

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.)

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

BILL: SB 278

INTRODUCER: Senator Rodriguez

SUBJECT: State Estate Tax

DATE: March 13, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Gross</u>	<u>Babin</u>	<u>FT</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 278 prohibits application of Florida’s estate tax laws to estates of decedents who die after December 31, 2004, provided that federal estate tax law does not authorize a state tax credit.

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 determined that the changes made by the bill will not affect state revenue.

The bill takes effect upon becoming law, and applies to pending probate proceedings.

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.¹ 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.²

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

² 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).

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.³ 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, 2004.⁴ 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.⁵ Since 2004, courts have relied upon an affidavit promulgated by the Department of Revenue to establish that the estate is nontaxable.⁶ 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.”⁷

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 provides that Florida’s estate tax laws do not apply to the estate of a decedent who dies after December 31, 2004, so long as federal tax law does not allow a state death tax credit or state generation-skipping transfer tax credit. The bill prohibits application of Florida’s estate tax provisions, effectively suspending the requirement to prove that the estate has paid the tax or that is a nontaxable estate.

The bill takes effect upon becoming law, and applies to pending probate proceedings.

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.

³ FLA. CONST. art VII, s. 5.

⁴ 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.

⁵ Section 198.26, F.S.

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

⁷ 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)

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 determined that the changes made by the bill will not affect state revenue.

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:**VI. Technical Deficiencies:**

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 198.41 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
