

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Finance and Tax

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BILL: CS/SB 278

INTRODUCER: Finance and Tax Committee and Senator Rodriguez

SUBJECT: State Estate Tax

DATE: March 14, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Gross</u>	<u>Babin</u>	<u>FT</u>	<b>Fav/CS</b>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 278 removes, for persons who died after December 31, 2004, a requirement for a personal representative to file an affidavit if an estate is not subject to the state estate or generation-skipping taxes and affirms that estates will not become subject to a lien.

In addition, courts will no longer need to:

- Find that the tax imposed on estates by Florida has been paid or there is no liability; or
- Consider an affidavit if the estate is nontaxable.

Because of changes in the federal estate tax, the state has not imposed an estate tax since 2004; however, state law requires the representative of an estate to provide proof of having paid the state estate tax or proof that the estate has no liability for the tax.

The Revenue Estimating Conference analyzed the prior version of the bill and determined changes made by that bill would not affect state revenue. Staff does not expect the committee substitute to change the determination.

The bill takes effect July 1, 2023, and applies to probate proceedings pending on July 1, 2023, for which an order of final discharge has not been entered.

## II. Present Situation:

Federal law imposes an estate tax on estates valued above a specified threshold. Updated annually, the threshold for 2023 is \$12.92 million. Estates valued below this amount are exempt from the federal estate tax.<sup>1</sup> The Joint Committee on Taxation reported less than 0.2 percent of all estates in the United States were subject to federal estate tax in 2013, which amounted to approximately 0.6 percent of total Federal receipts.<sup>2</sup>

The State Constitution authorizes an estate tax to the extent that the tax paid may be taken as a credit against federal estate tax liability.<sup>3</sup> As a result of federal tax law changes beginning in 2001, the federal estate tax credit was phased out and fully eliminated for estates of decedents dying after December 31, 2004.<sup>4</sup> As such, the state has not taxed estates of decedents who died after December 31, 2004.

However, to comply with state law, a personal representative may be discharged only after a court finds that the estate has paid the tax or is a nontaxable estate.<sup>5</sup> Since 2004, courts have relied upon an affidavit promulgated by the Department of Revenue to establish that the estate is nontaxable.<sup>6</sup> Since “nontaxable estate” is an undefined term in the Florida Statutes, a court may be required to make an interpretation. At least one court found, “[it] would be unable to consider the personal representative’s affidavit of non-liability for Florida estate tax if the decedent’s estate is subject to federal estate tax liability pursuant the Internal Revenue Code.”<sup>7</sup>

Federal estate tax law also imposes a tax on certain generation-skipping transfers of wealth. The generation-skipping tax (GST), also referred to as the generation-skipping transfer tax, is designed to prevent a person from deliberately skipping his or her children in his or her estate plan in favor of younger generations as a means to bypass potential estate taxes due upon the children’s deaths.

## III. Effect of Proposed Changes:

The bill removes, for persons who died after December 31, 2004, a requirement for a personal representative to file an affidavit if an estate is not subject to the state estate or generation-skipping taxes and affirms that estates will not become subject to a lien.

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<sup>1</sup> Internal Revenue Service, Estate Tax (Oct. 2022) <https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax> (last visited Mar. 07, 2023).

<sup>2</sup> Joint Committee on Taxation, United States Congress, Report JCX-52-15, *History, Present Law, and Analysis of the Federal Wealth Transfer Tax System*, 25-28 (2015) available at <https://www.jct.gov/publications/2015/jcx-52-15/> (last visited Mar. 07, 2023).

<sup>3</sup> FLA. CONST. art VII, s. 5.

<sup>4</sup> See the federal Economic Growth and Tax Relief Reconciliation Act of 2001. Note that the American Taxpayer Relief Act of 2012 changed the federal taxation of estates; however, it did not revive a credit for state death taxes.

<sup>5</sup> Section 198.26, F.S.

<sup>6</sup> See Department of Revenue forms DR-312 and DR-313. Available at [https://floridarevenue.com/Pages/forms\\_index.aspx](https://floridarevenue.com/Pages/forms_index.aspx) (last visited Mar. 07, 2023).

<sup>7</sup> The Real Property Probate and Trust Law Section, Florida Bar, *White Paper: Proposed Amendment of F.S. Section 198.41 to Render Chapter 198, Florida Statutes, Which Imposes the Florida Estate Tax Ineffective for as Long as There is no Federal State Death Tax Credit or no Federal Generation-Skipping Transfer Tax Credit* (2023) (on file with the Committee on Finance and Tax)

In addition, a court will no longer need to:

- Find that the tax imposed on estates by Florida has been paid or there is no liability; or
- Consider an affidavit if the estate is nontaxable.

The bill takes effect July 1, 2023, and applies to probate proceedings pending on July 1, 2023, for which an order of final discharge has not been entered.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

The bill does not increase or create a state tax or fee as specified in Article VII, s. 19 of the Florida Constitution.

##### **E. Other Constitutional Issues:**

None identified.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

The Revenue Estimating Conference analyzed the prior version of the bill and determined changes made by that bill will not affect state revenue. Staff does not expect the committee substitute to change the determination.

Some practitioners record with clerks of the court proof of non-liability of tax. The number of recorded documents along with the minimal recording fee (\$10) may result in a de minimis reduction to court revenues.

##### **B. Private Sector Impact:**

The bill may have a minimal positive fiscal impact on probate lawyers and law firms.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 198.26 and 198.32.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Finance and Tax on March 14, 2023:**

The committee substitute narrowed the scope of the bill to only exclude application of the following state estate tax laws for persons who died after December 31, 2004, rather than making the chapter entirely inoperative:

- A court will no longer need to find that either (1) the tax imposed on estates by Florida has been paid or there is no liability or (2) be required to consider an affidavit if the estate is nontaxable.
- Personal representatives will no longer be required to file an affidavit if an estate is not subject to the state estate or generation-skipping taxes and affirms that estates will not become subject to a lien.

B. Amendments:

None.