

DEPARTMENT OF TAXATION

2020 Fiscal Impact Statement

1. **Patron** Vivian E. Watts

2. **Bill Number** HB 736

3. **Committee** House Finance

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

4. **Title** Reinstatement of the Virginia Estate Tax;
Appropriation of Revenues for Health Care
Purposes

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 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, 2020.

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

Item(s): Page 1, Revenue Estimates
282 and 284, Department of Taxation

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

7a. **Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2019-20	\$23,140	0	GF
2020-21	\$48,512	0	GF
2021-22	\$88,961	1	GF
2022-23	\$88,358	1	GF
2023-24	\$90,458	1	GF
2024-25	\$92,560	1	GF
2025-26	\$94,664	1	GF

7b. Revenue Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2020-21	\$15.0 million	GF
2021-22	\$60.0 million	GF
2022-23	\$60.0 million	GF
2023-24	\$60.0 million	GF
2024-25	\$60.0 million	GF
2025-26	\$60.0 million	GF

8. Fiscal implications:

Administrative Costs

This bill would result in administrative costs to the Department of Taxation ("the Department") of \$23,140 in Fiscal Year 2020; \$48,512 in Fiscal Year 2021; \$88,961 in Fiscal Year 2022; \$88,358 in Fiscal Year 2023; \$90,458 in Fiscal Year 2024; \$92,560 in Fiscal Year 2025; and \$94,664 in Fiscal Year 2026. These costs would be incurred for purposes of hiring one full time employee beginning in Fiscal Year 2022 for compliance purposes. Such funding also would include costs for updating the Department's systems creating new forms and website content, and processing estate tax returns.

Revenue Impact

Based on data from Virginia estate tax returns processed during Fiscal Year 2008 and the \$11.58 million exemption threshold for estates in 2020, this bill would have a positive General Fund revenue impact of \$15.0 million in Fiscal Year 2021 and \$60.0 million in Fiscal Year 2022 and 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; and
- 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.

The portion of this bill exempting gross estates where the majority of the assets of the total estate are an interest in a closely held business or working farm would have a minimal offsetting negative revenue impact because it is expected that a small number of estates would qualify for these exemptions. In 2017, fewer than 50 small farms or businesses were subject to the federal estate tax nationwide and the estate tax exemption has increased significantly since that time.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes. Because the intent of this bill is to provide a Virginia estate tax exemption to estates where the majority of its assets are an interest in a closely held business or working farm, the Department recommends a technical amendment to Va. Code §§ 58.1-903 and 58.1-904 to add similar language regarding this exemption. As currently drafted, this exemption would not apply to the estates of nonresidents and alien decedents.

11. Other comments:

Legislative History

Prior to 2006, 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. Because it was based upon a credit that could be claimed on a federal estate tax return, the federal government was effectively reimbursing taxpayers for any Virginia estate tax paid. Therefore, Virginia’s estate tax did not result in an increase to the amount of total federal and state taxes owed by any estate.

In 2005, the federal credit for state estate taxes was eliminated by the Economic Growth and Tax Relief Act of 2001, but the tie to the 1978 amount of the federal credit in Virginia law preserved the Virginia estate tax. The 2006 *Acts of Assembly*, Chapter 4, effectively repealed the Virginia estate tax by striking language tying the tax to the 1978 amount of the federal credit and equating the Virginia estate tax to the current amount of the federal credit allowable for state estate taxes.

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 was 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 million (as indexed for inflation), and made the repeal of the federal credit for state estate taxes permanent.

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. Therefore, for 2020, the amount of the federal estate tax exemption is \$11.58 million.

State Comparison

The majority of states currently do not impose an estate tax. Eleven states (Connecticut, Hawaii, Illinois, Maine, Massachusetts, Minnesota, New York, Oregon, Rhode Island, Vermont, and Washington) and the District of Columbia have an estate tax. Five states (Iowa, Kentucky, Nebraska, New Jersey, and Pennsylvania) have an inheritance tax. An inheritance tax is different from an estate tax in that it is paid by heirs rather than by the deceased's estate. There is no federal version of an inheritance tax. One state, Maryland, has both an estate tax and an inheritance 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.

Exemption for Estates Under the Federal Exemption

Because the Virginia estate tax would be equal to a federal credit and because that federal credit was not permitted to be larger than the estate's federal tax liability (i.e., the federal credit was "nonrefundable"), the Virginia estate tax under this bill could not be larger than an estate's federal estate tax. As a result of this limitation, an estate that owes no federal estate tax would always have no Virginia estate tax liability. In 2020, estates valued at less than or equal to \$11.58 million are exempt from federal estate tax and would similarly be exempt from paying Virginia estate tax or filing a return under this bill.

Exemption for Closely Held Business or Working Farm

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.

Savings Clause if Federal Estate Tax Were Repealed

This bill would provide that if any provision of the federal estate tax law were repealed and no successor were enacted, then the reference to such provision in the Virginia estate tax law would be given the meaning of such provision as it existed immediately prior to its repeal ("the savings clause"). Because the savings clause contemplates the Virginia estate tax continuing to exist even if the federal estate tax were repealed, the bill would add language imposing Virginia estate tax filing requirements if no federal estate tax

return is required to be filed. Such language would provide that a Virginia estate tax return must 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.

Revenues from the Virginia Estate Tax

All moneys collected from the Virginia 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, 2020.

Similar Bills

SB 637 is identical to this bill.

cc : Secretary of Finance

Date: 1/23/2020 JJS
HB736F161