

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 619 State Estate Tax
SPONSOR(S): Ways & Means Committee, Tant
TIED BILLS: IDEN./SIM. **BILLS:** SB 278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	22 Y, 0 N, As CS	Berg	Aldridge
2) Judiciary Committee			

SUMMARY ANALYSIS

An estate tax is a tax levied on the assets of an individual after his or her death. The federal government currently imposes an estate tax on certain large estates, as well as a generation-skipping transfer tax for certain transfers of wealth when a generation is passed over (e.g., from grandparents directly to grandchildren). Florida currently does not tax either of these transfers; and it has not imposed these taxes on new transfers or estates for decedent dying after December 31, 2004, due to a 2001 change in federal law.

Chapter 198, F.S., provides the framework for the Florida estate tax and generation-skipping transfer tax. These taxes only apply to the extent that the federal government allows a credit against the federal tax for any amounts paid under a similar state tax. For many years, the federal government provided a credit for estate taxes and generation-skipping transfer taxes paid to a state. The estate tax credit was phased out over four years at the federal level, beginning in 2001, and ending in 2004. The generation-skipping transfer tax credit ended December 31, 2004.

Beginning with decedents who died on or after January 1, 2005, no new estates were subject to Florida estate tax or generation-skipping transfer tax under existing law. Since that date, however, Chapter 198, F.S., has continued in statute. There have been fewer and fewer estates with a liability for Florida estate tax each year, as essentially all estates for persons dying before January 1, 2005, are now closed.

Two sections, s. 198.26, and s. 198.32, F.S., continue to provide an administrative burden for personal representatives and the court system. They require proof that an estate has paid the state estate tax or is exempt from the tax, and the filing of an affidavit that no state estate tax is due before the personal representative can be discharged and probate can be closed.

CS/HB 619 amends sections 198.26 and 198.32, F.S., to provide that proof that the estate has paid the state estate tax or is exempt from the tax, and the filing of an affidavit that no estate tax is due, is inapplicable to estates of decedents who die after December 31, 2004, so long as upon the date of death there is no credit for state taxes available against the federal estate or generation-skipping transfer taxes. The bill applies to all probate proceedings that are opened on or after, or for which an order of final discharge has not been entered on or after, the effective date of the act.

The Revenue Estimating Conference has not estimated the potential revenue impacts of the bill. Staff estimates that the bill does not impact state government revenues.

The bill is effective July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

An estate tax is a tax levied on the assets of an individual left behind at their death. The federal government currently imposes an estate tax on estates valued at more than \$12.92 million.¹

Florida has had an estate tax in statute since at least the 1930s.² That estate tax has been limited in the Florida Constitution since 1930, when a constitutional amendment provided that the Legislature could levy an estate tax so long as the tax did not exceed that amount which could be “credited against or deducted from any similar tax...levied by the United States.”³ A version of that prohibition is still in Article VII, Section 5 of the Florida Constitution, which provides that no estate tax may be levied “in excess of the aggregate of amounts which may be allowed to be credited upon or deducted from any similar tax levied by the United States or any state.”

Chapter 198, F.S., provides the framework for the Florida estate tax, and is structured as what is known as a “pickup tax.” This type of tax allows a state to have an estate tax that “picks up” a portion of federal estate tax revenues without imposing any additional tax on a decedent’s estate. This was possible because the federal government previously allowed a credit against federal estate taxes for up to 16 percent of the estate’s value that was paid as state estate taxes.⁴ Before 2001, all 50 states imposed a pickup tax where the state estate tax was directly tied to the federal credit for state estate taxes paid.⁵

The credit was phased out over four years at the federal level, beginning in 2001.⁶ The phaseout was complete beginning with the estates of persons dying after December 31, 2004, and was removed from the Internal Revenue Code in 2014.⁷

Chapter 198, F.S., also provided a similar tax on generation-skipping transfers that took place at the time of a decedent’s death, up to the amount of an available federal credit for state generation-skipping transfer taxes.⁸ That credit was limited to no more than 5% of the total generation-skipping transfer tax imposed at the federal level.⁹ The credit was repealed as of December 31, 2004.¹⁰

Since January 1, 2005, Chapter 198, F.S., has remained in statute, but has had fewer and fewer estates with a liability for Florida estate or generation-skipping transfer tax, as essentially all estates for

¹ The estate tax applies to estates in excess of the basic exclusion amount found in section 2010 of the Internal Revenue Code, adjusted for inflation. The 2023 basic exclusion amount is \$12,920,000, per the IRS in the Instructions to Form 706, United States Estate Tax Return, available at <https://www.irs.gov/instructions/i706> (last visited March 5, 2023).

