REPORT OF THE

HOUSE FINANCE SUBCOMMITTEE ON

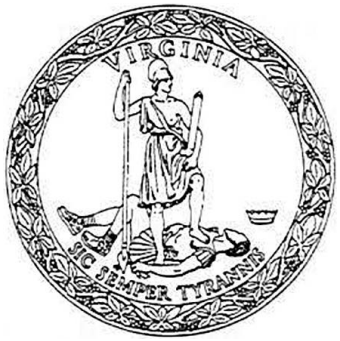
INHERITANCE & GIFT TAX LAWS

To

The Governor

And

The General Assembly of Virginia



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Commonwealth of Virginia
Department of Purchases and Supply
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Report of the

House Finance Subcommittee on

Inheritance and Gift Tax Laws

To

The Governor and the General Assembly of Virginia

Richmond, Virginia

January, 1978

TO: Honorable Mills E. Godwin, Jr., Governor of Virginia

and

The General Assembly of Virginia

I. INTRODUCTION

The study of Virginia's inheritance and gift tax structure and this report are the results of the following resolution passed at the 1977 Session of the General Assembly:

HOUSE RESOLUTION NO. 34

WHEREAS, Rule 23 of the House of Delegates charges each committee with the responsibility for inquiring into the condition and administration of the laws relating to the subjects which it has in charge; and

WHEREAS, the Committee on Finance has determined that the inheritance and gift tax laws of the Commonwealth which have been largely unchanged since nineteen hundred twenty-two deserve detailed study in the light of recent developments and recommends that the House of Delegates request a study of such laws; now, therefore, be it

RESOLVED by the House of Delegates, That the House Committee on Finance make a study of such inheritance and gift tax laws. The Committee may utilize citizen members in accordance with Rule 23, not to exceed six in number, and may also invite other members of the General Assembly to participate as if they were members of the Committee. All agencies of the Commonwealth shall assist the Committee in its study.

Pursuant to this directive, the following legislators were appointed to serve on the subcommittee: Senator Hunter B. Andrews, Chairman; Delegate Claude W. Anderson, Vice Chairman; Senator Adelard L. Brault; Senator William F. Parkerson, Jr.; Delegate Bernard G. Barrow; Delegate David G. Brickley; Delegate Frederick H. Creekmore; Delegate Thomas J. Michie, Jr.; and Delegate D. French Slaughter, Jr. The following citizen members were also appointed to serve on the subcommittee: Professor Edwin S. Cohen, Charlottesville; Lewis M. Costello, Esquire, Winchester; John Fisher, Winchester; Waller H. Horsley, Esquire, Richmond; Robert Layton, Richmond; N. Andre Nielsen, Richmond; and Carroll Kem Shackelford, Esquire, Woodberry Forest.

Delegate Archibald A. Campbell, chairman of the House Finance Committee, and Delegate Carrington Williams, chairman of the Revenue Resources and Economic Commission, were elected to serve on the subcommittee as ex-officio members.

On January 18, 1978 the House Finance Committee accepted the subcommittee's report and ordered that it be printed and distributed.

The subcommittee was assisted in its study by the staff of the Virginia Division of Legislative Services. Specific staff assigned to the subcommittee were: E. M. Miller, Jr., Staff Attorney; John A. Garka, Economist; Sally T. Warthen, Attorney; Jill M. Pope, Legislative Research Associate and William L. Higgs, Student Research Associate. Also assisting the subcommittee were representatives from the Department of Taxation, especially W. H. Forst, State Tax Commissioner, and Lawrence C. Haake, Jr., Director of Inheritance and Gift Taxes.

II. THE VIRGINIA INHERITANCE TAX

The Virginia inheritance tax applies to the beneficiaries' share of estates of residents and of nonresidents who come under its coverage. The tax levied depends on the share of the net estate (gross estate minus deductions and exemptions) received by the beneficiary and on the class of the beneficiary. There are three classes of beneficiaries.

Class A beneficiaries consist of the wife, husband, parents, grandparents, children, and all other lineally related persons. The first $5,000 of the inheritance received by each beneficiary is exempt from taxation and amounts above that are taxable as follows:

Over $5,000 to $50,000	1 percent
Over $50,000 to $100,000	2 percent
Over $100,000 to $500,000	3 percent
Over $500,000 to $1,000,000	4 percent
Over $1,000,000	5 percent

Class B beneficiaries are brothers, sisters, nephews, and nieces. They each receive a $2,000 exemption before the inheritance is subject to tax. Class C beneficiaries are grandnephews, and grandnieces, firms,

associations, corporations, other organizations, and those not elsewhere classified. In this class the first $1,000 of the inheritance is exempt. The inheritances of Class B and C beneficiaries are taxable as follows:

	Class B	Class C
Over $1,000 to $2,000		5 percent
Over $2,000 to $25,000	2 percent	5 percent
Over $25,000 to $50,000	4 percent	7 percent
Over $50,000 to $100,000	6 percent	9 percent
Over $100,000 to $500,000	8 percent	12 percent
Over $500,000	10 percent	15 percent

In conjunction with the above tax rates and exemptions Virginia imposes a minimum tax equal to the federal estate tax credit if that credit is larger than the Virginia inheritance tax. This allows Virginia to take full advantage of the federal credit for State death taxes and maximize its revenues because the Virginia tax assessment will never be less than the maximum federal credit for State death taxes. This process of imposing a floor on the tax liability is referred to as the "pick-up" statute. It should be noted that this "pick-up" does not increase the estate's taxes because in the absence of the Virginia "pick-up" tax, the federal estate tax would require these same dollars to be paid to the federal government.

III. THE VIRGINIA GIFT TAX

The Virginia gift tax was intended to complement the Virginia inheritance tax and operates on a similar framework. An important distinction, of course, is that the value of both the gift property and the gift taxes paid is removed from the cumulative rate structure of the Virginia inheritance tax.

The Virginia gift tax applies to the beneficiary shares of all property within the jurisdiction of the Commonwealth, real and personal, that is passed by gift in any one calendar year. The tax levied depends upon the actual value of the net taxable gift (total actual value of gift minus exemptions) received by each beneficiary. The exemptions, classes, and tax rates of the Virginia gift tax are identical to those of the inheritance tax. If an individual makes a number of gifts during the same calendar year to the same individual, the gift tax is based on the cumulative actual value given to each beneficiary during that one calendar year. The tax is paid by the donor on May one following the end of that calendar year.

Gifts made within three years of death are presumed to have been made to avoid the Virginia inheritance tax. If such gifts are brought back into the taxable estate, the gift tax previously paid is allowed as a credit against the inheritance tax due. Also, a gift made during lifetime, with possession of the property or its income retained by the donor until death, will not be effective in excluding the gifted property from the estate or inheritance tax. Thus, death bed gifts or transfers of all of an individual's "support" assets are not effective tax avoidance plans under present law.

In fiscal year 1975-76, Virginia received $17.4 million from the inheritance tax and $1.3 million from the gift tax.

IV. VIRGINIA AND FEDERAL DEATH TAXES

Virginia's first death tax was enacted in 1844. It imposed on collateral heirs a tax for the privilege of receiving an inheritance, measured by 2% of the value of the inheritance received. In 1916, this tax was extended to the inheritances of family heirs (that is, spouse and lineal heirs). In 1934, substantially the present tax rates and exemptions were enacted.

Since 1916, the federal government has levied a death tax on a decedent's privilege of transmitting property at death. In 1926, Virginia adopted absolute conformity with the federal tax in every case where the credit for State death tax paid, computed under the federal estate tax law, exceeds the aggregate tax otherwise payable under the regular Virginia inheritance tax law. Currently, due largely to the low maximum inheritance tax rates for close family (Class A) beneficiaries (i.e., a maximum of 5% as compared to the 70% maximum federal rate), Virginia's conforming estate tax applies automatically to all estates of $550,000 or more left outright to one child, or $1,100,000 or more left outright to a spouse. Because of certain exclusions under the Virginia inheritance tax and its multiple tax rate structure, the threshold of the Virginia conforming estate tax can be even lower in many cases.

The Virginia conforming estate tax is commonly referred to as a "pick-up" tax because it merely takes the credit allowed under the federal estate tax. For example, on a taxable estate of $500,000 the gross federal estate tax would be $155,800 and the State death tax credit allowed would be $10,000. If this estate is to be divided equally between the decedent's two children, after deducting $98,800, the actual amount of the federal estate tax, the aggregate Virginia inheritance tax would be only $8,900. Without the "pick-up" tax, the additional $1,100 would still have to be paid to the federal government and would not be saved by the children.

Although the distinction between a death tax on the decedent's estate (an estate tax) and tax on a beneficiary's inheritance (an inheritance tax) may seem academic in terms of the net economic burden of the tax, as a practical matter there are vital distinctions in both the structure and impact of the two types of taxes. An estate tax, for example, provides only limited means for imposing a higher tax on the shares received by friends or employees, as compared to the shares received by a spouse or child. In addition to a charitable deduction, since 1948 major dispensation has been given under the federal estate tax law to transfers to a surviving spouse (the so-called marital deduction), and in 1976 Congress granted limited special relief to orphans under age 22. Except for these important special cases, an estate tax law makes no direct distinction when applying its rates to a beneficiary's inheritance, unlike the classification of beneficiary possibilities available under an inheritance tax.

Even more significant from the standpoint of both revenues and tax

administration, an inheritance tax is necessarily limited in theory to a tax only on a beneficiary's receipt of property so that, as a result, the use of a trust or other means of conveying a future interest to a beneficiary delays the imposition of the inheritance tax because the future and often undetermined beneficiary (called a remainderman) in most instances has not yet received anything. Current Virginia law, therefore, taxes only the interests received by the beneficiaries who are entitled to life interest, and keeps open the assessment of tax on all future interests until they come into actual possession, unless the decedent's estate or beneficiaries elect to negotiate a present settlement of the tax.

Another significant distinction between the federal estate tax and the Virginia inheritance tax is the exclusion under Virginia practice of life insurance proceeds payable to a named beneficiary (other than the decedent's estate) and the deduction of the federal estate tax attributable to the value of the inheritance taxable by Virginia. Under federal law, life insurance as to which the decedent had an incident of ownership is included in the taxable estate, and no deduction is allowed for estate or inheritance taxes paid in the computation of the taxable estate.

In the area of gift taxes, Congress first enacted a gift tax in 1924 to complement the estate tax. Although initially intended to deter lifetime gifts as a means of avoiding the estate tax, in recent years the separate application of the gift tax and its lower rates, together with the impact of higher income taxes, tended to encourage the wealthy to make substantial lifetime transfers.

The volume of gifts reported for tax purposes at both State and federal levels has been surprisingly meager. When making a voluntary transfer, the donor of a lifetime gift must assume major social risks with respect to continuing his own lifestyle and the possible adverse impact of independent unearned means on the prospective donee. Furthermore, under carefully drawn statutes, lifetime gifts are ineffective in avoiding the death tax in many cases; such as, for example, the creation of joint ownership, the retention of rights in the transferred property, and transfers in contemplation of death. The requirements that control over the transferred property be irrevocably surrendered is a major deterrent to many prospective donors.

V. RECENT REFORM PROPOSALS.

As noted earlier, the Virginia inheritance and gift tax has remained basically unchanged since 1934. In 1958 and again in 1960 and 1966, proposals were made to repeal the Virginia gift tax and conform the Virginia inheritance tax to the federal estate tax law. More recent studies have been hampered by the continuing discussion of major revisions in the federal estate and gift tax area. Many individuals felt it more prudent to await the imminent changes at the federal level.

Major federal changes are now reflected in the Tax Reform Act of 1976 . By 1981, the Act, through a unified tax and credit system , will

relieve estates of up to $175,625 of any tax liability and further reduce the tax advantages of lifetime gifts as compared to transfers occurring at death. (The exempt estate level is $120,666 for persons dying in 1977, rising gradually to $175,625 for persons dying in 1981 and thereafter.) Moreover, in a dramatic change to the federal income tax provisions (now a part of Virginia income tax conformity with the federal law), complex carry-over basis rules promise significant new taxable gains to beneficiaries selling inherited property. Although lacking rules, regulations and technical amendments affecting the new Act, and any decision on conformity, the subcommittee felt that an extensive examination of the Virginia inheritance and gift tax should now be undertaken to study its overall equity and the continuing role it should play in the revenue structure of the Commonwealth.

The subcommittee has held a number of meetings during which it has thoroughly explored the present Virginia inheritance and gift tax structure and administration and has reviewed a number of alternatives, utilizing the expertise of its members, the services and data of its staff, and the cooperation of the Department of Taxation.

VI. FINDINGS

The subcommittee has found that the present Virginia inheritance and gift tax provides unreasonably burdensome treatment for Virginia's taxpayers in relation to the revenues derived by the Commonwealth. The present exemption amounts are unrealistically low. The $5,000 exemption allowed for a Class A beneficiary ($2,000 for Class B and $1,000 for Class C) does not allow the same exemption in real terms as it allowed in the 1930's. For example, the real value of a $5,000 exemption in 1934, adjusted for inflation only, is equivalent to $23,200 in 1977 dollars. Moreover, Virginia's exemption amounts for a surviving spouse are lower than any other state except Maryland and Pennsylvania. (See Appendix I.) In addition to exemptions, a large number of other states grant preferential deductions for a surviving spouse. (See Appendix II for the types of death taxes imposed by other states.)

To better understand who actually pays the inheritance tax, the subcommittee studied comprehensive data compiled from over 25,000 inheritance tax returns filed in fiscal year 1973-74. The data shows that the vast majority of the returns were in the lower brackets and produced an extremely small amount of revenue. For example, beneficiaries in the exempt and lowest taxable level of each of the three classes (i.e., less than $50,000 for Class A, and less than $25,000 for Class B and C) filed 84.7 percent of the total returns while yielding only 13.0 percent of total revenue exclusive of the "pick-up" returns. (See Appendix III and IV. Appendix III shows the number of beneficiaries, taxable amount, and total tax collections by class and by tax rate level. Appendix IV contains the percentage distribution of these items.)

Revenues resulting from the "pick-up" minimum tax produced a large portion of revenue from a small number of returns. Fewer than 100

returns brought in over $3.2 million in revenue during this period.

The present inheritance tax places an unusual compliance and administrative burden on many estates due to the requirement that all estates over $1,000 must file a return. Moreover, the low exemptions mean that inheritances of over $1,000 (for Class C) must file a return and actually pay a tax. This places even the smallest estates in the burdensome position of having very little tax liability but yet having to spend money for the legal and administrative expenses associated with the filing of the proper tax return.

The settlement of a decedent's estate has traditionally involved many administrative burdens to protect the rights of heirs, creditors, and the tax collector. Post death transfers of real estate are particulary prone to additional costs, since there are often both probate and tax lien procedures involved.

Many observers have critized the Virginia inheritance tax because of its automatic lien procedure, taking note of the certificate which present law requires the Department of Taxation to file with local clerks giving notice of inheritance taxes paid. The fact of the matter is, however, that the federal government also has an automatic lien for estate taxes, and title examiners, insurance companies and others interested in real estate transactions would still require a bond, escrow or release not only for taxes but for debts, will contents and the like.

In order to add a degree of conformity to the tax procedures here, and to relieve the Department of some of its continuing administrative tax burden, the subcommittee believes that conformity with the federal lien procedures would be desirable. This should become especially relevant under the "pick-up" tax format.

The subcommittee also notes the costs imposed on the Department of Taxation for the processing of some 25,000 inheritance tax returns, most of which yield either no revenue or very small amounts. The Department of Taxation spends approximately $250,000 annually administering the tax. A major portion of the cost is spent either on small returns that yield little or no revenue, or on costs associated with the complexities of the tax, some of which are enumerated in the following paragraph.

The present inheritance and gift tax structure is extremely complex. Even the Virginia Department of Taxation has characterized these taxes as "the department's most intricate and technical taxes." The complexity stems partly from three different classes of beneficiaries, three different rate schedules and exemption amounts, the prevalent use today of trusts and other forms of future interest transfers, and the small inheritances that are affected. Although the inheritance tax law allows a lower tax rate to be used on the shares of beneficiaries who are more closely related to a decedent than other beneficiaries, the administrative awkwardness often outweighs any perceived benefits of such a system.

In practice, the present system of lower rates and higher exemptions

for close family members (Class A beneficiaries) results in favored treatment principally in cases of intestacy. Most wills today contain a nonapportionment-of-taxes clause which neutralizes the impact of the inheritance tax's class structure by treating the aggregate tax merely as a charge against the residuary estate, just like any other routine expense of settling the estate.

The application of the "pick-up" tax under present law can also cause some curious inconsistencies in the treatment of beneficiaries even when taxes are apportioned. For example, suppose a man has an adjusted gross estate of $500,000, of which $300,000 consists of life insurance. He directs in his will and insurance contracts that his net estate and insurance are to be divided equally between his daughter and her husband. The actual tax computation would be approximately as follows:

	Inheritance Tax*	Pick-Up Tax
Daughter (Class A)	$1,450	$5,000
Daughter's husband (Class C)	7,450	5,000
Total	$8,900	$10,000

*Virginia excludes the $300,000 in life insurance proceeds from its taxable estate, so that the inheritance tax is computed on shares of only $100,000 each.

In this case, the "pick-up" tax being larger would be assessed and shared equally by the beneficiaries notwithstanding their class for inheritance tax purposes. If, however, only $250,000 of insurance had been involved in this example, this slight change in asset composition would have brought the inheritance tax back into play and passed to the son-in-law (to the probabie surprise of the unwitting testator) a share of the estate $8,240 less than passes to his spouse.

Another area of major complexity in the inheritance tax structure is the feature which taxes property only when a beneficiary is entitled to possession. This, of course, is consistent with the basic thrust of an inheritance tax as a tax on the beneficiary's privilege of receiving property. Under an inheritance tax system, a contingent remainderman, for example, is not taxed until he is in receipt of (that is, becomes entitled to possession of) the property.

The postponement of the tax liability on future interests is outdated in light of the extensive use today of long-term, "sprinkling" trusts and similar possession-delaying devices. Administrative hardship results because a beneficiary receiving a life interest in property, or anything less than an absolute interest, is taxed only on the present value of the temporary interest. The tax on the remainder or other future interest may not be assessed until many years later when the beneficiary entitled to it actually enters into possession of that property. The Department of Taxation must, of course, keep its files open on all unresolved estates.

The Department of Taxation is authorized to use annuity tables to settle a future interest. If a satisfactory compromise cannot be reached, the tax may not be collected until years after the decedent's death. If annuity or life interest tables are used difficulties still arise. The averaging procedure works well as an average but obviously any value based on averages of life duration seldom coincides with the actual value of the specific interest. Needless to say, these are problems for the taxpayer as well as the administrator.

These areas of concern led the subcommittee to explore alternatives to an inheritance tax structure as well as changes in the present structure. The subcommittee has also examined and considered various forms of estate taxation.

VII. RECOMMENDATIONS

THE SUBCOMMITTEE RECOMMENDS THAT THE VIRGINIA INHERITANCE AND GIFT TAX BE REPEALED FOR ALL DECEDENTS DYING ON OR AFTER JANUARY 1, 1980. THE SUBCOMMITTEE RECOMMENDS THAT VIRGINIA CONTINUE TO LEVY AN ESTATE TAX EQUAL TO THE MAXIMUM FEDERAL ESTATE TAX CREDIT WHICH IS ALLOWED AGAINST THE FEDERAL ESTATE TAX. This tax is generally known as the "pick-up" tax. (See Appendix VIII for the "pick-up" tax rates.)

The subcommittee after considering various estate taxes recommends that Virginia adopt a state tax equal to the maximum federal estate tax credit. This would continue to allow Virginia, like all other states (except Nevada), to take full advantage of the present federal credit. The subcommittee recommends this change be made effective for all decedents dying on and after January 1, 1980 so that the State's revenues would not be affected until the 1980-82 biennium.

The Governor's Six Year Revenue Plan of September 15, 1977, estimates that the present inheritance and gift tax would yield approximately $23.8 million in fiscal year 1980-81 and $24.7 million in fiscal year 1981-82. The subcommittee estimates that the revenue from the "pick-up" tax would yield approximately $11.1 and $11.6 million annually in the 1980-81 and 1981-82 fiscal years, respectively. (Based on the Virginia Department of Taxation report, entitled "Analysis of Conditions and Revenue for Virginia Under Pick-Up Statute," November, 1977 and related alternative estimates.)

Moreover, the Tax Reform Act of 1976 will yield the Commonwealth unanticipated additional income tax revenue from the new carry-over basis rule. Assuming the federal income tax structure is not modified in this area, taxable gains to beneficiaries resulting from the sale of inherited property will begin to yield additional income taxes. The Department of Taxation estimates this will yield approximately $0.5 million of additional revenue in fiscal year 1980-81 and $0.7 million in fiscal year 1981-82. (Based on the Virginia Department of Taxation report entitled "Revenue

Estimates for Virginia Under the New Carryover Basis , November, 1977.)

The subcommittee's recommendation, therefore, would result in the Commonwealth experiencing a revenue loss of approximately $12.2 million in fiscal year 1980-81 and $12.4 million in fiscal year 1981-82. Although the subcommittee views this revenue loss as not insignificant, the considerations listed in the next section mitigate any actual revenue loss.

As part of the adoption of the federal "pick-up" tax, THE SUBCOMMITTEE ALSO RECOMMENDS CONFORMITY TO THE FEDERAL LIEN PROCEDURE. Since under the new format Virginia would be closely allied with the federal government's tax assessment and collection procedures, conformity with the federal practice appears appropriate.

Finally, the subcommittee is concerned about the possible gaps in the present "pick-up" tax law which would not cover any lifetime gifts. ACCORDINGLY, THE SUBCOMMITTEE RECOMMENDS THAT ADJUSTMENTS BE MADE TO THE FEDERAL TAXABLE ESTATE TO INCLUDE TAXABLE GIFTS WHICH ARE PROPERLY INCLUDIBLE TO ALLOW THE STATE DEATH TAX CREDIT RATES TO BE APPLIED BY VIRGINIA AS A TAX UPON DECEDENT'S ADJUSTED TAXABLE GIFTS (THAT IS, THE TOTAL AMOUNT OF TAXABLE GIFTS MADE BY A DECEDENT AFTER DECEMBER 31, 1979, OTHER THAN GIFTS INCLUDIBLE IN THE FEDERAL GROSS ESTATE).

VIII. RATIONALE FOR RECOMMENDATIONS

A. SIMPLICITY

The present Virginia inheritance tax is an extremely intricate and administratively burdensome tax that affects a large number of Virginians but that yields relatively little revenue. In fiscal year 1980-81, the estimated inheritance and gift tax collections of $23.8 million would be less than one percent of the estimated General Fund collections of $2.523 billion. Thus, while sacrificing little revenue from a small revenue source, the Commonwealth can eliminate the tax liability and remove the filing burden for virtually all Virginians. Morever, the complexities of an inheritance tax, including the problems of future interest valuation as discussed above in the findings section, would be eliminated.

In fiscal year 1973-74, a "pick-up" only tax would have removed 25,000 Virginians from the tax and/or filing requirement. The only estates that will be subject to the filing requirement and the Virginia "pick-up" tax will be the larger estates that have a federal liability and therefore must file a federal return (e.g., estates in excess of $175,000, reduced by prior taxable gifts or estates in excess of $425,000 if a full marital deduction is utilized) or a special estate where there is a Virginia estate tax liability derived from prior taxable gifts. The staff estimates that only 710 estates will be subject to the proposed tax in Virginia in 1981. (See Appendix V.)

B. EQUITY

Under the present structure, inheritances of equal value pay different taxes. Moreover, over 40 years of inflation and changes in the structure of the economy have outdated exemption levels and placed undue hardship on small estates that must still comply with the low filing requirement. The subcommittee feels the taxation of small and moderate inheritances is inequitable and counterproductive. The elimination of the inheritance tax will afford relief primarily to Class A beneficiaries (consisting of surviving spouses, children, parents, etc.) which provide 56.6 percent of the tax, 78.4 percent of the total taxable inheritances and 61.2 percent of the returns (see Appendix IV) although clearly all beneficiaries, regardless of the size of the inheritance, will receive relief. The larger estates will not escape taxation, however, because they will still be subject to the "pick-up" tax; that is, the maximum federal estate tax credit for state taxes. (Appendix VI and Appendix VII present federal tax liability in 1981 for no deduction and a marital deduction, respectively.)

The major argument voiced by the proponents of inheritance taxation was that it allowed for preferential treatment for closely related beneficiaries. The subcommittee's recommendation would accord surviving spouses more preferential treatment through incorporation of the federal marital deduction provision whereby one-half the property left to a surviving spouse, with a minimum allowance of $250,000, can be exempt.

In the subcommittee's view it is not fair to characterize a transfer to the form of estate tax represented by the "pick-up" tax as relief primarily for Class B and C beneficiaries. Even under the present inheritance tax, Class A beneficiaries bear well over one-half the taxes assessed and, as noted above, the impact of the class structure is largely negated today by the prevalent use of the standard nonapportionment-of-taxes clause. In many cases, the net result of Class C beneficiary treatment for in-laws, employees, friends and others is in fact a further reduction of the shares passing to the family who ultimately receive the residue reduced by all taxes and other estate settlement expenses.

C. SAVINGS IN ADMINISTRATIVE COSTS

Those estates subject to the "pick-up" tax will be required to file a copy of the federal estate tax return with a single calculation of the Virginia tax. This should require no additional expense to the taxpayer. Moreover, Virginia by conforming to the federal estate law, and relying on the federal verification and audit, can save the Department of Taxation a portion of the $250,000 annual cost of administration.

D. REVENUE CONSIDERATIONS

The subcommittee notes that the expected revenue loss can be easily accomodated by a number of alternatives. First, the recommendation would not be effective until the 1980-82 biennium, and would thus not affect any budgetary period where the full amount of revenues have been anticipated. Second, the subcommittee notes that the revenue loss may be offset by increased revenue collections resulting from increased real growth as well as inflation. However, if it becomes necessary to make-up a revenue loss,

Fiscal Prospects and Alternatives: 1976 provides a number of alternative revenue options.

Finally, an improved tax climate may help attract individuals that are near retirement age to Virginia. Virginia should then be able to compete with Florida and other inheritance tax " haven" states for residents of wealth, both large and small, and the individuals so attracted will be paying income, sales and other general fund taxes to Virginia to further reduce the modest loss from repeal of the inheritance and gift taxes.

E. ELIMINATION OF VIRGINIA GIFT TAX

A majority of the subcommittee feels that the General Assembly should not completely exempt otherwise effective lifetime gifts from the imposition of a Virginia transfer tax. Under the new federal law, estate and gift taxes have been integrated, but the provisions of the state death tax credit conform to the pre-1977 estate tax base and do not include gifts made after December thirty-one, nineteen hundred seventy-six for "pick-up" tax computation purposes, unless made within three years of death.

Recognizing that only 15 other states presently impose any gift tax (see Appendix II) and that only insignificant revenues will be involved in 1980 when the Virginia "pick-up" tax takes effect, a majority of the subcommittee nevertheless believes that equity requires an adjustment to the tax base for Virginia "pick-up" tax purposes to include the value as reported on the federal estate tax return of all gifts made after December thirty-first, nineteen hundred seventy-nine. This will automatically incorporate the present $3,000 annual federal gift tax exclusion, and require an additional modification to exclude gifts made during 1977, 1978 and 1979 which would already have been taxed under the still effective Virginia gift tax law.

Under this proposal, Virginia would not impose any gift tax at the time the lifetime transfer is made. Relying upon the deterrent effect of the federal tax rates (which impose a minimum rate of 32% on federally taxable gifts made in 1980 and thereafter), Virginia would await the donor's death to impose its tax as a further adjustment to the "adjusted taxable estate", to be assessed by Virginia independently beginning at the top marginal rate achieved by the donor's estate in computing the state death tax credit. For example, if a decedent in 1985 had an adjusted taxable estate of $500,000 for state death tax credit purposes and had made effective gifts in 1980 and 1981 of an additional $100,000 as reported for federal estate tax purposes, Virginia would assess not only the permitted $10,000 "pick-up" tax but also an additional $4,000 estate tax with respect to the includible lifetime gifts. The total of $14,000 would be the amount of the "pick-up" tax if the taxable federal estate had been $600,000.

IX. RECOMMENDATIONS FOR FUTURE STUDY

Assuming the recommendations of the subcommittee are adopted, an estimated 3,000 remainder interests will remain in suspense after the

repeal of the Virginia inheritance tax, at an inordinate expense to the Department of Taxation. Although many of these unclosed files involve life interests which may be taxed in any event (for example, a marital trust with a general testamentary power of appointment), or not taxed (for example, if the remainderman is not domiciled in the Commonwealth on the termination of the life interest), the subcommittee believes that consistent with simplicity and benefits which flow from reduction in the costs of government, an inheritance tax should be imposed on such remainder interests at the earliest practicable time. To exempt such interests from any further tax would grant a windfall to those remainders now outstanding and encourage delayed taxes for decedent's estates in the interim before the effective date of the new "pick-up" only tax system.

The simplest method for eliminating the untaxed remainders is to close all interests for inheritance tax purposes as of January one, nineteen hundred eighty, except those of the present life interest (i.e., the normal marital trust) and may fairly be exempted without any net loss of revenue. The subcommittee is concerned, however, about the constitutionality of such an acceleration of the tax, and has considered other alternatives such as attractive discounts for voluntary settlements and integration with a generation-skipping adjustment (as applicable).

THE SUBCOMMITTEE RECOMMENDS THAT FURTHER STUDY BE GIVEN TO THE TRANSITIONAL TAXATION OF OUTSTANDING REMAINDER INTERESTS AND THAT,AFTER SUCH STUDY, APPROPRIATE LEGISLATION BE INTRODUCED ON THIS SUBJECT IN THE 1979 GENERAL ASSEMBLY.

Prior to the 1976 Tax Reform Act, a major area of death tax avoidance for the very wealthy was available through so-called generation-skipping transfers. Simply, a son could be given by his father a lifetime use and benefit of a substantial inheritance which, at the son's subsequent death, could pass to the son's children (the father's grandchildren) free of any further estate tax.

Complex new legislation has attempted to curb the tax avoidance of certain generation-skipping transfers effected after April thirty, nineteen hundred seventy-six, by imposing a new generation-skipping tax coordinated with, but separate from, the federal estate tax. The tax itself is normally not the liability of a decedent's estate, but under the federal statute is made the liability of the trust or distributee. At present, no regulations have been proposed to clarify the intricate provisions enacted last year or to show exactly how the "coordination" of the generation-skipping tax with the estate tax is to be accomplished.

A majority of the subcommittee believes that, if Virginia allows any adjustment to its new "pick-up" tax (for example, for lifetime gifts), then an appropriate adjustment may also be desirable to extend the "pick-up" tax rates to generation-skipping transfers otherwise taxable for federal purposes. Detailed study of the generation-skipping transfers as well as recommendations as to how this may be most easily accomplished would be presented to a subsequent session of the General Assembly after a

comprehensive study of the finally published federal rules in this area.

The minority of the subcommittee that opposes any adjustments to the presently allowed state death tax credit (whether for lifetime gifts, generation-skipping transfers or other exceptions) believes that the small revenue involved and additional administrative burden retained do not warrant the surrender of simplicity and the potential chilling effect such adjustments may have on maintaining Virginia as an attractive domicile for the wealthy. Certain of the subcommittee members also feel that the retention of any type of death or gift tax system (other than the permitted federal credit) is an anachronism today in light of the high tax revenues already derived from more progressive income and consumption taxes.

THE SUBCOMMITTEE ALSO RECOMMENDS THAT FURTHER STUDY BE GIVEN TO THE DESIRABILITY OF EXTENDING THE "PICK-UP" TAX RATES TO GENERATION-SKIPPING TRANSFERS OTHERWISE TAXABLE FOR FEDERAL PURPOSES, AND THAT AFTER SUCH STUDY, APPROPRIATE LEGISLATION BE INTRODUCED ON THIS SUBJECT IN THE 1979 GENERAL ASSEMBLY.

Your subcommittee suggests that the attached legislation (see Appendix IX) be introduced in the 1978 Session of the General Assembly to implement these recommendations.

Respectively submitted,

Hunter B. Andrews, Chairman

Claude W. Anderson, Vice-Chairman

Bernard G. Barrow

David G. Brickley

Adelard L. Brault

Frederick H. Creekmore

Thomas J. Michie, Jr.[1]

William F. Parkerson, Jr.[2]

D. French Slaughter, Jr.[3]

Edwin S. Cohen[4]

Lewis M. Costello

John Fisher

Waller H. Horsley[5]

Robert Layton

N. Andre Nielsen[6]

Carroll Kem Shackelford[7]

Archibald A. Campbell, ex-officio

Carrington Williams, ex-officio

FOOTNOTES

1. See attached dissenting statement.

2. See attached dissenting statement.

3. Dissenting in part (see attached statement).

4. Approved the report as written but notes his reservation to including an adjustment for gifts.

5. Dissenting in part (see attached statement).

6. Approved the report as written but notes his reservation to including an adjustment for gifts.

7. Dissenting in part (see attached statement).

DISSENTING STATEMENT OF DELEGATE MICHIE

Although I am in complete agreement with the findings of the subcommittee concerning the present inheritance and gift tax, I cannot in good conscience concur with the subcommittee's recommendation which would involve a revenue loss beginning in the 1980-81 fiscal year. I must, therefore, respectfully abstain from signing the subcommittee's report.

