

SUBCHAPTER 37. CONSUMER ALCOHOLIC BEVERAGE TASTING EVENTS AND SAMPLINGS

13:2-37.1 Consumer alcohol beverage tasting events and samplings

(a) (No change.)

(b) Consumer alcoholic beverage tasting events or samplings may be held by a licensee or permittee allowed to sell alcoholic beverages in open containers, for a fee or on a complimentary basis, [under] **in** the following conditions:

1.-4. (No change.)

5. Any supplier, manufacturer, importer, wholesaler, solicitor, or an authorized representative licensed or permitted by the Division of Alcoholic Beverage Control may participate in, assist with, and promote consumer wine, beer, and spirits tasting events up to two times per month at a licensed premises, except that samples shall not be served by any employee of a wholesaler. A solicitor employed by a supplier, manufacturer, or importer who holds a wholesale license or an authorized representative licensed or permitted by the Division of Alcoholic Beverage Control, with an annual special permit to participate in consumer tasting events, may serve samples at a tasting event and provide educational commentary regarding the alcoholic beverages. The fee for the annual special permit for the supplier, manufacturer, or wholesaler shall be [\$200.00] **\$300.00** and an additional [\$200.00] **\$300.00** permit **fee** for each solicitor or duly authorized representative. Ten days prior to participating in the event, the permittee shall file with the Division, a consumer tasting request on a form prescribed by the Director;

6.-10. (No change.)

(c) Consumer tasting events and samplings may be held at plenary retail distribution licensed premises, only on a complimentary basis, [under] **in** the following conditions:

1. (No change.)

2. Any supplier, manufacturer, importer, wholesaler, solicitor, or an authorized representative licensed or permitted by the Division of Alcoholic Beverage Control may participate in, assist with, and promote consumer wine, beer, and [spirits] **spirits** tasting events up to two times per month at a licensed premises, except that samples shall not be served by any employee of a wholesaler. A solicitor employed by a supplier, manufacturer, or importer who holds a wholesale license or an authorized representative licensed or permitted by the Division of Alcoholic Beverage Control, with an annual special permit to participate in consumer tasting events may serve samples at a tasting event and provide educational commentary regarding the alcoholic beverages. The fee for the annual special permit for the supplier, manufacturer, or wholesaler shall be [\$200.00] **\$300.00** and an additional [\$200.00] **\$300.00** permit **fee** for each solicitor or duly authorized representative. Ten days prior to participating in the event, the permittee shall file with the Division, a consumer tasting request on a form prescribed by the Director describing the place, time, and products to be featured at the event;

3.-14. (No change.)

(d)-(f) (No change.)

TREASURY—TAXATION

(a)

DIVISION OF TAXATION

Transfer Inheritance Tax and Estate Tax

Proposed Readoption with Amendments: N.J.A.C. 18:26

Proposed Repeals: N.J.A.C. 18:26-6.3 and 11.7

Authorized By: Marita R. Sciarrotta, Director, New Jersey Division of Taxation.

Authority: N.J.S.A. 54:38-7 and 54:50-1.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2025-101.

Submit written comments by October 17, 2025, to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1.c, N.J.A.C. 18:26 was scheduled to expire on July 16, 2025. As the Division of Taxation (Division) submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date was extended 180 days to January 12, 2026. The Division has reviewed these rules and determined that, as amended, and as set forth and summarized below, they are necessary, reasonable, and proper for the purpose for which they were originally promulgated. The rules are proposed to carry out the statutory mandates at N.J.S.A. 54:33-1 through 54:38A-6, which govern the imposition and collection of transfer inheritance tax and estate tax. The Division proposes to readopt the rules with amendments and repeals that are necessary to inform and assist taxpayers and their representatives in understanding and meeting the requirements of New Jersey transfer inheritance tax and estate tax statutes. The Division is also proposing amendments to make technical changes, such as for grammar and formatting, and to modify language to simplify meanings and to reflect gender neutrality.

The Transfer Inheritance Tax Law, N.J.S.A. 54:33-1 through 54:37-8, imposes a tax on the transfer of real and personal property valued at \$500.00 or more. This tax is collected on the estates of both resident and nonresident decedents. However, only real property and tangible personal property located in New Jersey is subject to tax in cases of a nonresident decedent.

The Estate Tax Law, N.J.S.A. 54:38-1 through 16, provided for an estate tax in addition to the inheritance tax on the estate of a resident decedent. The estate tax has been phased out. N.J.S.A. 54:38-1.a. Thus, for the estate of a decedent dying on or after January 1, 2018, there is no estate tax imposed. N.J.S.A. 54:38-1.a(4).

Previously, for the estate of a decedent dying before January 1, 2002, the estate tax was an amount equal to the difference between the gross amount of inheritance, legacy, and succession taxes actually paid to this State and any other states, territories, possessions, or the District of Columbia and the amount of the maximum credit for state death taxes allowable against any Federal estate tax payable pursuant to the Federal Estate Tax Law in effect on the decedent's date of death. N.J.S.A. 54:38-1.a(1). For the estate of a decedent dying after December 31, 2001, but before January 1, 2017, the estate tax was imposed on estates where the taxable estate plus adjusted taxable gifts exceeds \$675,000 pursuant to the provisions of the Internal Revenue Code in effect on December 31, 2001, in an amount equal to the maximum credit for State inheritance, estate, succession, or legacy taxes that would have been allowable pursuant to the provisions of the Internal Revenue Code in effect on December 31, 2001. N.J.S.A. 54:38-1.a(2). For the estate of a decedent dying on or after January 1, 2017, but before January 1, 2018, the estate tax was imposed on the taxable estate that exceeds \$2,000,000, as determined pursuant to section 2051 of the Internal Revenue Code (26 U.S.C. § 2051) in effect on January 1, 2017. N.J.S.A. 54:38-1.a(3).

The rules proposed for readoption with amendments and repeals are summarized as follows:

Subchapter 1, Definitions, sets forth definitions of particular words and phrases used in the chapter. N.J.A.C. 18:26-1.1 is proposed for amendment to amend the definition of "Class A transferee" to include a non-biological child of a decedent, where the child was the offspring of a biological parent partner conceived by assisted reproduction and not just by artificial insemination. N.J.A.C. 18:26-1.1 is also proposed for amendment to add the following definitions: The term "financial institution" is defined as any entity that holds funds or assets to the credit of a person or persons and is added to address any possibly exclusionary list of institutions in sections dealing with waiver requirements. A financial institution is also defined at N.J.S.A. 54:50-37 in relation to tax

collection and includes traditional deposit-taking institutions, brokerage firms, and other financial services dealing with the monetary transactions such as deposits, loans, and investments and the definition proposed is consistent with other uses of the term in the rules. This will cover any current or future types of institutions that are organized or operate in New Jersey. This includes, but is not limited to, banks, trust companies, savings institutions, building and loans, savings and loan associations, brokerage houses, financial advisors, credit unions, and corporations. The term “power of appointment” is defined as a right given to a decedent or transferee to effect the beneficial enjoyment, distribution, or disposition of trust property. The Division has experienced trouble in administering the Inheritance and Estate Tax laws that makes defining the terms “financial institution” and “power of appointment” now necessary in order to inform and assist taxpayers and their representatives in understanding and meeting the requirements of those laws because those terms are not defined by statute and in order to expressly distinguish the referenced power of appointment from a power of attorney which is not effective after the death of the principal. The definition of “blanket waiver” is deleted because N.J.A.C. 18:26-11.16 sufficiently defines “blanket waiver.”

