

CHAPTER 26

TRANSFER INHERITANCE AND ESTATE TAX

Authority

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

Source and Effective Date

R.1998 d.194, effective March 26, 1998.
See: 30 N.J.R. 609(a), 30 N.J.R. 1426(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 22, 2003. See: 34 N.J.R. 3935(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.1998 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: Source and Effective Date. See, also, section annotations.

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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:

(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 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.

(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, 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 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 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 or waiver by the surviving spouse can not be used for real property and tangible personal property transfers from a decedent to a surviving spouse.

(d) No 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 or 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.

(e) 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).

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 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.

Statutory References

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

18:26-11.3 Consent to transfer not issued

(a) Before the Director issues any 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 the 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 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.

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) A waiver is required for a period of 15 years from the date of such decedent's death in order to effect the transfer or delivery of the real or personal tangible or intangible property specified in N.J.A.C. 11.1 (Consent to transfer) which the decedent owned or in which he had an interest at the date of death.

(c) 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.

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 Tax 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 is 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).

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 waiver to, or on the order of, the legally appointed substitute for the deceased fiduciary.

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 waiver, or on the order of the surviving fiduciary or fiduciaries.

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 not subject to the New Jersey Transfer Inheritance Tax as provided in N.J.A.C. 18:26-6.

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 Branch, PO Box 249, Trenton, New Jersey 08646-0249, 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 Inheritance 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 inheritance 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).

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 Taxes and made payable to the New Jersey Inheritance Tax Branch;

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) Securities of a New Jersey Corporation registered in the name of a decedent and issued by any bank, or savings and loan association situated in this State, are not subject to the Blanket Waiver rule provided for in this section. Therefore, the written consent of the Director must be obtained in order to transfer or release such assets.

(e) 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.1971 d.2, effective January 4, 1971.
See: 2 N.J.R. 102(g), 3 N.J.R. 30(c).
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. 54:35-19.

18:26-11.17 Funds held in a banking institution

Except as otherwise indicated in this chapter, unless a waiver is first obtained, no banking institution, trust company or safe deposit company organized under the laws of the State of New Jersey; national bank operating in the State of New Jersey; building and loan or savings and loan association organized under the laws of the State of New Jersey; credit unions chartered by the United States operating in the State of New Jersey; or corporation, or person may release or transfer any funds, securities, deposits or other assets belonging to or on deposit to the credit of a decedent whether held:

1. In the name of the decedent individually, as copositor, jointly, trustee, agent, cestui que trust, or in any other capacity, excepting when held as custodian for a minor pursuant to N.J.S.A. 46:38-1 et seq.; or

2. As rental security deposits under the provisions of N.J.S.A. 47:8-19 et seq.

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

Statutory References

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

18:26-11.18 Funds held in bank accounts

(a) Bank accounts: Where funds are held on deposit in any bank to the credit of a person and payable on the death of such person to a named beneficiary, upon the death of the named beneficiary, no waiver is required to transfer or release the funds to such person, however, a waiver is required to transfer or release such funds to the beneficiary upon the death of the principal.

(b) Double dollar accounts: Where, upon the death of a decedent having funds on deposit to his credit, individually, in a joint account with right of survivorship or trustee account, in a banking institution located in New Jersey, there is credit to the account the proceeds of a life insurance contract, the consent of the director is required to release the amount on deposit after credited thereto the proceeds of the life insurance policy. In order to determine the taxability thereof, the type of account is to be indicated on the return.

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

Statutory References

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

18:26-11.19 Transfer of collateral

(a) A State bank, State banking association, trust company, national bank, national banking association, safe deposit company or other institution, having in its possession, custody or control, securities or other assets pledged as collateral for a loan of a decedent, may, for the purpose of liquidating a loan or other debt due from a resident decedent:

1. Transfer such collateral from the name of the decedent to its own name upon receiving the written consent of the director; or

2. Sell such collateral to satisfy a loan of a decedent without the written consent of the director, except that where the collateral pledged consists of the stock of a New Jersey corporation, such stock cannot be transferred on the books of such corporation without the written consent of the director. Where any excess moneys are received from a sale, the written consent of the director must be obtained before delivery of such excess money to a proper party in interest; or

3. Deliver any collateral to the executor or administrator of a decedent upon full payment of the loan or debt without the written consent of the director.

Statutory References

N.J.S.A. 54:35-22.

