

CHAPTER 26

TRANSFER INHERITANCE AND ESTATE TAX

Authority

N.J.S.A. 54:38-1 and 54:50-1.

Source and Effective Date

R.2003 d.152, effective March 17, 2003.  
See: 34 N.J.R. 3935(a), 35 N.J.R. 1567(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 26, Transfer Inheritance and Estate Tax, expires on September 13, 2008. See: 40 N.J.R. 872(a).

Chapter Historical Note

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

Pursuant to Executive Order No. 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 No. 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: 30 N.J.R. 609(a), 30 N.J.R. 1426(b).

Chapter 26, Transfer Inheritance and Estate Tax, was readopted as R.2003 d.152, effective March 17, 2003. As a part of R.2003 d.152, Subchapter 3A, Estate Tax—Decedent's Dying after December 31, 2001, was adopted as new rules. See: Source and Effective Date. See, also, section annotations.

Subchapter 3, Additional Tax (New Jersey Estate Tax), was renamed Estate Tax—Decedents Dying on or before December 31, 2001; and Subchapter 3A, Estate Tax—Decedent's Dying after December 31, 2001, was renamed Estate Tax—Decedents Dying after December 31, 2001, by R.2006 d.196, effective June 5, 2006. See: 37 N.J.R. 1694(a), 38 N.J.R. 2518(b).

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**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;

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

4. The estate tax return is amended by the taxpayer to include additional property of a decedent.

i. The issues raised in an amended tax return may be assessed within four years from the date that the amended tax return is filed;

5. 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 the estate tax return due to litigation or controversy.

i. A decedent's interest in property, or the value thereof, which is established after the estate tax return is filed may be assessed within four years from the date on which the interest or value is established, and the Division receives notification; or

6. A taxpayer or the Internal Revenue Service makes a change or changes to the Federal estate tax return filed subsequent to the filing of the New Jersey estate tax return.

i. A change or changes made by a taxpayer or the Internal Revenue Service to the Federal estate tax return filed subsequent to the filing of the New Jersey estate tax return may be assessed within four years from the date

that such change or changes are made, and the Division receives notification.

(b) For the purposes of this section, an estate tax return filed before the last day prescribed for its filing shall be considered to have been filed on the last day prescribed.

Amended by R.2006 d.154, effective May 1, 2006.  
See: 38 N.J.R. 108(a), 38 N.J.R. 1859(a).

In (a)3, substituted a semicolon for a period at the end; and added (a)4 through (a)6 and (b).

**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 plus adjusted taxable gifts 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, 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.

(d) In those cases where a taxpayer makes an election for Federal estate tax purposes, a like election must be made for New Jersey estate tax purposes. Assets and deductions must be treated in the same manner for both Federal and New Jersey estate tax purposes with the following exceptions:

1. In those situations where the decedent is survived by a spouse and a Federal estate tax return is required to be

filed, a Qualified Terminable Interest Property (QTIP) election which does not reduce the Federal estate tax liability is not given effect for New Jersey estate tax purposes. In those situations where a Federal estate tax return is not required to be filed, a QTIP election is not permitted for New Jersey estate tax purposes as the property effectively passes as part of the Federal taxable estate.

2. In those situations where a decedent is survived by a civil union partner on or after February 19, 2007, and a Federal estate tax return is required to be filed, a New Jersey QTIP election may be made provided that the election would have reduced the Federal estate tax liability had the decedent been survived by a spouse and the election been made for Federal purposes. In those situations where a Federal estate tax return is not required to be filed, a QTIP election is not permitted for New Jersey estate tax purposes as the election would not have been permitted had the decedent been survived by a spouse.

(e) If the decedent was a partner in a civil union and died on or after February 19, 2007, survived by his or her partner, a marital deduction equal to that permitted a surviving spouse under the provisions of the Internal Revenue Code in effect on December 31, 2001, is permitted to the surviving civil union partner for New Jersey estate tax purposes. In these cases, a pro forma 2001 Form 706 should be completed as though the Internal Revenue Code treated a surviving civil union partner and a surviving spouse in the same manner.

(f) A Simplified Tax System method may also be used, but only in those situations where a Federal estate tax return has not and will not be filed nor is a tax return required to be filed with the Internal Revenue Service. The Simplified Tax System requires that a Form IT- Estate be prepared and filed along with a New Jersey Inheritance Tax return Form IT-R completed in accordance with the provisions of the Inheritance Tax statute in effect on December 31, 2001.

Amended by R.2006 d.196, effective June 5, 2006.

See: 37 N.J.R. 1694(a), 38 N.J.R. 2518(b).

In (c), inserted "plus adjusted taxable gifts" in the first sentence and substituted "IT-ESTATE" for "IT-ESTATE-2" in the second sentence; and added (d).

Amended by R.2008 d.72, effective April 7, 2008.

