

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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APPENDIX A. (RESERVED)

SUBCHAPTER 1. DEFINITIONS

18:26-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“The Act”, “The Law” or “The Tax Act” means Chapters 33-38 of Title 54 of the Revised Statutes of New Jersey.

“Blanket waiver” means the general written consent of the Director issued by regulation permitting banks, trust companies, savings institutions, building and loan and savings and loan associations operating in this State, to transfer up to 50 percent of any shares held for or of the total funds on deposit to the credit of a deceased resident of this State, either individually as a co-depositor, trustee, agent, cestui que trust, or in any other capacity, prior to the final payment of the tax and in the absence of a formal waiver. The blanket waiver also authorizes the release of an amount in addition to the said 50 percent, called for by a check or checks made payable to New Jersey Inheritance and Estate Tax, in payment of transfer inheritance taxes chargeable.

“Class A transferee” means any of the following:

1. A father, mother, grandparent, grandchildren, husband or wife;
2. A child or children of a decedent, including any stepchild of a decedent or child or children adopted by a decedent in conformity with the laws of this State, or of any of the United States or of a foreign country;
3. The issue of any child or legally adopted child of a decedent;
4. Any child to whom the decedent for not less than 10 years prior to the transfer stood in the mutually acknowledged relationship of a parent, provided the relationship began at or before the child's 15th birthday and was continuous for 10 years thereafter. This applies to persons who were taken into the household and reared as children of the decedent, but who were never legally adopted by the decedent; or

5. A domestic partner as defined in section 3 of P.L. 2003, c. 246 (N.J.S.A. 26:8A-3).

“Class C transferee” means any of the following:

1. A brother or sister of a decedent;
2. A wife or widow of a son of a decedent; or
3. A husband or widower of a daughter of a decedent.

“Class D transferee” means any other transferee, distributee or beneficiary who is not a Class “A” or “C” or “E” transferee.

“Class E transferee” means any of the following:

1. The State of New Jersey or any political subdivision thereof;
2. Any educational institution, church, hospital, orphan asylum, public library or Bible and tract society or to, for the use of or in trust for any institution or organization organized and operated exclusively for religious, charitable, benevolent, scientific, literary or education purposes, including any institution instructing the blind in the use of dogs as guides, no part of the net earnings of which inures to the benefit of any private stockholder or other individual or corporation; provided, that the exemption does not extend to transfers of property to such education institutions and organizations of other states, the District of Columbia, territories and foreign countries which do not grant an equal and like exemption of transfers of property for the benefit of such institutions and organizations of this State.

“Clear Market Value” means the market value of any property included in any transfer, less any deductions allowable under the law.

“Director” means Director, Division of Taxation in the Department of the Treasury, State of New Jersey. (See, N.J.S.A. 52:27B-48, 49; 52:18A-25, 24.)

“Domestic partner” means an individual who is in a relationship that satisfies the definition of a domestic partnership as set forth in the Domestic Partnership Act, P.L. 2003, c. 246.

“Estate and Property” means the interest of the testator, intestate, grantor, bargainor or vendor, passing or transferred to the individual or specific legatee, devisee, heir, next of kin, grantee, donee or vendee, not exempt from the provisions of the Act, whether such property be situated within or without this State and includes family partnership interest or family limited partnership interest.

“Gross Estate” means the value, as of the date of a decedent's death of all property wherever situated, which is included in the decedent's estate for inheritance tax purposes.

“Market Value—Date Determined” means the value of property as of the date of death of the transferor, whether or

not the transfer was made during the lifetime of the transferor.

“Person” means any individual, domestic partner, corporation, organization, association, partnership or any other entity.

“Proper representative of the estate” means the appropriate representative as determined under the estate administration statutes, N.J.S.A. 3B:1-1 et seq.

“Transfer” means and includes the passing of property or any interest therein, in possession or enjoyment, present or future, by distribution by statute, descent, devise, bequest, grant, deed, bargain, sale or gift.

“Transferee” means any person to whom a transfer is made, and includes any legatee, devisee, heir, next of kin, grantee, donee, vendee, assignee, successor, or survivor or beneficiary.

“Waiver” means the written consent of the Director permitting the transfer of one or more assets held in the name of a decedent or a decedent and others.

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

Definition for “Proper representative of the estate” added.
Amended by R.1994 d.627, effective December 19, 1994.
See: 26 N.J.R. 4166(c), 26 N.J.R. 5036(a).
Amended by R.1998 d.194, effective April 20, 1998.
See: 30 N.J.R. 609(a), 30 N.J.R. 1426(b).

In “Class A transferee”, added a second sentence in 4.
Amended by R.2006 d.196, effective June 5, 2006.
See: 37 N.J.R. 1694(a), 38 N.J.R. 2518(b).

In the last sentence of definition “Blanket waiver”, substituted “New Jersey Inheritance and Estate Tax” for “the New Jersey Inheritance Tax Branch”; in definition “Class A transferee” deleted “or” at the end of 3, in 4, substituted “15th” for “fifteenth” and “10” for “ten” in the first sentence and “; or” for the period at the end of the last sentence, and inserted 5; inserted definition “Domestic partner”; added the language “and includes ... limited partnership interest” in definition “Estate and Property”; and inserted “domestic partner,” in definition “Person”.

Statutory References

N.J.S.A. 54:35-19.
N.J.S.A. 54:34-2a; 54:34-2.1.
N.J.S.A. 54:34-2c.
N.J.S.A. 54:34-1d.
N.J.S.A. 54:34-4(a) and 54:34-4(d).
N.J.S.A. 54:34-5.
N.J.S.A. 54:33-1.
N.J.S.A. 54:34-5.
N.J.S.A. 54:33-1.
N.J.S.A. 54:34-1.
N.J.S.A. 54:35-19.

Case Notes

The determination of clear market value or market value must encompass and entail the objective assessment of all relevant factors bearing upon worth. In re Estate of Romnes, 79 N.J. 139, 398 A.2d 543 (1979).

SUBCHAPTER 2. IMPOSITION AND COMPUTATION OF TAX

18:26-2.1 Nature of tax

(a) The Act imposes a tax upon transfers of the value of \$500.00 or over, or of any interest thereon or income therefrom, held in trust or otherwise, to or for the use of any transferee, as set forth under N.J.S.A. 54:34-1, including, but not limited to, the following:

1. In the case of a resident decedent, where such transfers consist of real or tangible property situated in this State or intangible personal property wherever situated, owned by such decedent; and

2. In the case of a nonresident decedent, where such transfers consist of real or tangible personal property owned by such decedent situated in this State at the time of death.

Statutory References

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

18:26-2.2 Law at the time of death controls

The right of the State to the inheritance tax on transfers vests at the moment of a decedent's death so that the law prevailing at the time of death of a resident or nonresident controls the transfers subject to the tax and the rates thereon.

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. 54:35-1.

Case Notes

Compromise transfer tax calculated on date of testator's death. Estate of Darrin v. Taxation Div. Director, 9 N.J.Tax 419 (1987), affirmed in part, reversed in part 232 N.J.Super. 437, 557 A.2d 677, appeal dismissed 118 N.J. 193, 570 A.2d 958, on remand 11 N.J.Tax 482.

Applicable transfer inheritance tax rates were those in effect at testator's death. Estate of Darrin v. Director of Div. of Taxation (Transfer Inheritance Tax Bureau), 232 N.J.Super. 437, 557 A.2d 677 (A.D.1989), appeal dismissed 118 N.J. 193, 570 A.2d 958, on remand 11 N.J.Tax 482.

Request that trustee of testamentary trust be appointed guardian of minor was properly denied. Matter of Estate of Horowitz, 220 N.J.Super. 300, 531 A.2d 1364 (L.1987).

Noted that the real significance of the transfer inheritance tax was that it vests in the State immediately upon the death of the testator; various tax statutes found not self-executing for current appropriations and not valid authority for withdrawal of monies from State treasury. City of Camden v. Byrne, 82 N.J. 133, 411 A.2d 462 (1980).

State's right to inheritance tax vests at the moment of decedent's death; law prevailing at time of death controls the transfer of the estate. Wells v. Taxation Div. Director, 3 N.J.Tax 420 (Tax Ct.1981).

18:26-2.3 Computation of tax

The New Jersey Inheritance Tax is computed upon the clear market value of the property transferred, but only upon that portion in excess of the exemptions and deductions allowable under the law on the date of the transferor's death at the rates then in effect.

Statutory References

N.J.S.A. 54:34-5.

18:26-2.4 Exclusion of exempt transfers

In computing the tax the deductions allowed by N.J.S.A. 54:34-5 (see N.J.A.C. 18:26-7) are to be deducted from the clear market value of the property transferred, and the tax computed on the remainder of the transfer less any exemptions permitted under N.J.S.A. 54:34-4 (see subchapter 6 of this chapter) at the rates in effect at the date of death.

Statutory References

N.J.S.A. 54:34-5, 54:34-4.

Case Notes

Enumerated statutory deductions are separate from valuation as such and are to be taken after valuation of an asset. In re Estate of Romnes, 79 N.J. 139, 398 A.2d 543 (1979).

18:26-2.5 Rates for Class "A" transferee

(a) Transfers to Class "A" transferees where the decedent dies on or after July 1, 1978 through June 30, 1985, except as provided in (c) below, are taxed at the following rates:

1. On any amount in excess of—

\$ 15,000 up to \$ 50,000	2%
50,000 up to 100,000	3%
100,000 up to 150,000	4%
150,000 up to 200,000	5%
200,000 up to 300,000	6%
300,000 up to 500,000	7%
500,000 up to 700,000	8%
700,000 up to 900,000	9%
900,000 up to 1,100,000	10%
1,100,000 up to 1,400,000	11%
1,400,000 up to 1,700,000	12%
1,700,000 up to 2,200,000	13%
2,200,000 up to 2,700,000	14%
2,700,000 up to 3,200,000	15%
3,200,000	16%

(b) Transfers to a spouse are totally exempt where the decedent dies on or after January 1, 1985.

(c) Transfers to Class "A" transferees, other than a spouse, where the decedent dies on or after July 1, 1985 through June 30, 1986, are taxed at the following rates:

1. On any amount in excess of—

\$ 50,000 up to 100,000	3%
100,000 up to 150,000	4%
150,000 up to 200,000	5%
200,000 up to 300,000	6%

300,000 up to 500,000	7%
500,000 up to 700,000	8%
700,000 up to 900,000	9%
900,000 up to 1,100,000	10%
1,100,000 up to 1,400,000	11%
1,400,000 up to 1,700,000	12%
1,700,000 up to 2,200,000	13%
2,200,000 up to 2,700,000	14%
2,700,000 up to 3,200,000	15%
3,200,000	16%

(d) Transfers to Class "A" transferees, other than a spouse, where the decedent dies on or after July 1, 1986 through June 30, 1987, are taxed at the following rates:

\$ 150,000 up to 200,000	5%
200,000 up to 300,000	6%
300,000 up to 500,000	7%
500,000 up to 700,000	8%
700,000 up to 900,000	9%
900,000 up to 1,100,000	10%
1,100,000 up to 1,400,000	11%
1,400,000 up to 1,700,000	12%
1,700,000 up to 2,200,000	13%
2,200,000 up to 2,700,000	14%
2,700,000 up to 3,200,000	15%
3,200,000	16%

(e) Transfers to Class "A" transferees, other than a spouse, where the decedent dies on or after July 1, 1987 through June 30, 1988, are taxed at the following rates:

1. On any amount in excess of—

\$ 250,000 up to 300,000	6%
300,000 up to 500,000	7%
500,000 up to 700,000	8%
700,000 up to 900,000	9%
900,000 up to 1,100,000	10%
1,100,000 up to 1,400,000	11%
1,400,000 up to 1,700,000	12%
1,700,000 up to 2,200,000	13%
2,200,000 up to 2,700,000	14%
2,700,000 up to 3,200,000	15%
3,200,000	16%

(f) Transfers to all Class "A" transferees, where decedent dies on or after July 1, 1988, are totally exempt.

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.1989 d.85, effective February 6, 1989.
See: 20 N.J.R. 2193(a), 21 N.J.R. 311(b).
Date changed in (b); added (c)-(g).
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. 54:34-2a.

18:26-2.6 Mutually acknowledged child or domestic partner

(a) In the case of Class "A" transferee to whom the decedent stood in the mutually acknowledged relationship of a parent, as defined in N.J.A.C. 18:26-1.1, the claim on behalf of such a transferee must include the following information:

1. The date and age the child was first taken into the household and a mutually acknowledged child relationship assumed.

2. The period of time the relationship continued with the dates given.

3. A complete statement of circumstances whereby the child was taken into the household.

4. The source and cost of the child's support.

5. The child's parentage indicating whether such parents are alive and their address or if deceased, the dates of death and their legal domicile at death.