Subchapter 2, Imposition and Computation of Tax, sets forth the class of taxpayers and the rate of transfer inheritance tax for each class, and the computation of the tax. N.J.A.C. 18:26-2.13(c) is proposed for amendment to replace the term “cestui que trust” with “trust beneficiary.”

Subchapter 3, Estate Tax—Decedents Dying on or Before December 31, 2001, sets forth the tax imposed for estates for decedents dying on or before December 31, 2001, the calculation of the tax, payment, and refund procedures, and protest procedures.

Subchapter 3A, Estate Tax—Decedents Dying After December 31, 2001, but Before January 1, 2017, sets forth the tax imposed for estates for decedents dying after December 31, 2001, but before January 1, 2017, the calculation of the tax, the Director’s alternative simplified tax system, the payment and refund procedures, and protest procedures.

Subchapter 3B, Estate Tax—Decedents Dying After December 31, 2016, but Before January 1, 2018, sets forth the tax imposed for estates for decedents dying after December 31, 2016, but before January 1, 2018, the calculation of the tax, the payment and refund procedures, and protest procedures.

Subchapter 3C, Estate Tax—Decedents Dying After December 31, 2017, sets forth the administration of estate assets where no estate tax is imposed.

Subchapter 4, Compromises (Inheritance and Estate Taxes), provides for the requirements for any compromise of inheritance and estate taxes where there is question of domicile or where there is doubt as to the Division’s ability to enforce a tax lien.

Subchapter 5, Transfers Subject to Tax, provides for identifying the types and kinds of transfers that are subject to the transfer inheritance tax. The term “transfers made during decedent’s lifetime” is proposed to be added to the subheading at N.J.A.C. 18:26-5.6 for clarification. N.J.A.C. 18:26-5.7(b) is proposed for amendment to replace the term “causa mortis” with “an awareness of impending death.” N.J.A.C. 18:26-5.9 is proposed for amendment to remove redundant language that cross-references a statute because pursuant to N.J.S.A. 54:34-4.j, only a surviving spouse is exempt, and Subchapter 6 also states that Class “A” transferees are exempt, along with N.J.A.C. 18:26-1.1, 2.4, and 2.5. N.J.A.C. 18:26-5.11(f) is proposed for deletion to remove redundant language because spouses, civil union members, and domestic partners are already exempt beneficiaries based on other Division rules. N.J.A.C. 18:26-5.19(b) is deleted because IRC § 2039(c) is no longer required to make a distinction and N.J.S.A. 54:34-4.j is no longer required to be cross-referenced due to the sections cited above.

Subchapter 6, Exemptions, sets forth transfers that are exempt from the transfer inheritance tax. N.J.A.C. 18:26-6.1(a) is proposed for amendment to remove redundant language, as the term “spouse” is already included in the definition of Class A Transferee. N.J.A.C. 18:26-6.3 is proposed for repeal, as the legal classification is no longer in effect because dower and curtesy have been replaced in the probate code (See N.J.S.A. 3B:28-1 and 2) and all interests of a surviving spouse are already exempt. N.J.A.C. 18:26-6.4 is amended to add a statutory reference for civil unions (N.J.S.A. 37:1-29). N.J.A.C. 18:26-6.11(b) is proposed for amendment to

add a cross-reference to the definition of “Class ‘E’ transferee” because, although it is defined in the definition section, the cross-reference is beneficial for ease of reference and having no reference here has caused confusion for taxpayers and their representatives. N.J.A.C. 18:26-6.14 is proposed for amendment to clarify that the benefit payable pursuant to the supplementary annuity plan of the State of New Jersey, or a deferred compensation plan administered by the State of New Jersey, is not considered a benefit of the Public Employees’ Retirement System and is taxable.

Subchapter 7, Deductions, provides for the deductions allowed to calculate the clear market value of the property subject to the transfer inheritance tax. N.J.A.C. 18:26-7.7 is proposed for amendment in order to note that the Unclaimed Property Administration has moved from the Attorney General’s Office to the Department of the Treasury. N.J.A.C. 18:26-7.10(d) is proposed for amendment to clarify when an executor’s or administrator’s commissions are allowed on sales of real estate because occasionally an executor will sell property at the request of a specifically devised beneficiary prior to the transfer of title and this does not qualify as being sold by the estate. In addition, examples are added to N.J.A.C. 18:26-7.10(d) for clarification. The term “and expenses of sale” is proposed to be added to the subheading at N.J.A.C. 18:26-7.12 for clarification. N.J.A.C. 18:26-7.12 is proposed for amendment to clarify that certain necessary expenses for the sale of real estate may be deducted and seeks to codify common audit practices because it is generally considered reasonable to allow closing costs, in addition to broker commissions when the property is sold and most such expenses are relatively minor. New N.J.A.C. 18:26-7.12(a)4 is proposed for clarification and consistency with N.J.A.C. 18:26-7.10(d).

Subchapter 8, Assessment and Valuation, provides for the Division to appoint appraisers to evaluate the clear market value of property in determining the assessment of inheritance tax. N.J.A.C. 18:26-8.8 is proposed for amendment to remove antiquated terminology.

Subchapter 9, Returns, Payments, and Penalties, sets forth the proper time and the forms to be submitted to the Division, as well as any penalties for failure to file or pay timely. New N.J.A.C. 18:26-9.2(a)2 is added to clarify those persons entitled to file a return due to modern estate planning where many of the decedent’s assets might be held in a revocable living trust created by the decedent during their lifetime. N.J.A.C. 18:26-9.6 is proposed for amendment to remove the outdated requirement that affidavits to amend an original return must be on legal sized paper. N.J.A.C. 18:26-9.8 is proposed for amendment to remove antiquated terms.

Subchapter 10, Collection and Refund, sets forth the time and manner for the Division to assess liability for transfer inheritance tax and the time and manner to obtain a refund from the Division.

Subchapter 11, Waivers—Consent to Transfer, describes when and how the Division requires waivers to transfer property subject to the transfer inheritance tax and estate tax. N.J.A.C. 18:26-11 is proposed for amendment to replace the words “banking institution,” “trust company,” or “safe deposit company” with “financial institutions” to account for any current or future types of institutions that are organized pursuant to the laws of New Jersey; additionally, amendments modify language and clarify the waiver requirements and procedure. N.J.A.C. 18:26-11.1(e) is proposed for deletion to remove an antiquated requirement that waivers be issued no earlier than 10 business days following the receipt of the tax payment that was carried forward from the original 1947 regulations based upon old banking practices and an obscure interpretation of N.J.S.A. 54:35-19.a. N.J.A.C. 18:26-11.7 is proposed for repeal because it does not appear to be specifically supported by statute, which is generally concerned with delivery of assets, and other sections prohibit the delivery of assets until tax is paid and it is unclear why there needs to be a special rule concerning deceased beneficiaries. N.J.A.C. 18:26-11.13(a) is proposed for amendment to explicitly state that this section applies to transfers of property not subject to N.J.A.C. 18:26-11.1 through 11.12, and to update a statutory cross-reference. N.J.A.C. 18:26-11.15 is proposed for amendment to provide for future forms. N.J.A.C. 18:26-11.16 is proposed for amendment to bring into uniformity, the treatment of the non-probate assets most often held by a decedent at death, which includes payable on death accounts and other blanket waivers. N.J.A.C. 18:26-11.17 is proposed for amendment to update statutory cross-

references. N.J.A.C. 18:26-11.18(b) is proposed for deletion because it is archaic and obsolete due to the fact that double dollar accounts are not widely recognized in modern finance. N.J.A.C. 18:26-11.22(e) is proposed for amendment to clarify that a waiver is not required for the transfer of stock of a corporation that is organized pursuant to the laws of a state other than New Jersey because such consents to transfer are not necessary and will not be issued.

