

Chapter 8

NEW JERSEY TRANSFER TAX PROCEEDINGS

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§ 8.01**NEW JERSEY PROBATE****8-6****PART I: STRATEGY****§ 8.01 Scope**

This chapter covers:

- Initiating New Jersey estate tax proceedings.
- Initiating New Jersey inheritance tax proceedings.
- Obtaining tax waivers.
- Defending audits of New Jersey tax proceedings.
- Obtaining closing letters and filing waivers from New Jersey Division of Taxation.

§ 8.02 Objective and Strategy

The purpose of this chapter is to cover the steps required to be taken by the practitioner to commence transfer tax proceedings in New Jersey. The chapter provides guidance as to the preparation and filing of New Jersey estate tax and inheritance tax returns and the payment of the taxes due, as well as steps to be taken when returns are audited by the state and upon receipt of a closing letter. The chapter does not cover federal estate tax and initiation of federal estate tax proceedings.

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**PART II: INITIATING NEW JERSEY
ESTATE TAX PROCEEDINGS****§ 8.03 CHECKLIST: Initiating New Jersey Estate Tax Proceedings**

- Determine whether “clear market value” of estate exceeds \$675,000 such that New Jersey Resident Decedent Estate Tax Return (Form IT-ESTATE) must be filed.
 - Obtain appraisals for real and tangible personal property.
 - Obtain date of death values for bank and investment accounts.
 - Subtract deductions allowed in figuring “clear market value.”

Authority: NJS 54:34-5; N.J. Admin. Code §§ 18:26-3A.1, 18:26-3A.3, 18:26-3A.8.

Forms: Form ESP 8.803.01, Letter to Obtain Appraisal of Real Property

Form ESP 8.803.02, Letter to Obtain Appraisal of Tangible Personal Property

Form ESP 8.803.03, Letter to Bank Inquiring of Account Balance as of Date of Decedent’s Death

Form ESP 8.803.04, Letter to Brokerage Firm Inquiring of Account Balance as of Date of Decedent’s Death

Discussion: See § 8.04 below.

- Consider whether the simplified tax system method or Form 706 (2001) method should be selected if no federal estate tax return (Form 706 (2001)) is required to be filed.
 - If simplified method is selected, also file New Jersey Inheritance Tax Resident Return (Form IT-R).
 - Determine if New Jersey Inheritance Tax Resident Return (Form IT-R) would be required even if simplified method is not selected.

Forms: Form ESP 8.803.05, Inheritance Tax Resident Return (N.J. Official Form IT-R)

Discussion: See § 8.05 below.

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- Calendar due date for filing Form IT-ESTATE, Resident Decedent Estate Tax Return, and paying New Jersey Estate Tax.

Authority: NJS 54:38-5; N.J. Admin. Code § 18:26-3A.10.

Discussion: See § 8.08 below.

- Prepare Form IT-ESTATE, Resident Decedent Estate Tax Return, and include Form IT-R, Inheritance Tax Resident Return, if simplified tax system method is selected.
 - Attach schedules E-1, E-2, E-3.
 - Attach copy of Will and copy of decedent's income tax return for final full year.

Authority: NJS 54:38-1; N.J. Admin. Code § 18:26-3A.8(c)(2).

Forms: Form ESP 8.803.06, Resident Decedent Estate Tax Return (N.J. Official Form IT-ESTATE)

Discussion: See § 8.06 below.

- Prepare Form IT-ESTATE, Resident Decedent Estate Tax Return, and Form 706 (2001), United States Estate and Generation Skipping Transfer Tax Return, if Form 706 (2001) method is selected.
 - Attach schedule E-3.
 - Attach copy of Will and copy of decedent's income tax return for last full year.

Authority: NJS 54:38-1; N.J. Admin. Code § 18:26-3A.8(c)(1).

Forms: Form ESP 8.803.07, United States Estate and Generation Skipping Transfer Tax Return, (IRS Official Form 706 (2001))

Discussion: See § 8.07 below.

- Consider whether to request extension of time to file Form IT-ESTATE, Resident Decedent Estate Tax Return or extension of time to pay tax.
 - File Form IT-EXT, Application for Extension of Time to File

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Returns, to request extension of time to file IT-ESTATE.

- Understand that interest runs from due date of return regardless of extension.
- Consider filing Form IT-EP, Inheritance and Estate Tax Payment on Account, to pay estate tax on account to avoid interest if seeking extension of time to file Form IT-ESTATE.
- Consider requesting extension of time to pay New Jersey estate tax.

Authority: NJS 54:38-5; N.J. Admin. Code § 18:26-9.1(b).

Forms: Form ESP 8.803.08, Application for Extension of Time to File Return (N.J. Official Form IT-EXT)

Form ESP 8.803.09, Inheritance and Estate Tax Payment on Account (N.J. Official Form IT-EP)

Discussion: See § 8.09 below.

- File additional information with Director of Division of Taxation after filing Form IT-ESTATE.
 - File copy of the federal estate tax return, any amendments to that return, or correspondence sent to IRS within 30 days of filing with IRS.
 - File copy of all notices of determination of amount of federal estate tax due, any estate tax closing letters, and other correspondence received from IRS within 30 days of receipt from IRS.
 - File copies of estate tax returns filed with other states or receipts received from other states.

Authority: NJS 54:38-7; N.J. Admin. Code § 18:26-3A.8.

Discussion: See § 8.10 below.

- Remember that New Jersey estate tax liens remain on all property of decedent as of date of death until paid.

Authority: NJS 54:38-6; N.J. Admin. Code. § 18:26-3A.6.

Discussion: See § 8.11 below.

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§ 8.04 Determining Whether New Jersey Resident Decedent Estate Tax Return (Form IT-ESTATE) Is Required**[1] Determine Whether Gross Estate Exceeds \$675,000**

The New Jersey Estate Tax is a tax imposed upon the transfer of property by New Jersey resident decedents. The estate tax is imposed on the estate of every resident decedent dying after December 31, 2001 if the gross estate, as determined pursuant to the Internal Revenue Code in effect on December 31, 2001, exceeds \$675,000. N.J. Admin. Code § 18:26-3A.1. In these cases, the executor, administrator, trustee or other person or corporation liable for the estate's tax payment must prepare and file a New Jersey Resident Decedent Estate Tax Return, Form IT-ESTATE. N.J. Admin. Code § 18:26-3A.8(c). No estate tax is imposed upon the estates of nonresident decedents.

The New Jersey Estate Tax was imposed upon resident decedents dying prior to January 1, 2002 but a return was not required. The tax due was equal to the federal estate tax credit against state death tax and was collected based upon the amount set forth in the closing letter prepared by the Internal Revenue Service in connection with the federal estate tax proceeding.

● **Warning:** A New Jersey Resident Decedent Estate Tax Return must be filed if the value of the gross estate equals or exceeds \$675,000 even if no tax is due because of the availability of the unlimited marital deduction or charitable deduction. If the return is not filed, the estate will not be issued tax waivers and estate assets will remain subject to the lien of New Jersey estate tax.

[2] Calculating Value of Decedent's Gross Estate

The decedent's assets must be valued to determine if the gross estate exceeds \$675,000. If so, Form IT-ESTATE must be filed. N.J. Admin. Code § 18:26-3A.1. A calculation of the value of decedent's assets includes an appraisal of the "clear market value" of all of the decedent's real and personal property (both tangible and intangible) that is subject to the New Jersey inheritance tax on the date of decedent's death. N.J. Admin. Code §§ 18:26-8.10(a), 18:26-3A.3. Deductions are permitted and should be

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claimed on Schedule E-2 and Line 5 of Form IT-ESTATE. In determining the "clear market value" of the property the following deductions are permitted:

- Debts of the decedent owing at the date of death, except that deductions for debts of a resident decedent owing for, or secured by, property outside of New Jersey are not permitted unless: (1) the property for which the debt is owing or for which it is secured is subject to estate or inheritance tax in New Jersey; or (2) the foreign debt exceeds the value of the property securing it or for which it was contracted, in which case the excess may be deducted;
- A reasonable sum for funeral expenses and last illness;
- Ordinary administration expenses, including customary fees for executors and administrators and their attorneys;
- A proportion of the state, county and municipal taxes on the property for the current fiscal year up to the date of death; and
- Transfer or inheritance taxes paid or payable to other states, territories, the District of Columbia or foreign countries on any taxable transfer of property.