See: 39 N.J.R. 5185(a), 40 N.J.R. 1923(b).

In the introductory paragraph of (d), substituted "with the following exceptions:" for a period at the end; and added (d)1, (d)2, (e) and (f).

#### **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, civil union partner, 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.

Amended by R.2008 d.72, effective April 7, 2008.

See: 39 N.J.R. 5185(a), 40 N.J.R. 1923(b).

In (b), inserted "civil union partner,".

Inheritance Tax and a New Jersey Estate Tax waiver, to, or on the order of, the surviving fiduciary or fiduciaries.

Amended by R.2003 d.152, effective April 7, 2003.  
See: 34 N.J.R. 3935(a), 35 N.J.R. 1567(b).

Inserted "and a New Jersey Estate Tax" following "a New Jersey Transfer Inheritance Tax".

### 18:26-11.11 Transfer of partnership interest

The written consent of the Director is not required for the transfer of real or personal property, tangible or intangible, owned by a bona fide partnership in which a decedent had an interest.

### 18:26-11.12 Transfer of assets held by nonresident custodian

A waiver is not required in order to transfer any assets held by a nonresident custodian on behalf of a resident or nonresident decedent.

### 18:26-11.13 Transfer of tangible or intangible personal property

(a) A waiver is not required in order to transfer all other tangible or intangible personal property, including but not limited to:

1. Wages;
2. Salaries;
3. Vacation and sick leave pay;
4. Payment under pension, profit sharing, bonus plans or stock purchase plans;
5. All automobiles;
6. Mortgages;
7. Accounts Receivable;
8. Household goods;
9. Personal effects;
10. Funds held in an account in the name of a funeral director in trust for a decedent in accordance with the provisions of N.J.S.A. 2A:102-13 (advance funeral payment);
11. Funds to a decedent's credit in a Credit Union plan organized under N.J.S.A. 17:13-26 et seq. in addition to any matching sums paid under any type of Credit Union plan in the form of a life insurance where said matching sum is directed to be paid to a decedent's estate or his executor or administrator. However, funds held under the Federal Credit Union Act must be reported and a waiver obtained.

(b) Any property, the transfer of which is not subject to first obtaining a waiver, must, nevertheless, be reported on a decedent's return.

Amended by R.1971 d.2, effective January 4, 1971.  
See: 2 N.J.R. 102(g), 3 N.J.R. 30(c).

#### Historical Note

Formerly Regulation 23 of Transfer Inheritance Tax Bureau, filed 9/1/51; Formerly Regulation 9B of Transfer Inheritance Tax Bureau filed on 12/30/48; Formerly Regulation 9C of the Transfer Inheritance Tax Bureau filed on 2/24/59.

#### Statutory References

N.J.S.A. 54:35-19.

### 18:26-11.14 Exempt property not subject to waiver

The written consent of the Director is not required for the transfer of any property exempt or not includible for purposes of the New Jersey Transfer Inheritance Tax Act and the New Jersey Estate Tax Act. The property sought to be treated as exempt for purposes of the State death transfer tax statutes must not be includible in the gross estate of the decedent regardless of whether the tax at issue is the New Jersey Estate Tax or the New Jersey Inheritance Tax.

Amended by R.2003 d.152, effective April 7, 2003.  
See: 34 N.J.R. 3935(a), 35 N.J.R. 1567(b).

Inserted "nor for any property not subject to the New Jersey Estate Tax" following the N.J.A.C. reference.

Amended by R.2006 d.196, effective June 5, 2006.  
See: 37 N.J.R. 1694(a), 38 N.J.R. 2518(b).

Rewrote the section.

#### Statutory References

N.J.S.A. 54:35-19.

### 18:26-11.15 Certain small estates not subject to waiver

(a) If the gross estate of a resident decedent which for tax purposes does not exceed \$5,000 where the applicant is the spouse/civil union partner of the decedent or \$200.00 where another person is the applicant, and the spouse/civil union partner or other applicant furnishes a bank, savings institution, or a savings and loan association with an affidavit in lieu of administration which has been obtained from the Surrogate of the County wherein the decedent died a resident, such bank, institution or association may release the funds on deposit to the credit of a resident decedent without the written consent of the Director upon the spouse/civil union partner or other applicant executing Form 0-80 or 0-83.