Subchapter 12, Administration and Forms, sets forth who may file returns, the Division's ability to conduct hearings, and the estate representative's ability to request, review, and appeal the Division's determination.

As the Division has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments and repeals will serve to inform and assist taxpayers and their representatives in understanding and meeting the requirements of New Jersey transfer inheritance tax and estate tax statutes, as delineated in the Summary above. The rules proposed for readoption with amendments and repeals implement the legislative policy of imposing a tax on the transfer of property from a decedent to a beneficiary. The rules are intended to minimize any inconvenience to taxpayers while maximizing the efficiency of the Division.

Economic Impact

The rules proposed for readoption with amendments and repeals will help to increase compliance with New Jersey transfer inheritance and estate tax laws. The rules have a beneficial economic impact on the cost of estate administration by making certain elements of the process more efficient, reducing estate administrators' costs and difficulties in understanding the process, and enabling estate administrators to comply with the requirements of the process.

Federal Standards Statement

A Federal standards statement is not required because the authority for the rules proposed for readoption with amendments and repeals are derived from the New Jersey Transfer Inheritance Tax Law, N.J.S.A. 54:33-1 through 54:37-8, and the New Jersey Estate Tax Law, N.J.S.A. 54:38-1 through 16. The rules proposed for readoption with amendments and repeals are, therefore, independent from any Federal standards or requirements.

Jobs Impact

The rules proposed for readoption with amendments and repeals will not result in the creation or loss of jobs in the State.

Agriculture Industry Impact

The rules proposed for readoption with amendments and repeals will have no impact on the agriculture industry in this State because the rules involve State tax administration.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments and repeals concern inheritance tax and estate tax. These taxes do not apply to the conduct of businesses in the State. Instead, these taxes are imposed on the transfer of property to and among individuals. The rules proposed for readoption with amendments and repeals apply to any individual or company that may be engaged in the administration of an estate, including those that may be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The rules proposed for readoption with amendments and repeals set forth reporting, recordkeeping, and other compliance requirements for all businesses engaged in the administration of an estate, including those employing fewer than 100 full-time employees, which are defined as small businesses pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As required pursuant to law, the provisions of rules regarding reporting and recordkeeping, as well as compliance, must be uniformly imposed without regard to business size.

The transfer inheritance tax and estate tax rules proposed for readoption with amendments and repeals will apply regardless of the estate representative's business size. The extent that such compliance

requirements would apply vary based on the circumstances of each estate. Thus, all businesses have the same duties, whether or not they are a small business. Any exemption for small businesses would be inconsistent with the statute.

The Division, consistent with its mission, reviews its rule proposals with a view to minimize the impact of its rules on small businesses to the extent possible. The mission of the Division is to administer the State's tax laws uniformly, equitably, and efficiently to maximize State revenues to support public services; and to ensure that voluntary compliance with taxing statutes is achieved without being an impediment to economic growth.

The Division has reviewed the application of the Regulatory Flexibility Act and the rules proposed for readoption with amendments and repeals. The Division is not able to develop and apply special rules for small businesses that would be different from the rules applied to all taxpayers because these tax rules must be applied uniformly and equitably.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments and repeals will not result in a change in the average costs associated with housing or with the affordability of housing. The rules proposed for readoption with amendments and repeals would have no impact on any aspect of housing, as the rules proposed for readoption with amendments and repeals concern State inheritance tax administration.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and repeals will not result in a change in the housing production within Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan. The basis for this finding is that the rules proposed for readoption with amendments and repeals do not involve housing production, either within Planning Area 1 or 2, within designated centers, or anywhere else in the State of New Jersey. The rules proposed for readoption with amendments and repeals concern State inheritance tax administration.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Division has evaluated this rulemaking and determined that the rules proposed for readoption with amendments and repeals will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State because the proposed new rules concern State inheritance tax administration. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:26.

Full text of the proposed amendments and repeals follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. DEFINITIONS

18:26-1.1 Definitions

In addition to those terms that are defined in the Act, 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 through 38 of Title 54 of the Revised Statutes of New Jersey.

"[Blanket waiver]" means the general written consent of the Director issued by rule permitting banks, trust companies, savings institutions, and 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.]

"Branch" means the Transfer Inheritance Tax Branch of the New Jersey Division of Taxation.

...

“Civil union partner” means a person who has established a civil union pursuant to the provisions [of] **at** N.J.S.A. 37:1-28 et seq.

“Class A transferee” means any person identified [in] **at** N.J.S.A. 54:34-2.a, which includes the following:

1. A [father, mother] **parent**, grandparent, grandchild, spouse, civil union partner, or domestic partner;

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, of any of the United States, or of a foreign country. A Class A transferee also includes a non-biological child of a decedent where the child was the offspring of a biological parent partner conceived by the [artificial insemination] **assisted reproduction** of that parent during the term of a marriage, civil union, or domestic partnership with the decedent, unless it is otherwise shown that the non-biological parent had not intended to be the parent of the child;

3.-4. (No change.)

“Class C transferee” means any person identified [in] **at** N.J.S.A. 54:34-2.c, which includes the following:

1. A [brother or sister] **sibling** of a decedent;

2. A spouse/civil union partner or surviving spouse/civil union partner of a [son or daughter] **child** of a decedent.

“Class D transferee” means any other transferee, distributee, or beneficiary who is not a Class “A,” “C,” or “E” transferee, as identified [in] **at** N.J.S.A. 54:34-2.d.

...

“Clear market value” means the market value of any property included in any transfer, less any deductions allowable [under] **pursuant to** the Law.

...

“Estate” and “property” means the interest of the testator, intestate, grantor, bargainor, or seller, passing or transferred to the individual or specific legatee, devisee, heir, next of kin, grantee, donee, or buyer, not exempt from the provisions of the Act, whether such property be situated within or outside this State and includes family partnership interest or family limited partnership interest.

“Financial institution” means any entity that holds funds or assets to the credit of a person or persons. This includes, but is not limited to, banks, trust companies, savings institutions, building and loans, savings and loan associations, brokerage houses, financial advisors, credit unions, and corporations.

“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] **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.

...

“Power of appointment” means a right given to a decedent or transferee to effect the beneficial enjoyment, distribution, or disposition of trust property.

...

“Waiver” means the written consent of the Director permitting the transfer of [one or more] **specific** assets held in the name of a decedent or a decedent and others.

