

11. On any amount equal to or more than \$4,040,000 but less than \$5,040,000, 11.2 percent of the excess over \$4,040,000 plus \$290,800;
12. On any amount equal to or more than \$5,040,000 but less than \$6,040,000, 12.0 percent of the excess over \$5,040,000 plus \$402,800;
13. On any amount equal to or more than \$6,040,000 but less than \$7,040,000, 12.8 percent of the excess over \$6,040,000 plus \$522,800;
14. On any amount equal to or more than \$7,040,000 but less than \$8,040,000, 13.6 percent of the excess over \$7,040,000 plus \$650,800;
15. On any amount equal to or more than \$8,040,000 but less than \$9,040,000, 14.4 percent of the excess over \$8,040,000 plus \$786,800;
16. On any amount equal to or more than \$9,040,000 but less than \$10,040,000, 15.2 percent of the excess over \$9,040,000 plus \$930,800; and
17. On any amount equal to or more than \$10,040,000, 16.0 percent of the excess over \$10,040,000 plus \$1,082,800.

18:26-3A.4 Reduction of tax

The tax as computed in N.J.A.C. 18:26-3A.2 shall be reduced by the aggregate amount of all estate, inheritance, succession or legacy taxes actually paid to any state or territory of the United States or the District of Columbia, including inheritance, succession or legacy taxes actually paid this State in respect to any property owned by such decedent or subject to such taxes as a part of or in connection with the estate. The amount of any reduction shall not exceed the proportion of the tax otherwise due under N.J.A.C. 18:26-3A.2 that the amount of the estate's property subject to tax by the other jurisdictions bears to the entire estate taxable for New Jersey estate tax purposes.

18:26-3A.5 Estate tax where no inheritance tax imposed

In the case of a decedent where no inheritance, succession or legacy tax is due this State, the estate tax imposed shall be determined pursuant to N.J.A.C. 18:26-3A.2.

18:26-3A.6 Lien

The estate tax imposed upon the estate of a resident decedent remains a lien on all property of a decedent as of the date of death of the decedent until paid. Except as otherwise provided in this chapter, no property owned by the decedent as of the decedent's date of death may be transferred without the written consent of the Director.

18:26-3A.7 Time limit for assessments

(a) 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; or
3. The taxpayer requests that the completion of the assessment be held in abeyance pending the final determination in the Federal estate tax proceeding.

18:26-3A.8 Filing of tax return and other information

(a) 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 any Federal estate tax return filed or required to be filed within 30 days after the filing or required filing of the original with the Federal government and a copy of any communication from the Federal government, making any intermediate or 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 any other evidence, information or data that the Director shall in his or her discretion deem necessary.

(b) 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 tax return filed and a copy of any receipts for payment of succession or estate taxes to other states or territories of the United States or the District of Columbia.

(c) A New Jersey estate tax return must be filed whenever the gross estate as determined in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001 exceeds \$675,000. The executor, administrator, trustee or other person or corporation liable for the payment of the estate tax shall prepare and file with the Director a New Jersey estate tax return form IT-ESTATE-2, and:

1. A Form 706 completed in accordance with the provisions of the Federal Internal Revenue Code of 1986, U.S.C. §§ 1 et seq., in effect on December 31, 2001 within 30 days after the date on which a Federal estate tax return would have been due under those provisions for decedent dying on that date; or
2. A New Jersey inheritance tax return completed in accordance with the provisions of the inheritance tax statutes and regulations in effect on December 31, 2001 within nine months of the date of death of the decedent.

18:26-3A.9 Taxation of future interest 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 device 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.

18:26-3A.10 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. 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.

(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.

(d) New Jersey estate tax returns (except returns filed using the Form 706 method, which are due nine months plus 30 days following the death of the decedent) must be filed within nine months following the death of the decedent. The Director may grant an extension of time in which a return may be filed. The estate representative may request an extension of time to file the New Jersey estate tax return for a period of six months beyond the original due date. Extensions beyond six months from the original due date of the return will be granted only in cases where the Director determines that exceptional circumstances exist. This subsection provides the authority only for an extension of time to file the tax return, and does not extend the time to pay the tax. The tax liability is due on the decedent's date of death and must be paid in full within nine months.

(e) Where interest has accrued at the time of any payment, such payment is first credited in satisfaction of the accrued interest, and the excess credited in payment of the tax chargeable. Interest shall continue to accrue on any remaining balance from the date of said payment to the date of final adjustment.

