

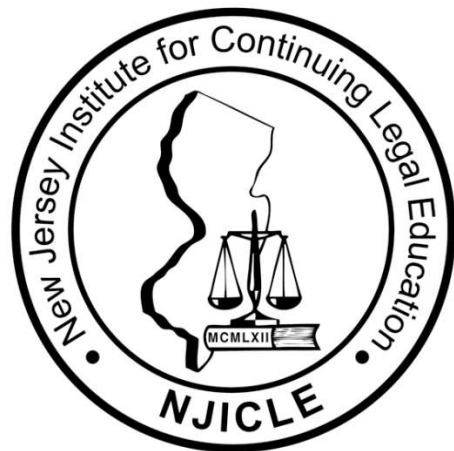
2025 ESTATE PLANNING AND ADMINISTRATION SUMMER INSTITUTE – DAY 1

2025 Seminar Material

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2025 ESTATE PLANNING AND ADMINISTRATION SUMMER INSTITUTE – DAY 1

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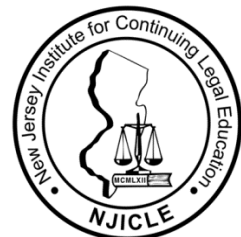
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In cooperation with the New Jersey State Bar Association **Real Property,**
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Ethics for Estate Planners

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Introduction:

In addition to the challenge of keeping up with new statutes and cases relating to estate planning and the administration of trusts and estates and ever-changing complex state and federal tax rules, trusts and estates attorneys need to have a solid understanding of ethics and be able to spot issues well before ethical violations occur. And we need to be mindful of the impact on our ethical obligations of recent changes like spending more time working remotely and the availability of new technology.

The purpose of this outline is to identify various situations that can raise ethical issues for trusts and estates attorneys and to highlight the applicable New Jersey Rules of Professional Conduct (the “**RPC**”) and New Jersey case law and ethics opinions that will serve as guidance in analyzing these ethical issues. The RPC can be found in the Part I Appendices to the New Jersey Rules of Court on-line at: njcourts.gov/attorneys/assets/rules/rpc.pdf.

The RPC is not identical to the American Bar Association’s Model Rules of Professional Conduct (the “**Model Rules**”), so it is important to recognize the differences in order to properly apply to New Jersey practice any discussion of ethics that is based on the Model Rules. Furthermore, New Jersey did not adopt the Comments to the Model Rules (which at least 37 other states adopted). Those Comments, as well as the Commentaries on the Model Rules of Professional Conduct issued by the American College of Trust and Estate Counsel (“**ACTEC**”), which were most recently updated in March 2023 as the Sixth Edition¹, may provide some insight for an analysis of ethics issues, but those resources must be used with care in New Jersey.

Effective January 1, 2021, the number of total ethics and professionalism continuing legal education credits required during a two-year compliance reporting period for New Jersey attorneys has increased from four to **five credit hours** and must

¹ For the Sixth Edition of the ACTEC Commentaries on the Model Rules of Professional Conduct, see https://www.actec.org/assets/1/6/ACTEC_Commentaries_6th_Rev.pdf?hssc=1

include at least **two credit hours** of coursework in diversity, inclusion, and the elimination of bias.

What's new in 2024/2025:

AI Committee, AI Task Force and CLE Technology Requirement

Artificial intelligence (“AI”), and specifically generative AI, has the potential to disrupt and transform the practice of law. Generative AI is “artificial intelligence (AI) that can create original content—such as text, images, video, audio or software code—in response to a user’s prompt or request. Generative AI relies on sophisticated machine learning models called *deep learning models*—algorithms that simulate the learning and decision-making processes of the human brain. These models work by identifying and encoding the patterns and relationships in huge amounts of data, and then using that information to understand users’ natural language requests or questions and respond with relevant new content.”² ChatGPT (or the Chat Generative Pre-Trained Transformer) is one of several generative AI tools and provides information based on plain language search requests and a database filled with a huge amount of existing written material. Others include Microsoft’s CoPilot, Google’s Gemini, and Anthropic’s Claude. In the legal realm, several well-known providers have developed AI products (such as Thomson Reuters CoCounsel, Westlaw Precision, and Lexis +AI) and new legal-specific AI products continue to be introduced in the marketplace.

The use of ChatGPT and similar AI tools raise a host of ethical implications for the practice of law.³ In response, the New Jersey Supreme Court established the Committee on Artificial Intelligence and the Courts. The Committee, which convened for the first time in September 2023, aims to consider the ethical and legal implications of AI on the practice of law and in the court system. The Committee is comprised of judicial and government leaders, judges, attorneys, educators, and cybersecurity and technology experts. Recognizing the concerns raised by the use of AI, on January 24, 2024, the Committee issued preliminary guidelines on the use of artificial intelligence by

² <https://www.ibm.com/topics/generative-ai>

³ See Mata v. Avianca, 678 F.Supp.3d 443 (S.D.N.Y. 2023). In this case, the judge imposed sanctions on two attorneys for relying on cases identified through ChatGPT in a brief filed with the court which turned out to be “hallucinated” (i.e. made up) cases. The attorneys sanctioned made no efforts to verify the holdings or validity of the cases they cited and were unaware that ChatGPT had the capacity to fabricate case law.

New Jersey lawyers.⁴ The guidelines were issued to support attorneys with compliance with the RPC and Rules of Court when employing AI.

The guidelines make clear that all attorneys are subject to the RPC when implementing AI in their practice. An attorney's unfamiliarity with AI and its shortcomings will not protect against alleged violations of the RPC. Much of the guidelines reiterate attorneys' general duties under the RPC (e.g. (i) accuracy and truthfulness, (ii) honesty, candor, and communication, and (iii) confidentiality) and highlight specific rules that may be implicated by the use of AI. In addition, the guidelines provide that while the RPC does not impose a duty on lawyers to disclose all uses of AI to their clients, an attorney must disclose its use of AI if a client expressly asks about the use of AI or if the client cannot otherwise make an informed decision without knowing of the attorney's AI use.

In March 2024, the Judiciary circulated an anonymous survey to all registered and active New Jersey attorneys regarding their views, understanding and usage of AI. The objective of the survey was to inform education and training initiatives and support the work of the AI Committee. Based upon the survey results, the Judiciary found a need for further education regarding AI and provided two free, virtual CLE courses in July and December of 2024.

In addition to the Judiciary's AI Committee, the New Jersey State Bar Association formed a Task Force on AI and the Law, made up of 27 attorneys and industry experts, to examine AI's impact on the legal profession. In May 2024, the AI Task Force issued a report on its recommendations and findings.⁵ The Task Force recommended that a technology CLE requirement be added due to the ethical and social justice implications of the use of technology, and specifically AI, by attorneys in the state. In line with that recommendation, the New Jersey Judiciary issued a Notice to the Bar in April 2025, adding an additional CLE requirement for "technology-related subjects".⁶ Members of the bar will be required to complete one CLE credit in this area per two-year reporting period. The timing of the new CLE requirement has not yet been announced.

⁴ <https://www.njcourts.gov/notices/notice-legal-practice-preliminary-guidelines-use-of-artificial-intelligence-new-jersey>

⁵ <https://njsba.com/wp-content/uploads/2024/05/NJSBA-TASK-FORCE-ON-AI-AND-THE-LAW-REPORT-final.pdf>.

⁶ <https://www.njcourts.gov/notices/notice-attorney-responsibilities-cybersecurity-emerging-technologies-new-requirement-of-one>

DRB Docket No. 23-207/D-78-23

In this 2024 disciplinary matter, In the Matter of David A. Faloni, Jr. (DRB Docket No. 23-207)(D-78-23)(089168), New Jersey's Disciplinary Review Board ("**DRB**") reviewed an attorney's conduct and alleged violations of the RPC in connection with estate planning services he provided to clients. Faloni had a referral relationship with a financial services firm and would sometimes prepare estate planning documents for clients of that firm. The financial services firm was described as having performed "estate planning services" to individuals in New Jersey.

During the proceedings, the attorney in question detailed his procedure in connection with estate planning matters. Typically, the attorney would have clients complete an intake sheet with his paralegal. The attorney would then participate in a meeting with the clients to discuss their objectives and lay out their estate planning options. From there, the attorney would proceed with drafting the appropriate documents and overseeing their execution with the clients. The attorney would also provide each client with a written engagement letter detailing his flat fees for the documents prepared.

When working with clients referred by the financial services firm, the attorney's practices differed somewhat. Typically, the financial services firm would complete the intake sheet (provided by the attorney) with the clients and then forward it to the attorney. The attorney would prepare the requested estate planning documents, submit them to the clients directly (or to the financial services firm to pass along), and would then connect with the clients to review and discuss the documents. The clients would eventually meet with the financial services firm to execute the documents.

Contrary to the attorney's statements, however, several clients testified in the disciplinary proceedings to a much different practice. The clients claimed they had never had any direct contact with the attorney, nor had they received any written engagement letter from the attorney. They claimed that their understanding was that there would be no separate contact with the attorney and that the financial services firm was a "go-between" between themselves (the clients) and the attorney.

The disciplinary complaint charged Faloni with having violated RPC 1.4(c) (requiring an attorney to explain a matter to the extent reasonably necessary to permit the client to make an informed decision regarding the representation), RPC 1.5(b) (requiring an attorney to set forth in writing the basis or rate of a legal fee), RPC 1.7(a)(2) (prohibiting an attorney from engaging in a concurrent conflict of interest where there is a significant risk that the representation of one client will be materially

limited by the personal interest of the lawyer), RPC 5.4(a) (prohibiting improper fee sharing with a nonlawyer), RPC 5.5(a)(2) (prohibiting an attorney from assisting another in the unauthorized practice of law), and RPC 8.4(a) (prohibiting the violation or attempted violation of the RPC, knowingly assisting or inducing another to do so, or doing so through the acts of another).

In its analysis of the alleged violations and appropriate level of discipline, the DRB reviewed several other disciplinary matters involving referral arrangements between a financial services firm and an estate planning attorney (In the Matter of Barry O. Bohmueller, DRB 16-428 (July 12, 2017), 232 N.J. 502 (2018); In the Matter of Donald Lee Kingett, DRB 19-435 (Nov. 10, 2020), 247 N.J. 241 (2021); In the Matter of G. Jeffery Moeller, DRB 02-463 (June 19, 2003), 77 N.J. 511). Ultimately, the DRB dismissed all but the RPC 1.4(c) and 1.5(b) violations for lack of clear and convincing evidence. The DRB determined that the attorney had violated RPC 1.4(c) and 1.5(b) by failing to communicate with certain clients and failing to provide written engagement letters. The DRB found the “substantially consistent versions of events” detailed by the clients to be more credible than the attorney’s statements regarding his typical practices for estate planning clients. Due to a number of mitigating factors (the attorney’s lengthy career, lack of any prior disciplinary action, and his statements that he had since reformed his estate planning practices), the DRB reprimanded the attorney for the RPC violations.

Opinion 746: Application of RPC 4.2 to Lawyers Who Are Proceeding Pro Se in Legal Matters⁷

A March 2024 opinion from the Advisory Committee on Professional Conduct addressed the issue of whether an attorney, acting pro se, would violate RPC 4.2 by contacting another party in a particular matter who is represented by counsel. RPC 4.2 states (in part) “In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows, or by the exercise of reasonable diligence should know, to be represented by another lawyer in the matter”. The opinion explains that the rule is designed to protect represented parties from adverse attorneys who may overreach, and if a pro se party happens to be an attorney, he or she may be at an advantage because of the attorney’s legal background and experience.

The opinion notes that several states and the ABA have found differently on whether RPC 4.2 applies to pro se lawyers. Those finding that the rule applies to pro se lawyers (including the ABA) believe that pro se lawyers are representing themselves

⁷ <https://www.njcourts.gov/notices/advisory-committee-professional-ethics-acpe-opinion-746-application-of-rpc-42-lawyers-who>

as clients and are thus within the scope of the rule. Those against disagree that a pro se lawyer is representing “a client” and find the rule inapplicable to pro se attorneys. The opinion highlights a third position taken by the ABA dissent, which argues that although the rule should apply to pro se lawyers, as presently written it does not.

The Committee ultimately agreed with the stance taken in the ABA dissent, reasoning that to find the rule applicable to pro se attorneys would produce “a tortured and counterintuitive construction of the Rule.” The Committee also noted that applying the rule to a pro se attorney would produce an inconsistent result – if an attorney were represented by counsel in a matter, the rule would not apply, even though the attorney’s personal background and legal experience would still place the attorney at a potential advantage. For the time being, RPC 4.2 does not apply to pro se attorneys.

Repeal of the New York Office Rule Rejected

In April 2023, the New York State Senate voted to repeal the New York “local office rule” that was codified in New York Judiciary Law Section 470 (“**Section 470**”). After the New York State Assembly also approved the bill (S.3261/A.2218) in June 2023, repeal of Section 470 appeared all but complete. Only Governor Hochul’s signature was required to make the bill effective.

Section 470, which was enacted in 1909, provided that a “person, regularly admitted to practice as an attorney and counsellor, in the courts of record of this state, whose office for the transaction of law business is within the state, may practice as such attorney or counsellor, although he resides in an adjoining state” (NY Jud. Law §470).

In Schoenefeld v. State of New York, 29 N.E.3d 230 (N.Y. 2015), the New York Court of Appeals (New York’s highest court) held that Section 470 obligated every nonresident attorney practicing in New York to have a physical office space in New York. “By its plain terms ... the statute requires nonresident attorneys practicing in New York to maintain a physical law office here.” *Id.* at 232. In contrast, a New York resident can practice law in New York from her kitchen table or a local coffee shop.

In Schoenefeld v. Schneiderman, 821 F.3d 273 (2d Cir. 2016), cert. denied, --- U.S. ---, 137 S.Ct. 1580 (2017), the Second Circuit Court of Appeals held that Section 470 was constitutional. “[W]e conclude that §470 does not violate the Privileges and Immunities Clause because it was not enacted for the protectionist purpose of favoring New York residents in their ability to practice law.” *Id.* at 276.

The New York lower courts have gone in different directions on the issue of whether a “virtual” office satisfies the New York office requirements. See Chupack v. Gomez, 2016 WL 127575 (Sup. Ct. N.Y. Co. Jan. 8, 2016) (analyzing the attributes of the Virtual Law Firm (“VLF”) program provided by the Bar Association of the City of New York, and holding that it provides an office that is “physical” enough to meet the requirements); but see Law Office of Angela Barker, LLC v. Broxton, 60 Misc. 3d 6, 7, 78 N.Y.S.3d 624, 625 (N.Y. App. Term. 1st Dep’t 2018) (holding without analysis that “counsel’s use of a ‘virtual office’ ... instead of maintaining a physical office ... was a violation of Judiciary Law §470”); see also Roy D. Simon, Jr., Simon’s NY Rules of Prof. Conduct § 5.5:1: Overview, NYRPCA § 5.5:1 (Dec. 2020 Update) (collecting cases). The most authoritative view on the subject was expressed in 2019 by the First Department in Marina Dist. Dev. Co., LLC v. Toledano, 174 A.D.3d 431, 432, 105 N.Y.S.3d 83, 85 (1st Dep’t 2019), which also dealt with the City Bar’s VLF program. The court held that “[t]o the extent that counsel uses the [program] only as a mailing address and an agent authorized to accept service of process, it is insufficient to meet the physical presence requirement of Schoenefeld.” Id. The court noted, however, that “the additional services [the program] provides may well satisfy physical presence,” as long as they are used at least sometimes. An earlier case cited by Toledano indicated that “periodic” use of an available, shared office space and telephone was sufficient. Id. (citing Reem Contr. v. Altschul & Altschul, 117 A.D.3d 583, 584 (1st Dep’t 2014)).

In 2019, a Working Group of the New York State Bar Association concluded that Section 470 was outdated and was not required to ensure that a nonresident lawyer can be effectively served. New York State Senate Judiciary Committee Chair Brad Hoylman sponsored a bill (S.5708) that was introduced in the Senate of the State of New York in 2019 and provided for the immediate repeal of Section 470. While the bill received widespread support, it was not enacted. A similar bill (S.700) was passed by the New York State Senate on May 12, 2021, and was approved by the Assembly’s Judiciary Committee overwhelmingly on May 19, 2021. However, that bill did not reach a floor vote in the New York State Assembly before the legislative session ended on June 10, 2021. In 2022, the bill was reintroduced in the New York State Senate, where it passed easily by a vote of 61-2, but it did not come up for a vote in the New York State Assembly in 2022.

Before the repeal of Section 470 some comfort relating to fees was provided by Matter of Hart, 194 A.D.3d 931, 149 N.Y.S.3d 182 (2d Dep’t 2021). There, a New Jersey law firm without a New York office provided legal services over the course of about three months to the estate of a long-time client, who had moved from New Jersey to New York shortly before his death. The Second Department affirmed the Surrogate’s Court’s refusal to dismiss the law firm’s fee petition. With no indication that Section 470 was “punitive or remedial” or that it called for fee forfeiture as punishment,

the Court held that an attorney's violation of Section 470 should not, without more, result in the attorney forgoing compensation. See also Frechtman v. Gutterman, 140 A.D.3d 538, 36 N.Y.S.3d 1 (1st Dep't 2016).

Some additional, but limited, favorable guidance was provided in New York Ethics Opinion 1241 (May 31, 2022). The question presented was whether an attorney admitted in both New York and Florida who maintains a physical office only in Florida may state on his letterhead that he is admitted to the New York Bar. The attorney confirmed that he closed his New York office and moved to Florida, he intends to provide advice on matters of New York law, including litigation matters, from his Florida location, but he would not be filing any appearances in any New York court. The opinion concluded that there were insufficient facts to determine whether the "predominant effect" of the attorney's conduct would occur in New York and whether the attorney "principally practices" in New York. Notwithstanding that uncertainty and after an analysis of the rules governing advertising by New York attorneys, the opinion concluded that stating on the letterhead that the attorney was admitted to the New York Bar would not violate the New York Rules of Professional Conduct. Unfortunately, Ethics Opinion 1241 is not particularly helpful since it was limited to approving what appears on the letterhead and did not extend to condoning the provision of legal services to New York clients without a physical office in New York.

According to Richard Lewis, the president of the New York State Bar Association, "Section 470 was created when horses were the main mode of transportation. In a world with e-filing, virtual court appearances and searchable databases, attorneys do not need to maintain offices in New York State to practice here. We urge the governor to sign the bill and repeal this outdated law."

Notwithstanding the overwhelming support for the repeal of Section 470, Governor Hochul vetoed the bill in late December 2023. Efforts to repeal Section 470 continue.

Other Ethical Challenges:

There are often no clear answers when considering matters of ethics, but that does not excuse failing to identify the issues. The following examples highlight some other important ethical issues for estate planners.

1. Legal Fees

Example 1: An individual wants to retain you to provide estate planning or estate administration services, or representation in connection with a Will contest. A

common question is “**how much will this cost?**” There are provisions in the RPC that you will need to consider in setting your fees.

RPC 1.5 -- Fees (emphasis added)

(a) A lawyer's fee shall be **reasonable**. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the **time** and labor required, the novelty and **difficulty** of the questions involved, and the **skill** requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the **fee customarily charged** in the **locality** for similar legal services;

(4) the **amount involved** and the **results obtained**;

(5) the **time limitations** imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the **experience, reputation, and ability of the lawyer** or lawyers performing the services;

(8) whether the fee is fixed or contingent.

1.1. The fee arrangements should be set forth in advance in the engagement letter. See the sample engagement letter attached as **Exhibit A**.

1.2. Alternative fee arrangements may include a flat fee for the project, a fee based on the numbers of hours devoted to the representation, or a fee that is capped by a specified amount.

1.3. The lodestar method to compute legal fees is to multiply the appropriate hourly fee by the number of hours that were reasonably expended.

1.4. In all cases, the fee must be **reasonable**.

1.5. Will the legal fees be deducted on an estate tax return, inheritance tax return, or an income tax return?

1.6. Is it possible that the fees will be paid by an individual other than your client or by an entity?

1.7. Will the fees be submitted to a Court for approval?⁸

2. Safeguarding Confidential Information

Example 2A: In connection with preparing an estate plan you obtain information about your client, including her social security number, copies of her bank and brokerage statements with account numbers, copies of her recent income tax returns, and details about her medical history. That information is sent to you by email. When the planning is completed, you retain those documents, as well as her original Will and several Trust Agreements. The client asks you to send her an electronic copy of her Will and Trust Agreements, along with copies of her new IRA beneficiary designation forms (which include her social security number and IRA account numbers).

- ❖ What safeguards should you take when dealing with a client's confidential information and property?
- ❖ Have new issues concerning confidentiality been presented by the widespread use of videoconferencing that began during the COVID-19 pandemic and continue since more attorneys are working remotely?

RPC 1.6 -- Confidentiality of Information (emphasis added)

(a) A lawyer **shall not** reveal information relating to representation of a client unless the client **consents** after consultation, **except** for (1) disclosures that are **impliedly authorized** in order to carry out the representation, (2) disclosures of information that is generally known, and (3) as stated in paragraphs (b), (c), and (d).

⁸ See In the Matter of the Estate of Jeane C. Simon, Deceased and In the Matter of Drew H. Simon, an Incapacitated Person (Superior Court of New Jersey, Appellate Division, Docket No. A-2490-15T2, Docket No. A-2563-15T2, Docket No. A-2873-15T2, Docket No. A-2874-15T2). In this unpublished opinion from 2018, arising from the appeal of the trial court decision in two matters in Passaic County, the Superior Court addresses issues relating to the reasonableness of legal fees in a guardianship matter.

2.1. What safeguards should you take when **transmitting** documents?

2.2. What safeguards should you take when **retaining** documents and confidential information?

2.3. When can you dispose of documents and what safeguards should you take when **disposing** of confidential information?

2.4. What safeguards **must** you take in transmitting, retaining, and disposing of a client's confidential information and documents?

2.5. **RPC 1.6** imposes a duty of confidentiality with respect to **information** relating to the representation of a client. That information may be in a printed form or in an electronic form. **RPC 1.6** is not limited to confidential information.

2.6. **RPC 1.15** deals with the safekeeping of property and provides that a "**lawyer shall hold property of clients** or third persons that is in a lawyer's possession in connection with a representation **separate** from the lawyer's own property..." (emphasis added). With so many lawyers working from home during the pandemic, this requirement provides new challenges.

2.7. Professional Ethics Opinion No. 692 (N.J.L.J. January 15, 2001; N.J.L. January 22, 2001) deals with the length of time that a lawyer must maintain a client file following the final disposition of a matter. While **RPC 1.15(b)** implies that "property of a client" may never be destroyed without the client's permission or some legal authority, Opinion No. 692 provides the following guidance, which softens the application of that rule⁹:

2.7.1. "Original wills, trusts, deeds, executed contracts, corporate bylaws and minutes are but a few examples of documents which constitute client property" for purposes of **RPC 1.15**. The portions of the file that constitute the property of the client must be "either returned to the client, disposed of pursuant to court order or agreement with the client, or preserved and maintained for a reasonable period of time following the conclusion of the matter."

2.7.2. The remainder of the file, including correspondence, pleadings, memoranda, and briefs are not client property and, therefore, are not subject

⁹ Language in Section 2.7 that is set off by quotation marks has been quoted from Professional Ethics Opinion No. 692.

to the retention requirements of **RPC 1.15**, but are subject to other ethical obligations including **RPC 1.1** (Competence) and **RPC 1.4** (Communication).

2.7.3. Absent an arrangement to the contrary, the general rule is that a file with property of the client may be destroyed **seven years** after it has been closed. A client may authorize the earlier destruction of a closed file.

2.7.4. There may be business reasons to retain materials: for example, for the benefit of the client, for use in a similar matter for another client, for use in the defense of a malpractice claim, and for use in a fee dispute.

2.7.5. The lawyer may choose to retain the file consistent with the duty of professional care that arises from the particular attorney-client relationship. For example, the lawyer may retain medical records and financial records that might be needed in the future but would otherwise be unavailable.

2.7.6. Failure to retain a client's closed file will not be considered unethical unless "the destruction of the file material constitutes an act of gross negligence or, along with the destruction of other files, a pattern of negligence."

2.7.7. When a closed file is destroyed, there is a duty to preserve confidentiality so "[s]imply placing the files in the trash would not suffice" to guard against the risk of inadvertent disclosure. Use a shredder in your office or hire a reliable outside company to shred the documents in the presence of a firm employee.

2.8. When is an estate planning file a closed file? The seven-year period does not begin to run until the file is closed. Estate planning files are often kept open, with ongoing correspondence sent to the client about gift tax return filing obligations, Crummey withdrawal notices, and updates in the law. Therefore, trusts and estates attorneys may need a longer document retention policy than transactional attorneys and litigators.

2.9. **Cybersecurity:** Transmitting client information and documents by email and storing that information and those documents electronically raise many complex cybersecurity issues, and as technology changes, new issues arise. The ABA published a book in 2013 entitled The Cybersecurity Handbook: A Resource for Attorneys, Law Firms, and Business Professionals, which provides some practical guidance. A detailed discussion of these cybersecurity issues is beyond the scope of this outline, but the following is a checklist of issues that should be considered:

2.9.1. Expert Advice: Does the duty of competence in **RPC 1.1** include competence in identifying and addressing cybersecurity issues? If a lawyer lacks the technical competence, is there a duty to consult with an expert?

2.9.2. Portable Devices: Devices like thumb drives, laptops, smartphones and tablets are portable and, therefore, can be easily lost or stolen. In 2010, the ABA Ethics 20/20 Commission established a technology group, which suggested precautions to increase the security of data on portable devices -- strong passwords, firewalls, protections against spyware, viruses and malware, frequent backup of data, and methods to delete data remotely if a device is lost or stolen.

2.9.3. Metadata:

2.9.3.1. Metadata includes hidden data and personal information that is stored in a document or in the document's properties. Metadata, such as prior versions of the document and internal comments made by reviewers of the document through tracked changes, is generally not intended to be seen by third parties.

2.9.3.2. Use a software program that will scrub your documents of metadata before they are sent electronically to other parties. Confirm that the program works when you are sending documents from home. If you do not have a program that deletes the metadata, print the document, and then scan it and send the "clean" pdf version by email.

2.9.3.3. Is it ethical for you to search for metadata in documents that you receive? Must you notify the sender if you find metadata? In 2006, the ABA issued Formal Opinion 06-442 concluding that there is no ethical prohibition on searching for and using metadata, but if the recipient knows or should have known that the transmission of the metadata was inadvertent, then the recipient must notify the sender.

2.9.3.4. New Jersey has a similar rule that permits a lawyer to review metadata provided the lawyer believes that the metadata was not inadvertently sent (**RPC 4.4**). In making the determination of whether it is permissible to review metadata, the lawyer needs to consider the nature and purpose of the document. Lawyers should avoid reviewing privileged attorney-client and work product information. The official comments to the rule dated August 1, 2016, provide that absent permission "a lawyer should not review metadata in a mediation statement or correspondence from another lawyer, as the metadata may reflect attorney-client communications, work product or internal communications not intended to be shared

with opposing counsel” (**RPC 4.4, Official Comment**). The official comment goes on to provide that if forensic “mining” software is needed to reveal the metadata, it is likely that the information revealed was inadvertently sent.

2.9.4. Outsourcing: What obligation does the attorney have to confirm that there are adequate safeguards in place to protect confidential information when services are provided through outsourcing, and data is transferred electronically to third parties?

2.9.5. Social Media: Be careful what you post on social media.

2.9.6. Networks, Email, Dangerous Websites, and the Cloud: The transmission of unsecured and poorly secured confidential information creates the opportunity for data leakage, and clicking on the wrong link can be disastrous. Here are just a few examples of why it is important to have a strong firewall for your network and to use a program that will encrypt emails:

2.9.6.1. An unsecured network creates an open door for hackers.

2.9.6.2. An email sent with confidential information in its header will leak data even if the body of the email is encrypted so it is advisable to encrypt the entire email.