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] **at** N.J.S.A. 54:34-1, including, but not limited to, the following:

1.-2. (No change.)

18:26-2.11 Renunciation or disclaimer

(a) If a transferee [under] **pursuant to** a will or by operation of law disclaims or renounces [his or her] **their** rights thereunder, or any portion thereof, and the instrument of disclaimer or renunciation is properly delivered and/or filed in accordance with the provisions [of] **at** N.J.S.A. 3B:9-1 et seq., the disclaimer or renunciation is given effect in computing the tax.

(b) (No change.)

18:26-2.13 Composition or compromise of taxes on certain transfers

(a)-(b) (No change.)

(c) The payment of the taxes provided for in such compromise shall be conclusive in favor of the executor or trustee as against the interests of such [cestui que] trust **beneficiary**, as may possess present rights of enjoyment, or fixed, absolute, or indefeasible rights of future enjoyment, or of such rights as would possess in the event of the immediate termination of a particular transfer.

(d) (No change.)

18:26-2.15 Ratio tax on transfer of nonresident decedent’s property

In the case of a nonresident decedent’s estate containing real or tangible personal property located in this State that passes to a transferee wherever situated, except by means of a specific devise, the tax on such transfer is to be first computed on the entire estate as if the decedent were a resident of New Jersey and all of [his or her] **their** assets were located in New Jersey and then prorated (multiplied) by the proportion (ratio) which the New Jersey real and tangible personal property bears to the entire estate.

Example 1: Mr. A, a California domiciliary, died intestate, on July 3, 2016, leaving as his sole heir a nephew, Mr. B. Mr. A’s estate consisted of the following: real property with a value of \$10,000 in New Jersey; \$20,000 cash located in an Illinois bank; and \$70,000 of real and personal property located in California.

The New Jersey property is subject to the ratio tax pursuant to this section 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[,] (that is, \$100,000 x 15 percent, the rate applicable for property passing to a Class “D” transferee or \$15,000 tax). 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 of the estate, real or personal, tangible or intangible, wherever situated (that is, 10/100 x \$15,000 = \$1,500 tax, 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 New Jersey resident tax rates.

Example 2.: Same facts as example above 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 spouse/civil union partner/domestic partner. First, a tax is computed as if Mr. A had been a New Jersey domiciliary. Mr. B would be liable for \$10,000 x 15 percent = \$1,500 tax. All of the property received by Mr. A’s spouse/civil union partner/domestic partner would be exempt. Second, the total tax, \$1,500, is then multiplied by 1/10, the ratio of the property subject to tax to the entire estate (1/10 x \$1,500 = \$150.00, the amount of tax due).

SUBCHAPTER 3. ESTATE TAX—DECEDENTS DYING ON OR BEFORE DECEMBER 31, 2001

18:26-3.1 Estates subject to tax

(a) In addition to the inheritance tax imposed upon the transfer of property of a decedent in this State, the estates of all New Jersey residents [dying after June 22, 1934,] are subject to an estate tax.

(b)-(c) (No change.)

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 to 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 in effect on December 31, 2001, due to the United States.

Example 1.: Mr. “A,” a New Jersey resident, died on July 16, 2000, with a taxable estate of \$700,000 for Federal estate tax purposes. The credit allowable for State taxes [under] **pursuant to** the Federal estate tax law was \$18,000. The amount actually paid to New Jersey for transfer inheritance tax was \$6,000. The New Jersey estate tax due is \$12,000.

(b)-(f) (No change.)

18:26-3.6 Payment; due date; interest; extension of time

(a) (No change.)

(b) All or any part of the estate tax due this State, if not paid within nine months from the date of the death, will 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] **spouse, parent**, or next of kin.

(c)-(f) (No change.)

SUBCHAPTER 3A. ESTATE TAX—DECEDENTS DYING AFTER
DECEMBER 31, 2001, BUT BEFORE
JANUARY 1, 2017

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

(a)-(d) (No change.)

(e) If the decedent was a partner in a civil union and died on or after February 19, 2007, survived by [his or her] **their** partner, a marital deduction equal to that permitted a surviving spouse [under] **pursuant to** the provisions of the Internal Revenue Code in effect on December 31, 2001, is permitted to the surviving civil union partner for New Jersey estate tax purposes. In these cases, a pro forma 2001 Form 706 should be completed as though the Internal Revenue Code treated a surviving civil union partner and a surviving spouse in the same manner.

(f) (No change.)

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

(a) (No change.)

(b) All or any part of the estate tax due this State, if not paid within nine months from the date of death, will 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] **spouse**, civil union partner, [father, mother] **parent**, 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 the Director's discretion, may require. In those cases where a Federal estate tax return is not required to be filed and where an extension of time to file the Federal estate tax return is not requested, the Director may reduce the interest rate to six percent per annum for the period until the expiration of any extension of time requested and granted for the filing of the New Jersey estate tax return. The request must be filed on or before the due date of the return.

(c)-(e) (No change.)

SUBCHAPTER 3B. ESTATE TAX—DECEDENTS DYING AFTER
DECEMBER 31, 2016, BUT BEFORE
JANUARY 1, 2018

18:26-3B.3 Reduction of tax; out-of-State property

(a)-(b) (No change.)

(c) Examples:

1. Ms. B died owning real property in Florida. The real property was reported on the New Jersey estate tax return. The estate can use the credit calculated [in] **at** (a) above for out-of-State property.

2. Mr. S established a trust containing real property located in a foreign jurisdiction. The real property contained in the trust retains its identity as real property and is subject to tax in the state where the real property is located. Accordingly, the real property within the trust is entitled to the credit calculated [in] **at** (a) above for out-of-State property.

3. Mrs. W owned XYZ, LLC, which was incorporated in Pennsylvania. XYZ, LLC owns a parcel of Pennsylvania real property. The real property

owned by [XYC] **XYZ**, LLC does not retain its identity as real property. The estate tax is assessed on the decedent's entire interest in the corporation. Therefore, the out-of-State credit calculated [in] **at** (a) above is not allowable in this instance for the New Jersey estate tax.

18:26-3B.9 Payment; due date; interest; extension of time

(a) (No change.)

(b) All or any part of the estate tax due this State, if not paid within nine months from the date of death, will 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] **spouse**, civil union partner, [father, mother] **parent**, 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 the Director's discretion, may require. In those cases where a Federal estate tax return is not required to be filed and where an extension of time to file the Federal estate tax return is not requested, the Director may reduce the interest rate to six percent per annum for the period until the expiration of any extension of time requested and granted for the filing of the New Jersey estate tax return. The request must be filed on or before the due date of the return.

(c)-(e) (No change.)

SUBCHAPTER 4. COMPROMISES (INHERITANCE AND
ESTATE TAXES)

18:26-4.1 Domicile doubtful; terms of settlement

(a) Where the Director and taxing authorities in another jurisdiction claim that a decedent was domiciled in each respective state or jurisdiction at the time of a decedent's death and an investigation discloses a reasonable doubt regarding decedent's domicile, the Director may, in [his or her] **their** discretion, enter into a written agreement with such other taxing authority and the executor, administrator, or trustee, to fix the sum acceptable to this State in full settlement of the New Jersey transfer inheritance tax; provided, that said agreement also fixes the sum acceptable to such other state or jurisdiction in full settlement of the death taxes imposable by said state or jurisdiction; and, provided further, that said agreement has the approval of the Superior Court or Tax Court of this State.

