

CHAPTER 26

TRANSFER INHERITANCE AND ESTATE TAX

Authority

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

Source and Effective Date

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

Chapter Expiration Date

Chapter 26, Transfer Inheritance and Estate Tax, expires on March 17, 2008.

Chapter Historical Note

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

Pursuant to Executive Order No. 66(1978), Chapter 26, Transfer Inheritance and Estate Tax, was readopted as R.1983 d.356, effective August 12, 1983. See: 15 N.J.R. 1088(b), 15 N.J.R. 1488(b).

Pursuant to Executive Order No. 66(1978), Chapter 26, Transfer Inheritance and Estate Tax, was readopted as R.1988 d.300, effective June 7, 1988. See: 20 N.J.R. 637(a), 20 N.J.R. 1571(a).

Pursuant to Executive Order No. 66(1978), Chapter 26, Transfer Inheritance and Estate Tax, was readopted as R.1993 d.314, effective June 4, 1993. See: 25 N.J.R. 1498(a), 25 N.J.R. 2906(a).

Pursuant to Executive Order No. 66(1978), Chapter 26, Transfer Inheritance and Estate Tax, was readopted as R.1998 d.194, effective March 26, 1998. See: 30 N.J.R. 609(a), 30 N.J.R. 1426(b).

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

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. DEFINITIONS

18:26-1.1 Definitions

SUBCHAPTER 2. IMPOSITION AND COMPUTATION OF TAX

- 18:26-2.1 Nature of tax
- 18:26-2.2 Law at the time of death controls
- 18:26-2.3 Computation of tax
- 18:26-2.4 Exclusion of exempt transfers
- 18:26-2.5 Rates for Class "A" transferee
- 18:26-2.6 Mutually acknowledged child
- 18:26-2.7 Rates of Class "C" transferee
- 18:26-2.8 Rates of Class "D" transferee
- 18:26-2.9 Escheat
- 18:26-2.10 Multiple transfers
- 18:26-2.11 Distribution by agreement
- 18:26-2.12 Renunciation or disclaimer
- 18:26-2.13 Possibility of divestment
- 18:26-2.14 Composition of taxes on certain transfers
- 18:26-2.15 Bond in lieu of payment
- 18:26-2.16 Ratio tax on transfer of nonresident's property
- 18:26-2.17 Direction in will as to payment of tax
- 18:26-2.18 through 18:26-2.19 (Reserved)

SUBCHAPTER 3. ADDITIONAL TAX (NEW JERSEY ESTATE TAX)

- 18:26-3.1 Estates subject to tax
- 18:26-3.2 Amount and nature of tax
- 18:26-3.3 Maximum estate tax where no inheritance tax imposed
- 18:26-3.4 Additions or reductions to estate tax
- 18:26-3.5 Change in Federal estate tax
- 18:26-3.6 Taxation of future interests after estate tax paid; credit
- 18:26-3.7 Payment; due date; interest; extension of time
- 18:26-3.8 Certificate of inheritance
- 18:26-3.9 Refunds
- 18:26-3.10 Protests, hearings and appeals

SUBCHAPTER 3A. ESTATE TAX—DECEDENT'S DYING AFTER DECEMBER 31, 2001

- 18:26-3A.1 Estate subject to tax—decedent's dying after December 31, 2001
- 18:26-3A.2 Amount of the tax
- 18:26-3A.3 Simplified Tax System
- 18:26-3A.4 Reduction of tax
- 18:26-3A.5 Estate tax where no inheritance tax imposed
- 18:26-3A.6 Lien
- 18:26-3A.7 Time limit for assessments
- 18:26-3A.8 Filing of tax return and other information
- 18:26-3A.9 Taxation of future interest after estate tax paid; credit
- 18:26-3A.10 Payment; due date; interest; extension of time
- 18:26-3A.11 Certificate of inheritance
- 18:26-3A.12 Refunds
- 18:26-3A.13 Protests, hearings and appeals

SUBCHAPTER 4. COMPROMISES (INHERITANCE AND ESTATE TAXES)

- 18:26-4.1 Domicile doubtful; terms of settlement
- 18:26-4.2 Compromise and settlement of certain tax claims or liens; waiver of defenses
- 18:26-4.3 Payment pursuant to compromise
- 18:26-4.4 through 18:26-4.5 (Reserved)

SUBCHAPTER 5. TRANSFERS SUBJECT TO TAX

- 18:26-5.1 Transfers generally
- 18:26-5.2 Transfers of residents and nonresidents
- 18:26-5.3 Property includible in estate of decedent
- 18:26-5.4 Classification of property as real or personal
- 18:26-5.5 Devises in lieu of commissions
- 18:26-5.6 Inter vivos transfers
- 18:26-5.7 Transfers made in contemplation of death
- 18:26-5.8 Transfers taking effect in possession or enjoyment at or after death
- 18:26-5.9 Certain profit sharing and retirement plans
- 18:26-5.10 Transfers not deemed to take effect at or after death
- 18:26-5.11 Jointly held property
- 18:26-5.12 Powers of appointment; estates in expectancy
- 18:26-5.13 Insurance proceeds subject to New Jersey Inheritance Tax
- 18:26-5.14 Proceeds payable to testamentary trustee
- 18:26-5.15 Proceeds under matured endowment policies
- 18:26-5.16 Proceeds under claim settlement certificates and supplementary contracts
- 18:26-5.17 Proceeds of retirement contracts
- 18:26-5.18 Proceeds of single premium life insurance with annuity contracts
- 18:26-5.19 Annuity contracts
- 18:26-5.20 Dividends and refunds on life insurance policies
- 18:26-5.21 (Reserved)

SUBCHAPTER 6. EXEMPTIONS

- 18:26-6.1 Class "A" transfers
- 18:26-6.2 Class "C" transfers
- 18:26-6.3 Dower or curtesy

- 18:26-6.4 Tenancy by the entirety
- 18:26-6.5 Intangible property of a nonresident
- 18:26-6.6 Wrongful death action
- 18:26-6.7 (Reserved)
- 18:26-6.8 Life insurance proceeds
- 18:26-6.9 Beneficiary of insurance trust
- 18:26-6.10 Trustee of insurance trust
- 18:26-6.11 Surrender of right to change beneficiary of contract of insurance
- 18:26-6.12 Public educational, scientific and charitable institutions
- 18:26-6.13 Property received from the Federal Government
- 18:26-6.14 Federal pensions
- 18:26-6.15 State pensions
- 18:26-6.16 Other pensions
- 18:26-6.17 No fault insurance

SUBCHAPTER 7. DEDUCTION

- 18:26-7.1 Deductions generally permitted
- 18:26-7.2 Decedent's debts
- 18:26-7.3 Debts secured by out-of-State real property
- 18:26-7.4 Mortgages
- 18:26-7.5 Debts secured by life insurance
- 18:26-7.6 Debt for claim of county welfare boards or State institutions
- 18:26-7.7 Estates subject to escheat
- 18:26-7.8 Funeral and last illness expenses
- 18:26-7.9 Administration expenses
- 18:26-7.10 Executor's and administrator's expenses
- 18:26-7.11 Counsel fees
- 18:26-7.12 Real estate broker's commissions
- 18:26-7.13 Storage expense
- 18:26-7.14 Operating costs of business
- 18:26-7.15 State, county and local taxes
- 18:26-7.16 Transfer taxes due other jurisdictions
- 18:26-7.17 Loans secured by life insurance policies
- 18:26-7.18 (Reserved)

SUBCHAPTER 8. ASSESSMENT AND VALUATION

- 18:26-8.1 (Reserved)
- 18:26-8.2 Appointment of appraisers
- 18:26-8.3 Notice of appraisal; evidence; report
- 18:26-8.4 Failure to testify before appraiser; false statements
- 18:26-8.5 Additional assessment
- 18:26-8.6 Final assessment
- 18:26-8.7 Assessment notices; required statements
- 18:26-8.8 Time limit for assessment
- 18:26-8.9 Appeals from assessment
- 18:26-8.10 Valuations generally
- 18:26-8.11 Fractional interest in real property
- 18:26-8.12 Life estate in realty held by the entirety
- 18:26-8.13 Bonds and mortgages
- 18:26-8.14 Partnerships
- 18:26-8.15 "Close" or "Family" corporation
- 18:26-8.16 Assets of close corporation or partnership of known market value
- 18:26-8.17 Government bonds and securities
- 18:26-8.18 Stocks, bonds, mutual funds and securities
- 18:26-8.19 Patents, trade marks, copyrights, and other items
- 18:26-8.20 Discretionary and legal common trust funds
- 18:26-8.21 Contingent or defeasible estates
- 18:26-8.22 Estates for life, estates for a term of years and annuities
- 18:26-8.23 Vested remainders after estate for life, estate for a term of years, or annuity
- 18:26-8.24 Estates subject to power of appointment
- 18:26-8.25 Certificates of deposit, savings certificates and special savings accounts
- 18:26-8.26 (Reserved)