6. The person who was established as the parent of the child when the child registered at school. The person who signed the child's report cards and similar documents. The person who claimed the child as a dependent for Federal income tax purposes and the relationship claimed on the return of such individual.

7. The affidavits of two or three disinterested persons having knowledge of the relationship setting forth the facts as known to them.

8. Any other details which will support the claim that a mutually acknowledged relationship of parent and child existed.

(b) In the case of a Class "A" transferee to whom the decedent stood in the relationship of a domestic partner as defined in section 3 of P.L. 2003, c. 246 (N.J.S.A. 26:8A-3), or a civil union or reciprocal beneficiary under (b)2iii below, the claim on behalf of such a transferee must include the following:

1. If the relationship was entered into in New Jersey, a copy of the Certificate of Domestic Partnership with the State seal issued by the local registrar.

2. If the relationship was entered into in another jurisdiction:

i. A copy of the certificate or other document issued by the other jurisdiction bearing its seal;

ii. An affidavit providing the information contained in the Affidavit of Domestic Partnership required to be filed in New Jersey; and

iii. Such other proof or supporting official documentation, if any, as required by the Director that directly supports the claim that is being made.

(c) If a domestic partnership, civil union or reciprocal beneficiary relationship was entered into in another jurisdiction, the surviving partner is exempt for inheritance tax purposes provided that the requirements for establishing a domestic partnership in New Jersey (other than a residence in New Jersey and the filing of an Affidavit of Domestic Partnership in New Jersey) were met and the partnership/union would be allowed under New Jersey statutes.

(d) New Jersey does not recognize same-sex marriages. A same-sex couple must register as domestic partners in New Jersey in order for the surviving partner to be exempt from the inheritance tax.

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

In (a)6, inserted "claimed the child as a dependent for Federal income tax purposes" following "who" in the third sentence.
Amended by R.2006 d.196, effective June 5, 2006.

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

Section heading was: "Mutually acknowledged child". Added (b) through (d).

Statutory References

N.J.S.A. 54:34-2.1.

18:26-2.7 Rates of Class "C" transferee

(a) In the case of a transfer to a Class "C" transferee, where the decedent dies prior to July 1, 1988, the rates are as follows:

On any amount up to \$1,100,000	11%
On any amount in excess of \$1,100,000 up to \$1,400,000	13%
On any amount in excess of \$1,400,000 up to \$1,700,000	14%
On any amount in excess of \$1,700,000.....	16%

(b) In the case of a transfer to a Class "C" transferee, where the decedent dies on or after July 1, 1988, the rates are as follows:

1. On any amount in excess of—

\$ 25,000 up to 1,100,000	11%
1,100,000 up to 1,400,000	13%
1,400,000 up to 1,700,000	14%
1,700,000	16%

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.

Statutory References

N.J.S.A. 54:34-2c.

18:26-2.8 Rates of Class "D" transferee

In the case of a transfer to a Class "D" transferee, the rates are as follows:

On any amount up to \$700,000	15%
On any amount in excess of \$700,000.....	16%

Statutory References

N.J.S.A. 54:34-2d.

Case Notes

Request that trustee of testamentary trust be appointed guardian of minor was properly denied. Matter of Estate of Horowitz, 220 N.J. Super. 300, 531 A.2d 1364 (L.1987).

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 properly filed, in accordance with the provisions of N.J.S.A. 3B:9-1 et seq.

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

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).
Amended by R.2007 d.206, effective July 2, 2007.
See: 39 N.J.R. 853(b), 39 N.J.R. 2545(a).
Rewrote (a); and in (b), substituted "Section" for "Branch".

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,

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 the 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 or the filing of the Federal estate tax return, whichever is earlier. 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.

(f) All New Jersey estate tax returns must be filed within nine months following the death of the decedent. The Director may grant an extension of time in which the return may be filed. An estate representative may request an extension of time to file the New Jersey estate tax return for a period up to that allowed by the IRS by filing Form IT-EXT (Application for Extension of Time to File a Return.) A copy of the request for a Federal extension and, if Federal approval is not automatic, a copy of the Federal approval must be attached to the request.

1. This subsection provides the authority only for an extension of time to file the estate 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. Any extension granted for the filing of the New Jersey estate tax return expires upon the filing of the Federal estate tax return.

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).

Amended by R.2002 d.135, effective May 6, 2002.
See: 34 N.J.R. 16(a), 34 N.J.R. 1725(b).

In (b), added "or the filing of the Federal estate tax return, whichever is earlier" at the end of the first sentence; added (f).

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 3A. ESTATE TAX—DECEDENTS DYING AFTER DECEMBER 31, 2001

18:26-3A.1 Estate subject to tax—decendent's dying after December 31, 2001

In addition to the inheritance tax imposed upon the transfer of property of a decedent in this State, an estate tax is imposed upon the transfer of the estate of every resident decedent dying after December 31, 2001 which would have been subject to an estate tax payable to the United States under the provisions of the Federal Internal Revenue Code of 1986, 26 U.S.C. §§ 1 et seq., in effect on December 31, 2001.

18:26-3A.2 Amount of the tax and certain valuations

(a) The tax is, at the discretion of the person or corporation liable for its payment, either:

1. The maximum credit that would have been allowable under the provisions of that Federal Internal Revenue Code in effect on December 31, 2001 against the Federal estate tax that would have been payable under the provisions of the Federal Internal Revenue Code in effect on December 31, 2001 on account of taxes paid to any state or territory of the United States or the District of Columbia; or

2. An amount determined pursuant to the Simplified Tax System set forth in N.J.A.C. 18:26-3A.3. The Simplified Tax System may not be used in those cases where a Federal estate tax return is filed or required to be filed.

(b) The following principles are applicable in making valuations and calculating the tax where family limited partnerships are involved.

1. A family limited partnership is a limited partnership in which more than 50 percent of the partners are related by blood or marriage and which does not have a true business purpose. It may or may not hold an interest in another partnership or other asset which has a true business purpose. One indicia of a true business purpose is that the family limited partnership has and engages in business or commercial transactions with customers, clients, persons or entities other than the partners of the family limited partnership, their family members or other related individuals or entities.

2. In an estate where a Federal estate tax return is required to be filed and where the discounts for an interest in a family limited partnership claimed have a Federal estate tax consequence, the discounts, if any, permitted by the Internal Revenue Service will generally be permitted for New Jersey estate tax purposes unless deemed by the Director to be excessive.

3. In an estate where a Federal estate tax return is not required to be filed and where the tax is computed in accordance with the provisions of (a)1 above (maximum credit) and in an estate where a Federal estate tax return is required to be filed but where the discount claimed for an interest in a family limited partnership has no Federal estate tax consequence:

i. If an interest in a family limited partnership was created or funded within one year of a decedent's death, it is presumed that the value of the interest is the value of the underlying assets on the date of death of the decedent unless conclusive proof to the contrary is submitted which clearly indicates a different value. Discounts are not permitted unless the Director determines that they are warranted by the interest in the partnership and/or the nature of and risk associated with the underlying assets. Discounts totaling more than 10 percent are not permitted unless the Director determines that a greater total discount is warranted by the nature and risk associated with the underlying assets.

ii. If an interest in a family limited partnership was created or funded more than one year prior to a decedent's death, the interest is valued based upon the interest in the partnership and the value of the underlying assets on the date of death of the decedent. Discounts totaling more than 10 percent are not permitted unless the Director determines that a greater total discount is warranted by the nature and risk associated with the underlying assets.

4. In an estate where a Federal estate tax return has not been filed and is not required to be filed and the tax is computed in accordance with (a)2 above (simplified tax system), an interest in a family limited partnership is valued at the value of the underlying assets on the date of the death of the decedent. Discounts are not permitted for an interest in a family limited partnership unless the Director determines that they are warranted by the nature of and risk associated with the underlying assets.

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

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

Section was named "Amount of the tax". In (a)2, substituted ". The Simplified Tax System" for ", Simplified Tax System,"; and added (b).

18:26-3A.3 Simplified Tax System

(a) The taxable value of the estate is determined as follows:

1. Net estate determined for New Jersey inheritance tax purposes under the provisions of the statutes and regulations in effect on December 31, 2001 (line 7 of recital page of form IT-R); plus

2. Real and tangible personal property located outside New Jersey; plus

3. Proceeds of any contract of insurance on the life of the decedent owned by the decedent or transferred by the decedent within three years of death paid to any beneficiary other than the executor, administrator, or estate; plus

4. All transfers made within three years of the decedent's death not included in the inheritance tax net estate; plus

5. In the event that the decedent was a surviving spouse and received qualified terminable interest property (QTIP) from the predeceased spouse for which the marital deduction was elected for Federal and/or New Jersey, the full value of the QTIP property; plus

6. Any other property includable in the Federal gross estate under the provisions of the Internal Revenue Code in effect on December 31, 2001; less

7. Any property passing outright to the decedent's surviving spouse provided he or she was a U.S. citizen on the decedent's date of death; and

8. Any property which passes to, for the use of or in trust for any educational institution, church, hospital, orphan asylum, public library or Bible and tract society or to any institution or organization organized and exclusively for religious, charitable, benevolent, scientific, literary or educational purposes, including any institution instructing the blind in the use of dogs as guides, no part of the net earnings of which inures to the benefit of any private stockholder or other individual or corporation; provided, that this exemption shall not extend to such educational institutions and organizations of other states, the District of Columbia, territories and foreign countries which do not grant an equal, and like exemption to such institutions and organizations of this State. This exemption does not apply if any portion of the property can be used by, for the benefit of or paid to any private stockholder, individual or corporation.

(b) The taxable value of the estate is reduced by \$60,000 and taxed at the following rates:

1. On any amount less than \$615,000, no tax;

2. On any amount equal to or more than \$615,000 but less than \$667,174, 37.0 percent of the excess over \$615,000;

3. On any amount equal to or more than \$667,174 but less than \$840,000, 4.8 percent of the excess over \$667,174 plus \$19,304;

4. On any amount equal to or more than \$840,000 but less than \$1,040,000, 5.6 percent of the excess over \$840,000 plus \$27,600;

5. On any amount equal to or more than \$1,040,000 but less than \$1,540,000, 6.4 percent of the excess over \$1,040,000 plus \$38,800;

6. On any amount equal to or more than \$1,540,000 but less than \$2,040,000, 7.2 percent of the excess over \$1,540,000 plus \$70,800;

7. On any amount equal to or more than \$2,040,000 but less than \$2,540,000, 8.0 percent of the excess over \$2,040,000 plus \$106,800;

8. On any amount equal to or more than \$2,540,000 but less than \$3,040,000, 8.8 percent of the excess over \$2,540,000 plus \$146,800;

9. On any amount equal to or more than \$3,040,000 but less than \$3,540,000, 9.6 percent of the excess over \$3,040,000 plus \$190,800;

10. On any amount equal to or more than \$3,540,000 but less than \$4,040,000, 10.4 percent of the excess over \$3,540,000 plus \$238,800;

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.

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

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

In (a)4, substituted "plus" for "less"; inserted present (a)5; and recodified former (a)5 and (a)6 as (a)6 and (a)7; and inserted "provided he or she was a U.S. citizen on the decedent's date of death" in new (a)6.

Amended by R.2008 d.12, effective January 7, 2008.

See: 39 N.J.R. 4106(a), 40 N.J.R. 193(b).

In (a)5, substituted "plus" for "less"; added new (a)6; and recodified former (a)6 and (a)7 as (a)7 and (a)8.

18:26-3A.4 Reduction of tax; out-of-State property

(a) The tax, as computed in N.J.A.C. 18:26-3A.2, shall be reduced by:

1. The portion of said tax that is attributable to property located outside New Jersey. The amount of the tax reduction is calculated by multiplying the tax due on the entire gross estate wherever located by a fraction, the numerator of which is the gross value of property located outside the State and the denominator of which is the New Jersey entire gross estate, wherever located. In general, for purposes of the calculation described in this paragraph, intangible personal property is considered to be located in New Jersey; and

2. The inheritance, succession or legacy taxes actually paid this State in respect to any property owned by such decedent or subject to such taxes as part of or in connection with the estate.

Repeal and New Rule, R.2008 d.12, effective January 7, 2008.

See: 39 N.J.R. 4106(a), 40 N.J.R. 193(b).