(b)-(c) (No change.)

SUBCHAPTER 5. TRANSFERS SUBJECT TO TAX

18:26-5.4 Classification of property as real or personal

(a) (No change.)

(b) The doctrine of equitable conversion is not applicable to those estates where:

1. A New Jersey decedent was a party to a contract of sale involving real estate situated in a foreign jurisdiction.

Example 1. The interest of a deceased resident seller located in another state, which was under contract of sale at the date of [his or her] **their** death, is deemed to be an interest in real property, the transfer of which is not subject to tax [under] **pursuant to** the inheritance tax laws of this State.

Example 2. The interest of a deceased resident buyer, under a contract of sale in effect at the date of death for the purchase of real property located in another state, is deemed personal property and taxable to the extent of the sum paid on account of the contract price at the time of a decedent's death. Pursuant to the provisions [of] **at** N.J.S.A. 54:34-5, the balance due [under] **pursuant to** the contract will not be allowed as a deduction in determining the clear market value of a decedent's estate subject to tax [under] **pursuant to** the inheritance tax laws of this State;

2.-3. (No change.)

(c) (No change.)

(d) Partnership real estate. Any real property held by a partnership of which a decedent is a partner even if held by the deceased partner and [his or her] **their** spouse/domestic partner/civil union partner as tenants by the entirety, is deemed to be a partnership asset and, therefore, is considered personal property.

18:26-5.6 Inter vivos transfers (**transfers made during decedent's lifetime**)

(a) Any transfer of real or tangible personal property located in this State or of intangible personal property wherever situated in the case of a resident decedent or of real or tangible personal property situated in this State in the case of a nonresident decedent made by such decedent during [his or her] **their** lifetime, whether in contemplation of death or intended to take effect in possession or enjoyment at or after decedent's death, is subject to the New Jersey transfer inheritance tax. Any such transfers will be taxed upon the clear market value of the transferred property on the date of the decedent's death.

(b) (No change.)

18:26-5.7 Transfers made in contemplation of death

(a) (No change.)

(b) "Contemplation of death" includes that expectancy of death that actuates the mind of a person of the execution of the will and is, therefore, not restricted to the expectancy of death that actuates the mind of a person making a gift [causa mortis] **with an awareness of impending death.**

(c) (No change.)

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 that takes effect at or after death and is as such subject to the tax[, except for the exemption provided by N.J.S.A. 54:34-4.j].

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] **through** 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 or her] **their** reserved income, rights, interests, and powers in and over the transferred property, including any right to possession, use, and enjoyment of the property.

18:26-5.11 Jointly held property

(a)-(e) (No change.)

[(f) The right of a spouse/civil union partner or the right of a domestic partner as defined in N.J.S.A. 26:8A-3, as a surviving joint tenant with his or her deceased spouse/civil union partner or domestic partner, 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/civil union partner or domestic partner is exempt from the transfer inheritance tax.]

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

(a) Transfers are subject to the New Jersey transfer inheritance tax, where, by transfer of a resident decedent of real or tangible personal property within this State or 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 that 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].

(b) (No change.)

18:26-5.17 Proceeds of retirement contracts

The proceeds of a retirement contract purchased on an installment plan are subject to the New Jersey transfer inheritance tax when the decedent dies prior to the date of retirement and the payments are returned to either [his or her] **their** estate or to a designated beneficiary, except for the exemption provided [by] at N.J.S.A. 54:34-4.j.

18:26-5.19 Annuity contracts

[(a)] Annuity contracts purchased by or vested in a decedent and made payable by [him or her] **the decedent** to another person at or after [his or her] **their** death are subject to the New Jersey transfer inheritance tax.

[(b)] Annuities payable under certain trusts and plans that are exempt under Section 2039(c) of the Internal Revenue Code of 1954 may not be exempt for New Jersey transfer inheritance tax purposes. The treatment to be accorded payments made under such trusts and plans depends upon the facts and circumstances that exist in each case (See N.J.S.A. 54:34-4.j).]

SUBCHAPTER 6. EXEMPTIONS

18:26-6.1 Class "A" transfers

[(a) Transfers to a spouse are exempt.]

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

18:26-6.2 Class "C" transfers

(a) The transfer of property having an aggregate clear market value of \$25,000 or less that is transferred to a [brother or sister] **sibling of a** decedent or to a spouse or surviving spouse of a child of a decedent is exempt from the New Jersey transfer inheritance tax.

(b) (No change.)

18:26-6.3 [Dower or curtesy] (**Reserved**)

[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.]

18:26-6.4 Tenancy by the entirety

The transfer of real property or personal property in this State held by spouses/civil union couple as tenants by the entirety to the surviving spouse/civil union partner is not taxable for New Jersey transfer inheritance tax purposes, see N.J.S.A. 46:3-17.2, except that where words such as "husband and wife" and "spouse/wife/husband" are used in the statute, the words "civil union couple" and "civil union partner" shall be given the same treatment as the former terms, respectively. **See N.J.S.A. 37:1-29 (civil union).**

18:26-6.11 Public educational, scientific, and charitable institutions

(a) (No change.)

(b) Any property of any decedent that passes to a Class "E" transferee is exempt. (See N.J.A.C. 18:26-1.1 for definition of Class "E" transferee)

(c) (No change.)

18:26-6.14 State pensions

(a) All payments at death [under] **pursuant to** 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 addressed in this section, whether such payments either before or after retirement are made on death to the employee's estate or to [his or her] **their** specifically designated beneficiary, are exempt from the New Jersey transfer inheritance tax.

(b) (No change.)

(c) The benefit payable [under] **pursuant to** the supplementary annuity plan of the State of New Jersey, or a **deferred compensation plan administered by 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.

(d) (No change.)

SUBCHAPTER 7. DEDUCTIONS

18:26-7.6 Debt for claim of county welfare boards or State institutions

(a) A deduction is allowed in the case of a claim by a county welfare board or a State institution for money advanced to or on account of the care provided to a decedent as an indigent person, provided that such claim is accompanied by the following documents:

1. (No change.)

2. A supplemental affidavit of the executor, heir, or administrator, as the case may be, stating whether or not [he or she] **they** acknowledge[s] the correctness of the amount of the claim and will pay the same in full out of the assets of the estate. If not, the supplemental affidavit should set forth the facts involved, and if the matter has been settled, set forth the amount that has been paid or will be paid in settlement.

(b) (No change.)

18:26-7.7 Estates subject to escheat

Estates subject to escheat that contain claims for services rendered to the decedent or advances made to the decedent are held in abeyance pending a final determination made with respect thereto by the [Attorney General's Office,] Unclaimed Property [Section] **Administration in the New Jersey Department of the Treasury**. The representatives of the estate will be so notified.

18:26-7.10 Executor's and administrator's expenses

(a)-(c) (No change.)

(d) Executor's or administrator's commissions are only allowed on real estate that is actually sold by the executor or administrator or which is expressly directed to be sold by the terms of the decedent's will. The real estate must be sold by the representative **on behalf of the estate** and not **by or on behalf of** the beneficiary or beneficiaries of **specifically devised real estate** in order to qualify.

