

18:26-5.7 Transfers made in contemplation of death

(a) Any transfer by deed, grant, bargain, sale or gift made without adequate valuable consideration within three years ending with the date of death of the grantor, vendor, or donor, in the absence of proof to the contrary, is deemed to have been made in contemplation of death. Any transfer made prior to such three-year period is not deemed to be in contemplation of death.

(b) The term "contemplation of death" includes that expectancy of death which actuates the mind of a person of the execution of his will and is therefore not restricted to that expectancy of death which actuates the mind of a person making a gift *causa mortis*.

(c) The term "adequate valuable consideration" means the clear market value of property in money or money's worth on the date of transfer.

Statutory References

N.J.S.A. 54:34-1.c.

18:26-5.8 Transfers taking effect in possession or enjoyment at or after death

(a) Any transfer of property by deed, grant, bargain, sale, gift or in trust (except in the case of a bona fide sale for an adequate valuable consideration in money or money's worth) made by a decedent transfer or during his lifetime under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death:

1. The possession or enjoyment of the property so that possession or enjoyment of the property can be obtained only by surviving the transferor; or
2. The right to income from the property, is a transfer subject to the New Jersey inheritance tax.

(b) The transfer is taxable if by any means whatsoever the transferor has in form transferred property but has deferred the actual possession, use or enjoyment of the property until a time which can only be measured by reference to the transferor's death.

Statutory References

N.J.S.A. 54:34-1(c).

Case Notes

Held that prior imposition in 1951 of New Jersey estate tax against the estate of decedent's husband did not constitute prior taxation of 1931 trust under the New Jersey transfer inheritance tax; decedent's estate responsible for tax consequences of various writings voluntarily executed by decedent and family in 1931. In re Estate of Vondermuhll, 156 N.J.Super 531, 384 A.2d 185 (App.Div.1978).

Estate disposition through will leaving estate to second wife and divorce settlement requiring one-half of the estate to go to daughters from first marriage requires inheritance tax burden upon each respec-

tive recipient based upon value of assets received. In re Estate of Lingle, 72 N.J. 87, 367 A.2d 878 (1976).

18:26-5.9 Certain profit sharing and retirement plans

The proceeds of a profit sharing or retirement plan payable at the date of death of a decedent to a beneficiary named by the decedent or in accordance with the preference schedule of beneficiaries is deemed to be a transfer which takes effect at or after death and is as such subject to the tax, except for the exemption provided by N.J.A.C. 18:26-6.16.

As amended, R.1981 d.477, effective December 21, 1981.

See: 13 N.J.R. 623(a), 13 N.J.R. 948(d).

Added: "except . . . N.J.A.C. 18:26-6.17".

Amended by R.1989 d.85, effective February 6, 1989.

See: 20 N.J.R. 2193(a), 21 N.J.R. 311(b).

Substituted "16" for "17".

Statutory References

N.J.S.A. 54:34-1.c.

Case Notes

An annuity or pension acquired by a decedent and made payable by him to another at or after decedent's death is subject to transfer inheritance tax. In re Estate of Rommes, 79 N.J. 139, 398 A.2d 543 (1979).

Value of survivorship annuity held subject to inheritance tax; annuity payments being subject to income tax did not result in prohibited double taxation; subjecting annuity to inheritance tax held not a denial of equal protection. Butzbach v. Director, Div. of Taxation, 3 N.J.Tax 462 (Tax Ct.1981).

18:26-5.10 Transfers not deemed to take effect at or after death

Any transfer of property by deed, grant, bargain, sale, gift or interest under which the transferor is entitled to some income, right, interest or power including the possession or enjoyment of the property, either expressly or by operation of law, is not deemed a transfer to take effect at or after the transferor's death if the transferor at any time more than three years prior to death completely and irrevocably disposes of all of his reserved income, rights, interests and powers in and over the transferred property, including any right to possession, use and enjoyment of the property.

Statutory References

N.J.S.A. 54:34-1.1.

18:26-5.11 Jointly held property

(a) Where, in the case of a resident decedent, real or tangible personal property situated in this State or intangible personal property wherever situated, or in the case of a nonresident decedent, real or tangible personal property located in this State, is held in the joint names of the decedent and one or more of such persons as joint tenants, the transfer of ownership, possession and enjoyment of such property to a surviving joint tenant or tenants is a transfer subject to the New Jersey Inheritance Tax.

