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Fast-Track Regulation Agency Background Document

Agency name	Virginia Department of Taxation
Virginia Administrative Code (VAC) citation(s)	23 VAC 10-300
Regulation title(s)	Estate Tax
Action title	Repeal the Virginia Estate Tax Regulation
Date this document prepared	August 26, 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

As a result of a periodic review of the Virginia Estate Tax Regulation initiated by the Department of Taxation on May 30, 2016 and completed June 20, 2016, the Department of Taxation has determined that the regulation should be repealed because it provides no guidance beyond the plain meaning of the statutes to which it applies and it is not necessary to protect the public health, safety, or welfare. A regulation that is not necessary to interpret the law or to protect the public health, safety, or welfare violates the general principles set forth in Governor Terence R. McAuliffe 's Executive Order 17 signed June 30, 2014.

Since 1980 Virginia imposed a "pick-up" estate tax that was equal to the maximum amount of the federal credit for state death taxes as it existed on January 1, 1978. Congress eliminated the federal credit for state death taxes in 2005, but the freeze to 1978 preserved the revenue from the Virginia estate tax. In

2006 the General Assembly struck the language tying the tax to the 1978 amount of the federal credit, which effectively repealed the Virginia estate tax. See *Acts of Assembly*, 2006, Sp. Sess. I, chapter 4, 5. The proposed regulatory action would repeal the corresponding regulations.

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.

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.

The Department of Taxation determined to repeal the Virginia Estate Tax regulation on August 26, 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.

Code of Va. § 58.1-203 authorizes the Tax Commissioner to issue regulations relating to the interpretation and enforcement of the laws governing taxes administered by the Department of Taxation.

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.

As a result of a periodic review of the Virginia Estate Tax Regulation initiated by the Department of Taxation on May 30, 2016 and completed June 20, 2016, the Department of Taxation has determined that the regulation should be repealed because it provides no guidance beyond the plain meaning of the statutes to which it applies and it is not necessary to protect the public health, safety, or welfare. A regulation that is not necessary to interpret the law or to protect the public health, safety, or welfare violates the general principles set forth in Governor Terence R. McAuliffe’s Executive Order 17 signed June 30, 2014.

Repeal of the regulation does not reflect any change in current tax policy. Repeal of the regulation will have no impact on the administration of the Virginia Estate Tax.

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 Department is using the fast-track process because the repeal of the Virginia Estate Tax Regulation is expected to be noncontroversial because the regulation provides no guidance beyond the plain meaning of the statutes to which it applies. No comments were received during the periodic review of the regulation.

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 action will repeal the Virginia Estate Tax Regulation. Since 1980 Virginia imposed a "pick-up" estate tax that was equal to the maximum amount of the federal credit for state death taxes as it existed on January 1, 1978. Congress eliminated the federal credit for state death taxes in 2005, but the freeze to 1978 preserved the revenue from the Virginia estate tax. In 2006 the General Assembly struck the language tying the tax to the 1978 amount of the federal credit, which effectively repealed the Virginia estate tax. See *Acts of Assembly, 2006, Sp. Sess. I, chapter 4, 5.*

Because the Virginia Estate Tax (*Code of Va. § 58.1-900 et seq.*) no longer imposes a tax on the estates of decedents there is no longer a need for the Virginia Estate Tax Regulation. Repeal of the regulation will have no impact on the administration of the Virginia Estate Tax.

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 the regulation the law no longer imposes a Virginia Estate Tax, the regulation pursuant to that law is unnecessary. Accordingly, its repeal poses no disadvantages to the public or the Commonwealth.

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 locality would be particularly affected by the repeal of this regulation.

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.

As the Virginia Estate Tax has been effectively repealed, the regulation is unnecessary. The only alternative to its repeal would be to leave in place an unnecessary regulation.

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>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>As the Virginia Estate Tax has been effectively repealed, the regulation is unnecessary and there are no costs related to the repeal of the Virginia Estate Tax Regulation.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>As the Virginia Estate Tax has been effectively repealed, the regulation is unnecessary and there are no costs related to the repeal of the Virginia Estate Tax Regulation.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>As the Virginia Estate Tax has been effectively repealed, the regulation is unnecessary and no one will be affected by the repeal of the Virginia Estate Tax Regulation.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an</p>	<p>As the Virginia Estate Tax has been effectively repealed, the regulation is unnecessary and no one</p>

<p>estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <p>a) is independently owned and operated and;</p> <p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>will be affected by the repeal of the Virginia Estate Tax Regulation.</p>
<p>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:</p> <p>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</p> <p>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.</p>	<p>As the Virginia Estate Tax has been effectively repealed, the regulation is unnecessary and there are no costs related to the repeal of the Virginia Estate Tax Regulation.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>As the Virginia Estate Tax has been effectively repealed, the regulation is unnecessary and repeal of the Virginia Estate Tax Regulation would remove an unnecessary regulation.</p>

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.

As the Virginia Estate Tax has been effectively repealed, the regulation is unnecessary and repeal of the Virginia Estate Tax Regulation would remove an unnecessary regulation.

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.

Commenter	Comment	Agency response

No comments were received.

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Repeal of the regulation does not reflect any change in current tax policy. Repeal of the regulation will have no impact on the administration of the Virginia Estate Tax. Because the regulation is unnecessary, small businesses will not be affected by the repeal of the Virginia Estate Tax Regulation.

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.

Repeal of the Virginia Estate Tax regulation will have no impact on the institution of the family and family stability.

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:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
23VAC10-300-20	Not applicable	Sets forth definitions for the regulation.	The repeal of the section would not affect the current statutory provisions, which have had no impact on the estates of decedents since 2006.
23VAC10-300-30	Not applicable	Sets forth the method used to calculate a credit against the tax.	The repeal of the section would not affect the current statutory provisions, which have had no impact on the estates of decedents since 2006.
23VAC10-300-50	Not applicable	Sets forth the method used to calculate the tax of an alien decedent.	The repeal of the section would not affect the current statutory provisions, which have had no impact on the estates of decedents since 2006.
23VAC10-300-80	Not applicable	Sets forth procedures related to certifications.	The repeal of the section would not affect the current statutory provisions, which have had no impact on the estates of decedents since 2006.
23VAC10-300-90	Not applicable	Sets forth procedures related to liens.	The repeal of the section would not affect the current statutory provisions, which have had no impact on the estates of decedents since 2006.