(b) Form 0-83, used by a spouse/civil union partner or Form 0-80, used by any other applicant, is to be obtained only from a bank, savings institution or savings and loan association and executed concurrently with the release of any funds. Every bank institution or association is required to obtain such forms directly from the Transfer Inheritance Tax Section of the Individual Tax Audit Branch, PO Box 249, Trenton, New Jersey 08695-0249, and is further required to obtain the following information from each applicant before the release of any funds to be assured that the total assets of the estate are less than \$5,000 or \$200.00 as the case may be:

1. The total amount on deposit in all bank accounts wherever situated, whether in the name of the decedent individually, jointly, or in trust for another;

2. The total redemption value of any United States Savings Bonds title to which is held in the name of the decedent either individually, jointly, or payable on death to another;

3. The total value of any tangible property owned by the decedent such as automobiles, jewelry and household goods;

4. The total value of any benefits paid or payable under a group annuity plan, retirement plan, or profit sharing plan of decedent's employer;

5. Whether the decedent was the lessee of a safe deposit box individually or jointly; but (see (c) below).

(c) The provisions of this section do not apply and therefore, except as provided under the Blanket Waiver, (see N.J.A.C. 18:25-11.16) a bank, savings institution, or savings and loan association is prohibited from releasing any funds of a resident decedent where:

1. Letters of testamentary or of general administration have been or are to be issued;

2. The decedent was the lessee, individually or jointly, of a safe deposit box;

3. There will be payable either to the estate of the decedent or to a beneficiary, any amount under a group annuity plan, retirement plan, or profit sharing plan;

4. The decedent has made a transfer of property within three years of the date of death without having received equal financial consideration therefor; and (see (d) below).

(d) In determining the value of a gross estate for tax purposes, under this section, the entire amount of any funds on deposit to the credit of a resident decedent in any bank, savings institution or savings and loan association, including the full value of any United States Savings Bonds must be included in the total value of such decedent's estate even though title to any such items is held jointly by the decedent and another; and (see (e) below).

(e) This section does not apply to the estate of any non-resident decedent or to the estate of a decedent which is administered under the provision of N.J.S.A. 3A:6-5, where the value thereof for tax purposes, exceeds \$5,000 or \$200.00 as the case may be.

Amended 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).

Stylistic changes.

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

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

Amended by R.2003 d.152, effective April 7, 2003.

See: 34 N.J.R. 3935(a), 35 N.J.R. 1567(b).

In (b), inserted "Section of the Individual Tax Audit" following "Transfer Inheritance Tax" in the introductory paragraph; in (d), substituted "tax" for "Inheritance Tax"; in (e), deleted "inheritance" preceding "tax purposes".

Amended by R.2008 d.72, effective April 7, 2008.

See: 39 N.J.R. 5185(a), 40 N.J.R. 1923(b).

In (a) and the introductory paragraph of (b), inserted "/civil union partner" throughout.

#### Statutory References

N.J.S.A. 54:35-19, P.L. 1979, Chapter 217.

#### 18:26-11.16 Blanket waiver

(a) Notwithstanding any other section contained in this chapter, regarding the release of funds; any banking institution, trust company or safe deposit company organized under the laws of this State; national bank operating in this State, building and loan or savings and loan association organized in this State; or credit union chartered by the United States and operating in this State; corporation or person may release any amount up to 50 percent of the entire amount of funds on hand held in deposit, which belong to or stand in the name of a resident decedent or in the joint names of such decedent and one or more other persons, to:

1. An executor;

2. Administrator;

3. Legal representative of the decedent;

4. Surviving joint tenant;

5. Cestui que trust; or

6. The estate of a minor where title to said funds are held in the name of a custodian for said minor, without the written consent of the Director, upon the application of such proper party to the institution, association, organization, corporation or person above mentioned.

(b) The provisions of this section apply to each institution, association or organization, corporation or person listed above with whom a decedent has any funds on deposit, including Certificates of Deposit, and is limited to no more than 50 percent of the funds in the entire account whether such account is held in the decedent's name only or jointly with another so that where the decedent holds an account jointly, only one half of the funds may be released, not the half claimed by the joint owner and an additional half of the funds belonging to the decedent.

(c) In addition to the amount permitted to be released by an institution, association, organization, corporation or person mentioned in this section, institutions, associations, organizations, corporations, or persons may, without written consent of the Director:

1. Pay any and all checks drawn on any account owned by a decedent individually, jointly, or otherwise, when said checks are issued prior to death and presented for payment within 10 days following the decedent's date of death;

except that in the event an executor, administrator, or other proper party above mentioned in this section shall apply for a release of 50 percent of the funds on deposit after 10 days from the decedent's death, the institution, association, organization, corporation, or person mentioned in this section holding the funds shall after having deducted the amount of any checks issued prior to and presented for payment within 10 days of the decedent's death, release 50 percent of the balance in a decedent's account to the proper party upon application and without the written consent of the Director;

2. Pay any checks in any amount for which there are sufficient funds held in deposit, drawn on any account owned by a decedent individually, jointly or otherwise, representing full or partial payment of any New Jersey Transfer Inheritance or Estate Taxes and made payable to New Jersey Inheritance and Estate Tax;

3. Liquidate the loan of any decedent who has pledged the pass book representing a savings account as collateral for a loan, where upon the death of such a decedent the loan is in default and then make 50 percent of the remaining funds available under the blanket waiver; but