2.9.6.3. An attorney surfing the internet or opening a link in an email may attract a virus that infects the entire network, exposes your clients’ confidential information to unauthorized parties, and shuts down your office computer.

2.9.6.4. An attorney using Dropbox or another cloud based file sharing service from his personal account may not have configured those services properly to restrict access by unauthorized parties.¹⁰ Passwords like “1234”

¹⁰ See Harleysville Ins. Co. v. Holding Funeral Home, Inc. et al, No. 1:15cv00057, 2017 WL 4368617 (W.D. Va. Oct. 2, 2017), which provides an object lesson in the perils of using and resusing an unsecured electronic folder in an internet-based file-sharing service operated by Box, Inc. In that case, an insurance claims file and an investigation file, with privileged information, were added to an electronic folder that contained a video (and was labeled “NICB Video”), and the claims file and investigation file were then inadvertently shared with an adverse party, when the intention was just to share the video. On appeal, the District Court Judge reversed the Magistrate Judge and held that the attorney-client privilege was not waived. The District Court Judge applied the following five-factor test to the inadvertent disclosure:

provide no real protection. Some experts have concluded that security-conscious users should avoid using AOL as their internet provider.

2.9.7. Engagement Letter. The engagement letter should address the potential security issues presented by electronic communication and the use of the internet. The letter can include confirmation that the client has given the attorney permission to communicate via email and text, understanding the risks. In addition, the client should be warned about following instructions received by email or other electronic communication to wire funds. Requests for funds may appear to come from the attorney but are actually acts of cybercrime designed to steal the client's money.

2.9.8. Spam Blockers. The use of a spam filter to move unwanted email to a place other than an attorney's inbox may seem like a good idea, but precautions need to be taken so that email that is mistakenly trapped by the spam filter does not get discarded. On a regular basis, the attorney or her agent should review a list of the emails that have been trapped by the spam filter so that legitimate email, such as email from a client, the Court, or an adversary, can be released from the spam filter and delivered. In addition, a log of all incoming email and a backup system for email should be maintained so there is a way to confirm whether an email was actually received. For example, if an email is mistakenly deleted, it can be retrieved via the backup system.¹¹

2.9.9. Smart Speakers. Attorneys should be aware of the risks of conducting confidential business in the presence of a smart speaker like Amazon Echo, Google Home, or Apple's HomePod.¹² Those devices may be recording the conversation even though they are only supposed to begin recording after the "wake words" are spoken (like "Alexa"). What if the device incorrectly hears the trigger word and mistakenly sends the recording to someone on the user's contact list?

(i) the reasonableness of the precautions taken to prevent inadvertent disclosure; (ii) the time taken to rectify the error; (iii) the scope of the discovery; (iv) the extent of the disclosure; and (v) whether the party asserting the privilege had used its unavailability for misleading, improper, or overreaching purposes.

¹¹ See Emerald Coast Utilities Authority v. Bear Marcus Pointe, L.L.C., FL Dist. Court of Appeals, 1st Dist. 2017.

¹² See San Francisco Chronicle article from June 11, 2018 written by Benny Evangelista entitled "Alexa and other smart speakers may endanger privacy rights." <https://sfchronicle.com/business/article/Alexa-and-other-smart-speakers-may-endanger-12982917.php>.

2.10. Professional Ethics Opinion No. 701 (N.J.L.J. April 10, 2006; N.J.L. April 24, 2006) deals with the electronic storage and access of documents obtained in connection with representing a client.¹³ The inquirer acknowledges that certain documents, such as Wills and deeds, must be retained in their original form, but he asks whether the RPC permits him to use an electronic filing system for certain other documents.

2.10.1. Opinion 701 confirms that property of the client such as a Will cannot be preserved merely in electronic form and must be retained in its original written form pursuant to Professional Ethics Opinion No. 692 (discussed above).

2.10.2. Opinion 701 deals with the rest of the client's file, which is not considered property of the client. An attorney has a duty of competence (**RPC 1.1**), and duties relating to communication with the client (**RPC 1.4**). Making information more readily accessible to the attorney, and, therefore, to the client, when it is stored electronically may improve the attorney's ability to discharge those duties, so to the extent that technology "enhances the ability to fulfill those obligations, it is a welcome development". However, while the ease of access for the attorney can be a good thing in terms of convenience, that ease of access may also create an ethical problem. "The availability of sensitive client documents in an electronic medium that could be accessed or intercepted by unauthorized users therefore raises issues of confidentiality under **RPC 1.6**."

2.10.3. The attorney must exercise reasonable care against the possibility of unauthorized access to client information. There is no bright line test of reasonableness, and no per se prohibition on the use of the internet, an outside internet service provider, or third party IT services. Rather, the Opinion states that "[t]he touchstone in using 'reasonable care' against unauthorized disclosure is that (1) the lawyer has entrusted such documents to an outside provider under circumstances in which there is an enforceable obligation to preserve confidentiality and security, and (2) use is made of available technology to guard against reasonably foreseeable attempts to infiltrate the data. If the lawyer has come to the prudent professional judgment he has satisfied both these criteria, then 'reasonable care' will have been exercised."

2.10.4. Professional Ethics Opinion 701 concludes that where a document with confidential client information is sent to the lawyer by email, the lawyer should password protect the lawyer's digital storage of that document. The

¹³ Language in Section 2.10 that is set off by quotation marks has been quoted from Professional Ethics Opinion No. 701.

conclusion of Opinion 701 can be extended to the electronic transmission by the attorney of a document that the attorney created, if that document contains confidential client information.

Example 2B: Your client refuses to pay your bill for legal services after you prepared a new Will and related estate planning documents for the client.

- ❖ May you turn over the delinquent account receivable to a collection agency?

2.11. Professional Ethics Opinion 723 (207 N.J.L.J. 845, March 19, 2012) concluded that a law firm was permitted to sell delinquent accounts receivable to a third party for collection of fees payable by a former client under the following conditions:

2.11.1. The attorney should first try to resolve the fee dispute directly with the client.

2.11.2. The attorney may not initiate a collection action against a current client.

2.11.3. An arbitration notice pursuant to Rule 1:20A-6 should be sent to the client before the matter is referred to a collection agency.

2.11.4. Reasonable efforts should be made to confirm that the collection agency is reputable and will not take improper or illegal measures to collect the debt.

2.11.5. Only information that is reasonably necessary to establish the claim for fees may be revealed to the collection agency.

2.11.6. If these steps are taken, then the attorney will not have violated the duty of confidentiality in **RPC 1.6(d)(2)**. The exception to that duty based on a claim in a controversy between the attorney and the client will be satisfied in that situation.

2.12. Before suing a client for fees or turning over the matter to a collection agency, consider the impact of that action on the likelihood that (i) the former client will file a counterclaim alleging malpractice and (ii) the underwriting of the attorney's future malpractice insurance will be more difficult.

2.13. As of April 1, 2013, an attorney can no longer retain a former client's property in connection with collecting unpaid fees. **RPC 1.16(d)** now provides that "[n]o lawyer shall assert a common law retaining lien."

3. Referral Services and Legal Service Plans.

Example 3: You would like to expand your practice and you find a company that hosts a website for individuals looking for legal advice and will provide your profile to potential clients.

❖ Can you participate in such a program?

3.1. The Advisory Committee on Professional Ethics received an inquiry from a bar association requesting a formal opinion about whether "it is ethical for lawyers to participate in certain online, nonlawyer, corporately owned services that offer legal services to the public." The companies at issue were Avvo, LegalZoom, and Rocket Lawyer.

3.2. The inquiry resulted in an opinion issued jointly on June 21, 2017, by the Advisory Committee on Professional Ethics (Opinion 732), the Committee on Attorney Advertising (Opinion 44), and the Committee on the Unauthorized Practice of Law (Opinion 54).

3.3. Two programs offered by Avvo were the subject of the inquiry -- Avvo Advisor and Avvo Legal Services. In the case of Avvo Advisor, a user pays Avvo a flat fee for a 15 minute telephone call with an attorney, Avvo contacts participating attorneys, and the first attorney to respond gets the job. Alternatively, the user can select the attorney from the attorney profiles on the Avvo website. Through Avvo Legal Services, a user can purchase limited scope legal services for a fixed fee paid to Avvo. In each case, after the services are provided, the entire flat fee is deposited into the participating attorney's account, and Avvo then withdraws a portion of that fee. Although the Avvo fee is designated as a "marketing fee", the title was not dispositive of its actual character. Instead, the Committees found that New Jersey lawyers are not permitted to participate in the Avvo programs because the compensation arrangements (i) constituted impermissible fee sharing with a nonlawyer in violation of **RPC 5.4(a)** and (ii) involved the payment of impermissible referral fees in violation of **RPC 7.2(c)** and **RPC 7.3(d)**. At least three other states have also concluded that it is unethical for attorneys to participate in the Avvo plans.

3.4. LegalZoom and Rocket Lawyer offer users a monthly subscription plan for prepaid legal services. Those plans were found to be legal service plans and not referral services, so there was no violation for impermissible fee sharing

or referral fees. However, at the time the inquiry was made both companies had failed to register with the Administrative Office of the Courts, which is required for legal service plans. Until that registration was completed, New Jersey attorneys were not permitted to participate in those legal service plans. On July 24, 2017, LegalZoom issued a press release to announce that it had completed the necessary registration in response to the joint Opinion.

4. **Advertising of Awards, Honors, and Accolades**

Example 4: You receive notification that you have been included in the list of AV Preeminent lawyers, Super Lawyers, Rising Stars, or Best Lawyers, or you have received some other award, honor or accolade (collectively referred to in this outline as the “**Award**”).

❖ Other than telling your mother, what can you do to publicize this?

4.1. Attached as **Exhibit B** is a copy of a Notice to the Bar from the New Jersey Supreme Court Committee on Attorney Advertising dated May 5, 2021 (the “**2021 Notice**”). The 2021 Notice is an updated version of the Notice that was issued on May 4, 2016.

4.2. According to the 2021 Notice, before an attorney can refer to the Award in a public communication a two-part test must be met:

(1) The organization conferring the Award must adequately investigate and consider the professional fitness of the lawyer. **RPC 7.1(a)(3)(ii)** requires that the basis for comparison with other lawyers must be “substantiated, bona fide, and verifiable.” The Notice lists factors that do not meet this test, including the payment of money for the Award, membership in the conferring organization, and the level of participation in the conferring organization’s website.

(2) If the Award meets the first test, then the lawyer may refer to it in advertising on a website, firm letterhead, email signature block, or other form of communication **ONLY IF** the following information is provided in reasonable proximity to the reference to the Award:

- The lawyer must describe the standards or methodology on which the Award was based either as text accompanying the advertisement or by reference to a “convenient, publicly available source” such as a link to the organization’s website where the methodology is described;

- The lawyer must include the name of the organization that granted the Award; and
- The lawyer must include the following disclaimer: “No aspect of this advertisement has been approved by the Supreme Court of New Jersey.”

4.3. In addition, if the Award includes a superlative such as “super”, “best”, or “top-rated”, the reference to the Award must state that the lawyer was included in the list with that name, but the lawyer cannot suggest that the lawyer has that attribute.

4.4. These requirements apply not only when the Award is listed in text, but also when a badge or logo of the Award appears.

4.5. The required information may not be buried at the bottom of the page, provided in tiny print, or placed outside the screen shot on the firm website.

5. Client Under a Disability

Example 5: You have represented a client for the past 20 years, and his estate plan provided for his assets to pass to his two children and six grandchildren, whom he often talked about fondly. Your client, a widower in his 80s, had a stroke last year and has trouble walking. He recently married a 50 year old woman who was one of the aides who took care of your client while he was recovering from his stroke. Your client calls you and instructs you to prepare a new Will, leaving his entire estate outright to his new wife. When you ask why he is making this drastic change in his planning, he doesn’t provide an answer other than to say that these are his wishes.

❖ What should you do?

5.1. May an attorney do estate planning for an individual who is disabled as a result of age, illness or injury?

5.2. What special safeguards should the attorney take?

5.3. Under what circumstances **must** the attorney disclose confidential information to others?

5.4. Under what circumstances **may** the attorney disclose confidential information to others?

5.5. The following provisions of the RPC provide guidance in analyzing these questions:

RPC 1.14 -- Client Under a Disability (emphasis added)

(a) When a client's capacity to make adequately considered decisions in connection with the representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer **shall**, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.¹⁴

(b) When the lawyer **reasonably believes** that the client has diminished capacity, is at risk of **substantial physical, financial or other harm** unless action is taken and cannot adequately act in the client's own interest, the lawyer **may** take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by **RPC 1.6**. When taking protective action pursuant to paragraph (b), the lawyer is **impliedly authorized** under **RPC 1.6(a)** to reveal information about the client, but **only to the extent reasonably necessary to protect the client's interests**.

5.6. If the client is someone the attorney has worked with for many years, it may be easier to maintain a normal attorney-client relationship even if the client has diminished capacity.

5.7. The RPC imposes various duties relating to communication between the attorney and the client. **RPC 1.4(c)** provides that a "lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." If your client has diminished capacity, what additional steps should you take to improve communication?

5.8. The attorney can **speak louder and more slowly** during meetings and telephone calls with the client, send letters with larger type face, provide

¹⁴ In the Matter of M.R., 135 N.J. 155 (1994), is a New Jersey Supreme Court case that discussed **RPC 1.14** and the issue of balancing the right of self-determination of a developmentally-disabled person with traditional judicial concerns for the individual's best interests.

checklists and summaries, and travel to the client's home. (Any written communication raises additional issues including, in the case of federal tax matters, compliance with the treasury regulations commonly referred to as "Circular 230." An examination of these issues is beyond the scope of this outline, but must be considered before sending a client an email, letter or other written communication.)

5.9. If the client has trouble hearing, the attorney should make sure he or she **lets the client tell the attorney in the client's own words** what the client's objectives are and why a change should be made; if the attorney asks a question and the client simply says "yes" it is quite possible that the client didn't hear what the attorney asked and isn't actually answering the question.

5.10. **RPC 1.14(b)** provides that the attorney "**MAY**" take protective action if the attorney reasonably believes that the client has diminished capacity and is at risk of substantial **physical, financial or other harm** unless action is taken; it does not obligate the attorney to do so.

5.11. **Warning Signs:** The following may be warning signs that the client may have diminished capacity and may be at risk of **substantial physical, financial or other harm** unless action is taken:

5.11.1. Unusual dramatic change in an estate plan;

5.11.2. The attorney's receipt of written instructions from a client who used to call on the phone; and/or

5.11.3. When the attorney asks the client why a change is being made the attorney receives an answer that sounds rehearsed or confused. If the conversation is taking place over the telephone, the client may sound like he or she is reading from a script rather than speaking freely.

5.12. Before an attorney permits a client with diminished capacity to sign a Will, the attorney needs to be satisfied that the client has capacity and is not acting under undue influence.¹⁵ If there is a real question about capacity, the attorney

¹⁵ See Varelli v. White, A-4675-16T3, 2019 WL 3229679, at *1 (N.J. Super. Ct. App. Div. July 18, 2019), cert. denied, 240 N.J. 130 (2019), and cert. denied, 240 N.J. 139 (2019). This case involves an estate plan for an individual with Alzheimer's and includes a claim of undue influence, a legal malpractice claim, a breach of fiduciary duty claim, a theory of joint enterprise, issues relating to the allocation of liability for damages, and issues relating to counsel fees. The attorney who drafted the estate planning documents and held himself out as a specialist in estate planning never met the client in person, never spoke to the client, did not

should take extra precautions. A discussion of this subject is beyond the scope of this seminar, but an example of advisable actions is that the attorney should arrange for the client to schedule a trip to the client's doctor on the day that the Will is signed and get a written report from the doctor confirming the client's competence.

6. Providing Timely Counsel

Example 6: You receive a call from a potential new client who tells you that she would like to update her estate planning to change the beneficiaries. She mentions during the call that she has a serious illness. You are planning a two-week vacation that will start in a week, and you have made commitments to other clients that will require significant work in the next month.

❖ Should you agree to represent this new client?

RPC 1.3 -- Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

6.1. After obtaining additional information about the potential client's health issues, a realistic timeline needs to be established and communicated to the potential client.

6.2. In estate planning there may be special circumstances (such as health issues) that shorten the timeline for the determination of promptness.

supervise the execution of the documents, and relied on information provided by a third party. The attorney had an eight-minute telephone call with someone he thought was the client but was actually the client's granddaughter. Several provisions of the **RPC** were relied upon by the plaintiffs' expert, including **RPC 1.4** and **RPC 5.3**, to support the conclusion that the attorney had not met the standard of care for an estate attorney, because (i) he did not follow the procedure of his own general practice to meet with clients without others present, (ii) he could not attest to the client's competency or screen for the presence of undue influence, (iii) he could not conclusively identify that the person on the phone was his client, (iv) he had no knowledge as to who was with the client during the phone call, (v) he could not have adequately explained everything to the client in such a short call, and (vi) he failed to explain or oversee the execution of the documents. The expert for the defendants opined that (i) the attorney owed no duty of care to the beneficiaries of the Estate, (ii) a violation of the **RPC** does not constitute malpractice per se, (iii) an attorney does not need to meet a client in person, and (iv) the attorney could have adequately reviewed with the client all of the relevant information in an eight-minute phone call. The Appellate Division remanded the case for a new jury trial.

6.3. In some egregious cases, failure to act in a timely manner may not only violate **RPC 1.3**, but also constitute gross negligence in violation of **RPC 1.1(a)**.

7. Spousal Representation

Example 7: Husband and Wife are referred to you for estate planning. You schedule an initial meeting.

- ❖ Can both Husband and Wife be your client?
- ❖ What special arrangements should be made?

7.1. Representing more than one individual in a marriage or a civil union at the same time presents potentially significant ethical issues. See **RPC 1.7**.¹⁶

7.2. While it is common to represent both spouses (or two members of a civil union) in connection with estate planning matters, beware:

7.2.1. Is it a first marriage/civil union?

7.2.2. Are there children from a prior marriage or children born outside of this relationship who have competing interests from the spouse/partner?

7.2.3. Are there any secrets?

7.2.4. Will the happy union turn into an unhappy union?

7.3. The attorney needs to balance the objective of delivering legal services without excessive cost or duplication WITH the attorney's role as the confidential advisor to a client.

7.4. **Engagement Letter**: Each engagement letter should identify the client and the scope of the engagement and confirm the fee arrangements consistent with **RPC 1.5**. An attorney can limit the scope of the representation if the "limitation is reasonable under the circumstances and the client gives informed consent." (**RPC 1.2(c)**)¹⁷ For example, the engagement letter can provide that the

¹⁶ A 1994 ABA Special Ethics Committee report on representing spouses concluded that marriage does not necessarily create an impermissible conflict of interest under **RPC 1.7**, but may under certain circumstances.

¹⁷ See Lerner v. Laufer, 359 N.J. Super 201, 819 A.2d 471 (2003), cert. denied, 177 N.J. 223, which deals with a matrimonial case but provides guidance about whether and to what extent

attorney will not be giving advice concerning the laws of any state but New Jersey. That caveat will be particularly relevant if the client owns property in another state.

In the case of estate planning for a couple, it is crucial for the attorney to discuss the terms of the engagement at the initial meeting with the couple and to send a written engagement letter to the couple confirming those arrangements.¹⁸ In addition to the matters that should be addressed in all engagement letters, including identifying the client, the scope of the engagement, and the fee arrangements, the attorney should clearly explain to the couple what the rules will be for disclosure of confidential information. Subject to the ethics rules there are some choices:

7.4.1. Is this a joint representation of the couple or a separate representation of each spouse/civil union partner?

7.4.2. Although some practitioners may conclude that separate representation of each individual is possible, that approach may create more issues when a conflict arises. ACTEC no longer provides or endorses a sample engagement letter for separate representation of each party in an estate planning matter for a couple.

7.4.3. The concept of joint representation rests on the premise that, without evidence to the contrary, there is no actual adversity between the spouses/civil union partners and assumes the spouses/civil union partners will agree.

7.4.4. **A key issue is whether the attorney is going to keep secrets or share information he or she learns from one spouse/civil union partner with the other.**

an attorney may limit the scope of representation in accordance with **RPC 1.2(c)** and not violate the duties of diligence, competence, faithfulness and good judgment.

¹⁸ See Hill Wallack v. Jackie Saint Gerard Jordan, which was decided on July 7, 2011 (Superior Court of New Jersey, Appellate Division, Docket No. A-0759-09T1), involved a dispute over legal fees and the content of an engagement letter. In that case, the defendant (client) claimed that because the engagement letter failed to include a specific rider required by Rule 5:3-5 for an engagement letter in the context of a family civil action matter the fees to which the attorney was entitled should be limited. The Court found that the client suffered no prejudice as a result of the omitted information. Although the attorney was able to avoid a penalty for the deficiency in the engagement letter based on a factual determination, the case serves as a reminder of the importance of ensuring that each engagement letter is appropriate for the specific matter.

7.4.5. The attorney must be able to exercise independent judgment; keeping secrets threatens that independent judgment.

7.5. The following is one approach to handling confidential spousal communications. This approach is reflected in the sample engagement letter attached as **Exhibit A** to this outline and is based on the ACTEC sample language for an engagement letter to a couple whom the attorney will be representing jointly:

7.5.1. The attorney confirms that he or she has permission to disclose matters that one member of the couple discusses with the attorney to the other.

7.5.2. The attorney will not agree to withhold information from the other spouse/civil union partner.

7.5.3. Disclosure between the parties does not affect the privileged nature of their communication to the extent otherwise protected from disclosure to third parties.

7.5.4. If a conflict of interest arises between the couple during the course of their planning or if they have a difference of opinion, the attorney will point out the pros and cons of their respective positions or differing opinions; however, the attorney will not advocate one position over the other.

7.5.5. The attorney will not give legal advice to either spouse/civil union partner or make any changes in any estate planning documents without their mutual knowledge and consent.

7.5.6. If an **actual** conflict of interest arises of such a nature that in the attorney's judgment it is impossible for the attorney to perform his or her ethical obligations to both spouses/civil union partners, the attorney will withdraw as the joint lawyer.

7.6. Problems will arise if one spouse/civil union partner asks the attorney to take an action without the knowledge or consent of the other spouse/civil union partner or the attorney learns a fact from one spouse/civil union partner that is unknown to the other spouse/civil union partner. The following are hypothetical (and not-so-hypothetical) examples of problems that may arise during the representation of a couple for estate planning:

7.6.1. Suppose the husband calls you after the meeting and asks you to provide for his wife's inheritance to be held in trust for her benefit rather than distributed outright to her, which was the disposition discussed at the meeting.

7.6.2. Suppose the husband calls you after the meeting and asks you to add his brother as co-executor and co-trustee with his wife because he wants the added protection of having a co-fiduciary but didn't want to hurt his wife's feelings at the meeting.

7.6.3. Suppose the spouses (who each have children from a prior marriage) tell you at the meeting that it is OK to have the jointly-owned house pass to the survivor outright, and the survivor says he or she will take care of the stepchildren without any formal arrangement in place.

7.6.4. Suppose the husband calls you after the meeting and asks you to add a \$2.0 million bequest to his girlfriend or change the beneficiary of a life insurance policy to his girlfriend, but not to tell his wife.

7.7. If a conflict arises, there are two interrelated decisions:

7.7.1. Does the attorney withdraw from the representation?

- **RPC 1.16(a)** provides that withdrawal is **mandatory** if the attorney's continued representation will violate the RPC or other law.
- **RPC 1.16(b)** provides that withdrawal is **permissive** if the client is using the attorney's services to perpetrate a fraud or the attorney considers the requested action to be repugnant or with which the attorney has a fundamental disagreement.

7.7.2. Does the attorney disclose the confidential information to the other spouse/civil union partner?

7.8. If an attorney abruptly withdraws without explanation he or she may have triggered some indirect disclosure. That is one reason why it is so important to address the issue of disclosure in the engagement letter.

7.9. **RPC 1.6(b)** (emphasis added) provides for the following **mandatory** disclosure of confidential information relevant to the trusts and estates attorney:

(b) A lawyer **shall** reveal such information to the **proper authorities**, as soon as, and to the extent the lawyer reasonably believes necessary, to prevent the client or another person:

(1) from committing a criminal, illegal or **fraudulent act** that the lawyer reasonably believes is likely to result in death or substantial bodily harm or **substantial injury to the financial interest or property of another**;

7.10. **RPC 1.6(c), (d), and (e)** (emphasis added) provides for the following **permissible** disclosure of confidential information relevant to the trusts and estates attorney:

(c) If a lawyer **reveals information pursuant to RPC 1.6(b)**, the lawyer also **may** reveal the information to the **person threatened** to the extent the lawyer reasonably **believes is necessary** to protect that person from death, substantial bodily harm, **substantial financial injury, or substantial property loss**.

(d) A lawyer **may reveal** such information to the extent the lawyer reasonably believes necessary:

(1) to rectify the consequences of a client's criminal, illegal or **fraudulent act** in the furtherance of which the lawyer's services had been used;

(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, or to establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer based upon the conduct in which the client was involved; [or]

(3) to comply with other law....

(e) Reasonable belief for purposes of **RPC 1.6** is the belief or conclusion of a reasonable lawyer that is based upon information that has **some foundation in fact** and constitutes prima facie evidence of the matters referred to in subsections (b), (c), or (d).

7.11. **A. v. B. v. Hill Wallack, 158 N.J. 51 (1999)**. This case, which was decided by the New Jersey Supreme Court, arose in the context of estate planning for a married couple and illustrates the vital importance of having a clear engagement letter that addresses the issue of whether confidential information about one co-client may be disclosed to the other co-client.

- In 1997 Husband and Wife retained Hill Wallack for estate planning and signed a “Waiver of Conflict of Interest” that included a statement that information provided by one spouse **could** become available to the other. Each spouse consented to and waived any conflicts arising from the firm’s joint representation. However, there was no express authorization for the firm to disclose one spouse’s confidential information to the other.
- The estate plan for Husband and Wife included Wills that left their respective estates to the survivor. If the spouse was not living, the Will provided for the residue to pass to the testator’s issue. If Wife predeceased Husband, he would inherit her property and then dispose of it under his Will. Sounds OK? Except,....
- Husband had recently fathered an illegitimate child, but neither the trusts and estates attorney at Hill Wallack nor Wife knew this.
- Before the Wills were signed, Hill Wallack was retained to represent the woman who was making the paternity claim against Husband. Due to a misspelling of Husband’s name in the firm’s records, the conflict search did not identify Husband as a firm client.
- Husband was represented by another firm in the paternity case and did not mention to the Hill Wallack lawyer who contacted Husband on behalf of the woman making the paternity claim that Husband was also a client of Hill Wallack.
- After the paternity case was filed, Husband and Wife signed their new Wills.
- When Hill Wallack later learned of the conflict of interest, it withdrew from representing the woman who was making the paternity claim.
- Hill Wallack wrote to Husband to say the firm would tell Wife about the paternity claim unless Husband did so by a set date.
- Husband joined the firm as a third-party defendant in the paternity case and sought to **bar disclosure** to Wife.