NJS 54:34-5.

⌘ Strategic Point: Federal estate taxes due or paid to the United States government will not be considered an administrative expense and will not be allowed as a deduction. NJS 54:34-5(a), (2).

Forms: Form ESP 8.803.01, Letter to Obtain Appraisal of Real Property

Form ESP 8.803.02, Letter to Obtain Appraisal of Tangible Personal Property

Form ESP 8.803.03, Letter to Bank Inquiring of Date of Death Balance

Form ESP 8.803.04, Letter to Brokerage Firm Inquiring of Date of Death Balance

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§ 8.05 Considering Whether to Use Simplified Tax System Method or Form 706 (2001) Method if No Federal Estate Tax Return Is Filed**[1] Examining Options if No Federal Estate Tax Return Is Required**

New Jersey estate tax proceedings can be filed in two different ways: either through the simplified tax system method or Form 706 (2001) method. The Form 706 (2001) method must be used if the taxpayer is required to file a Federal Estate Tax Return (Form 706 (2001)); this method is found in Column B of the Form IT-ESTATE. If the taxpayer is not required to file a Federal Form 706 (2001), then either the simplified tax system method (Column A) or Form 706 (2001) method (Column B) may be used. *See* instructions for Form IT-ESTATE.

[2] Filing of New Jersey Inheritance Tax Return if Simplified Tax System Method Is Selected

If the Simplified Tax System method is selected, a New Jersey Inheritance Tax Resident Return (Form IT-R) must be prepared and filed. That return requires reporting all transfers of \$500 or more during the three years preceding the decedent's date of death.

If the IT-R must be filed because there are non-Class A beneficiaries, (*see* § 8.14 *below*), the simplified tax system method is even more attractive. However, regulations do not mandate the use of this method if a Form IT-R is required; it remains an option to use the Form 706 (2001) method.

● **Warning:** In considering the simplified tax system method, practitioners should evaluate the consequences of the scrutiny by the Division of Taxation as to gifts made by the decedent within three years of death.

Forms: Form ESP 8.803.05, Inheritance Tax Resident Return (N.J. Official Form IT-R)

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[3] Considering Cost of Completing Form 706 (2001) Method if Federal Estate Tax Return Is Not Otherwise Required

Even if a federal estate tax return (federal Form 706 (2001)) is not required to be filed, the taxpayer may still use the Form 706 (2001) method. However, the simplified tax system method is normally more cost effective, particularly if the estate is otherwise required to file a New Jersey inheritance tax return because there are transfers to non-Class A beneficiaries (*see* § 8.14 *below*).

⊠ Strategic Point: As the applicable exemption amount increases over the next few years, fewer estates will be required to file federal estate tax returns and the use of the simplified tax system method should increase.

§ 8.06 Preparing Form IT-ESTATE Using Simplified Tax System Method

Form IT-ESTATE must be prepared and filed properly in order to avoid a lien. N.J. Admin. Code § 18:26-3A.6; NJS 54:38-6. Under the simplified tax system method, the taxpayer must complete and file Column A of Form IT-ESTATE and attach Schedules E-1, E-2 and E-3. Schedule E-1 asks the taxpayer to list all non-New Jersey real and tangible personal property; Schedule E-2 asks the taxpayer to list all allowable deductions; and Schedule E-3 asks the taxpayer to list all taxes paid to any state or territory of the United States.

In addition, the taxpayer must submit a completed Form IT-R, and also attach a copy of the decedent's Will, and a copy of decedent's last full year's federal income tax return. N.J. Admin. Code § 18:26-3A.8(c)(2). *See* instructions for Form IT-ESTATE.

Forms: Form ESP 8.803.06, Resident Decedent Estate Tax Return (N.J. Official Form IT-ESTATE)

§ 8.07 Preparing Form IT-ESTATE Using Form 706 (2001) Method

Under the Form 706 (2001) method, the taxpayer must complete and fill in Column B of Form IT-ESTATE and attach a completed Schedule E-3. Schedule E-3 asks the taxpayer to list all taxes paid to any state or territory

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of the United States. The taxpayer must also complete and submit federal estate tax return Form 706 (2001) as though decedent died on December 31, 2001. N.J. Admin. Code § 18:26-3A.8(c)(1). In addition, as with the simplified tax system Method, the taxpayer must submit a copy of the decedent's Will and a copy of decedent's federal income tax return for the last full year of decedent's life. *See* instructions for Form IT-ESTATE.

Forms: Form ESP 8.803.07, United States Estate and Generation Skipping Transfer Tax Return (IRS Official Form 706 (2001))

§ 8.08 Calendaring Due Date for Filing Form IT-ESTATE and Paying Estate Tax

The New Jersey estate tax is imposed and considered due upon the death of the decedent. However, the filing of the Form IT-ESTATE and the payment of the tax can be deferred until nine months following the date of decedent's death. Returns filed using the Form 706 (2001) method can be deferred until nine months plus 30 days following the death of the decedent. N.J. Admin. Code § 18:26-3A.10(d). The fiduciary should calendar this date. The estate of a member of the armed forces of the United States is granted a nine-month grace period from the time of official notification of the death of the decedent is received by the decedent's next of kin. NJS 54:38-5.

§ 8.09 Considering Whether to Request Extension of Time to File Form IT-ESTATE or to Pay Tax**[1] Understanding Interest is Charged on Late Payment of Estate Tax with or Without Extension of Time to File Return**

It is common for the fiduciary of an estate to need additional time to prepare the estate tax returns, particularly if there have been disputes during the estate administration process or if assets are not easily uncovered or valued. In addition, the estate may have difficulty timely paying the New Jersey estate tax due to liquidity problems. In such instances, it is advisable for the fiduciary to request an extension of time to file the Form IT-ESTATE.

If the estate tax is not paid by the expiration of the nine-month grace period, interest at a rate of 10 percent will be imposed from the due date of the return. NJS 54:38-5. However, the Director of the Division of Taxation may reduce the interest rate from 10 percent to six percent if an

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extension of time to file the federal estate tax return was granted to the estate. The reduced rate will stay in effect until the expiration of the extension or the filing of the estate tax return, whichever occurs earlier. NJS 54:38-5.

[2] Filing Form IT-EXT to Request Extension of Time to File Return

The estate representative may request an extension of time to file Form IT-ESTATE for a period of six months by completing and submitting to the Director of the Division of Taxation a Form IT-EXT, Application for Extension of Time to File a Return. 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. Generally, the extension will be up to four months beyond the original due date, but the estate representative may request an additional two months, if necessary. N.J. Admin. Code § 18:26-9.1(b). Further extensions, beyond a six-month period, will be granted at the Director's discretion if warranted by exceptional circumstances. N.J. Admin. Code § 18:26-9.1(b).

This extension is only for the filing of 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. N.J. Admin. Code § 18:26-9.1(b).

Forms: Form ESP 8.803.08, Application for Extension of Time to File Return (N.J. Official Form IT-EXT)

[3] Filing Form IT-EP to Pay Tax on Account

If the time to file the Form IT-ESTATE is extended, interest can be avoided by paying the estimated New Jersey estate tax on account. To do so the taxpayer must file Form IT-EP and pay the tax.

