

18:26-2.9 Escheat

In the case of a decedent who dies intestate with no known heirs surviving, the rate of tax is assessed against the transfer at the highest rate permissible to the State.

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

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

Repealed by R.1994 d.627, effective December 19, 1994.

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

Section was "Escheat".

New Rule, R.1997 d.205, effective May 19, 1997.

See: 28 N.J.R. 4755(a), 29 N.J.R. 2467(b).

18:26-2.10 Multiple transfers

When more than one transfer subject to the tax has been made by a decedent to the same transferee, the tax is computed upon the aggregate clear market value of all of the property so transferred in the same manner and to the same extent as if all of the property had actually been transferred by a single transfer at the date of the decedent's death.

Statutory References

N.J.S.A. 54:33-1; 54:34-1.

18:26-2.11 Distribution by agreement

If a transferee under a will agrees that the estate, or any part of it is to be distributed otherwise than as provided in the will, the tax is nevertheless computed in accordance with the terms of the will admitted to probate.

Amended by R.1983 d.323, effective August 15, 1983.

See: 15 N.J.R. 798(a), 15 N.J.R. 1384(b).

Deleted old (b).

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 (b).

18:26-2.12 Renunciation or disclaimer

(a) If a transferee under a will or by operation of law disclaims or renounces his rights thereunder, or any portion thereof, the disclaimer or renunciation is given effect in computing the tax against the estate; provided, the instrument of disclaimer or renunciation is filed within nine months of death in the office of the surrogate or Superior Court in which proceedings have been commenced or will be commenced for the administration of the estate of the decedent or deceased donee of the power.

(b) A copy of the disclaimer or renunciation should be filed with the Transfer Inheritance Tax Branch.

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

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

Deleted "a reasonable time" and added "nine months of death".

Amended by R.1990 d.73, effective February 5, 1990.

See: 21 N.J.R. 1822(a), 22 N.J.R. 366(a).

Reference to disclaimers added; as amended applies to both testate and intestate cases.

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. 54:34-1a.

Case Notes

Filing of copy of disclaimer of inheritance with Transfer Inheritance Tax Bureau for informational purposes. *Herman v. Baldwin*, 10 N.J.Tax 348 (1989).

Disclaimer of inheritance by parents resulted in taxpayer being considered actual transferee for tax purposes. *Herman v. Baldwin*, 10 N.J.Tax 348 (1989).

18:26-2.13 Possibility of divestment

Notwithstanding that a transferee by his act or omission can divest himself of the property transferred to him, the tax on the transfer is computed as if there were no possibility of divestment.

Statutory References

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

18:26-2.14 Composition of taxes on certain transfers

(a) In the case of a transfer or transfers made subject to a contingency or condition which renders a definite determination of the transfer inheritance tax due impossible, the Transfer Inheritance Tax Branch may enter into a composition or compromise of the tax based upon the immediate payment and final disposition of the tax.

(b) The composition or compromise of the tax is determined after a consideration of the amount of taxes that may become due as a result of the various contingencies or conditions, the present values thereof and the probability of the contingencies or conditions to which the transfers are subject occurring. The purpose of a composition is to permit an immediate, fair and equitable adjustment of the tax due, rather than holding the liability for taxes suspended for an indefinite period.

(c) The payment of the taxes provided for in such composition shall be conclusive in favor of the executor or trustee as against the interests of such cestuis que trustent as may possess present rights of enjoyment or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of a particular transfer.

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.

Statutory References

N.J.S.A. 54:36-6; 54:36-5.

18:26-2.15 Bond in lieu of payment

(a) If settlement through a compromise of the tax fails, a bond in double the highest amount of tax must be filed with the Inheritance Tax Branch, executed by the executor, admin-

istrator, trustee, or other proper representative, as principal, and a surety company licensed to operate in New Jersey as surety, until the contingency or condition occurs and the tax due becomes definite.

(b) Upon the happening of the contingency or condition to which a transfer is subject, the executor, administrator, trustee or other proper representative shall notify the Transfer Inheritance Tax Branch of the date the occurrence took place and a computation of the tax due shall then be made. (See N.J.A.C. 18:26-9.16).

(c) The composition or compromise permitted herein, refers only to the tax on transfers subject to contingencies or conditions and not to the value of the property included in the transfer.

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.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. 54:36-6.

18:26-2.16 Ratio tax on transfer of nonresident's property

(a) In the case of a nonresident decedent's estate containing real or tangible personal property located in this State which passes to a transferee wherever situated, except by means of a specific devise, the tax on such transfer shall be computed as follows:

The tax is first computed on the entire estate as if the decedent were a resident of New Jersey and all of his or her assets were located here and then prorated (multiplied) by the proportion (ratio) which the New Jersey real and tangible personal property bears to the entire estate.

(b) The following are illustrations of the provisions of (a) above:

Example (1):

Mr. "A" a California domiciliary, died intestate, on July 3, 1997 leaving as his sole heir a nephew, Mr. "B". Mr. "A's" estate consisted of the following: real property of the value of \$10,000 in New Jersey; \$20,000 in cash located in an Illinois bank; and \$70,000 in real and personal property located in California.

