

1. The Plan Administrator shall maintain a list of all pension providers under the ACTS, including a pension provider that has ceased to be a pension provider eligible to receive elective deferrals under the ACTS and a pension provider holding assets under the ACTS. Such list is hereby incorporated as part of the ACTS.

2. Each pension provider and the Plan Administrator shall exchange such information as may be necessary to satisfy IRC § 403(b) or other requirements of applicable law. In the case of a pension provider that is not eligible to receive elective deferrals under the ACTS (including a pension provider that has ceased to be a pension provider eligible to receive elective deferrals under the ACTS and a pension provider holding assets under the ACTS), the employer shall keep the pension provider informed of the name and contact information of the Plan Administrator in order to coordinate information necessary to satisfy IRC § 403(b) or other requirements of applicable law.

#### SUBCHAPTER 14. LOANS—ABP RETIREMENT PLAN, ACTS, AND CLOSED PLAN

##### 17:7-14.1 Loan permitted

(a) A participant may borrow from his or her employee account up to the amounts allowed under Federal law while still employed. The employee account and employer account shall be used solely to qualify for the amount of a policy loan.

1. Terms of loans. All loans shall be made on such terms and conditions as the Plan Administrator may determine and in accordance with the rules and procedures of the applicable DSP, provided that all loans:

i.iii. (No change.)

iv. Shall provide for repayment in full on or before the earlier of:

(1) (No change.)

(2) The date when distribution of the participant's Plan benefit is fully distributed (including payments after retirement out of Plan distributions); and

v. (No change.)

2. Amount of loan. The minimum amount of any new loan made to a participant shall be established by, and be subject to the loan rules and procedures of, the applicable DSP. The maximum amount of any new loan made to a participant shall be offset by the balance (principal plus accrued interest) due on any outstanding loans to the participant from the ABP Retirement Plan and ACTS (and from any other plans of the employer that are qualified employer plans under IRC § 72(p)(4)). In accordance with IRC § 72(p)(2), the principal amount of the new loan shall not exceed the lesser of:

i. Fifty thousand dollars, reduced by the greater of:

(1) The outstanding balance on any loan from the Plan (and from any other plans of the employer that are qualified employer plans under IRC § 72(p)(4)) to the participant on the day the loan is made; or

(2) (No change.)

ii. (No change.)

3.-7. (No change.)

#### SUBCHAPTER 16. ADMINISTRATION OF DISTRIBUTIONS— ABP RETIREMENT PLAN AND ACTS

##### 17:7-16.1 Claim for distribution

(a) Any distribution shall be paid only upon a claim made on the applicable form, and submission of additional information requested by the Plan Administrator, including, but not limited to:

1. Appropriate evidence that the participant has a severance from employment;

2. If the distribution is an Eligible Rollover Distribution (as defined in N.J.A.C. 17:7-9.2), the distributee's instruction as to whether the distribution (or a portion of the distribution) is to be paid directly to an eligible Retirement Plan (as defined in N.J.A.C. 17:7-9.2), and if any amount is to be paid directly to such an eligible Retirement Plan, the name and address of the trustee or plan administrator of that eligible Retirement Plan together with any other information that the Plan Administrator or DSP reasonably requests pursuant to Treasury Reg. § 1.401(a)(31)-1;

3.-8. (No change.)

## TREASURY—TAXATION

### (a)

#### DIVISION OF TAXATION

#### Transfer Inheritance Tax and Estate Tax

#### Adopted New Rules: N.J.A.C. 18:26

Proposed: July 17, 2017, at 49 N.J.R. 2210(a).

Adopted: June 13, 2018, by John J. Ficara, Acting Director, Division of Taxation.

Filed: June 13, 2018, as R.2018 d.139, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: July 16, 2018.

Expiration Date: July 16, 2025.

#### Summary of Public Comments and Agency Responses:

The Division received comments from:

1. Bruce S. Shapiro, Local Government & Regulatory Affairs Manager, New Jersey Realtors; and

2. Robert B. Hille, President of the New Jersey State Bar Association.

1. COMMENT: The commenter expressed that N.J.S.A. 18:26-3C-1, the lack of imposition of an estate tax, will assist families of the deceased, and make New Jersey more competitive with surrounding states by removing an economic burden. (1)

RESPONSE: The Division thanks the commenter for his comment.

2. COMMENT: The proposed heading of Subchapter 2 should be "Imposition and Computation of Transfer Inheritance Tax," not merely "Imposition and Computation of Tax," for clarity. (2)

RESPONSE: Although Subchapter 2 does indeed only apply to transfer inheritance tax, the change suggested may confuse the public that only Subchapter 2 applies for transfer inheritance tax. Other subchapters, such as those that include waivers and exemptions for purposes of calculation, also are implicated. The Division has made clear those chapters that are specific to the estate tax to distinguish between the two taxes.

3. COMMENT: The Division should clarify the imposition of transfer inheritance tax under N.J.A.C. 18:26-2.1(a)1. The proposed rule states that such tax applies "in the case of resident decedent, where such transfers consist of real or tangible personal property situated in this State or intangible personal property wherever situated, owned by such decedent." The last clause should be changed to read: "... owned by such decedent at the time of death or within three years of the decedent's death." (2)

RESPONSE: The proposed rule concerns the general imposition of the transfer inheritance tax to property, not to specific provisions of the tax. The Division has provided guidance in Subchapter 5 concerning transfers within three years prior to the decedent's date of death.

4. COMMENT: The proposed rule for N.J.A.C. 18:26-2.10 would delete the phrase "admitted to probate" from the previous version. The rule, as currently proposed, states that if a transferee agrees to a distribution different than what is provided in a decedent's will, the transfer inheritance tax is computed according to the will terms. Including the phrase would increase clarity. (2)

RESPONSE: The purpose of the proposed rule is to clarify that the terms of the will govern the application of the transfer inheritance tax. Regardless of whether a transferee agrees to a distribution different than what is provided in a decedent's will, the transfer inheritance tax is computed according to the will's terms. Given that any situation involving multiple wills or will contests will be determined by the probate court, the Division agrees and makes the recommended change.

5. COMMENT: The Division's proposed rules concerning the valuation and calculation of tax on "family limited partnerships" (N.J.A.C. 18:26-3A.2(b), 3B.2(b), and 8.12(b)), should not be included

because such entities should be valued at the clear market value as of date of death just as any other asset of the estate. (2)

RESPONSE: The rules in question are consistent with the Division's long-standing position (see N.J. State Tax News, Fall/Winter 2006, p. 5) that the clear market value of such partnerships is based on the partnership's assets' clear market value without any discount associated with the sale of partnership interest (such as marketability or minority interest discounts). A discount over 10 percent is presumptively denied until proven to the Director based on the nature and risk of the underlying assets.

6. COMMENT: Example 4 of proposed N.J.A.C. 18:26-3A.4(c) and 3B.3(c), which provides an example where a non-resident trust beneficiary moves to New Jersey should be removed. As a result of the change in domicile, the trust proceeds would be considered New Jersey property upon the beneficiary's death. (2)

RESPONSE: The Division agrees that the examples, while accurate in certain instances, do not apply to various potential scenarios, and, therefore, do not adequately serve the purpose for which they were intended. As such, Example 4 in N.J.A.C. 18:26-3A.4(c) and 3B.3(c) will be removed.

7. COMMENT: N.J.A.C. 18:26-3A.6 and 3B.5, which provide that the estate tax imposed on an estate remains a lien on all property of the decedent until paid, should be changed to reference the statute, N.J.S.A. 54:38-6, which may be amended to reflect a maximum time period on the lien. (2)

RESPONSE: The Division's language mirrors that of the statute as it is currently written. Modifying the rule as suggested may limit the ability of the Division to enforce outstanding liens by giving change in statute an inadvertent retroactive effect.

8. COMMENT: Proposed N.J.A.C. 18:26-3A.8(d) and 3B.7(d), which provide the requirement that assets and deductions for Federal estate tax purposes must be treated the same for New Jersey estate tax purposes, should be modified as a result of a recent United States Revenue Procedure 2016-49, which allows the disregard, and treat as a nullity, any QTIP election made if the election was not necessary to reduce the Federal estate tax liability to zero. The proposed rules should be revised to allow New Jersey only QTIP elections in cases where a Federal estate tax return is not required to be filed, regardless if one actually is. (2)

RESPONSE: For purposes of N.J.A.C. 18:26-3A.8(d), the application of the rule is based on the Internal Revenue Code in effect as of December 31, 2001. Revenue Procedure 2016-49 provides guidance for the 2010 amendments to the Internal Revenue Code, and, therefore, is not applicable to this rule.

For N.J.A.C. 18:26-3B.7(d), the Division has previously determined that where a taxpayer makes an election for Federal estate tax purposes, a like election must be made for New Jersey estate tax purposes. New Jersey follows Federal treatment regarding portability and QTIP elections pursuant to Revenue Procedure 2016-49. In instances where a Federal estate tax return is not filed and not required to be filed, the estate tax representative may, for New Jersey estate tax purposes, make a QTIP election in accordance with the provisions of the Internal Revenue Code. See N.J. State Tax News, Winter 2016/2017, pp. 3-4.

9. COMMENT: Proposed N.J.A.C. 18:26-3C.2 requires written waivers for the transfer of property from an estate even though no estate tax will be imposed on the estate. If no estate tax is assessed, it makes no sense to require written consent for such transfers, and would make administration of small estates more difficult. (2)

RESPONSE: The statute requiring written authorization remains in effect. The Division has developed self-executing waiver forms for non-taxable transfers, which would eliminate any delays for such transfers.

10. COMMENT: Proposed N.J.A.C. 18:26-7.9, concerning administrative expenses allowed for liquidating a decedent's business, has no substantive changes proposed from the prior rule. There should be allowed as an included administrative expense "the reasonable costs of goods sold and selling expenses." (2)

RESPONSE: The cost for liquidation of a decedent's business would generally be included in administrative expenses (as part of administering the estate). However, the cost of goods sold is not an administrative expense. Any goods owned by the business for resale are

considered inventory and assets of the business for purposes of calculating the clear market value of such business.

11. COMMENT: N.J.A.C. 18:26-7.10(a) includes the language from N.J.S.A. 3B:18-14, which provides the deduction allowed for executor and administrator commissions. The rates should not be included in the rule because of potential changes to the referent statute, which may cause confusion if the rates are amended in the future. (2)

RESPONSE: The rates are provided for ease of reference for both the public and the Division. Should the underlying statute be amended, the Division will amend its rules to accurately reflect the law.

12. COMMENT: Proposed N.J.A.C. 18:26-7.10(d) states that a deduction will be allowed for commissions on real estate, only if the property is actually sold by the executor, or administrator, or if the property is "expressly directed to be sold by the terms of the will." The commenter suggests that there is no statutory authority for this requirement and should not be included in the rule. (2)

RESPONSE: The Division is distinguishing real property that is inherited by a beneficiary or beneficiaries who then determine to sell the property, compared to the estate sale of the real property. This rule is substantially similar to the previously effective rule, which has been found to be within the Director's authority. See *In re Estate of Widenmeyer*, 70 N.J. 458, 464 (1976); *Sicardi v. Director, Div. of Taxation*, 26 N.J. Tax 74, 89 (Tax 2011).

13. COMMENT: Proposed N.J.A.C. 18:26-8.9, concerning the criteria for discounting the value of a fractional interest in real property, makes no substantive changes to prior rules. All property should be valued based upon the clear market value, and that there is no authority for treating fractional interests differently. (2)

RESPONSE: The Division's rule purports to calculate the clear market value. Where the estate claims a discount for fractional interest in real property, the Division is obliged to consider all relevant criteria in establishing a valuation. The weight to be accorded such criteria depends upon the "varying circumstances of each case and calls for expert knowledge in the field." See *Rosenthal v. Kingsley*, 97 N.J. Super. 286 (1967). The proposed rule clarifies the obligation of the Division to ascertain whether a discount is warranted and the amount of the discount, if any.

14. COMMENT: Proposed N.J.A.C. 18:26-8.13, concerning the filing requirements necessary to demonstrate a discount for the value of a "closed" or "family" corporation, is overly burdensome. The value of the stock of any closely held corporation should be based on its clear market value of such stock. (2)

RESPONSE: The rule purports to calculate the clear market value. Where there are no bona fide or arms' length sales available for comparison, such as in the case of the value of the stock of a closely held corporation or family corporation, the Division is obliged to consider all relevant criteria in establishing a valuation. Upon further review, the Division will relax this rule, as well as N.J.A.C. 18:26-8.12, to require information for three years instead of five years immediately preceding the date of death of the decedent to be provided upon filing to determine whether the clear market value reported in the return is accurate, consistent with transfers made within three years preceding the date of death. See N.J.A.C. 18:26-3A.3.

15. COMMENT: For proposed N.J.A.C. 18:26-8.14, which provides that in the valuation of a closely held corporation, no discount would be allowed for assets that have a known daily market value and readily reduced to cash, such as stocks and bonds. The clear market value should be based on the closely held corporation's value and not its assets. (2)

RESPONSE: The Division's proposed rule is clear that it applies to the value of the underlying assets of the closed corporation and not the corporation itself. Where the value of such easily sold assets can be readily determined, no discount should be allowed for such assets. This does not apply generally to the closely held corporation, unless all of its assets are as readily valued.

16. COMMENT: Proposed N.J.A.C. 18:26-11.1(c)5 provides a list of circumstances where a Class "A" transferee is not allowed to use Form L-8 (Self Executing Waiver Affidavit for a Resident Decedent). Subparagraph (c)5v, listing "other circumstances determined by the

Director or not specifically allowed” by rule or statute, is ambiguous and overbroad. (2)

RESPONSE: Upon review, the Division agrees that proposed N.J.A.C. 18:26-11.1(c)5v is ambiguous and will be removed.