Forms: Form ESP 8.803.09, Inheritance and Estate Tax Payment on Account (N.J. Official Form IT-EP)

[4] Requesting Extension of Time to Pay Tax

The Director of the Division of Taxation may, in his or her discretion, for cause shown, extend the time for payment of the New Jersey estate tax for such period as the circumstances may require. However, interest will be charged at the rate of 10% per annum from the due date to the time for

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payment. N.J. Admin. Code § 18:26-3A.10. This provision may be useful if an estate is experiencing problems liquidating assets or is involved in litigation.

§ 8.10 Filing Additional Information Within 30 Days of Filing Return

If a federal estate tax return must be filed for the estate, the personal representative of the estate must file a copy of the return with the Director of the Division of Taxation within 30 days of filing with the federal government. He or she must also file a copy of any communications from the Internal Revenue Service related to changes, amendments or confirmations of the estate tax return within 30 days of their receipt. NJS 54:38-7. In addition, the personal representative must file with the Director copies of tax returns filed with other states or territories of the United States as well as any receipts of payment of succession or estate taxes. N.J. Admin. Code § 18:26-3A.8(b).

At its discretion and as necessary, the Director can require the personal representative to file other information, evidence or data related to the estate tax return. NJS 54:38-7.

§ 8.11 Advising Client that New Jersey Estate Tax Liens Remain on Property Until Paid

The administrators, executors, trustees, grantees, donees and vendees are personally liable for the New Jersey estate tax until paid. NJS 54:38-6. For estates of decedents dying on or after January 1, 2002, the estate tax also is a lien on all of the decedent's property as of the date of death and does not expire until the lien is paid. N.J. Admin. Code § 18:26-3A.6; NJS 54:38-6. The lien may remain open indefinitely if the estate tax is not fully paid. Prior to January 1, 2002, the unpaid New Jersey estate tax was not a lien on the estate.

● **Warning:** An executor or administrator of an estate must exercise caution when making distributions to beneficiaries before receiving a closing letter from the state, because the executor or administrator remains personally liable for the New Jersey estate tax, regardless of whether the assets of the estate have been distributed.

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PART III: INITIATING NEW JERSEY INHERITANCE TAX PROCEEDINGS**§ 8.12 CHECKLIST: Initiating New Jersey Inheritance Tax Proceedings**

- Obtain tax waivers to enable transfer of certain financial assets and real estate to beneficiaries prior to filing transfer tax returns.
 - File Form IT-L-8, Affidavit and Self Executing Waiver, if all transferees are Class A beneficiaries and gross estate is under \$675,000.
 - File Form IT-L-9, Affidavit of Resident Decedent Requesting Real Property Tax Waiver, if real estate is to be transferred to Class A beneficiaries and gross estate is under \$675,000.
 - File Form IT-L-4, Preliminary Report to Secure Consents to Transfer, if Form IT-R, Resident Inheritance Tax Return must subsequently be filed.

Authority: N.J. Admin. Code § 18:26-9.4.

Forms: Form ESP 8.812.01, Affidavit and Self-Executing Waiver (N.J. Official Form IT-L-8)

Form ESP 8.812.02, Affidavit of Resident Decedent Requesting Real Property Tax Waiver (N.J. Official Form IT-L-9)

Form ESP 8.812.03, Preliminary Report to Secure Consents to Transfer (N.J. Official Form IT-L-4)

Discussion: See § 8.13 below.

- Classify all transferees of decedent's estate as either Class A, C, D, or E beneficiaries
 - Treat Class A and E beneficiaries as exempt and apply inheritance tax rates for Class C and D beneficiaries.

Authority: NJS 54:34-2, 54:34-4; N.J. Admin. Code §§ 18:26-1.1, 18:26-2.6, 18:26-2.7, 18:26-2.8.

Discussion: See § 8.14 below.

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- Ascertain whether there are transfers of property subject to inheritance tax.
 - For New Jersey residents, apply inheritance tax rules to all transfers of real and tangible personal property located in New Jersey and intangible property wherever located.
 - For nonresidents, apply inheritance tax rules to all transfers of real and tangible personal property located in New Jersey.

Authority: NJS 54:34-1; N.J. Admin. Code § 18:26-5.2

Discussion: See § 8.15[2] below.

- Determine whether transfer is subject to tax.
 - Consider whether cumulative transfers to beneficiary exceed \$500.
 - Include transfers made within three years of death unless it can be demonstrated that such transfers were not made in contemplation of death.
 - Include accrued income and dividends transferred with assets.
 - Include (fully) joint tenancy property passing to surviving joint tenant unless surviving joint tenant is able to trace ownership of property back to himself or herself.
 - Exclude joint property passing by tenancy by entireties.
 - Include property passing pursuant to power of appointment exercised by decedent.
 - Include life insurance proceeds payable to estate or executor but exclude proceeds payable to named beneficiary.
 - Include pensions and retirement plans except those for which the surviving spouse is designated beneficiary.

Authority: NJS 54:34-1, 54:34-3, 54:34.4; N.J. Admin. Code §§ 18:26-5 *et seq.*; *Estate of Berg v. Dir., Div. of Tax.*, 17 N.J. Tax 256 (Tax Ct. 1998).

Discussion: See § 8.15 below.

- Prepare New Jersey Inheritance Tax Resident Return (Form IT-R)

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for resident decedent where transfers occurred to non-Class A beneficiaries.

- Determine clear market value of all included transfers.
- Deduct debts, administration expenses, funeral expenses, and certain taxes.
- Calculate value of split interests, for example, life estates, term of years, remainder interests, transferred to non-Class A beneficiaries.
- Include required information on each non-Class A beneficiary.
- Consider requesting compromise of tax where definite determination of tax is not possible due to contingency of transfer.

Authority: NJS 54:34-5; N.J. Admin. Code §§ 18:26-2.3, 18:26-2.14, 18:26-7.12, 18:26-8.22, 18:26-8.23; *In re Estate of Romnes*, 79 N.J. 139 (N.J. 1979); *Carlin v. Dir., Div. of Tax.*, 19 N.J. Tax 545, 2001 N.J. Tax LEXIS 23 (Tax Ct. 2001).

Forms: Form ESP 8.803.05, Inheritance Tax Resident Return (N.J. Official Form IT-R)

Form ESP 8.812.04, Affidavit of Executor Regarding Approval of Compromise Tax

Discussion: See § 8.16 below.

- Prepare Form IT-NR, New Jersey Nonresident Decedent Inheritance Tax Return, or Flat Tax Affidavit for nonresident decedent if transfers of real or tangible personal property located in New Jersey are made to non-Class A beneficiaries.

Authority: N.J. Admin. Code §§ 18:26-2.3, 26-9.5.

Forms: Form ESP 8.812.05, Nonresident Decedent Inheritance Tax Return (N.J. Official Form IT-NR)

Discussion: See § 8.17 below.

- File inheritance tax returns and pay tax within eight months of date of death.
 - Consider filing Form IT-EXT, Application for Extension of Time to File Return, to request extension of time to file Forms

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IT-R or IT-NR.

- Understand that interest accrues on unpaid tax regardless of extension.
- If requesting extension, consider paying tax on account by filing Form IT-EP, Inheritance and Estate Tax Payment on Account.

Authority: NJS 54:35-3; N.J. Admin. Code §§ 18:26-9.1, 26-9.9.

Forms: Form ESP 8.803.08, Application for Extension of Time to File Return (N.J. Official Form IT-EXT)

Form ESP 8.803.09, Inheritance and Estate Tax Payment on Account (N.J. Official Form IT-EP)

Discussion: See §§ 8.18, 8.19 *below*.

- Understand that New Jersey inheritance tax lien remains for 15 years following death of transferor.

Authority: NJS 54:35-5; N.J. Admin. Code § 18:26-8.8.

Discussion: See § 8.20 *below*.

§ 8.13 Obtaining Waivers Prior to Filing Transfer Tax Returns

[1] Determining if Waiver Is Required

Certain assets, such as stocks and bonds in the name of a resident decedent, may not be transferred to a beneficiary by a New Jersey financial institution or New Jersey licensed corporation without a waiver (written consent) by the Division of Taxation. Likewise, real property in the State of New Jersey belonging to a resident or nonresident decedent may not be transferred to a beneficiary without a waiver.

