

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 Judiciary

BILL: SB 278

INTRODUCER: Senator Rodriguez

SUBJECT: State Estate Tax

DATE: February 6, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Pre-meeting
2.			FT	
3.			AP	

I. Summary:

Imposition of the Florida estate tax is contingent upon provisions in federal law imposing the federal estate tax. The state has not imposed an estate tax in over a decade, but the estate tax statutes remain in statute should the federal estate tax law be amended. The state statute includes a currently unnecessary requirement to show proof of having paid the state estate tax or having no liability for the tax before an estate may be closed by the court. The bill amends the Florida estate tax to eliminate the requirement to show proof of payment of or no liability, provided that federal estate tax law is not amended in a way that reinstates the Florida estate tax.

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

II. Present Situation:

The United States imposes an estate tax on some estates. For 2023, an estate valued at less than \$12.92 million is exempt from the federal estate tax.¹ Federal estate taxes are due from the estates of less than 0.2% of all persons who die in the United States.²

The State Constitution allows the imposition of a state estate tax, but only to the extent that the tax is a credit against the federal estate tax payable.³ Former federal estate tax law included such a credit, but the credit was phased out starting in 2001. The complete phase out of the credit was

¹ INTERNAL REVENUE SERVICE, ESTATE TAX, <https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax> (updated Oct. 26, 2022).

² JOINT COMMITTEE ON TAXATION, UNITED STATES CONGRESS, REPORT JCX-52-15, HISTORY, PRESENT LAW, AND ANALYSIS OF THE FEDERAL WEALTH TRANSFER TAX SYSTEM 1 (Mar. 16, 2015), <https://www.jct.gov/publications/2015/jcx-52-15/>.

³ FLA. CONST. art VII, s. 5., reads:

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 of amounts which may be allowed to be credited upon or deducted from any similar tax levied by the United States or any state.

effective for persons dying on or after January 1, 2005, and Congress "permanently" repealed the credit as of 2010.⁴ Thus, there has been no state-level estate tax in more than a decade.

However, even though the Florida Constitution effectively prohibits a Florida estate tax given the current structure of the federal estate tax law, the Florida estate tax is still in law. It remains in law should the federal government reinstate the credit and thereby revive the state's ability to collect the tax. One provision of the Florida estate tax code requires that a probate court obtain proof that the estate has paid the tax or is exempt from paying the tax as a condition of closing the estate.⁵ Obtaining this proof is mildly burdensome on estates and on the courts, and appears unnecessary so long as there continues to be no state-level estate tax.

Federal estate tax law imposes a tax on certain transfers of wealth that are generation-skipping. 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 the Florida estate tax law, ch. 198, F.S., does 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. This will have the current effect of suspending the requirement to show proof of having paid the state estate tax or no liability for the tax as a condition of closing a probate case. However, the requirement to show proof of payment or no liability would automatically be imposed again should the federal government reinstate the tax credit.

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.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴ American Taxpayer Relief Act of 2012, Pub. Law No. 112-240, H.R. 8, 112th Cong. (Jan. 2, 2013).

⁵ Section 198.26, F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

Some practitioners record proof in the Official Records that an estate was not liable for the state estate tax. The effect of this bill is that these recordings will no longer be necessary. The relatively small number of recorded documents and the minimal recording fee (\$10) of these documents leads to the conclusion that this bill appears to have an insignificant fiscal impact on the clerks of court.

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.