² See, e.g., Senate Bill 537 (1933), which adopted the “Estate Tax Law of Florida,” available at [http://edocs.dlis.state.fl.us/fldocs/leg/acts/florida/1933/LOF1933V1Pt1%20GeneralLaws%20\(Pt1\).pdf](http://edocs.dlis.state.fl.us/fldocs/leg/acts/florida/1933/LOF1933V1Pt1%20GeneralLaws%20(Pt1).pdf) (pp. 302-316) (last visited March 5, 2023).

³ 1929 HJR 35, adopted November 4, 1930, available at <http://library.law.fsu.edu/Digital-Collections/CRC/CRC-1998/conhist/1930amen.html> (last visited March 5, 2023). The amendment was adopted by a margin of 47,725 to 8,380, according to records from the Secretary of State available at <http://edocs.dlis.state.fl.us/fldocs/dos/secretarystatereport/reportofsecre19291930flor.pdf> (p. 15) (last visited March 5, 2023).

⁴ Internal Revenue Code section 2011, prior to January 1, 2002, provided a table to calculate the maximum credit amount based on the size of the estate. The highest bracket was 16%.

⁵ The Impact of the Federal Estate Tax on State Estate Taxes, October 24, 2012, Congressional Research Service, available at <https://crsreports.congress.gov/product/pdf/R/R42788/6> (last visited March 5, 2023).

⁶ The Economic Growth and Tax Relief Reconciliation Act of 2001 (PL 107-16, June 7, 2001, 115 Stat 38) phased out the credit for state estate taxes over four years in section 531 of that bill, and replaced it with a deduction for state estate taxes under IRC section 2058.

⁷ The Tax Increase Prevention Act of 2014 formally removed the section from law (Pub.L. 113-295, Div. A, Title II, § 221(a)(95)(A)(i), Dec. 19, 2014, 128 Stat. 4051).

⁸ S. 198.021, F.S.

⁹ Internal Revenue Code section 2604(b) (2001).

¹⁰ Pub. L. 107-16, Sec. 532(c)(10).

persons dying before January 1, 2005, are now closed. Before the phaseout began, Florida collected roughly three-quarters of a billion dollars each year from the estate tax.¹¹

Two sections, s. 198.26, and s. 198.32, F.S., continue to provide an administrative burden for personal representatives and the court system with no apparent benefit to the state. They require evidence be filed with the court that an estate has paid the state estate tax or is exempt from the tax, and an affidavit that no state estate tax is due, before the personal representative can be discharged and the probate case can be closed.

Effect of Proposed Changes

For the estates of persons who died after December 31, 2004, the bill removes the requirement for a personal representative to file an affidavit that states no estate tax is due, and affirms that estates are not subject to a lien for any state estate or generation-skipping transfer taxes. The bill also removes the requirement for a personal representative to show that estate and generation-skipping transfer taxes have either been paid or are not due, which will allow courts to close probate cases more efficiently. These changes will continue to apply so long as upon the decedent's date of death there is no credit for state taxes available against the federal estate or generation-skipping transfer taxes.

The bill applies to all probate proceedings that are opened on or after July 1, 2023, or for which proceedings are pending on July 1, 2023, and for which an order of final discharge has not been entered.

B. SECTION DIRECTORY:

- Section 1. Amends s. 198.26, F.S., so that the requirement to show proof that tax was paid before a personal representative can be discharged and an estate can be closed only applies if there is a federal credit against estate or generation-skipping transfer taxes at the time of the decedent's death.
- Section 2. Amends s. 198.32, F.S., to provide that the requirement to file an affidavit of no estate tax due, and the automatic lien by the state against an estate for estate and generation-skipping transfer taxes, do not apply unless there is a federal credit against estate or generation-skipping transfer taxes at the time of the decedent's death.
- Section 3. Provides that the act applies to all probate proceedings commenced on or after July 1, 2023, or which are pending on July 1, 2023, and for which an order of final discharge has not been entered.
- Section 4. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not estimated the potential revenue impacts of the bill. Staff estimates that the bill does not impact state government revenues.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

¹¹ 2004 Florida Tax Handbook, Estate Tax, page 56, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2004.pdf> (last visited March 5, 2023).

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill removes an unnecessary administrative burden from the personal representatives of estates in probate cases.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 15, 2023, the Ways & Means Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment narrowed the scope of the bill so that instead of rendering the entirety of chapter 198, F.S., inapplicable to all estates, the bill only addresses the following state estate tax laws for estates of persons who died after December 31, 2004:

- A court will no longer need to find that either the tax imposed on estates by Florida has been paid or that there is no such liability before the personal representative can be discharged. (s. 198.26, F.S.)
- Personal representatives will no longer be required to file an affidavit that an estate has no state tax liability, and affirms that estates will not become subject to a lien for state estate or generation-skipping transfer taxes. (s. 198.32, F.S.)

These changes will not apply if the federal government adopts a credit against state estate or generation-skipping transfer taxes in the future.

This analysis is drafted to the bill as amended by the Ways & Means Committee.