

(d) The tax imposed upon the estates of resident decedents in New Jersey, unlike the inheritance tax, does not constitute a lien on any of the property, real or personal, of the estate, and therefore waivers or consents to transfer are unnecessary.

(e) For estates with date of death on or after July 1, 1993, no assessment of additional estate tax shall be made after the expiration of more than four years from the date of filing of an estate tax return except in the following cases:

1. The return is false or fraudulent with the intent to evade tax;
2. If before the expiration of the four year period prescribed in this subsection for the assessment of additional tax a taxpayer consents in writing that such period may be extended, the amount of such additional tax may be determined at any time within such period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period;
3. An additional or increased estate tax becomes payable as a result of a redetermination, or additional or corrected assessment of estate, inheritance, succession, or legacy taxes by the United States government or any state or territory of the United States, including the District of Columbia. (See N.J.A.C. 18:26-3.4 for requirement to notify the Division of a redetermination of estate tax by the Internal Revenue Service.); or
4. The Federal estate tax chargeable on final assessment has not been definitely determined.

(f) The taxes assessed pursuant to (e)3 and 4 above shall be made within four years from the date the additional or increased estate tax becomes payable or the Federal estate tax chargeable on final assessment is definitely determined and the Branch is properly notified pursuant to N.J.A.C. 18:26-3.4.

Amended by R.1989 d.210, effective March 27, 1989.
See: 21 N.J.R. 285(a), 21 N.J.R. 1021(a).

In (a), Example (1): Revises example to conform with current Federal estate tax tables. "1988" replaces "1968"; changes net taxable estate amount to "\$700,000" from "\$300,000"; changes state tax credit to "\$10,000" from "\$20,000"; and actual amount paid to "\$6,000" from "\$18,000"; changes estate tax due to "\$4,000" from "\$2,000.00".

Amended by R.1992 d.402, effective October 19, 1992.

See: 24 N.J.R. 2533(a), 24 N.J.R. 3734(a).

Revised example in (a).

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 Regulation of Transfer Inheritance Tax Bureau filed 12/31/47.

Statutory References

N.J.S.A. 54:38-1; 54:49-6(b).

18:26-3.3 Maximum estate tax where no inheritance tax imposed

In an estate where no inheritance tax is due this State, but an estate tax is due the United States under the provisions of the Federal Estate Tax Law in effect at the date of a decedent's death, the estate tax due this State is that amount representing the difference between the gross amount of the inheritance, legacy and succession taxes actually paid any other states, territories, possessions or the District of Columbia, if any, and the maximum amount of credit allowable under the Federal Estate Tax Law.

Historical Note

Formerly Regulation of Transfer Inheritance Tax Bureau filed 12/31/47.

Statutory References

N.J.S.A. 54:38-1.

18:26-3.4 Additions or reductions to estate tax

(a) If subsequent to a determination of the estate tax due this State, an additional or increased estate tax shall become payable to the United States by reason of a redetermination, or additional or corrected assessment, as to a portion of which the estate is entitled to a credit for estate, inheritance, succession or legacy taxes paid to any state or territory of the United States, including the District of Columbia, then an additional estate tax shall be due and payable to this State which shall be computed in the same manner as stated in Section 3.2 of this Section.

(b) If subsequent to a determination of the estate tax due this State, the amount of the Federal estate tax shall be decreased and the amount allowed as a credit for inheritance, succession or legacy taxes paid to any state or territory of the United States, including the District of Columbia, correspondingly reduced, the estate tax due this State shall be reduced accordingly upon submitting satisfactory proof to the Director.

(c) The amount of the estate tax due New Jersey, if any, cannot be determined in any case until the Federal Government has definitely determined the amount of Federal estate tax chargeable on final assessment.

1. Notice to the estate of final assessment usually takes the form of a letter from the District Director, Internal Revenue Service, indicating the amount of Federal estate tax chargeable, and the amount of the allowable credit.

2. If any adjustments have been made, this letter is accompanied by a detailed statement of the changes made in each schedule of the Federal estate tax return. If an appeal from the Director's findings is taken, the final notice will be the order of the appellate court in this respect.