Section was "Reduction of tax".

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.

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).

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 ex-

tension 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 on account of such taxes.

Amended by R.2006 d.196, effective June 5, 2006.
See: 37 N.J.R. 1694(a), 38 N.J.R. 2518(b).
Substituted "on" for "in" near the end.

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.

18:26-4.4 through 18:26-4.5 (Reserved)

SUBCHAPTER 5. TRANSFERS SUBJECT TO TAX

18:26-5.1 Transfers generally

(a) Any transfers of property real or personal of the value of \$500.00 or over, or any interest in a transfer or income from a transfer which interest or income is \$500.00 or over in value, whether such transfer, interest or income is held in trust or otherwise to or for the use of any transferee, distributee or beneficiary, is subject to the transfer inheritance tax at the rates designated in Sections 2.4, 2.7 and 2.8 of this Chapter.

(b) In any case where a transfer or any interest or income is less than \$500.00 in value, the transfer, interest or income is exempt from the tax; provided, however, if the transfer, interest or income is valued at \$500.00 or more, then the entire transfer, interest or income is subject to tax.

Example:

Mr. "X" bequeaths his gold ring worth \$250.00 to "Y", this being the only transfer made to "Y", the transfer is not subject to the tax. If Mr. "X" had bequeathed not only the ring but a watch and chain worth \$300.00, then the transfer would be taxable and the tax would be based upon the entire amount, *i.e.*, \$550.00.

Statutory References

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

18:26-5.2 Transfers of residents and nonresidents

(a) *Residents.* Transfers by will or by the intestate laws of this State of real or tangible personal property situated in this State and intangible personal property, such as stock, bonds, securities, and mortgages wherever located from the estate of a resident decedent who died seized or possessed of such property, are subject to the tax. Intangible personal property of a resident decedent is deemed situated in this State, regardless of where it is actually located, since by law personalty is deemed to follow the domicile of its owner.

(b) *Nonresidents.* In the case of a nonresident decedent, only real or tangible personal property located within this State of which the decedent was seized or possessed transferred by will or intestate law are subject to the tax.

Statutory References

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

18:26-5.3 Property includible in estate of decedent

(a) Moneys recovered under New Jersey Death Act (N.J.S.A. 2A:31-1 et seq.).

1. Any sum recovered under the New Jersey Death Act representing damages sustained by a decedent between the date of injury and date of death, such as the expenses of care, nursing, medical attendance, hospital and other charges incident to the injury, including loss of earnings and pain and suffering are to be included in the decedent's estate.

2. Where an action is instituted under the New Jersey Death Act and terminates through settlement by a compromise payment without designating the amount to be paid under each count, the amount so recovered is first applied toward the payment of funeral expenses, the expenses of care, nursing, medical attendance, hospital and other proper charges incident to the injury and is includible in the estate of the decedent.

(b) Unpaid dividends—Stock, which on the date of death is quoted "exdividends" or "dividends" payable to the holder of record on the date prior to the date of death, constitute a part of the estate and are to be included in a decedent's estate.

(c) Accrued unpaid income—The amount of any accrued unpaid income on mineral and oil deeds or leases as of the date of death is considered an asset of the estate of a New Jersey decedent and includible in the estate.

Statutory References

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

18:26-5.4 Classification of property as real or personal¹

(a) For purposes of the transfer inheritance tax laws of this State, the doctrine of equitable conversion will not be applied in estates of New Jersey decedents which involve realty situated in New Jersey.

(b) The doctrine of equitable conversion will not be applied in the case of those estates where a New Jersey decedent was a party to a contract of sale involving real estate situated in a foreign jurisdiction;

Example 1. The interest of a deceased resident vendor located in another state, which was under contract of sale at the date of his death, shall be deemed to be an interest in real property, the transfer of which is not subject to tax under the inheritance tax laws of this State;

Example 2. The interest of a deceased resident vendee, under a contract in effect at the date of death to purchase real property located in another state, shall be deemed personal property and taxable to the extent of the sum paid on account of the contract price at the time of death. Pursuant to the provisions of N.J.S.A. 54:34-5, as amended, the balance due under the contract shall not be allowed as a deduction in determining the clear market value of decedent's estate subject to tax under the inheritance tax laws of this State.

and, also, where a nonresident decedent was involved as a party to a contract of sale involving realty situated in New Jersey.

Example 1. The interest of a deceased nonresident vendor of real property located in New Jersey, which was under contract of sale at the date of such nonresident decedent's death, shall be deemed to be an interest in real property the transfer of which shall be taxable under the inheritance tax laws of this State. If such nonresident shall die intestate, his interest in the New Jersey real property shall, for the purposes of the inheritance tax laws of this State, be deemed to have descended under the intestate laws of this State to his heirs at law;

Example 2. The interest of a deceased nonresident vendee, under a contract in effect at the date of death to purchase real property located in New Jersey, shall be deemed personal property and not subject to tax under the inheritance tax laws of this State;

Note:—This rule will apply whether a decedent died testate or intestate, or where real property is specifically devised but is under contract of sale at the date of death.

(c) Concerning ground rents, or leasehold interests, ground rents or any leasehold interest in land for 99 years or more is deemed to be an interest in real property for the purpose of valuation only under the New Jersey inheritance tax laws; however, as to succession under the laws of descent and distribution of this State, such an interest is personal property. Such an interest, when held by a husband and wife, is held as a tenancy in common, unless the conveyance expressly states they hold as joint tenants. There can be no tenancy by the entirety in such an interest. Unaccrued ground rent on property located outside this State and owned by a resident decedent is deemed to be foreign real property and, therefore, not subject to tax; however, ground rent accrued prior to the date of death on property located outside the State of New Jersey owned by a resident decedent is subject to tax as it is deemed to be personal property.

(d) Partnership real estate. Any real property held by a partnership of which a decedent is a partner even if held by the deceased partner and his wife as tenants by the entirety, is deemed to be a partnership asset and therefore is considered personal property.

As amended, R.1973 d.224(b), effective August 13, 1973.
See: 5 N.J.R. 244(b), 5 N.J.R. 321(b).
As amended, R.1980 d.198, effective May 6, 1980.
See: 12 N.J.R. 221(a), 12 N.J.R. 355(b).

¹This regulation is intended to conform the treatment of real property under contract of sale or purchase at the time of decedent's death with that of adjoining states (Cf. Estate of Paul, 303 Pa. 330, and In re DeSteuer's Estate, 99 N.Y. Supp. (2d.39)), and to revoke previous regulations in conflict herewith.

Historical Note

Formerly Regulation of Transfer, Inheritance Tax Bureau (Equitable Conversion) filed 1/6/53.

Statutory References

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

Case Notes

Held that doctrine of equitable conversion should not be applied to resolution of tax issues; rule held to exceed Director's authority under statute; husband's interest in property held by the entireties deemed not subject to taxation when he died after contract of sale of property was executed but prior to transfer of title. In re Estate of Houghton, 147 N.J.Super 477, 371 A.2d 735 (App.Div.1977), affirmed per curiam 75 N.J. 462, 383 A.2d 713 (1978).

18:26-5.5 Devises in lieu of commissions

In any case where a decedent appoints or names one or more executors or trustees and makes a devise of property to such fiduciaries in his will in lieu of commissions or allowances or appoints him or them his residuary legatee or legatees, the transfer to such fiduciary or fiduciaries of that portion of the property in excess of the reasonable compensation fixed by the Superior or County Court having jurisdiction in the matter, is subject to the New Jersey Inheritance Tax.

Statutory References

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

18:26-5.6 Inter vivos transfers

(a) Any transfer of real or tangible personal property situated in this state or intangible personal property wherever situated in the case of a resident decedent or of real or tangible personal property situated in this State in the case of a non-resident decedent made by such decedent during his lifetime, whether in contemplation of death or intended to take effect in possession or enjoyment at or after decedent's death, is subject to the New Jersey Inheritance Tax. Any such transfers will be taxed upon the clear market value of the transferred property on the date of death.

(b) In the case of a resident decedent, all intangible personal property is deemed to be situated in this State, even though it may be actually located anywhere outside the State.

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.c.

Case Notes

Death of donor, rather than date of gift, triggers inheritance tax on gifts. Maguire Estate v. Director of Div. of Taxation, 9 N.J.Tax 437 (1987).

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.

Case Notes

There is a statutory presumption that transfer is in contemplation of death and is therefore subject to inheritance tax, if a transfer is without valuable consideration within three years of death of transferor, and is a material part of transferor's estate or is in nature of final disposition or distribution; once statutory elements of the presumption are satisfied, a taxpayer must prove by a preponderance of evidence that the gift was not made in contemplation of death. *Berg v. Director, Div. of Taxation*, 17 N.J.Tax 256 (N.J.Tax 1998).

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 respective 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 or the right of a domestic partner as defined in section 3 of P.L. 2003, c. 246 (N.J.S.A. 26:8A-3), as a surviving joint tenant with his or her deceased spouse or domestic partner, 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 or domestic partner is exempt from the 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).

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

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

In (f), inserted the language "or the right of a . . . (N.J.S.A. 26:8A-3)," and twice inserted "or domestic partner".

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.

18:26-5.15 Proceeds under matured endowment policies

(a) In the case of a decedent who dies subsequent to the maturity of an endowment policy, the proceeds are taxable whether payable to a designated beneficiary or beneficiaries or to the estate of such decedent.

(b) Endowment policies which have all the attributes of life insurance policies prior to maturity are exempt if payable to a specific beneficiary and if the decedent died prior to maturity, but are taxable if payable to the estate for distribution by will.

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. 54:34-1(c), P.L. 1979, c.137.

18:26-5.16 Proceeds under claim settlement certificates and supplementary contracts

Payments made under a claim settlement certificate or a supplementary contract are subject to the New Jersey Inheritance Tax, except when they represent a continuation of payments under an insurance policy on the life of a prior decedent, which life insurance policy provided for such payment at decedent insured specific directions.

Statutory References

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

18:26-5.17 Proceeds of retirement contracts

The proceeds of a retirement contract purchased on the installment plan are subject to the New Jersey Inheritance Tax when the decedent dies prior to the date of retirement and

the payments are returned to either his estate or to a designated beneficiary, 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).

Changed "17" to "16".

Statutory References

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

18:26-5.18 Proceeds of single premium life insurance with annuity contracts

(a) The proceeds of single premium life insurance contracts combining a life insurance feature and an annuity feature are subject to the New Jersey Inheritance Tax.

(b) The proceeds of life insurance contracts combining a life insurance feature and an annuity feature, are subject to the New Jersey Inheritance Tax.

Statutory References

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

18:26-5.19 Annuity contracts

(a) Annuity contracts purchased by or vested in a decedent and made payable by him to another at or after his death are subject to the New Jersey Inheritance Tax.

(b) Annuity payable under certain trusts and plans which are exempt under Section 2039(c) of the Internal Revenue Code of 1954 may not be exempt for New Jersey Inheritance Tax purposes. The treatment to be accorded payments made under such trusts and plans depends upon the facts and circumstances which exist in each case. (See 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).

(b): "are" deleted after "1954" and "may" and "be" added. Added cross-reference to 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).

Changed "17" to "16".

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).

Subjection of survivor's annuity to inheritance tax as a transfer intended to take effect after decedent's death held valid on the grounds that annuity was also subject to Federal income tax. *Gritzmacher v. Director, Div. of Taxation*, 2 N.J. Tax 489 (Tax Ct. 1981).

18:26-5.20 Dividends and refunds on life insurance policies

Dividend accumulations, post mortem dividends, terminal dividends and premium refunds on contracts of life insurance although payable at the same time are not considered part of the life insurance proceeds of the policy and are taxable to the beneficiary as transfers taking effect at or after the death of the insured.

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

18:26-5.21 (Reserved)

SUBCHAPTER 6. EXEMPTIONS

18:26-6.1 Class "A" transfers

(a) In instances where the decedent dies prior to July 1, 1978, the transfer of property having an aggregate clear market value of \$5,000 or less which is transferred to a father, mother, grandparent, husband, wife, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.

(b) In instances where the decedent dies on or after July 1, 1978 through June 30, 1985, except as provided in (c) below, the transfer of property having an aggregate clear market value of \$15,000 or less which is transferred to a father, mother, grandparent, husband, wife, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.

(c) Transfers to a spouse are totally exempt where the decedent dies on or after January 1, 1985.

(d) In instances where the decedent dies on or after July 1, 1985 through June 30, 1986, the transfer of property having a clear market value of \$50,000 or less which is transferred to a father, mother, grandparent, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.