- The Family Part denied Husband's request, the Appellate Division reversed and the firm moved to appeal that order. The New Jersey Supreme Court then heard the case.
- The Supreme Court examined two competing obligations that an attorney has: the duty of confidentiality and the duty to inform a client of material facts. Crucial to the attorney-client relationship is the attorney's obligation not to reveal confidential information learned in the course of representation, unless impliedly authorized or otherwise permitted. An attorney also has a duty to keep clients informed so they can make informed decisions.
- The New Jersey Supreme Court **did not** apply **RPC 1.6(b)**, which **requires** disclosure to the proper authorities if the lawyer reasonably believes the disclosure is necessary to prevent the client from committing a fraudulent act that the lawyer reasonably believes is likely to result in substantial injury to the financial interests or property of another. According to the Court, the possible inheritance of Wife's property by Husband's illegitimate child was too remote.
- **HELD:** Husband's deliberate failure to reveal the existence of his illegitimate child during the joint estate planning project constituted a **fraud** on Wife, and the firm (whose services, in effect, were used in furtherance of the fraudulent act) was authorized to disclose to Wife the existence of the child pursuant to what is now **RPC 1.6(d)** which **permits** disclosure **to rectify** the consequences of a fraud. The Court found that disclosure to Wife of the illegitimate child's existence constituted an exceptional case "with compelling reason clearly and convincingly shown."
- The fact that the firm learned of the illegitimate child from someone other than Husband lowers the Husband's expectation of non-disclosure.
- The conflict waiver letter signed by Husband and Wife supported the firm's right to disclose -- although the letter stopped short of explicitly authorizing the firm to disclose a secret.
- The Court stated that an attorney at the start of a joint representation should address the issue of sharing confidential

information so the expectations are clear. According to the Court, the co-clients can agree (i) that any confidential information concerning one co-client, whether obtained from a co-client or from another source, will be shared with the other co-client, or (ii) that unilateral confidences or other confidential information will be kept confidential by the attorney. In the absence of an agreement, the Court cited the Restatement (Third) of The Law Governing Lawyers, which allows the attorney discretion to inform the co-client of the confidential information if, in the attorney's reasonable judgment, the immediacy and magnitude of the risk to the affected co-client outweigh the interest of the other co-client in continued secrecy. The Court also reviewed ACTEC commentaries and a report of the ABA Section of Real Property, Probate and Trust Law, which each focused on a discretionary rule of disclosure based on the balancing of various factors. However, if the engagement letter is clear, the attorney will be in a far better position to respond to this type of situation.

8. Representation of Multiple Family Members Other Than Spouses

Example 8: Your long-standing client calls to say that she wants you to prepare an estate plan for her mother who has just moved to New Jersey to be closer to your client. You know that your client has a brother and a sister who live in Virginia. You value the business that this client has generated for your firm and you look forward to future business from this client.

❖ Should you prepare the mother's estate plan?

8.1. Haynes v. First National State Bank of New Jersey, 87 N.J. 163 (1981). This New Jersey Supreme Court case provides a roadmap for what not to do when an attorney is asked to represent a family member of an existing client.

- Isabel Dutrow ("**Isabel**") had two daughters, Betty and Dorcas. For many years Betty and her two sons lived with Isabel. The two sons moved out around 1968 and undertook lifestyles which caused Isabel considerable aggravation and disappointment. Betty, who lived with Isabel for more than 30 years, continued to have a close relationship with Isabel until Betty's death in 1973.

- Isabel, who was then 84 and suffered from several medical ailments but was mentally alert, moved in with Dorcas and Dorcas's husband. At that time, Isabel's estate plan treated the two family branches equally.
- In November of 1973 (less than six months after Isabel moved in with Dorcas), Dorcas consulted with her regular family attorney named Mr. Buttermore about a trust agreement that had been prepared for Isabel by Isabel's attorney, Mr. Stevens. Mr. Buttermore had represented Dorcas, her husband and their children for more than six years in a variety of matters, including estate planning and substantial business matters.
- Mr. Buttermore and Mr. Stevens began sending letters to each other concerning Isabel's estate plan. In December of 1973, Mr. Stevens received a letter written by Dorcas but signed by both Dorcas and Isabel explaining requested changes in Isabel's estate plan and providing authorization for Mr. Buttermore to be involved. Mr. Buttermore met several times with Isabel alone. Mr. Buttermore testified that Isabel discussed in detail her wishes. Various extensive changes were made in the estate plan from late 1973 until Isabel's death in 1977. Mr. Buttermore drafted estate planning documents for Isabel, and her own lawyer was phased out.
- When Isabel died all of her assets passed to Dorcas, with the exception of a \$10,000 bequest to each of Isabel's grandchildren. Betty's two sons challenged the Will claiming undue influence.
- Undue influence has been defined as "mental, moral or physical exertion which has destroyed the free agency of the testator by preventing the testator from following the dictates of his own mind and will and accepting instead the domination and influence of another."
- Generally the burden of proof is on the contestant, which in this case would have been Betty's sons. However, that burden shifts and there will be a presumption of undue influence if (i) the Will benefits someone who stood in a **confidential relationship** to the testator, **and** (ii) there are additional circumstances of a **suspicious character**.
- Given Isabel's advanced age and physical limitations, she was dependent on Dorcas for companionship, care and support, and the Court found the requisite **confidential relationship** between the primary beneficiary of the estate (Dorcas) and the testator (Isabel). The Court found **suspicious**

circumstances as well. After Isabel began to use Dorcas's family attorney there were drastic changes in the estate plan, and Mr. Buttermore established a confidential relationship with Isabel. The Court, therefore, found both elements to be satisfied for the presumption of undue influence and shifted the burden of proof to Dorcas. The next question was whether the presumption could be rebutted by the lower standard of the **preponderance of the evidence** or by the higher standard of **clear and convincing evidence**.

- **HELD:** The presumption of undue influence created by a professional conflict of interest on the part of an attorney, coupled with confidential relationships between the decedent and the beneficiary as well as the attorney, must be rebutted by **clear and convincing evidence**. The case was remanded for a hearing on the facts.
- "Even where the representation of two clients has become a routine practice on the part of the bar generally, when the latent conflict becomes real, the attorney must fully disclose all material information and, if need be, extricate himself from the conflict by terminating his relationship with at least one party." (87 N.J. at 181-182.)
- There must be a significant burden of proof on the advocates of a Will where a presumption of undue influence has arisen because the testator's attorney placed himself in a conflict of interest and professional loyalty between the testator and the beneficiary. "In view of the gravity of the presumption in such cases, the appropriate burden of proof must be heavier than that which normally obtains in civil litigation." (87 N.J. at 182.)
- The Court found that Mr. Buttermore was in a position of irreconcilable conflict. At minimum, he was required to provide full disclosure of the conflict to Isabel and her daughter and to obtain "knowing and intelligent" waivers. The Court then commented that even those measures might not have been enough to overcome the conflict or enable Mr. Buttermore to render unimpaired independent professional judgment. The Court found that Mr. Buttermore took no such measures and was insensitive or impervious to the presence and extent of the professional conflict. In a footnote, the Court did note that Mr. Buttermore believed in good faith that he had taken proper precautions and relied on the fact that frequently estate planning involves members of an entire family and, therefore, no conflict existed. Although the Court disagreed with

Mr. Buttermore, **no ethical sanctions** were imposed because the rule had not been previously announced. That excuse will not be available to other attorneys.

8.2. **Pascale v. Pascale, 113 N.J. 20 (1988)**. In this case the New Jersey Supreme Court addressed another undue influence fact pattern involving representation of two family members by the same attorney. The father, who was a shrewd businessman, sought rescission of a gift that he had made to his son. The father claimed that he was entitled to a presumption of undue influence because a confidential relationship existed between him and his son, and the same attorney advised both of them in connection with the transfer. The Supreme Court held that the facts gave rise to a presumption of undue influence and the attorney was in a position of conflict arising from his dual representation. However, the Court further held that the son rebutted the presumption of undue influence by clear and convincing evidence, and, therefore, the gift was not rescinded.

8.3. Representing multiple family members, trustees, and closely-held entities in other estate planning transactions:

8.3.1. Drafting Shareholders' Agreements, Operating Agreements, Partnership Agreements, Employment Agreements, and Redemption Agreements for closely-held businesses;

8.3.2. Structuring sales to family members or trusts, including intentionally defective grantor trusts, where the parties do not have separate counsel; or

8.3.3. Acting only as the scrivener in drafting the documents implementing the transactions.

8.4. The attorney representing the executors of an estate in connection with the estate administration should make clear to all interested parties who the client is. Absent clarification from the attorney, the beneficiaries of the estate may assume that the attorney is representing them as well.¹⁹

8.4.1. Make sure the engagement letter identifies the client as the estate or the executors of the estate.

¹⁹ See Estate of Craig Fitzgerald v. Linnus, 336 N.J. Super 458 (2001) and Estate of Patricia Albanese v. Lolio, 393 N.J. Super 355 (2007), cert. denied 192 N.J. 597 (2007).

8.4.2. How should you handle a telephone call from a beneficiary?

8.4.3. What should you include in a transmittal letter sending a Refunding Bond to a beneficiary?

9. **Attorney as Fiduciary**

Example 9: You are updating an estate plan for an individual you have represented for the past 15 years. The client's husband recently died and her children have various financial and personal issues. You ask your client whom she would like to name as executor and trustee under her Will. Your client tells you that neither of her children would be suitable and her brother is in poor health and can't serve. She asks you what she should do.

❖ Can you offer to serve as executor and trustee?

9.1. **RPC 1.8(c)** provides: "A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent, or other relative or individual with whom the lawyer or the client maintains a close, familial relationship."

9.2. Can the attorney be named executor or trustee under documents that the attorney prepared? According to the Supreme Court Advisory Committee on Professional Ethics, an attorney can properly prepare a Will naming himself as a fiduciary and may properly be paid for services in both capacities. (See Professional Ethics Opinion No. 683 and N.J.S.A. 3B:18-6.)

9.3. The attorney should be careful to discuss the fee arrangements with the client -- will the attorney be compensated based on his or her standard hourly rate or will the attorney receive a statutory commission?

9.4. The attorney should document how the client reached the decision to name the attorney as the fiduciary. Alternatives to naming the attorney as fiduciary should be discussed and documented.

9.5. The attorney should keep separate time records for the work done as a fiduciary and the work done as an attorney.²⁰

10. **Direction to Retain Drafting Attorney for Estate Administration**

Example 10: You are preparing a Will for a client with two adult children who will be the beneficiaries of the estate and the executors. The children don't get along particularly well, but the client insists that with the right lawyer, the children will be able to properly administer the client's estate. The client tells you that because he has tremendous respect for you and thinks you can handle the children, he wants you to include a provision in the Will directing the executors to hire your firm as counsel to the executors. The client is concerned that if the Will is silent on this subject, then the children will find themselves in a dispute over the selection of counsel.

- ❖ Does the client's idea to include a provision in the Will requiring the executors to hire you solve his problem?

10.1. The attorney drafting a Will should not include a provision requiring his or her engagement to represent the executor in connection with the estate administration even if the estate planning client requests the inclusion of that direction. Such a clause is not enforceable.

10.2. If the client's strong preference is for the client's estate planning attorney to represent the executor in connection with the estate administration, the client can make that request in writing, but the attorney needs to inform the client that the request is not binding on the executor. The executor has the right to select his or her own counsel.

11. **Borrowing Money From a Client**

Example 11: You represent an elderly individual who is a long-time family friend. You mention to the client that you are having trouble paying your children's tuition. Your client offers to lend you \$50,000.

- ❖ Can you accept this loan and, if so, what measures do you need to take?

²⁰ See In Re Estate of Charles F. Seabrook, 127 N.J. Super 135 (1974), which involved an attorney who was an executor, counsel to the executors, a member of the board of directors of a company wholly owned by the decedent, and counsel to the company. The Court focused on the number of hours spent on various tasks.

11.1. **RPC 1.8(a)** provides that a lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and

(3) the client gives informed consent in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

11.2. **In the Matter of William J. Torre, 223 N.J. 538 (2015)**. In this case, the New Jersey Supreme Court addressed a similar situation.

- The attorney borrowed funds from an elderly client for whom he did estate planning. The attorney signed an unsecured, short term, interest bearing promissory note for the loan, which represented approximately 70% of the lender's total assets. The note was not repaid in accordance with its terms. The lender retained another attorney to try to collect the overdue balance and filed a grievance against the estate planning attorney. The client died shortly after the grievance was filed and before speaking to an investigator.
- After a member of a District Ethics Committee investigated the grievance and a complaint of alleged unethical conduct was filed, the estate planning attorney produced a letter addressed to his client that was dated the day after the note was signed. The attorney claimed that he had just discovered the letter, which was signed by him but not by his client. The letter discussed the conflict of interest and advised the lender/client to seek independent counsel.
- After the letter was produced, the matter was transferred to the OAE. A two-count complaint was filed by the OAE -- one count focused on the conflict of interest relating to the loan, and the other count charged the attorney with conduct involving dishonesty, fraud, deceit or misrepresentation in connection with the production of the letter.

- A panel of the District Ethics Committee conducted a hearing and concluded that the attorney violated **RPC 1.8(a)**. It found that (i) the terms of the loan were not fair and reasonable to the lender, (ii) those terms were not given to her in writing, (iii) she was not advised in writing of the desirability to seek independent legal counsel, and (iv) she did not give informed consent to the terms of the loan. The panel concluded that there was insufficient evidence to support the second count concerning the letter and when it had actually been written.
- The Disciplinary Review Board of the New Jersey Supreme Court (the “**DRB**”) on review agreed with the District Ethics Committee. Seven members of the DRB concluded that the attorney should be censured, and two members voted to impose a three-month suspension. The OAE recommended that he be suspended for three months.
- The New Jersey Supreme Court opinion reviewed the facts, the prior case law, and **RPC 1.8(a)**. Prior to the issuance of its opinion, the estate planning attorney had conceded that he violated **RPC 1.8(a)** for the reasons specified by the District Ethics Committee, and he asked the Court to adopt the recommendation of the DRB to censure him.
- In deciding the proper level of discipline, the New Jersey Supreme Court found there were two egregious circumstances: (i) the level of economic and emotional harm the attorney caused to the client; and (ii) the vulnerability of the victim, since she was an unsophisticated, elderly individual who had given her attorney a power of attorney and relied on him. The New Jersey Supreme Court found that these factors justified more severe disciplinary action than what was recommended by the DRB or the OAE and more severe disciplinary action than what was taken in other cases where attorneys borrowed funds from clients. The opinion discussed the “serious and growing problem of elder abuse.”
- The attorney was suspended from practicing law for one year. The opinion went on to say that if there had been clear and convincing proof that the attorney knew at the time he borrowed the funds that he was not going to repay the loan, then disbarment would have been the appropriate result.

11.3. In contrast, **RPC 1.8(a)** was not strictly applied in Lauren D. Burger Irrevocable Trust v. Amjady, No. A-4917-17T4, 2019 WL 2244755 (N.J. Super. Ct. App. Div. May 24, 2019). In that case, an attorney made a loan to a longtime friend and

client, and the attorney was able to successfully enforce his rights under a mortgage when the loan was not repaid, even though the technical requirement of **RPC 1.8(a)** to obtain written informed consent from the client was not satisfied. The trial judge made specific findings of fact, including the following: (i) the borrower was a sophisticated businessman, (ii) the terms of the loan were fair and reasonable to the borrower, (iii) the borrower signed the loan documents, and (iv) the borrower was not able to obtain financing on as favorable terms from another source. The attorney outlined the terms of the loan in a letter to the client and urged the client to seek independent counsel before going ahead with the transaction. The Appellate Division concluded that “although plaintiff did not obtain a written informed consent, his failure to achieve exact compliance with the RPC does not preclude him from enforcing the loan because the record otherwise contains clear and convincing evidence that the intent and purpose of the rule was satisfied.” Amjady, 2019 WL 2244755, at *4. The intent of the rule was to avoid the “hoodwinking of helpless clients out of funds in a business venture that is essentially for the benefit of the lawyer....” Id. at *4 (citing Milo Fields Tr., 378 N.J. Super. at 147-148, quoting In re Wolk, 82 N.J. 326, 335 (1980)). Based on the facts of the case, the Court found that the client had not been hoodwinked, and, in fact, the client had taken advantage of the attorney.

12. Multi-Jurisdictional and Unauthorized Practice

Example 12: Your clients, Husband and Wife, are New Jersey residents with a primary residence in New Jersey and vacation homes in Florida and Vermont. All three of these properties are owned jointly by Husband and Wife. In attempting to balance the assets owned by Husband and Wife in order to take advantage of estate tax and GST exemptions that would be available when the first spouse dies, you think it makes sense to retitle the real estate and provide for those assets to be held in a credit shelter trust for the survivor.

❖ How should you implement this estate plan?

12.1. To do a comprehensive estate plan, it is necessary to identify all of the client’s assets, including real estate or other assets located outside New Jersey. A deed or other instrument of conveyance may be needed to change title on those out-of-state assets in connection with the estate plan and/or the estate administration.

12.2. An existing client may move out of New Jersey and become a resident of another state. Can the attorney who is not admitted to practice in that other state continue to represent that client? Should the attorney continue to represent that client?

12.3. There may be non-New Jersey income, inheritance, estate and transfer tax issues about which the attorney is not knowledgeable.

12.4. There may be homestead or other local law issues about which the attorney is not knowledgeable.

12.5. The attorney needs to avoid engaging in the unauthorized practice of law. Those rules are different in various states.

12.6. The attorney needs to avoid conduct that would give rise to an ethics violation or malpractice liability.

12.7. Consider **RPC 5.5** and the corresponding provision in the rules of professional conduct of the other state involved in the estate plan. Some states have expanded the circumstances under which an out-of-state lawyer could practice in their state, but there is a lack of uniformity across the country.

12.8. Be careful and hire local counsel. There has been some discussion in Florida about restrictions on Florida attorneys providing advice to out-of-state trusts and estates lawyers. The Florida Bar has now approved of Florida lawyers reviewing documents drafted by out-of-state attorneys. (See letter from Mary Ellen Bateman on behalf of the Florida Bar to Mr. Louis B. Guttman III dated May 25, 2004, which can be found at <http://www.actec.org/Documents/misc/FIBarLtrr.pdf>.)

12.9. Professional Ethics Opinion No. 742, issued on October 6, 2021, addressed whether non-New Jersey attorneys, employed by out-of-state companies and firms and practicing out-of-state law, were engaged in the unauthorized practice of law while working remotely from homes in New Jersey. The opinion provided that non-New Jersey lawyers may practice out-of-state law from inside New Jersey so long as they do not maintain a “continuous and systematic presence” in New Jersey by practicing from an in-state office or otherwise holding themselves out as available for the practice of law in New Jersey. While the opinion provides protections for non-New Jersey attorneys practicing here, New Jersey attorneys practicing elsewhere should confirm whether local law would permit an attorney to work remotely as a New Jersey attorney practicing New Jersey law in that other state.

12.10. On May 20, 2021, the Florida Supreme Court approved a proposed advisory opinion from a committee of the Florida Bar Association that confirms that attorneys who are not admitted to practice law in Florida and have no place of business in Florida and no public presence or profile in Florida as attorneys may practice law governed by federal law while they are physically present in Florida. In that case a Florida domiciled attorney who was not licensed in Florida was working remotely

from his Florida home for a New Jersey law firm, and he sought confirmation that he would not be considered to be engaging in the unauthorized practice of law in Florida. This situation has become more common as more attorneys are working remotely. (See <https://www.floridasupremecourt.org/content/download/743446/opinion/sc20-1220.pdf>.)

July 3, 2025

The information contained in this outline is general in nature and is based on authorities that are subject to change. It is not intended, and should not be construed as, legal or tax advice provided to the reader. This material is not necessarily applicable to, or suitable for, specific circumstances or needs.

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EXHIBIT A

Sample Engagement Letter



ORLOFF
LOWENBACH
STIFELMAN &
SIEGEL P.A.

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LAURA N. WILENSKY
lwilensky@olss.com
973.507.2418

Member of NJ & NY Bars

Refer to File No.: _____

_____, 2025

Mr. and Mrs. _____
[Address]

Dear _____ and _____:

I am pleased that you have chosen my firm to represent you as counsel in connection with your estate planning. I understand that you are both [U.S. citizens and] New Jersey residents, and you are seeking legal advice about matters governed by federal law and New Jersey law.

It is common for a husband and wife to employ the same lawyer to assist them in planning their estates. You have taken this approach by asking my firm to represent both of you. It is important that you understand that because my firm will be representing both of you, you are considered my firm's client, collectively. Accordingly, matters that one of you discuss with me or others at my firm may be disclosed to the other of you. Ethical considerations prohibit me or others at my firm from agreeing with either of you to withhold information from the other relating to your estate planning. In this representation for your estate planning, my firm will not give legal advice to either of you or make any changes in any of your estate planning documents without your mutual knowledge and consent. Of course, matters that either of you discuss with me or others at my firm are privileged from disclosure to third parties in accordance with applicable law.

If a conflict of interest arises between you during the course of your estate planning or if the two of you have a difference of opinion, we can point out the pros and cons of your respective positions or differing opinions. However, ethical considerations prohibit attorneys at my firm, as the lawyers for both of you, from advocating one of your positions over the other. If an actual conflict of interest does arise between you of such a

ORLOFF, LOWENBACH, STIFELMAN & SIEGEL, P.A.

[Name] -2- _____, 2025

nature that in my judgment it is impossible for my firm to perform our ethical obligations to both of you, it would become necessary for my firm to withdraw as your joint lawyer.

Since you have consented to the joint representation by my firm for your estate planning, I would like to confirm the terms and conditions of the engagement, which will apply not only to the present matter but also to any future matters for which you choose to retain my firm, unless we enter into a different arrangement in writing.

The principal factor to be utilized in determining our fees will be the number of hours devoted to the representation. There are other factors that we may utilize in determining the fees to be charged. These factors may include, among others, the nature, novelty and difficulty of the questions involved; the skills required to perform the services properly; the peculiar demands upon the firm; the practice of other firms performing similar services; the size of the matter; the results obtained; the time limitations imposed; and the extent to which the matter precludes my firm from accepting other legal work.

My firm's current billing rates are \$_____ to \$_____ per hour for partners, counsel, and of counsel; \$_____ to \$_____ per hour for associates; and \$_____ to \$_____ per hour for paralegals. My current billing rate is \$_____ per hour. Our rates may be increased from time to time during the course of our representation. We will bill at the rates in effect when the services are rendered. As appropriate to the particular matter, I may also assign work to other attorneys, paralegals, and staff members.

My firm's invoices will also contain charges incurred on your behalf for ancillary goods and services as outlined in the attached *Standard Terms and Conditions of Engagement*. It is our normal practice to bill fees and disbursements on a monthly basis, unless the amount involved is so small as to make it administratively inadvisable or unfeasible to do so. All bills are payable upon receipt.

Other material terms and conditions of this engagement are set forth in the attached *Standard Terms and Conditions of Engagement*, which are incorporated in this letter by reference.

If you have any questions about this engagement letter or the terms of the engagement, please call me.

ORLOFF, LOWENBACH, STIFELMAN & SIEGEL, P.A.

[Name] -3- _____, 2025

I look forward to working with you on the basis set forth in this letter.

Very truly yours,

Laura N. Wilensky

LAURA N. WILENSKY

LNW/rr
Enclosure



ORLOFF
LOWENBACH
STIFELMAN &
SIEGEL P.A.

Standard Terms and Conditions of Engagement

Orloff, Lowenbach, Stifelman & Siegel, P.A. (“**we**” or “**OLSS**” or the “**Firm**”) appreciates the opportunity to serve you. Our standard policies, terms and conditions for working with clients are set forth below. Please review this exhibit carefully and contact us promptly if you have any questions. **This exhibit, as supplemented and, if applicable, modified by our engagement letter is our contract with you.**

1. **Expenses; Disbursements.** In addition to legal fees, we also charge for the following ancillary costs, among other out-of-pocket costs, incurred on your behalf in connection with a particular matter:

- Long distance telephone calls, conference call services and telecopies;
- Photocopies and binding;
- Transportation, lodging and other necessary travel expenses;
- Parking, tolls and mileage;
- Courier, express delivery and mailing costs, including postage;
- Computer research;
- Experts, consultants and other third-party vendors, including appraisers;
- Depositions and deposition transcripts;
- Court transcripts;
- Extraordinary secretarial costs; and
- Filing fees and document retrieval fees.

While our charges for these services are measured by use, they do not, in all instances, reflect our actual out-of-pocket costs. For some of these items, the true cost of providing the service is difficult to establish. For example, some of our arrangements with third party vendors (e.g., Westlaw online research) incorporate flat fees or volume discounts based on total usage by the Firm. We strive to maintain these charges at reasonable rates.

Where it would be suitable for the project and less costly for the client to have tasks, such as large volume photocopying, performed outside our office, we may do so. For significant disbursement items, we reserve the right to transmit invoices to the client for direct payment and it is expected that these bills will be paid by the client upon receipt. For lesser disbursements, we will generally advance the amount and include a charge for reimbursement in our invoice.

2. **Payment Terms.** We will normally submit monthly invoices for our fees for services and other charges. All invoices are due upon receipt and OLSS expects payment in not more than thirty (30) days. We reserve the right to add interest charges of one percent (1%) per month on all balances not paid within thirty (30) days after the invoice date. We also reserve the right to suspend further work at any time that there is an outstanding invoice more than thirty (30) days past due. Although we attempt to capture all fees charged and disbursements made on your behalf through the closing date set forth in each invoice, there may be fees or charges for a particular time period that come to our attention after the invoice for that time period is prepared. Any such fees and charges will appear on subsequent invoices.

3. **Collection.** If the Firm is required to resort to arbitration and/or other judicial proceedings to collect or recover from you any monies which may be due to us in respect of an engagement, we shall also be entitled to collect and recover from you in such proceedings all costs and expenses incurred by us in the prosecution of such

proceedings, including reasonable attorneys' fees and expenses.

4. **Termination or Withdrawal from Engagement.** You are free to terminate our representation at any time you see fit for any reason. We reserve the right to cease performing legal services and to terminate our representation of you for any reason consistent with the applicable ethics rules, including without limitation a conflict of interest, nonpayment of legal fees and expenses, misrepresentation or failure to disclose material facts, or action contrary to our advice. Upon termination of our representation, whether at your instance or ours, your obligation will be to pay our fees and disbursements accrued to the date of termination, plus any fees and disbursements accrued or incurred in connection with effectuating the termination.

5. **Limitations of Engagement.** It is understood and agreed that you are not relying upon OLSS for business, investment or accounting advice or decisions, or to investigate the character or credit of any persons with whom you are or may be dealing in connection with any matter. In addition, we will have no obligations to monitor renewal, notice, annual maintenance or perfection expiration dates or similar deadlines which may arise from the matters for which we have been retained. Upon cessation of our active involvement in a particular matter for which we have been engaged, we will have no further duty to inform you of future developments or changes in the law as may be relevant to such matter or matters for which our representation has ceased.

6. **Estimates.** Although we may from time to time respond to a client request for an estimate of the amount(s) of professional fees and/or costs and expenses that may be incurred in an engagement, or on a particular task or undertaking in furtherance of an engagement, such estimates, even though given by us in good faith and on the basis of our best judgment when given, are inherently inexact and are always subject to unforeseen contingencies and changed facts and/or circumstances. Accordingly, we cannot and will not be bound by any such estimates, and will not, except to the extent that we may expressly agree in writing at the time such estimate is given, limit our compensation to the amount of any such estimates.

7. **Records Retention.** Our current policy is to retain client files (but not necessarily the Firm's related work product and internal files) for a minimum of seven (7) years after the conclusion of the matter. We may store certain documents and information in electronic form in addition to, or in substitution for, retaining a paper version. The Firm reserves the right to change its document retention policy at any time without notice. Subject to our ethical obligations, the existence of the Firm's document retention policy, now or in the future, does not create any obligation on our part to retain files after the completion of the matter unless a separate written agreement is made between us for retention of certain files for some specified period of time. If you desire retention of your files according to your own records retention policy or needs, please request the originals or copies of your files at any time during the course of any matter or upon its conclusion. If you request that we transfer your files to you or a third party, you agree to pay us our standard hourly rates for time spent in reviewing the files for transfer, and our charges for copying any portion of the files we wish to retain.

