HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1197 Estate Tax
SPONSOR(S): McBurney
TIED BILLS: **IDEN./SIM. BILLS:** SB 2620

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Finance & Tax Council		Diez-Arguelles	Langston
2)	Policy Council			
3)	Full Appropriations Council on Education & Economic Development			
4)				
5)				

SUMMARY ANALYSIS

The bill deletes the existing statutory provisions that determine the amount of estate tax that a nonresident would pay to Florida, if the Florida estate tax were in effect.

In place of the deleted provisions, the bill imposes an estate or inheritance tax on property situated in Florida which is owned by a nonresident at the time of the nonresident's death.

The tax will only apply if the state in which the decedent was a resident imposes a tax on the estate or inheritance of persons who are not residents of that state.

The bill takes effect on July 1, 2010.

The Revenue Estimating Conference has estimated that the provisions of this bill will have an indeterminate positive impact on state revenues.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Constitution states that:

> No tax upon estates or inheritances or upon the income of natural persons who are residents or citizens of the state shall be levied by the state, or under its authority, in excess of the aggregate amounts which may be allowed to be credited upon or deducted from any similar tax levied by the United States or any state.[1]

Until 2005, Florida levied an estate tax "upon the transfer of the estate of every person who, at the time of death, was a resident of this state . . .."[2] Florida also levied an estate tax on every person who at the time of death was not a resident of this state, but was a resident of the United States.[3]

As prescribed by the Florida Constitution, the amount of the Florida estate tax could not exceed the amount of the credit for state taxes allowed by the federal government for state estate taxes. The Florida estate tax was what is known as a "pick-up" tax, which only "picks-up" taxes that would have otherwise been paid to the federal government.

While the Florida estate tax provisions are still set forth in the statutes,[4] they are inoperative at the present time. In 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act of 2001 (the Act). The Act phased out the federal estate tax over a 10-year period and the federal estate tax credit for state taxes over a 5-year period. Once the credit for state taxes was completely phased out, Florida's tax became inoperable. The Act's provisions have also resulted in the absence of federal estate taxes during 2010. Finally, unless Congress acts, the Act provides for the federal estate tax, and the credit for state taxes, to be reinstated in 2011, thereby reviving Florida's estate tax.[5] However, while most observers expect that Congress will take action to amend the federal estate tax before it is reinstated in 2011, they do not expect the credit for state taxes to be reinstated.

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[1] Article 7, Section 5(a), Florida Constitution (emphasis added)
[2] Sec. 198.02, F.S.
[3] Sec. 198.03, F.S.
[4] Ch. 198, F.S.
[5] Most observers expect that Congress will act to amend the federal estate tax before it is reinstated in 2011. Furthermore, most observers believe that if Congress acts, the credit for state taxes will not be reinstated.

While the federal credit for state taxes was in existence, all 50 states and the District of Columbia imposed a “pick-up” tax. Some states also imposed estate and inheritance taxes that were not dependent on the federal credit. Since the phase-out of the credit in the early 2000s a few states have de-coupled from the federal tax to impose estate and inheritance taxes. At present, there are 19 states and the District of Columbia that impose estate or inheritance taxes.

Proposed Changes

The bill deletes the existing statutory provisions that determine the amount of estate tax that a nonresident would pay to Florida, if the Florida estate tax were in effect. The deleted provisions generally provide for the amount of the tax to be the proportion of the federal credit that the value of property situated in Florida bears to the value of the entire estate of the nonresident.

In place of the deleted provisions, the bill imposes a tax on the transfer of property situated in Florida which is owned by a nonresident at the time of the nonresident’s death. The tax will only apply if the state in which the decedent was a resident imposes a tax on the estate or inheritance of persons who are not residents of that state.

The bill provides for the rate of the tax to be the same as the rate imposed by the state of residency of the decedent, and for the amount of the tax to be the additional tax resulting from adding the property situated in Florida to the tax return filed in the state where the decedent was a resident at the time of death.

The bill requires the tax to be paid within 12 months of the nonresident’s death.

B. SECTION DIRECTORY:

Section 1 provides that this act may be cited as the “Florida Taxpayers Protection Act.”

Section 2 amends s. 198.03, F.S., and imposes the tax.

Section 3 provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference has estimated that the provisions of this bill will have an indeterminate positive impact on state revenues.

2. Expenditures:

   Whether the Department of Revenue will incur additional expenses is not known at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions of the bill will impose taxes on the estates and inheritances of some nonresidents who own property situated in Florida at the time of death.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

The Florida Constitution limits estate and inheritance taxes on residents and citizens of the state to the amount allowed as a federal credit. The Florida Constitution does not limit taxes on nonresidents.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The requirement that taxes be paid within 12 months of the nonresident's death conflicts with other provisions of Chapter 198, F.S.

The calculation of the tax owed may not be clear enough to be applied in all other states. For example, the calculation calls for applying another state's tax rate. However, most estate taxes have graduated rate schedules where the tax rate increases as increments of value increase. In these situations, the determination of what rate to apply will be difficult to determine. Also, in some states, the value of the Florida property will already be included in the value of the estate; therefore, adding the value of the Florida property will result in including the Florida property twice.

The Department of Revenue may need emergency rulemaking authority to comply with the effective date of the bill.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES