

CHAPTER 26

TRANSFER INHERITANCE AND ESTATE TAX

Authority

N.J.S.A. 54:50-1.

Source and Effective Date

R.1998 d.194, effective March 26, 1998.
See: 30 N.J.R. 609(a), 30 N.J.R. 1426(b).

Executive Order No. 66(1978) Expiration Date

Chapter 26, Transfer Inheritance and Estate Tax, expires on March 26, 2003.

Chapter Historical Note

Chapter 26, Transfer Inheritance and Estate Tax, became effective prior to September 1, 1969.

Pursuant to Executive Order 66(1978), Chapter 26, Transfer Inheritance and Estate Tax, was readopted as R.1983 d.356, effective August 12, 1983. See: 15 N.J.R. 1088(b), 15 N.J.R. 1488(b).

Pursuant to Executive Order 66(1978), Chapter 26, Transfer Inheritance and Estate Tax, was readopted as R.1988 d.300, effective June 7, 1988. See: 20 N.J.R. 637(a), 20 N.J.R. 1571(a).

Pursuant to Executive Order No. 66(1978), Chapter 26, Transfer Inheritance and Estate Tax, was readopted as R.1993 d.314, effective June 4, 1993. See: 25 N.J.R. 1498(a), 25 N.J.R. 2906(a).

Pursuant to Executive Order No. 66(1978), Chapter 26, Transfer Inheritance and Estate Tax, was readopted as R.1998 d.194, effective March 26, 1998. See: Source and Effective Date.

See, also, section annotations.

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APPENDIX A (RESERVED)

SUBCHAPTER 1. DEFINITIONS

18:26-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

2. Where stock on the date of death or thereafter is selling "ex dividend", the dividend is required to be added to the taxable estate in addition to the quoted value of the stock.

(b) The value of stocks and bonds which are sold infrequently or in unconsequential numbers may not be ascertainable by reference to the sales price on an exchange since the stock exchange value reflected by quotations is nothing more than evidence of true value under ordinary and normal conditions. Therefore, in cases where stocks or bonds are infrequently traded or sold in small quantities it is necessary to resort to financial statements along with any other pertinent data to determine the value at date of death.

(c) Shares of mutual funds are appraised at the bid price prevailing on the date of death, and in the event there is no bid price if the date of death falls on holiday or Saturday or Sunday, the values shall be those provided in subsection (a) of this Section.

(d) The market value of rare or unlisted securities is established by information furnished by brokers regularly dealing in such securities, officers of the corporations involved, or other documentary proof satisfactory to the Director.

Amended by R.1994 d.627, effective December 19, 1994.
See: 26 N.J.R. 4166(c), 26 N.J.R. 5036(a).

Historical Note

Formerly Regulations 21 and 22 of Transfer Inheritance Tax Bureau filed 2/21/51.

Statutory References

N.J.S.A. 54:34-5 and 54:35-1.

18:26-8.19 Patents, trade marks, copyrights, and other items

The valuation of a "Patent", "Trade Mark", "Copyright", "License", "Franchise", is a question of fact in each instance, the burden of proof being on the representative of the estate to show the history of the item being valued, the state of the art or the monopoly created as of the date of death. The bookkeeping entries or its original costs are not regarded as a reliable gauge of value. In most cases, the date of death value is primarily based upon the probable earnings such items will bring its owner.

Statutory References

N.J.S.A. 54:34-5 and 54:35-1.

18:26-8.20 Discretionary and legal common trust funds

(a) Since the admission and withdrawal to the funds are controlled by contract, the value of the fund, therefore, is to be determined as of the close of business on the last bank business days of January, April, July and October of each

year. For inheritance tax purposes the valuation date shall be:

1. Where approval was obtained by the donor in his lifetime, then the valuation date so approved, will control the value of his interest in the fund.

2. If the donor dies more than five days prior to a contractual valuation date without having applied for approval, it shall be deemed that such a request was in fact made; then the valuation date shall be the one next following his death.

3. If the donor dies five days or less prior to a valuation date, then the valuation date shall be the one next following the valuation date immediately after death.

4. If the donor dies one or more days subsequent to a valuation date, but more than five days prior to the next valuation date, the valuation date shall be the one following the date of death.

Statutory References

N.J.S.A. 54:34-5 and 54:35-1.

18:26-8.21 Contingent or defeasible estates

(a) When an instrument creates an executory devise, or an estate in expectancy of any kind or character which is contingent or defeasible, the property which is the subject of such devise or in which such contingent or defeasible interest is created is appraised immediately at its clear market value. The value of the estate for life or term of years is then deducted from the appraised value of the property which is the subject of devise or limitation and the tax on such balance of the estate shall not be levied or assessed until the person or corporation entitled thereto comes into the beneficial enjoyment, seizing or possession thereof.