SUBCHAPTER 9. RETURNS, PAYMENT AND PENALTIES

- 18:26-9.1 Date return due
- 18:26-9.2 By whom filed

- 18:26-9.3 Form of returns
- 18:26-9.4 Resident decedents' returns
- 18:26-9.5 Nonresident returns
- 18:26-9.6 Amendment to original return
- 18:26-9.7 Confidential nature of returns
- 18:26-9.8 (Reserved)
- 18:26-9.9 Payment
- 18:26-9.10 How tax is payable
- 18:26-9.11 Persons responsible
- 18:26-9.12 Liability for nonpayment
- 18:26-9.13 Late payment; general provisions
- 18:26-9.14 Payment on executory devise or transfer subject to a contingency or power of appointment
- 18:26-9.15 Bond for failure to pay tax
- 18:26-9.16 Composition of taxes, bond
- 18:26-9.17 (Reserved)

SUBCHAPTER 10. COLLECTION AND REFUND

- 18:26-10.1 Levy of tax; resident and nonresident decedents
- 18:26-10.2 Lien of tax; duration
- 18:26-10.3 (Reserved)
- 18:26-10.4 Deduction or collection of tax before distribution
- 18:26-10.5 Payment of tax collected; receipt
- 18:26-10.6 Statement of payment or exemption
- 18:26-10.7 Proceedings to compel payment of taxes; collection cost fees
- 18:26-10.8 (Reserved)
- 18:26-10.9 Refund for erroneous overpayment
- 18:26-10.10 Overpayment of account
- 18:26-10.11 Refund when debt proved after legacy or distributive share paid
- 18:26-10.12 Time and manner of making application for refund
- 18:26-10.13 Interest on refunds

SUBCHAPTER 11. WAIVERS—CONSENT TO TRANSFER

- 18:26-11.1 Consent to transfer; generally
- 18:26-11.2 Executors and trustees to pay tax
- 18:26-11.3 Consent to transfer not issued
- 18:26-11.4 Real and personal property of resident and nonresident decedents
- 18:26-11.5 Leasehold interest
- 18:26-11.6 Mortgage participation certificates
- 18:26-11.7 Share of a deceased beneficiary
- 18:26-11.8 Transfers to savings accounts without a waiver
- 18:26-11.9 From one fiduciary to another
- 18:26-11.10 Transfer from joint fiduciaries to successors
- 18:26-11.11 Transfer of partnership interest
- 18:26-11.12 Transfer of assets held by nonresident custodian
- 18:26-11.13 Transfer of tangible or intangible personal property
- 18:26-11.14 Exempt property not subject to waiver
- 18:26-11.15 Certain small estates not subject to waiver
- 18:26-11.16 Blanket waiver
- 18:26-11.17 Funds held in a banking institution
- 18:26-11.18 Funds held in bank accounts
- 18:26-11.19 Transfer of collateral
- 18:26-11.20 Release of safe deposit box contents
- 18:26-11.21 through 18:26-11.28 (Reserved)
- 18:26-11.29 Transfer of stock of a New Jersey corporation
- 18:26-11.30 Life insurance companies
- 18:26-11.31 Notice
- 18:26-11.32 Penalty for failure to obtain consent or give notice—Inheritance Tax

SUBCHAPTER 12. ADMINISTRATION AND FORMS

- 18:26-12.1 General powers of Director
- 18:26-12.2 Administration of Transfer Inheritance Tax and New Jersey Estate Tax

- 18:26-12.3 Information from Transfer Inheritance Tax Branch
- 18:26-12.4 Examination of records
- 18:26-12.5 Hearings
- 18:26-12.6 Issuance of subpoenas
- 18:26-12.7 Compelling witness to attend
- 18:26-12.8 Notice; how given; presumption
- 18:26-12.9 Review
- 18:26-12.10 Informal hearing
- 18:26-12.11 (Reserved)
- 18:26-12.12 Appeal to Tax Court

APPENDIX A (RESERVED)

SUBCHAPTER 1. DEFINITIONS

18:26-1.1 Definitions

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

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

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

"Class A transferee" means any of the following:

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

"Class C transferee" means any of the following:

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

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

"Class E transferee" means any of the following:

1. The State of New Jersey or any political subdivision thereof;
2. Any educational institution, church, hospital, orphan asylum, public library or Bible and tract society or to, for the use of or in trust for any institution or organization organized and operated exclusively for religious, charitable, benevolent, scientific, literary or education purposes, including any institution instructing the blind in the use of dogs as guides, no part of the net earnings of which inures

to the benefit of any private stockholder or other individual or corporation; provided, that the exemption does not extend to transfers of property to such education institutions and organizations of other states, the District of Columbia, territories and foreign countries which do not grant an equal and like exemption of transfers of property for the benefit of such institutions and organizations of this State.

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

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

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

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

"Market Value—Date Determined" means the value of property as of the date of death of the transferor, whether or not the transfer was made during the lifetime of the transferor.

"Person" means any individual, corporation, organization, association, partnership or any other entity.

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

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

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

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

Amended by R.1991 d.384, effective August 5, 1991.

See: 23 N.J.R. 188(b), 23 N.J.R. 2320(a).

Definition for "Proper representative of the estate" added.

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

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

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

See: 30 N.J.R. 609(a), 30 N.J.R. 1426(b).
In "Class A transferee", added a second sentence in 4.

Statutory References

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

Case Notes

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

SUBCHAPTER 2. IMPOSITION AND COMPUTATION OF TAX

18:26-2.1 Nature of tax

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

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

Statutory References

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

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

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

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

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

Statutory References

N.J.S.A. 54:35-1.

Case Notes

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

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

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

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

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

18:26-2.3 Computation of tax

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

Statutory References

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

18:26-2.4 Exclusion of exempt transfers

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

Statutory References

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

Case Notes

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

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

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

1. On any amount in excess of—

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

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

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

1. On any amount in excess of—

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

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

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

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

1. On any amount in excess of—

| | |
|--------------------------|----|
| \$ 250,000 up to 300,000 | 6% |
| 300,000 up to 500,000 | 7% |

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

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

Amended by R.1978 d.31, effective January 27, 1978.

See: 10 N.J.R. 43(a), 10 N.J.R. 128(a).

Amended by R.1989 d.85, effective February 6, 1989.

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

Date changed in (b); added (c)-(g).

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

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

Statutory References

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

18:26-2.6 Mutually acknowledged child

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

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

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

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

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

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

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

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

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

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

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

In (a)6, inserted "claimed the child as a dependent for Federal income tax purposes" following "who" in the third sentence.

Statutory References

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

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

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

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

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

1. On any amount in excess of—

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

Amended by R.1989 d.85, effective February 6, 1989.
See: 20 N.J.R. 2193(a), 21 N.J.R. 311(b).
Substantially amended.

Statutory References

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

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

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

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

Statutory References

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

Case Notes

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

18:26-2.9 Escheat

In the case of a decedent who dies intestate with no known heirs surviving, the rate of tax is assessed against the transfer at the highest rate permissible to the State.

Amended by R.1983 d.356, effective September 6, 1983.
See: 15 N.J.R. 1088(b), 15 N.J.R. 1488(b).
Repealed by R.1994 d.627, effective December 19, 1994.
See: 26 N.J.R. 4166(c), 26 N.J.R. 5036(a).
Section was "Escheat".
New Rule, R.1997 d.205, effective May 19, 1997.
See: 28 N.J.R. 4755(a), 29 N.J.R. 2467(b).

18:26-2.10 Multiple transfers

When more than one transfer subject to the tax has been made by a decedent to the same transferee, the tax is computed upon the aggregate clear market value of all of the property so transferred in the same manner and to the same extent as if all of the property had actually been transferred by a single transfer at the date of the decedent's death.

Statutory References

N.J.S.A. 54:33-1; 54:34-1.

18:26-2.11 Distribution by agreement

If a transferee under a will agrees that the estate, or any part of it is to be distributed otherwise than as provided in the will, the tax is nevertheless computed in accordance with the terms of the will admitted to probate.

Amended by R.1983 d.323, effective August 15, 1983.
See: 15 N.J.R. 798(a), 15 N.J.R. 1384(b).
Deleted old (b).
Amended by R.1983 d.356, effective September 6, 1983.
See: 15 N.J.R. 1088(b), 15 N.J.R. 1488(b).
Deleted old (b).

18:26-2.12 Renunciation or disclaimer

(a) If a transferee under a will or by operation of law disclaims or renounces his rights thereunder, or any portion thereof, the disclaimer or renunciation is given effect in computing the tax against the estate; provided, the instrument of disclaimer or renunciation is filed within nine months of death in the office of the surrogate or Superior Court in which proceedings have been commenced or will be commenced for the administration of the estate of the decedent or deceased donee of the power.

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

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 infeasible 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 proportion (ratio) which the New Jersey real and tangible personal property bears to the entire estate.