18:26-3A.11 Certificate of inheritance

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 or her 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.

18:26-3A.12 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 or her 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) Interest will be paid on overpayments of tax at a rate determined by the Director to be equal to the prime rate, determined for each month or fraction thereof, compounded annually at the end of each year, from the date that such interest commences to accrue to the date of refund. Interest shall commence to accrue on the later of the date of the filing by the taxpayer of a claim for refund, the date of the payment of the tax, or the due date of the return; but no interest will be paid on an overpayment of less than \$1.00, nor upon any overpayment 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, whichever is later.

18:26-3A.13 Protests, hearings and appeals

(a) 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 submit a written protest to the Individual Tax Audit Branch in accordance with N.J.A.C. 18:26-12.9 and 12.10.

(b) 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. (See N.J.A.C. 18:26-12.12.)

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.

(e) These powers are in addition to or supplement the power of the Director to examine records, conduct hearings, issue subpoenas, and compel witnesses to attend hearings and produce records as provided in N.J.A.C. 18:26-12.4, 12.5, 12.6 and 12.7.

Amended by R.1983 d.356, effective September 6, 1983.
See: 15 N.J.R. 1088(b), 15 N.J.R. 1488(b).

Deleted "appraiser" and added "auditor".
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".
Amended by R.1998 d.194, effective April 20, 1998.
See: 30 N.J.R. 609(a), 30 N.J.R. 1426(b).
Added (e).

18:26-8.4 Failure to testify before appraiser; false statements

(a) Any person failing to attend before an appraiser after service of a subpoena, or refusing to give information concerning an estate, shall be liable for such penalty as prescribed by law.

Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(a), 20 N.J.R. 2310(c).
Deleted (b).

Statutory References

N.J.S.A. 54:34-10 and 11.

18:26-8.5 Additional assessment

(a) In the absence of fraud or clerical error, after a final determination and assessment has been made and a notice thereof sent to the representatives of the estate, the bureau will not reverse its determination or reopen an assessment. This, however, does not bar an additional or corrected assessment being made upon the discovery of assets or liabilities after an original report has been filed and the taxes assessed thereon paid.

(b) Where an asset is the subject of litigation at the time of a decedent's death, the appraisal of such an asset is suspended until the suit is terminated.

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

18:26-8.6 Final assessment

N.J.S.A. 54:34-12 provides for an assessment of the tax by the Division. Upon receipt of the return and payment of any applicable tax, the Transfer Inheritance Tax Branch will advise the estate representative as to whether the return filed by the estate and the tax calculation are accepted, in which case the Branch's notification will be the assessment. In the event that the Branch decides to further examine the return, it will subsequently notify the estate representative as to the amount of tax assessed.

Amended by R.1981 d.477, effective December 21, 1981.
See: 13 N.J.R. 623(a), 13 N.J.R. 948(d).

(a) Added "except ... applied". (c) and (d) deleted.

Amended by R.1983 d.356, effective September 6, 1983.

See: 15 N.J.R. 1088(b), 15 N.J.R. 1488(b).

Deleted old (c) and (d).

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

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

Added text (a) "except when returns ..."

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

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

All text deleted; new text added.

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

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

18:26-8.7 Assessment notices; required statements

(a) Any assessment notice changing the tax as reported by the taxpayer shall contain the statements required pursuant to subsections a, b, and d of N.J.S.A. 54:48-6.

(b) An arbitrary assessment of tax made pursuant to the provisions of N.J.S.A. 54:49-5 shall include a statement of the reason for the assessment, the action or omissions of the taxpayer which require the assessment, or the nature of the documentary evidence, if any, which has prompted the assessment, including the following:

1. In the case of an underpayment or failure of payment, a statement of the corresponding alleged correct payment and the correct date of payment; and

2. In the case of a failure to file a return, a statement of the alleged filing date.

(c) The lack of any statement otherwise required to be included with a notice pursuant to (a) above, or the lack of any description otherwise required pursuant to (b) above, shall not invalidate such notice.

Amended by R.1975 d.85, effective March 31, 1975.

See: 7 N.J.R. 118(d), 7 N.J.R. 240(c).

Amended by R.1975 d.348, effective November 18, 1975.

See: 7 N.J.R. 488(b), 7 N.J.R. 578(c).

Amended by R.1979 d.295, effective August 2, 1979.

See: 11 N.J.R. 358(a), 11 N.J.R. 475(a).

Amended by R.1983 d.445, effective December 20, 1982.

