Vermont Legislative Joint Fiscal Office

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FISCAL NOTE

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S.55 Vermont Estate Tax Changes - House Ways & Means Committee Amendment

This bill proposes a number of significant changes to the Vermont estate tax structure. The current Vermont estate tax is a complicated system that is largely the result of the state's attempt to retain the link to the federal estate tax credit amounts that existed in 2001 prior to federal changes made to the estate tax in the Economic Growth and Tax Relief Reconciliation Act (EGTRRA). These are the changes proposed in the amendment:

- updates the link of the Vermont estate tax to the federal internal revenue code as of December 31, 2015
- calculates the portion of the federal gross estate that is the Vermont taxable estate
- includes in the taxable value of the Vermont estate the amount deducted at the federal level for state and foreign death taxes and federal taxable gifts made within *two* years of death
- sets the estate tax exclusion amount at $2.75 million
- applies a flat 16% tax rate to estate value over the exclusion threshold
- applies the Vermont-based property apportionment ratio to the total estate tax liability to determine the Vermont estate tax amount
- the new estate tax structure applies to decedents dying after December 31, 2015

The revenue analysis is the effect of the proposed estate tax changes over 5⅓ fiscal years using the average change over the entire time period. The results are different in each fiscal year depending on the mix of estates of various sizes that filed returns in that particular year. A comparison of the annualized amount over the entire time period for the current law and the proposal is the method of determining "revenue neutrality." The difference, if any, is then scaled to the current law estate tax forecast.

Revenue Analysis: Current Law Calculation and Proposal Calculation

Return Year	# Returns	Current Law	Proposal $2.75M Exclusion, 16% Tax Rate, 2-year gift "look-back"
2011	76	$10,959,827	$9,545,773
2012	94	$35,195,162	$35,821,651
2013	82	$14,785,331	$15,669,462
2014	89	$17,895,187	$17,114,667
2015	120	$27,537,515	$29,014,073
2016 (1/3)	47	$3,960,171	$3,297,339
Grand Total	508	$110,333,192	$110,462,965
Annualized Amount	**100**	**$20,700,000**	**$ 20,700,000**

Recent data from other states indicates that the majority of gifting occurs in the years just prior to death and this analysis estimates that 30% of lifetime gifts are made in the last two years.

This analysis does not include possible behavioral changes which may positively or negatively affect revenues. For example, this may increase the ability of a taxpayer to utilize gifting strategies to avoid the state estate tax altogether. Under current law, a taxpayer must gift the entire estate in order to completely avoid the state estate tax. Under the proposal, a taxpayer must only gift the portion of the estate required to get below the state estate tax threshold in order to avoid paying state estate taxes, with the exception of the taxable gifts made 2 years prior to death.

S.55 Comparison - Estate Tax Provisions Only

	Senate	House		Current Law
Exclusion Amount	2016 $2.45 million 2017 $3.90 million 2019 Federal amount (estimated at $5.9 million)	2016 $2.75 million		$2.75 million
Tax Rate	Flat 16% on estate over threshold	Flat 16% on estate over threshold		Graduated rates from 1% to 16% beginning on the first dollar value of the estate or the marginal federal rate under the alternate calculation
Federal Taxable Gifts	2016 includes gifts made 1-year prior to death 2017 includes gifts made 2-years prior to death 2019 includes gifts made 3-years prior to death	2016 includes gifts made 2-years prior to death		Lifetime taxable gifts are included in the secondary estate tax calculation required for some estates
Calculation of Liability (see example)	Apportions the gross estate between VT and non-VT property and then applies the tax rate to the VT taxable estate	Calculates the tax liability on the VT taxable estate and then applies the apportionment ratio of VT and non-VT property to the tax liability		Apportions the gross estate between VT and non-VT property and then applies the tax rate to the VT taxable estate
Link to IRC	January 1, 2014 update	December 31, 2015		Linked to 2001 with annual updates
Effective date	January 1, 2016	January 1, 2016		N/A
Fiscal Impact	FY17 revenue neutral FY18 $5.5 million revenue loss FY20 $3.6 million additional revenue loss	FY17 revenue neutral		N/A

S.55 vs. New Policy

Assumptions:

$10.0M	Federal Gross Estate
-$0	Federal Line 2 (deductions and exemptions)
$10.0M	Federal Taxable Estate
$3.0M	Vermont Estate
$7.0M	Non-Vermont Estate
$0	Gifts
$2.75M	Vermont Exclusion Amount

S.55	New Policy
VT Gross Estate 10M (fed taxable) – 7.0 (non VT) – 2.75 (exclusion) = 0.25M	**VT Gross Estate** 3.0M
VT Taxable Estate = $0.25M	**VT Taxable Estate =** 10 (fed taxable) – 2.75 (exclusion) = $7.25M **VT tax =** .16 * 7.25 = $1.16M **VT apportionment ratio =** VT Gross/Fed Gross = 3/10 = .3
Final Tax = .16*.25 = **$40k**	**Final Tax =** .3 * 1.16M = **$348k**