3. The New Jersey Inheritance Tax Branch requires a photostatic copy of all determinations, final and interme-

diate, of the Internal Revenue Service, with all supporting statements. Photostatic copies of receipts for payment of succession or estate taxes to any state, other than New Jersey, territory, possession, or the District of Columbia are also required.

4. Form of return for New Jersey estate tax purposes may be obtained from the Transfer Inheritance Tax Branch, PO Box 249, Trenton, N.J. 08646-0249.

Amended by R.1991 d.384, effective August 5, 1991.
See: 23 N.J.R. 188(b), 23 N.J.R. 2320(a).
"Bureau" changed to "Branch"; address modified.
Amended by R.1998 d.194, effective April 20, 1998.
See: 30 N.J.R. 609(a), 30 N.J.R. 1426(b).

Historical Note

Formerly Regulation of Transfer Inheritance Tax Bureau filed 12/31/47.

Statutory References

N.J.S.A. 54:38-2; 54:38-3.

18:26-3.5 Change in Federal estate tax

In the event that the Federal Estate Tax Law is amended or changed with regard to the credit allowable for inheritance, succession or legacy taxes paid to any state or territory of the United States, including the District of Columbia, the estate tax due this State, shall be so computed as so to absorb the full amount of such changed credit.

Historical Note

Formerly Regulation of Transfer Inheritance Tax Bureau filed 12/31/47.

Statutory References

As to Effect of Change in Federal estate tax, see N.J.S.A. 54:38-9.

18:26-3.6 Taxation of future interests after estate tax paid; credit

If after the payment of the New Jersey estate tax there shall become due and payable a tax upon any future interest in any property under an instrument creating an executory devise or an estate in expectancy of any kind or character which is contingent or defeasible, or if by reason of any additional or corrected assessment by the Director an additional inheritance, succession or legacy tax shall become due and payable, the tax paid shall be credited against the tax arising therefrom, but the amount so credited shall not in any event exceed the amount of the tax so accruing.

Historical Note

Formerly Regulation of Transfer Inheritance Tax Bureau filed 12/31/47.

Statutory References

N.J.S.A. 54:38-4.

18:26-3.7 Payment; due date; interest; extension of time

(a) The New Jersey estate tax is due at the date of a decedent's death. However, if payment is made within nine months from the date of death, no late penalty shall be imposed.

(b) All or any part of the estate tax due this State, if not paid within nine months from the date of death, shall bear interest at the rate of 10 percent per annum from the expiration of the said nine months until the date of actual payment, unless an extension of time to file the Federal estate tax return is granted, in which case the Director may reduce the interest rate to six percent per annum until the expiration of the extension. If the decedent was a member of the United States armed forces, the estate tax will not bear interest until the expiration of nine months after receipt of official notification of the decedent's death by the decedent's husband, wife, father, mother, or next of kin. (For estates with date of death prior to March 1, 1992, the estate tax is payable within 18 months of the date of death, and estate tax not paid within 18 months from the date of death bears interest at the rate of six percent per annum from the expiration of the 18 months until the date of actual payment. If the Federal government has not determined the amount of estate tax due within such period of 18 months or there is a subsequent assessment of an additional or increased estate tax, the tax is payable within 60 days after receipt of notification from the Federal government stating the amount of the Federal estate tax and the credit for state death taxes allowable and the New Jersey estate tax shall bear interest at the rate of six percent per annum from the expiration of such 60 day period to the date of payment.)

(c) All administrators, executors, trustees, grantees, donees and vendees, shall be personally liable for any and all estate taxes until paid, for which an action at law shall lie in the name of the State, but no lien shall attach to any property of an estate on account of the estate tax due this State.

(d) The executor, administrator, trustee or other person or corporation liable for the payment of the estate tax shall file with the Director a copy of the Federal estate tax return within 30 days after the filing of the original with the Federal Government, and a copy of any communication from the Federal Government, making any final change in said return, or confirming, increasing or diminishing the tax thereby shown to be due, which is to be filed within 30 days after receipt thereof, and shall file any other evidence, information or data that the Director shall in his discretion deem necessary.

(e) The Director may, for cause shown, extend the time for payment with interest at the rate of 10 percent per annum for such period as the circumstances, in his or her discretion, may require.