17. COMMENT: Proposed N.J.A.C. 18:26-11.21(a)1 requires a waiver for the transfer of any Individual Retirement Account (IRA). The imposition of a waiver requirement creates a significant administrative burden on taxpayers and the time to obtain such a waiver may cause negative income tax ramifications. (2)

RESPONSE: The Division’s proposed rule clarifies the obligation of financial institutions in reporting the transfer of assets pursuant to N.J.S.A. 54:35-19. The Division will explore a reporting requirement for IRAs that would expedite the transfer of assets, similar to the current Form O-71 for insurance companies and if such is deemed necessary or beneficial, the Division will propose such in due course.

18. COMMENT: Proposed N.J.A.C. 18:26-11.22 requires a waiver for the transfer of any of a New Jersey corporation’s stock of a resident decedent, even if held in trust. The rule is overly restrictive and may cause negative tax consequences. (2)

RESPONSE: The Division’s proposed rule comports with the statutory requirement under N.J.S.A. 54:35-21.

19. COMMENT: Proposed N.J.A.C. 18:26-12.2 refers to “devise” when it should be “devisee.” (2)

RESPONSE: The Division agrees that a typographical error has occurred. The error will be corrected upon adoption.

**Federal Standards Statement**

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

**Full text** of the adopted new rules follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

CHAPTER 26

TRANSFER INHERITANCE AND ESTATE TAX

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.

“Civil union couple” means the legally recognized union of two eligible individuals of the same sex established pursuant to N.J.S.A. 37:1-28 et seq., partners of which shall receive the same benefits and protections and be subject to the same responsibilities as spouses in a marriage.

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

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

1. A father, mother, 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 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. The issue of any child or legally adopted child of a decedent; or

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.

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

1. A brother or sister of a decedent;
2. A spouse/civil union partner or surviving spouse/civil union partner of a son or daughter 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 N.J.S.A. 54:34-2.d.

“Class E transferee” means any of the following:

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

2. A tax-exempt organization that is organized and administered exclusively for religious, benevolent, scientific, literary, educational, or charitable purposes in which no part of the net earnings inures to the benefit of any private stockholder or other individual or corporation, to include, but not limited to, any tax-exempt organization under 26 U.S.C. § 501(c)(3) of the Internal Revenue Code; 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 that 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 the Director of the Division of Taxation of the State Department of the Treasury.

“Domestic partner” means an individual who is in a relationship that satisfies the definition of a domestic partnership as set forth in N.J.S.A. 26:8A-3.

“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.

“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 legal 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, buyer, 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.

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 personal 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.

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

The prevailing law at the time of death of a resident or nonresident controls the transfers subject to the tax and the rates thereon.

18:26-2.3 Computation of tax

The New Jersey transfer inheritance tax is computed on the portion of the clear market value of the property transferred in excess of any deductions set forth in N.J.S.A. 54:34-5 (see N.J.A.C. 18:26-7) or any exemptions permitted under N.J.S.A. 54:34-4 (see N.J.A.C. 18:26-6) at the rates then in effect on the date of the transferor's death.

18:26-2.4 Rates for Class "A" transferee

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.

18:26-2.5 Requirements for specific Class "A" transferees

(a) Mutually acknowledged child: In the case of a Class "A" transferee to whom the decedent stood in the mutually acknowledged relationship of a parent, as defined in N.J.S.A. 54:34-2 and this chapter, the claim on behalf of such transferee must include the following information:

1. The date and age the child was first taken into the household and a mutually acknowledged child relationship was assumed;
2. The period of time the relationship continued with the dates given;
3. A complete statement of circumstances whereby the child was taken into the household;
4. The source and cost of the child's financial support;
5. The child's parentage indicating whether such parents are alive and their address or if deceased, the dates of death and their legal domicile at death;
6. The person who was established as the parent of the child when the child registered at school and who signed the child's report cards and similar documents;
7. The person who claimed the child as a dependent for Federal income tax purposes and the relationship claimed on the return of such individual;
8. The affidavits of two or three disinterested persons having knowledge of the relationship setting forth the facts as known to them; and
9. Any other details that will support the claim that a mutually acknowledged relationship of parent and child existed.

(b) Marriage/civil union/domestic partnerships: In the case of a Class "A" transferee to whom the decedent stood in the relationship of a spouse or civil union partner as defined in N.J.S.A. 37:1-28 et seq., or domestic partner as defined in N.J.S.A. 26:8A-3, the claim on behalf of such a transferee must include such proof and supporting official documentation as may be required by the Director.

(c) If a marriage, civil union (or its equivalent), or a domestic partnership (or its equivalent) was entered into in another jurisdiction, the surviving spouse/partner is exempt for inheritance tax purposes.

(d) The surviving partner of a couple registered as domestic partners prior to February 19, 2007, who continue to be so registered, remain eligible for the transfer inheritance tax exemption. A couple aged 62 years and older, who wish to register as a domestic partnership may do so in New Jersey in order for the surviving partner to be exempt from the inheritance tax, however, a domestic partnership relationship entered

into outside of New Jersey, which is valid under the laws of the jurisdiction under which the partnership was created, need not be reaffirmed in New Jersey for the surviving partner to be exempt from the inheritance tax.

(e) Same sex couples may also enter into civil unions in New Jersey in order for the surviving partner to be exempt from the inheritance tax, however, a couple who has entered into a legally sanctioned civil union relationship in another jurisdiction is not required to reaffirm that relationship in New Jersey to be exempt from the tax.

18:26-2.6 Rates of Class "C" transferee

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

1. On any amount in excess of--	
\$25,000 up to \$1,100,000	11 percent
\$1,100,000 up to \$1,400,000	13 percent
\$1,400,000 up to \$1,700,000	14 percent
\$1,700,000	16 percent

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

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

On any amount up to \$700,000	15 percent
On any amount in excess of \$700,000	16 percent

18:26-2.8 Escheat

In the case of a decedent who dies intestate with no known heirs surviving, the rate of tax is assessed at the rates set forth in N.J.A.C. 18:26-2.7.

18:26-2.9 Multiple transfers

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

18:26-2.10 Distribution by agreement

If a transferee under a will agrees that the estate, or any part thereof, is to be distributed \*[otherwise]\* **\*other\*** than as provided in a decedent's will, the tax is nevertheless computed in accordance with the terms of the will **\*admitted to probate\***.

18:26-2.11 Renunciation or disclaimer

(a) If a transferee under a will or by operation of law disclaims or renounces his or her 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 N.J.S.A. 3B:9-1 et seq., the disclaimer or renunciation is given effect in computing the tax.

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

18:26-2.12 Possibility of divestment

Notwithstanding that a transferee's act or omission can divest the property transferred, the tax on the transfer is computed as if there were no possibility of divestment.

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

(a) In the case of a transfer or transfers made subject to a contingency or condition that renders a definite determination of the transfer inheritance tax due impossible, the Transfer Inheritance Tax Branch may enter into a composition or compromise of the tax based upon the immediate payment and final disposition of the tax.

(b) The composition or compromise of the tax is determined after a consideration of the amount of taxes that may become due as a result of the various contingencies or conditions, the present values thereof and the probability of the occurrence of the contingencies or conditions to which the transfers are subject. The purpose of a compromise is to permit an immediate, fair, and equitable adjustment of the tax due, rather than holding the liability for taxes suspended for an indefinite period.

(c) The payment of the taxes provided for in such compromise shall be conclusive in favor of the executor or trustee as against the interests of such cestui que trust 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) The composition or compromise permitted under this section refers only to the transfer inheritance tax on transfers subject to contingencies or conditions.

#### 18:26-2.14 Bond in lieu of payment

(a) If settlement through a compromise or composition of the transfer inheritance tax pursuant to N.J.A.C. 18:26-2.13 fails, a bond for double the highest amount of assessable tax must be filed with the Transfer Inheritance Tax Branch, executed by the executor, administrator, trustee, or other proper representative, as principal, and a surety company licensed to operate in New Jersey as surety, until the contingency or condition occurs and the tax due becomes definite.

(b) Upon the occurrence of the contingency or condition to which a transfer is subject, the executor, administrator, trustee, or other proper representative shall notify the Transfer Inheritance Tax Branch of the date the event took place and a computation of the tax due shall then be made. (See N.J.A.C. 18:26-9.14.)

#### 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 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: 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,  $10/100 \times \$15,000 = \$1,500$  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: 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  $\$10,000 \times 15 \text{ percent} = \$1,500$  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 ( $1/10 \times \$1,500 = \$150.00$ , the amount of tax due).

#### 18:26-2.16 Direction in will as to payment of tax

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

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

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

#### 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: 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 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) The New Jersey estate tax does not in any way interfere with the operation of the transfer inheritance tax so as to decrease any inheritance, succession, or legacy tax due or to become due this State or any other state, territory, possession, or the District of Columbia or to impair the lien of this State for any tax. The determination of the transfer inheritance tax chargeable need not be suspended until the estate tax, if any, payable to New Jersey, is assessed. It is not necessary to withhold the filing of the Federal estate tax return pending the determination of the amount of the New Jersey transfer inheritance tax chargeable. Where, however, the value of a bequest, in trust or otherwise, to a surviving spouse is made dependent upon the value of the decedent's adjusted gross estate, as finally fixed for Federal estate purposes, the New Jersey transfer inheritance tax chargeable cannot be determined until the Federal estate tax proceedings have been finally completed.

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

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

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

1. As allowed by the New Jersey State Uniform Tax Procedure Law, N.J.S.A. 54:49-6.b;
2. As allowed by N.J.S.A. 54:38-2; or
3. Where the Federal estate tax chargeable on final assessment has not been determined.

(f) The taxes assessed pursuant to (e)2 and 3 above must be made within four years from the date the additional or increased estate tax becomes payable or the Federal estate tax chargeable on final assessment is definitely determined and the New Jersey Transfer Inheritance Branch is properly notified pursuant to N.J.A.C. 18:26-3.4.

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

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

## 18:26-3.4 Additions or reductions to estate tax

(a) If, subsequent to a determination of the estate tax due this State, an additional or increased estate tax shall become payable to the United States by reason of a redetermination, or additional or corrected assessment, as to a portion of which the estate is entitled to a credit for estate, inheritance, succession, or legacy taxes paid to any state or territory of the United States, including the District of Columbia, then an additional estate tax shall be due and payable to this State, which shall be computed in the same manner as stated in N.J.A.C. 18:26-3.2.

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

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

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

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

3. The New Jersey Transfer Inheritance Tax Branch requires a copy of all determinations, final and intermediate, of the Internal Revenue Service, with all supporting statements. Copies of receipts for payment of succession or estate taxes to any state other than New Jersey, territory, possession, or the District of Columbia are also required.

4. The form of return for New Jersey estate tax purposes may be obtained from the Transfer Inheritance Tax Branch, PO Box 249, Trenton, NJ 08695-0249.

## 18:26-3.5 Taxation of future interests after estate tax paid; credit

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

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

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

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

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

(d) The executor, administrator, trustee, other person, or corporation liable for the payment of the estate tax must file with the Director a copy of the Federal estate tax return within 30 days after the filing of the original with the Federal government, and any other evidence, information, or data that the Director deems necessary. A copy of any communication from the Federal government making any final change

in said return, or confirming, increasing, or diminishing the tax thereby shown to be due is to be filed within 30 days after receipt thereof.

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

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

## 18:26-3.7 Refunds

(a) All applications for a refund of estate taxes claimed to have been overpaid or erroneously paid must be filed with the Director within three years from the date of payment. The Director will authorize the disbursement of a refund payment in the event the Director receives satisfactory proof of payment and determines that the tax was overpaid or erroneously paid.

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

(c) The date of payment is defined as the date the payment is actually received by the Division. It is not the date on which the tax return is filed, the date the Notice of Assessment is issued, or the date on which the audit is completed and/or the file is closed.

(d) Protective refund claims based on reasonably anticipated events may be filed within the time periods set forth in (a) above.

1. The protective refund claim must be made on the Transfer Inheritance and Estate Tax Protective Claim for Refund form. The form must be fully completed and must set forth the estimated refund amount and the basis for the claim.

2. The Director must be notified in writing of the actual refund claimed within 90 days after occurrence of the anticipated event.

3. For the purpose of determining the interest, if any, payable on a protective refund claim, the refund claim is deemed to have been made on the date that the Director receives notice of the occurrence of the anticipated event.

## 18:26-3.8 Protests, hearings, and appeals

Any executor, administrator, trustee, person, or corporation liable for the payment of the estate tax and aggrieved by any decision, order, finding, or assessment of the Director, may appeal to the Tax Court of New Jersey for a review thereof within 90 days of the date of notice assessing the tax complained of, in accordance with pertinent provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:51A-13 et seq. For protest procedures see N.J.A.C. 18:26-12.9, 12.10, and 12.11.

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

## 18:26-3A.1 Estates subject to tax—decedents dying after December 31, 2001, but before January 1, 2017

In addition to the transfer inheritance tax imposed upon the transfer of property of a decedent in this State, an estate tax is imposed upon the

transfer of the estate of every resident decedent dying after December 31, 2001, but before January 1, 2017, that would have been subject to an estate tax payable to the United States under the provisions of the Internal Revenue Code, 26 U.S.C. §§ 1 et seq., in effect on December 31, 2001.

#### 18:26-3A.2 Amount of the tax and certain valuations

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

1. The maximum credit that would have been allowable under the provisions of the Internal Revenue Code in effect on December 31, 2001, against the Federal estate tax that would have been payable under the provisions of the Internal Revenue Code in effect on December 31, 2001, on account of taxes paid to any state or territory of the United States or the District of Columbia; or

2. An amount determined pursuant to the simplified tax system set forth in N.J.A.C. 18:26-3A.3. The simplified tax system may not be used in those cases where a Federal estate tax return is filed or required to be filed. The simplified tax system is not intended for use in all estates. It may not be used when:

- i. The surviving spouse/civil union partner is not a U.S. Citizen;
- ii. The estate contains trusts for the purpose of sheltering assets from estate tax (such as marital trusts, qualified terminable interest property (QTIP) trusts, and credit shelter or bypass trusts); or
- iii. In situations where the tax liability produced under the simplified tax system is not similar to the tax liability determined pursuant to (a)1 above.

