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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Taxation
<b>Virginia Administrative Code (VAC) citation(s)</b>	23 VAC 10-310-30
<b>Regulation title(s)</b>	Tax on Wills and Administration
<b>Action title</b>	To amend the Tax on Wills and Administration regulation to reflect a recodified citation
<b>Date this document prepared</b>	September 13, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This regulatory action will amend the Tax on Wills and Administration (also known as the Probate Tax) to update a reference to a section of the *Code of Virginia* to reflect the recodification changes made by 2012 Acts of Assembly, ch. 614.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.*

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Not Applicable

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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The Tax Commissioner approved the amendments to the Tax on Wills and Administration regulation on August 16, 2016.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.*

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Code of Virginia § 58.1-203 provides that the “Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department.” The authority for the current regulatory action is discretionary.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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This regulatory action will amend the Tax on Wills and Administration to update references to sections of the Code of Virginia to reflect the recodification changes made by 2012 Acts of Assembly, ch. 614. The regulation section affected by this action was promulgated prior to the enactment of legislation that recodified Title 64.1 to Title 64.2. This regulatory action does not reflect any change in current tax policy, and will have no impact on the administration of any taxes.

### Rationale for using fast-track process

*Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

The fast-track process is intended for proposed regulations that are expected to be noncontroversial. As this regulatory action will merely correct references to sections of the *Code of Virginia*, this action is not expected to be controversial.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.*

This regulatory action will amend the Tax on Wills and Administration to update references to sections of the Code of Virginia to reflect the recodification changes made by 2012 Acts of Assembly, ch. 614. Specifically, references to sections of Title 64.1 are corrected to the appropriate sections of Title 64.2.

### Issues

*Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

As this regulatory action will merely correct references to sections of the *Code of Virginia*, there are no issues or disadvantages to the public or the Commonwealth associated with this regulatory action.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no applicable federal requirements.

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

No localities are particularly affected by this regulatory action.

### Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The regulatory methods follow the least intrusive and burdensome method consistent with statutory language. The tax applies to the administration of the estates of deceased individuals and does not directly affect small businesses. Thus the regulation could not be made less burdensome for small businesses without jeopardizing the enforcement of the tax laws.

### Economic impact

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b>  <b>a) fund source / fund detail; and</b>  <b>b) a delineation of one-time versus on-going expenditures</b></p>	<p>Because the intent of this regulatory action is to update references to sections of the <i>Code of Virginia</i>, this amendment will result in no changes to Virginia’s policies. Therefore, there will be no cost to the state to implement and enforce the amended regulation section.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>Because the intent of this regulatory action is to update references to sections of the <i>Code of Virginia</i>, this amendment will result in no changes to Virginia’s policies. Therefore, there will be no cost to localities to implement and enforce the amended regulation sections.</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>Because the intent of this regulatory action is to update references to sections of the <i>Code of Virginia</i>, this amendment will result in no changes</p>

	to Virginia’s policies. Therefore, no taxpayers will be impacted by the amended regulation sections.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</b> a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Because the intent of this regulatory action is to update references to sections of the <i>Code of Virginia</i> , this amendment will result in no changes to Virginia’s policies. Therefore, no taxpayers will be impacted by the amended regulation sections.
<b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:</b> a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	Because the intent of this regulatory action is to update references to sections of the <i>Code of Virginia</i> , this amendment will result in no changes to Virginia’s policies. Therefore, no taxpayers will be impacted by the amended regulation sections.
<b>Beneficial impact the regulation is designed to produce.</b>	The intent of this regulatory action is to update references to sections of the <i>Code of Virginia</i> .

### Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

The Department considered alternatives to the proposed regulatory action. Taking no action would leave this regulation referring to a section of the *Code of Virginia* that has been recodified into another section.

### Public participation notice

*If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

### Periodic review and small business impact review report of findings

*If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

The Department of Taxation initiated a periodic review of the Tax on Wills and Administration regulation. No comments were received during the periodic review public comment period that began on June 13, 2016, and completed July 5, 2016. The regulation is necessary for the economical performance of the administration of taxes, which is an important governmental function, and the regulation is clearly written and easily understandable. As a result of a periodic review, the Department has determined that there is a continued need for the regulation, with minor revision. References to sections of the *Code of Virginia* need to be updated to reflect a 2012 recodification of Title 64.1. The regulation does not overlap, duplicate, or conflict with any other federal or state law or regulation. The amendment of the regulation does not reflect any change in current tax policy and will have no impact on the administration of the tax on wills and administration. Because the intent of this regulatory action is to update references to sections of the *Code of Virginia* and will result in no changes to Virginia's policies, small businesses will not be impacted by the amended regulation sections.

### Family impact

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

This regulatory action is not expected to have an impact on family formation, stability and autonomy.

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.*

For changes to existing regulation(s), please use the following chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
23 VAC 10-310-20	N/A	The regulation directs the reader to § 64.1-94 and § 64.1-135 of the <i>Code of Virginia</i>	The references are corrected to § 64.2-455 and § 64.2-510 to reflect the recodification of the title by Chapter 212 of the <i>2012 Acts of Assembly</i> .
23 VAC 10-310-30	N/A	The regulation directs the reader to § 64.1-92 of the <i>Code of Virginia</i>	The reference is corrected to § 64.2-450 to reflect the recodification of the title by Chapter 212 of the <i>2012 Acts of Assembly</i> .