Amended by R.1993 d.131, effective March 15, 1993.
See: 24 N.J.R. 4240(b), 25 N.J.R. 1229(a).

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

Statutory References

N.J.S.A. 54:38-5.

18:26-3.8 Certificate of inheritance

(a) The Director shall not issue any certificate or other evidence of inheritance, succession or legacy tax paid this State in the estate of a resident decedent for use before the Internal Revenue Service in an estate tax proceeding until all inheritance, succession or legacy taxes have been paid or payment duly provided for, but the Director may, in his discretion pending final determination of all inheritance, succession, legacy, transfer or estate taxes due this State, issue temporary or preliminary certificates, so marked, showing payments in account of such taxes.

(b) Since the Director is precluded from issuing a certificate for payment of taxes to this State until the estate tax due this State has been paid or it has been established that there is no tax due, and since this cannot be done until the Internal Revenue Service has finally fixed the amount of Federal estate tax chargeable it follows that the certificate cannot be issued in time for filing simultaneously with the Federal estate tax return (Form 706). This fact, however, will not in any way jeopardize the estate's claim for a credit in the Federal estate tax proceedings for taxes paid this and other states.

(c) Proof of such payments can be submitted to the Internal Revenue Service after receipt by the estate of notice of final assessment, and allowance will be made at that time for credits properly established. The Transfer Inheritance Tax Branch will use best efforts to expedite estate tax assessments.

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

Statutory References

N.J.S.A. 54:38-12.

18:26-3.9 Refunds

(a) All applications for the refund of estate taxes claimed to have been excessively or erroneously paid must be filed with the Director within three years from the date of payment. In the event it is determined that the tax was erroneously or excessively paid, the Director upon receipt of satisfactory proof of payment, shall certify the same to the Director, Division of Budget and Accounting, who, in turn shall draw his warrant on the State Treasurer in favor of the executor, administrator, trustee, person or corporation who has paid said tax, or who may be lawfully entitled to receive the same, for the amount of such tax excessively paid.

(b) Said warrant shall be paid by the State Treasurer out of any appropriation for the refund of transfer inheritance taxes the same as warrants for the refund of such taxes under the transfer inheritance tax statutes of this State are paid.

(c) For estate tax paid with respect to reports or returns due on or after January 1, 1994, interest will be paid on overpayments not refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return, or within six months after the return is filed, or payment of the tax due thereon, whichever is later. See N.J.A.C. 18:26-10.13 for calculation of the interest.

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

Statutory References

N.J.S.A. 54:38-3; 54:49-15.1.

18:26-3.10 Protests, hearings and appeals

Any executor, administrator, trustee, person or corporation liable for the payment of the estate tax and aggrieved by any decision, order, finding or assessment of the Director, may appeal to the Tax Court of New Jersey for a review thereof within 90 days of the date of notice assessing the tax complained of, in accordance with pertinent provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:51A-13 et seq. For protest procedures see N.J.A.C. 18:26-12.9, 12.10 and 12.12.

Amended by R.1980 d.287, effective June 27, 1980.

See: 12 N.J.R. 352(b), 12 N.J.R. 497(a).

Amended by R.1991 d.384, effective August 5, 1991.

See: 23 N.J.R. 188(b), 23 N.J.R. 2320(a).

Conditions of appeal based on N.J.S.A. 54:51A-13.

Amended by R.1994 d.627, effective December 19, 1994.

See: 26 N.J.R. 4166(c), 26 N.J.R. 5036(a).

Statutory References

N.J.S.A. 54:33-2 (P.L. 1978, c.32).

SUBCHAPTER 4. COMPROMISES (INHERITANCE AND ESTATE TAXES)

18:26-4.1 Domicile doubtful; terms of settlement

(a) Where the Director claims that a decedent was domiciled in this State at the time of death and the taxing authorities of another state makes a similar claim with respect to their state or states and an investigation discloses a reasonable doubt regarding domicile, the Director may, in his discretion, enter into a written agreement with such taxing authorities and the executor, administrator, or trustee, fixing the sum acceptable to this State in full settlement of the transfer inheritance tax of this State; provided, that said agreement also fixes the sum acceptable to such other state or states in full settlement of the death taxes imposable by said state or states; and, provided further, that said agreement has the approval of the Superior Court of this State.