The subcommittee's examination of the Virginia inheritance and gift tax laws clearly show that the present inheritance tax is burdensome, its exemptions and filing requirements are outdated and inequitable, and by its very structure it is an administratively burdensome form of death taxation. The solution to these ills, in my opinion, is the enactment of an estate tax structure that will yield approximately an equal amount of revenue as the present structure but that increases the minimum filing levels and exemption amounts to eliminate those vast majority of tax returns that yield very little or no revenue.

My recommendation would be a minimum filing requirement of $175,000 compared to the present $1,000 minimum filing level. This would continue to tax, at modest rates, moderate and large estates which can afford to pay the tax while eliminating the vast majority of all estates upon which the tax and administrative burden are the greatest. This increase in the filing requirement, which is identical to the subcommittee's recommendation and which conforms with the federal government, combined with a change to an estate tax structure would substantially reduce all the inequities and administrative problems of the present tax.

The major problem with the subcommittee's recommendation is that it causes, beginning in the 1980-81 fiscal year, an estimated revenue short-fall of approximately $12 to 12 1/2 million annually. While it is true that future growth in other general fund revenues, stemming from both real growth and inflation, will be relatively large so also will the future expenditures necessary to provide the governmental services that Virginians demand. Recent history has shown that inflation affects the governmental sector even more heavily than the private sector, primarily because of its large labor component. Moreover, an examination of general fund revenues has shown that the percentage increase in general fund revenues is gradually decelerating. Because this trend is continuing, I believe it inappropriate to recommend a tax alternative that involves a revenue loss of this magnitude.

Finally, assuming Virginia decided to reduce a particular tax, the subcommittee has not studied which existing tax is the most onerous on Virginians, and therefore, which tax should be modified or reduced.

Therefore, to accomplish the goals of the subcommittee (i.e., the repeal of the present Virginia inheritance and gift tax) bearing in mind that the Commonwealth can ill afford a revenue loss of this magnitude at the present time, I recommend the following alternative:

The adoption of an estate tax structure similar to the recommendation of the subcommittee but with some important modifications that will offset the revenue losses while retaining the benefits of an estate structure. My recommendations coincide with the subcommittee's with the following changes.

First, my recommendation is to base the Virginia "pick-up" tax rates on federal taxable estate rather than allowing a $60,000 subtraction from the federal taxable estate. An examination of Appendix VII will show that under the subcommittee's recommendation before the maximum federal estate tax credit for State death taxes is calculated, the federal taxable estate is reduced by $60,000. Moreover, I recommend the adoption of a modified "pick-up" tax rate structure which would eliminate the $40,000 exemption that was part of the subcommittee's recommendation. The modified "pick-up" tax rate schedule is presented in Table 1. Thus, under my recommendation a tax liability would result as soon as there was some federal taxable estate. Other than these two changes, however, the rate structure is the same as recommended by the subcommittee.

These changes would increase the taxable base by $100,000 for all those estates which are taxable under the subcommittee's recommendations. Thus, the taxable base of each of the taxable returns would increase by $100,000 and this increase would be taxable at the top marginal rate applicable to each estate. This additional tax, of course, would not be allowed by the federal government as a credit. The staff estimates these changes alone would yield approximately $5.7 million of additional revenue in the 1980-81 fiscal year.

The second major recommendation that I propose is that the marital deduction be limited to one-half of the gross estate regardless of the size of the gross estate. The subcommittee's recommendation was to allow a marital deduction of one-half of the gross estate or $250,000, whichever was larger. I feel, however, this marital deduction could properly be modified to a straight one-half. In

conjunction with this change I recommend that Virginia levy a modified "pick-up" tax regardless of whether it is allowed against the federal estate tax. The subcommittee recommended that the "pick-up" tax be imposed only up to the amount of the federal estate tax. My recommendation could be accomplished by placing the tax rates in Table 1 directly into the statutes. This would also make the rates more permanent rather than requiring Virginia to depend on the whims of federal government.

This second recommendation would have the effect of imposing a tax on some estates that are not taxable and increasing the amount of tax levied against some estates. It would impose a tax on some estates that were previously exempt either because there was no federal estate tax liability, after allowance for the credits granted under the Tax Reform Act of 1976, or because of the minimum $250,000 standard marital deduction. Moreover, the recommendation would increase the tax on some estates because the Virginia tax would no longer be limited by the amount of the federal tax liability, after credits.

The staff estimates that the second recommendation will yield approximately $2 million of additional revenue in the 1980-81 fiscal year.

Thus, under my recommendations all estates over $175,000 will have some tax liability. Moreover, my recommendations would bring the treatment of estates with a marital deduction more in line with those without a marital deduction. For example, under the subcommittee's recommendation the "pick-up" tax did not come into play until the gross estate exceeded $425,000, assuming the standard marital deduction

was taken and $175,000 assuming no deduction was taken. The changes I propose would cause the tax threshold level for all estates to be $175,000. Although this would place the marital deduction estates more in line with non-marital estates in terms of the threshold of tax liability, it would continue to grant estates that take the standard marital deduction a benefit in terms of tax liability. For example, the tax on a gross estate of $175,000, assuming no deduction, would be $3,000 under my recommendation, while the tax on a similarly valued estate utilizing a marital deduction would be $1,000.

To help illustrate the impact of my recommendations, the staff has prepared the following table which compares the tax liability under the subcommittee's recommendations and mine, assuming no deductions except the applicable marital deduction.

NON-MARITAL DEDUCTION

TAX

Gross Estate	Subcommittee recommendation	Michie recommendation
$ 175,000	$ 0	$ 3,000
300,000	3,600	6,800
425,000	7,600	11,000
1,000,000	33,200	38,800
2,000,000	99,600	106,800

STANDARD MARITAL DEDUCTION

TAX

Gross Estate	Subcommittee recommendation	Michie recommendation
$ 175,000	$ 0	$ 1,000
300,000	0	2,400
425,000	0	4,000
1,000,000	10,000	14,000
2,000,000	33,200	38,800

The revenue yield of these recommendations combined with the revenue yield of the carry-over basis change would yield approximately $19.3 million in fiscal year 1980-81. This would almost balance the estimated revenues from the inheritance and gift tax structure while retaining the administrative and equity benefits of an estate form of taxation.

TABLE 1

PROPOSED VIRGINIA TAX
(Based on Federal Taxable Estate, as modified)

Amount equal to or more than	Amount less than	Rate of tax (percent)
$ 0	$ 50,000	0.8
50,000	100,000	1.6
100,000	200,000	2.4
200,000	400,000	3.2
400,000	600,000	4.0
600,000	800,000	4.8
800,000	1,000,000	5.6
1,000,000	1,500,000	6.4
1,500,000	2,000,000	7.2
2,000,000	2,500,000	8.0
2,500,000	3,000,000	8.8
3,000,000	3,500,000	9.6
3,500,000	4,000,000	10.4
4,000,000	5,000,000	11.2
5,000,000	6,000,000	12.0
6,000,000	7,000,000	12.8
7,000,000	8,000,000	13.6
8,000,000	9,000,000	14.4
9,000,000	10,000,000	15.2
10,000,000		16.0

Statement of Senator William F. Parkerson, Jr.

Although I am in agreement with some of the findings of the subcommittee concerning the present inheritance and gift tax, I cannot approve the recommendations of the subcommittee.

I agree that the present exemption amounts are inadequate and do not reflect the realities of today's economy. I also feel that the minimum filing level for estates should be adjusted upward. Moreover, I feel that the interests of the Commonwealth would be better served if the present inheritance tax structure was replaced with an estate form of taxation.

However, I cannot approve the subcommittee's recommendations because at the present time I am unwilling to forego approximately $12.5 million annually beginning in fiscal year 1980 - 81. The subcommittee's recommendation would eliminate a large number of substantial estates from taxation which I believe could and should be taxed, at modest rates, to help support the services of the Commonwealth. Under the subcommittee's recommendation, estate left to a surviving spouse would not be taxable unless they exceeded $425,000. It should be noted that this would be a significant departure from the present structure when a surviving spouse receives a $5,000 exemption.

In light of the complexity of some of the issues discussed by the subcommittee, the number of unresolved issues, such as, the federal generation - skipping tax and the transitional taxation of outstanding remainder interests, and the substantial length of the time until the effective date of the subcommittee's recoemmendations, I recommend that no action be taken at this time. I recommend the work of the subcommittee continue for another year to allow the subcommittee to benefit from the more conclusive resolution of some of the issues as well as additional time to consider and hear the views of additional knowledgeable experts.

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D. FRENCH SLAUGHTER, JR.
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ROGER L. MORTON

TELEPHONE
AREA CODE 703
825-0700

12 January 1978

The Honorable Hunter B. Andrews
Chairman, House Finance Subcommittee
on Inheritance and Gift Tax Laws
Senate of Virginia
State Capitol
Richmond, Virginia 23219

Re: Inheritance and Gift Tax Subcommittee

Dear Hunter:

I signed the report indicating my approval because I was sure you wanted to get a response as quickly as possible with the legislature beginning its session this week.

I did not realize that a majority of the committee favored inheritance taxes with respect to generation-skipping transfers, life-time gifts, etc. I am opposed to any tax at death on account of such transfers.

Of course, I am in favor of outright repeal of the Virginia inheritance and gift taxes and the use of the "pick-up" tax.

To impose death taxes because of gifts or any other lifetime transfers complicates our tax system. We have too much complexity now and we should not substitute one set of complexities for another.

So far as the possibility that certain estates might escape Virginia taxation because of the repeal of the gift taxes -- I do not see this happening as any donor who is influenced by tax consequences makes his decision on the basis of the Federal tax structure because of its greater impact rather than the Virginia tax structure.

Loss of revenue is insignificant as a percentage of the expected growth of state revenues by the biennium beginning 1980. Surely, we can reduce by what might otherwise be the growth of the cost of government by this small percentage.

Also, I did not understand the report as to the matter of tax liens. It is my understanding that the Federal government does not have a lien on real estate for estate tax liability until it has filed a notice of lien in the proper city or county Clerk's Office. I had understood this to be embodied in Section 6323 of the Internal Revenue Code.

I agree with the objections of Waller Horsley.

I do hope very much that you and the other legislative members of the subcommittee will be successful in passing the bill for outright repeal of the inheritance and gift taxes. The other questions could be studied later although I do not see the real need for any further study.

With kindest regards.

Sincerely,

D. French Slaughter, Jr.

DFSJr/jc

Claude W. Anderson
Bernard G. Barrow
David G. Brickley
Adelard L. Brault
Frederick H. Creekmore
Thomas J. Michie, Jr.
William F. Parkerson, Jr.
Edwin S. Cohen
Lewis M. Costello
John Fisher
Waller H. Horsley
Robert Layton
N. Andre Nielson
Carroll Kem Shackelford
John A. Garka

Archibald A. Campbell
Carrington Williams

VIEWS OF WALLER H. HORSLEY

CONCURRING IN PART AND DISSENTING IN PART

I concur with the findings of the subcommittee and its recommendations for outright repeal of the Virginia inheritance and gift taxes. I do not believe that retention of a gift tax adjustment, or any other adjustment to the Virginia "pick-up" tax, is consistent with the findings and recommendations of the subcommittee; and I, therefore, register my strong dissent as to these features of the subcommittee's report. Further, the practical problems involved in the continuation of a Virginia estate tax lien, which would merely duplicate the existing federal lien and constitute procedural overkill not needed by the Commonwealth, compels my dissent from that portion of the subcommittee's report also.