(b) The following principles are applicable in making valuations and calculating the tax where family limited partnerships are involved:

1. A family limited partnership is a limited partnership where more than 50 percent of the partners are related by blood or marriage/civil union/domestic partnership and does not have a true business purpose. It may or may not hold an interest in another partnership or other asset that has a true business purpose. One indication of a true business purpose is that the family limited partnership has and engages in business or commercial transactions with customers, clients, persons, or entities other than the partners of the family limited partnership, their family members, or other related individuals or entities.

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 that 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.

#### 18:26-3A.3 Simplified tax system

(a) The taxable value of the estate for decedents dying after December 31, 2001, but before January 1, 2017, is determined as follows:

1. Net estate determined for purposes of the New Jersey transfer inheritance tax under the provisions of the statutes and regulations in effect on the date of the decedent's death (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 date of the decedent's death not included in the transfer inheritance tax net estate; plus

5. In the event that the decedent was a surviving spouse/civil union partner of a decedent who died on or after February 19, 2007, and received qualified terminable interest property (QTIP) from the predeceased spouse or civil union partner for which the marital deduction was elected for Federal and/or New Jersey, the full value of the QTIP property; plus

6. Any other property includable in the Federal gross estate under the provisions of the Internal Revenue Code in effect on December 31, 2001; less

#### 7. Any property:

i. Passing outright to the decedent's surviving spouse or to the civil union partner of a decedent who died on or after February 19, 2007, provided that the surviving spouse/civil union partner was a U.S. citizen on the decedent's date of death; and/or

ii. That passes to a Class "E" beneficiary as defined by N.J.A.C. 18:26-1.1. 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 or equal to \$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 more than \$615,000;
3. On any amount equal to or more than \$667,174 but less than \$840,000, 4.8 percent of the excess over \$667,174 plus \$19,304;
4. On any amount equal to or more than \$840,000 but less than \$1,040,000, 5.6 percent of the excess over \$840,000 plus \$27,600;
5. On any amount equal to or more than \$1,040,000 but less than \$1,540,000, 6.4 percent of the excess over \$1,040,000 plus \$38,800;
6. On any amount equal to or more than \$1,540,000 but less than \$2,040,000, 7.2 percent of the excess over \$1,540,000 plus \$70,800;
7. On any amount equal to or more than \$2,040,000 but less than \$2,540,000, 8.0 percent of the excess over \$2,040,000 plus \$106,800;
8. On any amount equal to or more than \$2,540,000 but less than \$3,040,000, 8.8 percent of the excess over \$2,540,000 plus \$146,800;
9. On any amount equal to or more than \$3,040,000 but less than \$3,540,000, 9.6 percent of the excess over \$3,040,000 plus \$190,800;
10. On any amount equal to or more than \$3,540,000 but less than \$4,040,000, 10.4 percent of the excess over \$3,540,000 plus \$238,800;
11. On any amount equal to or more than \$4,040,000 but less than \$5,040,000, 11.2 percent of the excess over \$4,040,000 plus \$290,800;
12. On any amount equal to or more than \$5,040,000 but less than \$6,040,000, 12.0 percent of the excess over \$5,040,000 plus \$402,800;
13. On any amount equal to or more than \$6,040,000 but less than \$7,040,000, 12.8 percent of the excess over \$6,040,000 plus \$522,800;
14. On any amount equal to or more than \$7,040,000 but less than \$8,040,000, 13.6 percent of the excess over \$7,040,000 plus \$650,800;
15. On any amount equal to or more than \$8,040,000 but less than \$9,040,000, 14.4 percent of the excess over \$8,040,000 plus \$786,800;

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

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

#### 18:26-3A.4 Reduction of tax; out-of-State property

(a) The tax, as computed in N.J.A.C. 18:26-3A.2, is reduced by:

1. The portion of said tax that is attributable to property located outside New Jersey. The amount of the tax reduction is calculated by multiplying the tax due on the entire gross estate wherever located by a fraction, whose numerator is the gross value of property located outside the State and whose denominator is the New Jersey entire gross estate, wherever located. In general, for purposes of the calculation described in this paragraph, intangible personal property is considered to be located in New Jersey; and

2. The inheritance, succession, or legacy taxes actually paid this State in respect to any property owned by such decedent or subject to such taxes as part of or in connection with the estate.

(b) If real property located outside of New Jersey is distributed to the decedent's surviving spouse or civil union partner, the credit for out-of-State property cannot be used for that property.

(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 under (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 under (a) above for out-of-State property.

3. Mrs. W owned XYZ, LLC which was formed in Pennsylvania. XYZ, LLC owns a parcel of Pennsylvania real property. The real property owned by XYZ, LLC does not retain its identity as real property. The estate tax is assessed on the decedent's entire interest in the LLC. Therefore, the out-of-State credit calculated under (a) above is not allowable in this instance for the New Jersey estate tax.

\*[4. Mr. J, a nonresident, creates a trust for the benefit of his surviving spouse, Mrs. J, which includes intangible property (stocks and bonds). After Mr. J dies, Mrs. J changes domicile to New Jersey, and dies as a New Jersey resident. The trust proceeds, as intangible personal property, would be considered New Jersey property, not out-of-State property. Therefore, the out-of-State credit calculated under (a) above is not allowable in this instance for the New Jersey estate tax.]\*

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

In the case of a decedent where no inheritance, succession, or legacy tax is due this State, the estate tax imposed must 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 will 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. 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. A decedent's interest in property, or the value thereof, which is established after the estate tax return is filed may be assessed within four years from the date on which the interest or value is established, and the Division receives notification; or

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

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

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

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

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

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

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

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

(d) In those cases where a taxpayer makes an election for Federal estate tax purposes, a like election must be made for New Jersey estate tax purposes. Assets and deductions must be treated in the same manner for both Federal and New Jersey estate tax purposes.

(e) If the decedent was a partner in a civil union and died on or after February 19, 2007, survived by his or her partner, a marital deduction equal to that permitted a surviving spouse under 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) A simplified tax system method may also be used, subject to the limitations in N.J.A.C. 18:26-3A.3, and only in those situations where a Federal estate tax return has not and will not be filed nor is a tax return required to be filed with the Internal Revenue Service. The simplified tax system requires that a Form IT- Estate be prepared and filed along

with a New Jersey transfer inheritance tax return Form IT-R completed in accordance with the provisions of the transfer inheritance tax statute in effect at the time of decedent's death.

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

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

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

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

(b) All or any part of the estate tax due this State, if not paid within nine months from the date of death, 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, civil union partner, father, mother, or next of kin. The Director may, for cause shown, extend the time for payment with interest at the rate of 10 percent per annum, for such period as the circumstances, in 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) All administrators, executors, trustees, grantees, donees, and buyers are personally liable for any and all estate tax until paid, for which an action at law will lie in the name of the State.

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

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

#### 18:26-3A.11 Refunds

(a) All applications for a refund of estate tax claimed to have been overpaid or erroneously paid must be filed with the Director within three years from the date of payment. The Director will authorize the disbursement of a refund payment in the event the Director receives proof of payment to the satisfaction of the Director and determines that the tax was overpaid or erroneously paid.

(b) Interest will be paid on overpayments of tax at a rate determined by the Director to be equal to the prime rate, determined for each month or fraction thereof, compounded annually at the end of each year, from the date that such interest commences to accrue to the date of refund. Interest begins to accrue on the later of the date of the receipt by the

Division of a claim for refund by the taxpayer, the date of the payment of the tax, or the due date of the return; but no interest will be paid on an overpayment of less than \$1.00, nor upon any overpayment refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return or within six months after the return is filed, whichever is later.

(c) The date of payment is defined as the date the payment is actually received by the Division. It is not the date on which the tax return is filed, the date the Notice of Assessment is issued, or the date on which the audit is completed and/or the file is closed.

(d) Protective refund claims based on reasonably anticipated events may be filed within the time periods set forth in (a) above.

1. The protective refund claim must be made on the Transfer Inheritance and Estate Tax Protective Claim for Refund form. The form must be fully completed and must set forth the estimated refund amount and the basis for the claim.

2. The Director must be notified of the actual amount of the refund claimed within 90 days after occurrence of the anticipated event.

3. For the purpose of determining the interest, if any, payable on a protective refund claim, the refund claim will be deemed to have been made on the date that the Director is notified of the occurrence of the anticipated event.

#### 18:26-3A.12 Protests, hearings, and appeals

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

(b) Any executor, administrator, trustee, person, or corporation liable for the payment of the estate tax and aggrieved by any decision, order, finding, or assessment of the Director, may appeal to the Tax Court of New Jersey for a review thereof within 90 days of the date of notice assessing the tax complained of, in accordance with pertinent provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:51A-13 et seq. (See N.J.A.C. 18:26-12.11.)

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

#### 18:26-3B.1 Estates subject to tax—decedents dying after December 31, 2016, but before January 1, 2018

In addition to the transfer inheritance tax imposed upon the transfer of property of a decedent in this State, an estate tax is imposed upon the transfer of the estate of every resident decedent dying after December 31, 2016, but before January 1, 2018.

#### 18:26-3B.2 Amount of the tax and certain valuations

(a) The tax is calculated at the rate prescribed by N.J.S.A. 54:38-1.a(3).

(b) The following principles are applicable in making valuations and calculating the tax where family limited partnerships are involved:

1. A family limited partnership is a limited partnership where more than 50 percent of the partners are related by blood or marriage/civil union/domestic partnership and does not have a true business purpose. It may or may not hold an interest in another partnership or other asset that has a true business purpose. One indication of a true business purpose is that the family limited partnership has and engages in business or commercial transactions with customers, clients, persons, or entities other than the partners of the family limited partnership, their family members, or other related individuals or entities.

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 that 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.

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

(a) The tax, as computed in N.J.A.C. 18:26-3B.2, is reduced by:

1. The portion of said tax that is attributable to property located outside New Jersey. The amount of the tax reduction is calculated by multiplying the tax due on the entire gross estate wherever located by a fraction, whose numerator is the gross value of property located outside the State and whose denominator is the New Jersey entire gross estate, wherever located. In general, for purposes of the calculation described in this paragraph, intangible personal property is considered to be located in New Jersey; and

2. The inheritance, succession, or legacy taxes actually paid this State in respect to any property owned by such decedent or subject to such taxes as part of or in connection with the estate.

(b) If real property located outside of New Jersey is distributed to the decedent's surviving spouse or civil union partner, the credit for out-of-State property cannot be used for that partner.

(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 (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 (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 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 (a) above is not allowable in this instance for the New Jersey estate tax.

\*[4. Mr. J, a nonresident, creates a trust for the benefit of his surviving spouse, Mrs. J, which includes intangible property (stocks and bonds). After Mr. J dies, Mrs. J changes domicile to New Jersey, and dies as a New Jersey resident. The trust proceeds, as intangible personal property, would be considered New Jersey property, not out-of-State property. Therefore, the out-of-State credit calculated in (a) above is not allowable in this instance for the New Jersey estate tax.]\*

#### 18:26-3B.4 Estate tax where no transfer inheritance tax imposed

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

#### 18:26-3B.5 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.

#### 18:26-3B.6 Time limit for assessments

(a) No assessment of additional estate tax will 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. 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. A decedent's interest in property, or the value thereof, which is established after the estate tax return is filed may be assessed within four years from the date on which the interest or value is established, and the Division receives notification; or

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

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

#### 18:26-3B.7 Filing of tax return and other information

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

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

(c) A New Jersey estate tax return must be filed whenever the gross estate exceeds \$2,000,000. Within nine months of the date of death of the decedent, the executor, administrator, trustee, other person, or corporation liable for the payment of the estate tax must prepare and file with the Director a New Jersey estate tax return and a Form 706 completed in accordance with the provisions of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1 et seq., in effect January 1, 2017.

(d) In those cases where a taxpayer makes an election for Federal estate tax purposes, a like election must be made for New Jersey estate tax purposes. Assets and deductions must be treated in the same manner for both Federal and New Jersey estate tax purposes.

#### 18:26-3B.8 Taxation of future interest after estate tax paid; credit

If, after the payment of the New Jersey estate tax, there becomes due and payable a tax upon any future interest in any property under an instrument that creates an executor device or an estate in expectancy of any kind or character that is contingent or defeasible, or if by reason of any additional or corrected assessment by the Director an additional inheritance, succession, or legacy tax becomes due and payable, the tax

paid will be credited against the tax arising therefrom, but the amount so credited will not in any event exceed the amount of the tax so accruing.

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

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

(b) All or any part of the estate tax due this State, if not paid within nine months from the date of death, 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, civil union partner, father, mother, or next of kin. The Director may, for cause shown, extend the time for payment with interest at the rate of 10 percent per annum, for such period as the circumstances, in 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) All administrators, executors, trustees, grantees, donees, and buyers are personally liable for any and all estate tax until paid, for which an action at law will lie in the name of the State.

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

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

#### 18:26-3B.10 Refunds

(a) All applications for a refund of estate tax claimed to have been excessively or erroneously paid must be filed with the Director within three years from the date of payment. The Director will authorize the disbursement of a refund payment in the event the Director receives proof of payment to the satisfaction of the Director and determines that the tax was overpaid or erroneously paid.

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

(c) The date of payment is defined as the date the payment is actually received by the Division. It is not the date on which the tax return is filed, the date the Notice of Assessment is issued, or the date on which the audit is completed and/or the file is closed.

(d) Protective refund claims based on reasonably anticipated events may be filed within the time periods set forth in (a) above.

1. The protective refund claim must be made on the Transfer Inheritance and Estate Tax Protective Claim for Refund form. The form must be fully completed and must set forth the estimated refund amount and the basis for the claim.

2. The Director must be notified of the actual amount of the refund claimed within 90 days after occurrence of the anticipated event.

3. For the purpose of determining the interest, if any, payable on a protective refund claim, the refund claim will be deemed to have been made on the date that the Director is notified of the occurrence of the anticipated event.

#### 18:26-3B.11 Protests, hearings, and appeals

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

(b) Any executor, administrator, trustee, person, or corporation liable for the payment of the estate tax and aggrieved by any decision, order, finding, or assessment of the Director, may appeal to the Tax Court of New Jersey for a review thereof within 90 days of the date of notice assessing the tax complained of, in accordance with pertinent provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:51A-13 et seq. (See N.J.A.C. 18:26-12.11.)