Forms IT-L-8, Affidavit and Self Executing Waiver, IT-L-9, Affidavit of Resident Decedent Requesting Real Property Tax Waiver, and IT-L-4, Preliminary Report to Secure Consents to Transfer, are applications for different kinds of waivers. If waivers are required, the appropriate form must be filed prior to filing the transfer tax returns. For decedents dying after December 31, 2001, Forms IT-L-8 and IT-L-9 may be used only if the decedent's gross estate, plus adjusted taxable gifts for federal estate tax

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purposes under the Internal Revenue Code in effect on December 31, 2001, does not exceed \$675,000. N.J. Admin. Code § 18:26-9.4(a).

[2] Preparing Form IT-L-8 for Transfer to Class A Beneficiaries

Form IT-L-8, Affidavit and Self-Executing Waiver, is a self-executing waiver that permits the transfer of assets to a Class A beneficiary. It may be filed only if the estate beneficiary is a Class A beneficiary. N.J. Admin. Code § 18:26-9.4(3). Use of this form may eliminate the need to file a formal inheritance tax return if no assets pass to a beneficiary outside of Class A. N.J. Admin. Code § 18:26-9.4(3). For a definition of Class A beneficiaries, *see* § 8.14 *below*.

The form is comprised of an affidavit and self-executing waiver and must be filed with the financial institution, not the New Jersey Division of Taxation. The financial institution will then be authorized to release the asset without the necessity of receiving a waiver from the New Jersey Division of Taxation.

Forms: Form ESP 8.812.01, Affidavit and Self-Executing Waiver (N.J. Official Form IT-L-8)

[3] Preparing Form IT-L-9 if Real Property Is Transferred to Class A Beneficiaries and No Estate Tax Return Is Required

A Form IT-L-9, Affidavit of Resident Decedent Requesting Real Property Tax Waiver, is an affidavit executed by the executor or administrator of a resident decedent's estate requesting the issuance of a tax waiver for real property located within the State of New Jersey. This form may be used only if all of the beneficiaries are Class A beneficiaries and no New Jersey estate tax returns are required to be filed. N.J. Admin. Code § 18:26-9.4(4). The form must be filed with the New Jersey Division of Taxation, which will issue the waiver. If a resident decedent's gross estate is valued in excess of \$675,000, Form IT-L-9 cannot be used because the estate must file a New Jersey Resident Decedent Estate Tax Return, Form IT-ESTATE.

The executor or administrator is required to file the following along with the Form IT-L-9:

- Copy of decedent's Will, codicils and trust agreements;
- Copy of last full year's federal income tax return including Schedules A, B and D;
- Copy of letters testamentary or letters of administration; and

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- If there is a surviving domestic partner, copy of the stamped Certificate of Domestic Partnership issued by the local registrar bearing the seal of the state of New Jersey. *See* § 11.26 *et seq.* *below.*

Forms: Form ESP 8.812.02, Affidavit of Resident Decedent Requesting Real Property Tax Waiver (N.J. Official Form IT-L-9)

[4] Preparing Form IT-L-4 if Estate Is Required to File Form IT-R

A Form IT-L-4, Preliminary Report to Secure Consents to Transfer, must be filed with the Division of Taxation if the representative of the estate applies for consent to transfer property before filing the detailed Inheritance Tax Resident Return (Form IT-R). N.J. Admin. Code § 18:26-9.4(2).

If Form IT-L-4 is filed, the Division of Taxation will retain control over some portion of the assets to ensure that the tax is collected. N.J. Admin. Code § 18:26-9.4(2). The Division of Taxation will consent to transfer only a portion of personal property and will look to real property as a security for the tax, unless a bank, trust company, or similar institution has been named executor and guarantees the payment of the tax in writing. N.J. Admin. Code § 18:26-9.4(2).

Forms: Form ESP 8.812.03, Preliminary Report to Secure Consents to Transfer (N.J. Official Form IT-L-4)

§ 8.14 Classifying All Transferees of Decedent's Estate**[1] Applying Inheritance Tax Based on Classification of Transferees**

New Jersey inheritance tax is imposed upon transfers based upon the relationship of the beneficiary to the decedent and the amount of the property transferred to the beneficiary. There are four classes of transferees for purposes of computing the inheritance tax: Classes A, C, D, and E.

☒ Strategic Point: Whenever a New Jersey resident or nonresident owning real property in New Jersey dies, it is important to categorize the transferees of the decedent's assets to ascertain whether it will be necessary to file a New Jersey Inheritance Tax Return.

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[2] Identifying Class A Transferees and Understanding Their Exempt Status

A Class A transferee (beneficiary) is defined as follows:

- A decedent's father, mother, grandparent, grandchildren, husband or wife or domestic partner;
- A decedent's children, including any stepchild or child adopted by a decedent in conformity with New Jersey laws, or the laws of any of the United States or of a foreign country;
- The issue of any of decedent's children or legally adopted children; or
- Any child to whom the decedent (for not less than 10 years prior to the asset transfer) acted as the mutually acknowledged parent at or before the child's 15th birthday and thereafter for a continuous 10 years, even if the decedent never legally adopted the child.

N.J. Admin. Code § 18:26-1.1.

Transfers to Class A transferees are exempt from New Jersey inheritance tax. NJS 54:34-2; N.J. Admin. Code § 18:26-1.1.

In order to establish that the decedent was a mutually acknowledged parent, the mutually acknowledged child must establish the following:

- The date and age the child was first taken into the household and a mutually acknowledged child relationship began;
- The period of time the relationship continued, with the dates specified;
- A complete statement of circumstances whereby the child was taken into the household;
- The source and cost of the child's support;
- The child's parentage indicating whether the parents are alive and their address or, if deceased, the dates of death and their legal domicile at death;
- The person who was established as the parent of the child when the child registered at school; signed the child's report cards and similar documents; and claimed the child as a dependent for federal income tax purposes (and the relationship claimed on the return of such

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individual);

- The affidavits of two or three disinterested persons having knowledge of the relationship setting forth the facts as known to them; and
- Any other details which will support the claim that a mutually acknowledged relationship of parent and child existed.

N.J. Admin. Code § 18:26-2.6(a).

In the case of individuals who stand in the position of domestic partner, civil union or reciprocal beneficiary, the regulations require the following proof:

- In the case of a domestic partnership formed in New Jersey, a copy of the Certificate of Domestic Partnership with the state seal issued by the local registrar;
- If the relationship was entered into in another jurisdiction, the following: (1) a copy of the certificate or other document issued by the other jurisdiction bearing its seal; (2) an affidavit providing the information contained in the Affidavit of Domestic Partnership required to be filed in New Jersey; and (3) such other proof or supporting official documentation, if any, as required by the Director that directly supports the claim that is being made.

N.J. Admin. Code § 18:26-2.6(b).

● **Warning:** The Division of Taxation does not classify children of a stepchild, or “stepgrandchildren” as Class A Transferees. They are classified as Class D Transferees.

[3] Identifying Class C Transferees and Applying Their Tax Rates

A Class C transferee (beneficiary) is defined as follows:

- A decedent’s brother or sister;
- A decedent’s son’s wife or widow; or
- A decedent’s daughter’s husband or widower.

N.J. Admin. Code § 18:26-1.1.

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Transfers to Class C transferees are subject to New Jersey inheritance tax at the following rates:

On any amount received by the transferee in excess of

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

N.J. Admin. Code § 18:26-2.7.

[4] Identifying Class E Transferees and Understanding Their Exemption

A Class E transferee is defined as follows:

- The State of New Jersey or any political subdivision thereof; or
- Certain charitable or nonprofit institutions such as an educational institution, church, hospital, orphan asylum, public library or Bible and tract society or to, for the use of, or in trust for, any institution or organization organized and operated exclusively for religious, charitable, benevolent, scientific, literary or education purposes, if no part of the net earnings benefits any private stockholder, individual or corporation.