I also find unacceptable the recommendation of other dissenters to the subcommittee's report who feel that some form of transfer tax at death should continue to share in supporting the Commonwealth in the manner in which it has been accustomed. Although I appreciate the political concern for the loss of $12 million in general fund revenues, I cannot ascribe to the theory that two wrongs can make a right.

All concede that the present Virginia

inheritance and gift taxes are antiquated and outmoded. With the high rates that now prevail for federal income and estate taxes, Virginia's taxes do not pretend to play a significant part in any egalitarian plan to "break up the big estates". Thus, retention of a modified form of Virginia estate tax designed to preserve for the State its present level of revenue (as difficult as this may be with a tax that depends upon the unpredictable date of death) apparently endorses the theory that a tax, no matter how unfair, can nevertheless "succeed" politically as long as it does not involve too much of a burden on too many people.

Although perhaps politically pragmatic, I find any such basis for tax reform unacceptable - especially when, as in this case, the proposed "compromise" involves the sacrifice of the most fundamental features of the subcommittee's recommendations; namely, narrow application of the tax based on ability to pay, simplicity in the tax law and reduction of the costs of government.

In essence, the subcommittee without dissent found that the present Virginia inheritance and gift tax laws are unfair to the citizens of the Commonwealth, and too complicated and expensive than warranted by the sporadic revenue derived. All of these shortcomings can be cured, and in my opinion the interest of the Common-

wealth and all its citizens can be significantly advanced, by repeal of the present Virginia inheritance and gift taxes and retention of a "pick-up" only tax without adjustments.

Under current revenue projections, the addition of a mere .20% to the highest individual income tax bracket (i.e., moving the top rate from 5.75% to 5.95% on taxable incomes over $12,000) would more than replace the revenues lost, net after administrative savings gained, from the repeal of the Virginia inheritance and gift taxes. The net income tax is, in my opinion, the fairest tax yet devised in this country, and is one of the more obvious alternatives if the essential cost of State government must be maintained without a revenue loss.

The State has no vested interest in any existing tax source. The time has come for the public's elected representatives to be statesmenlike in their approach to tax reform, tax simplification and reductions in the cost of government. Curtailment of tax revenues from repeal of the Virginia inheritance and gift taxes would be a step in the right direction.

Waller H. Horsley

January 10, 1978

CARROLL KEM SHACKELFORD
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11 January 1978

Senator Hunter B. Andrews
Room 321
Legislative Office Building
Richmond, Virginia 23219

Dear Hunter:

I am enclosing my approval of the final report of the Inheritance and Gift Tax Subcommittee.

However, I ask that the record reflect that I am opposed to the creation of a state tax lien as set forth in the recommendations of the report (p. 19) and in the proposed statutes (58-238.10 at p. 49). I believe that, in view of the provisions for a federal lien, a state lien is unnecessary to assure collection of the estate taxes due, and would only create difficulties in situations where no filing is required and where there is no qualification.

I also enclose a copy of a letter to Delegate Michie in regard to his dissent to the Subcommittee's report.

Very sincerely,

Carroll Kem Shackelford

enc.

CKS/wj

APPENDIX TABLES

APPENDIX I – STATE INHERITANCE TAX RATES AND EXEMPTIONS, FOR SELECTED CATEGORIES OF HEIRS, JANUARY 1, 1976

State[1]	Exemptions					Rates (percent)				In case of spouse	
	Widow	Minor child	Adult child	Brother or sister	Other than relative	Spouse or minor child	Adult child	Brother or sister	Other than relative	Size of first bracket	Level at which top rate applies
Alabama[2]	....	....	....	....	....	....	....	....	....	....	....
Alaska[2]	....	....	....	....	....	....	....	....	....	....	....
Arizona[2]	....	....	....	....	....	....	....	....	....	....	....
Arkansas[2]	....	....	....	....	....	....	....	....	....	....	....
California[3,4]	$60,000	$12,000	$ 5,000	$ 2,000	$ 300	3 – 14	3 – 14	6 – 20	10 – 24	$ 25,000	$ 400,000
Colorado	30,000	15,000	10,000	2,000	500[5]	2 – 8	2 – 8	3 – 10	10 – 19	50,000	500,000
Connecticut[3,6,7]	50,000	10,000[8]	10,000[8]	3,000	600	3 – 8[9]	2 – 8	4 – 10	8 – 14	150,000	1,000,000
Delaware[3]	20,000	3,000	3,000	1,000	None	1 – 4[9]	1 – 6	5 – 10	10 – 16	50,000	200,000
District of Columbia[3]	5,000	5,000	5,000	2,000	1,000	1 – 8	1 – 8	5 – 23	5 – 23	50,000	1,000,000
Florida[2]	....	....	....	....	....	....	....	....	....	....	....
Georgia[2]	....	....	....	....	....	....	....	....	....	....	....
Hawaii	20,000	5,000	5,000	500	500	2 – 6[9]	1.5 – 7.5	3.5 – 9	3.5 – 9	15,000	250,000
Idaho[4]	10,000	10,000	4,000	1,000	None	2 – 15	2 – 15	4 – 20	8 – 30	25,000	500,000
Illinois	20,000	20,000	20,000	10,000	100	2 – 14[10]	2 – 14	2 – 14	10 – 30	20,000	500,000
Indiana[3]	15,000	5,000	2,000	500	100	1 – 10	1 – 10	5 – 15	7 – 20	25,000	1,500,000
Iowa	80,000	15,000	15,000	None[11]	None[11]	1 – 8	1 – 8	5 – 10	10 – 15	5,000	150,000
Kansas	75,000	15,000	15,000	5,000	200[5]	0.5 – 2.5[9]	1 – 5	3 – 12.5	10 – 15	25,000	500,000
Kentucky	10,000	10,000	5,000	1,000	500	2 – 10	2 – 10	4 – 16	6 – 16	20,000	500,000
Louisiana[3,4]	5,000	5,000	5,000	1,000	500	2 – 3	2 – 3	5 – 7	5 – 10	25,000	25,000
Maine	50,000	25,000	25,000	1,000	1,000	5 – 10	5 – 10	8 – 14	14 – 18	50,000	250,000
Maryland[5]	150	150	150	150	150	1	1	10	10	[13]	[13]
Massachusetts[15]	....	....	....	....	....	....	....	....	....	....	....
Michigan[3,16]	30,000[17]	5,000	5,000	5,000	None	2 – 8	2 – 8	2 – 8	10 – 15	50,000	750,000
Minnesota[3,16]	30,000	15,000	6,000	1,500	500	1.5 – 10	2 – 10	8 – 25	8 – 30	25,000	1,000,000
Mississippi[2]	....	....	....	....	....	....	....	....	....	....	....
Missouri	20,000[17]	5,000[18]	5,000[18]	500	100[5]	1 – 6	1 – 8	3 – 18	5 – 30	20,000	400,000
Montana[3]	25,000	5,000	2,000	500	None	2 – 8	2 – 8	4 – 16	8 – 32	25,000	100,000
Nebraska[3]	10,000	10,000	10,000	10,000	500	1	1	1	8 – 18	[13]	[13]
Nevada					No tax imposed						
New Hampshire	[19]	[19]	[19]	None[19]	None[19]	[19]	[19]	15	15	[19]	[19]
New Jersey	5,000	5,000	5,000	500[5]	500[5]	1 – 16	1 – 16	11 – 16	15 – 16	10,000	3,200,000
New Mexico[2]	....	....	....	....	....	....	....	....	....	....	....
New York[3]	....	....	....	....	....	....	....	....	....	....	....
North Carolina[20]	10,000[21]	5,000[21]	2,000	None	None	1 – 12	1 – 12	4 – 16	8 – 17	10,000	3,000,000
North Dakota[2]	....	....	....	....	....	....	....	....	....	....	....
Ohio[2]	....	....	....	....	....	....	....	....	....	....	....
Oklahoma[3]	....	....	....	....	....	....	....	....	....	....	....
Oregon[22,23]	[23]	[23]	[23]	1,000[24]	600[24]	3 – 12	3 – 12	3 – 20	5 – 25	25,000	500,000

See footnotes at the end of table.

APPENDIX I – STATE INHERITANCE TAX RATES AND EXEMPTIONS, FOR SELECTED CATEGORIES OF HEIRS, JANUARY 1, 1976 (Cont'd)

State[1]	Exemptions					Rates (percent)				In case of spouse	
	Widow	Minor child	Adult child	Brother or sister	Other than relative	Spouse or minor child	Adult child	Brother or sister	Other than relative	Size of first bracket	Level at which top rate applies
Pennsylvania	None[35]	None[35]	None[35]	None	None	6	6	15	15	[12]	[12]
Rhode Island[3,22]	$10,000	$10,000	$10,000	$ 5,000	$ 1,000	2 – 9	2 – 9	3 – 10	8 – 15	$ 25,000	$1,000,000
South Carolina[3]	....	....	....	....	....	....	....	....	....	....	....
South Dakota[3,9]	60,000	10,000	10,000	500	100	1½ – 4	1½ – 4	4 – 12	6 – 20	15,000	100,000
Tennessee[3]	10,000[36]	10,000[36]	10,000[36]	1,000[36]	1,000[36]	1.4 – 9.5	1.4 – 9.5	6.5 – 20	6.5 – 20	25,000	500,000
Texas[3,4]	25,000	25,000	25,000	10,000	500	1 – 6	1 – 6	3 – 10	5 – 20	50,000	1,000,000
Utah[3]	....	....	....	....	....	....	....	....	....	....	....
Vermont[3]	....	....	....	....	....	....	....	....	....	....	....
Virginia[3]	5,000	5,000	5,000	2,000	1,000	1 – 5	1 – 5	2 – 10	5 – 15	50,000	1,000,000
Washington[3,4]	5,000[37]	5,000[37]	5,000[37]	1,000[6]	None	1 – 10	1 – 10	3 – 20	10 – 25	25,000	500,000
West Virginia[3,9]	15,000	5,000	5,000	None	None	3 – 13	3 – 13	4 – 18	10 – 30	50,000	1,000,000
Wisconsin[3,38]	50,000	4,000	4,000	1,000	500	1¼ – 6¾[9]	2½ – 12½	5 – 25	10 – 30	25,000	500,000
Wyoming	60,000	10,000	10,000	10,000	None	2	2	2	6	[13]	[13]