(b) Where the provisions of an inter vivos trust or decedent's last will and testament create a right in the beneficiary to request that a limited sum be paid to her or him annually and no right exists in the beneficiary to terminate the trust, the interest of said beneficiary will be construed as contingent in character for inheritance tax purpose.

(c) Where a number of years have elapsed between the date of death and the date of initial assessment, the Branch will inquire as to the amounts and dates of any payments to, or withdrawals by the beneficiary. If such payments or withdrawals have been made a contingent assessment, based upon the amount of corpus paid less any vested life estate value or discounted value will be completed.

(d) To secure contingent taxes, the bond of New Jersey Bank as principal or as one of the principals and as surety will be accepted, provided such bond meets the requirements of form and content of the approved form of Bond, 0-54. In the case of a foreign fiduciary, however, a bond issued by a surety company licensed to operate in New Jersey as surety must be filed.

Amended by R.1991 d.384, effective August 5, 1991.
See: 23 N.J.R. 188(b), 23 N.J.R. 2320(a).
Stylistic change.

Statutory References

N.J.S.A. 54:36-3 and 54:36-6.

18:26-8.22 Estates for life or years

A life estate, annuity, or estate for a term of years is valued in accordance with the Federal Tables, effective after December 31, 1970, Table "A"(1) (single life male, six percent, showing the present worth of an annuity, of a life interest, and of a remainder interest) and Table "A"(2) (single life female, six percent, showing the present worth of an annuity, of a life interest, and of a remainder interest). These tables are identified as the United States Life Tables in N.J.S.A. 54:36-2. These tables apply as well in cases where a beneficiary survives the decedent by only a short period.

Amended by R.1978 d.31, effective January 27, 1978.
See: 10 N.J.R. 43(a), 10 N.J.R. 128(a).
Amended by R.1978 d.118, effective April 6, 1978.
See: 10 N.J.R. 127(c), 10 N.J.R. 210(a).
Repeal and New Rule, R.1994 d.627, effective December 19, 1994.
See: 26 N.J.R. 4166(a), 26 N.J.R. 5036(a).

Statutory References

N.J.S.A. 54:36-2.

18:26-8.23 Vested remainders after estate for life or years

When a vested interest in the remainder or corpus of any property subject to the New Jersey Inheritance Tax is bequeathed, devised, conveyed, granted, sold or given subject to an interest or income therefrom for life or for a term of years, such vested remainder is valued by first ascertaining the clear market value of the whole property and then deducting therefrom the value of the life estate or estate for years according to the provisions of section 22 of this subchapter (Estates for life or years).

Statutory References

N.J.S.A. 54:36-1.

18:26-8.24 Estates subject to power of appointment

When an instrument creates a power of appointment, the life estate or estate for years, to which such power is subject, is immediately appraised and taxed according to the provisions of N.J.A.C. 18:26-8.22; however, the appraisal and taxation of the remainder interest is suspended until the exercise of the power, at which time it is taxed at the clear market value as of date of death of the death of the creator of the power.

Statutory References

N.J.S.A. 54:36-4

18:26-8.25 Certificates of deposit, savings certificates and special savings accounts

Certificates of deposit, savings certificates, special savings accounts and other accounts with banking institutions which provide for a penalty for premature withdrawal are to be reported at face value at the death of the decedent, plus interest which may have been credited up to the date of death, unless it is necessary to redeem any or all of the items so described in order to pay the debts of the estate, to carry out the provisions of the will, to effect distribution of the estate under the intestate law or for the payment of taxes. In those cases, the actual amount received on redemption is reportable for taxation.

New Rule, R.1975 d.177, effective June 24, 1975.
See: 7 N.J.R. 240(a), 7 N.J.R. 349(c).

18:26-8.26 (Reserved)

SUBCHAPTER 9. RETURNS, PAYMENT AND PENALTIES

18:26-9.1 Date return due

(a) All inheritance tax returns must be filed, together with payment of the tax, within eight months following the death of the decedent. Failure of the personal representative, heir-at-law or next-of-kin, surviving joint tenant, trustee or transferee to file a return within the time prescribed subjects such party responsible for such filing to the penalties provided in N.J.S.A. 54:35-3.

(b) For good cause shown, the Director may grant an extension of time in which the report may be filed.

Amended by R.1991 d.384, effective August 5, 1991.
See: 23 N.J.R. 188(b), 23 N.J.R. 2320(a).
Tax payment required with return.

Statutory References

N.J.S.A. 54:35-2.

18:26-9.2 By whom filed

(a) A return may be prepared, executed and filed by:

1. The personal representative of the estate; or,
2. Any beneficiary entitled to share in the estate where letters testamentary or of general administration are not applied for or not required; or,
3. A surviving joint tenant where the decedent dies intestate and his or her entire estate passes to a surviving joint tenant by operation of law; or,