(b) The following are illustrations of the provisions of (a) above:

Example (1):

Mr. "A" a California domiciliary, died intestate, on July 3, 1997 leaving as his sole heir a nephew, Mr. "B". Mr. "A's" estate consisted of the following: real property of the value of \$10,000 in New Jersey; \$20,000 in cash located in an Illinois bank; and \$70,000 in real and personal property located in California.

The New Jersey property is subject to the ratio tax and the tax on such transfer is computed as follows:

First, a tax is computed on the value of the entire estate as if such estate were located in New Jersey, (i.e., \$100,000 x 15%, the rate applicable for property passing to a Class "D" transferee or \$15,000).

Second, the tax so computed is then multiplied by a fraction whose numerator is the value of the real or tangible personal property located in this State and whose denominator is the value of all property, real or personal, tangible or intangible, wherever situated, in the estate (i.e. $10/100 \times \$15,000 = \$1,500$, which is the ratio tax on the property passing to Mr. "B").

If Mr. "A" had specifically devised the property in New Jersey to his nephew, said property would not be subject to the ratio tax, but rather, it would be taxed directly to the devisee at the resident rates.

Example (2):

Same facts as Example (1) except that Mr. "A" died testate and bequeathed \$10,000 held in a bank account to his nephew and the rest of his estate to his wife.

First, a tax is computed as if Mr. "A" had been a New Jersey domiciliary, i.e., as to "B", $\$10,000 \times 15\% = \$1,500$; as to "A's" wife, \$90,000, all of which is exempt.

Second the total of tax, i.e., \$1,500 is multiplied by 1/10, the ratio of the property subject to tax to the entire estate, i.e., $1/10 \times \$1,500 = \150.00 , the amount of tax due.

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

Statutory References

N.J.S.A. 54:34-3.

18:26-2.17 Direction in will as to payment of tax

The direction of a decedent's will regarding the payment of inheritance or estate taxes out of a specific fund or the residuary estate, while binding on the executor and the beneficiaries, has no effect in the computation of tax due this State.

Statutory References

N.J.S.A. 54:34-12; 54:35-6; 3A:25 to 38.

18:26-2.18 through 18:26-2.19 (Reserved)**SUBCHAPTER 3. ADDITIONAL TAX (NEW JERSEY ESTATE TAX)****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,
2. All New Jersey residents dying after February 26, 1926, which are still in the process of settlement and subject to the jurisdiction of the probate courts of this State, except those estates where the inheritance tax due this State has been fully paid and all proceedings closed, or where the Federal estate tax has been fully paid and the time within which to claim the benefit of the credit for taxes paid to the State provided for in the Federal Revenue Act of 1926 expired prior to June 22, 1934, where the inheritance taxes paid to New Jersey, and other states, territories or the District of Columbia are not sufficient to fully absorb the credit allowed for payment thereof against any Federal estate tax payable to the United States.

(b) In a case where the aggregate of taxes paid this and any other states, District of Columbia, territories and possessions exceeds the amount of the allowable credit for state taxes under the Federal Estate Tax Law, no estate tax is due this State.

(c) The estate tax is not imposed upon the estates of nonresidents of New Jersey.

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

Historical Note

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

Statutory References

N.J.S.A. 54:38-14.

18:26-3.2 Amount and nature of tax

(a) The New Jersey estate tax is that amount representing the difference between the gross amount of the inheritance, legacy and succession taxes actually paid this State and any other states, territories, possessions, or the District of Columbia and the amount of the credit allowable against the Federal estate tax due the United States.

Example:

Mr. "A", a New Jersey resident, died on July 16, 1992, having a taxable estate of \$700,000 for Federal estate tax purposes. The credit allowable for State taxes under the Federal estate tax law was \$18,000, the amount actually paid to New Jersey for inheritance taxes was \$6,000. The New Jersey estate tax due is \$12,000.

(b) The New Jersey estate tax does not in any way interfere with the operation of the inheritance tax so as to decrease any inheritance, succession or legacy tax due or to become due this State or any other state, territory, possession, or the District of Columbia or to impair the lien of this State for any tax. The determination of the inheritance tax chargeable need not be suspended until the estate tax, if any, payable to New Jersey, is assessed. Neither is it necessary to withhold the filing of the Federal estate tax return pending the determination of the amount of the New Jersey inheritance taxes chargeable. Where, however, the value of a bequest, in trust or otherwise, to a surviving spouse is made dependent upon the value of the decedent's adjusted gross estate, as finally fixed for Federal estate purposes, the New Jersey transfer inheritance tax chargeable cannot be determined until the Federal estate tax proceedings have been finally completed.

(c) The estate tax due this State is payable out of the same funds as those from which the Federal estate taxes are payable.

(d) The tax imposed upon the estates of resident decedents in New Jersey, unlike the inheritance tax, does not constitute a lien on any of the property, real or personal, of the estate, and therefore waivers or consents to transfer are unnecessary.

(e) For estates with date of death on or after July 1, 1993, no assessment of additional estate tax shall be made after the expiration of more than four years from the date of filing of an estate tax return except in the following cases:

1. The return is false or fraudulent with the intent to evade tax;

2. If before the expiration of the four year period prescribed in this subsection for the assessment of additional tax a taxpayer consents in writing that such period may be extended, the amount of such additional tax may be determined at any time within such period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period;

3. An additional or increased estate tax becomes payable as a result of a redetermination, or additional or corrected assessment of estate, inheritance, succession, or legacy taxes by the United States government or any state or territory of the United States, including the District of Columbia. (See N.J.A.C. 18:26-3.4 for requirement to notify the Division of a redetermination of estate tax by the Internal Revenue Service.); or

4. The Federal estate tax chargeable on final assessment has not been definitely determined.

(f) The taxes assessed pursuant to (e)3 and 4 above shall be made within four years from the date the additional or increased estate tax becomes payable or the Federal estate tax chargeable on final assessment is definitely determined and the Branch is properly notified pursuant to N.J.A.C. 18:26-3.4.

Amended by R.1989 d.210, effective March 27, 1989.
See: 21 N.J.R. 285(a), 21 N.J.R. 1021(a).

In (a), Example (1): Revises example to conform with current Federal estate tax tables. "1988" replaces "1968"; changes net taxable estate amount to "\$700,000" from "\$300,000"; changes state tax credit to "\$10,000" from "\$20,000"; and actual amount paid to "\$6,000" from "\$18,000"; changes estate tax due to "\$4,000" from "\$2,000.00".

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

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

Revised example in (a).

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. 54:38-1; 54:49-6(b).

18:26-3.3 Maximum estate tax where no inheritance tax imposed

In an estate where no inheritance tax is due this State, but an estate tax is due the United States under the provisions of the Federal Estate Tax Law in effect at the date of a decedent's death, the estate tax due this State is that amount representing the difference between the gross amount of the inheritance, legacy and succession taxes actually paid any other states, territories, possessions or the District of Columbia, if any, and the maximum amount of credit allowable under the Federal Estate Tax Law.

Historical Note

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

Statutory References

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

18:26-3.4 Additions or reductions to estate tax

(a) If subsequent to a determination of the estate tax due this State, an additional or increased estate tax shall become payable to the United States by reason of a redetermination, or additional or corrected assessment, as to a portion of which the estate is entitled to a credit for estate, inheritance, succession or legacy taxes paid to any state or territory of the United States, including the District of Columbia, then an additional estate tax shall be due and payable to this State which shall be computed in the same manner as stated in Section 3.2 of this Section.

(b) If subsequent to a determination of the estate tax due this State, the amount of the Federal estate tax shall be decreased and the amount allowed as a credit for inheritance, succession or legacy taxes paid to any state or territory of the United States, including the District of Columbia, correspondingly reduced, the estate tax due this State shall be reduced accordingly upon submitting satisfactory proof to the Director.

(c) The amount of the estate tax due New Jersey, if any, cannot be determined in any case until the Federal Government has definitely determined the amount of Federal estate tax chargeable on final assessment.

1. Notice to the estate of final assessment usually takes the form of a letter from the District Director, Internal Revenue Service, indicating the amount of Federal estate tax chargeable, and the amount of the allowable credit.

2. If any adjustments have been made, this letter is accompanied by a detailed statement of the changes made in each schedule of the Federal estate tax return. If an appeal from the Director's findings is taken, the final notice will be the order of the appellate court in this respect.

3. The New Jersey Inheritance Tax Branch requires a photostatic copy of all determinations, final and interme-

date, of the Internal Revenue Service, with all supporting statements. Photostatic copies of receipts for payment of succession or estate taxes to any state, other than New Jersey, territory, possession, or the District of Columbia are also required.

4. Form of return for New Jersey estate tax purposes may be obtained from the Transfer Inheritance Tax Branch, PO Box 249, Trenton, N.J. 08646-0249.

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"; address modified.
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. 54:38-2; 54:38-3.

18:26-3.5 Change in Federal estate tax

In the event that the Federal Estate Tax Law is amended or changed with regard to the credit allowable for inheritance, succession or legacy taxes paid to any state or territory of the United States, including the District of Columbia, the estate tax due this State, shall be so computed as so to absorb the full amount of such changed credit.