### SUBCHAPTER 3C. ESTATE TAX—DECEDENTS DYING AFTER DECEMBER 31, 2017

#### 18:26-3C.1 Estates subject to tax—decedents dying after December 31, 2017

(a) No estate tax is imposed upon the transfer of the estate of every resident decedent dying after December 31, 2017.

(b) The Director has determined that no formal Estate Tax return, form IT-Estate, is required to be filed for the estate of every resident decedent dying after December 31, 2017.

#### 18:26-3C.2 Transfer of property requires waiver

Although no estate tax is imposed upon the estate, N.J.S.A. 54:38-6 requires that property owned by the decedent as of the date of the decedent's death may be transferred only with the written consent of the Director. The Director requires that any such transfer comply with the provisions of N.J.A.C. 18:26-11.

### 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 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) Any agreement as to the decedent's domicile will provide that, if the aggregate amount payable under such agreement to all states or jurisdictions involved is less than the maximum sum allowable as a credit to the estate against the Federal estate tax imposed thereon, then the executor, administrator, or trustee must also pay to the Director so much of the difference between such aggregate amount and the amount of such credit as the amount payable to the Director under the agreement bears to such aggregate amount.

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

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

(a) The Director may enter into an agreement with the executor, administrator, trustee, or beneficiary of any estate to alter, revise, compromise, and settle all claims or liens for past due transfer inheritance tax or estate or transfer taxes, together with all interest or interest penalties thereon, where:

1. Any lien or claim for any past due transfer inheritance tax or estate or transfer taxes are brought into question, claimed to be invalid or impaired, or are the subject of litigation; or

2. The Director, after investigation, determines that there is reasonable doubt as to the State's ability to enforce said lien or claim, or to collect the taxes due or claimed to be due, or that there is a reasonable doubt that said lien is valid or unimpaired.

(b) The agreement must require the executor, administrator, trustee, heir or heirs, next of kin, beneficiary, or beneficiaries, to waive all defenses that might be asserted against the claim or lien of the State and to submit to such terms of payment and settlement as the Director shall deem to be equitable, just, and in the best interest of the State.

18:26-4.3 Payment pursuant to compromise

(a) Any compromise or settlement is considered null and void unless the amount agreed to be paid is paid pursuant thereto within the time or times fixed in said agreement and in such event all payments made thereunder belongs to the State and will be credited to the arrears of taxes and interest or interest and penalties due. The person making payment is entitled to a receipt conforming to N.J.S.A. 54:35-8, which may be recorded as allowed under N.J.S.A. 54:35-9.

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

SUBCHAPTER 5. TRANSFERS SUBJECT TO TAX

18:26-5.1 Transfers generally

(a) Any transfers of property, real or personal, with a value of \$500.00 or more, or any interest in a transfer or income from a transfer which interest or income is \$500.00 or more in value, whether such transfer, interest, or income is held in trust or otherwise to or for the use of any transferee, distributee, or beneficiary, is subject to the transfer inheritance tax at the rates designated in N.J.A.C. 18:26-2.3, 2.7, and 2.8.

(b) In any case where a transfer or any interest or income is less than \$500.00 in value, the transfer, interest, or income is exempt from the tax; provided, however, if the transfer, interest or income is valued at \$500.00 or more, then the entire transfer, interest, or income is subject to tax.

Example: Mr. X bequeaths his gold ring worth \$250.00 to Ms. Y. Since this is the only transfer made to Ms. Y, the transfer is not subject to tax. If Mr. X had bequeathed not only the ring but a watch and chain worth \$300.00, then the transfer would be taxable and the tax would be based upon the entire amount, that is, \$550.00.

18:26-5.2 Transfers of residents and nonresidents

(a) Residents. Transfers by will or by the intestate laws of this State of real or tangible personal property situated in this State and intangible personal property, such as stock (including a share in a co-operative), bonds, securities, and mortgages, wherever located from the estate of a resident decedent who died seized or possessed of such property, are subject to the tax. Intangible personal property of a resident decedent is deemed situated in this State, regardless of where it is actually located, since by law personal property is deemed to follow the domicile of its owner.

(b) Nonresidents. In the case of a nonresident decedent, only real or tangible personal property located within this State of which the decedent was seized or possessed transferred by will or intestate law are subject to the tax.

18:26-5.3 Property includible in estate of decedent

(a) Moneys recovered under New Jersey Death Act (N.J.S.A. 2A:31-1 et seq.). Any sum recovered under the New Jersey Death Act representing damages sustained by a decedent between the date of injury and date of decedent's death (such as the expenses of care, nursing, medical attendance, hospital, and other charges incident to the injury), including loss of earnings and pain and suffering are to be included in the decedent's estate.

1. Where an action is instituted under the New Jersey Death Act and terminates through settlement by a compromise payment without designating the amount to be paid under each count, the amount so recovered is first applied toward the payment of funeral expenses, the expenses of care, nursing, medical attendance, hospital, and other proper charges incident to the injury and is fully includible in the estate of the decedent.

(b) Unpaid dividends. Stock, which on the date of death is quoted "ex dividends" or "dividends" payable to the holder of record on the date prior to the date of death, constitutes a part of the estate and is to be included in a decedent's estate.

(c) Accrued unpaid income. The amount of any accrued unpaid income on mineral and oil deeds or leases as of the date of death is considered an asset of the estate of a New Jersey decedent and fully includible in the estate.

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

(a) The doctrine of equitable conversion is not applicable to estates of New Jersey decedents that involve real property situated in New Jersey for the purposes of the transfer inheritance tax.

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

\*[i.]\* \*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 death, is deemed to be an interest in real property, the transfer of which is not subject to tax under 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 N.J.S.A. 54:34-5, the balance due under the contract will not be allowed as a deduction in determining the clear market value of a decedent's estate subject to tax under the inheritance tax laws of this State;

\*[ii.]\* \*2.\* A nonresident decedent was involved as a party to a contract of sale involving real property situated in New Jersey.

Example 1. The interest of a deceased nonresident seller of real property located in New Jersey, which was under contract of sale at the date of such nonresident decedent's death, is deemed to be an interest in real property, the transfer of which shall be taxable under the inheritance tax laws of this State. If such nonresident dies intestate, the interest in the New Jersey real property is, for the purposes of the inheritance tax laws of this State, deemed to have descended under the intestate laws of this State to the decedent's heirs at law.

Example 2. The interest of a deceased nonresident buyer, under a contract in effect at the date of death to purchase real property located in New Jersey, is deemed personal property and is not subject to tax under the inheritance tax laws of this State; and

\*[iii.]\* \*3.\* N.J.A.C. 18:26-5.4\*[(b)i and ii]\* \*(b)1 and 2\* are applicable regardless of whether a decedent died testate or intestate, or where real property is specifically devised but is under contract of sale at the date of death.

(c) Ground rents or any leasehold interest in land for 99 years or more are only deemed to be an interest in real property for the purpose of valuation under the New Jersey transfer inheritance tax; however, as to succession under the laws of descent and distribution of this State, such an interest is personal property. Such an interest, when held by spouses/civil union couple/domestic partners, is held as a tenancy in common, unless the conveyance expressly states that it is held as a joint tenancy. There can be no tenancy by the entirety in such an interest. Unaccrued ground rent on property located outside this State and owned

by a resident decedent is deemed to be foreign real property and, therefore, not subject to tax; however, ground rent accrued prior to the date of death on property located outside the State of New Jersey owned by a resident decedent is subject to tax because it is deemed to be personal property.

(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 spouse/domestic partner/civil union partner as tenants by the entirety, is deemed to be a partnership asset and, therefore, is considered personal property.

#### 18:26-5.5 Devises in lieu of commissions

In any case where a decedent appoints or names one or more executors or trustees and makes a devise of property to such fiduciaries in the decedent's will in lieu of commissions or allowances or appoints him, her, or them a residuary legatee or legatees, the transfer to such fiduciary or fiduciaries of that portion of the property in excess of the reasonable compensation fixed by the Superior Court having jurisdiction in the matter, is subject to the New Jersey transfer inheritance tax.

#### 18:26-5.6 Inter vivos transfers

(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 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) In the case of a resident decedent, all intangible personal property is deemed to be situated in this State, even though it may be actually located anywhere outside the State.

#### 18:26-5.7 Transfers made in contemplation of death

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

(b) "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.

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

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

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

1. The possession or enjoyment of the property so that possession or enjoyment of the property can be obtained only by surviving the transferor; or

2. The right to income from the property.

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

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

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

(c) This section applies to property deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor under N.J.S.A. 17:161-5.

(d) This section applies only to property held by two or more persons as joint tenants, and not tenants by the entirety. For the rule applicable to property held by tenants by the entirety, see N.J.A.C. 18:26-6.4.

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

(f) The right of a spouse/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) Property that is transferred pursuant to a power of appointment is deemed to pass from the estate of the donor or creator of the power to the transferee.

#### 18:26-5.13 Insurance proceeds subject to New Jersey transfer inheritance tax

Proceeds of any contract of insurance insuring the life of a resident of this State paid or payable to the estate or the executor or administrator of such decedent is subject to the New Jersey transfer inheritance tax.

## 18:26-5.14 Proceeds payable to testamentary trustee

Life insurance proceeds payable to a trustee or trustees of a testamentary trust created under the will of a decedent are not subject to transfer inheritance tax.

## 18:26-5.15 Proceeds under matured endowment policies

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

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

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

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

## 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 estate or to a designated beneficiary, except for the exemption provided by N.J.S.A. 54:34-4.j.

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

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

(b) The proceeds of life insurance contracts combining a life insurance feature and an annuity feature are subject to the New Jersey transfer inheritance tax.

## 18:26-5.19 Annuity contracts

(a) Annuity contracts purchased by or vested in a decedent and made payable by him or her to another person at or after his or her 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).

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

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

## 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 of decedent or to a spouse or surviving spouse of a child of a decedent is exempt from the New Jersey transfer inheritance tax.

(b) In instances where the decedent dies on or after February 19, 2007, the transfer of property having an aggregate clear market value of

\$25,000 or less, which is transferred to a civil union partner or surviving civil union partner of a child of a decedent is exempt from the New Jersey transfer inheritance tax.

## 18:26-6.3 Dower or curtesy

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

## 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.

## 18:26-6.5 Intangible property of a nonresident

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

## 18:26-6.6 Wrongful death action

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

## 18:26-6.7 Life insurance proceeds

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

## 18:26-6.8 Beneficiary of insurance trust

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

## 18:26-6.9 Trustee of insurance trust

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

## 18:26-6.10 Surrender of right to change beneficiary of contract of insurance

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

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

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

(b) Any property of any decedent that passes to a Class "E" transferee is exempt.

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

## 18:26-6.12 Property received from the Federal government

(a) Any amount recovered by a decedent's personal representative for the benefit of the classes of beneficiaries designated under the Federal Liability for Injuries to Employees Act for injuries to a decedent, whether for the pecuniary loss sustained by such beneficiaries as a result of the wrongful death of the decedent or for the loss and suffering by the decedent while the decedent lived, or both, is not subject to the New Jersey transfer inheritance tax.

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

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

## 18:26-6.13 Federal pensions

The proceeds of any pension, annuity, retirement allowance, return of contributions, or benefit payable by the United States pursuant to the Civil Service Retirement Act, Retired Serviceman's Family Protection Plan, and the Survivor Benefit Plan to a beneficiary or beneficiaries other than the estate or the executor or administrator of a decedent are exempt from the New Jersey transfer inheritance tax. All other pensions, annuities, retirement allowances, or returns of contributions payable by the United States to a beneficiary are not exempt under this provision.

## 18:26-6.14 State pensions

(a) All payments at death under the Teachers' Pension and Annuity Fund, the Public Employees' Retirement System of New Jersey, and the Police and Firemen's Retirement System of New Jersey, and such other State, county, and municipal systems as may have a tax exemption clause as broad as that of the three major State systems 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 specifically designated beneficiary, are exempt from the New Jersey transfer inheritance tax.

(b) All other benefit plans that do not have an exemption clause as broad as those under (a) above, such as, but not limited to, TIAA-CREF, are not exempt.

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

(d) The death benefits paid by the Social Security Administration or Railroad Retirement Board to the spouse of a decedent are also exempt from the New Jersey transfer inheritance tax. For purposes of filing a return these amounts neither need to be reported nor are they to be deducted from the amount claimed as a deduction for funeral expenses. In all other cases the death benefit involved should either be reported as an asset of the estate or deducted from the amount claimed for funeral expenses.

## 18:26-6.15 No fault insurance

(a) The insurance proceeds received by reason of medical expenses incurred as a result of personal injury to the decedent should be included in any calculations for purposes of the New Jersey transfer inheritance tax, so as to offset the amount claimed for medical expenses as a result of the accident.

(b) The insurance proceeds payable at the death of an income producer, defined by N.J.S.A. 39:6A-2.d, as a result of injuries sustained in an accident, which are paid to the estate of the income producer, are subject to the New Jersey transfer inheritance tax. In all other instances this amount is exempt.

(c) The amount paid at death to any person under the essential services benefits section of personal injury protection coverage as defined by N.J.S.A. 39:6A-4.c is exempt from taxation.

(d) The claim for funeral expenses is to be reduced by the amount paid under the funeral expenses benefits section of personal injury protection coverage as defined by N.J.S.A. 39:6A-4.e.

## SUBCHAPTER 7. DEDUCTIONS

## 18:26-7.1 Deductions generally permitted

The New Jersey transfer inheritance tax is imposed upon the transfer of property based upon the clear market value of such property. The "clear market value" of property means the market value of the property less the debts, expenses, and taxes that constitute an encumbrance upon the property of a decedent. No deductions are allowed, however, against any property that is exempt or not subject to the New Jersey transfer inheritance tax.

## 18:26-7.2 Decedent's debts

All debts owing at the date of a decedent's death are deductible from the property comprising such decedent's estate unless the property for which the debt is owing or for which it is secured is not subject to the New Jersey transfer inheritance tax.