(b) If the aggregate amount payable under such agreement to the states involved is less than the maximum sum allowable as a credit to the estate against the Federal estate tax imposed thereon, then the executor, administrator or trustee shall also pay to the Director so much of the difference between such aggregate amount and the amount of such credit as the amount payable to the Director under the agreement bears to such aggregate amount, and the agreement aforesaid shall so provide.

(c) Payment of the sum or sums fixed by said agreement shall be accepted by the Director in full satisfaction of this State's claim for transfer inheritance and estate taxes which would otherwise be chargeable under the law.

Statutory References

N.J.S.A. 54:38A-1.

18:26-4.2 Compromise and settlement of certain tax claims or liens; waiver of defenses

Where any lien or claim for any past due transfer inheritance taxes or estate or transfer taxes shall be brought into question, claimed to be invalid or impaired, or shall be in the course of litigation, or the Director, and the State Treasurer shall, after investigation, determine that there is reasonable doubt of the State's ability to enforce said lien or claim or to collect the taxes due, or claimed to be due, or that there is a reasonable doubt that said lien is valid or unimpaired, such officer shall enter into an agreement with the executor, administrator or trustee of any estate against whose assets said lien or claim shall be asserted, or the heirs, next of kin or beneficiaries succeeding to the property of any decedent against which such lien or claim is asserted, to alter, revise, compromise and settle all claims or liens for past due inheritance taxes or estate or transfer taxes, together with all interest or interest penalties thereon; provided, however, that the executor, administrator, trustee, heir or heirs, next of kin, beneficiary or beneficiaries, shall waive all defenses which might be set up against the claim or lien of the State and shall submit to such terms of payment and settlement as the Treasurer or Director shall deem to be equitable and just and in the best interest of the State.

Statutory References

N.J.S.A. 54:38A-3.

18:26-4.3 Payment pursuant to compromise

(a) Any compromise or settlement shall be null and void unless the amount agreed to be paid shall be paid pursuant thereto within the time or times fixed in said agreement and in such event all payment made thereunder shall belong to the State and shall be credited upon the arrears of taxes and interest or interest penalties due. Upon payment in full of the amount agreed to be paid pursuant to the terms of such agreement of alteration, revision, compromise or settlement, the person or persons so paying shall be entitled to receive a receipt for such payment which shall be a proper voucher in the settlement of the account and the Treasurer or Director shall issue a statement of payment which may be recorded in the office of the county clerk of the county where any real property is situated.

(b) If a judgment or decree has been entered in favor of the State of New Jersey, the Treasurer or Director, upon payment of the amount agreed upon or upon determination that the assessment be cancelled, shall execute and record a proper satisfaction of the lien, claim, judgment or decree in accordance with the facts.

Statutory References

N.J.S.A. 54:38A-4.

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, estates for a term of years and annuities

Life estates, estates for a term of years and annuities are valued using an interest rate assumption of six percent and the mortality data for persons of the relevant gender set forth in the tables of mortality contained in the United States Decennial Life Tables (Life Table for Males: United States and Life Table for Females: United States) most recently published by the United States Department of Health and Human Services as of the date of the decedent's death. This valuation methodology applies even in cases in which a holder of a life estate, estate for a term of years, or annuity 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).
Repeal and New Rule, R.1999 d.13, effective January 4, 1999.
See: 30 N.J.R. 3612(b), 31 N.J.R. 56(b).
Section was "Estates for life or years".

Statutory References

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

18:26-8.23 Vested remainders after estate for life, estate for a term of years, or annuity

When a vested remainder interest in any property subject to the New Jersey Inheritance Tax is bequeathed, devised, conveyed, granted, sold or given subject to one or more life estates, estates for a term of years, or annuities, such vested remainder is valued by first ascertaining the clear market value of the whole property and then deducting therefrom the value of each such life estate, estate for a term of years, or annuity as determined in accordance with the provisions of N.J.A.C. 18:26-8.22 (Estates for life, estates for a term of years and annuities).

Amended by R.1999 d.13, effective January 4, 1999.
See: 30 N.J.R. 3612(b), 31 N.J.R. 56(b).
Rewrote the section.

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,