8. **New Jersey Law Applies.** If either of us initiates any legal action, arbitration or proceeding in any way relating to the terms and provisions of our engagement letter or these Standard Terms and Conditions of Engagement, or our representation of you in any matter, we both understand and agree that any such legal action, arbitration or proceeding shall be brought in New Jersey, whose substantive and procedural laws, rules and regulations shall apply.

9. **Electronic/Wireless Communications.** During the course of representing you, it is often our practice to communicate and convey documents and other materials electronically via the Internet, whether over a wired connection or over Wi-Fi. We may also communicate with you by cellular or Voice over Internet Protocol (VoIP) telephone connection, including by text messages. Unless you advise us in writing to the contrary in advance, our use of these technologies in communicating with you is deemed to have been authorized by you. We caution you that we do not have control over the performance, reliability, availability, or security of the Internet or wireless communications. While we have adopted policies and procedures to aid in protecting against fraud, even the best security protections can still be bypassed by unauthorized parties. For this reason, we strongly advise that you do

not transmit nonpublic personal information, such as bank account numbers and social security numbers, by unsecured unencrypted email or other unsecured unencrypted electronic communication.

10. **Wire Transfers.** Spoofed emails attempting to induce fraudulent wire transfers are common and may appear to originate from an employee of this Firm or another trusted source. If you receive any such electronic communication directing you to transfer funds, *even if that electronic communication appears to be from an employee of this Firm*, you should call our office at 973-622-6200 to verify the instructions before initiating any wire transfer of funds. Following this “two step” authentication procedure is intended to protect you, and it is essential to safeguard against you sending funds to an incorrect account. If you fail to speak on the telephone to an employee of this Firm to verify wiring information in advance, your funds will be at risk of loss.

EXHIBIT B

NOTICE TO THE BAR

SUPREME COURT COMMITTEE ON ATTORNEY ADVERTISING REMINDER: ADVERTISING AWARDS, HONORS, AND ACCOLADES THAT COMPARE A LAWYER’S SERVICES TO OTHER LAWYERS’ SERVICES

The Supreme Court Committee on Attorney Advertising has received numerous grievances regarding attorney advertising of awards, honors, and accolades that compare a lawyer’s services to other lawyers’ services. Examples of such awards, honors, and accolades are: “AV Preeminent,” “BV Distinguished,” “Super Lawyers,” “Rising Stars,” “Best Lawyers,” “Top Lawyer,” “Top Law Firm,” “Superior Attorney,” “Leading Lawyer,” “Top-Rated Counsel,” numerical ratings, and the like. The Committee issues this Notice to the Bar to remind lawyers that they may refer to such awards, honors, and accolades only when the basis for the comparison can be verified and the organization has made adequate inquiry into the fitness of the individual lawyer. Further, whenever permissible references to comparative awards, honors, and accolades are made, Rule of Professional Conduct 7.1 requires that additional language be displayed to provide explanation and context.

As a preliminary matter, a lawyer who seeks to advertise the receipt of an award, honor, or accolade that compares the lawyer’s services to other lawyers’ services must first ascertain whether the organization conferring the award has made “inquiry into the attorney’s fitness.” Official Comment to Rule of Professional Conduct 7.1. “The rating or certifying methodology must have included inquiry into the lawyer’s qualifications and considered those qualifications in selecting the lawyer for inclusion.” In re Opinion 39, 197 N.J. 66, 76 (2008); see also Committee on Attorney Advertising Opinion 42 (December 2010). This inquiry into the lawyer’s fitness must be more rigorous than a survey or a simple tally of the lawyer’s years of practice and lack of disciplinary history. Pursuant to Rule of Professional Conduct 7.1(a)(3)(ii), the basis for the comparison must be substantiated, bona fide, and verifiable.

The Committee has reviewed numerous awards, honors, and accolades that do not include a bona fide inquiry into the fitness of the lawyer. Some of these awards are the result of a cursory survey of lawyers in the area with

no subsequent, independent vetting by the conferring organization. Several such awards are issued by regional magazines. Some are popularity contests – the lawyer “wins” the award when enough people email, telephone, or text their vote. Other awards are issued for a price or as a “reward” for joining an organization. Still others are generated based in large part on the participation of the lawyer with the conferring organization’s website. For example, a lawyer can enhance his or her “rating” with the organization by endorsing other lawyers, becoming endorsed in return, responding to questions from the public about legal matters on the organization’s website, and the like. Factors such as the payment of money for the issuance of the award; membership in the organization that will issue the award; and a level of participation on the organization’s Internet website render such awards suspect. Lawyers may not advertise receipt of such awards unless, as a threshold matter, the conferring organization made adequate and individualized inquiry into the professional fitness of the lawyer.

When an award, honor, or accolade meets this preliminary test, the lawyer must include additional information when referring to it in attorney advertising, whether that advertising be a website, law firm letterhead, lawyer email signature block, or other form of communication. First, the lawyer must provide a description of the standard or methodology on which the award, honor, or accolade is based, either in the advertising itself or by reference to a “convenient, publicly available source.” Official Comment to RPC 7.1. Second, the lawyer must include the name of the comparing organization that issued the award (note that the name of the organization is often different from the name of the award or the name of the magazine in which the award results were published). RPC 7.1(a)(3)(i). Third, the lawyer must include the following disclaimer “in a readily discernible manner: ‘No aspect of this advertisement has been approved by the Supreme Court of New Jersey.’” RPC 7.1(a)(3)(iii). All of this additional, accompanying language must be presented in proximity to the reference to the award, honor, or accolade.

Further, when the name of an award, honor, or accolade contains a superlative, such as “preeminent,” “distinguished,” “super,” “best,” “top,” “superior,” “leading,” “top-rated,” or the like, the advertising must state only that the lawyer was included in the list with that name, and not suggest that the lawyer has that attribute. Hence, a lawyer may state that he or she was included in the list called “Super Lawyers” or “The Best Lawyers in

America,” and must not describe the lawyer as being a “Super Lawyer” or the “Best Lawyer.”

Lastly, the Committee has reviewed numerous law firm advertising (websites, email signature blocks, print material) that includes badges or logos of comparative awards, such as the yellow “Super Lawyers” badge, but does not include the required additional information in a discernible manner in proximity to the reference to the award. Every reference to such an award, honor, or accolade – even when it is in an abbreviated form such as the badge or logo – must include the required accompanying information: (1) a description of the standard or methodology; (2) the name of the comparing organization that issued the award; (3) the statement “No aspect of this advertisement has been approved by the Supreme Court of New Jersey.” Only the description of the standard or methodology can be presented by reference (with the statement that the standard or methodology can be viewed at that website or hyperlinked page). The other required information must be stated on the face of the advertising, readily discernible and in proximity to the reference to the award. The accompanying information cannot be buried at the bottom of a page, or in tiny print, or placed outside the screen shot on a website.

For example, a reference to the Martindale-Hubbell AV Preeminent accolade should provide:

Jane Doe was selected to 2021 list of AV Preeminent lawyers. This award is conferred by Martindale-Hubbell. A description of the selection methodology can be found at www.martindale.com/ratings-and-reviews/. No aspect of this advertisement has been approved by the Supreme Court of New Jersey.

Lawyers who seek further assistance as to compliance with the rules governing attorney advertising may make inquiry of the Committee on Attorney Advertising. See Court Rules 1:19A-3 and 1:19A-8.

/s/ Jeffrey S. Apell

Jeffrey S. Apell

Chair, Committee on Attorney Advertising

Dated: May 5, 2021

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Ethics for Estate Planners

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lwilensky@olss.com



ORLOFF
LOWENBACH
STIFELMAN &
SIEGEL P.A.

What's new in 2024/2025?

Artificial Intelligence ("AI") Committee and Task Force:

- New Jersey Supreme Court established a committee to consider the legal and ethical implications of AI on the practice of law and the court system. The committee issued guidelines on the use of AI in January 2024 and provided free CLEs related to generative AI.
- NJSBA's AI Task Force issued a report recommending a new technology CLE requirement.

What's new in 2024/2025?

New CLE Requirement:

- Notice to the Bar issued April 2, 2025 – one credit per two-year reporting cycle in *technology-related subjects*
- Effective date not yet announced

What's new in 2024/2025?

IMO David A. Faloni, Jr.:

A New Jersey attorney was reprimanded for violating RPC 1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation) and RPC 1.5(b) (failing to set forth in writing the basis or rate of a legal fee).

What's new in 2024/2025?

Opinion 746:

Can an attorney proceeding pro se in a matter communicate directly with another party in the matter who is represented by counsel?

What's new in 2024/2025?

Continuance of the New York “local office rule”:

A bill repealing New York Judiciary Law Section 470 was approved in 2023 by the NY State Assembly and NY State Senate. The bill would eliminate the need for attorneys admitted to practice in New York who are not New York residents to maintain a physical office in New York. Governor Hochul vetoed the bill.

1. Legal Fees

Joe wants to retain you to provide estate planning services but asks you “**how much will this cost?**”
There are provisions in the RPC that you will need to consider in setting your fees.

2A. Safeguarding Confidential Information

In connection with preparing an estate plan you obtain information about Joe, including his SSN, copies of brokerage statements with account numbers and recent 1040s, and details about his medical history. That information is sent to you by email. When the planning is completed, you retain those documents, as well as his original Will and several Trust Agreements. The client asks you to send him PDFs of his Will and Trust Agreements, along with copies of new IRA beneficiary designation forms (which include his SSN and account numbers).

- ❖ **What safeguards should you take when dealing with a client's confidential information and property?**
- ❖ **Have new issues concerning confidentiality been presented by the widespread use of videoconferencing and working remotely?**

2B. Collecting Fees

Your client refuses to pay your bill for legal services after you prepared a new Will and related estate planning documents for the client.

- ❖ May you turn over the delinquent account receivable to a collection agency?

3. Providing Timely Counsel

Joe tells you that he would like to update his estate planning “ASAP”. Joe mentions during the call that he had cancer but “it’s taken care of”. You are going on a two-week vacation in a week, and you have made commitments to other clients that will require significant work in the next month.

❖ **Should you agree to represent this new client?**

4. Representation of Multiple Family Members Other Than Spouses

Joe, now a long-standing client, calls to say that he wants you to prepare an estate plan for his mother who just moved to New Jersey to be closer to him. You know that Joe has a sister who lives in Virginia. You value the business that Joe has generated for your firm, and you look forward to future business from him.

❖ Should you handle the mother's estate plan?

5. Spousal Representation

Joe calls you to tell you he recently got remarried. He would like you to prepare new estate planning documents for him and his new wife, Teresa. You schedule a meeting.

- ❖ Can both Joe and Teresa be your client?
- ❖ What special arrangements should be made?

6. Client Under a Disability

You have represented Joe for the past 20 years, and his estate plan provided for his assets to pass to his two children and four grandchildren, whom he often talked about fondly. Joe had a stroke last year and has trouble walking. Joe calls you and instructs you to prepare a new Will, leaving his entire estate outright to Teresa. When you ask why he is making this drastic change in his planning, he doesn't provide an answer other than to say that these are his wishes.

❖ What should you do?

7. Attorney as Fiduciary

You are updating an estate plan for an individual you have represented for the past 15 years. The client's husband recently died and her children have various financial and personal issues. You ask your client whom she would like to name as executor and trustee. Your client tells you that neither of her children would be suitable and her brother is in poor health and can't serve. She asks you what she should do.

❖ Can you offer to serve as executor and trustee?

8. Direction to Retain Drafting Attorney for Estate Administration

You are preparing a Will for a client with two adult children who will be the beneficiaries of the estate and the executors. The children don't always get along, but the client insists that with the right lawyer, the children will be able to properly administer the client's estate. The client tells you that because he has tremendous respect for you and thinks you can handle the children, he wants to include a provision in the Will directing the executors to hire your firm as counsel to the executors. The client is concerned that if the Will is silent on this subject, then the children will not agree on the selection of counsel.

- ❖ Does the client's idea to include a provision in the Will requiring the executors to hire you solve his problem?

9. Borrowing Money from a Client

You represent an elderly individual who is a long-time family friend. You mention to the client that you are having trouble paying your children's tuition. Your client offers to lend you \$50,000.

- ❖ Can you accept this loan and, if so, what measures do you need to take?

10. Multi-Jurisdictional Practice

Your clients, Husband and Wife, are New Jersey residents with a primary residence in New Jersey and vacation homes in Florida and Vermont. All three of the properties are owned jointly by Husband and Wife. In attempting to balance the assets owned by Husband and Wife in order to take advantage of the estate tax and GST exemptions that would be available when the first spouse dies, you think it makes sense to retitle the real estate and provide for those assets to be held in a credit shelter trust for the survivor.

❖ How should you implement this estate plan?

11. Referral Services and Legal Service Plans

You would like to expand your practice and you find a company that hosts a website for individuals looking for legal advice and will provide your profile to potential clients.

❖ Can you participate in such a program?

12. Advertising of Awards, Honors, and Accolades

You receive notification that you have been included in the list of AV Preeminent lawyers, Super Lawyers, Rising Stars, or Best Lawyers, or you have received some other award, honor or accolade.

- ❖ Other than telling your mother, what can you do to publicize this?

Disclaimer: The information contained in these slides and the accompanying outline is general in nature and is based on authorities that are subject to change. The slides and the outline are not intended, and should not be construed as, legal or tax advice provided to the reader. This material is not necessarily applicable to, or suitable for, specific circumstances or needs.

Planning for the Federal Estate Tax

Frederick K. Schoenbrodt, II
Bressler, Amery & Ross, P.C.

Current “Numbers to Know”

- The Basic Exclusion Amount for 2025 is \$13,990,000 -- This is the current federal estate, gift, and GST tax exemption.
- The new tax law increases the exemption to \$15,000,000.
- The gift tax annual exclusion for 2025 is \$19,000.
- The annual exclusion for gifts to a non-citizen spouse in 2025 is \$190,000.
- These amounts are indexed for inflation. The IRS publishes a Revenue Procedure annually with changes to any amounts, most recently, Rev. Proc. 2024-40.

25 Years of the FET Exemption

• 2000-2001	\$675,000	• 2016	\$5.45 million
• 2002-2003	\$1 million	• 2017	\$5.49 million
• 2004-2005	\$1.5 million	• 2018	\$11.18 million
• 2006-2008	\$2 million	• 2019	\$11.4 million
• 2009	\$3.5 million	• 2020	\$11.58 million
• 2010-2011	\$5 million	• 2021	\$11.7 million
• 2012	\$5.12 million	• 2022	\$12.06 million
• 2013	\$5.25 million	• 2023	\$12.92 million
• 2014	\$5.34 million	• 2024	\$13.61 million
• 2015	\$5.43 million	• 2025	\$13.99 million
		• 2026	\$15 million

Also Keep These Two Things In Mind...

1. The federal estate tax exemption is portable. The deceased spouse's unused exemption (DSUE) can be transferred to the surviving spouse without the need for a trust. Note that GST exemption is not portable.
2. The income tax basis of assets included in a decedent's estate "steps up" to the date of death value. This is an important consideration when discussing a client's testamentary and lifetime estate tax planning.

Testamentary FET Planning

Generally, 3 broad approaches to testamentary FET planning:

1. Outright to spouse w/ disclaimer trust option:

- Simple, flexible approach that can be implemented by surviving spouse based on financial, legal, and family circumstances at first death.
- If FET liability unlikely at survivor's eventual death, no disclaimer necessary and full basis step-up will be available at second death (e.g., consider \$10 million estate).
- Surviving spouse will receive first-spouse-to die's DSUE.
- With outright distribution to survivor, survivor could create inter vivos irrevocable grantor trust FBO children etc. and use DSUE to fund it, allowing this credit shelter-style trust to grow w/o reduction for income taxes.
- *Caveats: Relies on survivor to decide whether to disclaim and the survivor might not make the most tax-wise decision; default outright distribution means no control of distribution at survivor's death (i.e., risk of assets moving sideways to a new spouse rather than down to children); survivor cannot have a power of appointment over disclaimer trust assets.*

Testamentary FET Planning (cont'd)

2. 100% marital trust (partial QTIP w/ or w/o *Clayton* provisions)

- Similarly flexible tax planning approach where probate estate (instead of passing outright) passes to marital trust FBO surviving spouse.
- To extent that QTIP election under IRC § 2056(b)(7) is made, QTIP marital trust will be included in survivor's estate for FET purposes, allowing step-up of income tax basis of trust assets.
- Use of marital trust, rather than outright distribution, allows control of distribution of trust assets at survivor's death (*i.e.*, can ensure assets pass "down" not "sideways").
- Unlike a disclaimer trust, the marital trust can provide survivor with power of appointment over trust assets.
- The document may include a provision that any portion for which a QTIP election is made and any portion for which a QTIP is not made will be held as separate trusts to be administered under the same terms (typical marital trust terms) (see next slide).
- Non-QTIP portion should not be included in survivor's estate is, effectively creating a credit shelter trust (CST).
- *Caveats: Funding a CST this way results in CST with inefficient terms (mandatory income) or potentially sub-optimal terms (spouse-only, rather than spouse and issue).*

Example: Partial QTIP (no Clayton)

My Executor is authorized, but not required, to make the election provided under section 2056(b)(7) of the Internal Revenue Code to qualify all or any specific portion of the Marital Trust for the Federal estate tax marital deduction. Any specific portion of the Marital Trust as to which the election is made and the remaining portion passing hereunder may be held as separate trusts under the terms provided in this Article if my Trustee shall deem it more convenient to do so. The decision concerning the election shall be made by my Executor in my Executor's sole discretion, shall be conclusive upon my spouse and all beneficiaries, and shall not be subject to review by any court. In exercising this discretion, I suggest that my Executor consider the benefits and eventual cost of deferral of taxation until my spouse's death, possible inflation in values during my spouse's lifetime, foreseeable and relative needs of beneficiaries, and any other factors deemed relevant.

Testamentary FET Planning (cont'd)

2. 100% marital trust (partial QTIP w/ or w/o *Clayton* provisions) (cont'd)
 - Reg. §§ 20.2056(b)-7(d)(3) & 7(h), Example 6
 - Essence of the Clayton QTIP is that non-elected portion of the Marital Trust will pass to (or in trust for the benefit of) persons other than the surviving spouse. This could include a credit shelter trust.
 - The document may include a provision that any portion for which a QTIP election is made shall be held as the Marital Trust and any portion for which a QTIP is not made will be held in a separate trust CST (see next slide).
 - *Caveats: Some believe a non-spouse executor should make the partial QTIP election because gift concerns if spouse makes the election; consider including an exoneration of the electing executor.*

Example: Partial QTIP (Clayton provision)

My Executor is authorized, but not required, to make the election provided under section 2056(b)(7) of the Internal Revenue Code to qualify all or any specific portion of the Marital Trust for the Federal estate tax marital deduction. Any specific portion of the Marital Trust as to which the election is not made shall be held as a separate trust, to be designated as the "Family Trust," under the provisions of Article 4. The decision concerning the election shall be made by my Executor in my Executor's sole discretion, shall be conclusive upon my spouse and all beneficiaries, and shall not be subject to review by any court. In exercising this discretion, I suggest that my Executor consider the benefits and eventual cost of deferral of taxation until my spouse's death, possible inflation in values during my spouse's lifetime, foreseeable and relative needs of beneficiaries, and any other factors deemed relevant.

Clayton v. Commissioner

Estate of Clayton v. Commissioner, 97 T.C. 327 (1991); *Estate of Clayton v. Commissioner*, 976 F.2d. 1486 (5th Cir. 1992). In reversing the Tax Court, the Fifth Circuit Court of Appeals wrote:

“Congress clearly could not care less about the post-mortem disposition of that portion of the residue of the testator’s estate for which the QTIP election was not made, because every dollar’s worth of that property was taxed currently in the estate of the Testator as the first spouse to die. That is the very reason for allowing a partial election and for treating specific portions of interests in property separately. As such the Will and the administration of the Testator’s estate, including the partial QTIP election, met the only conditions that Congress has placed on the ability to defer estate tax on a terminable interest via the Marital Deduction; i.e., that the specific portion of the terminable property for which the election is made be taxed in the estate of the surviving spouse, and that all other property and interests in property – terminable or not – be taxed in the estate of the first spouse to die.”

Testamentary FET Planning (cont'd)

3. Mandatory funding of CST & marital share (a “2 share” plan)

- Formula clause is used that mandates funding of a credit shelter trust; no “post-mortem planning” required.
- Formula clauses can be drafted to (i) direct to the CST the maximum amount that can pass free of federal or state estate tax (*i.e.*, the lower of remaining federal or state exemptions) w/ the balance to the marital share (outright or to a QTIP trust) (“pecuniary CST” clause), (ii) direct to the marital share the minimum amount necessary to reduce federal and state estate tax to zero w/ the balance to the CST (a so-called “pecuniary marital”), or fractional formulas.
- Unlike “outright with disclaimer trust” or “100% marital trust” options, CST funding is mandatory and action by surviving spouse is not required to implement.
- CST can benefit spouse and issue and include power of appointment.
- *Caveats: If insufficient probate assets, disclaimer of survivorship interest in joint property may still be required; CST size will be impacted by lifetime taxable gifts; CST assets will not receive basis step-up at survivor’s death so, if total estate would have been under exemption/s, no estate tax benefit gained but income tax benefit lost.*

Example: Pecuniary CST Formula Clause & O/R Marital

CST Clause: *If my spouse survives me, I give and devise to my Trustee, hereinafter named, a sum equal to the largest amount that can pass free of Federal estate tax by reason of the unified credit allowable to my estate, but no other credit, and after taking account of property disposed of by my Will or otherwise which is includible in my gross estate and does not qualify for the marital or charitable deduction and after taking account of charges that are not allowed as deductions in computing my Federal estate tax. For the purpose of establishing the sum disposed of by this Article, the values finally fixed in the Federal estate tax proceeding relating to my estate shall be used....*

... Notwithstanding anything to the contrary provided herein, the sum so disposed of hereunder may not exceed the largest amount that can pass free of estate tax for the state in which I am domiciled at the time of my death.

... Such sum, if any, shall be held in a trust, designated as the "Unified Credit Trust," and shall be administered under the following terms and conditions...

Outright Marital: *I give and devise all the rest, residue and remainder of my estate, of whatever kind and wherever situate (all said property being hereinafter referred to as my "Residuary Estate"), as follows:*

(A) If my spouse survives me, I give and devise my Residuary Estate to my spouse.

Flexibility in Testamentary Tax Planning

- In the face of uncertainty, proper response is often flexibility.
- Consider the benefits of relying on disclaimers and/or partial QTIP planning vs. mandatory funding, especially whether stepped-up basis at the second death will be more valuable than a credit shelter trust.
- Although flexibility is usually good, when estates are large enough that an FET liability at the second death is effectively certain, mandatory funding likely makes sense.
 - Although no NJ estate tax, if planning for a client in a state like NY where there is a state estate tax (and in NY the “cliff tax” often makes it critical to use both spouse’s exemptions), mandatory CST funding will often make sense.
- Consider different ways in which you might think of a \$10 million estate, a \$30 million estate, or a \$50 million estate, pre-sunset, post-sunset, and when we’re not sure about sunset...

Lifetime FET Planning – All Gifts, All the Time

- At its most basic level, lifetime FET planning includes any transfer that supports the client's substantive goals while reducing the client's taxable estate.
- Although the Spousal Lifetime Access Trust (SLAT) recently received significant attention, traditional planning opportunities continue to apply:
 - Irrevocable Life Insurance Trusts (ILITs) – if the value of insurance proceeds are added to an already taxable estate at death, 40% of those proceeds will effectively be lost to taxes.
 - Non-SLAT Gift Trusts for Descendants – these trusts can include annual exclusion gifts or larger taxable gifts and are typically grantor trusts for income tax purposes.

Lifetime FET Planning – Outright and Zeroed-Out Strategies

- Clients can further leverage the value of their FET exemption by using strategies that result in no, or almost no, taxable gift.
- These strategies are flexible, can often be adapted and adjusted annually, and don't require the same lump sum commitment that a SLAT typically requires. For this reason, they may particularly appealing strategies now (in the face of uncertainty re: sunset), either on their own or as part of a larger strategy:
 - Annual exclusion gifts, outright or in trust, employing gift-splitting if clients are married (e.g., consider effect of $(\$19,000 \times 2) \times 9$ beneficiaries (3 children (outright) and 6 grandchildren (simple trusts)) = \$342,000 of annual gifts w/o reducing exemption, then add FET savings of removing growth on gifted assets from clients' estates.
 - Direct payments to providers of education or medical expenses (e.g., in addition to the annual exclusion gifts above, client could pay GC tuition (private school, college, grad school), no taxable gift.

Lifetime FET Planning – Outright and Zeroed-Out Strategies (cont'd)

- Traditional zeroed-out strategies like Grantor Retained Annuity Trusts (GRATs) and Charitable Lead Annuity Trusts (CLATs) should still be considered even in the face of higher interest rates.
- Current 7520 rate (July 2025) (the so-called “hurdle rate” to beat for a successful zeroed-out GRAT or CLAT) is 5.0% (compared to 5.2% in August 2024, 5.0% in August 2023, 3.8% in August 2022, and 1.2% in August 2021)
- When using short-term, rolling GRATs, the effect of market volatility may be more important than the effect of a high hurdle rate in the strategy’s likelihood for success.
- GRATs can drop into a “collecting” stand-alone trust for the client’s beneficiaries but be aware of GST issues; ETIP rules prevent allocation of GST exemption to a GRAT on the front end of the trust.

Spousal Lifetime Access Trust (SLAT)

- At its core, a SLAT is an irrevocable trust, operating as a grantor trust for federal income tax purposes, with grantor's spouse being designated as either sole initial beneficiary or as a member of a group of initial beneficiaries (*i.e.*, spouse has "lifetime access" as a trust beneficiary).
- SLAT is particularly popular when reduction in federal estate and gift exemptions is approaching. Clients are incentivized to make large gifts to use the exemption while it exists but are uncomfortable completely losing access to such a large portion of their assets.
- Trusts will often include typical grantor trust power to substitute assets of equivalent value (a "swap power") and also provide the grantor with the right to release the swap power, which in a non-SLAT context would "toggle off" grantor trust status.
- But see I.R.C. § 677(a)(2) which creates grantor trust status where a spouse has a right to current or accumulated income, so toggling off the grantor trust status of a SLAT may not be possible and should be differentiated from non-SLAT grantor trusts.
- Inclusion of the typical swap power is helpful to manage basis inside and outside of the trust. Also note that toggling off would be available if grantor survived beneficiary-spouse.

Spousal Lifetime Access Trust (SLAT) (cont'd)

- Additional considerations:
 - Considering difficulty in toggling off grantor trust status, draft to include tax reimbursement provisions; trust modification to add later problematic after CCA 202352018 (but state law can be helpful).
 - Address possibility of divorce; consider termination of spousal interest in the event of divorce (but note assets move “down” not back to grantor).
 - If each spouse will use their exemptions, pay attention to reciprocal trust doctrine; vary interests, powers of appointment, trustees, assets, timing, etc.; perhaps family financial circumstances would allow one of the trusts to be a SLAT and the other to be for children/issue only.
 - Discuss options if beneficiary-spouse predeceases grantor spouse; use of a broad limited power of appointment vs. relation back doctrine.
 - If couple will not fully utilize both exemptions, consider funding one SLAT above the grantor’s exemption, rather than two below the exemption; also restrictions on gift-splitting when spouse is trust beneficiary.
 - Powerful follow-on strategies available; *i.e.*, installment sale to grantor trust

Example: Tax Reimbursement Power

Reimburse the Grantor out of income or principal for the Grantor's income tax liability that is attributable to the inclusion of the trust's income, capital gains, deductions, and credits in the calculation of the Grantor's taxable income pursuant to Internal Revenue Code Section 671 for each taxable year that the trust constitutes a so-called 'grantor trust;' and, in so doing, the Trustee may pay the Grantor directly or may pay the reimbursement amount to an appropriate taxing authority on the Grantor's behalf;

Example: Termination on Divorce

The words “the Grantor’s spouse” shall be deemed to include only the Grantor’s spouse, JOHN DOE. At such time as JOHN DOE shall cease to be married to the Grantor during the Grantor’s lifetime, or is no longer living with the Grantor as spouses during the Grantor’s lifetime, or has entered into a legal separation agreement with the Grantor during the Grantor’s lifetime, JOHN DOE shall automatically cease to be Trustee, all individual rights, benefits and powers given to JOHN DOE hereunder during the Grantor’s lifetime and thereafter shall terminate, and the trust shall be administered as if JOHN DOE is then deceased.