## 18:26-7.3 Debts secured by out-of-State real property

The debts of a resident decedent owing for or secured by real property outside this State are not allowed as a deduction, unless such debt exceeds the value of the property securing it or for which it was contracted, in which event only that amount by which such debt exceeds the value of the out-of-State realty is permitted as a deduction.

## 18:26-7.4 Mortgages

The balance of a mortgage owing on the date of death is allowed as a deduction from the value of any real property securing such mortgage. In the case of real property held by a decedent and a surviving spouse/civil union partner as tenants by the entirety, the amount of any mortgage owing on such real property at the decedent's death is not allowable as a deduction since such property is exempt from the New Jersey transfer inheritance tax.

## 18:26-7.5 Debts secured by life insurance

Any debt of a decedent owing at the date of death and covered by the purchase of life insurance payable to a creditor of the decedent, in order to liquidate a debt arising from the acquisition of property for which the decedent was liable to such creditor, is not allowed as a deduction, because the debt is regarded as extinguished at the date of death by payment to said creditor of the insurance proceeds and, therefore, the decedent's estate is not diminished by the amount of the debt.

## 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. A letter signed by a representative of the welfare board or State institution stating the exact amount due from the decedent as of the date of death;

2. A supplemental affidavit of the executor, heir, or administrator, as the case may be, stating whether or not he or she acknowledges 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) Where a representative of the welfare board also acts as a representative of the estate, such as an executor or administrator, the representative is only required to submit the affidavit in which the claim is made, signed by the representative of the welfare board as executor, administrator, or otherwise. In such instances, the Division will not investigate unless other data in the record indicates that the amount claimed is in error.

## 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. The representatives of the estate will be so notified.

#### 18:26-7.8 Funeral and last illness expenses

(a) A deduction is allowed for all reasonable funeral expenses and last illness expenses uncompensated for by insurance or otherwise, owing and unpaid at the decedent's death for which the decedent's estate is liable.

(b) Funeral expenses include any reasonable costs incurred on behalf of the decedent payable by the estate:

1. Any deduction for funeral expenses is to be reduced by the amount of any death benefit paid or payable under the Social Security or Railroad Retirement Acts of the United States where the same are paid or payable to any person or fiduciary other than the spouse of the decedent;

2. What constitutes a reasonable funeral cost or expense will depend upon the facts and circumstances in each case; however, primary consideration will be given to the size of the estate in relation to the amount claimed as a deduction for such expenses.

(c) The expenses of a decedent's last illness allowed as a deduction include the expenses of care, nursing, medical attendance, medicines, hospital, and other charges incident to such illness unpaid and owing at the decedent's death and not compensated for by insurance or other payments.

#### 18:26-7.9 Administration expenses

A deduction is allowed for all the reasonable and ordinary expenses of administering a decedent's estate including reasonable and ordinary fees for executors, administrators, and attorneys, and, in addition, the reasonable cost incurred on an appeal from a determination of the Transfer Inheritance Tax Branch.

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

(a) In the absence of a judgment of the court exercising jurisdiction over the probate of an estate, the deduction for executor or administrator commissions is determined in accordance with N.J.S.A. 3B:18-14 as of the date of death of decedent as follows:

- First \$200,000 of corpus — 5 percent
- Next \$800,000 of corpus — 3 ½ percent
- Excess over \$1,000,000 of corpus — 2 percent

If more than one executor or administrator has been appointed, each additional executor or administrator may take an additional one percent of all corpus provided that no one executor or administrator shall be entitled to any greater commission than that which would be allowed if there were but one executor or administrator.

1. Where the amount claimed by the executor or administrator or allowed by the court is less than that determined by the application of the rates set forth in (a) above, only such amount as claimed or allowed shall be permitted as a deduction.

(b) Where a formal account is filed with the court exercising jurisdiction over the probate of an estate, in accordance with the Rules of the Court, and the amount allowed by the court for executor or administrator commissions is greater than the amount previously determined by the Transfer Inheritance Tax Branch, the fiduciary must forward a plain copy of the judgment allowing commissions to the Branch. The Transfer Inheritance Tax Branch will apply the amount or rate set forth by the court in its judgment to the value of the revised assessment of the property on which the allowance of the court is based, as of the date of death. However, the value of any property excluded from the New Jersey transfer inheritance tax will be excluded from the computation. See N.J.A.C. 18:26-7.1. If the Branch makes an assessment denying executor or administrator commissions, a written protest must be submitted to the Branch within 90 days in accordance with N.J.S.A. 54:49-18 and N.J.A.C. 18:26-12.9 in order for the Branch to consider a subsequent court judgment allowing the commissions. In order for the Branch to reopen an assessment subsequent to a judgment, a copy of the account must be filed with the Branch at the time of the filing with the court and a copy of the judgment specifying the rates to be applied to corpus must be forwarded to the Branch.

(c) In the absence of a judgment of the court exercising probate jurisdiction over the estate allowing otherwise, the value of property that

is held by the decedent and another as joint tenants with right of survivorship, as trustee for, or payable on death to another or which has been the subject of an inter vivos transfer, in contemplation of, or to take effect in possession or enjoyment at or after death, is to be excluded from the amount on which an executor's or administrator's commissions is computed.

(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 and not the beneficiary or beneficiaries in order to qualify.

(e) In the absence of a judgment of the court exercising probate jurisdiction over the estate, and the filing of a plain copy thereof with the Transfer Inheritance Tax Branch, the provisions of N.J.S.A. 3B:18-16 are not considered in the determination of the amount allowable as a deduction.

#### 18:26-7.11 Counsel fees

(a) A deduction for counsel fees is allowed if such fees are reasonable. The appraised value of a decedent's estate, for New Jersey transfer inheritance tax and Federal estate tax purposes will not be considered as a criterion for the determination of the amount allowable as a deduction for counsel fees.

(b) No deduction is allowed for counsel fees paid to an attorney who is not a member of the Bar of the State of New Jersey, except in cases where the services rendered by such counsel relate to matters not involving the New Jersey transfer inheritance tax proceedings.

(c) At the discretion of the Director, counsel may be required to submit an affidavit of services provided for the personal representative of an estate where it appears that the amount claimed as a deduction for counsel fees is other than ordinary or reasonable.

#### 18:26-7.12 Real estate broker commissions

(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, so long as:

1. The real estate was the subject of a contract of sale entered into by the decedent during his or her 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.

#### 18:26-7.13 Storage expense

(a) No deduction is allowed for expenses incurred by an executor or administrator for the storage or preservation of tangible personal property, except where the nature of the property or the value thereof is such that delivery to the legatee thereof is not possible within a reasonable time subsequent to a decedent's death.

(b) No deduction is allowed for expenses incurred for the preservation, maintenance, or upkeep of real property of which a decedent dies seized, either individually, jointly, or as a tenant in common.

#### 18:26-7.14 Operating costs of business

No deduction is allowed for the cost of operating a business in which the decedent had an interest at death. These expenses are not deemed an ordinary expense of administration and should be charged as an expense of the business.

#### 18:26-7.15 State, county, and local taxes

(a) A deduction is allowed for any State, county, and municipal taxes owing and unpaid at the date of death on any real property of a decedent that is subject to the New Jersey transfer inheritance tax. The amount of the deduction on such property for the current fiscal year, however, is limited to that sum representing unpaid taxes as the elapsed portion of said year bears to the full year. No deduction is allowed for State, county, or municipal taxes assessed or accruing subsequent to the death of the decedent.

(b) No deduction for unpaid State, county, and municipal taxes is allowed where the real property owned by the decedent was held by such decedent and a surviving spouse/civil union partner as tenants by the entirety, unless it can be shown that during the decedent's lifetime, the decedent appropriated all of the income from such property without having paid any of the State, county, and municipal taxes and other charges assessed against the real property.

#### 18:26-7.16 Transfer taxes due to other jurisdictions

(a) A deduction is allowed for any transfer, succession, or legacy taxes paid or payable to any state or territory of the United States, including the District of Columbia or any foreign country provided the property upon which such tax is paid or payable is subject to the New Jersey transfer inheritance tax.

(b) The amount due or paid to the United States as a Federal estate tax is not allowed as a deduction.

#### 18:26-7.17 Loans secured by life insurance policies

(a) A deduction is not allowed for a loan by an insurance company made to a decedent as the insured against a life insurance policy, because it is not considered a debt of the decedent but rather an advancement of the cash value of the policy.

(b) A deduction is not allowed for a loan made by a third party to a decedent secured by the assignment of a life insurance policy on the life of the decedent and satisfied from the proceeds of the policy. However, the right of a beneficiary to reimbursement from the estate for the amount of the loan is a proper claim by way of subrogation against the decedent's estate and is an allowable deduction unless a contrary intention is indicated.

### SUBCHAPTER 8. ASSESSMENT AND VALUATION

#### 18:26-8.1 Appointment of appraisers

(a) All appraisals of real and tangible personal property are made by a Division of Taxation representative exercising jurisdiction where the decedent is a resident or nonresident.

(b) The appraisal of all intangible personal property is made by an auditor at the Transfer Inheritance Tax Branch.

#### 18:26-8.2 Notice of appraisal; evidence; report

(a) An auditor, when it is deemed necessary, may give notice by mail to any person having knowledge of the assets of any estate, indicating the time and place an appraisal of property is to be made, requesting the presence of such person if necessary as a witness to give evidence under oath concerning property and the value thereof.

(b) The auditor, should the witness fail or refuse to attend, may issue a subpoena to compel the attendance of a witness.

(c) If an estate has filed a Federal estate tax return, for which a formal appraisal of any nature is required, an auditor may request that a copy of such appraisal be submitted for New Jersey transfer inheritance tax purpose.

(d) Upon completion of the examination for any property and attainment of any information solicited from witnesses, the appraiser is required to make a report and file the same with the Transfer Inheritance Tax Branch.

(e) These powers are in addition to or supplement the power of the Director to examine records, conduct hearings, issue subpoenas, and compel witnesses to attend hearings and produce records as provided in N.J.A.C. 18:26-12.4, 12.5, 12.6, and 12.7.

#### 18:26-8.3 Additional assessment

(a) In the absence of fraud or clerical error, after a final determination and assessment has been made and a notice thereof has been sent to the representative(s) of the estate, the Director will not reverse a determination or reopen an assessment. This, however, does not bar an additional or corrected assessment being made upon the discovery of assets or liabilities after an original report has been filed and the taxes assessed thereon have been paid.

(b) Where an asset is the subject of litigation at the time of a decedent's death, the appraisal of such an asset is suspended until the suit is terminated.

#### 18:26-8.4 Final assessment

Subsequent to receipt of the return and payment of any applicable tax, the Transfer Inheritance Tax Branch will advise the estate representative(s) as to whether the return filed by the estate and the tax calculation contained therein are accepted, in which case the Branch's notification will be the assessment. In the event that the Branch decides to examine the return further, the Branch will subsequently notify the estate representative as to the amount of tax assessed.

#### 18:26-8.5 Assessment notices

Any assessment notice, regardless of any changes to the tax as reported by the taxpayer, will conform to the requirements of N.J.S.A. 54:50-6.

#### 18:26-8.6 Time limit for assessment

(a) Upon the expiration of a period of 15 years after the date of death of a decedent, no proceeding may be instituted to assess or collect any tax, interest, or penalties due to this State for transfer inheritance tax purposes against any estate, executor, administrator, trustee, grantee, donee, buyer, devisee, legatee, heir, next of kin, or beneficiary. However, this subsection does not affect any rights to collection which this State has by reason of filing with the Clerk of the Superior Court, a Certificate of Debt or Decree of Judgment for the New Jersey transfer inheritance tax, including any interest and penalties; nor does the period of limitation affect the rights of this State to assess and collect the New Jersey transfer inheritance tax including any interest and penalties under the terms of a bond or agreement securing the payment of such tax, interest, and penalties.

(b) No assessment of additional transfer inheritance tax can be made after the expiration of more than four years from the date of the filing of an inheritance tax return, except in the following cases:

1. As allowed by the New Jersey State Uniform Tax Procedure Law, N.J.S.A. 54:49-6.b;

2. Tax on executory devises, contingent future interests, and estates subject to a power of appointment is assessed pursuant to the provisions of N.J.A.C. 18:26-8.12, 8.21, 8.24, and 9.16;

3. If the inheritance tax return is amended by the taxpayer to include additional property of a decedent, the assessment of tax on the additional property cannot be made after four years from the date of the filing of the amended return;

4. The assessment of tax on an estate passing to a beneficiary discovered after the filing of an inheritance tax return cannot be made after four years from the date of the discovery of the beneficiary and receipt of notification thereof by the Division; or

5. If 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 an inheritance tax return due to litigation or controversy, the assessment of tax must be made within four years after the decedent's interest in the property, or the value thereof on the decedent's date of death, has been definitely established and the Division receives notification thereof.

(c) Returns that do not meet the terms of the categories in (b) above will be subject to the provisions of (a) above.

(d) For the purposes of (b) above, an inheritance tax return filed before the corresponding day of the eighth month following the decedent's date of death is considered as filed on the corresponding day of the eighth month following the decedent's date of death.

#### 18:26-8.7 Appeals from assessment

Any interested person dissatisfied with an appraisal or assessment made by the Transfer Inheritance Tax Branch may, before appealing to the Tax Court in accordance with N.J.A.C. 18:26-12.12, submit a written protest to the Branch in accordance with N.J.A.C. 18:26-12.9. Executors, administrators, trustees, or other interested parties may also avail themselves of an informal hearing as provided under N.J.A.C. 18:26-12.10.

#### 18:26-8.8 Valuations generally

(a) All property — real, personal, tangible, or intangible — subject to the New Jersey transfer inheritance tax is appraised according to its clear market value on the date of decedent's death.

(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.

#### 18:26-8.9 Fractional interest in real property

In cases where a discounted fractional interest in real property is claimed by an estate, the Division will make a determination as to whether a discount in value is warranted, and, if so, the amount of the discount to be allowed.

