

**CHAPTER 26**

**TRANSFER INHERITANCE AND ESTATE TAX**

**Authority**

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

**Source and Effective Date**

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

**Chapter Expiration Date**

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.

Subchapter 3, Additional Tax (New Jersey Estate Tax), was renamed Estate Tax—Decedents Dying on or before December 31, 2001; and Subchapter 3A, Estate Tax—Decedent's Dying after December 31, 2001, was renamed Estate Tax—Decedents Dying after December 31, 2001, by R.2006 d.196, effective June 5, 2006. See: 37 N.J.R. 1694(a), 38 N.J.R. 2518(b).

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## APPENDIX A (RESERVED)

## SUBCHAPTER 1. DEFINITIONS

## 18:26-1.1 Definitions

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

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

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

“Class A transferee” means any of the following:

1. A father, mother, grandparent, grandchildren, husband or wife;
2. A child or children of a decedent, including any stepchild of a decedent or child or children adopted by a decedent in conformity with the laws of this State, or of any of the United States or of a foreign country;
3. The issue of any child or legally adopted child of a decedent;
4. Any child to whom the decedent for not less than 10 years prior to the transfer stood in the mutually acknowledged relationship of a parent, provided the relationship began at or before the child's 15th birthday and was continuous for 10 years thereafter. This applies to persons who were taken into the household and reared as children of the decedent, but who were never legally adopted by the decedent; or
5. A domestic partner as defined in section 3 of P.L. 2003, c. 246 (N.J.S.A. 26:8A-3).

“Class C transferee” means any of the following:

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

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

“Class E transferee” means any of the following:

1. The State of New Jersey or any political subdivision thereof;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Statutory References

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

#### Case Notes

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

## SUBCHAPTER 2. IMPOSITION AND COMPUTATION OF TAX

### 18:26-2.1 Nature of tax

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

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

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

#### Statutory References

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

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

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

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

#### Statutory References

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

#### Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

### 18:26-3A.3 Simplified Tax System

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 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