[1] All States, except those designated by asterisk (*), impose also an estate tax to assure full absorption of the 80 percent Federal credit.
[2] Imposes only estate tax. See table 120.
[3] Exemptions are deductible from the first bracket.
[4] Community property passing to the surviving spouse is exempt, or only one-half is taxable.
[5] No exemption is allowed if beneficiary's share exceeds the amount shown in the exemption column, but no tax shall reduce the value of the amounts shown in the exemption column. In Maryland, it is the practice to allow a family allowance of $480 to a widow if there are infant children, and $225 if there are no infant children, although there is no provision for such deductions in the statute. Where property of a decedent subject to administration in Maryland is $5,000 or less, no inheritance taxes are due or payable on any distribution from such estate.
[6] The exemption shown is the total exemption for all beneficiaries falling into the particular class and is shared by them proportionately.
[7] An additional 30 percent surtax is imposed.
[8] Only one $10,000 exemption is allowed for beneficiaries in Class A, which includes minor and adult children.
[9] Rate shown is for spouse only. A minor child is taxed at the rates applying to an adult child.
[10] With respect to taxable transfers passing to a husband or wife of a decedent dying on or after July 5, 1969, if taxable transfer exceeds $5,000,000, the tax on the excess thereof is computed at 6%. Tax rates on the taxable amount up to and including $5,000,000 are the same rates as provided for in excess of the exemption.
[11] Estates of less than $1,000 after deduction of debts are not taxable.
[12] Entire share (in excess of allowable exemption).
[13] The inheritance tax was replaced by a new estate tax effective 1/1/76.
[14] There is no tax on the share of any beneficiary if the value of the share is less than $100.
[15] Plus an additional $5,000 for every minor child to whom no property is transferred.
[16] For a widow, an additional exemption is allowed equal to the difference between the maximum deduction for family maintenance ($5,000) and the amount of family maintenance actually allowed by the Probate Court. The total possible exemption therefore would be $35,000. If there is no surviving widow entitled to the exemption, the aggregate exemption is allowable to the children.
[17] In addition, an exemption is allowed for the clear market value of one-half of the decedent's estate, or one-third if decedent is survived by lineal descendents.
[18] Or the value of the homestead allowance, whichever is greater.
[19] No tax imposed on spouse, lineal ascendants and descendants, and eff. 3/23/72 persons who for 10 consecutive years prior to their 18th birthday were members of the decedent's household.
[20] Gift taxes paid on gifts included in the gross estate of the decedent are credited against the estate tax.
[21] A widow with a child or children under 21 and receiving all or substantially all of her husband's property, shall be allowed, at her option, an additional exemption of $5,000 for each such child. The children shall not be allowed the regular $5,000 exemption provided for such children.
[22] Imposes also an estate tax. See table 120.
[23] Oregon imposes a basic tax, measured by the entire estate in excess of a single exemption ($25,000 prorated among all beneficiaries and deductible from the first bracket); and an additional tax, measured by the size of an individual's share for which each beneficiary has a specific exemption. All members of Class I (spouse, children, parents, grandparents, stepchildren or lineal descendents) are exempted from the additional tax. In addition to exemptions and deductions allowed for insurance received from policies on the life of the decedent and for pension retirement and social security benefits, and the homestead deduction, a credit is allowed against the inheritance tax for the amount not over $300,000 of the value of the taxable estate passing, respectively, to each of the following: (1) the surviving spouse; (2) a child or stepchild under 18 at the time of the parents death; and (3) a child or stepchild found to be incompetent or who is unable to support himself by reason of physical or mental handicap. The exemption for all social security, railroad retirement, government pension or retirement plan benefits payable to each beneficiary of a deceased person is $100,000.
[24] These exemptions apply to the additional tax.
[25] The $2,000 family exemption is specifically allowed as a deduction.
[26] Widows and children are included in Class A, with one $10,000 exemption for the entire class. Beneficiaries not in Class A are allowed one $1,000 exemption for the entire class.
[27] An additional $5,000 exemption is allowed to the class as a whole.
[28] These rates are subject to the limitation that the total tax may not exceed 20 percent of the clear market value of the property transferred to any distributee.

Source: ACIR staff compilation based on Commerce Clearing House, *State Tax Reporter*.

APPENDIX II - Types of State Death Taxes,

As of October 1, 1977.

Type of Tax	State
''Pick-up'' tax only (7)	Alabama
	Alaska
	Arkansas
	Florida
	Georgia
	New Mexico
	Utah
Estate tax only (1)	Mississippi
Estate tax and ''pick-up'' tax (7)	Arizona
	New York - also has gift tax
	North Dakota
	Ohio
	Oklahoma - also has gift tax
	S. C. - also has gift tax
	Vermont - also has gift tax
Inheritance tax only (1)	South Dakota
Inheritance tax and ''pick-up'' tax (32)	California - also has gift tax
	Colorado - also has gift tax
	Connecticut
	Delaware - also has gift tax
	District of Columbia
	Hawaii
	Idaho
	Illinois
	Indiana
	Iowa
	Kansas
	Kentucky
	Louisiana - also has gift tax
	Maine
	Maryland
	Massachusetts
	Michigan
	Minnesota - also has gift tax
	Missouri
	Montana
	Nebraska
	New Hampshire
	New Jersey

		N. C. - also has gift tax
		Pennsylvania
		Tennessee - also has gift tax
		Texas
		Virginia - also has gift tax
		Washington - also has gift tax
		West Virginia
		Wisconsin - also has gift tax
		Wyoming
Inheritance, estate, and ''pick-up'' taxes	(2)	Oregon - also has gift tax
		Rhode Island - also has gift tax
No tax	(1)	Nevada

SOURCE: Virginia Division of Legislative Services compilation based on Commerce Clearing House, State Tax Reporter .

APPENDIX III - INHERITANCE TAXES EXCLUSIVE OF THE "PICK-UP" FOR FISCAL YEAR 1973-74

Class A Beneficiaries

Number of Beneficiaries Taxable at Highest Rate Shown		Amount Taxable	Total Tax Collections
Exempt	1,698	$ 0	$ 0
1%	11,577	140,268,077	1,402,625
2%	1,521	99,111,144	1,982,250
3%	1,044	181,894,651	5,456,833
4%	59	36,442,560	1,457,703
5%	14	26,660,318	1,333,016
	15,913	$484,376,750	$11,632,427

Class B Beneficiaries

Number of Beneficiaries Taxable at Highest Rate Shown		Amount Taxable	Total Tax Collections
Exempt	908	$ 0	$ 0
2%	3,705	22,584,620	451,783
4%	474	15,605,721	624,212
6%	236	16,479,698	988,782
8%	109	19,608,650	1,568,692
10%	5	5,060,575	506,058
	5,437	$ 79,339,264	$ 4,139,527

Class C Beneficiaries

Number of Beneficiaries Taxable at Highest Rate Shown		Amount Taxable	Total Tax Collections
Exempt	1,043	$ 0	$ 0
5%	3,096	16,497,461	824,963
7%	309	10,774,633	754,222
9%	127	8,561,881	770,569
12%	61	11,521,596	1,382,597
15%	7	6,968,461	1,045,268
	4,643	$ 54,324,032	$ 4,777,619
Total	25,993	$618,040,046	$20,549,573

Note: It must be noted that because of the technique used to gather the inheritance tax returns, the results include data for a period slightly larger than the 1973-74 fiscal year.

SOURCE: The data were compiled by the Department of Taxation.

APPENDIX IV

TABLE : --PERCENTAGE DISTRIBUTION OF INHERITANCE TAX DATA, EXCLUSIVE OF THE "PICK-UP", FOR RETURNS, TAXABLE AMOUNTS, AND TAX COLLECTIONS, FISCAL YEAR 1973-74

Class A Beneficiaries

Percentage of Beneficiaries Taxable at Highest Rates Shown		Percentage of Total Amount Taxable	Percentage of Total Tax Collections
Exempt	6.5%	0%	0%
1%	44.5	22.7	6.8
2%	5.9	16.0	9.6
3%	4.0	29.4	26.6
4%	0.2	5.9	7.1
5%	0.1	4.3	6.5
	61.2%	78.4%	56.6%

Class B Beneficiaries

Percentage of Beneficiaries Taxable at Highest Rates Shown		Percentage of Total Amount Taxable	Percentage of Total Tax Collections
Exempt	3.5%	0%	0%
2%	14.3	3.7	2.2
4%	1.8	2.5	3.0
6%	0.9	2.7	4.8
8%	0.4	3.2	7.6
10%	0.0	0.8	2.5
	20.9%	12.8%	20.1%

Class C Beneficiaries

Percentage of Beneficiaries Taxable at Highest Rates Shown		Percentage of Total Amount Taxable	Percentage of Total Tax Collections
Exempt	4.0%	0%	0%
5%	11.9	2.7	4.0
7%	1.2	1.7	3.7
9%	0.5	1.4	3.7
12%	0.2	1.9	6.7
15%	0.0	1.1	5.1
	17.9%	8.8%	23.2%
Total	100.0%	100.0%	100.0%

SOURCE: The data were compiled by the Department of Taxation.

APPENDIX V - Estimated Number of U. S. Estate Tax Returns at 1977 Level That Would Be Filed And Taxable in Virginia

Calendar Year	Filing Requirement	Estimated Number Filed	Estimated Number Taxable
1977 (under prior law)	$ 60,000	4,390	3,040
1977	120,000	2,370	1,150
1978	134,000	2,030	1,030
1979	147,000	1,790	910
1980	161,000	1,580	800
1981	175,000	1,400	710

SOURCE: Estimates of the Joint Committee on Internal Revenue Taxation adjusted by the Statistics of Income - 1972, Estate Tax Returns to reflect Virginia returns.

APPENDIX VI - Federal Estate Tax Liability in 1981 under pre-1977 law and under the present estate tax

(Assumes no deductions from adjusted gross estate except the specific exemption)

Gross Estate Less Expenses, Debts, Taxes and Losses (thousands)	Pre-1977 Law	Present Law	Increase or Decrease	Percentage Change
$60	0	0	0	0.0
70	$500	0	$-500	-100.0
80	1,600	0	-1,600	-100.0
90	3,000	0	-3,000	-100.0
100	4,800	0	-4,800	-100.0
150	17,900	0	-17,900	-100.0
200	32,700	7,800	-24,900	-76.1
250	47,700	23,800	-23,900	-50.1
300	62,700	40,800	-21,900	-34.9
350	78,500	57,800	-20,700	-26.4
400	94,500	74,800	-19,700	-20.8
450	110,500	91,800	-18,700	-16.9
500	126,500	108,800	-17,700	-14.0
600	159,700	145,800	-13,900	-8.7
700	194,700	182,800	-11,900	-6.1
750	212,200	201,300	-10,900	-5.1
800	229,700	220,800	-8,900	-3.9
900	266,500	259,800	-6,700	-2.5
1,000	303,500	298,800	-4,700	-1.5
1,250	399,800	401,300	+1,500	+0.4
1,500	503,000	508,800	+5,800	+1.2
1,750	613,700	621,300	+7,600	+1.2
2,000	726,200	733,800	+7,600	+1.0
2,500	968,800	978,800	+10,000	+1.0
3,000	1,231,400	1,243,800	+12,400	+1.0
3,500	1,509,600	1,528,800	+19,200	+1.3
4,000	1,802,800	1,833,800	+31,000	+1.7
4,500	2,115,400	2,158,800	+43,400	+2.1
5,000	2,430,400	2,503,800	+73,400	+3.0
6,000	3,098,000	3,203,800	+105,800	+3.4
7,000	3,796,200	3,903,800	+107,600	+2.8
8,000	4,524,400	4,603,800	+79,400	+1.8
9,000	5,282,600	5,303,800	+21,200	+0.4
10,000	6,042,600	6,003,800	-38,800	-0.6

Staff of the Joint Committee on Internal Revenue Taxation.
September 21, 1976.