#### 18:26-8.10 Life estate in real property held by the entirety

(a) When real property is devised or transferred to spouses/civil union couple/domestic partners as tenants by the entirety each having a vested life estate in common with the other for their joint lives with a vested estate in fee in the entire remainder subject to defeasance, as to the one first dying, the value of such property for New Jersey transfer inheritance tax purposes, is ascertained as follows:

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

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

- i. The tax chargeable if the devisee or grantee against whom the lower rate of tax would apply survives;
- ii. The tax chargeable if the devisee or grantee against whom the higher rate of tax would apply survives; or
- iii. The tax chargeable determined on the basis that the devisees or grantees will share the remainder equally as the result of a sale of the real property or the entry of a judgment of divorce.

#### 18:26-8.11 Bonds and mortgages

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

#### 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. A detailed balance sheet, revised to reflect the market value of the assets as distinguished from the net book value, as of the date of death of the decedent, or as near thereto as may be deemed acceptable;
2. Detailed balance sheets (setting forth the partner's capital accounts) and establishing the net worth of the partnership for each of the \*[five]\* \*three\* years preceding the date of death of the decedent;
3. Detailed profit and loss statements for the \*[five]\* \*three\* years immediately preceding the date of death of the decedent;
4. A copy of a partnership agreement if any;
5. The nature of the business in which the partnership is engaged;
6. A copy or copies if any, of a mutual purchase agreement to which the decedent was a party at the time of his or her death; and
7. A copy or copies, of any insurance policies, on the life of the decedent, held by the surviving partners as beneficiaries.

(b) In cases where the decedent was a member of a partnership that constitutes a family limited partnership, special rules apply, including rules related to valuation of the partnership interest.

1. A family limited partnership is a limited partnership where more than 50 percent of the partners are related by blood or marriage/civil union/domestic partnership and does not have a true business purpose. It may or may not hold an interest in another partnership or other asset that has a true business purpose. One indication of a true business purpose is that the family limited partnership has and engages in business or commercial transactions with customers, clients, persons, or entities other than the partners of the family limited partnership, their family members, or other related individuals or entities.

2. An interest in a family limited partnership is valued at the value of the underlying assets on the date of death of the decedent. Discounts for family limited partnership interests are not permitted unless the Director determines that they are warranted by the nature of and risk associated with the underlying assets.

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

(a) \*[The appraisal of any stock of a decedent in a closely held or family corporation, incapable of being valued on the basis of bona fide sales, is based]\* \*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. The basis of the clear market value reported in the return;\*
- \*[1.]\* \*2.\* A detailed balance sheet and profit and loss statement, revised to reflect the market value of the assets thereof as distinguished from the net book value, as of the date of death of the decedent, or as near thereto as the Director may deem acceptable;
- \*[2.]\* \*3.\* Detailed balance sheets establishing the net worth of the corporation for each of the \*[five]\* \*three\* years preceding the date of death of the decedent;
- \*[3.]\* \*4.\* Detailed profit and loss statements for the \*[five]\* \*three\* years immediately preceding the date of the death of the decedent;
- \*[4. A statement establishing the salaries paid to each officer of the corporation for the five years immediately prior to death;
5. The nature of the business in which the corporation is engaged;]\*\*
- \*[6.]\* \*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 death;
- \*[7.]\* \*6.\* A copy or copies of any insurance policies, if any, held by the corporation as beneficiary on the life of the decedent. The proceeds of such insurance are included as an asset of the corporation on the date of death in arriving at the value of the stock; \*and\*
- \*[8. The number of shares of stock of all classes issued and outstanding and the par value thereof;
9. Statement of dividends paid, if any, for a five-year period prior to decedent's death;
10. List of stockholders and number of shares owned by each;]\*\*
- \*[11.]\* \*7.\* If corporation owned realty\*,\* description of same, assessed and market value thereof should be shown\*]; and]\*\*\*.\*
- \*[12. Basis for determining that clear market value is the value reported in the return.]\*\*

#### 18:26-8.14 Assets of close corporation or partnership of known market value

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

(b) In ascertaining the book value of the common stock of a closely held corporation, the preferred stock, issued and outstanding, must be deducted at par value.

#### 18:26-8.15 Government bonds and securities

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

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

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

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

- i. Interest accrued from the last interest date to the date of death is not included in the appraisal of the United States Savings Bonds Series "H."
- ii. Government securities acceptable in payment of Federal estate taxes at par will be valued for New Jersey transfer inheritance tax purposes at their market value as of the date of a decedent's death in accordance with (a)1 above.

#### 18:26-8.16 Stocks, bonds, mutual funds, and securities

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

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

2. Where stock on the date of death or thereafter is selling "ex dividend," the dividend is required to be added to the taxable estate in addition to the quoted value of the stock.

(b) The value of stocks and bonds that are sold infrequently or in inconsequential numbers may not be ascertainable by reference to the sales price on an exchange since the stock exchange value reflected by quotations is nothing more than evidence of true value under ordinary and normal conditions. Therefore, in cases where stocks or bonds are infrequently traded or sold in small quantities it is necessary to resort to financial statements along with any other pertinent data to determine the value at date of death.

(c) Shares of mutual funds are appraised at the bid price prevailing on the date of death, and in the event there is no bid price if the date of death falls on a holiday or Saturday or Sunday, the values shall be those provided in (a) above.

(d) The market value of rare or unlisted securities is established by information furnished by brokers regularly dealing in such securities, officers of the corporations involved, or other documentary proof satisfactory to the Director.

#### 18:26-8.17 Patents, trademarks, copyrights, and other items

The valuation of a patent, trademark, copyright, license, or franchise, is a question of fact in each instance. The representative(s) of the estate has the burden of proof to show the history of the item being valued, the state of the art, or the monopoly created as of the date of death. The bookkeeping entries or original costs are not regarded as a reliable gauge of value. In most cases, the date of death value is primarily based upon the probable earnings such items will bring their owner(s).

#### 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 lifetime, then the valuation date so approved will control the value of his or her 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 death.

3. If the donor dies five days or less prior to a valuation date, then the valuation date shall be the one next following the valuation date immediately after death.

4. If the donor dies one or more days subsequent to a valuation date, but more than five days prior to the next valuation date, the valuation date shall be the one following the date of death.

#### 18:26-8.19 Contingent or defeasible estates

(a) When an instrument creates an executory devise, or an estate in expectancy of any kind or character that is contingent or defeasible, the property which is the subject of such devise or in which such contingent or defeasible interest is created is appraised immediately at its clear market value. The value of the estate for life or term of years is then deducted from the appraised value of the property which is the subject of devise or limitation and the tax on such balance of the estate will not be levied or assessed until the person or corporation entitled thereto comes into the beneficial enjoyment, seizing, or possession thereof.

(b) Where the provisions of an inter vivos trust or decedent's last will and testament create a right in the beneficiary to request that a limited sum be paid to him or her annually and no right exists in the beneficiary to terminate the trust, the interest of said beneficiary will be construed as contingent in character for transfer inheritance tax purposes.

(c) Where a number of years have elapsed between the date of death and the date of initial assessment, the Branch will inquire as to the amounts and dates of any payments to, or withdrawals by the beneficiary. If such payments or withdrawals have been made a contingent assessment, based upon the amount of corpus paid less any vested life estate value or discounted value will be completed.

(d) To secure contingent taxes, the bond of a New Jersey bank as principal or as one of the principals and as surety will be accepted, provided such bond meets the requirements of form and content of the approved Form of Bond, Form O-54. In the case of a foreign fiduciary, however, a bond issued by a surety company licensed to operate in New Jersey as surety must be filed.

#### 18:26-8.20 Estates for life, estates for a term of years, and annuities

Life estates, estates for a term of years, and annuities are valued using an interest rate assumption of six percent and the mortality data for persons of the relevant gender set forth in the tables of mortality contained in the United States Decennial Life Tables (Life Table for Males: United States and Life Table for Females: United States) most recently published by the United States Department of Health and Human Services as of the date of the decedent's death. This valuation methodology applies even in cases in which a holder of a life estate, estate for a term of years, or annuity survives the decedent by only a short period.

#### 18:26-8.21 Vested remainders after estate for life, estate for a term of years, or annuity

When a vested remainder interest in any property subject to the New Jersey transfer inheritance tax is bequeathed, devised, conveyed, granted, sold, or given subject to one or more life estates, estates for a term of years, or annuities, such vested remainder is valued by first ascertaining the clear market value of the whole property and then deducting the value of each such life estate, estate for a term of years, or annuity as determined in accordance with the provisions of N.J.A.C. 18:26-8.20.

#### 18:26-8.22 Estates subject to power of appointment

When an instrument creates a power of appointment, the life estate or estate for years, to which such power is subject, is immediately appraised and taxed according to the provisions of N.J.A.C. 18:26-8.22; however, the appraisal and taxation of the remainder interest is suspended until the exercise of the power, at which time it is taxed at the clear market value as of the date of death of the creator of the power.

#### 18:26-8.23 Certificates of deposit, savings certificates, and special savings accounts

Certificates of deposit, savings certificates, special savings accounts, and other accounts with banking institutions that provide for a penalty for premature withdrawal are to be reported at face value at the death of the decedent, plus interest that may have been credited up to the date of death, unless it is necessary to redeem any or all of the items so described in order to pay the debts of the estate, to carry out the provisions of the will, to effect distribution of the estate under the

intestate law, or for the payment of taxes. In those cases, the actual amount received on redemption is reportable for taxation.

#### SUBCHAPTER 9. RETURNS, PAYMENT, AND PENALTIES

##### 18:26-9.1 Date return due

(a) All New Jersey transfer inheritance tax returns must be filed, together with payment of the reported tax, within eight months following the death of the decedent. Failure of the personal representative, heir-at-law or next-of-kin, surviving joint tenant, trustee, or transferee to file a return within the time prescribed subjects such party responsible for such filing to the penalties provided in N.J.S.A. 54:35-3.

(b) The Director may grant an extension of time during which the return may be filed. An estate representative may request an extension of time to file the New Jersey transfer inheritance tax return by filing Form IT-EXT (Application for Extension of Time to File a Return). An extension may be requested for a period of four months beyond the original due date. If it is not possible to file the return within the four month extension period, the estate representative may request an additional two month extension, or a total of six months. Extension beyond six months from the original due date of the return will be granted only in cases where the Director determines that exceptional circumstances exist.

1. This subsection provides the authority only for an extension of time to file the New Jersey transfer inheritance tax return, and does not extend the time to pay the tax due. The tax liability arises as of the decedent's date of death and must be paid in full within eight months.

##### 18:26-9.2 By whom filed

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

1. The personal representative of the estate;
2. Any beneficiary entitled to share in the estate where letters testamentary or of general administration are not applied for or not required;
3. A surviving joint tenant where the decedent dies intestate and his or her entire estate passes to a surviving joint tenant by operation of law; or
4. The director of any county welfare board in cases where no executor or administrator has been appointed and an heir-at-law or next-of-kin is not available, or is unwilling to execute such returns, provided that such return is accompanied by a copy of the report of the board upon which the decision to grant assistance was based, and a copy of any document signed by the applicant (decedent) for assistance.

##### 18:26-9.3 Form of returns

Returns are required to be made on Forms IT-R (Resident) and IT-NR (Non-Resident) approved by the Director. These forms may be obtained by writing to the Transfer Inheritance Tax Branch, PO Box 249, Trenton, NJ 08695-0249, or obtained electronically via the Division of Taxation website at [www.nj.gov/treasury/taxation](http://www.nj.gov/treasury/taxation).

##### 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 date of death, and any relevant document outlined in the instructions of the appropriate form:

1. Form IT-R (Resident): Must be used in all resident estates;
2. Form L-4: Preliminary affidavit to be used in making application for consents to transfer prior to completion of the original return. The Branch in every case will retain control over a sufficient portion of the liquid assets (those assets that are readily converted to cash) to assure collection of the tax and filing of necessary returns. Payment on account may be taken into consideration but will not guarantee the issuance of consents to transfer. In no case will waivers be released unless payment is made by guaranteed funds;
3. Form L-8: Self-executing waiver for use in permitting a transfer of assets to a Class "A" beneficiary;

4. Form L-9: Application by the representative of the estate of a resident decedent for issuance of a waiver permitting a transfer of real property to a Class "A" beneficiary; or

5. Form L-10: Affidavit and self-executing waiver of County Welfare Director.

##### 18:26-9.5 Nonresident returns

(a) In the case of a nonresident decedent, a return must be filed on one of the following forms and be accompanied by payment of tax, a certified copy of the decedent's will, if such decedent died testate, and any relevant document outlined in the instructions of the appropriate form:

1. Form IT-NR (Non-resident): Must be used in all nonresident estates; or

2. Form L-9NR: Application by the representative of the estate of a nonresident decedent for issuance of a waiver permitting a transfer of real property to a Class "A" beneficiary.

##### 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 in detail 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. In the case of an intestate decedent, the administrator duly appointed, or beneficiary entitled to share in the estate under the intestate laws or any duly authorized attorney for the foregoing persons;
2. In the case of a testate decedent, those persons entitled to share under a probated will or the executor, or any duly authorized attorney for the aforementioned persons; or
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 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 for payment of shall be made payable to the "Treasurer, State of New Jersey."

##### 18:26-9.8 Payment

(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 devises, contingent future estates, estates 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 possession of such property.

##### 18:26-9.9 How tax is payable

(a) Full payment of the tax and interest, if any, must be submitted together with the return directly to the Transfer Inheritance Tax Branch, PO Box 249, Trenton, NJ 08695-0249.

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

(c) Payment on account of any transfer inheritance tax to be assessed may be made in advance of the actual assessment. Any payment on account will also be accepted to cover any compounded, contingent, or compromise assessment.

#### 18:26-9.10 Persons responsible

Any administrator, executor, trustee to the extent of any estate funds in his or her possession, grantee, donee, cestui que trust, 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 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.

#### 18:26-9.11 Liability for nonpayment

The tax on a gift in contemplation of death, or to take effect in possession or enjoyment at or after death, if not paid by the donee must be paid by the executor or administrator to the extent of the assets within such fiduciary's possession or control.