Historical Note

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

Statutory References

As to Effect of Change in Federal estate tax, see N.J.S.A. 54:38-9.

18:26-3.6 Taxation of future interests after estate tax paid; credit

If after the payment of the New Jersey estate tax there shall become due and payable a tax upon any future interest in any property under an instrument creating an executory devise or an estate in expectancy of any kind or character which is contingent or defeasible, or if by reason of any additional or corrected assessment by the Director an additional inheritance, succession or legacy tax shall become due and payable, the tax paid shall be credited against the tax arising therefrom, but the amount so credited shall not in any event exceed the amount of the tax so accruing.

Historical Note

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

Statutory References

N.J.S.A. 54:38-4.

18:26-3.7 Payment; due date; interest; extension of time

(a) The New Jersey estate tax is due at the date of a decedent's death. However, if payment is made within nine months from the date of death, no late penalty shall be imposed.

(b) All or any part of the estate tax due this State, if not paid within nine months from the date of the death, shall bear interest at the rate of 10 percent per annum from the expiration of the said nine months until the date of actual payment, unless an extension of time to file the Federal estate tax return is granted, in which case the Director may reduce the interest rate to six percent per annum until the expiration of the extension or the filing of the Federal estate tax return, whichever is earlier. If the decedent was a member of the United States armed forces, the estate tax will not bear interest until the expiration of nine months after receipt of official notification of the decedent's death by the decedent's husband, wife, father, mother, or next of kin. (For estates with date of death prior to March 1, 1992, the estate tax is payable within 18 months of the date of death, and estate tax not paid within 18 months from the date of death bears interest at the rate of six percent per annum from the expiration of the 18 months until the date of actual payment. If the Federal government has not determined the amount of estate tax due within such period of 18 months or there is a subsequent assessment of an additional or increased estate tax, the tax is payable within 60 days after receipt of notification from the Federal government stating the amount of the Federal estate tax and the credit for state death taxes allowable and the New Jersey estate tax shall bear interest at the rate of six percent per annum from the expiration of such 60 day period to the date of payment.)

(c) All administrators, executors, trustees, grantees, donees and vendees, shall be personally liable for any and all estate taxes until paid, for which an action at law shall lie in the name of the State, but no lien shall attach to any property of an estate on account of the estate tax due this State.

(d) The executor, administrator, trustee or other person or corporation liable for the payment of the estate tax shall file with the Director a copy of the Federal estate tax return within 30 days after the filing of the original with the Federal Government, and a copy of any communication from the Federal Government, making any final change in said return, or confirming, increasing or diminishing the tax thereby shown to be due, which is to be filed within 30 days after receipt thereof, and shall file any other evidence, information or data that the Director shall in his discretion deem necessary.

(e) The Director may, for cause shown, extend the time for payment with interest at the rate of 10 percent per annum for such period as the circumstances, in his or her discretion, may require.

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

1. This subsection provides the authority only for an extension of time to file the estate tax return, and does not extend the time to pay the tax. The tax liability is due on the decedent's date of death and must be paid in full within nine months. Any extension granted for the filing of the New Jersey estate tax return expires upon the filing of the Federal estate tax return.

Amended by R.1993 d.131, effective March 15, 1993.
See: 24 N.J.R. 4240(b), 25 N.J.R. 1229(a).

Revised (a) and (d).

Amended by R.1994 d.627, effective December 19, 1994.
See: 26 N.J.R. 4166(c), 26 N.J.R. 5036(a).

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

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

Statutory References

N.J.S.A. 54:38-5.

18:26-3.8 Certificate of inheritance

(a) The Director shall not issue any certificate or other evidence of inheritance, succession or legacy tax paid this State in the estate of a resident decedent for use before the Internal Revenue Service in an estate tax proceeding until all inheritance, succession or legacy taxes have been paid or payment duly provided for, but the Director may, in his discretion pending final determination of all inheritance, succession, legacy, transfer or estate taxes due this State, issue temporary or preliminary certificates, so marked, showing payments in account of such taxes.

(b) Since the Director is precluded from issuing a certificate for payment of taxes to this State until the estate tax due this State has been paid or it has been established that there is no tax due, and since this cannot be done until the Internal Revenue Service has finally fixed the amount of Federal estate tax chargeable it follows that the certificate cannot be issued in time for filing simultaneously with the Federal estate tax return (Form 706). This fact, however, will not in any way jeopardize the estate's claim for a credit in the Federal estate tax proceedings for taxes paid this and other states.

(c) Proof of such payments can be submitted to the Internal Revenue Service after receipt by the estate of notice of final assessment, and allowance will be made at that time for credits properly established. The Transfer

Inheritance Tax Branch will use best efforts to expedite estate tax assessments.

Amended by R.1994 d.627, effective December 19, 1994.
See: 26 N.J.R. 4166(c), 26 N.J.R. 5036(a).

Statutory References

N.J.S.A. 54:38-12.

18:26-3.9 Refunds

(a) All applications for the refund of estate taxes claimed to have been excessively or erroneously paid must be filed with the Director within three years from the date of payment. In the event it is determined that the tax was erroneously or excessively paid, the Director upon receipt of satisfactory proof of payment, shall certify the same to the Director, Division of Budget and Accounting, who, in turn shall draw his warrant on the State Treasurer in favor of the executor, administrator, trustee, person or corporation who has paid said tax, or who may be lawfully entitled to receive the same, for the amount of such tax excessively paid.

(b) Said warrant shall be paid by the State Treasurer out of any appropriation for the refund of transfer inheritance taxes the same as warrants for the refund of such taxes under the transfer inheritance tax statutes of this State are paid.

(c) For estate tax paid with respect to reports or returns due on or after January 1, 1994, interest will be paid on overpayments not refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return, or within six months after the return is filed, or payment of the tax due thereon, whichever is later. See N.J.A.C. 18:26-10.13 for calculation of the interest.

Amended by R.1994 d.627, effective December 19, 1994.
See: 26 N.J.R. 4166(c), 26 N.J.R. 5036(a).

Statutory References

N.J.S.A. 54:38-3; 54:49-15.1.

18:26-3.10 Protests, hearings and appeals

Any executor, administrator, trustee, person or corporation liable for the payment of the estate tax and aggrieved by any decision, order, finding or assessment of the Director, may appeal to the Tax Court of New Jersey for a review thereof within 90 days of the date of notice assessing the tax complained of, in accordance with pertinent provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:51A-13 et seq. For protest procedures see N.J.A.C. 18:26-12.9, 12.10 and 12.12.

Amended by R.1980 d.287, effective June 27, 1980.

See: 12 N.J.R. 352(b), 12 N.J.R. 497(a).

Amended by R.1991 d.384, effective August 5, 1991.

See: 23 N.J.R. 188(b), 23 N.J.R. 2320(a).

Conditions of appeal based on N.J.S.A. 54:51A-13.

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

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

Statutory References

N.J.S.A. 54:33-2 (P.L. 1978, c.32).

SUBCHAPTER 3A. ESTATE TAX—DECEDENT'S DYING AFTER DECEMBER 31, 2001

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

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

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

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

1. The maximum credit that would have been allowable under the provisions of that Federal Internal Revenue Code in effect on December 31, 2001 against the Federal estate tax that would have been payable under the provisions of the Federal Internal Revenue Code in effect on December 31, 2001 on account of taxes paid to any state or territory of the United States or the District of Columbia; or
2. An amount determined pursuant to the Simplified Tax System set forth in N.J.A.C. 18:26-3A.3, Simplified Tax System, may not be used in those cases where a Federal estate tax return is filed or required to be filed.