(e) In instances where the decedent dies on or after July 1, 1986 through June 30, 1987, the transfer of property having an aggregate clear market value of \$150,000 or less which is transferred to a father, mother, grandparent, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.

(f) In instances where the decedent dies on or after July 1, 1987 through June 30, 1988, the transfer of property having an aggregate clear market value of \$250,000 or less which is transferred to a father, mother, grandparent, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.

(g) Transfers to all Class "A" transferees, where decedent dies on or after July 1, 1988, are totally exempt.

(h) Transfers to a domestic partner as defined in section 3 of P.L. 2003, c. 246 (N.J.S.A. 26:8A-3) are totally exempt where the decedent dies on or after July 10, 2004.

New Rule, R. 1989 d.85, effective February 6, 1989.
See: 20 N.J.R. 2193(a), 21 N.J.R. 311(b).
Amended by R. 2006 d.196, effective June 5, 2006.
See: 37 N.J.R. 1694(a), 38 N.J.R. 2518(b).
Added (h).

18:26-6.2 Class "C" transfers

In instances where the decedent dies on or after July 1, 1988, the transfer of property having an aggregate clear market value of \$25,000 or less which is transferred to a brother or sister of decedent, a wife or widow of a son of a decedent or a husband or widower of a daughter of a decedent is exempt from the New Jersey transfer inheritance tax.

As amended, R. 1978 d.31, effective January 27, 1978.
See: 10 N.J.R. 43(a), 10 N.J.R. 128(a).
New Rule, R. 1989 d.85, effective February 6, 1989.
See: 20 N.J.R. 2193(a), 21 N.J.R. 311(b).
Repealed old rule: was Class "A" transfers.

18:26-6.3 Dower or curtesy

(a) In the case of an estate of a resident decedent dying, prior to May 28, 1980, intestate and seized of real property who is survived by a spouse and a child or children, the interest of the spouse in the real property by way of dower or curtesy provided under N.J.S.A. 3A:35-1 and 2 is not subject to the inheritance tax of this State; provided, however, that such spouse takes only his or her dower curtesy interest in the real property or has such interest set off or admeasured by way of election under the will or otherwise.

(b) The exemption for dower or curtesy is in addition to the exemption provided for in N.J.A.C. 18:26-6.1.

(c) In the case of a resident decedent dying on or after May 28, 1980, there is no exemption for the interest of the spouse in real property by way of dower or curtesy unless both the real estate was purchased and the marriage took place prior to May 28, 1980.

Amended by R. 1989 d.85, effective February 6, 1989.
See: 20 N.J.R. 2193(a), 21 N.J.R. 311(b).
Changed 6.2 to 6.1.
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. 3A:25-1; 3A:35-2; 3B:28-2

18:26-6.4 Tenancy by the entirety

(a) The transfer of real property or personal property in this State held by a husband and wife as tenants by the entirety to the surviving spouse is not taxable for New Jersey Inheritance Tax purposes.

1. See N.J.S.A. 46:3-17.2, P.L. 1987, c. 357.

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

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

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

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

Revised (a); deleted (b); added new (a)1.

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).

18:26-6.5 Intangible property of a nonresident

The transfer of intangible personal property such as stocks, bonds, corporate securities, bank deposits and mortgages owned by a nonresident decedent is not subject to the New Jersey Inheritance Tax.

Statutory References

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

18:26-6.6 Wrongful death action

Any sum recovered under Sections 1, 2, 3 and 4 of the New Jersey Death Act (N.J.S.A. 2A:31-1 et seq.) as compensation for wrongful death of a decedent is not subject to the New Jersey inheritance tax except as provided in N.J.A.C. 18:26-5.3(a).

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

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

18:26-6.7 (Reserved)**18:26-6.8 Life insurance proceeds**

The proceeds of any contract of insurance insuring the life of a resident or nonresident decedent paid or payable, by reason of the death of such decedent, to one or more named beneficiaries other than the estate, executor or administrator of such decedent are exempt for New Jersey Inheritance Tax purposes.

Statutory References

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

18:26-6.9 Beneficiary of insurance trust

The transfer of property to a beneficiary or beneficiaries of a trust created during the lifetime of a resident or nonresident decedent, to the extent such property results from the proceeds of any contract of insurance, insuring the life of such decedent and paid or payable to a trustee or trustees of such trust by reason of the death of such decedent, is exempt from the New Jersey Inheritance Tax irrespective of whether such beneficiary or beneficiaries have a present, future, vested, contingent or defeasible interest in such trust.

Statutory References

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

18:26-6.10 Trustee of insurance trust

The transfer of life insurance proceeds insuring the life of a resident or nonresident decedent, paid or payable by reason of the death of such decedent to a trustee or trustees of a trust created by such decedent during his lifetime for the benefit of one or more beneficiaries irrespective of whether such beneficiaries have a present, future, vested, contingent or defeasible interest in such trust, is exempt from the New Jersey Inheritance Tax.

Statutory References

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

18:26-6.11 Surrender of right to change beneficiary of contract of insurance

The transfer, relinquishment, surrender or exercise at any time or times by a resident or nonresident of this State, of any right to nominate or change the beneficiary or beneficiaries of any contract of insurance insuring the life of such resident or nonresident, regardless of when such transfer, relinquishment, surrender or exercise of such right occurred, is exempt from the tax.

Statutory References

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

18:26-6.12 Public educational, scientific and charitable institutions

(a) Property passing to or for the use of the State of New Jersey, or to or for the use of a municipal corporation within the State or other political subdivision thereof, for exclusively public purposes is exempt.

(b) Any property of any decedent which passes on or after July 1, 1963, for the use of directly, or in trust for any educational institution, church, hospital, orphan asylum, public library or bible and tract society or to or for the use of directly or in trust for any institution or organization

organized and operated exclusively for religious, charitable, benevolent, scientific, literary or educational purposes, including any institution instructing the blind in the use of dogs as guides, no part of the net earnings of which inures to the benefit of any private stockholder or other individual or corporation is exempt, but such exemption does not extend to transfers of such property to educational institutions and organizations of other states, the District of Columbia, territories and foreign countries which do not grant an equal and like exemption of transfers of property for the benefit of such institutions and organizations of this State. Included within this exemption are transfers to Volunteer Fire Companies and First Aid Squads, provided such organizations meet all other tests of a charitable or benevolent group or association.

(c) Cemetery corporations are deemed to be charitable institutions within the meaning of the Act.

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. 54:34-4(d).

18:26-6.13 Property received from the Federal Government

(a) Any amount recovered (under the Federal Liability for Injuries to Employees Act) for injuries to a decedent by the personal representative for the benefit of the classes of beneficiaries designated in that Statute, whether for the pecuniary loss sustained by such beneficiaries as a result of the wrongful death of the decedent or for the loss and suffering by the decedent while he lived, or both is not subject to the inheritance tax.

(b) Any amount recovered by the legal representatives of any decedent by reason of any war risk insurance certificate or policy, either term or converted, or any adjusted service certificate issued by the United States, whether received directly from the United States or through any intervening estate or estates, is exempt from the New Jersey Inheritance Tax.

(c) This exemption does not entitle any person to a refund of any tax heretofore paid on the transfer of property of the nature aforementioned; and does not extend to that part of the estate of any decedent composed of property, when such property was received by the decedent before death.

Statutory References

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

18:26-6.14 Federal pensions

The proceeds of any pension, annuity, retirement allowance, return of contributions or benefit payable by the Government of the United States pursuant to the Civil Service Retirement Act, Retired Serviceman's Family Protection Plan

and the Survivor Benefit Plan to a beneficiary or beneficiaries other than the estate or the executor or administrator of a decedent are exempt.

As amended, R.1973 d.224, effective August 13, 1973.
See: 5 N.J.R. 244(b), 5 N.J.R. 321(b).

Case Notes

Inheritance tax exemptions for State and Federal paid pensions do not cause equal protection violations in the taxation of other annuities. *Butzbach v. Director, Div. of Taxation*, 3 N.J.Tax 462 (Tax Ct.1981).

18:26-6.15 State pensions

(a) All payments at death under the Teachers Pension and Annuity Fund, the Public Employees' Retirement System of New Jersey, and the Police and Firemen's Retirement System of New Jersey, and such other State, county, and municipal systems as may have a tax exemption clause as broad as that of the three major State systems aforementioned, whether such payments either before or after retirement are made on death to the employee's estate or to his specifically designated beneficiary, are exempt from the New Jersey Inheritance Tax.

(b) The benefit payable under the supplementary annuity plan of the State of New Jersey is not considered a benefit of the Public Employees' Retirement System and is taxable whether paid to a designated beneficiary or to the estate.

(c) (Reserved)

(d) The death benefits paid by the Social Security Administration or Railroad Retirement Board to the spouse of a decedent are also exempt. For purposes of filing a return these amounts need not be reported nor are they to be deducted from the amount claimed as a deduction for funeral expenses. In all other cases the death benefit involved should either be reported as an asset of the estate or deducted from the amount claimed for funeral expenses.

As amended, R.1973 d.224, effective August 13, 1973.
See: 5 N.J.R. 244(b), 5 N.J.R. 321(b).
Amended by R.2006 d.196, effective June 5, 2006.
See: 37 N.J.R. 1694(a), 38 N.J.R. 2518(b).

Reserved (c), which exempted benefits paid to decedent's widow by the New Jersey Firemen's Association and New Jersey State Judges Pension Act.

Statutory References

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

Case Notes

Inheritance tax exemptions for State and Federal paid pensions do not cause equal protection violations in the taxation of other annuities. *Butzbach v. Director, Div. of Taxation*, 3 N.J.Tax 462 (Tax Ct.1981).

Annuitant held not subject to discriminating treatment by exemption from inheritance tax of annuities payable with respect to public employment; exemption serves legitimate State objective as encouraging public employment; Federal annuity exemption viewed as substitute for Social Security death benefit exemption. *Gritzmacher v. Director, Div. of Taxation*, 2 N.J.Tax 489 (Tax Ct.1981).

18:26-6.16 Other pensions

An exemption is provided for payments from any pension, annuity, retirement allowance or return of contributions, which is a direct result of the decedent's employment under a qualified plan as defined by section 401(a), (b) and (c) or 2039(c) of the Internal Revenue Code, which is payable to a surviving spouse or a domestic partner as defined in section 3 of P.L. 2003, c. 246 (N.J.S.A. 26:8A-3).

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

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

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

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

Added the language "or a domestic partner . . . (N.J.S.A. 26:8A-3)".

Historical Note

A rule concerning no fault insurance was previously codified at this section, but was recodified as N.J.A.C. 18:26-6.17.

18:26-6.17 No fault insurance

(a) The amount payable by reason of medical expenses incurred as a result of personal injury to the decedent should be reflected by reducing the amount claimed for medical expenses as a result of the accident.

(b) The amount payable at the death of an income producer as a result of injuries sustained in an accident, which are paid to the estate of the income producer, is reportable for taxation. In all other instances this amount is exempt.

(c) The amount paid at death to any person under the essential services benefits section is exempt from taxation.

(d) The claim for funeral expense is to be reduced by the amount paid under the funeral expenses benefits section of the law.

R.1975 d.186, effective June 25, 1975.
See: 7 N.J.R. 239(a), 7 N.J.R. 350(a).
As amended. R.1981 d.477, effective December 21, 1981.
See: 13 N.J.R. 623(a), 13 N.J.R. 948(d).

Historical Note

This section was recodified from N.J.A.C. 18:26-6.16.

SUBCHAPTER 7. DEDUCTION

18:26-7.1 Deductions generally permitted

The New Jersey Transfer Inheritance Tax is imposed upon the transfer of property based upon the clear market value of such property. Clear market value is ascertained by deducting from the market value of any property, the debts, expenses and taxes which constitute an encumbrance upon the property of a decedent. No deductions are allowed, however, against any property which is exempt or not subject to the New Jersey Inheritance Tax.

Statutory References

N.J.S.A. 54:34-5.

18:26-7.2 Decedent's debts

All debts owing at the date of a decedent's death are deductible from the property comprising such decedent's estate unless the property for which the debt is owing or for which it is secured is not subject to the New Jersey Inheritance Tax.

Statutory References

N.J.S.A. 54:34-5.a.

18:26-7.3 Debts secured by out-of-State real property

The debts of a resident decedent owing for or secured by real property outside this State are not allowed as a deduction, unless such debt exceeds the value of the property securing it or for which it was contracted, in which event only that amount by which such debt exceeds the value of the out-of-State realty is permitted as a deduction.

