

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	21 Y, 0 N	Mawn	Kramer

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 a 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; however, the estate tax credit was phased out over four years at the federal level, between 2001 and 2004, and the generation-skipping transfer tax credit ended on 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. Thus, 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. However, two sections of Florida law, ss. 198.26 and 198.32, F.S., continue to provide an administrative burden for personal representatives and the court system, as they still require the personal representative to submit proof that an estate has paid the state estate tax or is exempt from the tax, and to file 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 not required for 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 bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

An estate tax is a tax levied on the assets an individual leaves behind at his or her 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 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 However, the credit was phased out over four years at the federal level, beginning in 2001.⁶ The phaseout began with the estates of persons dying after December 31, 2004, and was removed from the Internal Revenue Code entirely in 2014.⁷

Chapter 198, F.S., also provided a similar tax on generation-skipping transfers occurring 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 However, 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 persons dying before January 1, 2005, are now closed and the Florida Department of Revenue no longer collects such taxes with respect to the estates of decedents who died after December 31, 2004.

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 23, 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 23, 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 23, 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 23, 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 23, 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).

Before the phaseout began, Florida collected roughly three-quarters of a billion dollars each year from such taxes.¹¹

However, two sections of Florida law, ss. 198.26 and 198.32, F.S, still require that evidence be filed with the court as to whether 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. These requirements create an administrative burden for personal representatives and the court system with no apparent benefit to the state.

Effect of Proposed Changes

CS/HB 619 provides that, notwithstanding any other provisions of this section and applicable to the estate of a decedent who dies after December 31, 2004, if, upon the death of a decedent, a state estate tax credit or a generation-skipping transfer credit is not allowable pursuant to the Internal Revenue Code of 1986, as amended, s. 19.26, F.S., does not apply. The bill also provides that, for the estates of persons who died after December 31, 2004, the personal representative does not have to file an affidavit as to whether state estate tax is due, and the estate is not subject to a lien for such taxes.

Practically speaking, the bill may allow a court to probate certain estates more efficiently, as the personal representatives would no longer have to comply with unnecessary administrative procedures. 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.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 198.26, F.S., relating to no discharge of personal representative until tax is paid.
- Section 2:** Amends s. 198.32, F.S., relating to prima facie liability for tax.
- Section 3:** Provides applicability.
- Section 4:** Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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 23, 2023).

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 committee substitute 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.
- 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.

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 committee substitute as passed by the Ways & Means Committee.