18:26-3A.3 Simplified Tax System

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

1. Net estate determined for New Jersey inheritance tax purposes under the provisions of the statutes and regulations in effect on December 31, 2001 (line 7 of recital page of form IT-R); plus
2. Real and tangible personal property located outside New Jersey; plus
3. Proceeds of any contract of insurance on the life of the decedent owned by the decedent or transferred by the decedent within three years of death paid to any beneficiary other than the executor, administrator, or estate; plus
4. All transfers made within three years of the decedent's death not included in the inheritance tax net estate; less

5. Any property passing outright to the decedent's surviving spouse; and

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

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

1. On any amount less than \$615,000, no tax;
2. On any amount equal to or more than \$615,000 but less than \$667,174, 37.0 percent of the excess over \$615,000;
3. On any amount equal to or more than \$667,174 but less than \$840,000, 4.8 percent of the excess over \$667,174 plus \$19,304;
4. On any amount equal to or more than \$840,000 but less than \$1,040,000, 5.6 percent of the excess over \$840,000 plus \$27,600;
5. On any amount equal to or more than \$1,040,000 but less than \$1,540,000, 6.4 percent of the excess over \$1,040,000 plus \$38,800;
6. On any amount equal to or more than \$1,540,000 but less than \$2,040,000, 7.2 percent of the excess over \$1,540,000 plus \$70,800;
7. On any amount equal to or more than \$2,040,000 but less than \$2,540,000, 8.0 percent of the excess over \$2,040,000 plus \$106,800;
8. On any amount equal to or more than \$2,540,000 but less than \$3,040,000, 8.8 percent of the excess over \$2,540,000 plus \$146,800;
9. On any amount equal to or more than \$3,040,000 but less than \$3,540,000, 9.6 percent of the excess over \$3,040,000 plus \$190,800;
10. On any amount equal to or more than \$3,540,000 but less than \$4,040,000, 10.4 percent of the excess over \$3,540,000 plus \$238,800;

11. On any amount equal to or more than \$4,040,000 but less than \$5,040,000, 11.2 percent of the excess over \$4,040,000 plus \$290,800;

12. On any amount equal to or more than \$5,040,000 but less than \$6,040,000, 12.0 percent of the excess over \$5,040,000 plus \$402,800;

13. On any amount equal to or more than \$6,040,000 but less than \$7,040,000, 12.8 percent of the excess over \$6,040,000 plus \$522,800;

14. On any amount equal to or more than \$7,040,000 but less than \$8,040,000, 13.6 percent of the excess over \$7,040,000 plus \$650,800;

15. On any amount equal to or more than \$8,040,000 but less than \$9,040,000, 14.4 percent of the excess over \$8,040,000 plus \$786,800;

16. On any amount equal to or more than \$9,040,000 but less than \$10,040,000, 15.2 percent of the excess over \$9,040,000 plus \$930,800; and

17. On any amount equal to or more than \$10,040,000, 16.0 percent of the excess over \$10,040,000 plus \$1,082,800.

18:26-3A.4 Reduction of tax

The tax as computed in N.J.A.C. 18:26-3A.2 shall be reduced by the aggregate amount of all estate, inheritance, succession or legacy taxes actually paid to any state or territory of the United States or the District of Columbia, including inheritance, succession or legacy taxes actually paid this State in respect to any property owned by such decedent or subject to such taxes as a part of or in connection with the estate. The amount of any reduction shall not exceed the proportion of the tax otherwise due under N.J.A.C. 18:26-3A.2 that the amount of the estate's property subject to tax by the other jurisdictions bears to the entire estate taxable for New Jersey estate tax purposes.

18:26-3A.5 Estate tax where no inheritance tax imposed

In the case of a decedent where no inheritance, succession or legacy tax is due this State, the estate tax imposed shall be determined pursuant to N.J.A.C. 18:26-3A.2.

18:26-3A.6 Lien

The estate tax imposed upon the estate of a resident decedent remains a lien on all property of a decedent as of the date of death of the decedent until paid. Except as otherwise provided in this chapter, no property owned by the decedent as of the decedent's date of death may be transferred without the written consent of the Director.

18:26-3A.7 Time limit for assessments

(a) No assessment of additional estate tax shall be made after the expiration of more than four years from the date of filing of an estate tax return except in the following cases:

1. The return is false or fraudulent with the intent to evade tax;

2. If, before the expiration of the four-year period prescribed in this subsection for the assessment of additional tax, a taxpayer consents in writing that such period may be extended, the amount of such additional tax may be determined at any time within such period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period;

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

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

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

5. A decedent's interest in property, or the value thereof, as of the decedent's date of death, has not been determined at the time of the filing of the estate tax return due to litigation or controversy.

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

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

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

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

Amended by R.2006 d.154, effective May 1, 2006.

See: 38 N.J.R. 108(a), 38 N.J.R. 1859(a).

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

18:26-3A.8 Filing of tax return and other information

(a) The executor, administrator, trustee or other person or corporation liable for the payment of the estate tax shall file

with the Director a copy of any Federal estate tax return filed or required to be filed within 30 days after the filing or required filing of the original with the Federal government and a copy of any communication from the Federal government, making any intermediate or final change in said return, or confirming, increasing or diminishing the tax thereby shown to be due, which is to be filed within 30 days after receipt thereof, and any other evidence, information or data that the Director shall in his or her discretion deem necessary.

(b) The executor, administrator, trustee or other person or corporation liable for the payment of the estate tax shall file with the Director a copy of the tax return filed and a copy of any receipts for payment of succession or estate taxes to other states or territories of the United States or the District of Columbia.

(c) A New Jersey estate tax return must be filed whenever the gross estate as determined in accordance with the provisions of the Internal Revenue Code in effect on December 31, 2001 exceeds \$675,000. The executor, administrator, trustee or other person or corporation liable for the payment of the estate tax shall prepare and file with the Director a New Jersey estate tax return form IT-ESTATE-2, and:

1. A Form 706 completed in accordance with the provisions of the Federal Internal Revenue Code of 1986, U.S.C. §§ 1 et seq., in effect on December 31, 2001 within 30 days after the date on which a Federal estate tax return would have been due under those provisions for decedent dying on that date; or

2. A New Jersey inheritance tax return completed in accordance with the provisions of the inheritance tax statutes and regulations in effect on December 31, 2001 within nine months of the date of death of the decedent.

18:26-3A.9 Taxation of future interest after estate tax paid; credit

If, after the payment of the New Jersey estate tax, there shall become due and payable a tax upon any future interest in any property under an instrument creating an executory device or an estate in expectancy of any kind or character which is contingent or defeasible, or if by reason of any additional or corrected assessment by the Director an additional inheritance, succession or legacy tax shall become due and payable, the tax paid shall be credited against the tax arising therefrom, but the amount so credited shall not in any event exceed the amount of the tax so accruing.

18:26-3A.10 Payment; due date; interest; extension of time

(a) The New Jersey estate tax is due at the date of a decedent's death. However, if payment is made within nine months from the date of death, no late penalty shall be imposed.

(b) All or any part of the estate tax due this State, if not paid within nine months from the date of death, shall bear interest at the rate of 10 percent per annum from the expiration of the said nine months until the date of actual payment, unless an extension of time to file the Federal estate tax return is granted, in which case the Director may reduce the interest rate to six percent per annum until the expiration of the extension. If the decedent was a member of the United States armed forces, the estate tax will not bear interest until the expiration of nine months after receipt of official notification of the decedent's death by the decedent's husband, wife, father, mother, or next of kin. The Director may, for cause shown, extend the time for payment with interest at the rate of 10 percent per annum, for such period as the circumstances, in his or her discretion, may require.

(c) All administrators, executors, trustees, grantees, donees and vendees shall be personally liable for any and all estate taxes until paid, for which an action at law shall lie in the name of the State.

(d) New Jersey estate tax returns (except returns filed using the Form 706 method, which are due nine months plus 30 days following the death of the decedent) must be filed within nine months following the death of the decedent. The Director may grant an extension of time in which a return may be filed. The estate representative may request an extension of time to file the New Jersey estate tax return for a period of six months beyond the original due date. Extensions beyond six months from the original due date of the return will be granted only in cases where the Director determines that exceptional circumstances exist. This subsection provides the authority only for an extension of time to file the tax return, and does not extend the time to pay the tax. The tax liability is due on the decedent's date of death and must be paid in full within nine months.

(e) Where interest has accrued at the time of any payment, such payment is first credited in satisfaction of the accrued interest, and the excess credited in payment of the tax chargeable. Interest shall continue to accrue on any remaining balance from the date of said payment to the date of final adjustment.

18:26-3A.11 Certificate of inheritance

The Director shall not issue any certificate or other evidence of inheritance, succession or legacy tax paid this State in the estate of a resident decedent for use before the Internal Revenue Service in an estate tax proceeding until all inheritance, succession or legacy taxes have been paid or payment duly provided for, but the Director may, in his or her discretion pending final determination of all inheritance, succession, legacy, transfer or estate taxes due this State, issue temporary or preliminary certificates, so marked, showing payments in account of such taxes.

18:26-3A.12 Refunds

(a) All applications for the refund of estate taxes claimed to have been excessively or erroneously paid must be filed with the Director within three years from the date of payment. In the event it is determined that the tax was erroneously or excessively paid, the Director, upon receipt of satisfactory proof of payment, shall certify the same to the Director, Division of Budget and Accounting, who, in turn shall draw his or her warrant on the State Treasurer in favor of the executor, administrator, trustee, person or corporation who has paid said tax, or who may be lawfully entitled to receive the same, for the amount of such tax excessively paid.

(b) Said warrant shall be paid by the State Treasurer out of any appropriation for the refund of transfer inheritance taxes the same as warrants for the refund of such taxes under the transfer inheritance tax statutes of this State are paid.

(c) Interest will be paid on overpayments of tax at a rate determined by the Director to be equal to the prime rate, determined for each month or fraction thereof, compounded annually at the end of each year, from the date that such interest commences to accrue to the date of refund. Interest shall commence to accrue on the later of the date of the filing by the taxpayer of a claim for refund, the date of the payment of the tax, or the due date of the return; but no interest will be paid on an overpayment of less than \$1.00, nor upon any overpayment refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return or within six months after the return is filed, whichever is later.