N.J. Admin. Code § 18:26-1.1.

Transfers to Class E beneficiaries are exempt from New Jersey inheritance tax. This Class E tax exemption does not extend to property transferred to such institutions and organizations in other states, the District of Columbia, territories and foreign countries which do not grant the same Class E type tax exemptions to such institutions and organizations. N.J. Admin. Code § 18:26-1.1.

[5] Identifying Class D Transferees and Noting Their Tax Rates

A Class D transferee is defined as any other transferee, distributee or beneficiary who is not a Class A or C or E transferee. N.J. Admin. Code § 18:26-1.1.

There is no exemption amount for Class D transferees. Transfers to Class D transferees are subject to New Jersey inheritance tax at the following rates:

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

N.J. Admin. Code § 18:26-2.8.

§ 8.15 Determining Whether Transfer Is Subject to Transfer Inheritance Tax

[1] Determining Whether Cumulative Value of All Transfers to Transferee Is \$500 or More

Any real or personal property transfers valued at \$500 or more, or any interest in a transfer valued at \$500 or more, is subject to the inheritance tax. NJS 54:34-1; N.J. Admin. Code § 18:26-5.1(a). This includes any transfer or interest which is held in trust or is otherwise provided to, or for the use of, any transferee, distributee or beneficiary. The value is calculated by adding together all of the transfers of real or personal property to a transferee. For example, a transferee who obtains three separate pieces of property, each valued less than \$500, but which together equal more than \$500, would be subject to the inheritance tax.

[2] Applying Situs and Residency Provisions of Inheritance Tax

For a decedent who was a resident of New Jersey, all transfers, made by Will or by the New Jersey intestate laws, of real or tangible personal property situated in New Jersey, and all transfers of intangible property (that is, stocks, bonds, securities and mortgages) wherever located, are subject to the transfer inheritance tax. NJS 54:34-1(a); N.J. Admin. Code § 18:26-5.2(a).

For a nonresident decedent, only the real or tangible personal property transferred by Will or by intestacy and located within New Jersey at the time of death and of which the decedent was seized or possessed of upon death is subject to the transfer inheritance tax. NJS 54:34-1(b); N.J. Admin. Code § 18:26-5.2(b). Intangible property of the nonresident decedent is not subject to the transfer inheritance tax.

[3] Including All Transfers Made by Decedent in Contemplation of Death

All transfers made by the decedent in contemplation of death during the three-year period preceding the decedent's date of death are subject to the

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transfer inheritance tax. NJS 54:34-1(c). This includes any transfer by deed, grant, bargain, sale or gift made without adequate consideration, in absence of proof that the transfer was not intended to be in contemplation of death. N.J. Admin. Code § 18:26-5.7(a). Any transfer made prior to the three year period preceding the decedent's date of death is not considered made in contemplation of death and is therefore not subject to the transfer inheritance tax. NJS 54:34-1; N.J. Admin. Code § 18:26-5.7(a).

“Contemplation of death” is defined as “that expectancy of death which actuates the mind of a person of the execution of his will and is therefore not restricted to that expectancy of death which actuates the mind of a person making a gift causa mortis.” N.J. Admin. Code § 18:26-5.7(b).

In order to overcome the presumption that a transfer was made in contemplation of death, the taxpayer must demonstrate by a preponderance of the evidence that the gift was not made in contemplation of death. The New Jersey Supreme Court held that it was appropriate to assign the burden of proof to the taxpayer to demonstrate that transfers within three years of death were not in contemplation of death. *Swain v. Neeld*, 28 N.J. 60 (1958).

Factors to be considered include the following: the age and health of the donor at the time of the gift; the existence of a desire to evade New Jersey inheritance tax; whether the gifts were part of a testamentary plan or scheme; past history of substantial gifts by the donor; whether the gifts were made to the natural objects of the decedent's bounty; and whether an emergency situation existed that may have prompted the donation. *See Swain v. Neeld*, 28 N.J. 60, 70 (1958).

● **Warning:** Determine whether the decedent was making annual exclusion gifts to non-Class A transferees during the three years preceding his or her death.

The contemplation of death rule as it applies to Medicaid qualifying transfers was addressed by the New Jersey Tax Court, which held that transfers made by the decedent's attorney-in-fact to accelerate the decedent's eligibility for Medicaid assistance were in contemplation of death and therefore taxable. *Estate of Berg v. Dir., Div. of Tax.*, 17 N.J. Tax 256 (Tax Ct. 1998) (desire to seek government assistance was an impelling

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motive, regardless of fact that decedent was incompetent and could not form intent and disposition would have occurred pursuant to terms of decedent's Will).

[4] Including All Transfers Taking Effect in Possession or Enjoyment Following Death

All of a resident decedent's transfers of real or tangible personal property within New Jersey or intangible personal property wherever located, as well as a nonresident's real or tangible personal property within New Jersey, taking effect in possession or enjoyment by transferee after the decedent's death are subject to the transfer inheritance tax. NJS 54:34-1(c); N.J. Admin. Code § 18:26-5.8(b). These include transfers by deed, grant, bargain, sale, gift or in trust made by a decedent at death or made by decedent during his or her lifetime under which decedent retained an interest for life. N.J. Admin. Code § 18:26-5.8(a).

The following are items of intangible property to be included on the return of a resident decedent:

- Interest in closely held business held by decedent, including sole proprietorship, partnership, limited liability company, corporation, or joint venture;
- Bank accounts, such as savings accounts, checking accounts, certificates of deposit;
- Cash on hand;
- Mutual funds, stocks and bonds;
- U.S. Savings Bonds, such as Series E and H bonds;
- Receivables from estates and trusts wherein decedent was entitled to an interest;
- Cash value of life insurance where decedent owned policy insuring the life of another;
- Unpaid compensation; and
- Refunds due and owing to the decedent.

Any property transfer in which the transferor retained 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

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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 disposed of all of his or her interest in or power over the transferred property, including any right to possession, use and enjoyment of the property. NJS 54:34-1.1; N.J. Admin. Code § 18:26-5.10.

[5] Including All Accrued Income and Dividends

All accrued income and dividends as of the date of decedent's death must be included on the inheritance tax return. They are frequently overlooked and should be included as receivables due to the decedent which are subject to taxation.

[6] Including Total Value of Joint Tenancy Property

The total value of all assets held in joint tenancy with right of survivorship must normally be included in valuing a transfer for inheritance tax purposes. These transfers are taxed as if the property had belonged solely to the decedent and had been devised or bequeathed by will to the surviving joint tenants. The only part or interest of the joint property that is exempt from the tax is that which the surviving joint tenant is able to prove originally belonged to him or her and not the decedent. NJS 54:34-1(f); N.J. Admin. Code § 18:26-5.11(b). This rule does not apply to property held by spouses as tenants by the entirety. N.J. Admin. Code § 18:26-5.11(d).

✘ Strategic Point: Real property owned by spouses as tenants by the entireties should not be included on the inheritance tax return.

The transfer of real property in New Jersey upon the death of a nonresident is treated as a specific devise or bequest of New Jersey property and is not subject to the ratio tax imposed upon the transfer of property of a nonresident. NJS 54:34-3. N.J. Admin. Code § 18:26-5.11(e).

[7] Including Property Passing Pursuant to Power of Appointment Exercised by Decedent

All transfers by a resident decedent of real or tangible personal property within New Jersey or intangible personal property wherever located (or by a nonresident of real or tangible personal property within New Jersey),

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pursuant to a power of appointment contained in an instrument taking effect on or after July 4, 1909 are subject to the New Jersey inheritance tax. NJS 54:34-1(d)(2); N.J. Admin. Code § 18:26-5.12. This includes property transferred pursuant to a general or special power of appointment.