#### 18:26-9.12 Late payment; general provisions

(a) Any payment of the New Jersey transfer inheritance tax after the expiration of the corresponding day of the eighth month following the date on which it became due and payable will bear interest at the rate of 10 percent per annum on any unpaid portion of the tax, from the expiration of eight months after the date on which it became due and payable until the date of actual payment. See N.J.A.C. 18:2-4 for general rules regarding timely filing and remittance.

(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) In cases where a decedent dies while a member of the Armed Forces of the United States, the tax due begins to bear interest at the rate of 10 percent per annum on any unpaid balance due after the expiration of eight months after receipt of official notification of the death of the decedent by the spouse/civil union partner, parent, or next of kin of such decedent.

(d) Any person liable for the payment of the tax, may, in order to avoid a penalty, estimate and pay the tax believed to be owing prior to actual receipt of a tax bill. In the event of any overpayment of the tax, a refund will be made. In the event of an underpayment, interest will be charged on the balance due.

(e) Tax on any sum recovered as compensation for the death of a person caused by a wrongful act, neglect, or default not paid within 30 days of the receipt of the award or settlement will bear interest at the rate of 10 percent per annum from the expiration of eight months after the date of the award determination to the date of actual payment subject to the exceptions in (a) above.

(f) For returns due on or after July 1, 1993, 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 the written advice.

#### 18:26-9.13 Payment on executory devise or transfer subject to a contingency or power of appointment

(a) With respect to the payment of the tax due on an executory devise, or a transfer subject to a contingency or power of appointment, any payment on such a transfer after the expiration of two months from the date the contingency occurs or the property vests, will bear interest at the rate of 10 percent per annum from the expiration of the two-month period, until the date of actual payment.

(b) In any case where a contingent remainder vests in beneficial possession and enjoyment subsequent to the death of the original

decedent, but prior to the expiration of the statutory interest period, interest on the contingent tax does not start to accrue until eight months from the date of death of the original decedent.

#### 18:26-9.14 Bond for failure to pay tax

(a) Where an executor, administrator, grantee, donee, buyer, beneficiary, or trustee fails to pay the tax due within eight months from the date of a decedent's death, such person is required to give a bond, on a form approved by the Director, to the State of New Jersey in double the amount of the tax to secure payment of any tax and interest which may become due.

(b) In the case of tax due on any sum recovered as compensation for the death of a person caused by a wrongful act, neglect, or default, the bond is required within eight months of the date of the award determination if the tax is not paid within 30 days of the receipt of the award or settlement.

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

(a) The Director may enter into an agreement with the executor(s) or trustee(s) of an estate for the purpose of compounding the tax due upon such terms as are deemed equitable and expedient, where:

1. An estate is so created that the remainders or expectant estates are of such a nature or are so disposed or circumstanced that the taxes thereon are held not to be presently payable; or

2. The interests of legatees or devisees are not ascertainable at the death of the testator, grantor, donor, or seller.

(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 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 trust 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 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

#### 18:26-10.1 Levy of tax; resident and nonresident decedents

Resident and nonresident decedents' returns must be filed together with full payment of the tax and interest, if any, directly with the Transfer Inheritance Tax Branch, PO Box 249, Trenton, NJ 08695-0249. Upon filing of a return and payment of the tax, the Branch will issue a notice of assessment showing the amount of tax due, the amount paid, and whether interest is due or a refund is to be issued (see N.J.A.C. 18:26-8.6, 9.4, 9.9, and 9.10).

#### 18:26-10.2 Lien of tax; duration

(a) The New Jersey transfer inheritance tax whether or not assessed or levied constitutes a lien on all the property owned by the decedent as of the date of death for a period of 15 years unless sooner paid or secured by a bond.

(b) After a period of 15 years from the date of a decedent's death has expired no proceeding may be instituted to assess and collect the New Jersey transfer inheritance tax or any interest or penalties due thereon. No notice or consent to transfer is required for the transfer of any real or personal property and no personal liability remains on any executor, administrator, trustee, grantee, donee, buyer, devisee, legatee, heir, next of kin, or beneficiary; however, this does not affect any right of the State under any certificate of debt, decree, or judgment for taxes, interest, and penalties duly recorded with the clerk of the Superior Court, or with any county clerk, or to assess and enforce the collection of any tax including any interest and penalties pursuant to the terms of any bond or other agreement securing the payment of the tax, interest, and penalties.

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

(a) An executor, administrator, or trustee having charge or holding in trust any property subject to the New Jersey transfer inheritance tax for distribution is to deduct from such property the transfer inheritance tax assessed and levied on the transfer prior to distribution to the transferee. In the event the property to be transferred is not money, however, the executor, administrator, or trustee is to collect the transfer inheritance tax assessed and levied from the person entitled to the property prior to delivering such property to the transferee, and unless such tax is collected, the executor, administrator, or trustee may not deliver or be compelled to deliver any property to a transferee.

(b) In the case of a legacy charged upon or payable out of real property, the heir or devisee is to deduct the transfer inheritance tax from the legacy and pay such tax over to the executor, administrator, or trustee who may enforce the payment of such tax in the same manner as the payment of such legacy may be enforced.

(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 believes the same to be necessary, apply to the court having jurisdiction of his or her accounts to make an apportionment of the sum to be paid him or her by the legatee for the tax.

(d) An executor, administrator, or trustee may, if necessary, sell so much of the property of a decedent as is necessary to pay the New Jersey transfer inheritance tax due on the transfer of such property.

## 18:26-10.4 Payment of tax collected; receipt

An executor, administrator, or trustee who has retained or received the amount due for transfer inheritance tax on the transfer of property is required to pay the Director within 30 days, and may, upon written request, receive a receipt signed by the State Treasurer and countersigned by the Director, which represents a voucher in settlement of the account of the executor, administrator, or trustee.

## 18:26-10.5 Statement of payment or exemption

When the tax and interest chargeable has been paid in full or secured by bond, or when an estate is determined by the Director to be exempt from any transfer inheritance tax of this State, a statement of such fact, signed by the Director and including a description of any real property involved, is issued to the executor, administrator, or other representative of the estate who may record such statement in the office of the county clerk of the county wherein the real property if any is situated.

## 18:26-10.6 Proceedings to compel payment of taxes; collection cost fees

(a) In the event the New Jersey transfer inheritance tax that has accrued is not paid within the time provided by law, the Director shall notify the Attorney General of this State who will institute an action to compel the payment of such tax in the name of the Director in the Superior Court or Tax Court of this State and any judgment cited in such action will have the same effect as other judgments entered in the Superior Court, so as to constitute a lien which may be executed on any property of a decedent.

(b) In the event the New Jersey transfer inheritance tax is not paid within the time prescribed by law, fees for the cost of collection shall be imposed as allowed pursuant to N.J.S.A. 54:49-12.1. Such fees shall be in addition to any interest or penalty, or both, otherwise provided by law.

## 18:26-10.7 Refund for erroneous overpayment

In any case where there has been an overpayment in error of the New Jersey transfer inheritance tax, an application for a refund may be made in the manner provided in N.J.A.C. 18:26-10.12 to the Director, who upon satisfactory proof of such erroneous payment, will authorize disbursement of a refund payment.

## 18:26-10.8 Overpayment of account

In any case where the amount paid on account for the New Jersey transfer inheritance tax exceeds the amount of such tax due after final assessment has been made, the amount so overpaid will be refunded by the State Treasurer in the due course of business, provided, however,

that all applications for a full or partial refund of the payment of the New Jersey transfer inheritance tax must be made within three years from the date of such payment, or from the date of the final determination of a court of competent jurisdiction, which establishes the fact that the decedent had no legal or equitable interest in the property on which the tax was assessed and erroneously paid, whichever is later; and provided, however, that no refund shall be made where such final determination occurs more than 20 years after the date of death of the decedent.

## 18:26-10.9 Refund when debt proved after legacy or distributive share paid

In any case where a debt against the estate of a decedent is proved after a legacy has been paid or property has been distributed from which legacy or property the New Jersey transfer inheritance tax has been deducted or paid, the legatee, devisee, heir, beneficiary, or next of kin may make an application for a refund to pay such debt to the executor, administrator, or trustee, who is required to refund a proportion of the tax where the same has not been paid to the Director or make application for a refund to the Director in the manner provided in N.J.A.C. 18:26-10.12 and upon receipt of such refund, repay the legatee, devisee, heir, beneficiary, or next of kin the proportion of the tax overpaid.

## 18:26-10.10 Time and manner of making application for refund

(a) All applications for a refund are to be made within three years from the date of payment or from the date of any final determination of a court of competent jurisdiction that establishes the fact that the decedent had no legal or equitable interest in the property on which the tax was assessed, whichever is later, but in no event shall a refund be made where such final determination occurs more than 20 years after the date of decedent's death.

(b) Such application is to be made by means of an affidavit, setting forth in detail all of the facts upon which the claim for refund is based, including a copy of a Court Order, if a court of competent jurisdiction has made a final determination upon which the refund is based, signed by the executor, administrator, trustee, heir-at-law, or surviving joint tenant and filed directly with the Transfer Inheritance Tax Branch, PO Box 249, Trenton, NJ 08695-0249.

(c) The date of payment is defined as the date the payment is actually received by the Division. It is not the date on which the tax return is filed, the date the Notice of Assessment is issued, or the date on which the audit is completed and/or the file closed.

(d) Protective refund claims based on reasonably anticipated events may be filed within the time periods set forth in (a) above.

1. The refund claim must be made on the Transfer Inheritance and Estate Tax Protective Claim for Refund form. The form must be fully completed and set forth the estimated refund amount and the basis for the claim.

2. The Director must be notified in writing of the actual refund claimed within 90 days after occurrence of the anticipated event.

3. For the purpose of determining the interest, if any, payable on a protective refund claim, the refund claim is deemed to have been made on the date that the Director is notified of the occurrence of the anticipated event.

## 18:26-10.11 Interest on refunds

If the Transfer Inheritance Tax Branch takes more than six months to pay a valid refund after a refund application or written request is received by the Director, taxpayers have the right to receive interest on the refund. If interest must be paid, it will be calculated to accrue from the date of filing of a refund claim to the date the tax is paid in accordance with N.J.A.C. 18:26-8.6, or the due date of the return, whichever is later. Interest will be paid at a rate determined by the Director to be equal to the prime rate, determined for each month or fraction thereof, compounded annually at the end of each calendar year, from the date that such interest commences to accrue to the date of the refund. No interest will be paid on an overpayment of less than one dollar (\$1.00), or on an overpayment refunded within six months after the last date prescribed or permitted by extension of time for filing the return, or within six months after the return is filed, whichever is later. No interest will be paid on an overpayment unless the taxpayer files a claim for refund.

## 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 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 organized under the laws of New Jersey; national bank operating in this State; building and loan or savings and loan associations engaged in New Jersey; or credit unions chartered by the United States operating in this State; 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 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 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 organized under the laws of New Jersey; national bank operating in this State; building and loan or savings and loan associations engaged in New Jersey; or credit unions chartered by the United States operating in this State. 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. Place of residence and voting;
- ii. Social and business affiliations;
- iii. Jurisdictions where the last five income tax returns were filed prior to death;
- iv. Date of commencement and length of actual residence in place claimed as legal domicile;
- 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.

2. If the party in possession or control of the property determines from the proofs submitted that 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, 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\*[, as defined in N.J.A.C. 18:26-1.1]\*, in the estate of New Jersey domiciled decedent. In order to satisfy a corporation or its transfer agent, including any banking institution, trust company organized under the laws of New Jersey, national bank operating in this State, building and loan or savings and loan association in New Jersey, or credit union chartered by the United States operating in this State that intangible assets may be released to the Class "A" transferee, an Affidavit of Waiver (Form L-8) can be executed by the Class "A" transferee or the personal representative of the decedent's estate.

1. If two or more executors or administrators qualify, the affidavit may be executed by one of them.

2. The Class "A" transferee can execute a Form L-8 in all cases where under the terms of the account or instrument and applicable State law the Class "A" transferee has the right of survivorship or is the named beneficiary. Letters testamentary or of administration are not required to be attached as part of the affidavit when executed by the Class "A" transferee, except as provided in (c)3 below.

3. Where the Class "A" transferee has qualified as executor or administrator of the decedent's estate, intangible assets that pass to the Class "A" transferee under a will or law of intestate distribution may be

released by the affidavit together with assets described in (c)2 above, provided that the Class "A" transferee's letters testamentary or of administration are attached and made a part of the Form L-8 as provided in (c)1 above. Where the Class "A" transferee has not qualified as an executor or administrator of the decedent's estate, only intangible assets may be released by the Form L-8 in accordance with (c)2 above.

4. A separate Form L-8 is required for each institution, organization, or corporation releasing assets to a Class "A" transferee.

5. The Form L-8 of waiver by the Class "A" transferee cannot be used for the following:

- i. Real property;
- ii. Tangible personal property transfers from a decedent to a Class "A" transferee;
- iii. Where a disclaimer has been filed; \*or\*
- iv. For transfers through a third party, such as a testamentary trust\*[, or]\*\*.\*

\*[v. Other circumstances determined by the Director or not specifically allowed in N.J.A.C. 18:26-11 or by statute.]\*

(d) Estate tax waivers are required if the decedent died after December 31, 2001. Estate tax waivers are not required if a decedent died on or prior to December 31, 2001.

(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.

## 18:26-11.2 Executors and trustees to pay tax

An executor, administrator, or trustee is not permitted to turn over any property subject to an executory devise, an estate in expectancy of any kind or character that is contingent or defeasible, or a power of appointment unless the New Jersey transfer inheritance tax and the New Jersey estate tax including any interest due has been first paid to the Director. Any executor, administrator, or trustee who transfers such property prior to having paid the tax and interest chargeable, if any, are personally liable for such payment. See N.J.S.A. 54:35-2.

## 18:26-11.3 Consent to transfer not issued

(a) Before the Director issues any transfer inheritance tax consent to transfer the assets of a person dying domiciled in this State, it is required that proof be submitted showing that the will of such decedent was originally probated in New Jersey or that letters of administration were originally granted in this State. If it appears that original probate or original administration was had in a foreign jurisdiction, all consents to transfer the decedent's assets will be withheld and a report will be made to the county court of the county in which a decedent died domiciled or to the Superior Court until an order is issued from the court.

