23,761,833	4	GF
2015-16	$23,452,733	0	NGF
2016-17	$24,469,415	4	GF
2016-17	$24,156,315	0	NGF
2017-18	$25,198,104	4	GF
2017-18	$24,881,004	0	NGF
2018-19	$28,877,384	4	GF
2018-19	$28,556,284	0	NGF

7b. Revenue Impact:

Fiscal Year	***Dollars***	***Fund***
2012-13	$0	GF
2013-14	$25,600,000	GF
2014-15	$102,400,000	GF
2015-16	$102,400,000	GF
2016-17	$102,400,000	GF
2017-18	$102,400,000	GF
2018-19	$102,400,000	GF

8. Fiscal implications:

<u>Department of Taxation Administrative Impact</u>

Of the total administrative costs, the Department would incur administrative costs of $125,450 in FY 2014, $136,100 in FY 2015, $140,100 in FY 2016, $144,100 in FY 2017, $148,100 in FY 2018, and $152,100 in FY 2019 for the systems and forms changes necessary to implement this bill. The Department would also need to hire two FTEs for processing and compliance purposes. This bill would require the Department to continue collecting the Virginia Estate Tax even if the federal estate tax is repealed. Enforcement of the Virginia Estate Tax without the benefit of federal conformity would be considerably more complex. In the unlikely event that Congress repeals the federal estate tax in the future, the Department's cost to administer the Virginia Estate Tax would increase substantially.

Department of Health Administrative (“VDH”) Administrative Impact

Of the total administrative costs, the VDH would incur costs in FY 2014 of $179,000 and $169,000 per year in the fiscal years to follow. The VDH would need to hire two FTEs for inspecting nursing homes, each with an annual salary of $75,400, including benefits. Because the two FTEs would spend the majority of their time on-site, the support costs for them would be higher than it would be for office-centered positions. The two FTEs would each require a one-time expense of $2,500 for equipment. In addition, the two FTEs would annually require $600 for training, $8,000 for travel, and $500 for communications and supplies. Further, the VDH would require a one-time expense of $5,000 to modify their existing regulations.

Department of Medical Assistance Services ("DMAS") Administrative 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 2015, a 9 percent increase over the total nursing hours currently provided nursing home residents statewide, to meet the FY 2015 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 $45.6 million ($22.8 million GF) in additional Medicaid reimbursement for nursing facilities in FY 2015. The requirement of 3.9 daily patient hours by FY 2019 will result in $57.1 million ($28.6 million GF) in additional Medicaid reimbursement for nursing facilities in FY 2019; the requirement of 4.1 daily patient hours by FY 2021 will result in $63.7 million ($31.8 million GF) in additional costs for nursing facilities in FY 2021. 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.

Revenue Impact

Based on data from Virginia estate tax returns processed during FY 2008 and the $5.25 million threshold for estates in 2013, this bill would increase revenue in the amount of $25.6 million in FY 2014 and $102.4 million per year in the fiscal years to follow. However, these estimates should be considered 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: No.

11. Other comments:

Legislative History

The 2006 Acts of Assembly, Chapter 4, effectively suspended the Virginia estate tax by equating the Virginia estate tax to the current amount of the federal credit allowable for state estate taxes.

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 was scheduled to revert to 2001 rates and credits in 2013. The American Taxpayer Relief Act of 2012 continued the federal estate tax beyond 2012, kept the estate tax exemption at $5,000,000 (as indexed for inflation), and increased the maximum estate tax rate from 35% to 40% for taxable years after December 31, 2012.

State Comparison

The majority of states currently do not impose an estate tax. Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New

Jersey, New York, North Carolina, Oregon, Rhode Island, Tennessee Vermont, and Washington have an estate tax.

Proposed Legislation

This bill would effectively reinstate the Virginia estate tax for residents by treating the maximum amount of the federal credit for state estate taxes as if it is equal to the federal credit as it existed on January 1, 1978. The Virginia 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 purposes of the Virginia estate tax, an "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. A "working farm" would be defined as an interest in a closely held business that operates as an active trade or business for agricultural purposes.

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.

All moneys collected would first be required to be used to fund the Medicaid cost of meeting the staffing standards in nursing homes, which would require a minimum amount of direct care services to each resident per 24-hour period. Five percent of the remaining moneys would be designated through the General Appropriations Act to fund home-based and community-based services to enable older adults and people with disabilities to remain in home settings. Such appropriations would include, but would not be limited to, payment for services through area agencies on aging and payment for support of home care providers through increased Medicaid compensation, health insurance, and training. Any remaining moneys would be used as provided in the General 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 provided by certified nursing assistants, licensed practical nurses, licensed vocational nurses, or registered nurses to each resident per 24-hour period would be 3.5 hours per patient per day by July 1, 2014, 3.9 hours by July 1, 2018, and 4.1 hours by July 1, 2020. Any facility that fails to maintain staffing levels sufficient to provide at least 3 hours of direct care services per patient per day by July 1, 2014 and at least 3.3 hours of direct care services per patient by July 1, 2020 would be ineligible to accept new patients. Total staffing hours would be determined based on payroll information reported to the Internal Revenue Service for the positions identified.

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, 2013. The first required minimum staffing standard would be required to be met by July 1, 2014.

cc : Secretary of Finance

Date: 1/13/2013 mth
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