APPENDIX VII - Federal Estate Tax Liability in 1981 under pre-1977 law and under the present estate tax for an estate with a marital deduction

(Assumes no deductions from adjusted gross income except the specific exemption and marital deduction)

Gross Estate Less Expenses, Debts, Taxes and Losses (thousands)	Pre-1977 Law	Present Law	Increase or Decrease	Percentage Change
$ 60	0	0	0	0
70	0	0	0	0
80	0	0	0	0
90	0	0	0	0
100	0	0	0	0
150	$ 1,050	0	$ -1,050	-100.0
200	4,800	0	-4,800	-100.0
250	10,900	0	-10,900	-100.0
300	19,300	0	-19,300	-100.0
350	25,200	0	-25,200	-100.0
400	32,700	0	-32,700	-100.0
450	40,200	$ 7,800	-32,400	-80.6
500	47,700	23,800	-23,900	-50.1
600	62,700	40,800	-21,900	-34.9
700	78,500	57,800	-20,700	-26.4
750	86,500	66,300	-20,200	-23.4
800	94,500	74,800	-19,700	-20.8
900	110,500	91,800	-18,700	-16.9
1,000	126,500	108,800	-17,700	-14.0
1,250	168,450	155,050	-13,400	-8.0
1,500	212,200	201,300	-10,900	-5.1
1,750	257,250	250,050	-7,200	-2.8
2,000	303,500	298,800	-4,700	-1.5
2,500	399,800	401,300	+1,500	+0.4
3,000	503,000	508,800	+5,800	+1.2
3,500	613,700	621,300	+7,600	+1.2
4,000	726,200	733,800	+7,600	+1.0
4,500	846,300	856,300	+10,000	+1.2
5,000	968,800	978,800	+10,000	+1.0
6,000	1,231,400	1,243,800	+12,400	+1.0
7,000	1,509,600	1,528,800	+19,200	+1.3
8,000	1,802,800	1,833,800	+31,000	+1.7
9,000	2,115,400	2,158,800	+43,400	+2.1
10,000	2,430,400	2,503,800	+73,400	+3.0

Staff of the Joint Committee on Internal Revenue Taxation.
September 15, 1976.

APPENDIX VIII - MAXIMUM FEDERAL ESTATE TAX CREDIT FOR STATE DEATH TAXES. (Based on Federal adjusted taxable estate which in the Federal taxable estate reduced by $60,000.)

Adjusted federal taxable estate equal to or more than	Adjusted federal taxable estate less than	Credit on amount in column (1)	Rate of credit on excess over amount in column (1)
(1)	(2)	(3)	(4)
			(Percent)
0	$ 40,000	0	None
$ 40,000	90,000	0	0.8
90,000	140,000	$ 400	1.6
140,000	240,000	1,200	2.4
240,000	440,000	3,600	3.2
440,000	640,000	10,000	4.0
640,000	840,000	18,000	4.8
840,000	1,040,000	27,600.	5.6
1,040,000	1,540,000	38,800	6.4
1,540,000	2,040,000	70,000	7.2
2,040,000	2,540,000	106,800	8.0
2,540,000	3,040,000	146,800	8.8
3,040,000	3,540,000	190,800	9.6
3,540,000	4,040,000	238,800	10.4
4,040,000	5,040,000	290,800	11.2
5,040,000	6,040,000	402;800	12.0
6,040,000	7,040,000	522,800	12.8
7,040,000	8,040,000	650,800	13.6
8,040,000	9,040,000	786,800	14.4
9,040,000	10,040,000	930,800	15.2
10,040,000	.....	1,082,800	16.0

SOURCE: Internal Revenue Code § 2011; Internal Revenue Service, Instructions for Form 706 (Revised June, 1977).

APPENDIX IX

A BILL to amend and reenact § 58-70 of the Code of Virginia, and to amend the Code of Virginia by adding in Title 58 a chapter numbered 6.1, consisting of sections numbered 58-238.1 through 58-238.37 and to further amend the Code of Virginia by repealing Chapter 6 of Title 58, consisting of sections numbered 58-218 through 58-238 after January 1, 1980, the amended section relating to the tax on wills and administration, the added sections levying a tax on the estates of decedents dying on or after January one, nineteen hundred eighty and the repealed sections relating generally to the gift tax.

Be it enacted by the General Assembly of Virginia:

1. That § 58-70 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 58 a chapter numbered 6.1, consisting of sections numbered 58-238.1 through 58-238.37, as follows:

§ 58-70. Undervaluation of estate; collection of additional tax; minimum additional tax or refund payable.—Should it thereafter appear that on the probate of a will or grant of administration the estate has been undervalued, the commissioner of accounts, before whom the appraisement is directed to be filed, shall report such fact to the clerk of the court, whereupon the tax shall forthwith be paid to the clerk of the court and the estate shall not be distributed until such inventory has been filed and the tax paid. Whenever the Department of Taxation, in its administration of the ~~State inheritance tax law~~ *Virginia Estate Tax Act* , finds that any estate has been undervalued for probate or administration tax purposes, the Department shall certify such fact to the proper clerk of court at the time the ~~State inheritance~~ *Virginia Estate* Tax is finally assessed and such clerk shall thereupon collect such additional probate or administration tax as may be due. No additional tax shall be payable or no refund made if the payment or refund due would be less than five dollars.

CHAPTER 6.1.

ESTATE TAXES.

Article 1.

Substantive Provisions Generally.

§ 58-238.1. Short title.—This chapter shall be known as the "Virginia Estate Tax Act."

§ 58-238.2. Definitions; meaning of terms.—The following definitions

shall apply throughout this chapter unless the context requires otherwise.

A. "Decedent" means a deceased person.

B. "Federal credit" means the maximum amount of the credit for State death taxes allowed by Section 2011 of the United States Internal Revenue Code of 1954, as amended or renumbered, or successor provision, in respect to a decedent's taxable estate. The term "maximum amount" shall be construed as to take full advantage of such credit as the laws of the United States may allow.

C. "Gross estate" means "gross estate" as defined in Section 2031 of the United States Internal Revenue Code of 1954, as amended or renumbered, or successor provision of the laws of the United States.

D. "Nonresident" means a decedent who was domiciled outside of the Commonwealth of Virginia at his death.

E. "Personal representative" means the personal representative of the estate of the decedent, appointed, qualified and acting within the Commonwealth, or, if there is no personal representative appointed, qualified and acting within the Commonwealth, then any person in actual or constructive possession of the Virginia gross estate of the decedent.

F. "Resident" means a decedent who was domiciled in the Commonwealth of Virginia at his death.

G. "State" means any state, territory or possession of the United States and the District of Columbia.

H. "Taxable estate" means "taxable estate" as defined in Section 2051 of the United States Internal Revenue Code of 1954, as amended or renumbered, or successor provision of the laws of the United States.

I. "Value" means "value" as finally determined for federal estate tax purposes under the laws of the United States relating to federal estate taxes.

Any reference in this chapter to the laws of the United States relating to federal estate and gift taxes shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal estate and gift taxes, as the same may be or become effective at any time or from time to time.

§ 58-238.3. Tax on transfer of taxable estate of residents; amount; credit; property of a resident defined.—A. A tax in the amount of the federal credit is imposed on the transfer of the taxable estate of every resident, subject, where applicable, to the credit provided for in subsection B.

B. If property of a resident is subject to a death tax imposed by another state for which a credit is allowed under Section 2011 of the

Internal Revenue Code of 1954, as amended or renumbered, or successor provision of the laws of the United States relating to federal estate taxes, the amount of tax due under this section shall be credited with the lesser of:

1. The amount of the death tax paid the other state and credited against the federal estate tax; or

2. An amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which another state or states have jurisdiction to the same extent to which Virginia would exert jurisdiction under this act with respect to the residents of such other state or states and the denominator of which is the value of the decedent's gross estate.

C. Property of a resident includes:

1. Real property situate in the Commonwealth of Virginia;

2. Tangible personal property having actual situs in the Commonwealth of Virginia; and

3. Intangible personal property owned by the resident regardless of where it is located.

§ 58-238.4. Tax on transfer of taxable estate of nonresidents; property of a nonresident defined; exemptions.—A. A tax in an amount computed as provided in this section is imposed on the transfer of the taxable estate located in the Commonwealth of Virginia of every nonresident.

The tax shall be an amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which Virginia has jurisdiction for estate tax purposes and the denominator of which is the value of the decedent's gross estate.

B. For purposes of this section, property located in the Commonwealth of Virginia which is taxable to a nonresident shall include:

1. Real property and real property interests located in the Commonwealth of Virginia including mineral interests, royalties, production payments, leasehold interests, or working interests in oil, gas, coal, or any other minerals;

2. Tangible personal property having an actual situs in the Commonwealth of Virginia.

§ 58-238.5. Tax upon estates of alien decedents.—A tax in an amount computed as provided in this section is imposed upon the transfer of real property situate and tangible personal property having an actual situs in the Commonwealth of Virginia and upon intangible personal property physically present within the Commonwealth of every person who at the time of death was not a resident of the United States.

The tax shall be an amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of that part of the gross estate over which Virginia has jurisdiction for estate tax purposes and the denominator of which is the decedent's gross estate taxable by the United States wherever situate.

For purposes of this section, stock in a corporation organized under the laws of the Commonwealth shall be deemed physically present within the Commonwealth.

§ 58-238.6. Additional estate tax on lifetime transfers.—In addition to the tax imposed under §§ 58-238.3, 58-238.4 and 58-238.5, a tax is imposed on the amount of the adjusted taxable gifts, as finally determined for federal estate tax purposes, limited in each case to the property which would have been deemed under this chapter as part of the decedent's taxable estate if such decedent had died at the time such transfer was made. The amount of such additional estate tax shall be determined by adding such gifts to the adjusted taxable estate, as defined in § 2011 (b) of the Internal Revenue Code, and recomputing the federal credit on such amount, the excess of this tax credit being the additional estate tax due under this section.

For purposes of this section, "adjusted taxable gifts" shall mean the total amount of the taxable gifts, within the meaning of § 2503 of the Internal Revenue Code made by the decedent after January 1, 1980, other than gifts which are includible in the gross estate of the decedent.

§ 58-238.7. Filing returns; payment of tax due thereon.—A. The personal representative of every estate subject to the tax imposed by this chapter who is required by the laws of the United States to file a federal estate tax return shall file with the Department, on or before the date the federal estate tax return is required to be filed, an executed copy of the federal estate tax return.

B. If the personal representative has obtained an extension of time for filing the federal estate tax return, the filing required by subsection A. shall be similarly extended until the end of the time period granted in the extension of time for the federal estate tax return. Upon obtaining an extension of time for filing the federal estate tax return, the personal representative shall provide the Department with a true copy of the instrument providing for this extension.

C. The tax due under this chapter shall be paid by the personal representative to the Department not later than the date when the return covering this tax is required to be filed under subsection A. or B.; provided however, if such tax be paid pursuant to subsection B., interest, at a rate equal to the rate of interest established pursuant to § 58-1160, shall be added for the period between the date when such tax would have been due had no extension been granted and the date of full payment.

§ 58-238.8. Amended returns.—A. If the personal representative files an amended federal estate tax return, he shall immediately file with the

Department an executed copy of the amended federal estate tax return. If the personal representative is required to pay an additional tax under this chapter pursuant to such amended return, he shall pay such tax, together with interest as provided in § 58-1160, at the time of filing the amended return.

B. If, upon final determination of the federal estate tax due, a deficiency is assessed, the personal representative shall within sixty days after this determination give written notice of such deficiency to the Department. If any additional tax is due under this chapter by reason of this determination, the personal representative shall pay such additional tax, together with interest as provided in § 58-1160, at the same time he files the notice.