(b) Such transfers are taxed in the same manner as if such property had belonged absolutely to the decedent joint tenant and had been devised or bequeathed by will to the surviving joint tenant or tenants. Only that part or interest in such property which the surviving joint tenant or tenants prove, to the satisfaction of the Director, to have originally belonged to him or them and not the decedent, is exempt from the tax.

(c) The rule stated in this section applies to property deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor under N.J.S.A. 17:9A-218.

(d) The rule stated in this section applies only to property held by two or more persons as joint tenants, and not tenants by the entirety. For the rule applicable to property held by tenants by the entirety, see section 6.4 (Tenancy by the entirety) of this chapter.

(e) In the case of a nonresident decedent holding real property in this State as a joint tenant together with one or more other persons, the transfer of such property at death is deemed to pass to the surviving joint tenant or tenants as though specifically devised and as such is not subject to the ratio tax imposed upon the transfer of property of a nonresident under N.J.S.A. 54:34-3.

(f) The right of a spouse, as a surviving joint tenant with his or her deceased spouse, to the immediate ownership or possession and enjoyment of a membership certificate or stock in a cooperative housing corporation, the ownership of which entitles such member or stockholder to occupy real estate for dwelling purposes as the principal residence of the decedent and spouse is exempt from Transfer Inheritance Tax.

As amended, R.1980 d.198, effective May 6, 1980.
See: 12 N.J.R. 221(a), 12 N.J.R. 355(b).

Statutory References

N.J.S.A. 54:34-1(f), Chapter 413, P.L. 1979.

Case Notes

Noted that Transfer Inheritance Tax Bureau has uniformly held that a transfer of property to a survivor of a joint tenancy is, at least presumptively, a taxable event, but that this is not true for a "transfer" of real property held by the entirety to the surviving spouse; acquirer of husband's interest in property held by the entirety obtains status of tenant in common during the joint life of the husband and wife and the interest the husband would have if he survived the wife; acquirer's exclusion from property by wife amounted to an ouster entitling him to an accounting for one-half of the imputed rental value less expenses. *Newman v. Chase*, 70 N.J. 254, 359 A.2d 474 (1976).

18:26-5.12 Powers of appointment; estates in expectancy

(a) Where by transfer of a resident decedent of real or tangible personal property within this State of intangible personal property wherever situated, or by transfer of a nonresident decedent of real or tangible personal property within this State, a transferee comes into the possession or enjoyment of:

1. An estate in expectancy of any kind or character which is contingent or defeasible, transferred by an instrument taking effect on or after July 4, 1909; or

2. Property transferred pursuant to a power of appointment contained in an instrument taking effect on or after July 4, 1909;

3. Such transfers are subject to the New Jersey Inheritance Tax.

(b) Property which is transferred pursuant to a power of appointment whether general or special, is deemed to pass from the estate of the donor or creator of the power to the transferee.

(c) For purposes of the New Jersey Inheritance Tax, a general power of appointment is a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate; a special or limited power of appointment is a power which does not qualify as a general power of appointment.

Statutory References

N.J.S.A. 54:34-1(d).

Case Notes

State law taxing property under a power of appointment differs from Federal law in that the subject property is taxed only once as part of the estate of the creator of the power. *Estate of Campbell v. United States*, 449 F.Supp. 675 (D.N.J.1977).

Grant of power to invade marital trust corpus conferred sufficient ownership to subject to transfer inheritance tax the testamentary transfer to spouse of both a life estate and residual portion of trust; grant of power to invade corpus did not bring trust within the exemption for direct taxation of powers of appointment. *Laffey Estate v. Director, Div. of Taxation*, 8 N.J.Tax 100 (Tax Ct.1986).

18:26-5.13 Insurance proceeds subject to New Jersey Inheritance Tax

Proceeds of any contract of insurance insuring the life of a resident of this State paid or payable to the Estate or the executor or administrator of such decedent is subject to the New Jersey Inheritance Tax.

Statutory References

N.J.S.A. 54:34-4(f).

18:26-5.14 Proceeds payable to testamentary trustee

Life insurance proceeds payable to a trustee or trustees of a testamentary trust created under the will of a decedent are not subject to inheritance tax, in estates of decedents dying on or after July 6, 1979.

As amended, R.1980 d.287, effective June 27, 1980.
See: 12 N.J.R. 352(b), 12 N.J.R. 497(a).

Statutory References

N.J.S.A. 54:34-4(c) as amended, P.L. 1979, c.137.