Conclusion

As always, the name of the game for FET planning remains thoughtful (and flexible) testamentary planning combined, where appropriate, with whatever lifetime strategies make sense for the client based on that client's family and financial circumstances and appetite for planning. Even with "sunset" off the table, the sooner we have these conversations with clients who will benefit from them, the better.

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Planning for the New Jersey Inheritance Tax

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I. INHERITANCE TAX GENERALLY

Due to changes in the law, there is no longer any New Jersey estate tax imposed on the estate of a decedent dying on or after January 1, 2018. Over the years, legislation has been introduced to repeal the New Jersey inheritance tax. However, to date none of that legislation has been enacted and the New Jersey inheritance tax still remains. In 2022 and 2023, there was legislation introduced to limit the scope of the New Jersey inheritance tax, including expanding the exemption to additional classes of individuals. In 2024 two different bills were introduced to repeal the New Jersey inheritance tax. However, to date none of that legislation has been enacted.

The New Jersey transfer inheritance tax is a tax on transfers. N.J.S. 54:33-1 provides that a transfer is “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.”

The New Jersey inheritance tax applies to both resident and nonresident decedents.

New Jersey inheritance tax is governed by Title 54, Chapters 33 through 37 and 38A. In addition, the New Jersey Administrative Code provides guidance regarding the New Jersey inheritance tax. Transfer Inheritance Tax and Estate Tax Rules contained in Chapter 26 of Title 18, Sections 18:26-1.1 through 18:26-12.12 of the New Jersey Administrative Code were adopted on June 13, 2018 and are effective through July 26, 2025. Updated Transfer Inheritance Tax and Estate Tax Rules have been proposed but not yet adopted. The proposed new rules are substantially similar to the current rules.

II. BENEFICIARY CLASSES AND TAX RATES

To plan for the New Jersey inheritance tax, it is important to understand when the tax applies. The inheritance tax rate depends upon the relationship of the beneficiary (transferee) to the decedent (transferor). Transferee beneficiaries are divided into different “Classes” depending on their relationship to the decedent.

1. Class A Beneficiaries

Class A beneficiaries are entirely exempt from inheritance tax. They generally include individuals with a close relationship to the decedent. Class A beneficiaries include a decedent’s spouse, civil union partner after 2/19/2007, domestic partner after 7/10/2004, parents, grandparents, and descendants (including naturally born or legally adopted children and their descendants), a mutually acknowledged child, and a stepchild (but not a step grandchild or a great-step grandchild).

A mutually acknowledged child is a child who has not been legally adopted by the decedent, but where the child was taken into the household and the

decedent had a parent/child relationship which existed for at least ten continuous years and which began at or before the child's 15th birthday. A claim for a mutually acknowledged child should be accompanied by a detailed affidavit explaining the relationship.

2. **Class B Beneficiaries**

Class B no longer exists. It was deleted by amendment on 7/1/1963.

3. **Class C Beneficiaries**

Class C beneficiaries include: (i) sibling of a decedent, including a half-brother or half-sister, (ii) the spouse or surviving spouse of a child of the decedent, (iii) the civil union partner after 2/19/2007 or surviving civil union partner after 2/19/2007 of a child of the decedent.

The first \$25,000 received by a Class C beneficiary is exempt from inheritance tax. Transfers exceeding the initial \$25,000 are taxed as follows:

11% on the next \$1,075,000;
 13% on any amount in excess of \$1,100,000, up to \$1,400,000;
 14% on any amount in excess of \$1,400,000, up to \$1,700,000; and
 16% on any amount exceeding \$1,700,000.

Example: New Jersey resident, Phil passes away. His will leaves his entire estate, consisting of \$2,000,000 in cash to his sister, a resident of Florida. Phil's estate pays NJ inheritance tax in the amount of \$247,250, computed as follows:

\$25,000 x 0:	\$	0 +
(\$1,100,000 - \$25,000) x .11:	\$	118,250 +
(\$1,400,000 - \$1,100,000) x .13:	\$	39,000 +
(\$1,700,000 - \$1,400,000) x .14:	\$	42,000 +
(\$2,000,000 - \$1,700,000) x .16:	\$	<u>48,000</u>
Total:	\$	247,250

Note that it is irrelevant that the sister lives in Florida for purposes of determining whether New Jersey inheritance tax is due. Only Phil's domicile at his death is relevant.

4. **Class D Beneficiaries**

Class D beneficiaries include everyone else, other than Class “A,” “C” and “E” beneficiaries.

Note that the current instructions to the New Jersey Form IT-R point out that issue of a stepchild; a stepbrother or stepsister of the decedent; and a spouse, civil union partner, domestic partner, widow, widower, surviving civil union partner, or surviving domestic partner of a stepchild or of a mutually acknowledged child of the decedent are Class D beneficiaries, and not Class A or Class C beneficiaries.

A transfer to a Class D beneficiary under \$500 is exempt from inheritance tax. However, if the transfer is \$500 or more, there is no exemption and the rates are applied as follows:

15% on any amount up to \$700,000; and
16% on any amount exceeding \$700,000.

Example: New Jersey resident, Phil, passes away. His will leaves \$500,000 in cash to his wife, Tammy, and \$20,000 in cash to each of his four children. However, in addition, Phil leaves \$499 to his nephew. Phil’s estate will pay no New Jersey inheritance tax, since all transfers are exempt transfers.

Example: New Jersey resident, Phil, passes away. His will leaves \$500,000 in cash to his wife, Tammy, and \$20,000 in cash to each of his four children. However, in addition, Phil leaves \$1,000 to his nephew. Phil’s estate will pay New Jersey inheritance tax in the amount of \$150 (\$1,000 x .15 rate).

5. **Class E Beneficiaries**

Class E beneficiaries include all qualifying charities. This includes IRC Section 501(c)(3) tax exempt organizations, such as educational institutions, houses of worship and religious organizations, hospitals, and public libraries, as well as the State of New Jersey or any of its political subdivisions.

Class E beneficiaries are entirely exempt from inheritance tax.

III. **TYPES OF TRANSFERS SUBJECT TO NEW JERSEY INHERITANCE TAX**

1. Testamentary transfers of real property and tangible personal property located in New Jersey and intangible personal property wherever located, passing under a will or revocable trust or through intestacy passing to a non-Class A beneficiary.

2. Jointly held property passing to a survivor and property passing by operation of law to a non-Class A beneficiary. With regard to jointly held property, only the portion of the property which the surviving joint tenant can prove, to the satisfaction of the Director, to have originally belonged to them and never to have belonged to the decedent will be exempt from the tax.
3. Retirement accounts (other than certain New Jersey retirement funds) passing to a non-Class A beneficiary. Note that in this case, the inheritance tax is assessed on the full date of death value of the account, even though the beneficiary will be subject to payment of income tax when the account assets are distributed to them. There is no offset for the built-in income tax liability.
4. Certain Lifetime Transfers may be brought back into a decedent's estate for inheritance tax purposes, such as:
 - Gifts in contemplation of death – A gift made without adequate valuable consideration within 3 years of the decedent's death is presumed to be made in contemplation of death. The estate has the burden of showing by a preponderance of the evidence that the transfer was not made in contemplation of death.
 - Transfers intended to take effect on or after death – Where the decedent makes a lifetime transfer that vests in the beneficiary at the decedent's death and which remains subject to the decedent's control, possession or enjoyment during their lifetime, or where the decedent retains for their lifetime (or for a period which does not actually end before death) the right to income from the property, the transfer is subject to the inheritance tax. A retained life estate in a residence that passes to a non-Class A beneficiary at death is an example. A bequest under a will in satisfaction of an amount owed under a matrimonial settlement agreement might also be subject to inheritance tax.
5. Note that for a nonresident decedent, the inheritance tax only applies to real or tangible property located in New Jersey passing to a non-Class A beneficiary.
6. Some transfers that involve non-Class A contingent beneficiaries may be subject to inheritance tax, but the tax is not due until the contingency occurs. For example, a transfer at death of property to a trust for the lifetime of a beneficiary that has non-Class A contingent remainder beneficiaries, or is subject to a limited power of appointment, could result in inheritance tax once the contingency occurs. Generally, the property is taxed once the interest of the contingent beneficiary vests. However, in cases such as these, the New Jersey Inheritance Tax Branch might agree to a compromise tax, as discussed below.

IV. TRANSFERS EXEMPT FROM NEW JERSEY INHERITANCE TAX

1. Real property and tangible personal property located outside New Jersey is exempt from inheritance tax.
2. Life insurance payable to a specific beneficiary is exempt from inheritance tax. However, life insurance payable to the estate of a decedent might be subject to inheritance tax.
3. A transfer at death of real or tangible personal property held as tenancy by the entireties to a surviving spouse or civil union partner is exempt from the inheritance tax.
4. A transfer of assets more than three years prior to death, even if transferred to a non-Class A beneficiary.
5. The proceeds of any pension, annuity, retirement allowance, return of contributions or benefit payable by the Government of the United States pursuant to the Civil Service Retirement Act, Retired Serviceman's Family Protection Plan and the Survivor Benefit Plan to a named beneficiary (but not the estate) are exempt from the inheritance tax.
6. A transfer at death under the New Jersey Teachers Pension and Annuity Fund, the Public Employees' Retirement System for New Jersey, or the Police and Firemen's Retirement System of New Jersey, whether to a named beneficiary or the decedent's estate are exempt from the New Jersey Inheritance Tax.
7. Wrongful death awards recovered under the New Jersey Death Act.
8. For nonresidents, the inheritance tax base is limited to real and tangible personal property located in New Jersey and intangible assets are exempt from inheritance tax.

V. INHERITANCE TAX PLANNING CONSIDERATIONS

When assisting your clients with their estate planning, to address any inheritance tax issues it is important to review their goals, as well as their assets. Individual or joint ownership of assets, as well as inclusion of named beneficiaries on accounts such as "POD" or "TOD" accounts, should be considered. Then, determine if any assets will be passing to non-Class A beneficiaries, and if so, whether those assets are exempt from inheritance tax.

There are options to avoid the inheritance tax, but they might not be right for every client. Below are options to avoid the inheritance tax if your client wishes to transfer assets to non-Class A beneficiaries. Most of the options have pros and cons and should be discussed carefully with the client, since avoidance of inheritance tax might not be their most important goal.

1. Transfer assets that are exempt from New Jersey inheritance tax, such as life insurance proceeds paid to a named beneficiary (but not to the estate of the insured), real property located outside New Jersey, or proceeds paid to a named beneficiary (but not to the estate) of certain New Jersey retirement funds, such as the Teachers Pension and Annuity Fund, Public Employees' Retirement System and the Police and Firemen's Retirement System.
2. Life insurance is a popular method for avoiding inheritance tax. Insurance proceeds payable directly to the beneficiary are exempt from inheritance tax.

Example: New Jersey resident, Phil, dies owning a life insurance policy on his life with a death benefit of \$500,000. He names his estate as the beneficiary under the policy. His will distributes his entire estate to his nephew. Since Phil's nephew is a Class D beneficiary, New Jersey inheritance tax in the amount of \$75,000 would be due on the transfer ($\$500,000 \times .15$). If instead, Phil named his nephew as the 100% beneficiary of the life insurance proceeds, no inheritance tax would be due, because the insurance proceeds are exempt from inheritance tax.

3. Another option using life insurance is to create an irrevocable life insurance trust as owner and beneficiary of the insurance policy during the client's lifetime, and then after the client's death the proceeds of the policy could be held in further trust for the beneficiary of the trust.
4. Leave assets valued at under \$25,000 to Class C beneficiaries, such as a sibling, since the first \$25,000 passing to Class C beneficiaries is exempt from inheritance tax.
5. Transfer assets to an irrevocable trust more than three years before death and retain no income, principal or other benefits in the trust. If the transfer is less than three years before death, the estate must prove that the transfer was not done in contemplation of death, which can be difficult to prove. Otherwise, the gift will be included in the estate for inheritance tax purposes.
6. Transfer assets as outright gifts more than three years before death. If the gift is less than three years before death, the estate must prove that the gift was not done in contemplation of death. Otherwise, the gift will be included in the estate for inheritance tax purposes.
7. If a client wishes to name a non-Class A beneficiary as the beneficiary of a traditional individual retirement account, conversion of the account to a Roth IRA could reduce the inheritance tax liability.
8. Change residency from New Jersey to a state with more beneficial transfer tax laws. Some clients choose to move to another state, such as Florida or Arizona, to avoid New Jersey taxes.

VI. INHERITANCE TAX PAYMENT

If inheritance tax will be due, it is important to discuss allocation and payment of that tax with the client. Ideally, the decedent's will should direct who pays the inheritance tax, and this should be discussed with the client rather than relying on boilerplate tax allocation provisions. If the client wishes to make specific bequests to non-Class A beneficiaries that will be subject to inheritance tax, the client should decide whether the beneficiary should pay the inheritance tax or if the tax should be paid from the residuary estate. It is particularly important to address the tax allocation if non-probate assets such as retirement accounts will be subject to inheritance tax, since those proceeds pass directly to the named beneficiary and the personal representatives of the decedent's estate has no control over those assets. If tax allocation is not addressed, the personal representative could end up chasing an IRA beneficiary for inheritance tax payment of the amount they receive from the IRA.

A tax allocation clause in a will can provide that all estate and inheritance taxes should be paid from the decedent's residuary estate, whether passing under the will or outside of the probate estate. It could also provide that only estate and inheritance taxes attributable to probate assets should be paid from the decedent's residuary estate, and the recipient of any other assets should pay the related transfer tax on the assets they receive. The tax clause can also allocate payment of inheritance tax to the recipient of certain bequests. Generally, the tax allocation clause will direct that no estate or inheritance taxes should be paid from any bequest passing to a qualified charitable organization. If the will is silent, then the default under New Jersey law is that each recipient pays their pro-rata share of inheritance taxes on the amount they receive.

Special consideration should be given if the client wishes to make bequests to a non-Class A beneficiary and the beneficiary of a decedent's residuary estate is one or more qualified charitable organizations that are exempt from New Jersey inheritance tax. In that case, a tax allocation directing payment of all inheritance tax from the residuary estate will cause a circular calculation. To avoid that result, any specific bequest could be a "grossed-up" amount that includes the amount of inheritance tax anticipated to be due, and the inheritance tax payment could be allocated to the recipient of the bequest.

It is also important to consider the client's assets and the source of the funds for payment of the inheritance tax to ensure that if inheritance tax is to be paid from the residuary estate, there will be sufficient assets in the estate to pay the taxes, debts and expenses of the estate. This is particularly true if significant non-probate assets, such as retirement accounts, are passing to non-Class A beneficiaries.

VII. TAX WAIVERS AND INHERITANCE TAX RETURN

In order to transfer property in New Jersey after a decedent's death, inheritance tax waivers are generally required. A Waiver/Consent to Transfer is required for the following estate assets:

- Real Estate (except if held by spouses or civil union partners as tenants-by-the-entireties).
- Assets held in all New Jersey financial institutions, such as bank and brokerage accounts.
- Individual Retirement Accounts.
- Stock in New Jersey corporations.
- New Jersey Municipal Bonds.
- Mutual Funds incorporated in New Jersey.

If the necessary waiver is not obtained, then the New Jersey inheritance tax constitutes a lien on all property owned by the decedent for a period of 15 years from the date of death, unless sooner paid or secured by a bond. Generally, a **Form 0-1** inheritance tax waiver is issued by the New Jersey Division of Taxation after a New Jersey inheritance tax return is filed and any tax due is paid.

There are also other types of waiver forms that may be used, depending on the situation, as discussed below.

1. **Form L-8.** A Form L-8, Affidavit for Non-Real Estate Investments: Resident Decedent, may be used to obtain a waiver in some instances where the beneficiaries of the property being transferred are all Class A beneficiaries (other than a mutually acknowledged child). The assets may pass by operation of law, as a specific bequest under a will, or where all beneficiaries under a will are Class A beneficiaries. The instructions state that qualified civil union partners and domestic partners must include a legal certificate to document their status. The Form L-8 is a "self-executing waiver" that is intended to provide a simplified procedure to transfer assets and may be used rather than filing a full inheritance tax return to release certain assets where all beneficiaries are Class A. The L-8 is filed with the institution releasing the funds, which in turn submits it to the Branch for review. However, the Branch does not issue an approval notice to the financial institution. Thus, once the Form L-8 is signed, the assets should be released by the financial institution. The instructions provide descriptions of the type of beneficiaries for which the form may be used, and those for which it cannot be used.

However, a Form L-8 cannot be utilized if any of the following is true:

- (i) The decedent died prior to January 1, 2017, and the decedent's taxable estate plus adjusted taxable gifts exceeds \$675,000.
- (ii) The decedent died on or after January 1, 2017 but before January 1, 2018, and the decedent's taxable estate was equal to or more than \$2,000,000.
- (iii) Any of the assets to be released with the Form L-8 pass to a beneficiary as a result of a disclaimer. This is true even if the assets pass only to Class A beneficiaries.
- (iv) Any of the assets to be released with the Form L-8 pass into or through a trust, where the trust decides how the assets are distributed. This is true whether the trust is set up through the decedent's will, or separately from the will, such as in a revocable living trust. The instructions to the new Form L-8 clarify that where assets pass to a trust even where all beneficiaries are Class A, the Form L-8 cannot be used. The Form L-8 instructions provide that for purposes of the Form L-8, it is not generally considered a "trust" when there is a bequest in a will to a minor (who is a Class "A") to be held "in trust" until he/she reaches a specific age. However, in all other cases involving a trust, either a full inheritance tax return or a Form L-4 request for preliminary waivers must be filed, even if the assets all appear to be passing to Class A beneficiaries. Note that assets owned at death by or in the name of a trust (such as a revocable living trust) do not require a waiver, but still must be reported on any inheritance tax return filed, if one is required.
- (v) Importantly, you cannot use the Form L-8 for real estate. Instead, a Form L-9 may be used in some circumstances, as discussed below.

2. **Form L-9.** A Form L-9, Affidavit for Real Property Tax Waiver: Resident Decedent, is used to apply for a tax waiver for the transfer of real property from a resident decedent who died on or after January 1, 2018. The form may be used when all beneficiaries of the estate are Class A beneficiaries (other than a mutually acknowledged child).

The Form L-9 cannot be used if:

- (i) The real estate was held as tenants-by-the-entirety and the spouse/civil union partner is surviving. No waiver is needed for this property, and none will be issued.

- (ii) Any asset valued at \$500 or more passes to a beneficiary other than a Class A beneficiary (other than a mutually acknowledged child).
- (iii) The relationship of a mutually acknowledged child is claimed to exist.
- (iv) There is any New Jersey inheritance or estate tax due.

If a trust agreement exists or is created under the terms of the decedent's will, you may still use the Form L-9. In the event that all other conditions for the use of Form L-9 are met and there is no possibility that any portion of the trust assets will pass other than to a Class A beneficiary, the Division will consider the issuance of a real estate tax waiver.

3. **Form L-9(A).** A Form L-9(A), Affidavit for Real Property Tax Waiver: Resident Decedent, is used to apply for a tax waiver for the transfer of real property from a resident decedent who died before January 1, 2018.
4. **Form L-4.** A Form L-4, Affidavit Requesting Preliminary Waivers: Resident Decedents, may be used to apply for tax waivers in the following circumstances:
 - (i) An inheritance tax return is required but has not yet been prepared and filed; or
 - (ii) All beneficiaries are Class A, but the estate does not qualify to use Form L-8 (i.e., if there is a disclaimer or a trust); or
 - (iii) All beneficiaries are Class E, or Class E and Class A.

The appropriate box should be checked in Part 1, Reason for Request, on the Form L-4. Copies of the will, any trusts, and any disclaimers must be submitted with the Form L-4. If all beneficiaries are Class A but the estate does not qualify to use Form L-8, the Division will review the submissions and determine whether an inheritance tax return is required. Similarly, if all beneficiaries are Class E, or all Class E and Class A, the Division will review the filing and determine if an inheritance tax return is required. Any waivers are given at the discretion of the Division and the Form L-4 instructions state: "The filing of this form does not guarantee that any waivers will be issued at this time."

5. **Form IT-R (Inheritance Tax Resident Return).** If required, the inheritance tax return for a resident decedent must be filed and the inheritance tax paid within 8 months of the decedent's date of death. It is possible to obtain an extension to file the inheritance tax return, but this does not extend the date for payment of tax. Interest accrues at the rate of 10% per annum for any tax not paid within 8 months of the decedent's date of death. The interest

rate may be reduced to 6% if the taxpayer demonstrates an “unavoidable cause of delay” for the late payment of the tax. The initial available filing extension is 4 months and an additional 2 month extension is available if a request is filed within the initial 4 month extension period. Extensions in excess of 6 months may be available in exceptional circumstances.

In December of 2024, the New Jersey Division of Taxation published a new Form IT-R.

The New Jersey Division of Taxation continues to accept the “old” Form IT-R, even for decedents who died on or after the release of the new Form IT-R. The new Form IT-R should be used for any filings for decedents who died after the publication date. However, there is no requirement to redo any returns that were in process and not yet filed prior to the publication of the new return.

There are several significant updates to the Form IT-R, including more detailed instructions and guidance on each of the schedules of the return. Some specific changes to the form include:

- (i) The first page of the return is a **Cover Page** where information about the estate is presented. There are a series of “yes” or “no” questions about the estate and information about documentation to submit with the return depending on how each question is answered. Finally, the personal representative of the estate must sign the Cover Page in the presence of a notary public.

Note when submitting the return to the New Jersey Division of Taxation, the Cover Page must include an original signature. A photocopy is not acceptable.

- (ii) **Page 2** of the Form IT-R is now a **summary page**, which should be completed after the various return schedules are completed. Information reported on the summary page includes the calculation of the value of the estate and the inheritance tax due.
- (iii) **Schedule A** of Form IT-R is used to report **New Jersey Real Property** and has been updated to more clearly detail the information that must be reported in connection with New Jersey Real Property.
- (iv) **Schedule B** of Form IT-R is used to report **Closely Held Businesses** and has been updated, again to more clearly detail the information that must be reported in connection with any closely held business interest owned by the decedent. In addition, for each closely held business reported, there are a series of check box options to indicate whether there are certain documents, such as a partnership agreement, buy-sell

agreement, certified business appraisal, etc., in connection with the closely held business and specifying that copies of any such documents must be attached.

Depending on the specific type of closely held business (i.e., closely held corporation, partnership or joint venture, sole proprietorship, or family limited partnership), the instructions provide further direction about specific information required for each type.

- (v) **Schedules B-1 to B-4** are used to report the decedent's personal property. On these schedules, everything that was owned by or in possession of the decedent, either individually or jointly, on the date of death (other than real estate or businesses) will be reported. If the decedent's name appears on the asset, it must be reported on one of these schedules.

For property held as joint tenants with rights of survivorship, do not automatically report those assets at one-half value. Jointly held assets are presumed to have been the sole property of the decedent. If a surviving joint owner wishes to claim that all or part of the asset was due to their contribution, an affidavit from the surviving joint tenant detailing the amount they contributed, together with whatever documents can be provided to support the claim of contribution must be submitted to support the claim.

Schedule B-1 reports accounts held at banking and financial institutions, such as savings, checking, certificates of deposit, money markets, credit union accounts, IRAs, mutual funds and brokerage accounts. For brokerage accounts, the total value of the account should be reported and a copy of the date of death account statement should be provided.

Schedule B-2 reports common or preferred stock owned by the decedent. However, accumulated dividends should be reported on Schedule B-4 and not Schedule B-2.

Schedule B-3 reports municipal and corporate bonds, but not U.S. Savings Bonds, which should be reported on Schedule B-4.

Schedule B-4 reports all other property owned by the decedent, including convertible virtual currency, such as Bitcoin.

- (vi) **Schedule C** is used to report **Transfers**, either during the decedent's lifetime, incomplete transfers, and payable on death policies/plans. Schedule C has been updated to provide more detailed information about what information needs to be reported to the New Jersey Division of Taxation.

- (vii) **Schedule D** is used to report debts of the decedent and certain administration expenses that are allowed to be deducted from the decedent's gross estate for Inheritance Tax purposes.

Note that just because an expense is paid on behalf of the estate does not necessarily mean it may be deducted on the Form IT-R. To be deductible, an expenses must either have been due at the date of death, or meet the requirements for an allowable administration expense.

- (viii) **Schedule E** is used to report all of the beneficiaries of the estate, whether living or deceased.

Some additional updates throughout the Form IT-R include 'if this, then that' types questions, check boxes to indicate if the return is amended, check boxes to indicate if additional Schedule pages are included, check boxes to indicate if there is a mortgage lien on real property reported on Schedule A, check boxes to indicate if stock listed on Schedule B-2 is for a New Jersey corporation (to provide guidance on whether a waiver is required), and in general, more detailed schedules that provide instructions and guidance on reporting information on the return.

In addition to the updates to Form IT-R itself, the Division has also published a 41 page PDF with detailed instructions for preparing the Form IT-R and worksheets to assist with the calculations of the inheritance tax on Class C and Class D beneficiaries.

Prior to 2018, if a personal representative filed a New Jersey estate tax return and the will or other governing document provided for the establishment of a trust for the benefit of a surviving spouse, with the decedent's descendants as the remainder beneficiaries (i.e., all such persons being Class A beneficiaries), no New Jersey inheritance tax return was required. However, with the change in the law, after 2018 it has been necessary to file inheritance tax returns for many more estates. Based on the instructions for Form L-8, if the will or other governing document provides for the establishment of a trust for the benefit of a surviving spouse, with the remainder passing to continuing lifetime trusts (or even age restricted trusts in certain circumstances) for the benefit of the decedent's descendants, an inheritance tax return reporting the transfer might be required. This might even be true if the continuing trusts for descendants terminate at a certain age, depending if the beneficiaries are minors at the decedent's death. As discussed above, the revised Form L-4 provides a possible alternative to the need to prepare a full inheritance tax return, depending on the circumstances. However, if an inheritance tax return is required and a trust is reported, it should include a strong compromise tax affidavit, even if the primary and contingent remainder beneficiaries are all Class A. The personal representative could report in the compromise tax

affidavit that the likelihood of any non-Class A beneficiaries receiving trust property is so remote as to be valued at zero.

6. **Form L-9 NR.** A Form L-9 NR, Affidavit of Non-Resident Decedent Requesting Real Property Tax Waiver(s), is used to apply for a tax waiver for the transfer of real property from a non-resident decedent. The form may only be used when the entire estate passes to Class A or Class E beneficiaries, which are exempt from inheritance tax.
7. **Form IT-NR (Inheritance Tax Non-Resident Return).** If a non-resident decedent dies owning real property or tangible personal property in New Jersey, and any of the estate assets pass to a non-Class A beneficiary, then a Form IT-NR, Inheritance Tax Non-Resident Return, will be required. For non-resident decedents who die owning real property in New Jersey, if all estate assets pass to Class A beneficiaries, then a Form L-9 NR may be used, as discussed above. If a non-resident decedent dies owning only intangible property in New Jersey, then no inheritance tax return is required.