[8] Including Value of Life Insurance Policies Payable to Estate, Executor or Administrator

Life insurance proceeds payable on the life of a New Jersey resident to the estate, executor or administrator of such resident decedent are subject to the transfer inheritance tax. N.J. Admin. Code § 18:26-5.13. Life insurance proceeds payable on the life of a resident or nonresident decedent payable to any beneficiary other than the estate, executor or administrator are exempt from the transfer inheritance tax. NJS 54:34-4(f).

Dividend accumulations, post-mortem dividends, terminal dividends and premium refunds on life insurance contracts, although payable at the same time, are not considered part of the life insurance proceeds and are taxable to the beneficiary as transfers taking effect at or after the death of the insured. N.J. Admin. Code § 18:26-5.20. Life insurance proceeds that combine life insurance and annuity features are subject to the transfer inheritance tax. N.J. Admin. Code § 18:26-5.18(a), (b).

[9] Including Value of Nonexempt Pensions and Retirement Funds

The proceeds of a profit sharing or retirement plan payable to a designated beneficiary on the death of the decedent are subject to inheritance tax. Such is also the case with a retirement contract purchased on the installment plan if the decedent dies prior to the date of retirement and the payments are returned to either the decedent's estate or to a designated beneficiary. N.J. Admin. Code §§ 18:26-5.9, 18:26-5.17. But any pension, annuity, retirement allowance or return of contributions that is payable to a surviving spouse and is a direct result of the decedent's employment under a qualified plan (as defined by IRC §§ 401(a) - (c) or IRC § 2039(c)) is exempt from inheritance tax. N.J. Admin. Code § 18:26-6.16.

8-31**NEW JERSEY TRANSFER TAX PROCEEDINGS****§ 8.16[3]****§ 8.16 Preparing New Jersey Inheritance Tax Resident Return (Form IT-R) for Resident Decedent****[1] Deciding if Form IT-R Is Required**

Generally, a New Jersey Inheritance Tax Resident Return (Form IT-R) is required to be filed for all resident decedents who transferred real or tangible personal property in New Jersey or intangible property located anywhere to non-Class A beneficiaries. *See* § 8.14 *above* for discussion of how to classify transferees.

[2] Completing All Schedules Setting Forth "Clear Market Value" of Included Transfers

The transfer inheritance tax is computed upon the "clear market value" of the property transferred, excepting all exemptions and deductions legally permitted. N.J. Admin. Code § 18.26-2.3. *See* § 8.04 *above*. The Form IT-R, Inheritance Tax Resident Return schedules must set forth the "clear market value" of all of the property transferred to the beneficiaries. The following are the schedules included in the Form IT-R and the property that must be included therein:

- Schedule A: Real property in which decedent had an interest;
- Schedule B: Closely held businesses in which decedent had an interest;
- Schedule B(1): All other personal property;
- Schedule C: Transfers by the decedent.

Forms: Form ESP 8.803.05, Inheritance Tax Resident Return (N.J. Official Form IT-R)

[3] Deducting All Allowable Debts and Administration Expenses

The total allowable deduction amount must be reported on line 6 of Form IT-R. The deductions must be specifically claimed on Schedule D of Form IT-R. Schedule D requires the name of the person to whom the debt or claim is owed, and the nature and amount of the debt or claim. The instructions for Schedule D provide many examples of allowable and non-allowable deductions. *See* Form ESP 8.803.05 Inheritance Tax Resident Return (N.J. Official Form IT-R), Schedule D Instructions.

The following are examples of items that may be deducted on the Form IT-R:

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- Funeral expenses;
- Administration expenses including court fees, surety bond fees, and fees to obtain death certificates;
- Ordinary commissions of executor or administrator;
- Legal fees;
- Expenses of decedent's last illness;
- Certain debts of decedent;
- Storage expenses;
- Appraisal fees;
- Income taxes due and owing on death of the decedent; and
- Transfer taxes paid to other states or territories, the District of Columbia or foreign countries on property subject to the New Jersey inheritance tax.

Deductions are permitted for the debts of the decedent, but not a debt of a resident decedent secured by property located outside of the State of New Jersey, unless the property is subject to New Jersey inheritance tax or the amount of the foreign debt exceeds the value of the property. In the latter instance, only the excess amount of the debt may be deducted.

Gift taxes and income taxes due but unpaid at the time of the decedent's death may also be deducted, but not the federal estate tax or generation skipping transfer tax. NJS 54:34-5. The New Jersey Division of Taxation refuses to reduce an IRA's taxable value by the amount of federal and New Jersey income taxes payable in connection with its distribution. *In re Estate of Romnes*, 79 N.J. 139 (N.J. 1979) (holding that executors could not reduce value of annuity by future federal income tax liability); *Carlin v. Dir., Div. of Tax.*, 19 N.J. Tax 545, 2001 N.J. Tax LEXIS 23 (Tax Ct. 2001).

Commissions for the sale of real estate will be deducted only if there was a binding contract of sale during decedent's lifetime and the property was sold by the executor, or the sale was required to pay debts, expenses or legacies. N.J. Admin. Code § 18:26-7.12.

[4] Calculating Value of Life Interests and Terms of Years

For estates of decedents dying on or after November 1, 1997, life estates and terms of years must be valued in accordance with gender-based

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mortality tables (namely, the U.S. Decennial Life Tables for 1989-1991) using an interest rate assumption of six percent. The "clear market value" of the entire property is determined and the value of the life estate or estate for years is deducted to determine the value of the remainder interest. N.J. Admin. Code §§ 18:26-8.22, 18:26-8.23. Annuities for life are valued using the same tables.

If there are successive life estates, the value of each life estate must be determined. If the life estates are successive, the first life estate is immediately taxable; the second and succeeding life estates are not immediately taxable since a succeeding life tenant must survive the first life tenant in order to take his or her interest. If there are concurrent life estates, the value of each life tenant's interest must be calculated, and the value of the life estates must be determined.

● **Warning:** The calculation of terms of years, life estates, and successive and concurrent life estates can be daunting. Little guidance is offered for computing these amounts. Thus, the practitioner should exercise caution when determining the inheritance tax on such transfers.

[5] Submitting Request for Compromise Tax if Transfer Is Subject to Contingency

If contingent interests exist that make a definite determination of the transfer inheritance tax impossible, for example, a contingent remainder interest, a compromise of the tax can be requested. N.J. Admin. Code § 18:26-2.14(a). *See* Form ESP 8.803.05, Resident Inheritance Tax Return (N.J. Official Form IT-R), Recital Page Instructions. In determining the compromise or payment, the Division of Taxation will consider the amount of taxes that may become due as a result of the contingencies, the present value of the transfer and the probability of the contingency occurring. N.J. Admin. Code § 18:26-2.14(b). The contingency amount included in the estate must be set out on Line 8 of Form IT-R.

Forms: Form ESP 8.812.04, Affidavit of Executor Regarding Approval of Compromise Tax

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[6] Reporting Information Regarding Each Beneficiary

Schedule E of Form IT-R requires the following information for each beneficiary: name, address, relationship to decedent, class designation, whether the beneficiary survived the decedent, age at decedent's death and interest in the estate. Schedule E also requests the names of all of the beneficiaries who died before or after the decedent's death (along with the date of death and domicile at death). The decedent's Will and codicils must also be attached to Schedule E. Form IT-R, Schedule E.

§ 8.17 Preparing New Jersey Nonresident Decedent Inheritance Tax Return (Form IT-NR) or Flat Tax Affidavit for Nonresident Decedent**[1] Preparing Form IT-NR**

The New Jersey inheritance tax is imposed upon the estates of nonresident decedents if transfers of real or tangible personal property located within the State of New Jersey have occurred. The fiduciary of the estate must report such transfers of property on either a New Jersey Nonresident Decedent Inheritance Tax Return (Form IT-NR) or a Flat Tax Affidavit.

As with Form IT-R for resident decedents, the transfer inheritance tax is computed upon the clear market value of the property transferred, excepting all exemptions and deductions legally permitted. N.J. Admin. Code § 18.26-2.3.