§ 58-238.9. Certification of payment by Department.—Upon the payment of the estate tax, or if no tax is due pursuant to a filing under §§ 58-238.7 or 58-238.8, upon the ascertainment of that fact, the Department shall certify such fact to the personal representative.

§ 58-238.10. Nonpayment of tax; lien; powers of release.—In addition to the Department's remedies under § 58-1010 and the other provisions of law, the estate tax assessable under this chapter shall be a lien upon the gross estate of the decedent for ten years from the date of death pursuant to the same procedures and subject to the same limitations applicable to the federal estate tax under §§ 6324 through 6324 B, inclusive, of the Internal Revenue Code. Also the Department shall have similar powers for the release of lien or discharge of property granted the Secretary of the Treasury of the United States under § 6325 of the Internal Revenue Code.

§ 58-238.11. Liability of personal representative.—The tax and interest imposed by this chapter shall be paid by the personal representative. If any personal representative shall make distribution either in whole or in part of any of the property of an estate to the heirs, next of kin, distributees, legatees or devisees without having paid or secured the tax due pursuant to this chapter, he shall become personally liable for the tax so due, or so much thereof as may remain due and unpaid, to the full extent of any property belonging to such person or estate which may come into his custody or control.

§ 58-238.12. Duty of resident representative of a nonresident decedent.—A resident personal representative, holding personal property of a deceased nonresident subject to the tax, shall deduct the tax therefrom or collect it from the personal representative in the state of the decedent's domicile and shall not deliver such property to him or any other person until he has collected the tax and paid the same into the State Treasury. When the transfer of such personal property is subject to a tax under the provisions of this chapter and the personal representative in the state of domicile neglects or refuses to pay the tax upon demand or if for any reason the tax is not paid within nine months after the decedent's death the resident personal representative may, upon such notice as the Circuit Court of the city of Richmond may direct, be authorized to sell such property or, if the same can be divided, such portion thereof as may be

necessary and shall deduct the tax from the proceeds of such sale and shall account for the balance, if any, in lieu of the property.

§ 58-238.13. Final account.—No final account of a personal representative in any probate proceeding who is required to file a federal estate tax return can be allowed and approved by the court before whom such proceeding is pending unless the court finds that the tax imposed on the property by this chapter, including applicable interest, has been paid in full or that no such tax is due.

§ 58-238.14. Reports by clerks of courts.—The clerk of every court of every county and city having jurisdiction to admit wills to probate and to grant letters of administration shall report to the Department of Taxation on forms provided for the purpose, every qualification upon the estate of a decedent in such court or in the clerk's office thereof. Such report shall be filed with the Department not less than once every month and shall contain the name of the decedent; the date of his death; the name and address of the personal representative; and the value of the estate upon which the will or administration tax was paid. Such report shall also contain the name of all decedents whose wills are probated in the court or before the clerk thereof, upon which no qualification is had, the names and addresses of the beneficiaries under such wills and the value of the property passing under such wills.

§ 58-238.15. Administration by Department.—A. The Department is charged with the administration and enforcement of this chapter and may promulgate such rules and regulations as may be required to effectuate the purposes of this chapter.

B. The Department shall prescribe and provide such books and forms as are requisite for the execution of this chapter.

§ 58-238.16. Deposit of funds.—All monies collected pursuant to this chapter shall be paid into the general fund of the State Treasury.

§ 58-238.17. Applicability.—This chapter shall apply to the transfers of the Virginia gross estate of decedents dying on or after January one, nineteen hundred eighty.

Article 2.

Payment of Death Taxes Due By

Nonresident Decedents to Other States.

§ 58-238.18. Proof of payment of death taxes to state of domicile.—At any time before the expiration of eighteen months after the qualification in this Commonwealth of any executor of the will of, or administrator of the estate of, any nonresident decedent, such executor or administrator

shall file with the clerk of the court in which he qualified proof that all death taxes, together with interest or penalties thereon, which are due to the state of domicile of such decedent, or to any political subdivision thereof, have been paid or secured or that no such taxes, interest or penalties are due, as the case may be, unless it appears that letters have been issued in the state of domicile.

§ 58-238.19. Form of proof.—The proof required by § 58-238.18 may be in the form of a certificate issued by the official or body charged with the administration of the death tax laws of the domiciliary state.

§ 58-238.20. Notice to domiciliary state if proof not filed.—If such proof be not filed within the time limit set out in § 58-238.18, then the clerk of the court shall forthwith notify by mail the official or body of the domiciliary state charged with the administration of the death tax laws thereof with respect to such estate and shall state in such notice so far as is known to him:

A. The name, date of death and last domicile of such decedent;

B. The name and address of each executor or administrator;

C. A summary of the values of the real estate, tangible personalty and intangible personalty, wherever situated, belonging to such decedent at the time of his death; and

D. The fact that such executor or administrator has not filed theretofore the proof required in § 58-238.18.

Such clerk shall attach to such notice a plain copy of the will and codicils of such decedent, if he died testate, or, if he died intestate, a list of his heirs and next of kin, so far as is known to such clerk.

§ 58-238.21. Petition of domiciliary state for accounting.—Within sixty days after the mailing of such notice, the official or body charged with the administration of the death tax laws of the domiciliary state may file with such court in this Commonwealth a petition for an accounting in such estate. Such official body of the domiciliary state shall, for the purpose of this article, be a party interested for the purpose of petitioning such court for such accounting. If such petition be filed within the period of sixty days, such court shall decree such accounting and upon such accounting being filed and approved shall decree the remission of the fiduciary appointed by the domiciliary probate court of the balance of the intangible personalty after the payment of creditors and expenses of administration in the Commonwealth.

§ 58-238.22. Final accounting not granted without compliance.—Unless the provisions of either § 58-238.18 or 58-238.21 shall have been complied with no such executor or administrator shall be entitled to a final accounting or discharge in any court in this Commonwealth.

§ 58-238.23. To what nonresident estates article applies.—The provisions

of this article shall apply to the estate of any nonresident decedent if the laws of the state of his domicile contain a provision, of any nature or however expressed, whereby this Commonwealth is given reasonable assurance of the collection of its inheritance or death taxes, interest and penalties, from the estates of decedents dying domiciled in this Commonwealth when the estates of such decedents are being administered by the probate courts of such other state, or if the state of domicile does not grant letters in nonresident estates until after letters have been issued by the state of domicile.

§ 58-238.24. How article construed.—The provisions of this article shall be liberally construed in order to insure that the state of domicile of any decendent shall receive any death taxes, together with interest and penalties thereon, due to it.

§ 58-238.25. Meaning of "state".—For the purpose of this article the word "state" shall be construed to include any territory of the United States, the District of Columbia and any foreign country.

Article 3.

Interstate Compromise and Arbitration of Death Taxes.

§ 58-238.26. Title of article.—This article shall be known and may be cited as the "Uniform Act on Interstate Compromise and Arbitration of Death Taxes."

§ 58-238.27. Interpretation.—This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§ 58-238.28. Dispute as to domicile; compromise agreement.—When the State Tax Commissioner claims that a decedent was domiciled in this Commonwealth at the time of his death and the taxing authorities of another state or states make a like claim on behalf of their state or states, the Commissioner may make a written agreement of compromise with the other taxing authorities and the executor or administrator of such decedent that a certain sum shall be accepted in full satisfaction of any and all death taxes imposed by this Commonwealth, including any interest or penalties to the date of signing of the agreement. The agreement shall also fix the amount to be accepted by the other states in full satisfaction of death taxes. The executor or administrator of such decedent is hereby authorized to make such agreement. Unless the tax so agreed upon is paid within sixty days after the signing of such agreement, interest or penalties shall thereafter accrue upon the amount fixed in the agreement, but the time between the decedent's death and the signing of such agreement shall not be included in computing the interest or penalties.

§ 58-238.29. Same; arbitration agreement; board of arbitrators.—When

the State Tax Commissioner claims that a decedent was domiciled in this Commonwealth at the time of his death and the taxing authorities of another state or states make a like claim on behalf of their state or states, the Commissioner may with the approval of the Attorney General make a written agreement with the other taxing authorities and with the executor or administrator of such decedent to submit the controversy to the decision of a board consisting of one or any uneven number of arbitrators. The executor or administrator of such decedent is hereby authorized to make the agreement. The parties to the agreement shall select the arbitrator or arbitrators.

§ 58-238.30. Hearings by board; testimony and witnesses; production of documents.—The board shall hold hearings at such times and places as it may determine, upon reasonable notice to the parties to the agreement, all of whom shall be entitled to be heard, to present evidence and to examine and cross-examine witnesses.

The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of books, papers and documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, any judge of a court of record of this Commonwealth, upon application by the board, may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt.

§ 58-238.31. Determination of domicile of decedent.—The board shall, by majority vote, determine the domicile of the decedent at the time of his death. This determination shall be final for purposes of imposing and collecting death taxes but for no other purpose.

§ 58-238.32. Questions determined by majority vote.—Except as provided in § 58-238.30 in respect of the issuance of subpoenas, all questions arising in the course of the proceedings shall be determined by a majority vote of the board.

§ 58-238.33. Record of proceedings, agreement, etc., to be filed with taxing authorities.—The State Tax Commissioner, the board or the executor or administrator of such decedent shall file the determination of the board as to domicile, the record of the board's proceedings, and the agreement or a duplicate, made pursuant to § 58-238.29 with the authority having jurisdiction to assess or determine the death taxes in the State determined by the board to be the domicile of the decedent and shall file copies of such documents with the authorities that would have been empowered to assess or determine the death taxes in each of the other states involved.

§ 58-238.34. When penalties and interest not imposed.—In any case where it is determined by the board that the decedent died domiciled in this Commonwealth, interest or penalties, if otherwise imposed by law, for nonpayment of death taxes shall not be imposed between the date of the agreement and of filing of the determination of the board as to domicile.

§ 58-238.35. Nothing in article to prevent compromise.—Nothing contained in this article shall prevent at any time a written compromise, if otherwise lawful, by all parties to the agreement made pursuant to § 58-238.29 fixing the amounts to be accepted by this and any other state involved, in full satisfaction of death taxes.

§ 58-238.36. Compensation and expenses of board members and employees.—The compensation and expenses of the members of the board and its employees may be agreed upon among such members and the executor or administrator and if they cannot agree shall be fixed by any court having jurisdiction over probate matters of the state determined by the board to be the domicile of the decedent. The amounts so agreed upon or fixed shall be deemed an administration expense and shall be payable by the executor or administrator.

§ 58-238.37. Reciprocal application of arbitration provisions.—The provisions of this article relative to arbitration shall apply only to cases in which and so far as each of the states involved has a law identical or substantially similar to this article.

2. That the provisions of Chapter 5 of Title 58, consisting of sections numbered 58-152 through 58-217.14 shall not be applicable to estates of decedents dying on or after January one, nineteen hundred eighty; provided, however, that inheritance taxes due with respect to estates of decedents dying before January one, nineteen hundred eighty, shall be assessed by the Department of Taxation pursuant to Chapter 5 of Title 58 which shall continue in force until all such taxes have been fully collected.

3. That on January one, nineteen hundred eighty, Chapter 6 of Title 58, consisting of sections numbered 58-218 through 58-238, is repealed.

4. If any part, provision or application of this act be held invalid as to any person or circumstance by a court of record of this Commonwealth from which no appeal may be taken, then all other parts and applications of this act shall be given full force and effect insofar as possible and to this end the provisions and applications of this act are declared severable.