18:26-3A.13 Protests, hearings and appeals

(a) Any executor, administrator, trustee, person or corporation liable for the payment of the estate tax and aggrieved by any decision, order, finding or assessment of the Director, may submit a written protest to the Individual Tax Audit Branch in accordance with N.J.A.C. 18:26-12.9 and 12.10.

(b) Any executor, administrator, trustee, person or corporation liable for the payment of the estate tax and aggrieved by any decision, order, finding or assessment of the Director, may appeal to the Tax Court of New Jersey for a review thereof within 90 days of the date of notice assessing the tax complained of, in accordance with pertinent provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:51A-13 et seq. (See N.J.A.C. 18:26-12.12.)

SUBCHAPTER 4. COMPROMISES (INHERITANCE
AND ESTATE TAXES)

18:26-4.1 Domicile doubtful; terms of settlement

(a) Where the Director claims that a decedent was domiciled in this State at the time of death and the taxing

authorities of another state makes a similar claim with respect to their state or states and an investigation discloses a reasonable doubt regarding domicile, the Director may, in his discretion, enter into a written agreement with such taxing authorities and the executor, administrator, or trustee, fixing the sum acceptable to this State in full settlement of the transfer inheritance tax of this State; provided, that said agreement also fixes the sum acceptable to such other state or states in full settlement of the death taxes imposed by said state or states; and, provided further, that said agreement has the approval of the Superior Court of this State.

(b) If the aggregate amount payable under such agreement to the states involved is less than the maximum sum allowable as a credit to the estate against the Federal estate tax imposed thereon, then the executor, administrator or trustee shall also pay to the Director so much of the difference between such aggregate amount and the amount of such credit as the amount payable to the Director under the agreement bears to such aggregate amount, and the agreement aforesaid shall so provide.

(c) Payment of the sum or sums fixed by said agreement shall be accepted by the Director in full satisfaction of this State's claim for transfer inheritance and estate taxes which would otherwise be chargeable under the law.

Statutory References

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

18:26-4.2 Compromise and settlement of certain tax claims or liens; waiver of defenses

Where any lien or claim for any past due transfer inheritance taxes or estate or transfer taxes shall be brought into question, claimed to be invalid or impaired, or shall be in the course of litigation, or the Director, and the State Treasurer shall, after investigation, determine that there is reasonable doubt of the State's ability to enforce said lien or claim or to collect the taxes due, or claimed to be due, or that there is a reasonable doubt that said lien is valid or unimpaired, such officer shall enter into an agreement with the executor, administrator or trustee of any estate against whose assets said lien or claim shall be asserted, or the heirs, next of kin or beneficiaries succeeding to the property of any decedent against which such lien or claim is asserted, to alter, revise, compromise and settle all claims or liens for past due inheritance taxes or estate or transfer taxes, together with all interest or interest penalties thereon; provided, however, that the executor, administrator, trustee, heir or heirs, next of kin, beneficiary or beneficiaries, shall waive all defenses which might be set up against the claim or lien of the State and shall submit to such terms of payment and settlement as the Treasurer or Director shall deem to be equitable and just and in the best interest of the State.

Statutory References

N.J.S.A. 54:38A-3.

18:26-4.3 Payment pursuant to compromise

(a) Any compromise or settlement shall be null and void unless the amount agreed to be paid shall be paid pursuant thereto within the time or times fixed in said agreement and in such event all payment made thereunder shall belong to the State and shall be credited upon the arrears of taxes and interest or interest penalties due. Upon payment in full of the amount agreed to be paid pursuant to the terms of such agreement of alteration, revision, compromise or settlement, the person or persons so paying shall be entitled to receive a receipt for such payment which shall be a proper voucher in the settlement of the account and the Treasurer or Director

shall issue a statement of payment which may be recorded in the office of the county clerk of the county where any real property is situated.

(b) If a judgment or decree has been entered in favor of the State of New Jersey, the Treasurer or Director, upon payment of the amount agreed upon or upon determination that the assessment be cancelled, shall execute and record a proper satisfaction of the lien, claim, judgment or decree in accordance with the facts.

Statutory References

N.J.S.A. 54:38A-4.

18:26-5.7 Transfers made in contemplation of death

(a) Any transfer by deed, grant, bargain, sale or gift made without adequate valuable consideration within three years ending with the date of death of the grantor, vendor, or donor, in the absence of proof to the contrary, is deemed to have been made in contemplation of death. Any transfer made prior to such three-year period is not deemed to be in contemplation of death.

(b) The term "contemplation of death" includes that expectancy of death which actuates the mind of a person of the execution of his will and is therefore not restricted to that expectancy of death which actuates the mind of a person making a gift *causa mortis*.

(c) The term "adequate valuable consideration" means the clear market value of property in money or money's worth on the date of transfer.

Statutory References

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

Case Notes

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

18:26-5.8 Transfers taking effect in possession or enjoyment at or after death

(a) Any transfer of property by deed, grant, bargain, sale, gift or in trust (except in the case of a bona fide sale for an adequate valuable consideration in money or money's worth) made by a decedent transfer or during his lifetime under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death:

1. The possession or enjoyment of the property so that possession or enjoyment of the property can be obtained only by surviving the transferor; or
2. The right to income from the property, is a transfer subject to the New Jersey inheritance tax.

(b) The transfer is taxable if by any means whatsoever the transferor has in form transferred property but has deferred the actual possession, use or enjoyment of the property until a time which can only be measured by reference to the transferor's death.

Statutory References

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

New Jersey State Library

Case Notes

Held that prior imposition in 1951 of New Jersey estate tax against the estate of decedent's husband did not constitute prior taxation of 1931 trust under the New Jersey transfer inheritance tax; decedent's estate responsible for tax consequences of various writings voluntarily executed by decedent and family in 1931. In re Estate of Vondermuhll, 156 N.J.Super 531, 384 A.2d 185 (App.Div.1978).

Estate disposition through will leaving estate to second wife and divorce settlement requiring one-half of the estate to go to daughters from first marriage requires inheritance tax burden upon each respective recipient based upon value of assets received. In re Estate of Lingle, 72 N.J. 87, 367 A.2d 878 (1976).

18:26-5.9 Certain profit sharing and retirement plans

The proceeds of a profit sharing or retirement plan payable at the date of death of a decedent to a beneficiary named by the decedent or in accordance with the preference schedule of beneficiaries is deemed to be a transfer which takes effect at or after death and is as such subject to the tax, except for the exemption provided by N.J.A.C. 18:26-6.16.

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

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

Added: "except . . . N.J.A.C. 18:26-6.17".

Amended by R.1989 d.85, effective February 6, 1989.

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

Substituted "16" for "17".

Statutory References

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

Case Notes

An annuity or pension acquired by a decedent and made payable by him to another at or after decedent's death is subject to transfer inheritance tax. In re Estate of Rommes, 79 N.J. 139, 398 A.2d 543 (1979).

Value of survivorship annuity held subject to inheritance tax; annuity payments being subject to income tax did not result in prohibited double taxation; subjecting annuity to inheritance tax held not a denial of equal protection. *Butzbach v. Director, Div. of Taxation*, 3 N.J.Tax 462 (Tax Ct.1981).

18:26-5.10 Transfers not deemed to take effect at or after death

Any transfer of property by deed, grant, bargain, sale, gift or interest under which the transferor is entitled to some income, right, interest or power including the possession or enjoyment of the property, either expressly or by operation of law, is not deemed a transfer to take effect at or after the transferor's death if the transferor at any time more than three years prior to death completely and irrevocably disposes of all of his reserved income, rights, interests and powers in and over the transferred property, including any right to possession, use and enjoyment of the property.

Statutory References

N.J.S.A. 54:34-1.1.

18:26-5.11 Jointly held property

(a) Where, in the case of a resident decedent, real or tangible personal property situated in this State or intangible personal property wherever situated, or in the case of a nonresident decedent, real or tangible personal property located in this State, is held in the joint names of the decedent and one or more of such persons as joint tenants, the transfer of ownership, possession and enjoyment of such property to a surviving joint tenant or tenants is a transfer subject to the New Jersey Inheritance Tax.

(b) Such transfers are taxed in the same manner as if such property had belonged absolutely to the decedent joint tenant and had been devised or bequeathed by will to the surviving joint tenant or tenants. Only that part or interest in such property which the surviving joint tenant or tenants prove, to the satisfaction of the Director, to have originally belonged to him or them and not the decedent, is exempt from the tax.

(c) The rule stated in this section applies to property deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor under N.J.S.A. 17:9A-218.

(d) The rule stated in this section applies only to property held by two or more persons as joint tenants, and not tenants by the entirety. For the rule applicable to property held by tenants by the entirety, see section 6.4 (Tenancy by the entirety) of this chapter.

(e) In the case of a nonresident decedent holding real property in this State as a joint tenant together with one or more other persons, the transfer of such property at death is deemed to pass to the surviving joint tenant or tenants as though specifically devised and as such is not subject to the ratio tax imposed upon the transfer of property of a nonresident under N.J.S.A. 54:34-3.

