

# DEPARTMENT OF TAXATION

## 2014 Fiscal Impact Statement

1. **Patron** Vivian E. Watts

3. **Committee** House Finance

4. **Title** Estate Tax Reinstated

2. **Bill Number** HB 569

**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 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 first would be used to fund the Medicaid cost of laws passed by the General Assembly on or after July 1, 2014, that require a minimum of direct care services to residents of nursing homes. Five percent of the remaining moneys would be designated through the General Appropriations Act to fund certain home-based and community-based services for older adults and people with disabilities. Any remaining moneys would be used for health care purposes, as provided in the General Appropriations Act.

This bill would be effective for the estates of Virginia decedents dying on or after July 1, 2014.

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

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### 7. **Fiscal Impact Estimates are:** Preliminary. (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> |
|---------------------------|-----------------------|-------------------------|--------------------|
| 2013-14                   | \$0                   | 0                       | GF                 |
| 2014-15                   | \$129,450             | 2                       | GF                 |
| 2015-16                   | \$140,100             | 2                       | GF                 |
| 2016-17                   | \$144,100             | 2                       | GF                 |
| 2017-18                   | \$148,100             | 2                       | GF                 |
| 2018-19                   | \$152,100             | 2                       | GF                 |
| 2019-20                   | \$156,100             | 2                       | GF                 |

**7b. Revenue Impact:**

| <i><b>Fiscal Year</b></i> | <i><b>Dollars</b></i> | <i><b>Fund</b></i> |
|---------------------------|-----------------------|--------------------|
| 2013-14                   | \$0                   | GF                 |
| 2014-15                   | \$25,600,000          | 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                 |
| 2019-20                   | \$102,400,000         | GF                 |

**8. Fiscal implications:**Administrative Costs

The Department would incur administrative costs of \$129,450 in FY 2015, \$140,100 in FY 2016, \$144,100 in FY 2017, \$148,100 in FY 2018, \$152,100 in FY 2019, and \$156,100 in FY 2020 for the systems and forms changes necessary to implement this bill. This includes the cost of hiring two FTEs for compliance purposes.

Revenue Impact

Based on data from Virginia estate tax returns processed during FY 2008, this bill would increase revenue in the amount of \$102.4 million annually, beginning in FY 2016. Because the federal estate tax is due 9 months after the death of a decedent, this estimate assumes that taxpayers would begin filing Virginia estate tax returns 9 months after the effective date, resulting in a revenue impact of \$25.6 million in FY 2015. 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; and (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

**10. Technical amendment necessary:** No.**11. Other comments:**Federal Estate Tax

Estates over certain thresholds are subject to a federal tax levied on the assets left behind by a decedent. Because many states imposed estate taxes, estates were permitted to claim a federal credit for the amount of state estate taxes paid. This credit was then applied as a dollar-for-dollar reduction in federal estate tax liability.

The federal Economic Growth and Tax Relief and Reconciliation Act of 2001 (EGTRRA) contained provisions intended to phase out the federal estate tax over time. Specifically, EGTRRA gradually increased the exemption amount from \$1 million in 2001 to \$3.5 million by 2009, and decreased the maximum rate from 55 percent in 2001 to 45 percent by 2009. Any estate with a value less than the exemption amount was not subject to the federal estate tax.

Under EGTRRA, the federal estate tax was temporarily repealed for 2010. EGTRRA was then scheduled to sunset on January 1, 2011, which would have reinstated the federal estate tax rules and credits that were effective in 2001. However, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 extended preferential federal estate tax treatment through 2012. Specifically, the 2010 Act imposed a maximum estate tax rate of 35 percent and increased the exemption amount to \$5 million. The American Taxpayer Relief Act of 2012 further extended the provisions of the 2010 Act, while increasing the maximum estate tax rate to 40 percent beginning in 2013.

In addition to affecting the estate tax exemption amounts and rate structure, EGTRRA eliminated the federal credit for state estate taxes. When the federal credit was repealed, it was replaced with a deduction for state estate taxes, which could be used to reduce the value of the taxable estate, rather than being applied as a dollar-for-dollar reduction in the amount of estate tax liability. Neither the 2010 Act nor the 2012 Act reinstated the federal credit for state estate taxes.

#### Virginia Estate Tax – Legislative History

Under prior law, Virginia imposed a “pick-up” estate tax that was equal to the maximum amount of the federal credit for state death taxes. Many other states imposed a similar estate tax that was based on the federal credit. When the federal credit for state estate taxes was eliminated in 2005, many states’ estate taxes were also repealed. Because Virginia law provided that the maximum Virginia estate tax could not be less than the federal credit for state taxes that was in existence on January 1, 1978, Virginia continued to impose an estate tax even after the repeal of the federal credit.

Because EGTRRA created a new deduction for state estate taxes that affected the federal taxable estate amount upon which the state tax was computed, estates of individuals who died after January 1, 2005 were required to undertake complex calculations to account for the federal deduction.

In 2006, the General Assembly effectively repealed the Virginia estate tax by eliminating the provision that tied the state tax to the 1978 federal credit. This change was effective for the estates of individuals who died on or after July 1, 2007. Virginia law still imposes a tax equal to the amount of the current federal credit for state estate taxes, but, because there currently is no federal credit, Virginia’s estate tax was effectively repealed. If Congress were to reinstate the federal credit for state estate taxes, the Virginia estate tax would also be reinstated.

## State Comparison

The majority of states no longer impose an estate tax. Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, 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; 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 or 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 from the Virginia estate tax would first be used to fund the Medicaid cost of any laws passed by the General Assembly on or after July 1, 2014, that increase the staffing standards in nursing homes by requiring a minimum 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 for health care purposes, as provided in the General Appropriations Act.

This bill would be effective for the estates of Virginia decedents dying on or after July 1, 2014.

cc : Secretary of Finance

Date: 1/14/2014 MTH  
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