Example 1. The decedent specifically devised real estate to a beneficiary or beneficiaries. The beneficiary or beneficiaries subsequently sell the real estate. Executor's or administrator's commissions are not allowed on the sale.

Example 2. The executor or administrator sells specifically devised real estate. Commissions are not allowed on the sale.

Example 3. The executor or administrator sells real estate that was part of the residue of the estate. Commissions are allowed on the sale.

(e) (No change.)

18:26-7.12 Real estate broker commissions and expenses of sale

(a) A deduction is allowed for commissions paid or payable to a real estate broker or agent in connection with the sale of real estate of which a decedent dies seized **and other necessary expenses of the sale of real estate**, so long as:

1. The real estate was the subject of a contract of sale entered into by the decedent during [his or her] **their** lifetime;

2. The real estate is actually sold by the executor or administrator (the real estate must be sold by the representative of an estate and not the beneficiary or beneficiaries in order to qualify); [or]

3. It is necessary in the administration of the decedent's estate to affect a sale of said real estate for the purpose of liquidating debts, or the payment of the expenses of administration of the estate, or for the payment of legacies[.]; **or**

4. The real estate was not specifically devised.

SUBCHAPTER 8. ASSESSMENT AND VALUATION

18:26-8.8 Valuations generally

(a) (No change.)

(b) In the Director's judgment and discretion, the Director may require that the appraisal of any tangible assets subject to the transfer inheritance tax or estate tax, be supported by an appraisal made by a [broker, dealer, jobber, or any other] person having expert knowledge with respect to the market value of any such tangible property.

18:26-8.12 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.-5. (No change.)

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

7. (No change.)

(b) (No change.)

18:26-8.13 "Close" or "family" corporation

(a) To the extent that the valuation of stock of a "close" or "family" corporation is generally incapable of being appraised on the basis of arms-length sales of stock, the Director will base the value of such corporation on the following data to be submitted with the return:

1.-4. (No change.)

5. A copy or copies of any stock purchase or option agreement to which the decedent was a party at the time of [his or her] **their** death;

6.-7. (No change.)

18:26-8.18 Discretionary and legal common trust funds

(a) As the admission and withdrawal to the funds are controlled by contract, the value of the fund, therefore, is to be determined as of the close of business on the last bank business days of January, April, July, and October of each year. For transfer inheritance tax purposes the valuation date shall be:

1. Where approval was obtained by the donor in [his or her] **their** lifetime, then the valuation date so approved will control the value of [his or her] **their** interest in the fund.

2. If the donor dies more than five days prior to a contractual valuation date without having applied for approval, it shall be deemed that such a request was in fact made; then the valuation date shall be the one next following [his or her] **their** death.

3.-4. (No change.)

SUBCHAPTER 9. RETURNS, PAYMENT, AND PENALTIES

18:26-9.2 By whom filed

(a) A return may be prepared, executed, and filed by:

1. (No change.)

2. The trustee of a revocable living trust created by the decedent during their lifetime, where letters of testamentary or general administration are not applied for or not required;

[2.] **3.** (No change in text.)

[3.] **4.** A surviving joint tenant where the decedent dies intestate and [his or her] **their** entire estate passes to a surviving joint tenant by operation of law; or

[4.] **5.** (No change in text.)

18:26-9.4 Resident decedents' returns

(a) In the case of a resident decedent, all returns must be filed and tax must be computed on one of the following forms and accompanied by payment of tax, a copy of the decedent's will, if such decedent died testate, as well as a copy of the decedent's income tax return (Form 1040 or 1040A) filed with the Internal Revenue Service for the last full year preceding [his or her] **their** date of death, and any relevant document outlined in the instructions of the appropriate form:

1.-5. (No change.)

18:26-9.6 Amendment to original return

In the case of both resident and nonresident estates, any assets and liabilities not disclosed in the original return and all supplemental data requested by the Branch is to be filed in affidavit form [on legal size paper] and attested to by the duly authorized statutory representative of the estate, next of kin, or beneficiary [certifying]. **The affiant must certify to the facts in detail, including a description of the asset, real or personal, and/or the liability and the reasons for failure to disclose same in the original return and filed directly with the Transfer Inheritance Tax Branch, PO Box 249, Trenton, NJ 08695-0249.**

18:26-9.7 Confidential nature of returns

(a) All New Jersey transfer inheritance tax returns and data filed in connection therewith are considered privileged communications pursuant

to N.J.S.A. 54:33-8 and 54:50-8 and are not to be inspected or copied by any person other than:

1.-2. (No change.)

3. In the case of either an intestate or testate proceeding, a surviving joint tenant, or [cestui que trust (]trust beneficiary[)], or trustee or any duly authorized attorney for such persons, but only to the extent of such persons' legal or equitable interest in a decedent's estate.

(b) Copies of records on file with the Transfer Inheritance Tax Branch may be obtained by authorized persons only upon proper application and subject to the provisions [of] at N.J.S.A. 54:50-8 and 9. There will be a \$.40 per page charge for copies exceeding 10 pages. Authenticated copies are \$1.00 per page [and a check]. **Checks** for [payment of] **copies** shall be made payable to the "Treasurer, State of New Jersey."

18:26-9.8 Payment due dates

(a) [Due date of payment.] The New Jersey transfer inheritance tax is due at the date of a decedent's death; however, payment may be made at any time within eight months after the date of death. There is no extension of time permitted or granted for the payment of the tax.

(b) [Due date, executory] **Executory** devises, contingent future estates, **and** estates **are** subject to power of appointment. The New Jersey transfer inheritance tax on executory devise or the transfer of property subject to a contingency or a power of appointment is due and payable within two months after the person entitled to the property comes into enjoyment, [seisin,] or **legal** possession of such property.

18:26-9.10 Persons responsible

Any administrator, executor, trustee to the extent of any estate funds in [his or her] **their** possession, grantee, donee, [cestui que] trust **beneficiary**, beneficiary, and buyer is personally liable for any and all New Jersey transfer inheritance taxes until paid or provided for by bond in double the amount of the tax due to the extent of [his or her] **their** interest in the estate and an action at law may be brought in the name of the State against any such person for payment of such tax. See N.J.A.C. 18:26-10.4.

18:26-9.12 Late payment; general provisions

(a) (No change.)

(b) In cases where there is no corresponding day in the eighth calendar month following the date of death, the first business day of the succeeding month will be the effective date for purposes of determining interest and penalties; for example, where decedent died June 30, 2013, the tax payment will not bear interest if made on or before March 1, 2014.

(c)-(e) (No change.)

(f) [For returns due on or after July 1, 1993, the] **The** Director will waive the payment of any part of any penalty or interest attributable to the executor's, administrator's, or trustee's reasonable reliance on erroneous advice furnished to the taxpayer, in writing, by an employee of the Transfer Inheritance Tax Branch acting in the employee's official capacity, provided that the penalty or interest did not result from the failure of the executor, administrator, or trustee to provide adequate or accurate information giving rise to the erroneous advice. The executor, administrator, or trustee has the affirmative obligation to show that it was reasonable to rely [on] **upon** the written advice.

18:26-9.15 Composition or compromise of taxes, bond

(a) (No change.)