VIII. NEW JERSEY COMPROMISE TAX

1. Generally

When the New Jersey inheritance tax on a transfer of property cannot be definitely determined until the occurrence of certain contingencies, the inheritance tax liability may be immediately adjusted by the payment of a compromise tax. The compromise tax is the amount of inheritance tax that the New Jersey Inheritance and Estate Tax Branch will accept in satisfaction of a tax liability which, if not settled in this manner, will be held in abeyance for an indefinite period. The compromise tax is determined after a consideration of the tax that may become due upon the occurrence of various contingencies, the present value of the tax, and the probability of the various contingencies occurring.

Both the Branch and the estate can benefit from settlement of inheritance tax on the contingent portion of an estate prior to the occurrence of the contingencies.

The Branch prefers an immediate, fair and equitable settlement of the tax. In most cases it eliminates the need to maintain active files for an indefinite period, it eliminates the necessity of making multiple assessments of tax in the same estate, and it provides for the immediate receipt of tax revenue for the Branch. The estate representatives usually prefer the immediate settlement of the transfer inheritance tax liability because it results in a more expeditious completion of the inheritance tax proceeding and it eliminates the requirement of filing a bond for twice the highest amount of potential inheritance tax that may become due until the contingencies have occurred and the resulting tax liability has been satisfied.

A compromise tax on the contingent portion of an estate may be computed by the estate representative and reported on the estate's inheritance tax return. When a compromise tax is reported on the return, the estate representative should attach an affidavit setting forth the computations and basis for the amount of compromise tax reported. If the Branch reviews the computations and determines that the proposed compromise tax is acceptable, and, if none of the contingencies have occurred prior to the completion of the assessment of tax by the Branch, then the assessment will be completed on the basis of the amount of compromise tax reported on the return.

If the compromise tax reported on the inheritance tax return is not acceptable to the Branch, or, if the estate representative does not wish to compute a compromise tax for the Branch's review, the Branch will propose a compromise tax on the contingent portion of the estate. If the compromise tax proposed by the Branch is accepted by the estate representative and paid prior to the occurrence of the contingencies, such payment of the compromise tax will result in a final adjustment of the tax on the contingent portion of the estate.

In most compromise tax situations, the tax on the contingent portion of an estate is settled by the payment of a compromise tax. In the absence of a compromise, a bond will need to be posted until the contingency has occurred and any inheritance tax has been paid.

2. **Procedure for Computing the Compromise Tax.**

As set forth in the New Jersey Transfer Inheritance Tax Guide for Computation of the Compromise Tax, the following steps are necessary in the computation of a compromise tax:

- (i) Determine the value, for inheritance tax purposes, of the contingent portion of the estate. The contingent portion is that portion of the estate upon which the tax cannot be definitely determined until the occurrence of contingencies. The contingent portion of the estate is reported on line 8 of the recital page of the inheritance tax return.
- (ii) Determine the amount of contingent tax (tax on the contingent portion of an estate) that will become due upon the occurrence of the various contingencies. In some cases, the tax will not vary and there will be only one possible contingent tax; however, in most cases there will be several possible contingent taxes that may result from the occurrence of various contingencies. When several contingent tax possibilities exist, the computation of the compromise tax should be based upon a minimum of three possible contingent taxes. The three possible contingent taxes which should be considered are the contingent tax that will become due upon the occurrence of the most

probable contingencies, the highest possible contingent tax, and the lowest possible contingent tax (may be zero if the occurrence of the contingencies could result in no contingent tax liability). If, however, a large amount of contingent tax is involved, a sufficient number of contingent tax possibilities should be considered in order to provide a basis for the proper determination of the compromise tax.

- (iii) Determine the present value of each of the possible contingent taxes calculated in step (ii). It is necessary to determine the value, in present dollars, of the contingent tax that will become due upon the occurrence of the various contingencies. Therefore, for each possible contingent tax, it must be estimated when the contingencies will occur. The period of time that will pass between the immediate settlement of the potential tax liability by the payment of a compromise tax and the payment of a contingent tax upon the occurrence of contingencies is used for the purpose of determining the present values of the contingent taxes. The present value of the contingent tax is then determined by multiplying the contingent tax by the factor for this period of time from a table for the present value of \$1.00 at an interest rate of 6% compounded annually.
- (iv) Determine the probability of the various contingencies and resulting contingent taxes occurring. This step involves the assignment of a relative probability of occurrence to each of the contingent taxes computed in step (ii).
- (v) Determine the compromise tax. After a review of the relative probabilities of the various contingent taxes, the next step is to determine the compromise tax. Since this step is based on judgment, there is no set procedure or specific formula used exclusively in the computation of the compromise tax.

Three possible methods of completing the computation of the compromise tax are set forth below:

- a) Start with the present value of the most probable contingent tax and then adjust this value upward or downward on the basis of the present values of the other contingent tax possibilities. For example, if the most probable contingent tax is much lower than most of the other less probable contingent taxes, the present value of the contingent tax with the highest probability of occurrence would be adjusted upward to allow for the possibility of the higher contingent taxes;
- b) A second method is the assignment of weights to the contingent tax possibilities on the basis of their relative probability of occurrence. For example, if three contingent taxes were computed in step (ii), the

most probable might be assigned a weight of 3, the highest possible contingent tax, which is the second most probable contingent tax, might be assigned a weight of 2 and the lowest possible contingent tax, also the tax with the lowest probability of occurrence, might be assigned a weight of 1. Then the present value of the most probable contingent tax would be multiplied by 3, the present value of the highest possible contingent tax would be multiplied by 2 and the present value of the lowest contingent tax would be multiplied by 1. The compromise tax is then determined by adding the products and dividing the result by 6;

- c) A third method is to assign a percentage of probability to each contingent tax determined in step (ii) and, also to the probability, if one exists, that the occurrence of contingencies may result in no contingent tax liability. The total of the percentages assigned would equal 100%. The assigned percentages would then be multiplied by the present value of each contingent tax determined in step (iii). The compromise tax is then determined by adding the products.

To potentially reduce the audit time of the inheritance tax return, you may calculate and propose a compromise tax for the Division's review. When doing so, the estate should include an attachment detailing full calculations and enter the proposed tax amount on line 15 of Form IT-R. If you leave line 15 blank, the Division will propose the compromise tax and notify the estate of the amount due. The Division reserves the right to reject or alter the estate's proposed compromise tax.

3. **Preparation of Compromise Tax Affidavit**

- (i) If the probability of a tax becoming payable on the contingent portion of an estate is remote, the Branch might determine that the probability of tax is too remote to compromise and exempt the contingent portion of the estate from tax. Include a strong affidavit with the tax return to try to achieve this result.
- (ii) If distributions may be made from a trust for the education, health and/or support of a beneficiary at the discretion of a trustee and the contingent beneficiaries could be non-Class A beneficiaries, the estate representative should, to the extent possible, advise the Branch of the status of the beneficiary's education, health and/or financial condition.
- (iii) If tax on the contingent portion of an estate is not settled by the payment of a compromise tax, the administrator, executor, trustee, or other proper representative of an estate must file a bond, subject to the approval of the Director, Division of Taxation, equal to twice

the highest amount of tax that may become payable upon the occurrence of the contingencies.

Form L-8
Affidavit for Non-Real Estate Investments:
Resident Decedent

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Form L-8 – Affidavit for Non-Real Estate Investments: Resident Decedents

Use this form for release of:

- New Jersey bank accounts;
- Stock in New Jersey corporations;
- Brokerage accounts; and
- New Jersey investment bonds.

*This form **cannot** be used for real estate.*

For real estate investments, use [Form L-9](#).

This form can be completed by:

- The executor;
- Administrator;
- The surviving Class A joint tenant (often a spouse or civil union partner); or
- Class A "Payable On Death (POD)" beneficiary of the assets for which release is sought.

PART I – ELIGIBLE BENEFICIARIES: Check the box or boxes corresponding to the type of beneficiary who is receiving the assets that will be listed in Part V. If at least one of the boxes does not apply, the L-8 cannot be used to release these assets. *Qualified civil union partners and domestic partners must provide a legal certificate to document their status.*

The following are considered Class A beneficiaries:

- Surviving spouse;
- Surviving civil union partner when a decedent's death is on or after February 19, 2007;
- Surviving domestic partner when a decedent's death is on or after July 10, 2004;
- Child, stepchild, legally adopted child, or issue of any child or legally adopted child (includes a grandchild and a great grandchild but not a step-grandchild or a step great-grandchild);
- Parent and /or grandparent.

Note: You cannot use this form to release **any** asset passing to a beneficiary other than the Class A beneficiaries specifically listed in Part I.

For example, the following people **cannot** use this form (and must file a return to receive waivers):

- Sisters and brothers of the decedent;
- Sons-in-law or daughters-in-law of the decedent;
- Nieces and nephews, aunts and uncles;
- Ex-spouses;
- Mutually acknowledged children;
- Step-grandchildren and charities.

PART II – SUCCESSION: Check the box that shows how the assets pass to the beneficiary.

- Check Box **a** if the assets on the form pass directly to the beneficiary by operation of law. This means they were jointly held, POD, or Transfer on Death (TOD). (A copy of the will is not needed);
- Check Box **b** if the will states that these specific assets reported on the L-8 form pass to a particular named beneficiary. (Attach a copy of the will);
- Check Box **c** if there was no will (intestate) and all the beneficiaries in the entire estate are Class A beneficiaries as listed in Part I; or
- Check Box **c** if there was a will (testate), but there were no specific bequests and all the beneficiaries in the entire estate are one of the Class A beneficiaries listed in Part I (attach a copy of the will).

Note: *If at least one of the boxes does not apply, the L-8 **cannot** be used to release these assets.*

PART III – TRUSTS/DISCLAIMERS: If any of the assets you wish to release pass into or through a trust, where the trust decides how the assets are distributed, you cannot use the L-8. Trusts can be set up by decedents either in their will, or separately from the will. For the purposes of the L-8, it is not generally considered a “trust” when there is a bequest in the will to a minor (who is a Class “A”) to be held “in trust” until he/she reaches a specific age. In all other cases, a full return must be filed with the Inheritance Tax Branch, even if the assets all appear to be passing to Class A beneficiaries.

NOTE: *Assets that are owned by or in the name of a trust do not require a waiver or L-8, but must still be reported on any return filed.*

PART IV – ESTATE TAX: This section determines whether the estate may be required to pay New Jersey Estate Tax. You must be able to answer “YES” to either a), b), or c) to qualify to use this form. If the decedent died on or after January 1, 2017, but before January 1, 2018, his/her entire taxable estate must be under \$2 million. If the date of death was before January 1, 2017, the entire taxable estate must be under \$675,000. *Even if you qualify to use this form, a return is still required if the gross estate is over \$675,000.* If the decedent died on or after January 1, 2018, then there is no Estate Tax.

PART V – PROPERTY: List all the assets in *this* institution for which you are requesting a release. If this is a bank, list each account in this bank separately. Follow the column headings for each asset. Under “How held/Registered,” you may enter “NOD” (Name of Decedent) if the account was in the name of the decedent alone. If it was Paid on Death (POD) to a person, enter “POD to” and the person or persons’ names (e.g., POD Jane Doe and John Doe). If it was jointly held, enter “NOD and/or” the beneficiary’s name.

PART VI – BENEFICIARIES: List the name of each beneficiary and his/her relationship to the decedent. The relationship must be one of the Class A beneficiaries listed in Part I of the L-8.

NOTE: “Executor,” “Estate,” and “Beneficiary” are **not** correct relations to the decedent in this column. You must use terms such as “Child,” “Spouse,” or “Grandchild.”

SIGNATURE: This form is an **affidavit** and must be signed by the executor, administrator, or beneficiary, and the signature must be **notarized**.

PART VII – RELEASING INSTITUTION: A representative of the institution releasing the funds must verify that all questions have been answered and that the beneficiaries reported are allowed per Part I, **before** signing the form and releasing any assets. If you have any question as to whether you are permitted to release assets, please call the Inheritance Tax general information number at (609) 292-5033 and ask to speak to an Information Section representative.

**Form L-8**

Take or send the completed form directly to the bank or other financial institution holding the funds.

Do not mail this form to the Division of Taxation. You will not receive a waiver.

Decedent's Name _____ Decedent's SSN: _____
(Last) (First) (Middle)

Date of Death (mm/dd/yy) _____ County of Residence _____ Testate (Will) ☐ Intestate (No Will) ☐

You must answer the following questions:

I. ELIGIBLE BENEFICIARIES: Who is receiving the assets listed on the reverse side? Check all that apply:

- ☐ a. Surviving spouse;
- ☐ b. Surviving civil union partner when a decedent's death is on or after February 19, 2007;
- ☐ c. Surviving domestic partner when a decedent's death is on or after July 10, 2004;
- ☐ d. Child, stepchild, legally adopted child, or issue of any child or legally adopted child (includes a grandchild and a great grandchild but not a step-grandchild or a step great-grandchild);
- ☐ e. Parent and /or grandparent.

Were you able to check at least one of the boxes above?

☐ **Yes** ☐ **No** If "**No**," this form may **not** be used and an Inheritance Tax return must be filed. If "**Yes**," continue to Part II.

II. SUCCESSION: How were the assets received? Check any that apply:

- ☐ a. The beneficiary succeeded to the assets by survivorship or contract; or
- ☐ b. The property was specifically devised to the beneficiary; or
- ☐ c. The property was not specifically devised, but **all** beneficiaries under the decedent's will or intestate heirs-at-law are Class A as described in a. through e. in Part I above.

Were you able to check at least one of the boxes above?

☐ **Yes** ☐ **No** If "**No**," this form may **not** be used.

NOTE: *If there are any assets passing to any beneficiary other than a member of the groups listed above, a complete Transfer Inheritance Tax Return must be filed in the normal manner. It must list all assets in the estate, including any which were acquired by means of this form.*

III. TRUSTS/DISCLAIMERS: Do any portion of the assets listed on the reverse side pass into a trust or pass to the beneficiary as a result of a disclaimer?

☐ **Yes** ☐ **No** If "**Yes**," this form may **not** be used.

IV. ESTATE TAX:

- a. Was the decedent's date of death **on or after January 1, 2018**; or
- b. Was the decedent's date of death **on or after January 1, 2017**, but before January 1, 2018, and his/her taxable estate less than \$2 million as determined pursuant to Section 2051 of the Internal Revenue Code (I.R.C. § 2051)*; or
- c. Was the decedent's date of death **before January 1, 2017**, and is his/her taxable estate plus adjusted taxable gifts \$675,000 or less as determined pursuant to the provisions of the Internal Revenue Code in effect on December 31, 2001, (Line 3 plus Line 4 on 2001 Federal Estate Tax Form 706)?

Check Yes or No based on whether "a," "b," or "c" applies.

☐ **Yes** ☐ **No** If "**No**," this form may **not** be used.

*While this form may be used if the decedent died **on or after** January 1, 2017 but **before** January 1, 2018 if the decedent's **taxable estate** is under \$2 million pursuant to Section 2051 of the Internal Revenue Code, a return must still be filed if the **gross estate** is over \$2 million.

To Be Valid, This Form Must Be Fully Completed On Both Sides

V. 120 PROPERTY (Bank accounts, Brokerage accounts, Stock, Investment Bonds):

A separate affidavit is required for each institution releasing assets.

Description of Asset (Checking, Savings, CD, IRA, # of Shares, etc.)	How held/Registered (Joint, POD, TOD, Individual, etc.)	Date of Death Value* (Full Value)

BANK ACCOUNTS/BROKERAGE ACCOUNTS: Must list the **full balance** as of the **date of death**.

STOCK: List the name of the company and number of shares held under "Description of Asset."

BONDS: Include the name of the issuer, face value under "Description of Asset."

VI. BENEFICIARIES OF PROPERTIES LISTED IN V. ABOVE:

Name(s) of Beneficiary	Relation to Decedent (Must be checked in Part I)

If the decedent died **with a will**, and the assets listed above **pass** to the beneficiaries through the will, a **complete copy** of the last will and testament, codicils, and separate writings must be submitted with this form.

I hereby request the release of the property listed in Part V above. I certify that the beneficiaries of said property are listed in Part VI above and that this form is completed in accordance with its filing requirements.

State of New Jersey County of _____ ss.

_____ being duly sworn, deposes and says that the foregoing statements are true to the best of his/her information or belief.

Subscribed and sworn before me this _____
day of _____.

Signature: _____

Deponent: Executor / Administrator / Joint Tenant / Heir-at-Law

Deponent's Social Security or Federal Identification Number

Notary Public

Street Address

Town/CityState Zip

This Form Must Be Signed by the Releasing Institution Before Mailing to the Division of Taxation

VII. To Be Completed by Releasing Institution

A bank, trust company, association, other depository, transfer agent, or organization may release the assets herein set forth only if the first, second, and fourth boxes (Parts I, II and IV) on the front of this form are checked "YES," the third box (Part III) is checked "NO" and Part VI includes only those relationships permitted in Part I, items 1 through 5. Also, if the decedent died testate and the assets do not pass by contract or survivorship, a complete copy of the will, separate writing, and all codicils must be attached.

The original of this affidavit must be filed by the releasing institution within five business days of execution with the Division of Taxation, Transfer Inheritance and Estate Tax Branch, 3 John Fitch Way, PO Box 249, Trenton, NJ 08695-0249. The affiant (person who made affidavit) should be given a copy.

Name of Institution Accepting Affidavit

Address

By _____

Name

Phone Number

**Riders May be Attached – This Form May Be Reproduced
To Be Valid, This Form Must Be Fully Completed on Both Sides**

Form L-9
Affidavit for Real Property Tax Waiver:
Resident Decedent

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L-9
(9/22)

Affidavit for Real Property Tax Waiver Resident Decedent

Use this form for dates of death **on or after** January 1, 2018
For dates of death **before** January 1, 2018, use [Form L-9\(A\)](#)



Decedent's Name _____
Last First Middle Initial

Decedent's SSN _____ - _____ - _____ Date of Death (mm/dd/yyyy) ____/____/____ County of Residence _____

This form may be used **only** if **all** beneficiaries are **Class A**, there is no New Jersey Inheritance or Estate Tax, and there is no requirement to file a tax return.

Complete and Notarize

☐ Testate (with will)

☐ Intestate (no will)

**Mailing Address
for all
correspondence**

Name _____ Phone (____) _____

Street _____

City _____ State _____ ZIP Code _____

Beneficiaries State full names of all who have an interest in the estate (vested, contingent, operation of law, transfer, etc.)	Relationship to Decedent	Interest of Beneficiary in the Estate (percentage or specific)

Deponent (person making deposition) further states the following schedule contains the names of all beneficiaries who predeceased the decedent.

Name	Date of Death	Domicile at Death

State of _____

County of _____

(Deponent's name) _____, being duly sworn, has reviewed the information contained in this form and declares to the best of their knowledge it is true, correct, and complete. Deponent authorizes the party listed above to act as the estate's representative and to receive the waiver(s) requested herein.

Subscribed and sworn before me

This _____ day of _____, 20____.

Affidavit of ☐ Executor ☐ Administrator ☐ Joint Tenant

(Signature of Notary Public or Attesting Officer)

Signature of Deponent

Deponent's Social Security or Federal Identification Number

Address

Description of New Jersey Real Estate	
County	
Street and Number	
Lot	Block
Municipality	
Owner(s) of Record (if decedent owned a fractional interest, state how held and fractional value thereof):	

Description of New Jersey Real Estate	
County	
Street and Number	
Lot	Block
Municipality	
Owner(s) of Record (if decedent owned a fractional interest, state how held and fractional value thereof):	

Description of New Jersey Real Estate	
County	
Street and Number	
Lot	Block
Municipality	
Owner(s) of Record (if decedent owned a fractional interest, state how held and fractional value thereof):	

Riders may be attached when necessary

This form will be **returned** if it is not fully and properly completed and/or it does not have the required attachments.

Include **all** of the required documentation with this form:

- Copy of the decedent's will, codicils and related writings, and any trust agreements;
- Copy of the deed for the property listed on the form;
- Copy of executor's or administrator's certificate (letters of testamentary or of administration);
- Copy of the decedent's death certificate.

Form L-9 Instructions

This form can be completed by:

- The executor;
- Administrator; or
- Joint tenant of the property for which a waiver is requested.

Eligibility

All beneficiaries of this estate must be one of the following Class A beneficiaries:

- Spouse or civil union partner;
- Child (includes legally adopted child), grandchild, great-grandchild, etc.;
- Parent or grandparent;
- Step-child (but not step-grandchildren);
- Domestic partner (on or after 7/10/04).

You **cannot use** Form L-9 if any of the following conditions exist:

- The real estate was held as **“tenants by the entirety” (jointly by spouse/civil union partner)** and the spouse/civil union partner is surviving.
Note: No waiver is needed for this property, and none will be issued;
- Any asset of the decedent valued at **\$500 or more** passes to any beneficiary other than the Class A beneficiaries listed above;
- The relationship of a mutually acknowledged child is claimed to exist;
- There is any New Jersey Inheritance Tax or Estate Tax due.

Note: If a **trust agreement** either exists or is created by the will, the Division may require a full return should the terms of the trust indicate a possible Inheritance Tax. A waiver would not then be issued from this form.

Required Documents

- Copy of the decedent's will, codicils and related writings, and any trust agreements;
- Copy of the deed for the property listed on the form;
- Copy of executor's or administrator's certificate (letters of testamentary or of administration);
- Copy of the decedent's death certificate.

This form is not a tax waiver. Do not file with the County Clerk. Mail to:

Regular Mail and USPS Express Mail

NJ Division of Taxation
Transfer Inheritance Tax
PO Box 249
Trenton, NJ 08695-0249

Express Mail – Private Carriers (UPS, FedEx)

NJ Division of Taxation
Transfer Inheritance Tax
PO Box 249
3 John Fitch Way, 6th Floor
Trenton, NJ 08611

For more information about the use of Form L-9, call the Inheritance and Estate Tax Branch at (609) 292-5033 or visit the Division of Taxation website at nj.gov/taxation.

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Form L-9(A)
Affidavit for Real Property Tax Waiver:
Resident Decedent

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L-9(A)
(9/22)

Affidavit for Real Property Tax Waiver Resident Decedent

Use this form for dates of death **before** January 1, 2018



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Decedent's Name _____
Last First Middle Initial

Decedent's SSN. _____ - _____ - _____ Date of Death (mm/dd/yyyy) ____ / ____ / ____ County of Residence _____

This form may be used **only** if **all** beneficiaries are **Class A**, there is no New Jersey Inheritance or Estate Tax, and there is no requirement to file a tax return.

Part I

The decedent's gross estate (plus adjusted taxable gifts) consisted of the following: ☐ Testate (with will) ☐ Intestate (no will)

A. Real estate wherever located (full market value) \$ _____
 B. Stocks and bonds, whether held individually or jointly \$ _____
 C. Bank accounts, whether held individually or jointly \$ _____
 D. Individual Retirement Accounts \$ _____
 E. Pensions and annuities \$ _____
 F. Life insurance policies, whether paid to a beneficiary or to the estate \$ _____
 G. Transfers intended to take effect in possession or enjoyment at or after death \$ _____
 H. Other Assets (mortgages, cash, personal property, etc.) \$ _____
 I. Gross estate (total lines A through H) (line 1, federal estate tax form 706) \$ _____
 J. Adjusted taxable gifts (line 4, 2001 federal estate tax form 706) \$ _____
 M. Total (line I plus line J) \$ _____

Do not use this form if:

- The date of death is **before January 1, 2017**, and the total (line M) is **greater than \$675,000**. You must file a New Jersey Estate Tax Return.
- The date of death is **on or after January 1, 2017, but before January 1, 2018**, and the gross estate (line I) is **greater than \$2 million**. You must file a 2017 New Jersey Estate Tax Return.

Part II

List all transfers made by the decedent within three years of date of death (attach additional sheets as needed)

Date of Transfer	Transferee/Beneficiary	Relationship	Property Transferred	DOD Value

Part III

Description of New Jersey Real Estate	Full Assessed Value for Year of Death	Full Market Value at Date of Death
County		
Street and Number		
Lot Block		
Municipality		
Owner(s) of Record (if decedent owned a fractional interest, state how it is held, and the fractional value or percentage):		

Riders may be attached when necessary

Beneficiaries State full names of all who have an interest in the estate (vested, contingent, operation of law, transfer, etc.)	Relationship to Decedent	Interest of Beneficiary in the Estate (percentage or specific)

Deponent (person making deposition) further states the following schedule contains the names of all beneficiaries who predeceased the decedent.

Name	Date of Death	Domicile at Death

This form **will be returned** if it is not fully and properly completed and/or it does not have the required attachments.

Include **all** of the required documentation with this form:

- Copy of the decedent's will, codicils and related writings, and any trust agreements;
- Copy of the deed for the property listed on the form;
- Copy of executor's or administrator's certificate;
- Copy of the decedent's death certificate;
- Copy of the decedent's last full-year federal income tax return (or statement that none was filed);
- Copy of any existing appraisals or current contracts of sale.

Complete and Notarize

Name _____ Phone (____) _____

**Mailing address for
all correspondence**

Street _____

City _____ State _____ ZIP Code _____

State of _____

County of _____

(Deponent's name) _____ being duly sworn, has reviewed the information contained in this form and declares to the best of their knowledge it is true, correct, and complete. Deponent authorizes the party listed above to act as the estate's representative and to receive the waiver(s) requested herein.

Subscribed and sworn before me

Affidavit of: ☐ Executor ☐ Administrator ☐ Joint Tenant

This _____ day of _____, 20_____.

(Signature of Notary Public or Attesting Officer)

Signature of Deponent

Print Name

Deponent's Social Security or Federal Identification Number

Address

Form L-9(A) Instructions

This form can be completed by:

- The executor;
- Administrator; or
- Joint tenant of the property for which a waiver is requested.

Eligibility

All beneficiaries of this estate must be one of the following Class A beneficiaries:

- Spouse or civil union partner;
- Child (includes legally adopted child), grandchild, great-grandchild, etc.;
- Parent or grandparent;
- Step-child (but not step-grandchildren);
- Domestic partner (on or after 7/10/04).

You **cannot** use Form L-9(A) if any of the following conditions exist:

- The real estate was held as **“tenants by the entirety” (jointly by spouse/civil union partner)** and the spouse/civil union partner is surviving.
Note: No waiver is needed for this property, and none will be issued;
- Any asset valued at **\$500 or more** passes to any beneficiary other than the Class A beneficiaries listed above;
- A trust agreement **exists or is created** under the terms of the decedent’s will;
- The relationship of a mutually acknowledged child is claimed to exist;
- The decedent’s date of death is **before January 1, 2017**, and their gross estate, plus adjusted taxable gifts, **exceeds \$675,000** as determined for federal estate tax purposes under the provisions of the Internal Revenue Code in effect on December 31, 2001. A New Jersey Estate Tax return must be filed;
- The decedent’s date of death is **on or after January 1, 2017, but before January 1, 2018**, and their gross estate **exceeds \$2 million** as determined for federal estate tax purposes under the provisions of the current Internal Revenue Code. A 2017 New Jersey Estate Tax return must be filed;
- There is any New Jersey Inheritance Tax or Estate Tax due.

Required Documents

- Copy of the decedent’s will, codicils and related writings, and any trust agreements;
- Copy of the deed for the property listed on the form;
- Copy of executor’s or administrator’s certificate (letters of testamentary or of administration);
- Copy of the decedent’s death certificate;
- Copy of the decedent’s last full-year federal income tax return. (Include Schedules A, B, and D or statement that none was filed);
- Copy of any existing appraisals or current contracts of sale.