Statutory References

N.J.S.A. 54:34-5.a(2).

18:26-7.4 Mortgages

The balance of a mortgage owing on the date of death is allowed as a deduction from the value of any real property

securing such mortgage, except that in the case of realty held by a decedent and a surviving spouse as tenants by the entirety, the amount of any mortgage owing on such realty at the decedent's death is not allowable as a deduction since such property is exempt from the New Jersey Inheritance Tax.

Statutory References

N.J.S.A. 54:34-5.

18:26-7.5 Debts secured by life insurance

Any debt of a decedent owing at the date of death and covered by the purchase of life insurance payable to a creditor of the decedent, in order to liquidate a debt arising from the acquisition of property for which the decedent was liable to such creditor, is not allowable as a deduction since the debt is regarded as extinguished at the date of death by payment to said creditor of the insurance proceeds and, therefore, the decedent's estate is not diminished by the amount of debt.

Statutory References

N.J.S.A. 54:34-5.

18:26-7.6 Debt for claim of county welfare boards or State institutions

(a) A deduction is permitted in the case of a claim by a county welfare board or a State institution for money advanced to or on account of the care provided a decedent as an indigent person, provided that such claim is accompanied by the following data:

1. A letter signed by a representative of the welfare board or State institution stating the exact amount due from the decedent as of the date of death;
2. A supplemental affidavit of the executor, heir or administrator, as the case may be, stating whether or not he acknowledges the correctness of the amount of the claim and will pay the same in full out of the assets of the estate. If not, the supplemental affidavit should set forth the facts involved and if the matter has been settled, set forth the amount that has been paid or will be paid in settlement.

(b) An exception to the above is where the affidavit in which the claim is made is signed by a representative of the welfare board as executor, administrator, or otherwise, in which case no further investigation will be needed unless there is some other data in the record indicating that the amount claimed is possibly incorrect.

Statutory References

N.J.S.A. 54:34-5.

18:26-7.7 Estates subject to escheat

Estates subject to escheat containing claims for services rendered to the decedent or advances made to the decedent are held in abeyance pending a final determination made with respect thereto by the Attorney General's Office, Escheat Section. The representatives of the estate will be so notified.

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. 54:34-5.

18:26-7.8 Funeral and last illness expenses

(a) A deduction is allowed for all reasonable funeral expenses and last illness expenses uncompensated for by insurance or otherwise, owing and unpaid at the decedent's death for which the decedent's estate is liable.

(b) Funeral expenses include any reasonable costs incurred on behalf of the decedent payable by the estate:

1. Any deduction for funeral expenses is to be reduced by the amount of any death benefit paid or payable under the Social Security or Railroad Retirement Acts of the United States where the same are paid or payable to any person or fiduciary other than the spouse of the decedent;

2. What constitutes a reasonable funeral cost or expense will depend upon the facts and circumstances in each case; however, primary consideration will be given to the size of the estate and the amount thereof claimed as a deduction for such expenses.

(c) The expenses of a decedent's last illness allowable as a deduction include the expenses of care, nursing, medical attendance, medicines, hospital and other charges incident to such illness unpaid and owing at decedent's death and not compensated for by insurance or other payments.

Statutory References

N.J.S.A. 54:34-5.b.

18:26-7.9 Administration expenses

A deduction is allowed for all the reasonable and ordinary expenses of administering a decedent's estate including reasonable and ordinary executors, administrators and attorneys fees, and, in addition, the reasonable cost incurred on an appeal from a determination of the Inheritance Tax Bureau.

Statutory References

N.J.S.A. 54:34-5.c.

18:26-7.10 Executor's and administrator's expenses

(a) In the absence of a judgment of the court exercising jurisdiction over the probate of an estate, the deduction for executor's or administrator's commissions shall be determined in accordance with N.J.S.A. 3B:18-14 as of the date of death of decedent as follows:

First	\$ 200,000 of corpus	5 percent
Next	800,000 of corpus	3½ percent
Excess over	1,000,000 of corpus	2 percent

If more than one executor or administrator has been appointed, each additional executor or administrator may take an additional one percent of all corpus provided that no one executor or administrator shall be entitled to any greater commission than that which would be allowed if there were but one executor or administrator.

1. Where the amount claimed by the executor or administrator or allowed by the court is less than that determined by the application of the rates set forth in (a) above, only such amount as claimed or allowed shall be permitted as a deduction.

(b) Where a formal account is filed in accordance with the Rules of the Court, with the court exercising jurisdiction over the probate of an estate and the amount allowed by the court for executor's or administrator's commissions is greater than the amount previously determined by the Branch, the fiduciary must forward a plain copy of the judgment allowing commissions and upon revision of the assessment there shall be applied the rate set forth by the court in its judgment to the value, as of the date of death as determined by the Transfer Inheritance Tax Branch of the property on which the allowance of the court is based, but the value of any property excluded from the New Jersey Transfer Inheritance Tax shall be excluded from the computation. See N.J.A.C. 18:26-7.1. If the Branch makes an assessment denying executor's or administrator's commissions, a written protest must be submitted to the Branch within 90 days in accordance with N.J.S.A. 54:49-18 and N.J.A.C. 18:26-12.9 in order for the Branch to consider a subsequent court judgment allowing the commissions. In order for the Branch to reopen an assessment subsequent to a judgment, a copy of the account must be filed with the Branch at the time of the filing with the court and a copy of the judgment specifying the rates to be applied to corpus must be forwarded to the Branch.

(c) The value of property which is held by the decedent and another as joint tenants with right of survivorship, as trustee for, or payable on death to another or which has been the subject of an inter vivos transfer, in contemplation of, or to take effect in possession or enjoyment at or after death, is to be excluded from the amount on which an executor's or administrator's commissions is computed in the absence of the judicial allowance thereon.

(d) Executor's or administrator's commissions are allowed on real estate that is actually sold by the executor or administrator or which is expressly directed to be sold by the terms of the decedent's will. The real estate must be sold by the representative and not the beneficiary(s) in order to qualify.

(e) In the absence of a judgment of the court exercising probate jurisdiction over the estate, and the filing of a plain copy thereof with the Branch, the provisions of N.J.S.A. 3B:18-16 shall not be considered in the determination of the amount allowable as a deduction.

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 (a).

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"; real estate commissions allowed on sales by executor or administrator only, either actual or directed by will.

Amended by R.1996 d.15, effective January 2, 1996.

See: 27 N.J.R. 3915(a), 28 N.J.R. 176(a).

Substantially amended (a) and (b), and in (e) substituted N.J.S.A. 3B:18-15 and 3B:18-16 for 3A:10-2.

Amended by R.2001 d.259, effective August 6, 2001.

See: 33 N.J.R. 1508(a), 33 N.J.R. 2679(a).

Rewrote (a); and in (e), amended N.J.S.A. reference.

Statutory References

N.J.S.A. 54:34-5.c.

Case Notes

Held that trustee which has filed interim accounting for prior periods was not barred from taking interim corpus commissions for any period prior to the period for which it was presently accounting; trustee entitled to corpus commission in handling stock of closely held corporation which had paid those who gave investment advice to board of directors of trustee corporation; use of market value other than inventory value in computing corpus commissions was proper, but court could require a 40 percent rather than a 30 percent discount rate. In re Bessemer Trust Co., 147 N.J.Super. 331, 371 A.2d 316 (Ch.Div.1976) affirmed per curiam 165 N.J. 76, 397 A.2d 708 (App.Div.1979).

Subsection (d) noted previously held valid; executrix affirmed as "class D" beneficiary due to impossibility of existence of common-law marriage to decedent prior to abolition of such marriages by statute. In re Estate of Widenmeyer, 134 N.J.Super 307, 340 A.2d 676 (App. Div.1975), affirmed 70 N.J. 458, 360 A.2d 396 (1976).

Rule permitting deduction of ordinary fees of executrix only in the amount of five percent of the estate remainder, after deduction of real and jointly held property, held reasonable and valid. In re Estate of Talakowitsh, 127 N.J.Super 290, 317 A.2d 371 (App.Div.1974).

Failure to protest assessment increasing tax on basis of reduction of executor's commissions or to file complaint in Tax Court within 90 days of assessment notice required dismissal of complaint. Off v. Division of Taxation for the State of New Jersey, 16 N.J.Tax 157 (1996).

18:26-7.11 Counsel fees

(a) The deduction allowable for counsel fees shall be determined on the basis of their reasonableness. The appraised value of the decedent's estate, for New Jersey Inheritance Tax and Federal Estate Tax purposes shall not be considered as the criterion for the determination of the amount allowable as a deduction for counsel fees.

(b) No deduction shall be allowed for counsel fees paid to an attorney who is not a member of the Bar of New Jersey, except in cases where the services rendered by such counsel relate to matters not involving the New Jersey Inheritance Tax proceedings.

(c) The Director may, in his discretion, require the submission of an affidavit of services by counsel for the personal representative of an estate where it appears that the amount claimed as a deduction for counsel fees is other than ordinary or reasonable.

Statutory References

N.J.S.A. 54:34-5.c.

18:26-7.12 Real estate broker's commissions

(a) No deduction is allowed for commissions paid or payable to a real estate broker or agent in connection with the sale of real estate of which a decedent dies seized except where:

1. The real estate was the subject of a contract of sale entered into by the decedent in his lifetime; or

2. The real estate is actually sold by the executor or administrator (the real estate must be sold by the representative of an estate and not the beneficiary(s) in order to qualify); or

3. It is necessary in the administration of the decedent's estate to effect a sale of said real estate for the purpose of liquidating debts, or the payment of the expenses of administration of the estate, or for the payment of legacies.

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. 54:34-5.c.

18:26-7.13 Storage expense

(a) No deduction is allowed for expenses incurred by an executor or administrator for the storage or preservation of tangible personal property except where the nature of the property or the value thereof is such that delivery to the legatee thereof is not possible within a reasonable time subsequent to death.

(b) No deduction shall be allowed for expenses incurred for the preservation, maintenance or upkeep of real estate of which a decedent dies seized, either individually, jointly or as a tenant in common.

Statutory References

N.J.S.A. 54:34-5.c.

18:26-7.14 Operating costs of business

No deduction is allowed for the cost of operating a business in which the decedent had an interest at death. These expenses are not deemed an ordinary expense of administration and should be charged as an expense of the business.

Statutory References

N.J.S.A. 54:34-5.c.

18:26-7.15 State, county and local taxes

(a) A deduction is permitted for any State, county and municipal taxes owing and unpaid at the date of death on any real property of a decedent which is subject to the New Jersey Inheritance Tax. The amount allowable as a deduction on such property for the current fiscal year, however, is limited to that sum representing unpaid taxes as the elapsed portion of said year bears to the full year. No deduction is allowed for State, county or municipal taxes assessed or accruing, subsequent to the death of the decedent.

(b) No deduction for unpaid State, county and municipal taxes is allowed where the realty owned by the decedent was held by such decedent and a surviving spouse as tenants by the entirety, unless it can be shown that during his lifetime, the decedent appropriated all of the income from such property without having paid any of the state, county and municipal taxes and other charges assessed against the realty.

Statutory References

N.J.S.A. 54:34-5.d.

18:26-7.16 Transfer taxes due other jurisdictions

(a) A deduction is allowed for any transfer, succession or legacy taxes paid or payable to any state or territory of the United States, including the District of Columbia or any foreign country provided the property upon which such tax is paid or payable is subject to the New Jersey Transfer Inheritance Tax.

(b) The amount due or paid the United States Government as a Federal Estate Tax is not allowable as a deduction.

Statutory References

N.J.S.A. 54:34-5.e.

18:26-7.17 Loans secured by life insurance policies

(a) A loan made to a decedent as the insured by an insurance company against a life insurance policy is not considered a debt of the decedent but rather an advancement on the cash value of the policy and the deduction is not allowable.

(b) A loan made by a third party to a decedent secured by the assignment of a life insurance policy on the life of the decedent and satisfied from the proceeds of the policy is also not allowable. However, the right of the beneficiary to reimbursement from the estate for the amount of the loan is a proper claim by way of subrogation against the decedent's estate and is an allowable deduction unless a contrary intention is indicated.

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

18:26-7.18 (Reserved)**SUBCHAPTER 8. ASSESSMENT AND VALUATION****18:26-8.1 (Reserved)**

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

Repealed rules concerning assessments in general.
New Rule, R.1989 d.85, effective February 6, 1989.
See: 20 N.J.R. 2193(a), 21 N.J.R. 311(b).
Repealed by R.1991 d.384, effective August 5, 1991.
See: 23 N.J.R. 188(b), 23 N.J.R. 2320(a).