(b) The payment of the tax due pursuant to a composition or compromise are conclusive in favor of the executor or trustee as against any [cestui que] trust **beneficiary** and who possess a present right of enjoyment, interest in, or fixed, absolute, or indefeasible right of future enjoyment in property and any [cestui que trustents] **trust beneficiaries** as would possess such rights in the event a particular estate would terminate.

(c) If the executor or trustee elects to defer the adjustment of the taxes due until the person or [body politic or corporate] **entity** beneficially interested in the property chargeable with the tax comes into actual possession or enjoyment of the property, such executor or trustee must execute a bond to the State of New Jersey in twice the amount of the tax imposed at the highest possible rate, with such surety or sureties as approved by the New Jersey Department of Banking and Insurance or by

the Director, conditioned to pay the tax and interest at the time or period when such contingency occurs.

SUBCHAPTER 10. COLLECTION AND REFUND

18:26-10.3 Deduction or collection of tax before distribution

(a)-(b) (No change.)

(c) In the case of a legacy given to a person in money for a limited period, the executor, administrator, or trustee is to retain the transfer inheritance tax due for the entire amount of money transferred; however, if such legacy is charged upon or payable out of property, other than money, the executor, administrator, or trustee, may, if [he or she] **they** believe[s] the same to be necessary, apply to the court having jurisdiction of [his or her] **their** accounts to make an apportionment of the sum to be paid [him or her] **them** by the legatee for the tax.

(d) (No change.)

SUBCHAPTER 11. WAIVERS—CONSENT TO TRANSFER

18:26-11.1 Consent to transfer; generally

(a) Except as otherwise indicated in this chapter, written consent to **the** transfer or release (waiver) of any real property or any tangible or intangible personal property must be obtained from the Director prior to such transfer or release where:

1. Such property is held by an executor, administrator, trustee, individual, firm, association, partnership, organization, or corporation including any [banking institution, trust company, or safe deposit company] **financial institution** organized [under] **pursuant to** the laws of New Jersey[; national bank operating in this State; building and loan or savings and loan associations engaged in New Jersey; or credit unions chartered by the United States] **or** operating in this State; and

2. Such property belongs to or stands in the name of a resident decedent or in the names of a resident decedent and one or more persons, to an executor, administrator, or legal representative of a resident decedent, or upon [his or her] **their** order or request, or, to the survivor or survivors when held in the joint names of a resident decedent and one or more persons, or upon [his or her] **their** order or request.

(b) No waivers are required in estates of nonresident decedents, except for a transfer inheritance tax waiver for real property located in the State of New Jersey. See N.J.A.C. 18:26-11.4(c).

1. It must, however, be established in detail that the decedent was legally domiciled in a jurisdiction other than New Jersey to the satisfaction of the trustee, individual, firm, association, partnership, organization, or corporation (its transfer agent) including any [banking institution, trust company, or safe deposit company] **financial institution** organized [under] **pursuant to** the laws of New Jersey[; national bank operating in this State; building and loan or savings and loan associations engaged in New Jersey; or credit unions chartered by the United States] **or otherwise** operating in this State. To do this, the personal representative of the estate should file with the proper party an affidavit providing details as to domicile, including the following:

i.-iv. (No change.)

v. Whether decedent formerly resided in New Jersey and, if so, what facts are relied upon to establish abandonment of New Jersey and intention not to return **to New Jersey**.

2. If the party in possession or control of the property determines from the proofs submitted that **the** decedent was legally domiciled outside of New Jersey, that party may transfer the stock or obligation of the corporation or any other tangible or intangible personal property without [the written consent of the Director] **a waiver**, permanently maintaining the affidavit as authority for the action taken.

(c) The Director waives the requirement to file a waiver in the case of certain transfers to Class "A" transferees, in the estate of a New Jersey domiciled decedent. In order to satisfy a corporation or its transfer agent, including any [banking institution, trust company] **financial institution** organized [under] **pursuant to** the laws of New Jersey[, national bank operating in this State, building and loan or savings and loan association in New Jersey, or credit union chartered by the United States] **or** operating in this State that intangible assets may be released to the Class "A" transferee, an Affidavit of Waiver (Form L-8) can be executed by the

Class “A” transferee or the personal representative of the decedent’s estate.

1.-5. (No change.)

(d) (No change.)

[e] In the absence of the express approval of the Director, waivers are issued no earlier than 10 business days following the receipt of the tax payment.]

18:26-11.3 Consent to transfer not issued

(a) (No change.)

(b) The provisions [of] **at** (a) above shall not apply in cases where it appears to the Director that neither the probate of a decedent’s will nor the grant of letters of administration are required by the laws of this State. In any case, however, the Director may issue any and all transfer inheritance tax consents to transfer the assets of a decedent where in [his or her] **their** discretion, the collection of the transfer inheritance tax payable to New Jersey would be jeopardized by the withholding of such consent.

18:26-11.4 Real and personal property of resident and nonresident decedents

(a) Waivers consenting to the transfer of real property located in New Jersey are necessary for estates of resident decedents or estates of decedents whereby guardians have been appointed for the decedent prior to [his or her] **their** death. Real property held by spouses/civil union couple/domestic partners as tenants by the entirety does not require a waiver for the estate of the spouse/civil union partner/domestic partner dying first.

(b) An inheritance tax waiver is required for a period of 15 years from the date of such decedent’s death. If the decedent died after December 31, 2001, an estate tax waiver is required for an unlimited period in order to affect the transfer or delivery of the real or personal tangible or intangible property specified [in] **at** N.J.A.C. 18:26-11.1, which the decedent owned or in which [he or she] **they** had an interest at the date of death.

(c) (No change.)

18:26-11.5 Leasehold interest

[The written consent of the Director] **A waiver** is required to transfer any leasehold or chattels real, which a decedent owned or in which a decedent had an interest.

18:26-11.7 [Share of a deceased beneficiary] (Reserved)

[In any case where a beneficiary dies prior to the settlement of an estate in which such beneficiary is entitled to receive a share or interest, the executor or administrator of the first estate must first obtain a waiver before transferring such share or interest.]

18:26-11.8 Transfers to savings accounts without a waiver

(a)-(d) (No change.)

(e) The bank is required to retain the same control over the substituted account as the original account until the [written consent to the transfer by the Director] **waiver** is received.

18:26-11.9 From one fiduciary to another

Bonds and/or stock of a New Jersey corporation or a national bank located in New Jersey, or any money deposited in any [trust company, bank, or other] **financial** institution in the name of one court appointed fiduciary as executor, administrator, trustee, or guardian, may, upon the death of such fiduciary, be transferred without a New Jersey transfer inheritance tax and a New Jersey estate tax waiver to, or on the order of, the legally appointed substitute for the deceased fiduciary.

18:26-11.10 Transfer from joint fiduciaries to successors

Bonds and/or stock of a New Jersey corporation or a national bank located in New Jersey or any money deposited in any [trust company, bank, or other] **financial** institution in the names of two or more fiduciaries as executors, administrators, trustees, or guardians, may, upon the death of one or more of such fiduciaries, be transferred without a New Jersey transfer inheritance tax and a New Jersey estate tax waiver, to, or on the order of, the surviving fiduciary or fiduciaries.