This form is not a tax waiver. Do not file with the County Clerk. Mail to:

Regular Mail and USPS Express Mail

NJ Division of Taxation
Transfer Inheritance Tax
PO Box 249
Trenton, NJ 08695-0249

Express Mail – Private Carriers (UPS, FedEx)

NJ Division of Taxation
Transfer Inheritance Tax
PO Box 249
3 John Fitch Way, 6th Floor
Trenton, NJ 08611

For more information about the use of Form L-9(A), call the Inheritance and Estate Tax Branch at (609) 292-5033 or visit the Division of Taxation website at nj.gov/taxation.

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Form L-4
Affidavit Requesting Preliminary Waivers:
Resident Decedents

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Affidavit Requesting Preliminary Waivers: Resident Decedents

L-4
(12-19)

This form may be used when:

- A complete Inheritance or Estate Tax return cannot be completed yet; or
- All beneficiaries are Class A, but estate does not qualify to use Form L-8; or
- All beneficiaries are Class E, or Class E and Class A.

Use this form to request release of:

- New Jersey bank accounts;
- Stock in New Jersey corporations;
- Brokerage accounts;
- New Jersey investment bonds; and
- New Jersey real estate (only when estate does not qualify to use Form L-9).

This form can be completed by the:

- Executor;
- Administrator;
- Trustee;
- Legal Representative of the estate.

For all L-4 filings:

- Check the appropriate box in Part I to indicate why you are filing this form;
- Submit complete copies of the decedent's Will and Codicils and Trust documents;
- Submit copies of any disclaimer(s) filed;
- List all beneficiaries and their relationship to the decedent in Part VII;
- Check the "Request Waiver" box for each asset for which a waiver is requested at this time. The Branch will make final decision on which (if any) waivers are issued;
- The form must be signed by an estate representative and notarized;
- Mail form to: NJ Inheritance Tax Branch, PO Box 249, Trenton, NJ 08695-0249.

For taxable estates:

- Report all known New Jersey assets on attached schedules;
- Submit a complete copy of the decedent's last full-year federal income tax return (include all schedules) or statement that none was filed;
- Include estimated payment on attached IT-PMT (recommended);
- If requesting a real estate waiver, include deed, contract of sale, or closing agreement.

Note: The filing of this form does not guarantee that any waivers will be issued at this time. In addition, the filing of this form will not generate a Notice of Assessment or any finding of tax due.

Affidavit Requesting Preliminary Waivers: Resident Decedents



State of New Jersey
Division of Taxation
Individual Tax Audit Branch
Transfer Inheritance and Estate Tax
PO Box 249
Trenton, New Jersey 08695-0249

L-4
(12-19)

Decedent's Name _____
(Last) (First) (Middle)

Decedent's S.S. No. ____ / ____ / ____ Date of Death (mm/dd/yy) ____ / ____ / ____ County of Residence _____

Complete and Notarize

☐

Testate (with will)

☐

Intestate (no will)

**Mailing Address
to send all
correspondence**

Name _____ Daytime Phone (____) _____

Street _____

City _____ State _____ ZIP Code _____

PART I – Reason for Request (Check the appropriate box):

☐ **I am filing this form to obtain one or more preliminary waivers.** The estate is not able to file a full return at this time; however, specific waivers are needed to protect estate assets. I understand that a full return must still be completed and filed.

Important Note: The Branch will, in every case, keep control of enough liquid assets (i.e., those that can easily be converted to cash) to insure that the tax is covered and that returns will be filed. This means that we will hold back whichever bank waivers we think are necessary and will avoid relying on real estate being the only waiver withheld (per N.J.A.C. 18:26-9.4).

☐ **I am filing this form to obtain all waivers (Class A only).** All beneficiaries are Class A; however, the estate does not qualify to use Form L-8. The estate contends that no tax will be due. I understand that the Branch will evaluate my attached submissions and advise me if a full return is required.

☐ **I am filing this form to obtain all waivers (Class E/Class A).** All beneficiaries are Class E only or Class E and Class A. I understand that the Branch will evaluate my submissions and advise me if a full return is required.

I hereby request the release of the indicated property listed below. I certify that all beneficiaries of the estate are listed in Part VII below and that this form is completed in accordance with its filing requirements.

State of New Jersey County of _____ ss.

_____ being duly sworn, deposes and says that the foregoing statements are true to the best of their information or belief.

Subscribed and sworn before me

Signature

This _____ day of _____, _____.

Notary Public

Deponent: Executor / Administrator / Joint Tenant / Heir-at-Law

Deponent's Social Security or Federal Identification Number

Street Address

Town/City, State, Zip

Decedent's Name: _____

Decedent's S.S. No.: _____ / _____ / _____ 137

PART II – Estimated Net Estate

Report estimated value of all NJ reportable assets of the estate:

Gross Estate – Inheritance Tax	
(Optional) Deductions (Debts, funeral, legal, etc.)	
Net Estate	

PART III – Transfers

List all transfers made by the decedent within three years of date of death or to take effect at death (such as POD annuities):

Date of Transfer	Transferee/Beneficiary	Relationship	Property Transferred	DOD Value

Attach additional sheets if necessary

PART IV – Real Estate

List all real estate owned wholly or partially by the decedent (except as tenants by the entirety where the spouse is surviving)

Description	Assessed Value	Market Value	Request Waiver
County			☐
Street			
Lot Block			
Municipality			
Interest			

Description	Assessed Value	Market Value	Request Waiver
County			☐
Street			
Lot Block			
Municipality			
Interest			

Description	Assessed Value	Market Value	Request Waiver
County			☐
Street			
Lot Block			
Municipality			
Interest			

(Attach additional sheets or riders if necessary)

Decedent's Name: _____

Decedent's S.S. No.: ____ / ____ / ____

PART V – NJ Financial Institutions (Banks, Brokerage Accts, Mutual Funds)

Name of Bank or Institution	Name(s) on Account and how They Were Held	Date of Death Balance	Request Waiver
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐
			☐

(Attach additional sheets or riders if necessary)

PART VI – NJ Stocks, Investment Bonds

Name of Stock or Bond	Name(s) of Owner(s)	Shares	Date of Death Value	Request Waiver
				☐
				☐
				☐
				☐
				☐
				☐
				☐

(Attach additional sheets or riders if necessary)

PART VII – Beneficiaries

Name and Address (if available)	Relationship	Share in Estate

(Attach additional sheets or riders if necessary)

Form IT-R
Inheritance Tax Resident Return

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☐ Check if amended return

Estate Information:

Decedent's Name _____ Decedent's S.S. No. _____ / _____ / _____
Last First Middle

Also Known As (AKA) _____

AKA: If the decedent was also known by any other name(s) that would appear on a house deed, bank account, will, trust, tax return, etc., enter name(s) here.

Date of Death (mm/dd/yyyy) _____ / _____ / _____ NJ County of Residence _____

The Division of Taxation is requested to direct ALL correspondence and/or telecommunications regarding this estate to:

Name _____ Daytime Phone (_____) _____

Street 1 _____

Street 2 _____

City _____ State _____ ZIP Code _____

Email (optional) _____

1. **Last Will and Testament:** Did the decedent have a Last Will and Testament? Yes ☐ No ☐
If Yes, submit a complete copy of the Will (including Codicils) and the Letters of Testamentary.
If No, submit a copy of the Letters of Administration or Affidavit of Next of Kin.
2. **Trusts:** Did the decedent have any Trust documents separate from the Last Will and Testament? Yes ☐ No ☐
If Yes, submit a complete copy of the Trust(s) and any restatements or amendments of Trust.
3. **Income Tax Return:** Did the decedent file a federal Form 1040, for the full year prior to death? Yes ☐ No ☐
If Yes, attach a copy. If the decedent did not or was not required to file a federal Form 1040 with the IRS, check No.
4. **Disclaimers:** Were there, or will there be, any disclaimers filed by a beneficiary renouncing whole or partial interest in a distribution from any part of the decedent's estate? Yes ☐ No ☐
If Yes, submit a copy of the stamped disclaimer that was filed with the Surrogate's Court, or as approved by other agency.
5. **Virtual Currency:** Did the decedent own any convertible virtual currency at death, for example: Bitcoin? Yes ☐ No ☐
If Yes, then submit valuation as of date of death. Report the value on Schedule B-4.

Certification of Summary Page amounts	Enter Total from IT-R Summary Page
Net Estate from Line 7 Summary Page	
Total Tax Due from Line 17 Summary Page	

Affiant says, under penalty of perjury, "I declare that I have examined this return and all accompanying schedules and to the best of my knowledge and belief, it is true, correct and complete." I hereby authorize the parties set forth above to act as the estate representative, to receive confidential information, and to make presentations on behalf of the estate.

My signature affirms that the information provided herein is true, correct and complete, and that I will be held personally liable under penalties of perjury for making any false statements. (N.J.S.A. 2C:28-1)

Subscribed and sworn before me

this _____ day of _____, _____

Signature: _____

Circle one: Executor Administrator Heir-at-law

Print Name: _____

Official Title (Notarized)

Address _____

Daytime Phone (_____) _____

IT-R (12-24)
Transfer Inheritance Tax
PO Box 249
Trenton, NJ 08695-0249

**New Jersey Division of Taxation
Inheritance Tax Return
Resident Decedent Summary Page**

(67) For Division Use Only

☐ Check if amended return

Decedent's Name _____ Decedent's S.S. No. _____ / _____ / _____
Last First Middle

Date of Death (mm/dd/yyyy) _____ / _____ / _____ NJ County of Residence _____ Will ☐ No Will ☐

Estate Value Calculation					Division Use Only	Total From Attached Schedules	
1.	New Jersey Real Property.... Total from Schedule A					1.	
2.	Closely Held Businesses..... Total from Schedule B					2.	
3.	All Other Personal Property.. Total from Schedule B1–B4 Recap					3.	
4.	Transfers Total from Schedule C					4.	
5.	Gross Estate Total lines 1 through 4.....					5.	
6.	Deductions..... Total from Schedule D					6.	
7.	Net Estate Subtract line 6 from line 5 (If zero or less, enter zero)...					7.	
8.	Contingent Amount included on line 7					8.	
9.	Balance of Estate – Subtract line 8 from line 7 (If line 8 is zero, enter amt from line 7)					9.	
	Tax Class	Total Beneficiaries in each Tax Class	Total Distribution for each Tax Class	Total Exemption for each Tax Class	Total Taxable Amount	Tax Calculation	
10.	A - Spouse*		\$ _____	\$ _____	\$ _____ 0 _____	10.	0
11.	A - Other		\$ _____	\$ _____	\$ _____ 0 _____	11.	0
12.	C		\$ _____	\$ _____	\$ _____	12.	
13.	D		\$ _____	\$ _____	\$ _____	13.	
14.	E		\$ _____	\$ _____	\$ _____ 0 _____	14.	0
Total Distribution:		\$ _____	This amount should equal the amount on line 9				
15.	Compromise Tax Due on Line 8 Amount					15.	
16.	Contingent Tax.....					16.	
17.	Total Tax Due (Total lines 10 through 16).....					17.	
18.	Interest Due (if applicable)					18.	
19.	Total Amount Due (Add line 17 and line 18).....					19.	
20.	Payments made prior to filing return.....					20.	
21.	If line 20 is less than line 19, enter balance due. Pay this amount with Form IT-R					21.	
22.	If line 20 is more than line 19, enter refund amount					22.	

*Includes Civil Union Partners (See Instructions).

Division Use Only

Category 1	23.	☐	☐
Category 2	24.	☐	☐
Category 3	25.	☐	☐
Category 4	26.	☐	☐

Verified _____



☐ Check if amended return

Decedent's Name	Date of Death	Decedent's Social Security Number

Schedule A – New Jersey Real Property

☐ Check if additional copies of the schedule are attached

(A) Description of New Jersey Real Estate (All fields required)	(B) Tax Assessed Value for year of death for entire property	(C) Full Market Value* at Date of Death	(D) Value of Decedent's Interest (Not including mortgage balances)	(E) Division Use Only
1. _____ New Jersey County Fractional or percent interest _____ Street address with number, unit _____ Lot(s) _____ Block _____ Municipality _____ Owner(s) name(s)/Property Title ☐ Check if there is a mortgage lien against this property reported on Schedule D.				
2. _____ New Jersey County Fractional or percent interest _____ Street address with number, unit _____ Lot(s) _____ Block _____ Municipality _____ Owner(s) name(s)/Property Title ☐ Check if there is a mortgage lien against this property reported on Schedule D.				
3. _____ New Jersey County Fractional or percent interest _____ Street address with number, unit _____ Lot(s) _____ Block _____ Municipality _____ Owner(s) name(s)/Property Title ☐ Check if there is a mortgage lien against this property reported on Schedule D.				
Total of all additional schedules (if none, enter zero)				
Total of all New Jersey real property. Enter here and on Form IT-R Summary Page, line 1.				

*Check if documentation that supports the reported full market value is included (see instructions) ☐

☐ Check if amended return

Decedent's Name	Date of Death	Decedent's Social Security Number

Schedule B – Closely Held Businesses

☐ Check if additional copies of the schedule are attached

(A) Business Information	(B) Market Value at Date of Death – Entire Business	(C) Market Value at Date of Death – Decedent's Share	Division Use Only

1. Business name: _____ Federal EIN: _____ Type of Business: _____ Is this a Family Limited Partnership? ☐ Yes ☐ No (See instructions) Decedent's percentage of ownership: _____ Number of shares held (if applicable): _____	Attach any of the below information which is applicable to this business. Check box(es) indicating which documents are attached:	☐ Partnership agreement ☐ Schedules K & K-1 of Form 1065 Partnership Return for last full year ☐ prior to death ☐ Form 1120 US Corporation Income Tax Return for last full year prior to death ☐ Financial statements for three full years prior to death ☐ Buy-Sell agreement ☐ Certified Business appraisal (if available)

2. Business name: _____ Federal EIN: _____ Type of Business: _____ Is this a Family Limited Partnership? ☐ Yes ☐ No (See instructions) Decedent's percentage of ownership: _____ Number of shares held (if applicable): _____	Attach any of the below information which is applicable to this business. Check box(es) indicating which documents are attached:	☐ Partnership agreement ☐ Schedules K & K-1 of Form 1065 Partnership Return for last full year ☐ prior to death ☐ Form 1120 US Corporation Income Tax Return for last full year prior to death ☐ Financial statements for three full years prior to death ☐ Buy-Sell agreement ☐ Certified Business appraisal (if available)

3. Business name: _____ Federal EIN: _____ Type of Business: _____ Is this a Family Limited Partnership? ☐ Yes ☐ No (See instructions) Decedent's percentage of ownership: _____ Number of shares held (if applicable): _____	Attach any of the below information which is applicable to this business. Check box(es) indicating which documents are attached:	☐ Partnership agreement ☐ Schedules K & K-1 of Form 1065 Partnership Return for last full year ☐ prior to death ☐ Form 1120 US Corporation Income Tax Return for last full year prior to death ☐ Financial statements for three full years prior to death ☐ Buy-Sell agreement ☐ Certified Business appraisal (if available)

Total of all additional schedules (if none, enter zero)		
Total of all closely held businesses. Enter here and on Form IT-R Summary Page, line 2 ...		

Decedent's Name	Date of Death	Decedent's Social Security Number

Schedule B-1 – Financial Institution Accounts☐ Check if additional copies of the schedule are attached

Types of accounts held at a banking or financial institution that are required to be reported under Schedule B-1: **savings, checking, certificates of deposit, money markets, credit union accounts, IRAs, mutual funds, brokerage accounts.**

For brokerage accounts, report only the total value of the account. Submit the date of death account statement.

Registered Owners: For each account held at a bank or financial institution which the decedent owned individually or jointly*, report the names of all registered owner(s) and named beneficiaries on the account **as they appear on the most recent statement** issued by the institution prior to death.

*Joint Tenants: If a surviving joint tenant is claiming partial ownership, proof of contribution must be provided. See Schedule B-1 instructions.

	(A) Name of Institution, Last Four Digits of Account Number, and Registered Owners	(B) Full Date of Death Value	(C) Value of Decedent's Equity	Division Use Only
1.	Institution/Account Number _____ _____ Name(s) on account _____ _____			
2.	Institution/Account Number _____ _____ Name(s) on account _____ _____			
3.	Institution/Account Number _____ _____ Name(s) on account _____ _____			
4.	Institution/Account Number _____ _____ Name(s) on account _____ _____			
5.	Institution/Account Number _____ _____ Name(s) on account _____ _____			
6.	Institution/Account Number _____ _____ Name(s) on account _____ _____			
Total of all additional schedules (if none, enter zero)				
Total of all financial institution accounts. Enter here and on Schedule B1–B4 Recap, line 1.....				

Decedent's Name	Date of Death	Decedent's Social Security Number

Schedule B-2 – Stock / Co-ops

☐ Check if additional copies of the schedule are attached

Part I – Stocks: Report common or preferred stock owned by the decedent, individually or jointly. Report accumulated dividends on Schedule B-4.

Note: Stock held in “street name” within a brokerage account or mutual fund should not be reported on this schedule. Brokerage accounts should be reported on Schedule B-1. Mutual funds should be reported as one stock on this schedule.

[illegible]

Part II – Co-ops: Report shares held by the decedent in a co-op.

(A) Name of Company Issuing the Shares of Co-op	(B) Registered Owner and Address of Co-op	(C) Number of Shares	(D) Total Market Value	(E) Value of Decedent's Equity	Division Use Only
	Name: _____ Address: _____ _____				
	Name: _____ Address: _____ _____				
Total – Part II					
Total of Part I and Part II of all additional schedules (if none, enter zero)					
Total of all stocks. Enter here and on Schedule B1-B4 Recap, line 2.....					

☐ Check if amended return

Decedent's Name

Date of Death

Decedent's Social Security Number

Schedule B-3 – Municipal and Corporate Bonds ☐ Check if additional copies of the schedule are attached

Report the following information in the appropriate column:

- (A) Provide the name of the company or entity holding the bond and include the terms of the bond.
Include the names of all registered owners on each bond.
- (B) Report the full date of death value of the bond.
Include any accrued dividends or interest to the date of death.
- (C) Total value of decedent's equity.

Do not report U.S. Savings Bonds on this schedule. Report U.S. Savings Bonds on Schedule B-4.

(A) Name of Bond and Registered Owner	(B) Date of Death Value	(C) Value of Decedent's Equity	Division Use Only
Total of all additional schedules (if none, enter zero)			
Total of all municipal and corporate bonds. Enter here and on Schedule B1–B4 Recap, line 3.....			

Decedent's Name	Date of Death	Decedent's Social Security Number

Schedule B-4 – All Other Property☐ Check if additional copies of the schedule are attached

This schedule should include, but is not limited to, the following types of assets or accounts:

- U.S. Savings Bonds or Treasury Certificates;
- Convertible virtual currency (i.e., Bitcoin);
- Automobiles or other vehicles (i.e., boats, planes, etc.);
- Tangible personal property including furniture, jewelry, collections (i.e., coins, stamps, firearms), etc.;
- Mortgages and promissory notes held by the decedent as the lender;
- Accumulated dividends on stock reported on Schedule B-2;
- Cash on hand (including uncashed checks);
- Funds remitted to New Jersey Unclaimed Property;
- Interests in prior estates;
- Accounts receivable.

Note: If the decedent's Last Will and Testament leaves personal property items to specific people, list each item separately.

(A) Other Property – Individually or Jointly Owned	(B) Date of Death Value	(C) Decedent's Equity	Division Use Only
Total of all additional schedules (if none, enter zero)			
Total of all other property. Enter total here and on Schedule B1–B4 Recap, line 4			

☐ Check if amended return

Decedent's Name	Date of Death	Decedent's Social Security Number

Schedules B1–B4 Recap – All Other Personal Property

Enter totals from each of the following schedules:

1. Schedule B-1: Financial Institution Accounts.....	
2. Schedule B-2: Stock/Co-ops.....	
3. Schedule B-3: Municipal and Corporate Bonds.....	
4. Schedule B-4: All Other Property.....	
5. Total Lines 1–4 Enter here and on Form IT-R Summary Page, line 3	

Note: If there are no assets reported on any of these schedules or if a specific schedule is not applicable to the decedent, enter zero on the line corresponding to that schedule.

Decedent's Name	Date of Death	Decedent's Social Security Number

Schedule C – Transfers☐ Check if additional copies of the schedule are attached**Part I – Transfers during decedent's lifetime**

1. Did the decedent, within 3 years of date of death, transfer property valued at \$500 or more without receiving full financial consideration for the property? **(required)** ☐ Yes ☐ No

If yes, list all such transfers below (if additional space is needed to report a transfer, use multiple lines)

(A) Date of Transfer	(B) Describe Property Transferred (See instructions)	(C) Name of Transferee	(D) Relationship of Transferee to Decedent	(E) Market Value of Property as of Date of Death	Division Use Only
Total – Part I					

Part II – Incomplete Transfers

2. Did the decedent at any time prior to death transfer property without receiving full financial consideration, while still reserving (in whole or in part) the use, possession, enjoyment of, or income from the property? **(required)** ☐ Yes ☐ No

If yes, list all such transfers below (if additional space is needed to report a transfer, use multiple lines)

(A) Date of Transfer	(B) Describe Property Transferred (See instructions)	(C) Name of Transferee	(D) Relationship of Transferee to Decedent	(E) Market Value of Property as of Date of Death	Division Use Only
Total – Part II					
Total of Part I and Part II of all additional schedules (if none, enter zero)					

Decedent's Name	Date of Death	Decedent's Social Security Number

Schedule C – Transfers☐ Check if additional copies of the schedule are attached**Part III – Payable on Death Policies/Plans**

3. Did the decedent own or participate in any pension plan, annuity, contract, or policy that provided for any kind of payment (lump sum or annuity) to a beneficiary or the Estate upon the decedent's death, other than life insurance payable to a beneficiary? **(required)** ☐ Yes ☐ No

If yes, list all such policies below (if necessary, attach additional schedules):

Under **Section A**, report any plan, annuity, or contract payable on death to a named beneficiary (except life insurance payable to a named beneficiary).

Under **Section B**, report any plan, annuity, contract or policy payable on death to the estate as named beneficiary (including life insurance payable to the estate).

Dividend accumulations, post mortem dividends, terminal dividends, and premium refunds on life insurance contracts, although payable at the same time as the life insurance proceeds, are not considered part of the life insurance proceeds of the policy. These are taxable to the beneficiary as transfers taking effect at or after the death of the insured, and should be reported on the schedule below, *even if the policy is payable to a named beneficiary*.

Annuities payable over a term of years should be reported at present value as of date of death.

(A) Type of Policy	(B) Name of Company Issuing Policy and Policy Number	(C) Name of Beneficiary*	(D) Relationship of Beneficiary to Decedent	(E) Date of Death Value of Payment Proceeds	Division Use Only

Section A – Pension plans, annuities, or contracts payable on death to a named beneficiary:

***If there are multiple beneficiaries under a policy, each beneficiary and their proceeds should be reported on a separate line.**

Section B – Pension plans, annuities, contracts or policies payable on death to the estate as beneficiary:

		Estate	Estate		
		Estate	Estate		
		Estate	Estate		
		Estate	Estate		
		Estate	Estate		
		Estate	Estate		

Total – Part III (Section A and Section B).....

Total of Part III of all additional schedules (if none, enter zero).....

Total of all transfers (Part I, Part II, Part III, and totals of all additional schedules). Enter here and on Form IT-R Summary Page, line 4.....

☐ Check if amended return

Decedent's Name	Date of Death	Decedent's Social Security Number

Schedule D – Deductions Claimed☐ Check if additional copies of the schedule are attached**Part I – Allowable Estate Administration Expenses**

(A) Type of Expense	(B) Name of Business/Person Paid	(C) Amount	Division Use Only
Funeral (list additional funeral expenses in Part III): _____	Name(s): _____		
Administration (list additional expenses in Part III): _____ _____ _____ _____	Name(s): _____		
Professional Fees: Estimated/Agreed	Name(s):		
Counsel Fees ☐ ☐	Name(s):		
CPA/Enrolled Agent Fees ☐ ☐			
Executor's or Administrator's Commissions (Commissions must be reported on your Income Tax return)	Name(s): _____ SS# _____ / _____ / _____ Name: _____ SS# _____ / _____ / _____		
Total – Part I.....			

Part II – Real Property Debts of the Decedent

(A) Type of Expense	(B) Name of Business/Person Owed	(C) Amount	Division Use Only
Section A – Mortgages on Real Property reported on Schedule A (date of death balances only)			
1.			
2.			
3.			
4.			
Section B – Debts associated with the Sale of the Decedent's Real Property			
1.			
2.			
3.			
4.			
Total – Part II (Section A and Section B).....			

☐ Check if amended return

Decedent's Name	Date of Death	Decedent's Social Security Number

Schedule D – Deductions Claimed

☐ Check if additional copies of the schedule are attached

Part III – Other administration/funeral expenses or debts of the decedent as of the date of death

(A) Type of Expense	(B) Name of Business/Person Owed	(C) Amount	Division Use Only
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			
21.			
22.			
23.			
24.			
Total – Part III			
Total of all additional schedules (Part I, Part II, and Part III) (if none, enter zero)			
Total of all deductions claimed (Part I, Part II, and Part III). Enter here and on Form IT-R Summary Page, line 6			

Decedent's Name	Date of Death	Decedent's Social Security Number

Schedule E – Beneficiaries

☐ Check if additional copies of the schedule are attached

Part I – Beneficiaries

(A) Beneficiary and address of each person who has an interest (vested, contingent, or otherwise) in this Estate	(B) Relationship to Decedent	(C) Tax Class	Interest of Beneficiary in Estate		(F) Age*
			(D) Fractional/percentage of residuary Estate and/or specific asset	(E) Dollar Amount	
Name: _____ Address: _____ _____					
Name: _____ Address: _____ _____					
Name: _____ Address: _____ _____					
Name: _____ Address: _____ _____					
Name: _____ Address: _____ _____					
Name: _____ Address: _____ _____					
Name: _____ Address: _____ _____					
Name: _____ Address: _____ _____					
Name: _____ Address: _____ _____					
Name: _____ Address: _____ _____					

*Beneficiary Age as of the date of the decedent's death is only required if the beneficiary is receiving a life estate or contingent interest in any part of the estate. (See Instructions)

Part II – Deceased Beneficiaries

Report below any beneficiary who died before or after the decedent's death. List the name, date of death, relationship, and where they were living at the time of their death.

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Form IT-R Instructions

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IT-R Instructions

What is Transfer Inheritance Tax?

When someone dies, the assets they own must be transferred from the name of the person who died (the decedent) to other people or entities (beneficiary). The State of New Jersey, by law, may impose a tax on this transfer of ownership, depending on who the beneficiaries are. The law essentially “freezes” all New Jersey financial and real estate assets in a deceased person’s name until the Inheritance Tax, if any, is assessed and paid. The Inheritance Tax is due within eight (8) months of the date of death.

What must happen before “frozen” assets can be released or transferred?

When an Inheritance Tax return is required, the following steps must be completed before waivers to release assets will be issued.

File return. The Inheritance Tax return must be completed and filed with the Division by the appropriate person.

Assessment of tax due. The Division must determine whether any tax is due and how much.

Payment of tax due. Any tax due must be paid in full. Payments can be submitted prior to the return being filed; however, the tax is not considered “paid” until a return is filed and a determination of tax due is made by the Division.

How is the Inheritance Tax Imposed?

The Inheritance Tax is based on **who** is entitled to receive, or has received (via transfers completed prior to death), the decedent’s assets, and **how much** each beneficiary is entitled to receive.

The amount of tax imposed depends on several factors:

- How the assets are distributed to the beneficiaries;
- How the beneficiaries are related to the decedent (see [“Beneficiary Tax Classes”](#));
- The value of the decedent’s assets (and debts) on the date of death;
- Whether the decedent lived in New Jersey or elsewhere.

When is an Inheritance Tax Return (IT-R) required?