(f) The right of a spouse, as a surviving joint tenant with his or her deceased spouse, to the immediate ownership or possession and enjoyment of a membership certificate or stock in a cooperative housing corporation, the ownership of which entitles such member or stockholder to occupy real estate for dwelling purposes as the principal residence of the decedent and spouse is exempt from Transfer Inheritance Tax.

As amended, R.1980 d.198, effective May 6, 1980.
See: 12 N.J.R. 221(a), 12 N.J.R. 355(b).

Statutory References

N.J.S.A. 54:34-1(f), Chapter 413, P.L. 1979.

Case Notes

Noted that Transfer Inheritance Tax Bureau has uniformly held that a transfer of property to a survivor of a joint tenancy is, at least presumptively, a taxable event, but that this is not true for a "transfer" of real property held by the entirety to the surviving spouse; acquirer of husband's interest in property held by the entirety obtains status of tenant in common during the joint life of the husband and wife and the interest the husband would have if he survived the wife; acquirer's exclusion from property by wife amounted to an ouster entitling him to an accounting for one-half of the imputed rental value less expenses. *Newman v. Chase*, 70 N.J. 254, 359 A.2d 474 (1976).

18:26-5.12 Powers of appointment; estates in expectancy

(a) Where by transfer of a resident decedent of real or tangible personal property within this State of intangible personal property wherever situated, or by transfer of a nonresident decedent of real or tangible personal property within this State, a transferee comes into the possession or enjoyment of:

1. An estate in expectancy of any kind or character which is contingent or defeasible, transferred by an instrument taking effect on or after July 4, 1909; or
2. Property transferred pursuant to a power of appointment contained in an instrument taking effect on or after July 4, 1909;
3. Such transfers are subject to the New Jersey Inheritance Tax.

(b) Property which is transferred pursuant to a power of appointment whether general or special, is deemed to pass from the estate of the donor or creator of the power to the transferee.

(c) For purposes of the New Jersey Inheritance Tax, a general power of appointment is a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate; a special or limited power of appointment is a power which does not qualify as a general power of appointment.

Statutory References

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

Case Notes

State law taxing property under a power of appointment differs from Federal law in that the subject property is taxed only once as part of the estate of the creator of the power. *Estate of Campbell v. United States*, 449 F.Supp. 675 (D.N.J.1977).

Grant of power to invade marital trust corpus conferred sufficient ownership to subject to transfer inheritance tax the testamentary transfer to spouse of both a life estate and residual portion of trust; grant of power to invade corpus did not bring trust within the exemption for direct taxation of powers of appointment. *Laffey Estate v. Director, Div. of Taxation*, 8 N.J.Tax 100 (Tax Ct.1986).

18:26-5.13 Insurance proceeds subject to New Jersey Inheritance Tax

Proceeds of any contract of insurance insuring the life of a resident of this State paid or payable to the Estate or the executor or administrator of such decedent is subject to the New Jersey Inheritance Tax.

Statutory References

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

18:26-5.14 Proceeds payable to testamentary trustee

Life insurance proceeds payable to a trustee or trustees of a testamentary trust created under the will of a decedent are not subject to inheritance tax, in estates of decedents dying on or after July 6, 1979.

As amended, R.1980 d.287, effective June 27, 1980.
See: 12 N.J.R. 352(b), 12 N.J.R. 497(a).

Statutory References

N.J.S.A. 54:34-4(c) as amended, P.L. 1979, c.137.

18:26-5.15 Proceeds under matured endowment policies

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

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

As amended, R.1980 d.287, effective June 27, 1980.
See: 12 N.J.R. 352(b), 12 N.J.R. 497(a).

Statutory References

N.J.S.A. 54:34-1(c), P.L. 1979, c.137.

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

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

Statutory References

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

18:26-5.17 Proceeds of retirement contracts

The proceeds of a retirement contract purchased on the installment plan are subject to the New Jersey Inheritance Tax when the decedent dies prior to the date of retirement and the payments are returned to either his estate or to a designated beneficiary, except for the exemption provided by N.J.A.C. 18:26-6.16.

As amended, R.1981 d.477, effective December 21, 1981.
See: 13 N.J.R. 623(a), 13 N.J.R. 948(d).

Added: "except . . . N.J.A.C. 18:26-6.17".

Amended by R.1989 d.85, effective February 6, 1989.

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

Changed "17" to "16".

Statutory References

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

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

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

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

Statutory References

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

18:26-5.19 Annuity contracts

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

(b) Annuity payable under certain trusts and plans which are exempt under Section 2039(c) of the Internal Revenue Code of 1954 may not be exempt for New Jersey Inheritance Tax purposes. The treatment to be accorded payments made under such trusts and plans depends upon the facts and circumstances which exist in each case. (See N.J.A.C. 18:26-6.16.)

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

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

(b): "are" deleted after "1954" and "may" and "be" added. Added cross-reference to N.J.A.C. 18:26-6.17.

Amended by R.1989 d.85, effective February 6, 1989.

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

Changed "17" to "16".

Statutory References

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

Case Notes

An annuity or pension acquired by a decedent and made payable by him to another at or after decedent's death is subject to transfer inheritance tax. In re Estate of Rommes, 79 N.J. 139, 398 A.2d 543 (1979).

Value of survivorship annuity held subject to inheritance tax; annuity payments being subject to income tax did not result in prohibited double taxation; subjecting annuity to inheritance tax held not a denial of equal protection. Butzbach v. Director, Div. of Taxation, 3 N.J.Tax 462 (Tax Ct.1981).

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

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

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

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

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

18:26-5.21 (Reserved)**SUBCHAPTER 6. EXEMPTIONS****18:26-6.1 Class "A" transfers**

(a) In instances where the decedent dies prior to July 1, 1978, the transfer of property having an aggregate clear

market value of \$5,000 or less which is transferred to a father, mother, grandparent, husband, wife, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.

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

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

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

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

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

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

New Rule, R.1989 d.85, effective February 6, 1989.
See: 20 N.J.R. 2193(a), 21 N.J.R. 311(b).

18:26-6.2 Class "C" transfers

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

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

18:26-6.3 Dower or curtesy

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

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

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

Amended by R.1989 d.85, effective February 6, 1989.
See: 20 N.J.R. 2193(a), 21 N.J.R. 311(b).

Changed 6.2 to 6.1.

Amended by R.1994 d.627, effective December 19, 1994.
See: 26 N.J.R. 4166(c), 26 N.J.R. 5036(a).

Statutory References

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

18:26-6.4 Tenancy by the entirety

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

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

Amended by R.1980 d.198, effective May 6, 1980.
See: 12 N.J.R. 221(a), 12 N.J.R. 355(a).
Amended by R.1992 d.402, effective October 19, 1992.
See: 24 N.J.R. 2533(a), 24 N.J.R. 3734(a).
Revised (a); deleted (b); added new (a)1.

Case Notes

Noted that Transfer Inheritance Tax Bureau has uniformly held that a transfer of property to a survivor of a joint tenancy is, at least presumptively, a taxable event, but that this is not true for a "transfer" of real property held by the entirety to the surviving spouse; acquirer of husband's interest in property held by the entirety obtains status of tenant in common during the joint life of the husband and wife and the interest the husband would have if he survived the wife; acquirer's exclusion from property by wife amounted to an ouster entitling him to an accounting for one-half of the imputed rental value less expenses. *Newman v. Chase*, 70 N.J. 254, 359 A.2d 474 (1976).

18:26-6.5 Intangible property of a nonresident

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

Statutory References

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

18:26-6.6 Wrongful death action

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

Amended by R.1994 d.627, effective December 19, 1994.
See: 26 N.J.R. 4166(c), 26 N.J.R. 5036(a).

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

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

Statutory References

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

18:26-6.9 Beneficiary of insurance trust

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

Statutory References

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

18:26-6.10 Trustee of insurance trust

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

Statutory References

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

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

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

Statutory References

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

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

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

(b) Any property of any decedent which passes on or after July 1, 1963, for the use of directly, or in trust for any educational institution, church, hospital, orphan asylum, public library or bible and tract society or to or for the use of directly or in trust for any institution or organization organized and operated exclusively for religious, charitable, benevolent, scientific, literary or educational purposes, including any institution instructing the blind in the use of dogs as guides, no part of the net earnings of which inures to the benefit of any private stockholder or other individual or corporation is exempt, but such exemption does not extend to transfers of such property to educational institutions and organizations of other states, the District of Columbia, territories and foreign countries which do not grant an equal and like exemption of transfers of property for the benefit of such institutions and organizations of this State. Included within this exemption are transfers to Volunteer Fire Companies and First Aid Squads, provided such organizations meet all other tests of a charitable or benevolent group or association.

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

As amended, R.1980 d.198, effective May 6, 1980.
See: 12 N.J.R. 221(a), 12 N.J.R. 355(b).

