

**DEPARTMENT OF TAXATION
2024 Fiscal Impact Statement**

1. **Patron** Elizabeth B. Bennett-Parker

2. **Bill Number** HB 1414

3. **Committee** House Finance

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

4. **Title** Estate Tax; Reinstatement

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would reinstate the estate tax for persons dying on and after July 1, 2024. However, no estate tax would be imposed on a gross estate if the majority of the assets of the estate are an interest in a closely held business or a working farm. The bill would also designate revenues from the estate tax to be used for early childhood care and education purposes.

If enacted during the regular session of the 2024 General Assembly, this bill would become effective for deaths occurring on and after July 1, 2024.

6. Budget amendment necessary: Yes.

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

8. Fiscal implications:

Administrative Costs

The Department of Taxation (“Department”) would incur costs of approximately \$380,000 in the first year of this bill’s implementation to update its systems, create new forms and website content, and to process estate tax returns. After the first year of this bill’s implementation, the Department would incur ongoing costs of approximately \$90,000 annually to hire one full time employee for compliance purposes. Due to the system and form changes required by this bill and the resources already committed to implementing legislation enacted during the 2023 General Assembly session, the Department would be unable to implement this legislation until at least one year after the effective date of this bill.

Revenue Impact

This bill would result in an unknown revenue gain. The amount of the revenue gain cannot be reliably estimated because:

- The most recent data is 17 years old from Virginia estate tax returns for decedents dying before July 1, 2007. The unified estate and gift tax credit has increased

significantly since 2007, which would reduce the number of estates subject to the tax, but inflation has also increased, which would increase the amount of assets included in a taxable estate.

- This bill would exempt estates if the majority of the assets are an interest in a closely held business or a working farm. While this is expected to apply to a very small number of estates (50 total estates in 2017, which has likely decreased since then), the exemption would reduce taxable estates by an unknown amount.
- The Virginia estate tax would apply after estates claim the unified estate and gift tax credit on their federal returns, the unified credit was temporarily doubled between 2018 and 2025. It is not known whether Congress will extend the doubled unified credit or allow it to expire.

Given these limitations and assuming the extension of the doubling of unified estate and gift tax credit, the positive revenue estimate of this bill could be approximately \$60 million annually.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Background

Virginia’s Estate Tax and The Federal Tax Credit for State Death Taxes

On January 1, 1980, Virginia’s inheritance tax was replaced by an estate tax equal to the maximum federal tax credit for state death taxes permitted in 1978. This allowed the Commonwealth to gain estate tax revenue without increasing the tax burden on Virginia taxpayers, since Virginia’s estate tax was offset by a corresponding federal credit decreasing the taxpayer’s federal tax liability by an equal amount.

In 1978, the federal credit was calculated by subtracting \$60,000 from the federal taxable estate to arrive at the adjusted taxable estate. The federal credit (and thus the Virginia estate tax) was calculated from the following table.

Adjusted Gross Estate (Taxable Estate minus \$60,000)	Tax is		Rate	On Amount In Excess Of
0 - \$90,000	\$0	Plus	0.8%	0
\$90,000 to \$140,00	\$400	Plus	1.6%	\$90,000
\$140,000 to \$240,000	\$1,200	Plus	2.4%	\$140,000
\$240,000 to \$440,000	\$3,600	Plus	3.2%	\$240,000
\$440,000 to \$640,000	\$10,000	Plus	4.0%	\$440,000
\$640,000 to \$840,000	\$18,000	Plus	4.8%	\$640,000
\$840,000 to \$1,040,000	\$27,600	Plus	5.6%	\$840,000
\$1,040,000 to \$1,540,000	\$38,800	Plus	6.4%	\$1,040,000
\$1,540,000 to \$2,040,000	\$70,000	Plus	7.2%	\$1,540,000
\$2,040,000 to \$2,540,000	\$106,800	Plus	8.0%	\$2,040,000

Adjusted Gross Estate (Taxable Estate minus \$60,000)	Tax is		Rate	On Amount In Excess Of
\$2,540,000 to \$3,040,000	\$146,000	Plus	8.8%	\$2,540,000
\$3,040,000 to \$3,540,000	\$190,000	Plus	9.6%	\$3,040,000
\$3,540,000 to \$4,040,000	\$238,000	Plus	10.4%	\$3,540,000
\$4,040,000 to \$5,540,000	\$290,000	Plus	11.2%	\$4,040,000
\$5,540,000 to \$6,040,000	\$402,000	Plus	12.0%	\$5,040,000
\$6,040,000 to \$7,540,000	\$522,000	Plus	12.8%	\$6,040,000
\$7,540,000 to \$8,040,000	\$650,000	Plus	13.6%	\$7,040,000
\$8,040,000 to \$9,540,000	\$786,000	Plus	14.4%	\$8,040,000
\$9,540,000 to \$10,040,000	\$930,000	Plus	15.2%	\$9,040,000
Over \$10,040,000	\$1,082,000	Plus	16.0%	\$10,040,000

In 2001, Congress phased out the federal credit for state death taxes between 2002 and 2005. Virginia continued to impose its estate tax, even after 2005, based on the federal credit as it existed in 1978. However, the language in the Code of Virginia tying the federal credit to 1978 was later repealed by the General Assembly, which effectively eliminated the Virginia estate tax for estates of persons who died on or after July 1, 2007, even though the rest of the Virginia estate tax law remained in the Code of Virginia.

The Federal Unified Estate and Gift Tax Credit

Transfer of wealth or gifts are taxed whether under the gift tax or estate tax. To equalize the treatment of gifts, whether given during the lifetime of the grantor (*inter vivos* gifts) or after the death of the grantor (testamentary gifts), the federal government allows a unified estate and gift credit that rolls the gift and estate tax exclusions into one tax system. The unified credit has been regularly increased and effectively exempts the first \$13.61 million of the estate of a person dying in 2024. Because the federal tax credit for state death taxes, as it existed in 1978, was applied after the federal unified estate and gift tax credit, these limits also would apply to Virginia’s estate tax. As a result, Virginia’s estate tax under this bill would be 16 percent of the amount over \$13.61 million.

However, the unified credit will be cut almost in half in 2026 unless Congress acts. In 2011, Congress set the unified credit at \$5 million, indexed annually for inflation. However, in 2018 the unified credit was temporarily doubled. The doubled unified credit expires in 2025. For example, if the indexed unified credit is \$14 million in 2025, it will drop to a little over \$7 million in 2026 (depending on inflation that year). If that happens, Virginia’s estate tax under this bill would be 12.8 percent of the amount over \$7 million and move up the rate schedule (shown in the table above) from there.

Proposed Legislation

This bill would reinstate the Virginia estate tax by reinstating language that tied the tax to the federal credit as it existed in 1978. As a result, the Virginia estate tax would be reinstated on the estates of persons dying on and after July 1, 2024. It would also add new language exempting an estate from the estate tax if the majority of its assets are in a closely held business or a working farm.

Exemption for Estates Under the Federal Exemption

Because the Virginia estate tax would be equal to a federal credit that 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 almost always have no Virginia estate tax liability. In 2024, because of how the Federal Unified Estate and Gift Tax Credit is computed, estates valued at less than or equal to \$13.61 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

The bill would designate revenues from the estate tax to be used for early childhood care and education purposes.

If enacted during the regular session of the 2024 General Assembly, this bill would become effective for deaths occurring on and after July 1, 2024.

cc: Secretary of Finance

Date: 2/3/2024 JPJ
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