See: 14 N.J.R. 1153(a), 14 N.J.R. 1464(b).

Increased gross estate from \$200,000 to 250,000.

Deleted marital deduction and renumbered 2-4 as 1-3.

Amended by R.1986 d.441, effective November 3, 1986.

See: 18 N.J.R. 1520(b), 18 N.J.R. 2216(b).

Deleted text in (a) "Where the gross estate of a resident decedent is \$250,000 or less, the".

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

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

Substantially amended.

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

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

New Rule, 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. 54:50-6.

18:26-8.8 Time limit for assessment

(a) Upon the expiration of a period of 15 years after the date of death of a decedent, no proceeding may be instituted to assess or collect any tax, interest or penalties due this

State for Inheritance Tax purposes against any estate, executor, administrator, trustee, grantee, donee, vendee, devisee, legatee, heir, next of kin or beneficiary. However, this does not affect any rights to collection which this State has by reason of filing with the Clerk of the Superior Court, a Certificate of Debt, Decree of Judgment for the New Jersey Inheritance Tax, including any interest and penalties; nor does the period of limitation affect the rights of this State to assess and collect the New Jersey Inheritance Tax including any interest and penalties under the terms of a bond or their agreement securing the payment of such tax, interest and penalties.

(b) For estates with date of death on or after July 1, 1993, no assessment of additional inheritance tax shall be made after the expiration of more than four years from the later of the date of the filing of an inheritance tax return or payment of tax due thereon. However, the assessment period may be extended in the following cases:

1. The return is false or fraudulent with the intent to evade tax;
2. If, before the expiration of the period prescribed in the 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. Tax on executory devises, contingent future interests and estates subject to a power of appointment is assessed pursuant to the provisions of N.J.A.C. 18:26-8.12, 8.21, 8.24 and 9.16;
4. If the inheritance tax return is amended by the taxpayer to include additional property of a decedent, the assessment of tax on the additional property shall not be made after four years from the date of the filing of the amended return;
5. The assessment of tax in an estate passing to a beneficiary discovered after the filing of an inheritance tax return shall not be made after four years from the date of the discovery of the beneficiary and receipt of notification by the Inheritance Tax Branch; or
6. If a decedent's interest in property, or the value thereof as of the decedent's date of death, has not been determined at the time of the filing of an inheritance tax return due to litigation or controversy, the assessment of tax shall be made within four years after the decedent's interest in the property, or the value thereof on the decedent's date of death, has been definitely established.

(c) Returns not falling into the six categories in (b) above shall be subject to the provisions of (a) above.

(d) For the purposes of (b) above, an inheritance tax return filed before the corresponding day of the eighth month following the decedent's date of death shall be considered as filed on that day.

Amended by R.1980 d.198, effective May 6, 1980.

See: 12 N.J.R. 221(a), 12 N.J.R. 355(b).

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

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

Stylistic changes.

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. 54:35-5.1, as amended by P.L. 1979, c.417; 54:49-6(b).

18:26-8.9 Appeals from assessment

Any interested person dissatisfied with an appraisal or assessment made by the Inheritance Tax Branch may, before appealing to the Tax Court in accordance with N.J.A.C. 18:26-12.12, submit a written protest to the Branch in accordance with N.J.A.C. 18:26-12.9. Executors, administrators, trustees, or other interested parties should also avail themselves when appropriate of an informal hearing as provided under N.J.A.C. 18:26-10.

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).

Reference to N.J.S.A. 54:51A-13 et seq. added.

Amended by R.1998 d.194, effective April 20, 1998.

See: 30 N.J.R. 609(a), 30 N.J.R. 1426(b).

Rewrote the section.

18:26-8.10 Valuations generally

(a) All the real, personal property, tangible and intangible subject to the New Jersey Inheritance Tax is appraised according to its clear market value on the date of decedent's death.

(b) Any direction in a will regarding the payment of inheritance or estate taxes while binding on the executor and the beneficiaries has no effect in the computation of the tax due this State.

(c) The Director may, in his judgment and discretion, require that the appraisal of any tangible assets subject to tax, be supported by an appraisal made by a broker, dealer, jobber or any other person having expert knowledge with respect to the market value of any such tangible property.

Amended by R.1974 d.34, effective February 13, 1974.

See: 6 N.J.R. 35(b), 6 N.J.R. 124(c).

Amended by R.1976 d.246, effective August 3, 1976.

See: 8 N.J.R. 356(a), 8 N.J.R. 445(b).

Statutory References

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