The New Jersey property is subject to the ratio tax and the tax on such transfer is computed as follows:

First, a tax is computed on the value of the entire estate as if such estate were located in New Jersey, (i.e., \$100,000 x 15%, the rate applicable for property passing to a Class "D" transferee or \$15,000).

Second, the tax so computed is then multiplied by a fraction whose numerator is the value of the real or tangible personal property located in this State and whose denominator is the value of all property, real or personal, tangible or intangible, wherever situated, in the estate (i.e. $10/100 \times \$15,000 = \$1,500$, which is the ratio tax on the property passing to Mr. "B").

If Mr. "A" had specifically devised the property in New Jersey to his nephew, said property would not be subject to the ratio tax, but rather, it would be taxed directly to the devisee at the resident rates.

Example (2):

Same facts as Example (1) except that Mr. "A" died testate and bequeathed \$10,000 held in a bank account to his nephew and the rest of his estate to his wife.

First, a tax is computed as if Mr. "A" had been a New Jersey domiciliary, i.e., as to "B", $\$10,000 \times 15\% = \$1,500$; as to "A's" wife, \$90,000, all of which is exempt.

Second the total of tax, i.e., \$1,500 is multiplied by 1/10, the ratio of the property subject to tax to the entire estate, i.e., $1/10 \times \$1,500 = \150.00 , the amount of tax due.

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.

Statutory References

N.J.S.A. 54:34-3.

18:26-2.17 Direction in will as to payment of tax

The direction of a decedent's will regarding the payment of inheritance or estate taxes out of a specific fund or the residuary estate, while binding on the executor and the beneficiaries, has no effect in the computation of tax due this State.

Statutory References

N.J.S.A. 54:34-12; 54:35-6; 3A:25 to 38.

18:26-2.18 through 18:26-2.19 (Reserved)

SUBCHAPTER 3. ESTATE TAX—DECEDENTS DYING ON OR BEFORE DECEMBER 31, 2001

18:26-3.1 Estates subject to tax

(a) In addition to the inheritance tax imposed upon the transfer of property of a decedent in this State, the estates of the following are subject to an estate tax:

1. All New Jersey residents dying after June 22, 1934; and,

Amended by 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. 54:35-1, 54:36-5.

18:26-9.10 How tax is payable

(a) A certified or cashiers check in full payment of the tax and interest, if any, must be filed together with the return directly with the Inheritance Tax Branch, PO Box 249, Trenton, New Jersey 08646-0249.

(b) 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. The interest shall continue to accrue on any remaining balance from the date of said payment to the date of final adjustment.

(c) Payment on account of any transfer inheritance tax to be assessed may be made in advance of the actual assessment. Any payment on account will also be accepted to cover any compounded, contingent or compromise assessment.

Amended by R.1989 d.85, effective February 6, 1989.
See: 20 N.J.R. 2193(a), 21 N.J.R. 311(b).

Zip code changed from 08625 to 08646.

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

Payment method clarified.

Amended by R.1998 d.194, effective April 20, 1998.
See: 30 N.J.R. 609(a), 30 N.J.R. 1426(b).

Statutory References

N.J.S.A. 54:35-2; 54:35-4.

18:26-9.11 Persons responsible

Any administrator, executor, trustee to the extent of any estate funds in his possession, grantee, donee, cestui que trustent, beneficiary and vendee is personally liable for any and all New Jersey Inheritance Taxes until paid or provided for by bond in double the amount of the tax due to the extent of his or her interest in the estate and an action at law may be brought in the name of the State against any such person for payment of such tax. See N.J.A.C. 18:26-10.4 (Deduction or collection of tax before distribution).

Statutory References

N.J.S.A. 54:35-2; 54:35-4.

Case Notes

Executor of estate not personally liable for transfer inheritance tax obligation of decedent arising from decedent's role as sole heir and executor of estate of decedent's brother; transfer inheritance tax obligation did not become known as a debt of estate until more than six months after issuance of order limiting creditors and until after all assets of estate were distributed. *Coleman v. Director, Div. of Taxation*, 15 N.J.Tax 529 (1996).

18:26-9.12 Liability for nonpayment

The tax on a gift in contemplation of death, or to take effect in possession or enjoyment at or after death, if not paid by the donee must be paid by executor or administrator to the extent of the assets within such fiduciary's possession or control.

Historical Note

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

Statutory References

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

18:26-9.13 Late payment; general provisions

(a) Any payment of the New Jersey inheritance tax after the expiration of the corresponding day of the eighth month following the date on which it became due and payable shall bear interest at the rate of 10 percent per annum on any unpaid portion of the tax, from the expiration of eight months after the date on which it became due and payable until the date of actual payment, unless payment was tendered by the taxpayer within the eight month period and is evidenced by the postmark of the United States Postal Service on the letter conveying the payment, by a postmark made by other than the United States Postal Service (that is, metered mail) within the eight month period and the payment was received by the Inheritance Tax Branch within three days of the expiration of the eight month period, or by other acceptable proof, but was not credited through no fault of the taxpayer, in which case no interest shall be charged, or unless by reason of any claims made upon the estate, necessary court litigation, or other unavoidable cause of delay, the decedent's estate or a part thereof, cannot be settled before the expiration of eight months from the date of death, in which event interest at the rate of only six percent per annum is to be charged from the expiration of eight months until the cause of delay is removed.