(b) The provisions of (a) above shall not apply in cases where it appears to the Director that neither the probate of a decedent's will nor the grant of letters of administration are required by the laws of this State. In any case, however, the Director may issue any and all transfer inheritance tax consents to transfer the assets of a decedent where in his or her 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 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 N.J.A.C. 18:26-11.1, which the decedent owned or in which he or she had an interest at the date of death.

(c) Transfer inheritance tax waivers are necessary to transfer any real property located in New Jersey belonging to a nonresident decedent. Such waivers are issued after the nonresident decedent return is filed

with the Transfer Inheritance Tax Branch and the tax, if any, is adjusted and paid.

#### 18:26-11.5 Leasehold interest

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

#### 18:26-11.6 Mortgage participation certificates

In order to effect the transfer of any mortgage participation certificates registered in the name of a decedent or which belong to a decedent even though held in the name of another, it is necessary to obtain a waiver.

#### 18:26-11.7 Share of a deceased beneficiary

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

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

(a) Funds of a decedent on deposit in a checking account in any bank may be transferred to an interest bearing account in the same bank in the name of the decedent or the decedent's estate without obtaining a waiver.

(b) Funds of a decedent on deposit in an Individual Retirement Account (IRA) and/or Keogh retirement plan account may be transferred to another account in the same bank without obtaining a waiver.

(c) Any certificate of deposit or any type of a preferred account containing funds of a decedent may be transferred to another account in the same bank without obtaining a waiver.

(d) The transfers permitted in (a), (b), and (c) above are subject to the requirement that the banking institution promptly file a notice with the Transfer Inheritance Tax Branch, PO Box 249, Trenton, NJ 08695-0249, containing the following information:

1. Decedent's name;
2. Date of death and domicile;
3. Name and address of executor or administrator of estate; and
4. The account number or certificate number sought to be transferred and the balance on deposit or the maturity value as of the date of death.

(e) 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 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 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 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 is not required for the transfer of real or personal property, tangible or intangible, owned by a bona fide partnership in which a decedent had an interest.

#### 18:26-11.12 Transfer of assets held by nonresident custodian

A waiver is not required in order to transfer any assets held by a nonresident custodian on behalf of a resident or nonresident decedent.

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

(a) A waiver is not required in order to transfer all other tangible or intangible personal property, including, but not limited to:

1. Wages;
2. Salaries;
3. Vacation and sick leave pay;
4. Payment under pension, profit sharing, bonus plans, or stock purchase plans;
5. All automobiles;
6. Mortgages;
7. Accounts receivable;
8. Household goods;
9. Personal effects;
10. Funds held in an account in the name of a funeral director in trust for a decedent in accordance with the provisions of N.J.S.A. 2A:102-13; and

11. Funds to a decedent's credit in a Credit Union plan organized under N.J.S.A. 17:13-26 et seq., in addition to any matching sums paid under any type of Credit Union plan in the form of a life insurance where said matching sum is directed to be paid to a decedent's estate or the estate's executor or administrator. However, funds held under the Federal Credit Union Act must be reported and a waiver obtained.

(b) Any property, the transfer of which is not subject to first obtaining a waiver, must, nevertheless, be reported on a decedent's return.

(c) Transfer of real property or personal property, whether tangible or intangible, held by revocable and irrevocable trusts may be taxable pursuant to N.J.S.A. 54:34-1.c either as transfers intended to take effect at or after death or as transfers made in contemplation of death. Waivers are not issued for these transfers, but property must be properly reported in accordance with (b) above.

#### 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. 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 of the decedent is the applicant, and the applicant furnishes a bank, savings institution, or a savings and loan association 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 may release the funds on deposit to the credit of a resident decedent without the written consent of the Director upon the applicant executing Form O-80.

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

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

(c) The provisions of this section do not apply and therefore, except as provided under the blanket waiver (see N.J.A.C. 18:25-11.16) a bank,

savings institution, or savings and loan association is prohibited from releasing any funds of a resident decedent where:

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

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

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

#### 18:26-11.16 Blanket waiver

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

1. An executor;
2. Administrator;
3. Legal representative of the decedent;
4. Surviving joint tenant;
5. Cestui que trust; or

6. The estate of a minor where title to said funds are held in the name of a custodian for said minor, without the written consent of the Director, upon the application of such proper party to the institution, association, organization, corporation, or person above mentioned.

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

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

1. Pay any and all checks drawn on any account owned by a decedent individually, jointly, or otherwise, when said checks are issued prior to death and presented for payment within 10 days following the decedent's date of death; except that in the event an executor, administrator, or other proper party above mentioned in this section shall apply for a release of 50 percent of the funds on deposit after 10 days from the decedent's death, the institution, association, organization, corporation, or person mentioned in this section holding the funds shall after having deducted the amount of any checks issued prior to and presented for payment within 10 days of the decedent's death, release 50 percent of the balance in a decedent's account to the proper party upon application and without the written consent of the Director;

2. Pay any checks in any amount for which there are sufficient funds held in deposit, drawn on any account owned by a decedent individually,

jointly, or otherwise, representing full or partial payment of any New Jersey transfer inheritance tax or estate tax;

3. Liquidate the loan of any decedent who has pledged the pass book representing a savings account as collateral for a loan, where upon the death of such a decedent the loan is in default and then make 50 percent of the remaining funds available under the blanket waiver.

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

(e) The Director reserves the right to direct at any time that any sum or sums not yet paid over must be withheld by the informant pending further order of the Director where that course is deemed imperative to protect the interest of the State.

#### 18:26-11.17 Funds held in a banking institution

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

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

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

#### 18:26-11.18 Funds held in bank accounts

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

(b) Double dollar accounts. Where, upon the death of a decedent having funds on deposit to his 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, 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;

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

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

#### 18:26-11.20 Release of safe deposit box contents

No safe deposit company, trust company, bank, or other institution may deliver or transfer any securities, deposits, or other assets contained in a safe deposit box within its control or possession 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.

#### 18:26-11.21 Specific waiver situations

(a) Waiver requirements for the following specific accounts are as follows:

1. Individual retirement accounts. Except as otherwise set forth in this chapter, including at N.J.A.C. 18:26-11.8, a waiver is required for the transfer of any Individual Retirement Account in which the funds are held in a financial institution that would otherwise require a waiver, as specified in N.J.A.C. 18:26-11.1(a).

2. Brokerage accounts. Except as otherwise set forth in this chapter, a waiver will be issued only for the total date of death value of a brokerage account. Blanket waiver provisions as specified in N.J.A.C. 18:26-11.16, will apply to the date of death value of said accounts. No waiver is required for the transfer or sale of any assets within the brokerage account (that is, the conversion of stocks and bonds to cash).

3. Estate accounts. Except as otherwise set forth in this chapter, including at N.J.A.C. 18:26-11.8, waivers consenting to the transfer of funds from an estate account are not required and will not be issued.

4. Qualified Tuition Program. Except as otherwise set forth in this chapter, including at N.J.A.C. 18:26-11.8, a waiver is required for the transfer of any Qualified Tuition Program, as defined by 26 U.S.C. § 529, in which the funds are held in a financial institution that would otherwise require a waiver, as specified in N.J.A.C. 18:26-11.1(a).

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

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

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

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

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

#### 18:26-11.23 Life insurance companies

(a) All corporations, associations, societies, or other organizations, incorporated or organized under the laws of this State to transact the business of providing life insurance or to grant annuities, and all corporations, associations, societies, or other organizations, incorporated or organized elsewhere and authorized by the New Jersey Commissioner of Banking and Insurance to transact the business of providing life insurance or to grant annuities within this State must give notice to the Director, at the time and in the manner and form set forth below, of all amounts payable by them as a result of the death of a resident of this State:

1. Under the terms of life insurance policies, endowment policies, and annuity contracts owned by a decedent or paid to a partnership, firm, or corporation entitled to receive payment in its own right in those instances where a decedent held an interest in the partnership, firm, or corporation at death; and

2. Under the terms of a supplementary optional settlement or similar contract issued to effectuate the distribution of benefits under life insurance policies, endowment policies, and annuity contracts except when the sums payable represent a continuation of payments under a policy or contract which provided for such payment at a prior decedent's specific direction.

(b) The written consent of the Director is not required to release any sums payable referenced in (a) above.

(c) Neither the written consent of the Director nor notice to the Director is required to release any sums payable referenced in (a) above when payment is made outright to the decedent's surviving spouse/civil union partner.

(d) Neither the written consent of the Director nor notice to the Director is required to release any sums payable under pension or retirement plans (including group annuity contracts) legally owned by an employer or a qualified trust. See N.J.A.C. 18:26-11.13(a)4.

#### 18:26-11.24 Notice

(a) The notice required by N.J.A.C. 18:26-11.23, is to be given by mailing Form O-71 to the Division of Taxation, Transfer Inheritance Tax Branch, PO Box 249, Trenton, NJ 08695-0249 as soon as practicable after the death of the decedent, but in any event not later than 10 days after any part of the sum or sums required to be reported therein have been paid and by advising each beneficiary listed on the form that information regarding death claim payments is being supplied to the State pursuant to the requirements of the Division of Taxation and that it is the position of the Division of Taxation that a beneficiary may, in the absence of State or Federal statutes to the contrary, be personally liable for any and all inheritance and/or estate taxes on such payments until paid.

(b) Completed Forms O-71 may be mailed to the Division on a monthly basis. A completed Form O-71 that is made part of a monthly mailing will be deemed to have been mailed in a timely manner provided that the monthly mailing is within one month of the date on which the form would otherwise be required to be mailed.

(c) Nothing in this section may be taken to relieve a party responsible to notify the Director of any liability imposed by statute in any instance where the party has failed to file notice as provided in this section. The Director reserves the right to direct, at any time, that any amount of tax not yet paid over shall be withheld pending further order of the Director where that action is deemed imperative to protect the interests of the State.

#### 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 fails to obtain the written consent of the Director, allow an examination or give notice as provided in this chapter is liable to pay the amount of the tax and interest due or which becomes due upon the securities, deposits, shares of stock, or other assets transferred or delivered and in addition is liable to a penalty of \$1,000, which may be enforced in an action at law in the name of the State.

(b) A safe deposit company, trust company, bank, other institution, corporation, or person is not liable for the tax and interest or penalty provided in (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

#### 18:26-12.1 General powers of Director

The Director, Division of Taxation, New Jersey Department of the Treasury, is authorized and empowered to administer the New Jersey transfer inheritance tax and estate tax laws, and make and enforce any rules and regulations deemed necessary, pursuant to N.J.S.A. 54:50-1.

18:26-12.2 Administration of transfer inheritance tax and New Jersey estate tax

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

1. No 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. An attorney at law of the State of New Jersey;
- ii. The personal representative of an estate;
- iii. An heir-at-law, next-of-kin, grantee, transferee, legatee, beneficiary, or \*[devise]\* \***devisee**\* of the decedent;
- iv. A certified public accountant of the State of New Jersey, provided such accountant is designated for such purpose, in writing, by any of the persons enumerated in (a)ii or iii above, subject to the condition that the client be notified, in writing, before the certified public accountant commences work on the return, that review of the return by a qualified attorney may be desirable because of the possible application of legal principles to the preparation of the tax return. A copy of the properly executed notification must be filed with the 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 (a)ii 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 (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 discretion, the strict adherence thereto would jeopardize the collection of any tax due or the closing of a transfer inheritance tax proceeding.

4. An IRS enrolled agent is a practitioner licensed by the United States Internal Revenue Service to represent taxpayers before that agency.

18:26-12.3 Information from Transfer Inheritance Tax Branch

(a) After a return has been filed all communications regarding the New Jersey transfer inheritance tax or estate tax are to be addressed to the Transfer Inheritance Tax Branch, PO Box 249, Trenton, NJ 08695-0249 and should state the full name of the decedent, the date of death, and the name of the county in which the decedent resided as of the date of death. See N.J.A.C. 18:26-9.7.

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

(c) No employee of the Transfer Inheritance Tax Branch is permitted to pass upon, or decide, any question involving the taxability of a transfer of any property under the terms of a decedent's will, deed of trust, annuity contract, agreement, contract, or any other instrument prior to the date of a decedent's death, nor may an employee compute any hypothetical tax on any set of facts submitted for consideration.

18:26-12.4 Examination of records

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

18:26-12.5 Hearings

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

18:26-12.6 Issuance of subpoenas

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

18:26-12.7 Compelling witness to attend

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

18:26-12.8 Notice; how given; presumption

Any notice required to be given by the Director, may be served personally or by mailing the same to the person for whom it is intended, addressed to such person at the address given in the last return or report filed by said person or if no return or report has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom it was addressed. See N.J.S.A. 54:50-6 for the required statements to be contained in assessment notices.

18:26-12.9 Review and protest

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

- 1. Whether a hearing or a review is requested;
- 2. The decedent's name, date of death, Social Security number, and county of residence;
- 3. The name, address, and telephone number of the estate representative the Branch should contact in connection with the protest;
- 4. A copy of the assessment or determination subject to the protest;
- 5. The specific amount of tax or interest under protest;
- 6. An explanation of the basis for the protest; and
- 7. The specific facts supporting the basis for the protest and a summary of evidence or documentation to be presented in support of the estate's position.

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

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

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

- i. The taxpayer's record of compliance;
- ii. The estate's financial condition; and
- iii. Any other information that the Director reasonably believes to be relevant to this determination.

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

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

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

#### 18:26-12.10 Informal hearing

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

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

(c) An estate representative shall be provided, before or during a conference, an explanation of the audit process and the estate's rights

under the audit process in the case of a conference relating to the determination of transfer inheritance tax or estate tax, and shall be provided an explanation of the collection process and the estate's rights under the collection process in the case of a conference relating to the collection of transfer inheritance tax or estate tax.

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

(e) Any request for or grant of an informal hearing under this subsection does not toll or otherwise extend the 90-day period for protesting the Division of Taxation's assessment nor does such an informal hearing constitute a protest under N.J.A.C. 18:26-12.9.

#### 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 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 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.