18:26-8.2 Appointment of appraisers

(a) All appraisals of real and tangible personal property are made by the Division of Taxation Representative exercising jurisdiction where the decedent is a resident or non-resident.

(b) The appraisal of all intangible personal property is made by an auditor at the 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 "District Supervisor and appraiser" and added "Division of Taxation Representative". Also deleted "examiner and 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".

18:26-8.3 Notice of appraisal; evidence; report

(a) An auditor, when it is deemed necessary, may give notice by mail to any person having knowledge of the assets of any estate, indicating the time and place when and where an appraisal of property is to be made, requesting the presence of such person if necessary as a witness to give evidence under oath concerning property and the value thereof.

(b) The auditor, should the witness fail or refuse to attend, may compel the attendance of a witness issuing a subpoena for that purpose.

(c) If an estate has filed a Federal estate tax return, for which a formal appraisal of any nature is required, an auditor may request that a copy of such appraisal be submitted for New Jersey Transfer Inheritance Tax purpose.

(d) Upon completion of the examination for any property and attainment of any information solicited from witnesses, the appraiser is required to make a report and file the same with the Inheritance Tax Branch.

(b) A determination shall then be made by a representative of the Inheritance Tax Branch as to whether a discount in value is warranted, and, if so, the amount of the discount to be allowed.

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

Statutory References

N.J.S.A. 54:34-9; 54:34-1; 54:34-5.

18:26-8.12 Life estate in realty held by the entirety

(a) When real property is devised or transferred to a husband and wife as tenants by the entirety each having a vested life estate in common with the other for their joint lives with a vested estate in fee in the entire remainder subject to defeasance, as to the one first dying, the value of such property for New Jersey Inheritance Tax purposes, is ascertained as follows:

1. A life estate is computed on the basis of the lesser life expectancy of the devisees or grantees and the value so determined is considered as immediately vested in equal shares, and subject to tax accordingly.

2. The remainder is treated as contingent and a compounded (compromise) tax is suggested in accordance with N.J.S.A. 54:36-6, based upon the following alternatives:

i. The tax chargeable if the devisee or grantee against whom the lower rate of tax would apply survives;

ii. The tax chargeable if the devisee or grantee against whom the higher rate of tax would apply survives;

iii. The tax chargeable determined on the basis that the devisees or grantees will share the remainder equally as the result of a sale of the realty or the entry of a judgment of divorce.

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

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

Amended by R.1981 d.477, eff. December 21, 1981.

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

(a)1: "Lesser life expectancy" was "age of the older".

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 to (a) "or transferred".

Statutory References

N.J.S.A. 54:34-5; 54:35-1; 54:36-1 to 54:36-3 inclusive.

18:26-8.13 Bonds and mortgages

It is presumed that the face value, or balance due, as of the date of death, plus any accrued interest as of such date, is the correct value of a bond and mortgage held as an investment

unless conclusive proof to the contrary is submitted which clearly indicates a different value.

Statutory References

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

18:26-8.14 Partnerships

(a) In the case of a decedent who was a member of one or more partnerships the partnership interest of such decedent is given a value as of the date of death, based upon the following information which is to be submitted with the return:

1. A detailed balance sheet, revised to reflect the market value of the assets as distinguished from the net book value, as of the date of death of the decedent, or as near thereto as may be deemed acceptable;

2. Detailed balance sheets (setting forth the partner's capital accounts) and establishing the net worth of the partnership for each of the five years preceding the date of death of the decedent;

3. Detailed profit and loss statements for the five years immediately preceding the date of death of the decedent;

4. A copy of partnership agreement if any;

5. The nature of the business in which the partnership is engaged;

6. A copy, or copies, if any of a mutual purchase agreement to which the decedent was a party at the time of his death; and,

7. A copy, or copies, of any insurance policies, on the life of the decedent, held by the surviving partners as beneficiaries.

(b) In cases where the decedent was a member of a partnership that constitutes a family limited partnership, special rules apply, including rules related to valuation of the partnership interest.

1. A family limited partnership is a limited partnership in which more than 50 percent of the partners are related by blood or marriage and which does not have a true business purpose. It may or may not hold an interest in another partnership or other asset which has a true business purpose. One indicia of a true business purpose is that the family limited partnership has and engages in business or commercial transactions with customers, clients, persons or entities other than the partners of the family limited partnership, their family members or other related individuals or entities.

2. An interest in a family limited partnership is valued at the value of the underlying assets on the date of death of the decedent. Discounts for family limited partnership interests are not permitted unless the Director determines

that they are warranted by the nature of and risk associated with the underlying assets.

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

Statutory References

N.J.S.A. 54:34-5.

18:26-8.15 "Close" or "Family" corporation

(a) The appraisal of any stock of a decedent in a "closely held" or "family" corporation, incapable of being valued on the basis of *bona fide* sales, is based on the following data to be submitted with the return:

1. A detailed balance sheet and profit and loss statement, revised to reflect the market value of the assets thereof as distinguished from the net book value, as of the date of death of the decedent, or as near thereto as the Director may deem acceptable;

2. Detailed balance sheets establishing the net worth of the corporation for each of the five years preceding the date of death of the decedent;

3. Detailed profit and loss statements for the five years immediately preceding the date of the death of the decedent;

4. A statement establishing the salaries paid to each officer of the corporation for the five years immediately prior to death;

5. The nature of the business in which the corporation is engaged;

6. A copy, or copies, of any stock purchase or option agreement to which the decedent was a party at the time of his death; and

7. A copy, or copies of any insurance policies, if any, held by the corporation as beneficiary on the life of the decedent. The proceeds of such insurance are included as an asset of the corporation on the date of death in arriving at the value of the stock;

8. The number of shares of stock of all classes issued and outstanding and the par value thereof;

9. Statement of dividends paid, if any, for a five year period prior to decedent's death;

10. List of stockholders and number of shares owned by each;

11. If corporation owned realty description of same, assessed and market value thereof should be shown;

12. Basis for determining that clear market value is the value reported in the return.

Statutory References

N.J.S.A. 54:34-5.

Case Notes

In computing value of stock shares in closely held corporation bequeathed by decedent to wife, proceeds of insurance policies on life of decedent taken out and paid for by corporation were properly included as corporate assets. In re Estate of Carew, 125 N.J. Super 373, 311 A.2d 185 (App.Div.1973).

18:26-8.16 Assets of close corporation or partnership of known market value

(a) When the assets of a "closely held" corporation or "partnership" include stocks and bonds which have a definite, established and known daily market value and are readily reducible to cash at that value, no deduction thereon will be allowed in determining the book value of the stock of the corporation or interest in the partnership.

(b) In ascertaining the book value of the common stock of a "closely held" corporation, the preferred stock, issued and outstanding, must be deducted at par value even though it might be selling or it is claimed that it shall be valued for less.

Statutory References

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

18:26-8.17 Government bonds and securities

(a) Treasury bonds and similar negotiable obligations issued by the United States Government are valued at:

1. The intermediate price between the low and high price prevailing on the date of death of the decedent if traded on an exchange or over the counter;

2. If there were no sales of bonds or similar negotiable obligations issued by the United States Government on the date of death, either the mean between the highest and lowest selling price for the previous day, or the nearest trading day prior to the date of death, or the prorated value used for Federal estate tax purposes reflecting the mean between the highest and lowest selling price on the nearest trading dates prior to and subsequent to the date of death may be used. The Alternative Valuation Date method of valuing bonds for Federal estate tax purposes is, however, not acceptable for New Jersey transfer inheritance tax purposes. All of the assets must be valued using the same method;

3. Interest accrued from last interest date to date of death is required to be added to the taxable estate in addition to the quoted value of bonds or similar obligations; except,

(b) Interest accrued from the last interest date to the date of death is not included in the appraisal of the United States Savings Bonds Series "H".

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 trust, 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 10 percent per annum from the expiration of the two-month period, 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).

Amended by R.2007 d.206, effective July 2, 2007.
See: 39 N.J.R. 853(b), 39 N.J.R. 2545(a).

In (a), substituted "10" for "ten" and "expiration of the two-month period" for "date the contingency occurs or the property vests".

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.

Statutory References

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

18:26-9.17 (Reserved)

SUBCHAPTER 10. COLLECTION AND REFUND

18:26-10.1 Levy of tax; resident and nonresident decedents

Resident and nonresident decedents' returns must be filed together with a certified or cashier's check in full payment of the tax and interest, if any, directly with the Inheritance Tax Branch, PO Box 249, Trenton, New Jersey 08646-0249. Upon filing of a return and payment of the tax, the Branch will issue a notice of assessment showing the amount of tax due, the amount paid, and whether interest is due or a refund is to be issued (see N.J.A.C. 18:26-8.6, 9.4, 9.9 and 9.10).

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

Levy of tax 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. 54:34-12.

18:26-10.2 Lien of tax; duration

(a) The New Jersey Inheritance Tax whether or not assessed or levied constitutes a lien on all the property owned by the decedent as of the date of death for a period of 15 years unless sooner paid or secured by a bond.

(b) After a period of 15 years from the date of a decedent's death has expired no proceeding may be instituted to assess and collect the New Jersey Inheritance Tax or any interest or penalties due thereon. No notice or consent to transfer is required for the transfer of any real or personal property and no personal liability remains on any executor, administrator, trustee, grantee, donee, vendee, devisee, legatee, heir, next of kin or beneficiary; however, this does not affect any right of the State under any certificate of debt, decree or judgment for taxes, interest and penalties duly recorded with the clerk of the Superior Court, or with any county clerk, or to assess and enforce the collection of any tax including any interest and penalties pursuant to the terms of any bond or other agreement securing the payment of the tax, interest and penalties.

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. 54:35-5 and 54:35-5.1, as amended by P.L. 1979, c.417.

18:26-10.3 (Reserved)

18:26-10.4 Deduction or collection of tax before distribution

(a) An executor, administrator or trustee having charge or holding in trust any property subject to the New Jersey Inheritance Tax for distribution is to deduct from such property the Inheritance Tax assessed and levied on the transfer prior to distribution to the transferee. In the event the property to be transferred is not money, however, the executor, administrator or trustee is to collect the Inheritance Tax assessed and levied from the person entitled to the property prior to delivering such property to the transferee, and unless such tax is collected, the executor, administrator or trustee may not deliver or be compelled to deliver any property to a transferee.

(b) In the case of a legacy charged upon or payable out of real property, the heir or devisee is to deduct the Inheritance Tax from the legacy and pay such tax over to the executor, administrator or trustee who may enforce the payment of such tax in the same manner as the payment of such legacy may be enforced.

(c) In the case of a legacy given to a person in money for a limited period, the executor, administrator or trustee is to retain the Inheritance Tax due for the entire amount of money transferred; however, if such legacy is charged upon or payable out of property, other than money, the executor, administrator or trustee, may, if he believes the same to be necessary, apply to the court having jurisdiction of his accounts to make an apportionment of the sum to be paid him by the legatee for the tax.

(d) An executor, administrator or trustee may, if necessary, sell so much of the property of a decedent as is necessary to pay the New Jersey Inheritance Tax due on the transfer of such property.

Statutory References

N.J.S.A. 54:35-6 and 54:35-7.

18:26-10.5 Payment of tax collected; receipt

Within 30 days from the time an executor, administrator, or trustee has retained or received the amount due for inheritance taxes on the transfer of property, he is required to pay the same to the Director and may, upon written request, receive a receipt signed by the State Treasurer and countersigned by the Director, which represents a voucher in settlement of the account of the executor, administrator, or trustee.

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.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. 54:35-8.

18:26-10.6 Statement of payment or exemption

When the tax and interest chargeable has been paid in full or secured by bond, or when an estate is determined by the Director to be exempt from any Inheritance Tax of this State, a statement of such fact, signed by the Director and including a description of any real property involved, is issued to the executor, administrator or other representative of the estate who may record such statement in the office of the county clerk of the county wherein the real property if any is situated.

Statutory References

N.J.S.A. 54:35-9.

18:26-10.7 Proceedings to compel payment of taxes; collection cost fees

(a) In the event the New Jersey Transfer Inheritance Tax which has accrued is not paid within the time provided by law, the Director shall notify the Attorney General of this State who shall institute an action to compel the payment of such tax in the name of the Director in the Superior Court of this State and any judgment cited in such action will have the same effect as other judgments entered in the Superior Court so as to constitute a lien which may be executed on any property of a decedent.