18:26-11.20 Release of safe deposit box contents

No safe deposit company, trust company, bank or other institution may deliver or transfer any securities, deposits or other assets contained in a safe deposit box within its control or possession which belongs to or stands in the name of a resident decedent, principal of a one person corporation or in the joint names of a resident decedent and one or more other persons, unless a release is obtained from the Transfer Inheritance Tax Branch. A blanket release will be issued to safe deposit companies, trust companies, banks and other institutions which will allow for release of the contents of all safe deposit boxes without inspection by the Division.

Amended by R.1975 d.247, effective August 15, 1975.

See: 7 N.J.R. 348(a), 7 N.J.R. 447(a).

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 where safe deposit box is located.

Amended by R.1991 d.242, effective May 6, 1991.

See: 23 N.J.R. 27(a), 23 N.J.R. 1422(a).

Requirement for inspection prior to release deleted.

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

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

Revised text.

18:26-11.21 (Reserved)

Amended by R.1975 d.247, effective August 15, 1975.

See: 7 N.J.R. 348(a), 7 N.J.R. 447(a).

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 added Inheritance Tax Bureau.

Amended by R.1991 d.242, effective May 6, 1991.

See: 23 N.J.R. 27(a), 23 N.J.R. 1422(a).

Requirement for inventory by the Inheritance Tax Bureau deleted; requirement for release added.

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

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

Section was "Conditions for opening safe deposit box".

18:26-11.22 (Reserved)

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.

Amended by R.1991 d.242, effective May 6, 1991.

See: 23 N.J.R. 27(a), 23 N.J.R. 1422(a).

District supervisor deleted and replaced with Inheritance Tax Branch.

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

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

Section was "Release of empty safe deposit box".

Statutory References

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

18:26-11.23 (Reserved)

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.242, effective May 6, 1991.

See: 23 N.J.R. 27(a), 23 N.J.R. 1422(a).

District supervisor deleted and replaced with Inheritance Tax Branch.

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

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

Section was "Inventory of safe deposit box".

Statutory References

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

18:26-11.24 (Reserved)

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

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

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

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

Section was "Right of access by deputy".

18:26-11.25 (Reserved)

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

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

Section was "Box rented in name of partnership".

18:26-11.26 (Reserved)

Amended by R.1975 d.247, effective August 15, 1975.

See: 7 N.J.R. 348(a), 7 N.J.R. 447(a).

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

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

Section was "Box rented by corporation; exception".

18:26-11.27 (Reserved)

Amended by R.1991 d.242, effective May 6, 1991.

See: 23 N.J.R. 27(a), 23 N.J.R. 1422(a).

Reference to district supervisor deleted.

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

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

Section was "Box rented in name of fiduciary".

18:26-11.28 (Reserved)

Amended by R.1971 d.2, effective January 4, 1971.
 See: 2 N.J.R. 102(g), 3 N.J.R. 30(c).
 Repealed by R.1992 d.402, effective October 19, 1992.
 See: 24 N.J.R. 2533(a), 24 N.J.R. 3734(a).
 Section was "Box rented by nonresident decedent".

Historical Note

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

Statutory References

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

18:26-11.29 Transfer of stock of a New Jersey corporation

(a) No corporation organized under the laws of this State may transfer any of its stock standing in the name of or belonging to a resident decedent or in the joint names of such a decedent and one or more persons, or in trust for a resident decedent, unless the written consent of the Director is first obtained.

(b) The written consent of the Director is required in connection with the transfer of stock of a corporation organized under the laws of New Jersey when such stock represents shares issued as a stock dividend where the holder of record date is the same date as that on which the decedent died, or a date prior thereto, and such stock is received by the decedent's personal representative.

(c) The corporation issuing or paying its shares in the form of a stock dividend is responsible for obtaining from the representative of the estate the written consent of the Director for the transfer of all stock standing in the name of the decedent on its books as of the date of death and such additional shares as are issued as stock dividends subsequent to death where the holder of record date is prior to, or the same as, the date of death of the decedent.