Statutory References

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

18:26-6.13 Property received from the Federal Government

(a) Any amount recovered (under the Federal Liability for Injuries to Employees Act) for injuries to a decedent by

the personal representative for the benefit of the classes of beneficiaries designated in that Statute, whether for the pecuniary loss sustained by such beneficiaries as a result of the wrongful death of the decedent or for the loss and suffering by the decedent while he lived, or both is not subject to the inheritance tax.

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

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

Statutory References

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

18:26-6.14 Federal pensions

The proceeds of any pension, annuity, retirement allowance, return of contributions or benefit payable by the Government of the United States pursuant to the Civil Service Retirement Act, Retired Serviceman's Family Protection Plan and the Survivor Benefit Plan to a beneficiary or beneficiaries other than the estate or the executor or administrator of a decedent are exempt.

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

Case Notes

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

18:26-6.15 State pensions

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

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

(c) The benefits paid to decedent's widow by the New Jersey State Firemen's Association per N.J.S.A. 43:17-35 and benefits paid to decedent's widow by the New Jersey State Judges Pension Act per N.J.S.A. 2A:3-21.4 et seq. and 43:6 et seq. are exempt from taxation.

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

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

Statutory References

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

Case Notes

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

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

18:26-6.16 Other pensions

An exemption is provided for payments from any pension, annuity, retirement allowance or return of contributions, which is a direct result of the decedent's employment under a qualified plan as defined by section 401(a), (b) and (c) or 2039(c) of the Internal Revenue Code, which is payable to a surviving spouse.

R.1981 d.477, effective December 21, 1981.
See: 13 N.J.R. 623(a), 13 N.J.R. 948(d).

Historical Note

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

18:26-6.17 No fault insurance

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

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

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

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

Statutory References

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

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

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

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

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

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

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

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

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

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

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

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

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

Amended by R.1989 d.85, effective February 6, 1989.

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

Added text to (a) "or transferred".

Statutory References

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

18:26-8.13 Bonds and mortgages

It is presumed that the face value, or balance due, as of the date of death, plus any accrued interest as of such date, is the correct value of a bond and mortgage held as an investment unless conclusive proof to the contrary is submitted which clearly indicates a different value.

Statutory References

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

18:26-8.14 Partnerships

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

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

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

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

4. A copy of partnership agreement if any;

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

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

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

Statutory References

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Statutory References

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

Case Notes

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

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

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

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

Statutory References

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

18:26-8.17 Government bonds and securities

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

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

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

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

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

(c) Further, Government Securities acceptable in payment of Federal estate taxes at par will be valued for New Jersey Transfer Inheritance Tax purposes at their market value as of the date of a decedent's death in accordance with paragraph 1 of subsection (a) of this Section.

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 Regulations 18 and 24 of Transfer Inheritance Tax Bureau filed on 9/7/55.

Statutory References

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

18:26-8.18 Stocks, bonds, mutual funds and securities

(a) The value of stocks, bonds and securities listed on any stock exchange is appraised on the basis of the intermediate price between the low and high price prevailing on the date of death.

1. If there were no sales of stocks, bonds, and securities listed on a stock exchange on the date of death, either the mean between the highest and lowest selling price for the previous day, or the nearest trading day prior to the date of death, or the prorated value used for Federal estate tax purposes reflecting the mean between the highest and lowest selling price on the nearest trading dates prior to and subsequent to the date of death may be used. The Alternative Valuation Date method of valuing stocks and bonds for Federal estate tax purposes is, however, not applicable for New Jersey transfer inheritance tax purposes. All of the assets must be valued using the same method;

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 nor for any property not subject to the New Jersey Estate Tax.

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

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

Statutory References

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

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

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

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

1. The total amount on deposit in all bank accounts wherever situated, whether in the name of the decedent individually, jointly, or in trust for another;
2. The total redemption value of any United States Savings Bonds title to which is held in the name of the decedent either individually, jointly, or payable on death to another;
3. The total value of any tangible property owned by the decedent such as automobiles, jewelry and household goods;
4. The total value of any benefits paid or payable under a group annuity plan, retirement plan, or profit sharing plan of decedent's employer;
5. Whether the decedent was the lessee of a safe deposit box individually or jointly; but (see (c) below).

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

1. Letters of testamentary or of general administration have been or are to be issued;
2. The decedent was the lessee, individually or jointly, of a safe deposit box;
3. There will be payable either to the estate of the decedent or to a beneficiary, any amount under a group annuity plan, retirement plan, or profit sharing plan;
4. The decedent has made a transfer of property within three years of the date of death without having received equal financial consideration therefor; and (see (d) below).

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

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

Amended R.1980 d.287, effective June 27, 1980.
See: 12 N.J.R. 352(b), 12 N.J.R. 497(a).
Amended by R.1991 d.384, effective August 5, 1991.
See: 23 N.J.R. 188(b), 23 N.J.R. 2320(a).
Stylistic changes.
Amended by R.1998 d.194, effective April 20, 1998.
See: 30 N.J.R. 609(a), 30 N.J.R. 1426(b).
Amended by R.2003 d.152, effective April 7, 2003.
See: 34 N.J.R. 3935(a), 35 N.J.R. 1567(b).

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

Statutory References

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

18:26-11.16 Blanket waiver

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

1. An executor;
2. Administrator;
3. Legal representative of the decedent;
4. Surviving joint tenant;
5. Cestui que trust; or
6. The estate of a minor where title to said funds are held in the name of a custodian for said minor, without the written consent of the Director, upon the application of such proper party to the institution, association, organization, corporation or person above mentioned.

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

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

1. Pay any and all checks drawn on any account owned by a decedent individually, jointly, or otherwise, when said checks are issued prior to death and presented for payment within 10 days following the decedent's date of death; except that in the event an executor, administrator, or other proper party above mentioned in this section shall apply for a release of 50 percent of the funds on deposit after 10 days from the decedent's death, the institution, association, organization, corporation, or person mentioned in this section holding the funds shall after having deducted the amount of any checks issued prior to and presented for payment within 10 days of the decedent's death, release 50 percent of the balance in a decedent's account to the proper party upon application and without the written consent of the Director;
2. Pay any checks in any amount for which there are sufficient funds held in deposit, drawn on any account owned by a decedent individually, jointly or otherwise, representing full or partial payment of any New Jersey Transfer Inheritance or Estate Taxes and made payable to New Jersey Inheritance and Estate Tax;
3. Liquidate the loan of any decedent who has pledged the pass book representing a savings account as collateral for a loan, where upon the death of such a decedent the loan is in default and then make 50 percent of the remaining funds available under the blanket waiver; but

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

Statutory References

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

Case Notes

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

18:26-11.30 Life insurance companies

(a) All corporations, associations, societies, or other organizations, incorporated, or organized under the laws of this State to transact the business of life insurance or to grant annuities, and all corporations, associations, societies or other organizations, 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 must give notice to the Director, at the time and in the manner and form hereinafter prescribed, of all sums payable by them, as a result of the death of a resident of the 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 and retain 50 percent of all sums payable until the Director issues a waiver setting forth the total of the sums payable.

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

Rewrote the section.

18:26-11.31 Notice

(a) The notice required by N.J.A.C. 18:26-11.30 is to be given by mailing Form 0-71 to the Division of Taxation, Transfer Inheritance and Estate Tax Section, PO Box 249, Trenton, New Jersey 08646-0249 as soon as practicable after the death of the decedent, but in any event not later than 10 days after any part of the sum or sums required to be reported therein have been paid.

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

Amended by R.1994 d.627, effective December 19, 1994.
See: 26 N.J.R. 4166(c), 26 N.J.R. 5036(a).
Amended by R.1998 d.194, effective April 20, 1998.

See: 30 N.J.R. 609(a), 30 N.J.R. 1426(b).
Amended by R.2003 d.152, effective April 7, 2003.
See: 34 N.J.R. 3935(a), 35 N.J.R. 1567(b).

In (a), substituted "Transfer Inheritance and Estate Tax Section" for "Transfer Inheritance Tax Branch" and deleted "the whole or" preceding "any part of the sum"; in (b), deleted the former first sentence.

Statutory References

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

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

(a) Any bank, banking institution, safe deposit company, trust company, other institution, association, organization, corporation or person who fails to obtain the written consent of the Director, allow an examination or give notice as provided in this Chapter is liable to pay the amount of the tax and interest due or which becomes due upon the securities, deposits, shares of stock or other assets transferred or delivered and in addition is liable to a penalty of \$1,000.00 which may be enforced in an action at law in the name of the State.

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

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

Statutory References

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

SUBCHAPTER 12. ADMINISTRATION AND FORMS

18:26-12.1 General powers of Director

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

Statutory References

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

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

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

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

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

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

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

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

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

(a)iv added.

Amended by R.1989 d.85, effective February 6, 1989.

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

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

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

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

Historical Note:

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

Statutory References

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

Case Notes

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

18:26-12.3 Information from Transfer Inheritance Tax Branch

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

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

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