(b) In cases where there is no corresponding day in the eighth calendar month following the date of death, the first business day of the succeeding month shall be the effective date for purposes of determining interest penalties; for example where decedent died June 30, 1962, the tax payment will not bear interest if made on or before March 1, 1963.

(c) In cases where a decedent dies while a member of the Armed Forces of the United States, the tax due shall begin to bear interest at the rate of ten per cent per annum on any unpaid balance due after the expiration of eight months after receipt of official notification of the death of the decedent by the spouse, parent or next of kin of such decedent.

(d) Any person liable for the payment of the tax, may, in order to avoid a penalty, estimate and pay the tax believed

to be owing prior to actual receipt of a tax bill. In the event of any over-payment of the tax, a refund will be made. In the event of an underpayment, interest will be charged on the balance due.

(e) Tax on any sum recovered as compensation for the death of a person caused by a wrongful act, neglect, or default must be paid within 30 days of the receipt of the award or settlement. Tax not paid within 30 days shall bear interest at the rate of 10 percent per annum from the expiration of eight months after the due date (the date of the award settlement) to the date of actual payment subject to the exceptions in (a) above.

(f) For returns due on or after July 1, 1993 the Director shall waive the payment of any part of any penalty or interest attributable to the executor's, administrator's, or trustee's reasonable reliance on erroneous advice furnished to the taxpayer in writing on or after July 1, 1993 by an employee of the Transfer Inheritance and Estate Tax Branch acting in the employee's official capacity, provided that the penalty or interest did not result from the failure of the executor, administrator or trustee to provide adequate or accurate information. The executor, administrator, or trustee has the affirmative obligation to show that it was reasonable to rely on the written advice.

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.1994 d.627, effective December 19, 1994.

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

Statutory References

(a) N.J.S.A. 54:35-3; (e) N.J.S.A. 54:35-4.1; (f) N.J.S.A. 54:49-11(b).

Case Notes

Interest was properly assessed on inheritance tax due at rate of 10%, absent showing of unavoidable cause of delay. *Heine v. Director of New Jersey Div. of Taxation*, 10 N.J.Tax 435 (1989).

18:26-9.14 Payment on executory devise or transfer subject to a contingency or power of appointment

(a) With respect to the payment of the tax due on an executory devise, or a transfer subject to a contingency or power of appointment, any payment on such a transfer after the expiration of two months from the date the contingency occurs or the property vests, shall bear interest at the rate of ten percent per annum from the date the contingency occurs or the property vests, until the date of actual payment.

(b) In any case where a contingent remainder vests in beneficial possession and enjoyment subsequent to the death of the original decedent, but prior to the expiration of the statutory interest period, interest on the contingent tax does not start to accrue until eight months from the date of death of the original decedent.

Amended by 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. 54:36-5.

18:26-9.15 Bond for failure to pay tax

(a) Where an executor, administrator, grantee, donee, vendee, or trustee fails to pay the tax due within eight months from the date of a decedent's death, such person is required to give a bond, on a form approved by the Director, to the State of New Jersey, in double the amount of the tax to secure payment of any tax and interest which may become due.

(b) In the case of tax due on any sum recovered as compensation for the death of a person caused by a wrongful act, neglect, or default, the bond shall be required within eight months of the due date (the date of the award or settlement) if the tax is not paid within 30 days of the receipt of the award or settlement.

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. 54:35-3, 54:35-4, 54:35-4.1, 54:35-5.

18:26-9.16 Composition of taxes, bond

(a) Where an estate is so created that the remainders or expectant estates are of such a nature or are so disposed or circumstanced that the taxes thereon are held not to be presently payable, or where the interests of legatees or devisees are not ascertainable at the death of the testator, grantor, donor or vendor, the Director may enter into an agreement with the executors or trustees of such estate for the purpose of compounding the tax due upon such terms as are deemed equitable and expedient.

(b) The payment of the tax due pursuant to a composition or compromise are conclusive in favor of the executor or trustee as against any cestui que trust and who possess a present right of enjoyment, interest in, or fixed, absolute or indefeasible right of future enjoyment in property and any cestui que trustents as would possess such rights in the event a particular estate would terminate.

(c) If the executor or trustee elects to defer the adjustment of the taxes due until the person or body politic or corporate beneficially interested in the property chargeable with the tax comes into actual possession or enjoyment of the property, such executor or trustee must execute a bond to the State of New Jersey in twice the amount of the tax imposed at the highest possible rate, with such surety or sureties as approved by the New Jersey Department of Banking and Insurance or by the Director, conditioned to pay the tax and interest at the time or period when such contingency occurs.