(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

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, corporations, 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 not required to obtain a waiver, must give notice to the Director, at the time and in the manner and form hereinafter prescribed, of all sums paid or payable by them, as a result of the death of a resident of this State, under the terms of life insurance policies, endowment policies and annuity contracts, and under the terms of supplementary optional settlement on similar contracts issued to effectuate the distribution of benefits under life insurance policies, endowment policies and annuity contracts; except that notice need not be given:

1. Of any sum or sums paid or payable under the terms of an industrial life insurance or endowment policy; or,
2. Of any sum or sums paid or payable under the terms of a life insurance or endowment policy to a beneficiary other than the estate of the decedent, or his or her executors or administrators; unless
 - i. Such policy was issued on a single premium basis in conjunction with an annuity contract; or
 - ii. The beneficiary under such policy is a partnership, firm or corporation receiving payment in its own right, in which event notice must be given.

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 Tax Branch, PO Box 249, Trenton, New Jersey 08646-0249 as soon as practicable after the death of the decedent, but in any event not later than 10 days after the whole or any part of the sum or sums required to be reported therein have been paid.

(b) The giving of notice in accordance with this Section is deemed a sufficient compliance with the provisions of the Transfer Inheritance Tax Laws of this State. 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).

Statutory References

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

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

(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.

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 taxability of a transfer of any property under the terms of a decedent's will, deed of trust, annuity contract, agreement, contract or any other instrument prior to the date of a decedent's death, nor may an employee compute any hypothetical tax on any set of facts submitted for consideration.

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).

Historical Note:

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

Statutory References

N.J.S.A. 54:33-6-7-8.

18:26-12.4 Examination of records

For the purpose of administering the New Jersey inheritance and estate tax, the Director, whenever he deems expedient, may make or cause to be made through the Transfer Inheritance Tax Branch or any employee thereof engaged in the administration of such taxes, an examination or investigation of any tangible personal property and any books, records, papers, vouchers, accounts, and documents of any taxpayer. See N.J.A.C. 18:26-12.6 for power of the Transfer Inheritance Tax Branch to issue subpoenas and interview witnesses.

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. 54:34-9 and 54:50-2.

18:26-12.5 Hearings

The Director or his duly authorized employees in the Transfer Inheritance Tax Branch may conduct hearings, subpoena documents, administer oaths to, and examine under oath, any taxpayer as well as any directors, officers, agents and employees of a taxpayer in respect to any matter evident to the administration of the New Jersey Inheritance and Estate Tax.

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

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

18:26-12.6 Issuance of subpoenas

The Director, or his duly authorized employees in the Transfer Inheritance Tax Branch, may by subpoena compel the attendance of witnesses and/or the production of any books, records, papers, vouchers, accounts or documents of any taxpayer or of any person who the Director has reason to believe has information pertinent to any matter under investigation by the Director or any such deputy at any hearing held pursuant to law. The fees of witnesses required to attend any such hearing are to be the same as those allowed to witnesses appearing in the Superior Court and shall be paid in the manner provided for the payment of other expenses incident to the administration of the New Jersey transfer inheritance tax or estate tax law.

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

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

18:26-12.7 Compelling witness to attend

If a person subpoenaed to attend any hearing under this Subtitle fails to appear, be examined, answer any question, or produce any books, records, papers, vouchers, accounts or documents when subpoenaed so to do by the Director or any duly authorized employee, the Director or any such employee may apply to the Superior Court for an order to compel him to do so.

18:26-12.8 Notice; how given; presumption

Any notice required to be given by the Director, may be served personally or by mailing the same to the person for whom it is intended, addressed to such person at the address given in the last report filed by him or if no report has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom it was addressed. See N.J.A.C. 18:26-8.7 for the required statements to be contained on assessment notices.

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

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

Added a third sentence.

18:26-12.9 Review

(a) In order to make a protest of a Transfer Inheritance and Estate Tax Branch assessment or finding within the 90 day period provided by N.J.S.A. 54:49-18, a written protest must be submitted to the Branch. The written protest must be signed by the estate representative, certified to be true, and contain the following data:

1. Whether a hearing or a review is requested;
2. The decedent's name, date of death, social security number, and county of residence;
3. The name, address, and telephone number of the estate representative the Branch should contact in connection with the protest;

4. A copy of the assessment or determination subject to the protest;
5. The specific amount of tax or interest under protest;
6. An explanation of the basis for the protest; and
7. The specific facts supporting the basis for the protest and a summary of evidence or documentation to be presented in support of the estate's position.

(b) A submission which does not include the information requested in (a)5 and 6 above will not be considered a valid protest and will not result in a hearing or review. In addition, the submission of an incomplete or invalid protest will not toll or otherwise extend the 90 day period for such protests to the Division of Taxation.

