DEPARTMENT OF TAXATION
2018 Fiscal Impact Statement

1. Patron Vivian E. Watts

2. Bill Number HB 310
House of Origin:
X **Introduced**
____ **Substitute**
____ **Engrossed**

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

3. Committee House Finance

4. Title Estate tax; Appropriation of Revenues for Health Care Purposes

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 be used for health care purposes as provided in the General Appropriation Act.

This bill would be effective for the estates of Virginia decedents dying on or after July 1, 2018.

6. Budget amendment necessary: Yes.
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7. Fiscal Impact Estimates are: Preliminary. (See Line 8.)
7b. Revenue Impact:

Fiscal Year	*Dollars*	*Fund*
2017-18	$0	GF
2018-19	$17.3 million	GF
2019-20	$69.3 million	GF
2020-21	$69.3 million	GF
2021-22	$69.3 million	GF
2022-23	$69.3 million	GF
2023-24	$69.3 million	GF

8. Fiscal implications:

Administrative Costs

The Department of Taxation ("the Department") has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, the Department considers implementation of this bill as "routine," and does not require additional funding.

The Department will provide specific administrative costs on any legislation that is not "routine." Additionally, the Department will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, the Department will identify the costs at that time.

Revenue Impact

Based on data from Virginia estate tax returns processed during Fiscal Year 2008 and the $10 million threshold for estates in 2018, this bill would increase revenue in the amount of $17.3 million in Fiscal Year 2019 and $69.3 million per year in each fiscal year thereafter. However, these estimates should be considered tentative for the following reasons:

- They are based on Fiscal 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;

- 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.

9. Specific agency or political subdivisions affected:

Department of Taxation

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 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 and kept the estate tax exemption at $5 million (as indexed for inflation). Public Law 115-97, known as the "Tax Cuts and Jobs Act," increased the estate tax exemption amount to $10 million (indexed for inflation) for estates of persons dying after December 31, 2017, but before January 1, 2026.

<u>State Comparison</u>

The majority of states currently do not impose an estate tax. Fourteen states (Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington) and the District of Columbia have an estate tax.

<u>Proposed Legislation</u>

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 from the estate tax would be required to be used for health care purposes as provided in the General Appropriation Act.

This bill would be effective for the estates of Virginia decedents dying on or after July 1, 2018.

cc : Secretary of Finance

Date: 1/16/2018 JJS
HB310F161