The total allowable deduction amount must be reported on line 6 of Form IT-NR. The deductions must be specifically claimed on Schedule C of Form IT-NR. Information as to whom the debt or claim belongs, and the nature and amount of the debt or claim must be reported on Schedule C.

Schedule F of Form IT-NR requires the following information for each beneficiary: name, address, relationship to decedent, class designation, whether the beneficiary survived the decedent, age at decedent's death and interest in the estate. Schedule F also requests the names of all of the beneficiaries who died before or after the decedent's death along with the date of death and domicile at death.

Forms: Form ESP 8.812.05, Nonresident Inheritance Tax Return (N.J. Official Form IT-NR)

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[2] Preparing Flat Tax Affidavit as Alternative to Form IT-NR

⚠ Strategic Point: Although the flat tax affidavit can be a useful tool that takes less time to prepare than an inheritance tax return, it must be used with caution because it does not permit deductions to be taken and it waives the estate's right to a refund for taxes and interest. The affidavit may be appropriate, for instance, if the only assets involved are parcels of real property that are specifically devised to beneficiaries.

The requirements for the Flat Tax Affidavit, which may be submitted in lieu of filing the New Jersey Inheritance Tax Return, include the following:

- Name of the decedent, date of death, and legal domicile as of the date of death;
- Description and fair market value of the New Jersey tangibles;
- Description (by lot and block number and deed reference) of New Jersey real estate and the assessed and market values thereof for the year of decedent's death, and explanation of how any fractional ownership in real estate was derived, and description of any liens or encumbrances outstanding at decedent's death;
- Value of gross estate of decedent both inside and outside of New Jersey, certifying whether the decedent made any gifts or transfers in contemplation of death, or to take effect at or after death, or created any trust in his or her lifetime and giving the names and relationship to decedent of donees or transferees, and market value of gifts, transfers or trusts;
- If the decedent died testate, a certified copy of the Will and the ages of any life tenants or annuitants as of decedent's date of death and stating whether all beneficiaries survived;
- If decedent died intestate, the names of the heirs-at-law and the next of kin and their relationship to decedent, giving the parentage of any heirs and next of kin taking a deceased parent's share;
- Statement that all right is waived to a refund of the payment of tax and interest found due.

N.J. Admin. Code § 18:26-9.5(b).

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§ 8.18 Filing Form IT-R or Form IT-NR or Flat Tax Affidavit and Paying Tax on Timely Basis

All inheritance tax returns must be filed, together with the tax payment, within eight months after the decedent's death, that is, one month prior to the due date for the estate tax return. N.J. Admin. Code § 18:26-9.1(a). The New Jersey inheritance tax can be paid on account if the estate has requested an extension of time to file.

The fiduciary should consider paying excess inheritance tax if he or she is concerned that all assets have not been discovered or there are valuation issues on difficult to value transfers (for example, life estates, terms for years and annuities) or if there are contingent interests for which the estate wishes to enter into a compromise with the Division of Taxation.

§ 8.19 Considering Whether to Request Extension of Time for Filing Inheritance Tax Return**[1] Filing Form IT-EXT to Request Extension of Time to File Return**

Penalties are imposed for failure to file the transfer inheritance tax return within the prescribed time. NJS 54:35-3; N.J. Admin. Code § 18:26-9.1(a). The Director of the Division of Taxation, upon application, may grant an extension. But the extension extends only the time in which to file the return; it does not extend the time to pay the owed taxes, which are due on the decedent's date of death and must be paid in full within eight months of the date of death. N.J. Admin. Code § 18:26-9.1(b)(1). There is no extension of time for the payment of the transfer inheritance tax. N.J. Admin. Code § 18:26-9.9(a).

An extension of time to file the return may be requested by filing Form IT-EXT, Application for Extension of Time to File a Return, with the Tax Director. N.J. Admin. Code § 18:26-9.1(b). An extension may be requested up to four months beyond the original due date. If it is not possible to file the return within the four-month period, an additional two-month extension may be requested. The Director will grant an extension beyond six months only in cases where exceptional circumstances exist. N.J. Admin. Code § 18:26-9.1(b).

Forms: Form ESP 8.803.08, Application for Extension of Time to File Return (N.J. Official Form IT-EXT)

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[2] Filing Form IT-EP to Pay Tax on Account

Interest accrues at the rate of 10% per annum on any direct or contingent transfer inheritance tax not paid within eight months of the decedent's death. NJS 54:35-3. When an extension of time to file the inheritance tax return is sought, interest can be avoided by paying the estimated New Jersey estate tax on account. To do so the taxpayer must file Form IT-EP, Inheritance and Estate Tax Payment on Account, and make a payment.

Forms: Form ESP 8.803.09, Inheritance and Estate Tax Payment on Account (N.J. Official Form IT-EP)

§ 8.20 Understanding that New Jersey Inheritance Tax Lien Remains for 15 Years

Unpaid New Jersey inheritance taxes remain a lien against assets of the decedent's estate for a period of 15 years following the decedent's date of death. Once the 15-year period has expired, no lien remains and properties can be freely transferred. NJS 54:35-5; N.J. Admin. Code § 18:26-8.8.

● **Warning:** In contrast to the New Jersey inheritance tax, the New Jersey estate tax lien never expires unless and until the tax obligation is satisfied.

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PART IV: DEFENDING AUDIT OF NEW JERSEY TRANSFER TAX PROCEEDINGS**§ 8.21 CHECKLIST: Defending Audit of New Jersey Transfer Tax Proceedings**

- Review Form O-3, Auditor's Computation of Tax from New Jersey Inheritance Tax Division auditor.

Authority: NJS 54:34-12; N.J. Admin. Code § 18:26-8.6.

Discussion: See § 8.22 below.

- Submit appropriate affidavits if state challenges classification of beneficiaries.

Authority: N.J. Admin. Code § 18:26-2.6.

Discussion: See § 8.23 below, § 8.14[2] above.

- Notify state of decedent's alleged domicile if New Jersey exerts domicile over decedent.

Authority: NJS 54:38A-1.

Discussion: See § 8.24 below.

- Submit written protest of assessment within 90 days of receiving notice of assessment.
- File security to stay right of state to collect assessment following filing of protest.

Authority: NJS 49-1, *et seq.*; N.J. Admin. Code § 18:26-12.9(a).

Discussion: See § 8.25[1] below.

- Appeal assessment to New Jersey Tax Court within 90 days of final determination.
- Understand that filing appeal will not stay right of state to collect assessment unless approved by Director.

Authority: NJS 54:34-13(a), 54:49-18(a), 54:51A-14(a); N.J. Admin. Code §§ 18:26-12.12, 18:26-12.9(f).

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Discussion: *See § 8.25[2] below.*

- Pay assessment and file claim for refund if no appeal or protest to assessment was filed.

Authority: NJS 54:49-14, 54:49-15.

Discussion: *See § 8.26 below.*

§ 8.22 Obtaining and Reviewing Auditor's Computation of Tax (Form O-3)

The Director, Division of Taxation, will examine all tax returns filed in the Department to determine any tax payment deficiencies and may audit or investigate as he or she deems necessary. NJS 54:49.6(a). If after the audit, the Director believes there is a deficiency in the transfer inheritance tax, he or she may issue a revised tax computation and assess additional taxes. NJS 54:34-12; N.J. Admin. Code § 18:26-8.6.

The auditor assigned to the proceeding will submit Form O-3, Auditor's Computation of Tax, to the fiduciary or preparer of the return for his or her review. The taxpayer should review the auditor's changes to determine whether they are correct or should be disputed.

⊗ Strategic Point: The New Jersey inheritance tax branch auditors are generally open to discuss their analysis and computation of tax deficiency. It is worth a telephone call to the auditor to discuss the basis of his or her recalculation.

