

**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, administrator, 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 pro-

portion (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/civil union partner/domestic partner.

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/civil union partner/domestic partner, \$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.  
Amended by R.2008 d.72, effective April 7, 2008.  
See: 39 N.J.R. 5185(a), 40 N.J.R. 1923(b).

In the first and second paragraphs of *Example (2)*, inserted "/civil union partner/domestic partner".

**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,

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

(b) Transfers to all Class "A" transferees, where decedent dies on or after July 1, 1988, are totally exempt, except that transfers to a domestic partner are totally exempt where the decedent dies on or after July 10, 2004, and transfers to a civil union partner are totally exempt where the decedent dies on or after February 19, 2007.

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).

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

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

Deleted former (a) and (b); recodified former (c) as (a); deleted (d) through (f); recodified former (g) as (b); rewrote (b); and deleted (h).

#### 18:26-6.2 Class "C" transfers

(a) 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.

(b) In instances where the decedent dies on or after February 19, 2007, the transfer of property having an aggregate clear market value of \$25,000 or less, which is transferred to a civil union partner or surviving civil union partner of a son or 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.

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

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

Inserted designation (a); and added (b).

#### 18:26-6.3 Dower or curtesy

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).  
Amended by R.2008 d.72, effective April 7, 2008.  
See: 39 N.J.R. 5185(a), 40 N.J.R. 1923(b).  
Deleted (a) and (b); and deleted designation (c).

#### Statutory References

N.J.S.A. 3A:25-1; 3A:35-2; 3B:28-2

#### 18:26-6.4 Tenancy by the entirety

The transfer of real property or personal property in this State held by a husband and wife/civil union couple as tenants by the entirety to the surviving spouse/civil union partner is not taxable for New Jersey Inheritance Tax purposes. See N.J.S.A. 46:3-17.2, P.L. 1987 c. 357, except that where words such as "husband and wife" and "spouse/wife/husband" are used in the statute, the words "civil union couple" and "civil union partner" shall be given the same treatment as the former terms, respectively.

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.  
Amended by R.2008 d.72, effective April 7, 2008.  
See: 39 N.J.R. 5185(a), 40 N.J.R. 1923(b).  
Deleted designation (a) and rewrote the section.

#### 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).