(b) In the event the New Jersey inheritance tax is not paid within the time prescribed by law, fees for the cost of collection shall be imposed as follows:

1. If a certificate of debt is issued pursuant to N.J.S.A. 54:49-12, the fee shall be five percent of the tax or \$100.00, whichever is greater;
2. If the tax remains unpaid after the issuance of the certificate of debt and the matter is referred to the Attorney General, the fee shall be 10 percent of the tax or \$200.00, whichever is greater; and
3. If a suit is instituted for the collection of the tax, the fee shall be 20 percent of the tax or \$500.00, whichever is greater.

(c) The fees specified in (b) above shall be paid in addition to any interest or penalty, or both, otherwise provided by law.

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. 54:35-15, 54:49-12.1.

18:26-10.8 (Reserved)**18:26-10.9 Refund for erroneous overpayment**

In any case where there has been an overpayment in error of the New Jersey Inheritance Tax, an application for a refund may be made in the manner provided in N.J.A.C. 8:26-10.12 (Time and manner of mailing application for refund) to the Director, who upon satisfactory proof of such erroneous payment, may certify such overpayment to the Director of the Division of Budget and Accounting who in turn draws his warrant on the State Treasurer for the amount overpaid in favor of the executor, administrator, person or persons who have paid the tax in error, or who are lawfully entitled to such refund.

Statutory References

N.J.S.A. 54:35-10.

18:26-10.10 Overpayment of account

In any case where the amount paid on account for New Jersey Inheritance Taxes exceeds the amount of such tax due after final assessment has been made, the amount so overpaid is refunded by the State Treasurer in the due course of business without application for a refund.

18:26-10.11 Refund when debt proved after legacy or distributive share paid

In any case where a debt against the estate of a decedent is proved after a legacy has been paid or property has been distributed from which legacy or property the New Jersey Inheritance Tax has been deducted or paid, the legatee, devisee, heir or next of kin may make an application for a refund to pay such debt to the executor, administrator or trustee, who shall refund a proportion of the tax where the same has not been paid to the Director or who shall make application for a refund to the Director in the manner provided in N.J.A.C. 18:26-10.12 (Time and manner of mailing application for refund) and upon receipt of such refund, repay the legatee, devisee, heir or next of kin the proportion of the tax overpaid.

Statutory References

N.J.S.A. 54:35-11.

18:26-10.12 Time and manner of making application for refund

(a) All applications for a refund are to be made within three years from the date of payment or from the date of any final determination of a court of competent jurisdiction which establishes the fact that the decedent had no legal or equitable interest in the property on which the tax was assessed, whichever is later, but in no event shall a refund be made where such final determination occurs more than 15 years after the date of decedent's death.

(b) Such application is to be made by means of an affidavit on legal size paper, setting forth in detail all of the facts upon which the claim for refund is based, including a copy of a Court Order, if a court of competent jurisdiction has made a final determination upon which the refund is based, signed by the executor, administrator, trustee, heir-at-law, or surviving joint tenant and filed directly with the Transfer Inheritance Tax Branch, PO Box 249, Trenton, New Jersey 08646-0249.

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.

Historical Note

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

Statutory References

N.J.S.A. 54:35-10 and 54:35-11.

18:26-10.13 Interest on refunds

If the Inheritance Tax Branch takes more than six months to remit a valid refund after a refund application or written request is received by the Director, taxpayers have the right to receive interest on the refund. If interest must be paid, it will be calculated to accrue from the date of filing of a refund claim, the date of tax is paid in accordance with N.J.A.C. 18:26-8.6, or the due date of the return, whichever is later. Interest will be paid 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 calendar year, from the date that such interest commences to accrue to the date of the refund. This rule becomes effective for returns due on and after January 1, 1994. No interest will be paid on an overpayment of less than one dollar (\$1.00), or on an 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. No interest will be paid on an overpayment unless the taxpayer files a claim for refund.

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. 54:49-15.1.

SUBCHAPTER 11. WAIVERS—CONSENT TO TRANSFER

18:26-11.1 Consent to transfer; generally

(a) Except as otherwise indicated in this chapter, no executor, administrator, trustee, individual, firm, association,

partnership, organization or corporation including any banking institution, trust company or safe deposit company organized under the laws of New Jersey; National Bank operating in this State; Building and Loan or Savings and Loan Associations engaged in New Jersey; or credit unions chartered by the United States operating in this State, may release or transfer any real property or any tangible or intangible personal property which is subject to the Transfer Inheritance Tax and if the decedent died after December 31, 2001 which is subject to the estate tax, all or any part of which belongs to a resident decedent, whether held in the name of the decedent or otherwise, without first obtaining the written consent to such transfer or release from the Director.

(b) No waivers are required in estates of nonresident decedents, except for an inheritance tax waiver for real property located in the State of New Jersey.

1. There is, however, the necessity of definitely establishing to the satisfaction of the trustee, individual, firm, association, partnership, organization or corporation (its transfer agent) including any banking institution, trust company or safe deposit company organized under the laws of New Jersey; National Bank operating in this State; Building and Loan or Savings and Loan Associations engaged in New Jersey; or credit unions chartered by the United States operating in this State that the decedent was legally domiciled in a jurisdiction other than New Jersey. The proper procedure is for the personal representative of the estate to file with the proper party as aforesaid an affidavit establishing in some detail the facts as to domicile;

2. These should include place of residence and voting; social and business affiliations, where the last five income tax returns were filed prior to death; date of commencement and length of actual residence in place claimed as legal domicile; whether decedent formerly resided in New Jersey and, if so, what facts are relied upon to establish abandonment of New Jersey and intention not to return;

3. If from the proofs submitted to him the proper party as aforesaid is convinced that decedent was legally domiciled outside of New Jersey he may transfer the stock or obligation of the corporation or any other tangible or intangible personal property without the written consent of the Director, Division of Taxation, keeping the affidavit in his permanent files as authority for the action taken.

(c) No inheritance tax waivers are required to be issued by the Director in the case of certain transfers to the surviving spouse of a New Jersey domiciled decedent who died on or after January 1, 1985. In order to satisfy a corporation (its transfer agent) including any banking institution, trust company organized under the laws of New Jersey, national bank operating in this State, building and loan or savings and loan association in New Jersey, or credit union chartered by the United States operating in this State that intangible assets may be released to the surviving

spouse, an affidavit of waiver can be executed by the surviving spouse or the personal representative of the decedent's estate.

1. If two or more executors or administrators qualify, the affidavit may be executed by one of them.

2. The decedent's surviving spouse can execute an affidavit in all cases where under the terms of the account or instrument and applicable State law the spouse has the right of survivorship or is the named beneficiary. Letters testamentary or of administration are not required to be attached as part of the affidavit when executed by the surviving spouse, except as provided in (c)3 below.

3. Where the surviving spouse has qualified as executor or administrator of the decedent's estate, intangible assets which pass to the spouse under a will or the law of intestate distribution can be released by the affidavit together with other assets described in (c)2 above, provided that the spouse's letters testamentary or of administration are attached and made a part of the affidavit as provided in (c)1 above. Where the spouse has not qualified as an executor or administrator of the decedent's estate, only intangible assets may be released by the affidavit in accordance with (c)2 above.

4. A separate affidavit is required for each institution, organization or corporation releasing assets to a surviving spouse.

5. The affidavit of waiver by the surviving spouse cannot be used for real property and tangible personal property transfers from a decedent to a surviving spouse.

6. Estate tax waivers are required if the decedent died after December 31, 2001 except as provided in (e) below. Estate tax waivers are not required if a decedent died on or prior to December 31, 2001.

(d) No inheritance tax waivers are required to be issued by the Director in case of certain transfers to the following Class "A" transferees in the estate of New Jersey domiciled decedent who died on or after July 1, 1988: a father, mother, grandparent, grandchild, a child or children of a decedent, including any stepchild of a decedent or child or children adopted by a decedent or the issue of any child or legally adopted child of a decedent. In order to satisfy a corporation (its transfer agent) including any banking institution, trust company organized under the laws of New Jersey, national bank operating in this State, building and loan or savings and loan association in New Jersey, or credit union chartered by the United States operating in this State that intangible assets may be released to the Class "A" transferee, an affidavit of waiver can be executed by the Class "A" transferee or the personal representative of the decedent's estate.

1. If two or more executors or administrators qualify, the affidavit may be executed by one of them.

2. The Class "A" transferee can execute an affidavit in all cases where under the terms of the account or instrument and applicable State law the Class "A" transferee has the right of survivorship or is the named beneficiary. Letters testamentary or of administration are not required to be attached as part of the affidavit when executed by the Class "A" transferee, except as provided in (d)3 below.

3. Where the Class "A" transferee has qualified as executor or administrator of the decedent's estate, intangible assets which pass to the Class "A" transferee under a will or law of intestate distribution can be released by the affidavit together with assets described in (d)2 above, provided that the Class "A" transferee's letters testamentary or of administration are attached and made a part of the affidavit as provided in (d)1 above. Where the Class "A" transferee has not qualified as an executor or administrator of the decedent's estate, only intangible assets may be released by the affidavit in accordance with (d)2 above.

4. A separate affidavit is required for each institution, organization or corporation releasing assets to a Class "A" transferee.

5. The affidavit of waiver by the Class "A" transferee cannot be used for real property and tangible personal property transfers from a decedent to a Class "A" transferee.

6. Estate tax waivers are required if the decedent died after December 31, 2001 except as provided in (e) below. Estate tax waivers are not required if a decedent died on or prior to December 31, 2001.

(e) An estate tax waiver is not required for decedents dying after December 31, 2001 if the decedent's taxable estate plus adjusted taxable gifts for Federal estate tax purposes under the provisions of the Internal Revenue Code in effect on December 31, 2001 does not exceed \$675,000.

(f) In the absence of the express approval of the Director, waivers are not issued until the passage of ten business days following the receipt of payment.

Amended by R.1971 d.2, effective January 4, 1971.

See: 2 N.J.R. 102(g), 3 N.J.R. 30(c).

Amended by R.1985 d.650, effective January 6, 1986.

See: 17 N.J.R. 2241(b), 18 N.J.R. 94(d).

New (c) added; old (c) renumbered to (d).

Amended by R.1989 d.210, effective April 17, 1989.

See: 21 N.J.R. 285(a), 21 N.J.R. 1021(a).

(b): corrects rule regarding waiver requirement for real property. New (d) added to explain the use of a "spousal" or "self-executing" waiver that allows for the release of certain assets to a surviving spouse. Old (d) recodified as (e).

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

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

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

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

In (a), inserted "and if the decedent died after December 31, 2001 which is subject to the estate tax" following "Transfer Inheritance Tax"; in (b), inserted "an inheritance tax waiver for" preceding "real property" in the introductory paragraph; in (c) and (d), inserted "inheritance tax" preceding "waivers are required" in the introductory paragraph, substituted "of" for "or" following "The affidavit" in 5 and added 6; added a new (e); recodified former (e) as (f).

Historical Note

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

Statutory References

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

Case Notes

Officers could, before they become majority shareholders, enter into agreement to transfer corporate property after they achieved majority. *Kislak Co., Inc. v. Byham*, 229 N.J.Super. 163, 550 A.2d 1291 (A.D. 1988).

18:26-11.2 Executors and trustees to pay tax

(a) An executor, administrator or trustee is not permitted to turn over any property subject to an executory devise, an estate in expectancy of any kind or character which is contingent or defeasible, or a power of appointment unless the New Jersey Inheritance Tax and the New Jersey Estate Tax including any interest due has been first paid to the Director.

(b) Any executor, administrator or trustee who transfers such property prior to having paid the tax and interest, if any, chargeable, becomes personally liable to the extent of all the assets of the estate subject to his control, for the payment of the tax including interest which is due on such transfers.

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

In (a), inserted "and the New Jersey Estate Tax" following "the New Jersey Inheritance Tax".

Statutory References

N.J.S.A. 54:35-8.

18:26-11.3 Consent to transfer not issued

(a) Before the Director issues any Inheritance Tax consents to transfer the assets of a person dying domiciled in this State, it is required that proof be submitted showing the will of such decedent was originally probated in New Jersey, or that letters of administration were originally granted in this State. If it appears that original probate or original administration was had in a foreign jurisdiction, all consents to transfer the decedent's assets will be withheld and a report made to the county court of the county in which a decedent died domiciled, or to the Superior Court until an order is issued from the court.

