

(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 as of the date of death of decedent as follows:

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

provided, however, that where the amount claimed is less than that determined by the application of the rates of set forth above, only such amount as claimed shall be allowed. See N.J.S.A. 3B:18-14.

(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:18-15 and 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.

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.