18:26-11.11 Transfer of partnership interest

[The written consent of the Director] **A waiver** is not required for the transfer of real or personal property, tangible or intangible, owned by a bona fide partnership in which a decedent had an interest.

18:26-11.13 Transfer of tangible or intangible personal property

(a) A waiver is not required in order to transfer [all other] tangible or intangible personal property **that is not subject to N.J.A.C. 18:26-11.1 through 11.12**, including, but not limited to:

1.-9. (No change.)

10. Funds held in an account in the name of a funeral director in trust for a decedent in accordance with the provisions [of] **at** N.J.S.A. 2A:102-13; and

11. Funds to a decedent’s credit in a Credit Union plan organized [under] **pursuant to** N.J.S.A. 17:13-[26]73 et seq., in addition to any matching sums paid [under] **pursuant to** 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 the estate’s executor or administrator. However, funds held [under] **pursuant to** the Federal Credit Union Act must be reported and a waiver obtained.

(b)-(c) (No change.)

18:26-11.14 Exempt property not subject to waiver

The transfer of any property exempt or not includible for purposes of the New Jersey transfer inheritance tax and the New Jersey estate tax does not require [the written consent of the Director] **a waiver**. The property sought to be treated as exempt must not be includible in the gross estate of the decedent regardless of whether the tax at issue is the New Jersey estate tax or the New Jersey transfer inheritance tax.

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

(a) If the gross estate of a resident decedent that for tax purposes does not exceed \$200.00 where a person other than a [spouse/civil union partner/domestic partner] **Class “A” beneficiary** of the decedent is the applicant, and the applicant furnishes a [bank, savings institution, or a savings and loan association] **financial institution** with an affidavit in lieu of administration that has been obtained from the Surrogate of the county wherein the decedent died a resident, such [bank, institution, or association] **financial institution** may release the funds on deposit to the credit of a resident decedent without [the written consent of the Director] **a waiver** upon the applicant executing Form O-80, **or such form or affidavit as the Director may designate for this purpose**.

(b) Form O-80, **or similar affidavit**, used by an applicant other than a [spouse/civil union partner/domestic partner] **Class “A” beneficiary** of the decedent, is to be obtained only from a [bank, savings institution, or savings and loan association] **financial institution** and executed concurrently with the release of any funds. Every bank institution or association is required to obtain such forms directly from the Transfer Inheritance Tax Branch, PO Box 249, Trenton, NJ 08695-0249, and is further required to obtain the following information from each applicant before the release of any funds to be [assured] **ensured** that the total assets of the estate are less than \$200.00:

1.-5. (No change.)

(c)-(e) (No change.)

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] **financial institution** organized [under] **pursuant to** 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] **or operating in this State** may release, **without a waiver**, 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.-4. (No change.)

5. [Cestui que trust] **Trust beneficiary**; [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.];

7. Beneficiary of payable-on-death accounts; and

8. Upon the application of such proper party to the financial institution at (a)1 through 7 above, the funds may be released.

(b) The provisions of this section apply to each **financial** 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, **financial** institutions[, associations, organizations, corporations, or persons] may, without **a waiver** [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 **financial** 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] **a waiver**;

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 tax or estate tax, **and made payable to "New Jersey Inheritance and Estate Tax";**

3. (No change.)

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

(e) (No change.)

18:26-11.17 Funds held in a banking or other financial institution

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

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

2. As rental security deposits [under] **pursuant to** the provisions [of] **at** N.J.S.A. [47:8]46:8-19 et seq.

18:26-11.18 Funds held in [bank] financial accounts—death of named beneficiary

[(a) Bank accounts. Where funds are held on deposit in any bank to the credit of a person and payable on the death of such person to a named beneficiary, upon] **Upon** the death of [the] **a** named beneficiary **on a bank or other financial account**, no waiver is required to transfer or release the funds to [such person, however, a] **the principal owner of the account**. A waiver is required, **however**, to transfer or release such funds to the beneficiary upon the death of the principal.

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

18:26-11.19 Transfer of collateral

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

1. Transfer such collateral from the name of the decedent to its own name upon receiving [the written consent of the Director] **a waiver**;

2. Sell such collateral to satisfy a loan of a decedent without [the written consent of the Director] **a waiver**, except that where the collateral pledged consists of the stock of a New Jersey corporation, such stock cannot be transferred by such corporation without [the written consent of the Director] **a waiver**. Where any excess money is received from a sale, [the written consent of the Director] **a waiver** must be obtained before delivery of such excess money to a proper party in interest; or

3. Deliver any collateral to the executor or administrator of a decedent upon full payment of the loan or debt without [the written consent of the Director] **a waiver**.

18:26-11.20 Release of safe deposit box contents

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

18:26-11.22 Transfer of stock of a New Jersey corporation

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

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

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

(d) [The written consent of the Director] **A waiver** 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.

(e) **A waiver is not required for the transfer of stock of a corporation that is organized pursuant to the laws of a state other than New Jersey. Such consents to transfer are not necessary and waivers will not be issued for the transfer of stock of a corporation not organized pursuant to New Jersey law.**

18:26-11.25 Penalty for failure to obtain consent or give notice—
transfer inheritance tax

(a) Any [bank, banking institution, safe deposit company, trust company, other institution, association, organization, corporation, or] person [who] **or financial institution that** fails to obtain [the written consent of the Director] **a waiver**, 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, 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,] **financial institution** or person is not liable for the tax and interest or penalty provided [in] **at** (a) above, where such entity or person 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.

SUBCHAPTER 12. ADMINISTRATION AND FORMS

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 transfer inheritance tax report on the estate of a resident decedent will be accepted nor any administrative matter communicated with regard to the estate matters of a resident decedent unless such estate is represented by:

i.-iii. (No change.)

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] **at** (a)1ii 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 transfer inheritance tax return; or

v. An IRS enrolled agent, provided such enrolled agent is designated for such purpose, in writing, by any of the persons enumerated [in] **at** (a)1ii or iii above subject to the condition that the client be notified, in writing, before the enrolled agent 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 transfer inheritance tax return.

2. Nothing in this section is intended to preclude the discussion of accounting problems that may arise in the course of an audit of a New Jersey transfer inheritance tax report, with a certified public accountant, or IRS enrolled agent, provided, such accountant or IRS enrolled agent is designated for such purpose, in writing, by any of the persons enumerated [in] **at** (a)1 above. Under no circumstances may a CPA or IRS enrolled agent enter into discussions regarding any question of law.

3. The provision of this section may be waived by the Director where, in [his or her] **their** discretion, the strict adherence thereto would jeopardize the collection of any tax due or the closing of a transfer inheritance tax proceeding.

4. (No change.)

18:26-12.9 Review and protest

(a)-(b) (No change.)

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

1. Security will not be required for amounts in controversy of less than \$10,000, except in cases of arbitrary assessments [under] **pursuant to** N.J.S.A. 54:49-5 or 7. Security may be required in contested amounts of \$10,000 or more if it is determined that there is substantial risk that the estate will fail or be unable to pay a liability. In determining whether there is substantial risk of the estate's failure or inability to pay, the Division may consider the following:

i.-iii. (No change.)

(d)-(f) (No change.)

18:26-12.11 Appeal to Tax Court

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