(b) The provisions of (a) above shall not apply in cases where it appears to the Director that neither the probate of

a decedent's will nor the grant of letters of administration are required by the laws of this State. In any case, however, the Director may, at his discretion, issue any and all Inheritance Tax consents to transfer the assets of a decedent where in his judgment, the collection of the Transfer Inheritance Tax payable to New Jersey would be jeopardized by the withholding of such consent.

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

Inserted "Inheritance Tax" preceding "consents to transfer" throughout.

Statutory References

N.J.S.A. 54:35-23.

18:26-11.4 Real and personal property of resident and nonresident decedents

(a) Waivers consenting to the transfer of real property located in New Jersey are necessary for estates of resident decedents or estates of decedents whereby guardians have been appointed for the deceased prior to his death; except, that real property held by a husband and wife and tenants by the entirety must be transferred without a waiver in the estate of the spouse dying first.

(b) An inheritance tax waiver is required for a period of 15 years from the date of such decedent's death and if the decedent died after December 31, 2001 an estate tax waiver is required for an unlimited period in order to effect the transfer or delivery of the real or personal tangible or intangible property specified in N.J.A.C. 18:26-11.1, Consent to transfer; generally, which the decedent owned or in which he had an interest at the date of death.

(c) Inheritance tax waivers are necessary to transfer any real property located in New Jersey belonging to a nonresident decedent. Such waivers are issued after the nonresident decedent return is filed with the Transfer Inheritance Tax Branch and the tax, if any, is adjusted and paid.

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

Rewrote (b); in (c), substituted "Inheritance tax waivers" for "Waivers".

Statutory References

N.J.S.A. 54:35-5.

18:26-11.5 Leasehold interest

The written consent of the Director is required to transfer any leasehold or chattels real, which a decedent owned or in which a decedent had an interest.

Statutory References

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

18:26-11.6 Mortgage participation certificates

In order to effect the transfer of any mortgage participation certificates registered in the name of a decedent of which belong to a decedent even though held in the name of another, it is necessary to obtain a waiver.

Statutory References

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

18:26-11.7 Share of a deceased beneficiary

In any case where a beneficiary dies prior to the settlement of an estate in which such beneficiary is entitled to receive a share or interest, the executor or administrator of the first estate must first obtain a waiver before transferring such share or interest.

Statutory References

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

18:26-11.8 Transfers to savings accounts without a waiver

(a) Funds of a decedent on deposit in a checking account in any bank may be transferred to an interest bearing account in the same bank in the name of the decedent or his estate without obtaining a waiver.

(b) Funds of a decedent on deposit in an Individual Retirement Account (IRA) and/or Keogh retirement plan account may be transferred to another account in the same bank without obtaining a waiver.

(c) Any certificate of deposit or any type of a preferred account containing funds of a decedent may be transferred to another account in the same bank without obtaining a waiver.

(d) The transfers permitted in (a) through (c) above are subject to the requirement that the banking institution promptly file a notice with the Transfer Inheritance and Estate Tax Section of the Individual Tax Audit Branch, PO Box 249, Trenton, New Jersey, 08646-0249, containing the following information:

1. Decedent's name;
2. Date of death and domicile;
3. Name and address of executor or administrator of estate;
4. The account number, or certificate number, sought to be transferred and the balance on deposit or the maturity value as of the date of death.

(e) In any event, the bank is required to retain the same control over the substituted account as the original account until the New Jersey Inheritance Tax and the New Jersey Estate Tax are provided for and paid.

Amended by R.1978 d.286, effective August 15, 1978.
See: 10 N.J.R. 300(b), 10 N.J.R. 407(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.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 (d), inserted "and Estate Tax Section of the Individual Tax Audit" following "Transfer Inheritance" in the introductory paragraph; in (e), substituted "and the New Jersey Estate Tax are" for "is" following "New Jersey Inheritance Tax".

Statutory References

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

18:26-11.9 From one fiduciary to another

Bonds and/or stock of a New Jersey Corporation or a national bank located in New Jersey, or any money deposited in any trust company, bank or other institution in the name of one court appointed fiduciary as executor, administrator or trustee or guardian, may, upon the death of such fiduciary, be transferred without a New Jersey Transfer Inheritance Tax and a New Jersey Estate Tax waiver to, or on the order of, the legally appointed substitute for the deceased fiduciary.

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".

18:26-11.10 Transfer from joint fiduciaries to successors

Bonds and/or stock of a New Jersey corporation or a national bank located in New Jersey or any money deposited in any trust company, bank or other institution in the names of two or more fiduciaries as executors, administrators, trustees or guardians, may, upon the death of one or more of such fiduciaries, be transferred without a New Jersey Transfer 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 of the decedent or \$200.00 where another person is the applicant, and the spouse 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 or other applicant executing Form 0-80 or 0-83.

(b) Form 0-83, used by a spouse, 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 nonresident 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".

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

(d) The written consent of the Director is required where stock of a New Jersey Corporation owned by a resident decedent is to be surrendered in exchange for the stock of any corporation whether title to the new shares are registered in the decedent's name or in the name of the estate.

Statutory References

N.J.S.A. 54:35-21.

Case Notes

Officers could, before they become majority shareholders, enter into agreement to transfer corporate property after they achieved majority. *Kislak Co., Inc. v. Byham*, 229 N.J.Super. 163, 550 A.2d 1291 (A.D.1988).

18:26-11.30 Life insurance companies

(a) All corporations, associations, societies, or other organizations, incorporated, or organized under the laws of this State to transact the business of life insurance or to grant annuities, and all corporations, associations, societies or other organizations, incorporated or organized elsewhere and authorized by the New Jersey Commissioner of Banking and Insurance to transact the business of life insurance or to grant annuities within this State must give notice to the Director, at the time and in the manner and form hereinafter prescribed, of all sums payable by them on or after April 7, 2003, as a result of the death of a resident of the State:

1. Under the terms of life insurance policies, endowment policies and annuity contracts owned by a decedent or paid to a partnership, firm or corporation entitled to receive payment in its own right in those instances where a decedent held an interest in the partnership, firm or corporation at death; and

2. Under the terms of a supplementary optional settlement or similar contract issued to effectuate the distribution of benefits under life insurance policies, endowment policies and annuity contracts except when the sums payable represent a continuation of payments under a policy or contract which provided for such payment at a prior decedent's specific direction.

(b) The written consent of the Director is not required to release any sums payable referenced in (a) above.

(c) Neither the written consent of the Director nor notice to the Director is required to release any sums payable referenced in (a) above when payment is made outright to the decedent's surviving spouse.

(d) Neither the written consent of the Director nor notice to the Director is required to release any sums payable under pension or retirement plans (including group annuity contracts) legally owned by an employer or qualified trust. See N.J.A.C. 18:26-11.13(a)4.

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

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

18:26-11.31 Notice

(a) The notice required by N.J.A.C. 18:26-11.30 is to be given by mailing Form 0-71 to the Division of Taxation, Transfer Inheritance and Estate Tax Section, PO Box 249, Trenton, New Jersey 08695-0249 as soon as practicable after the death of the decedent, but in any event not later than 10 days after any part of the sum or sums required to be reported therein have been paid and by advertising each beneficiary listed on the form that information regarding death claim payments is being supplied to the State pursuant to the requirements of the Division of Taxation and that it is the position of the Division of Taxation that a beneficiary may, in the absence of State or Federal statutes to the contrary, be personally liable for any and all inheritance and/or estate taxes until paid.

(b) Completed Forms 0-71 may be mailed to the Division on a monthly basis. A completed Form 0-71 which is made part of a monthly mailing will be deemed to have been mailed in a timely manner provided that the monthly mailing is within one month of the date on which the form would otherwise be required to be mailed.

(c) Nothing herein may be taken to relieve an informant of any liability imposed by statute in any instance where it has failed to file notice as provided herein. The Director reserves the right to direct, at any time, that any sum or sums not yet paid over shall be withheld by the informant pending further order of the Director where that course is deemed imperative to protect the interest of the State.

Amended by R.1994 d.627, effective December 19, 1994.
See: 26 N.J.R. 4166(c), 26 N.J.R. 5036(a).
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 (a), substituted "Transfer Inheritance and Estate Tax Section" for "Transfer Inheritance Tax Branch" and deleted "the whole or" preceding "any part of the sum"; in (b), deleted the former first sentence.
Amended by R.2006 d.196, effective June 5, 2006.
See: 37 N.J.R. 1694(a), 38 N.J.R. 2518(b).

In (a), substituted "08695-00249" for "08646-0249" and added the language "and by advertising each . . . estate taxes until paid"; added present (b); and recodified former (b) as (c).

Statutory References

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

18:26-11.32 Penalty for failure to obtain consent or give notice—Inheritance Tax

(a) Any bank, banking institution, safe deposit company, trust company, other institution, association, organization, corporation or person who fails to obtain the written consent of the Director, allow an examination or give notice as provided in this Chapter is liable to pay the amount of the tax and interest due or which becomes due upon the securities,

deposits, shares of stock or other assets transferred or delivered and in addition is liable to a penalty of \$1,000.00 which may be enforced in an action at law in the name of the State.

(b) A safe deposit company, trust company, bank, other institution, corporation or person is not liable to the tax and interest or penalty provided in subsection (a) of this Section, where it or he delivers securities, deposits shares of stock or other assets belonging to or standing in the names of two or more persons to one of such persons without knowledge or reasonable ground to believe that another one of such persons is dead.

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

Statutory References

N.J.S.A. 54:35-20.

SUBCHAPTER 12. ADMINISTRATION AND FORMS

18:26-12.1 General powers of Director

The Director, Division of Taxation, New Jersey Department of the Treasury, is authorized and empowered to carry the New Jersey Transfer Inheritance Tax and Estate Tax Laws into effect, and to make and enforce any rules and regulations he may in his discretion deem necessary.

Statutory References

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

18:26-12.2 Administration of Transfer Inheritance Tax and New Jersey Estate Tax

(a) The Act is administered by the Director through the Transfer Inheritance Tax Branch of the Division of Taxation in the Department of the Treasury.

1. No Inheritance Tax report on the estate of a resident decedent will be accepted nor negotiation entered into with regard to the estate matters of a resident decedent unless such estate is represented by:

- i. An attorney at law of the State of New Jersey;
- ii. The personal representative of an estate; or,
- iii. An heir-at-law, next-of-kin, grantee, transferee, legatee, or devise of the decedent; or
- iv. A certified public accountant of the State of New Jersey, provided such accountant is designated for such purpose, in writing, by any of the persons enumerated in (a)ii or iii above subject to the condition that the client be notified, in writing, before the certified public accountant commences work on the return, that review of the return by a qualified attorney may be desirable

because of the possible application of legal principles to the preparation of the tax return. A copy of the properly executed notification must be filed with the inheritance tax return.

2. Nothing herein is intended to preclude the discussion of accounting problems which may arise in the course of an audit of a New Jersey Inheritance Tax report, with a Certified Public Accountant, provided, such accountant is designated for such purpose, in writing, by any of the persons enumerated in paragraph 1 of this subsection. Under no circumstances may a C.P.A. enter into discussion regarding any question of law;

3. The provision of this section may be waived by the director where, in his discretion, the strict adherence thereto would jeopardize the collection of any tax due or the closing of an inheritance tax proceeding.

Amended by R.1987 d.225, effective May 18, 1987.

See: 18 N.J.R. 2321(b), 19 N.J.R. 885(a).

(a)iv added.

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 to (a)liv "subject to the ..."

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 25 of Transfer Inheritance Tax Bureau filed 4/8/58.

Statutory References

N.J.S.A. 52:18A-24.

Case Notes

Opinion of Committee on the Unauthorized Practice of Law modified to permit preparation and filing of New Jersey inheritance tax returns by qualified certified public accountants licensed in New Jersey, provided that accountant notifies client in writing that review of return by a qualified attorney may be desirable because of possible application of legal principles to tax return preparation. In re Application of the New Jersey Society of Certified Public Accountants, 102 N.J. 231, 507 A.2d 711 (1986).

18:26-12.3 Information from Transfer Inheritance Tax Branch

(a) After a return has been filed all communications regarding the New Jersey transfer inheritance or estate tax are to be addressed to the Transfer Inheritance Tax Branch, PO Box 249, Trenton, New Jersey 08646-0249 and should state the full name of the decedent, the date of death, and the name of the county where the decedent resided as of the date of death. See N.J.A.C. 18:26-9.7 for confidential nature of communications with the Transfer Inheritance Tax Branch.

(b) If a communication includes inquiries with respect to more than one decedent's estate, copies shall be furnished for each as mentioned in the communication.

(c) No employee of the Transfer Inheritance Tax Branch is permitted to pass upon, or decide, any question involving the