§ 8.23 Submitting Affidavits to Support Classification of Beneficiaries if Challenged

If the state challenges the classification of any of decedent's beneficiaries, the taxpayer may submit appropriate affidavits that support the correctness of the initial classification.

To support the position that decedent acted as a mutually acknowledged parent to the transferee, multiple affidavits must be submitted that contain certain information specified by statute. *See § 8.14[2] above.*

§ 8.24**NEW JERSEY PROBATE****8-40****§ 8.24 Notifying Decedent's Domicile if New Jersey Exerts Domicile**

The Director of the New Jersey Division of Taxation may claim that an alleged nonresident decedent was actually domiciled in New Jersey at the time of death. NJS 54:38A-1. In such a case, the Director may institute an investigation.

If the Division of Taxation exerts domicile over an alleged nonresident decedent, the practitioner should contact the taxing authorities of the state where decedent's estate claimed he or she had been domiciled in the event that they desire to defend their tax assessment against decedent's estate.

§ 8.25 Protesting Assessment and Filing Appeal to Assessment**[1] Submitting Written Protest Within 90 Days of Notice of Assessment**

The Director, Division of Taxation, will examine all tax returns filed in the Department to determine any tax payment deficiencies. If the Director believes a deficiency exists, additional taxes will be assessed and notice of the assessment will be given to the taxpayer. NJS 54:49-6(a).

The estate representative may submit a protest appeal to the Director within 90 days of receiving the notice of assessment. NJS 54:49-8; N.J. Admin. Code § 18:26-12.9(a). A valid protest appeal must be in writing, signed by the estate representative, certified as true, and contain the following information:

- Whether a hearing or a review is requested;
- The decedent's name, date of death, social security number, and county of residence;
- The estate representative's name, address, and telephone number;
- A copy of the protested assessment;
- The amount of protested tax;
- The basis for the protest; and
- The specific facts supporting the protest and a summary of evidence or documentation in support of the estate's position.

N.J. Admin. Code § 18:26-12.9(a).

The Director, thereafter, will grant a hearing and make a final determi-

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§ 8.26

nation confirming, modifying or vacating any such finding or assessment. NJS 54:49-18. The filing of any valid protest will stay the right of the Director to collect the tax if the estate furnishes proper security. N.J. Admin. Code § 18:26-12.9(c).

[2] Filing Appeal of Assessment to New Jersey Tax Court Within 90 Days of Final Determination

Within 90 days of the Director's final notice of assessment, an appeal of that assessment can be made to the Tax Court. NJS 54:34-13(a), 54:49-18(a), 54:51A-14(a); N.J. Admin. Code §§ 18:26-12.12, 18:26-12.9(f).

● **Warning:** An appeal will not stay the collection or enforcement of the transfer inheritance tax unless approved by the Director. NJS 54:51A-15; N.J. Admin. Code § 18:26.12.12(a).

§ 8.26 Filing Claim for Refund if No Appeal or Protest Is Filed

A claim for refund may be filed after the assessment is paid if the taxpayer never filed an appeal or protest of the tax assessment. NJS 54:49-15, 54:49.14.

In addition to having neither protested nor appealed the assessment, the taxpayer must have done the following to file a claim for a refund:

- Paid the full assessment within one year after the expiration of time allowed for filing a protest;
- Filed a claim within 450 days of the expiration of the time allowed for filing a protest; and
- Determined that the amount of the refund claimed is not greater than the assessment paid.

NJS 54:49.14(b)(4).

The claim for refund must be filed under oath and must state the grounds for requesting the refund. NJS 54:49.14.

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PART V: OBTAINING CLOSING LETTERS AND FILING WAIVERS**§ 8.27 CHECKLIST: Obtaining Closing Letters and Filing Waivers**

- Review closing letter package to determine whether all necessary waivers are included.
 - Contact inheritance tax division if waivers are missing from the closing letter package.

Authority: N.J. Admin. Code § 18:26-11.1(a).

Discussion: See § 8.28 below.

- Submit waivers to financial institutions to release New Jersey inheritance tax or estate tax liens.
 - Review accuracy of waivers before submitting them.

Authority: N.J. Admin. Code §§ 18:26-11.17, 18:26-11.29.

Discussion: See § 8.29 below.

- Record waivers for real property located in New Jersey with applicable county clerk and pay recording fee.
 - Contact county clerk as to recording fee.
 - Transmit waiver to title company if real property was previously transferred and proceeds are held in escrow.

Authority: N.J. Admin. Code § 18:26-11.4.

Discussion: See § 8.30 below.

- File bond with state tax commissioner equal to double the highest amount of tax if settlement of compromise tax fails.

Authority: NJS 54:36-6; N.J. Admin. Code §§ 18:26-2.15(a), 18:26-9.16.

Discussion: See § 8.31 below, § 8.16[5] above.

8-43**NEW JERSEY TRANSFER TAX PROCEEDINGS****§ 8.30[1]****§ 8.28 Reviewing Closing Letter to Determine if All Necessary Waivers Are Included**

The practitioner should review the closing letter package from the inheritance tax division to ensure that all of the necessary waivers for the estate are included. No fiduciary, firm, corporation, or financial institution may release or transfer any real property or tangible or intangible personal property which is subject to the transfer inheritance tax without first obtaining a waiver from the Division of Taxation. N.J. Admin. Code § 18:26.11-1(a).

If waivers are missing, the New Jersey Inheritance Tax Division should be contacted.

§ 8.29 Submitting Waivers to Financial Institutions

The waivers must be submitted to the financial institutions holding the decedent's assets in order to release any inheritance or estate tax liens, and, thus enable the asset transfer. N.J. Admin. Code §§ 26:18-11.17; 26:18-11.29. Prior to submitting the waivers to the financial institutions, the fiduciary should review the waivers to ensure that the account information and amounts, for example, number of shares, are accurate.

§ 8.30 Recording Waivers for Real Property with Applicable County Clerk and Paying Fee**[1] Recording Waiver in County Clerk's Office of County Where Real Property Is Located**

In order to make the release of the New Jersey estate and inheritance tax liens a matter of record, the estate representative or transferee of New Jersey real property should record the tax waiver for each parcel of New Jersey real property with the clerk of the county where the real property is located.

✘ Strategic Point: Title companies who are insuring title for purchasers of real property will review the county records to determine if a tax waiver was recorded if an estate was an owner of the property. The fiduciary should know the whereabouts of the tax waiver for real property.

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[2] Paying Recording Fee to County Clerk

The county clerk will require that a fee be paid upon submission of the tax waiver for recording. To determine the current amount of the recording fee, inquiry may be made with the local county clerk or register of deeds.

[3] Transmitting Waiver to Title Company if Title Was Previously Transferred

If title to real property was previously transferred to a purchaser, and funds are being held in escrow pending receipt of a tax waiver from the New Jersey Division of Taxation, the tax waiver should be transmitted to either the title company holding the escrow or the purchaser's attorney, as the case may be, to release the escrow funds.

⊗ Strategic Point: The attorney should attempt to negotiate a provision that permits payment of escrow funds directly to the New Jersey Division of Taxation if the estate tax or inheritance tax has not been paid at the time of closing.

§ 8.31 Filing Bond if Settlement of Compromise Tax Fails

If settlement through a compromise of the tax fails, a bond equal to double the highest amount of tax must be filed with the Inheritance Tax Branch until the contingency or condition occurs and the tax due becomes definite. N.J. Admin. Code §§ 18:26-2.15(a), 18:26-9.16. For information regarding when to request a compromise of tax, *see* § 8.16[5] *above*. The bond must be in the form specified by Form O-54, executed by the executor or other proper representative and a New Jersey licensed surety company, and filed in the office of the State Tax Commissioner. NJS 54:36-6.

The surety bond must stay in place until the contingency or condition occurs and the tax due becomes definite. N.J. Admin. Code § 18:26-2.15(a); NJS 54:36-6.

If a foreign fiduciary is involved, the bond must be issued by a surety company licensed to operate in New Jersey.