(c) The filing of any valid protest shall stay the right of the Director to collect the tax in any manner provided by law if the estate shall furnish security, within 90 days after the final determination, of the kind and in the amount determined as follows:

1. Security will not be required for amounts in controversy of less than \$10,000, except in cases of arbitrary assessments under N.J.S.A. 54:49-5 or 54:49-7. Security may be required in contested amounts of \$10,000 or more if it is determined that there is substantial risk that the estate will fail or be unable to pay a liability. In determining whether there is substantial risk of the estate's failure or inability to pay, the Division may consider the following:
 - i. The taxpayer's record of compliance;
 - ii. The estate's financial condition; and
 - iii. Any other information which the Director reasonably believes to be relevant to this determination.

(d) Hearings are scheduled whenever possible by telephone on a mutually acceptable date for both the estate representative and the Branch.

(e) When an application for a refund is made within three years from the date of payment of the tax, the period in which a protest may be submitted is 90 days after a denial of the refund is made.

(f) After the hearing or review of a protest is completed, the Branch will make a final determination confirming, modifying, or vacating the assessment, finding, or denial of a refund request. The estate representative will be notified of the Branch's determination by registered or certified mail. The estate has 90 days after the issuance of the final determination to appeal therefrom to the Tax Court.

As 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.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. 54:34-13, 54:38-10, 54:49-18.

Case Notes

Obligation for payment of transfer inheritance taxes became fixed once 90-day period for appealing assessment passed. *Gifford v. Director, Div. of Taxation*, 15 N.J.Tax 51 (1995).

18:26-12.10 Informal hearing

(a) An executor, administrator, trustee, or other interested party may, at any time, request an informal conference with the Transfer Inheritance Tax Branch in order to present information or discuss any issues.

(b) A conference before the Transfer Inheritance Tax Branch may be conducted on an informal basis with or without representation on behalf of a taxpayer or other party in interest.

(c) An estate representative shall be provided, before or during a conference, an explanation of the audit process and the estate's rights under the audit process in the case of a conference relating to the determination of inheritance or estate tax, and shall be provided an explanation of the collection process and the estate's rights under the collection process in the case of a conference relating to the collection of inheritance or estate tax.

(d) Estate representatives have the right, upon giving 14 days advance notice to the Branch, to make a recording of any hearings or conferences with their own equipment and at their own expense; provided, however, that the Branch shall have the same right of recording.

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. 54:50-2.2, 54:50-3, 54:1-16, 54:1-17.

18:26-12.11 (Reserved)

Repealed by R.1989 d.210, effective April 17, 1989.
See: 21 N.J.R. 285(a), 21 N.J.R. 1021(a).

Deleted section "Formal hearing", to conform with statute exempting Division of Taxation inheritance tax cases from administrative hearings, pursuant to N.J.S.A. 52:14B-2(b), and reserves section.

18:26-12.12 Appeal to Tax Court

(a) Any person aggrieved by any decision, order, finding or assessment of the Director or his deputies, through the Transfer Inheritance Tax Branch, may appeal therefrom to the Tax Court within 90 days from the date a final determination is made. No such appeal shall stay the collection of the tax or the enforcement of the same by entry of judgment unless security, if required pursuant to the standards and subject to the exception of subsection b of N.J.S.A. 54:49-18, approved by the Director of the Division of Taxation has been furnished to the Director of the Division of Taxation.

(b) A prevailing estate in a court proceeding in connection with the determination, collection, or refund of inheritance or estate tax, penalty, or interest may be awarded a judgment or settlement for reasonable litigation costs as set forth in N.J.S.A. 54:51A-22.

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.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, 54:51A-15, 54:51A-22.

APPENDIX A. (RESERVED)

As amended, R.1972 d.133, effective June 21, 1972.

See: 4 N.J.R. 168(a).
As amended, R.1973 d.298, effective October 18, 1973.
See: 5 N.J.R. 393(e).
As amended, R.1975 d.270, effective September 12, 1975.
See: 7 N.J.R. 489(b).
As amended, R.1983 d.356, effective September 6, 1983.
See: 15 N.J.R. 1088(b), 15 N.J.R. 1488(b).

Deleted Solomon Friss and John P. Scozzari, Esq. from Appendix A, Investigators.

New Rule, R.1989 d.85, effective February 6, 1989.

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

Repealed and inserted new rule.

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

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

Appendix was "District Supervisors-Inheritance Tax".