A full return must be filed whenever any of a decedent’s assets pass, whether by transfer prior to death, last will and testament, intestacy or operation of law*, to a beneficiary that is a Class C, Class D, Class E, Mutually Acknowledged child, or a Trust of any kind. A return may also be required if a Trust is the primary testamentary instrument. For additional information on when to file a return or other Inheritance Tax forms, see [Inheritance Tax Filing Requirements](#) on the Division’s website.

*“Operation of Law” refers to assets that are jointly held, payable on death (POD), transfer on death (TOD), or any asset with a designated beneficiary.

How is the Inheritance Tax Assessed?

The legal representative of a decedent’s Estate is required to file an Inheritance Tax return (Form IT-R) with the Division of Taxation. This return is an affidavit that reports all of the decedent’s known assets, debts, and beneficiaries as of the date of their death.

The Division will examine the filed return, along with the required documentation (such as the decedent’s will) to determine and fix the taxable value of the Estate and assess the Inheritance Tax due.

When Tax Returns Are Due

When Inheritance Tax is due, the Inheritance Tax return must be filed and **taxes paid within eight (8) months** after the decedent’s death. Use the following chart to determine when the return is due based on the decedent’s date of death.

If the date of death is in:	The return is due on the same date in:
January*	September
February	October
March*	November
April	December
May	January
June*	February
July	March
August*	April
September	May
October*	June
November	July
December	August

*If there is no corresponding date in the eighth month, the due date is the first day of the following month. For example, if a decedent's date of death is January 31, the due date would be October 1 since there is no September 31.

Payments

You can make payments either electronically (e-check or credit card) or by check or money order. Payments on account can be made at any time to avoid or reduce interest for late payment. In any case, where the amount paid on account for New Jersey inheritance taxes exceeds the amount of tax due after final assessment has been made, the overpaid amount will be refunded provided, however, that all applications for a full or partial refund of the payment of the transfer inheritance tax shall be made within three years from the date of such payment.

Payments by Check. Make checks payable to "NJ Inheritance Tax." **Include the decedent's name and Social Security number on the check.** If you are authorizing a check to be sent directly from a bank or other institution, make sure they include this information on the **check note line**. If a check is being submitted by a third party (such as a title company), make sure they include the decedent's information on the check and check stub. If you are mailing a check, keep a copy of it for your records before mailing it.

Online Payments. Online payments can be made by e-check or credit card (processing fees apply). To make an [online payment](#) of estimated tax prior to filing the Inheritance Tax return, call the Inheritance Tax Hotline at (609) 292-5033 and request that a representative establish an account. **Payments cannot be made online unless an account has been created by the Division.** Save a copy of the payment confirmation page for your records. After making an online payment, it is advisable to check the website after several days to confirm that the payment was accepted.

Extension Request

If an extension of time to file is needed, complete and submit [Form IT-EXT](#), Inheritance Tax Application for Extension of Time to File a Return, along with [Form IT-EP](#) to make an estimated payment. **An extension of time to file does not extend the due date for payment or result in any reduction or delay in interest charges on tax due that is paid after the original due date.**

Note: The filing of an IT-EXT without an estimated payment will not establish an account with the Division. (See "Payments" above.)

Connect With Inheritance Tax

Visit the [Inheritance and Estate Tax](#) section of the Division's website, for further information, forms, and resources. You can also browse our [Guide to Being an Executor](#) tax guide.

If additional guidance is required after visiting the website, you can call the **Inheritance Tax Hotline at (609) 292-5033**. Hotline employees cannot complete Inheritance Tax returns over the phone and can only offer general Inheritance and Estate Tax guidance. Specific, complex tax questions about filing a return may require a written request or a callback from an auditor. Representatives cannot make tax rulings over the phone.

Employees of the Inheritance and Estate Tax Branch are prohibited from offering estate planning advice.

Where to File and Pay

The original Inheritance Tax return, amended returns, and payments by check must be mailed to:

Regular Mail and USPS Express Mail:

NJ Division of Taxation
Transfer Inheritance Tax
PO Box 249
Trenton, NJ 08695

Express Mail – Private Carriers (UPS, FedEx, etc.):

NJ Division of Taxation
Transfer Inheritance Tax
PO Box 249
3 John Fitch Way, 6th Floor
Trenton, NJ 08611

Note: Keep a copy of the Inheritance Tax return, amendments, and/or correspondence, before mailing the original to the Division.

Amendments to Original Return

There are multiple ways to file an amended Inheritance Tax return.

Non-Complex Changes

Affidavit method. Describe the change in a supplemental affidavit and submit with all relevant documentation. Include the decedent's name, Social Security number, and date of death in the affidavit. Attach a cover letter that states "Amended Return" and includes any known information from the Division such as file number, DLN, and/or auditor name.

Amended IT-R – affected schedules only. When there are limited adjustments to report, you may submit a notarized copy of the Cover Page, a revised Summary Page with updated totals, and only the schedules that are affected by the change. Include relevant documentation regarding the change. Check the "Amended Return" box on each schedule submitted.

Complex or Multiple Changes

Amended IT-R – all schedules. When an amendment involves multiple changes, file a complete amended IT-R as well as a letter explaining the changes requested. Include any documentation required to verify the changes. There is no need to resubmit documents, such as wills and trusts, previously submitted with the original return. **Check the "Amended Return" box on each schedule of the amended IT-R.**

Payment. If the amended return will result in additional tax due, **submit payment of the estimated tax and interest** with Form IT-PMT. If you make an online payment, submit a copy of the confirmation page.

Waivers (Form 0-1)

A waiver, or Form 0-1, is a form issued by the Division of Taxation that allows you to release specific assets of a deceased person. This waiver represents the "written consent of the Director" (as required by law) to allow the transfer of New Jersey assets owned by, or in the name of, a decedent. To obtain waivers, you must file a return with the Division.

Assets requiring a waiver to transfer (for NJ resident decedents) include:

- Bank accounts, certificates of deposit, brokerage accounts, or any asset held in a New Jersey financial institution which are in the name, or joint names, of a resident decedent;
- Stocks and investment bonds in the name of a resident decedent of corporations organized under the laws of the State of New Jersey;
- Real property (residents and nonresidents), such as real estate, located in New Jersey, and in the name of a decedent (individually or jointly.) Real property held as "tenants by the entirety" in the Estate of the spouse/civil union partner who dies first does not need to be reported, and waivers are not required;

Waivers are not required for automobiles, household goods, personal effects, accrued wages, mortgages, and non-NJ stocks and bonds, but these items must be reported on the filed return.

For additional information on Waivers and Waiver Alternatives, see [Tax Waiver Requirements](#) on our website.

Blanket Waiver. Despite the waiver provisions above, any financial institution may, without a waiver from the Division, release up to 50% of the date of death value of any bank account, certificate of deposit, brokerage account, etc., to a surviving joint tenant, executor, administrator, or other legal representative of a decedent's Estate. This procedure is referred to as a "Blanket Waiver." The procedure is not available for the transfer of stocks, bonds or real property. This blanket waiver also allows a financial institution to honor a check in any amount for which there are funds in the account made directly to the Division of Taxation in order to pay Inheritance Taxes. For a detailed explanation, see [N.J.A.C. 18:26-11.16](#), or the Division of Taxation [Tax Waiver Requirements](#).

Preparing the IT-R

The IT-R is a report of the decedent's assets and debts as of the date of death, and the distribution to the decedent's beneficiaries. The following sections contain information that may be helpful prior to or during the completion of the return.

What to have on hand

- Account statements or letters from banks/financial institutions showing date of death balances for all of the accounts with decedent's name on them.
- Real Estate tax statements or deeds.
- Appraisals of real property, personal property, or businesses.
- Copies of outstanding bills of decedent with date of death balances.
- Copies of mortgage statements, loan agreements, or other debt obligations.
- Decedent's will and/or trust documents, if any.

Definitions/Terms that are referred to on the IT-R and in the instructions for the returns:

Affidavit. A written sworn statement signed in the presence of a Notary Public.

Arm's-Length Transaction. A sale of an asset where the buyer and seller are not related and are each acting in their own self-interests.

Beneficiary. A person who shares in a decedent's Estate.

Civil Union Couple. The legally recognized union of two eligible individuals of the same sex established pursuant to the Civil Union Act. Partners in a Civil Union receive the same benefits and protections and are subject to the same responsibilities as spouses in a marriage. Any reference in this publication to a spouse also refers to a spouse who entered into a valid same-sex marriage in another state or foreign nation and a partner in a [civil union \(CU\)](#) recognized under New Jersey law.

Clear Market Value. The market value of any property included in any transfer, minus any deductions allowable under the law.

Decedent. A person who has died.

Direct Tax. The Inheritance Tax charged on a Class C or Class D beneficiary that is not subject to a contingent event.

Director. The Director of the Division of Taxation, which is an agency of the New Jersey Department of the Treasury.

Distribution. The manner in which the assets of a decedent are apportioned to the beneficiaries of their Estate.

Domestic Partner. An individual who is in a relationship that satisfies the definition of a domestic partnership as set forth in the Domestic Partnership Act. To be considered a domestic partnership, both parties must have jointly filed an Affidavit of Domestic Partnership with their local registrar.

Estate/Property. Those assets of the decedent passing to or transferred to their beneficiaries that are not exempt from the provisions of the law.

Gross Estate. The value, as of the decedent's date of death, of their property, wherever situated, that is included in the decedent's Estate for Inheritance Tax purposes.

Market Value. The value of an asset as of the date of death of the decedent. This means the price that would be paid for an asset in an arm's-length transaction by a willing buyer to a willing seller.

Legal Representative of the Estate. The person(s) or entity that is entitled to act on behalf of the Estate and is legally responsible for all Estate matters, including filing of the Inheritance Tax return and payment of the tax.

Personal Property. Any tangible or intangible property or assets owned that are not real property.

Supplemental Affidavit. An affidavit submitted with a return to support claims made in the return, or submitted after the return is filed to support amendments to the return.

Transfer. The passing of property or any interest therein, in possession or enjoyment, present or future, by distribution by statute, devise, bequest, grant, deed, bargain, sale, or gift.

Transferee. A person to whom assets have been transferred.

Waiver. The written consent of the Director, on Form 0-1, permitting the transfer of specific assets held in the name of a decedent or a decedent and others.

Beneficiary Tax Classes

All beneficiaries of an Estate are categorized as one of four Tax Classes: A, C, D or E.

Class A beneficiaries are exempt from Inheritance Tax.

The following relationships are considered Class A beneficiaries:

- Surviving spouse;
- Civil union partner after February 19, 2007;
- Domestic partner after July 10, 2004;
- Child (including a legally adopted child);
- Grandchild, great-grandchild, etc.;
- Parents, grandparents, etc.;
- Mutually acknowledged child;
- Stepchild, (but not a step-grandchild or their descendants).

Class C beneficiaries are taxed at rates from 11% to 16% after a \$25,000 exemption for each beneficiary (see [How to Calculate Class C Tax](#)).

The following relationships are considered Class C beneficiaries:

- Sibling of a decedent (including half-siblings);
- Spouse or surviving spouse of a child of a decedent (i.e., son-in-law or daughter-in-law);
- Civil union partner or surviving civil union partner of a child of a decedent (after February 19, 2007).

Class D beneficiaries are taxed at rates from 15% to 16%. (See [How to Calculate Class D Tax](#)). Class D beneficiaries are any beneficiaries that are **not** specifically classified as Class A, Class C, or Class E.

Examples of common Class D beneficiaries:

- Nieces and nephews;
- Aunts, uncles, and cousins (of all degrees);
- Personal friends;
- Step-grandchildren and their descendants;
- Ex-spouses;
- Live-in “partners” who are not certified domestic partners.

Examples of less common Class D beneficiaries:

- Stepbrother, stepsister, stepparent;
- Spouse/civil union partner/domestic partner of a stepchild/mutually acknowledged child of the decedent;

- Surviving spouse/surviving civil union partner/surviving domestic partner of a stepchild/mutually acknowledged child of the decedent;
- Corporations (non-charitable).

Class E beneficiaries are exempt from Inheritance Tax. Class E beneficiaries include but are not limited to:

- Qualified charities and all 501(c)(3) organizations;
- Religious institutions;
- Educational and medical institutions;
- Nonprofit benevolent or scientific institutions;
- The State of New Jersey or its political subdivisions (counties, municipalities).

Exemptions From Inheritance Tax

The New Jersey Administrative Code lists certain specific transfers which, per New Jersey statutes, are not subject to New Jersey Inheritance Tax. A brief summary of the most common of these follows.

Tenants by the entirety real property (held jointly by spouses or civil union couple) is not subject to the New Jersey Inheritance Tax when passing to the surviving spouse/civil union partner.

Wrongful death proceeds. Any sum recovered under the New Jersey Death Act as compensation for the wrongful death of a decedent is not subject to the New Jersey Inheritance Tax. This includes funds recovered under settlement or compromise agreements in these cases (but only that part of which can be determined to have been awarded specifically for wrongful death).

Exceptions: Those funds awarded that are related to the injury but would have been payable to, or for the benefit of, the decedent during their lifetime, are not considered wrongful death proceeds and are considered assets of the Estate, such as for:

- Pain and suffering;
- Medical expenses, nursing care, hospitalization, etc. (usually claimed as deductions);
- Loss of earnings;
- Funeral expenses.

These proceeds can, however, be defrayed by being applied to medical expenses or other debts related to the injury causing death.

Life insurance proceeds payable to named beneficiaries, or beneficiaries of an insurance trust established by the decedent, are exempt for New Jersey Inheritance Tax purposes. **Note:** Insurance policy proceeds payable to the Estate, instead of a named beneficiary, are includible in the Estate and are **subject to tax**.

Property received from the federal government. Property received by an Estate directly from the federal government is exempt when recovered under the following:

- Federal Liability for Injuries to Employees Act;
- A war risk insurance certificate or policy;
- Any pension, annuity, retirement allowance, return of contributions or benefit payable pursuant to the Civil Service Retirement Act, Retired Serviceman's Family Protection Plan, and the Survivor Benefit Plan to a named beneficiary.

New Jersey State pensions. All payments at death that fall under the following are exempt from Inheritance Tax:

1. The Teachers' Pension and Annuity Fund;
2. The Public Employees' Retirement System for New Jersey;
3. The Police and Firemen's Retirement System of New Jersey;
4. Such other New Jersey State, county, and municipal systems as may have a tax exemption clause as broad as that of the three major State pension systems.

Exceptions: The following are **not** considered benefits of the Public Employees' Retirement System, and all proceeds are subject to tax in the decedent's Estate:

- The supplemental annuity plan of the State of New Jersey;
- New Jersey Deferred Compensation Plan;
- TIAA-CREF benefit plans;
- All other benefit plans that do not meet the criteria stated in 4 above.

Completing the Inheritance Tax Return

The following sections provide guidance for completion of each schedule of the Inheritance Tax return, as well as tax calculation tables and examples. Each section provides "How To" instructions as well as additional information you will need to complete each schedule.

When filing the return, you should include all schedules even if some of them contain no information or do not apply to the Estate.

If you require more space to list items on any schedule, additional copies of each schedule are provided in a separate packet.

When submitting the Inheritance Tax return, do not forget to include any of the following that are applicable:

- Decedent's death certificate;
- Letters of Testamentary/Administration/Affidavit of Next of Kin;
- Last full year federal income tax return, Form 1040;
- Last Will and Testament, with any codicils (a supplement that modifies the will);
- Trust documents, with amendments;
- Any filed disclaimers;
- Attachments to any schedules, including any needed documentation;
- Payment of any tax due and any applicable interest with Form IT-PMT.

IT-R Cover Page

Estate Information

Decedent's Name

Enter the legal name (last name, first name) of the decedent for whom you are filing this return.

Note: The return will be processed using the name entered here. This name should be used throughout the rest of the return.

AKA

If the decedent was also known by another name that would appear on a deed, bank account, will, trust, tax return, etc., enter that name here.

Decedent's Social Security Number

Enter the decedent's complete Social Security number. If the complete and correct Social Security number is not entered, processing will be delayed. If the decedent did not have a Social Security number, write "NONE" in this field on this page and leave blank on the remaining schedules of the return.

Note: Always double-check that the decedent's Social Security number is entered correctly, and that you are **not** entering your own Social Security number, a spouse's Social Security number, or the Estate EIN.

Date of Death

Enter the decedent's certified date of death. This will normally match their death certificate. Inform the Division of any discrepancies (or questions) regarding the date of death in a supplemental statement included with the tax filing.

NJ County of Residence

Enter the New Jersey county where the decedent was a legal resident (or "domiciled"). Typically, the county of residence is where the Surrogate's Court documentation is issued.

STOP if the decedent was **not** a resident of New Jersey. This is not the correct return. See the [Non-Resident Return IT-NR](#) for more information.

Correspondence/Authorized Representative

Enter the contact information of the person or firm that you are authorizing to receive all correspondence and communication about this return.

In this section, you, as the legal representative of the Estate (Executor, Administrator, or Heir-at-law), are notifying the Division of Taxation which additional parties (besides yourself) the Division is permitted to correspond with regarding all matters relating to this return.

The contact information you enter in this section tells the Division where to send all correspondence regarding the decedent's Estate, including but not limited to: requests for information, tax waivers, bills, refund checks, and notices. You can designate a tax professional hired by the Estate (i.e., attorney or law firm, CPA, IRS enrolled agent, etc.), yourself as the legal representative of the Estate, or anyone else for this purpose.

In all cases, the Division may also correspond with the legal representative(s) who sign this return.

Important: The Division is **only** allowed to correspond (including phone inquiries, emails, and/or status requests) with the person or firm **named in this section**. If a person or firm is not listed here, the Division cannot communicate with them. If you want to change contacts or add people that the Division can correspond or discuss this return with, you must notify the Division in writing, or by filing [Form M-5008-R](#), Appointment of Taxpayer Representative.

Note: The Estate representative is not required to hire a tax professional to complete this return.

Lines 1–5

Answer the five questions, and submit any indicated documents.

Trust documents. If a trust was restated during the decedent's lifetime, it is not necessary to provide copies of the original trust document. Only submit the latest "restated" version and amendments. If a trust was funded during the decedent's lifetime, provide a complete list of assets (at date of death value) currently held by the trust.

Disclaimers. A disclaimer is a legally executed document in which beneficiaries give up their right to inherit from a decedent. When a beneficiary disclaims assets, those assets are then distributed as if the beneficiary had predeceased the decedent. The disclaiming beneficiary has no rights as to how the assets are then distributed (i.e., one cannot disclaim in favor of another person). A beneficiary may not file disclaimers once they have taken possession of an inherited asset.

Certification of Summary Page Amounts

Enter the dollar amounts from lines 7 and 17 of the Summary Page after the return has been completed and before signing and notarizing the return in the next section.

Signature and Notarization

The return must be signed by the legal representative of the Estate (Executor, Administrator or Heir-at-law), and the signature **must be notarized** by a Notary Public. The entire return is an **affidavit** and will not be considered valid without an authorized signature. An attorney or other fiduciary may not sign the return on behalf of the legal representative.

If there is more than one legal representative, such as co-executors, only one of them is required to sign the return for Division of Taxation purposes. If all representatives sign, attach one copy of the cover page with each representative's notarized signature.

Processing a return without a valid notarized, original signature will be delayed until the signature can be obtained.

Important: The return you submit to the Division must contain this Cover Page with the original signature. **Do not send a photocopy of this page.**

IT-R Summary Page

Complete this schedule **after** you have completed Schedules A through E. Include all schedules when filing, even if a schedule does not apply.

Decedent's Name

Enter the Decedent's name as reported on the Cover Page.

Decedent's Social Security Number

Enter the decedent's complete Social Security number.

Date of Death

Enter the decedent's date of death using mm/dd/yyyy format.

NJ County of Residence

Enter the New Jersey county where the decedent lived.

Will or No Will Check Box

Check "Will" even if the decedent's will was not probated.

Estate Value Calculation**Line 1 – New Jersey Real Property**

Enter the Total of all New Jersey real property from Schedule A.

Line 2 – Closely Held Businesses

Enter the Total of all closely held businesses from Schedule B.

Line 3 – All Other Personal Property

Enter the amount from line 5 of Schedules B1–B4 Recap.

Line 4 – Transfers

Enter Total of all transfers from Schedule C, Part III, Section B.

Line 5 – Gross Estate

Add lines 1–4 and enter the total.

Line 6 – Deductions

Enter the Total of all deductions claimed from Schedule D, Part III.

Line 7 – Net Estate

Subtract line 6 from line 5. This is the Net Estate. These are the funds available for distribution to the beneficiaries. If line 6 is greater than line 5, enter zero.

Line 8 – Contingent Amount

Enter the portion of the decedent's Net Estate that will be distributed based on future contingent events or conditions. If this situation does not apply to the decedent's Estate, enter zero.

Line 9 – Balance of Estate

Subtract line 8 from line 7 and enter the result. This is the balance of the Estate available for distribution and calculation of tax on lines 10–14.

On lines 10–14, you will compile the total of each tax Class in the appropriate row and column. See [Summary Page Additional Instructions](#) for examples and a column-by-column explanation.

Line 10 – A–Spouse

Class A beneficiary who is a surviving spouse or civil union partner. There can only be one beneficiary on this line.

Line 11 – A–Other

All other Class A beneficiaries, including domestic partner.

Line 12 – C

All Class C beneficiaries.

Line 13 – D

All Class D beneficiaries.

Line 14 – E

All Class E beneficiaries.

Total Distribution (Box)

Add the Total Distribution amounts from lines 10–14. This total should equal the Balance of Estate on line 9.

Line 15 – Compromise Tax

The amount of tax proposed on the portion of the Contingent Amount on line 8 for which the contingencies have not yet occurred. A Compromise Tax is based on the current payment of possible future tax. (See [Summary Page Additional Instructions – “Line 15 – Compromise Tax Due”](#) for details). **If line 8 is zero, enter zero.**

Note: There is no interest due on a Compromise Tax.

Line 16 – Contingent Tax

The amount of tax calculated based on the portion of the Contingent Amount on line 8 that became part of the Estate after the date of death or if contingencies have already occurred. (See [Summary Page Additional Instructions – “Line 16 – Contingent Tax”](#) for details). **If line 8 is zero, enter zero.**

Note: It is rare to have a contingent tax due when the return is filed prior to the eight-month due date.

Line 17 – Total Tax Due

Enter the total of lines 10–16. This is the total amount of tax due based on the distribution of the decedent’s Estate.

Line 18 – Interest Due

Enter the total interest due as a result of late payment of any part of the tax from lines 12 and 13. Interest at the rate of 10% per year will accrue on the **unpaid portion** of the tax. (See examples of interest calculation in [Summary Page Additional Instructions – “Line 18 – Interest Due”](#)).

Line 19 – Total Amount Due

Add lines 17 and 18 and enter the total.

Line 20 – Payments Made

If any payments were made to the Division of Taxation prior to filing the Inheritance Tax return, enter the total amount of previous payments. If no previous payments were made, enter 0.

Line 21 – Balance Due

If line 19 is more than line 20, subtract line 20 from line 19 and enter the balance due. This is the **amount that needs to be paid** with the Inheritance Tax return.

Line 22 – Refund

If line 20 is more than line 19, subtract line 19 from line 20 and enter the amount overpaid. This is the amount requested as a refund to the Estate.

Lines 23–26 (Categories 1, 2, 3, and 4) are for Division use only. Do not check these boxes.

Summary Page Additional Instructions

Class C Tax

How to Calculate Class C Tax

Use the worksheet below to calculate the tax for each Class C beneficiary. Tax is calculated on the total amount each beneficiary is receiving. If there is more than one Class C beneficiary, do **not** combine the amounts they are each receiving prior to calculating the tax. The worksheet is intended to calculate the tax due for **one** beneficiary; the tiered tax rates and exemptions are applicable on an individual basis.

Class C Beneficiary Worksheet				
Individual Beneficiary's share: \$ _____		← If this amount is \$25,000 or less, this beneficiary has no tax.		
		Rate		Tax
1. First \$25,000 Exempt	_____	x 0%	=	_____
2. Amount over \$25,000 up to \$1,100,000	_____	x 11%	=	_____
3. Amount over \$1,100,000 up to \$1,400,000	_____	x 13%	=	_____
4. Amount over \$1,400,000 up to \$1,700,000	_____	x 14%	=	_____
5. Amount over \$1,700,000	_____	x 16%	=	_____
		Total Tax _____		
Total (line 1 through line 5)		← This amount should match the individual beneficiary's share.		

Example of Class C Tax Calculations

Example: A decedent's Estate is payable to three Class C beneficiaries as follows:

1. Beneficiary #1 receives \$ 15,000
2. Beneficiary #2 receives \$ 250,000
3. Beneficiary #3 receives \$1,200,000

The three worksheets below show how the tax on each share is calculated.

1. **Beneficiary #1** receives \$15,000. The applicable tax rate is 0%, and no tax is due on Beneficiary #1's distribution.

Class C Beneficiary Worksheet					
Individual Beneficiary's share: \$ 15,000		← If this amount is \$25,000 or less, this beneficiary has no tax.			
			Rate		Tax
1. First \$25,000 Exempt	\$ 15,000	x	0%	=	\$ 0
2. Amount over \$25,000 up to \$1,100,000		x	11%	=	
3. Amount over \$1,100,000 up to \$1,400,000		x	13%	=	
4. Amount over \$1,400,000 up to \$1,700,000		x	14%	=	
5. Amount over \$1,700,000		x	16%	=	
Total Tax					\$ 0
Total (line 1 through line 5)		\$ 15,000	← This amount should match the individual beneficiary's share.		

2. **Beneficiary #2** receives \$250,000. The applicable tax rates are 0% on the first \$25,000 and 11% on the next \$225,000.

Class C Beneficiary Worksheet					
Individual Beneficiary's share: \$ 250,000		← If this amount is \$25,000 or less, this beneficiary has no tax.			
			Rate		Tax
1. First \$25,000 Exempt	\$ 25,000	x	0%	=	\$ 0
2. Amount over \$25,000 up to \$1,100,000	\$ 225,000	x	11%	=	\$ 24,750
3. Amount over \$1,100,000 up to \$1,400,000		x	13%	=	
4. Amount over \$1,400,000 up to \$1,700,000		x	14%	=	
5. Amount over \$1,700,000		x	16%	=	
Total Tax					\$ 24,750
Total (line 1 through line 5)		\$ 250,000	← This amount should match the individual beneficiary's share.		

3. **Beneficiary #3** receives \$1,200,000. The applicable tax rates are 0% on the first \$25,000, 11% on the next \$1,075,000, and 13% on the remainder \$100,000.

Class C Beneficiary Worksheet					
Individual Beneficiary's share: \$ 1,200,000		← If this amount is \$25,000 or less, this beneficiary has no tax.			
			Rate		Tax
1. First \$25,000 Exempt	\$ 25,000	x	0%	=	\$ 0
2. Amount over \$25,000 up to \$1,100,000	\$ 1,075,000	x	11%	=	\$ 118,250
3. Amount over \$1,100,000 up to \$1,400,000	\$ 100,000	x	13%	=	\$ 13,000
4. Amount over \$1,400,000 up to \$1,700,000		x	14%	=	
5. Amount over \$1,700,000		x	16%	=	
Total Tax					\$ 131,250
Total (line 1 through line 5)		\$ 1,200,000	← This amount should match the individual beneficiary's share.		

Once the tax has been calculated for each beneficiary, combine the total of each beneficiary's share, exemption amounts from line 1, and tax due amounts. The combined totals are then entered on the IT-R Summary Page on line 12 for Class C, as shown below:

	Tax Class	Total Beneficiaries in Each Tax Class	Total Distribution for Each Tax Class	Total Exemption for Each Tax Class	Total Taxable Amount	Tax Calculation	
10.	A-Spouse*					10.	
11.	A-Other					11.	
12.	C	3	\$1,465,000	\$65,000	\$1,400,000	12.	\$156,000
13.	D					13.	
14.	E					14.	
Total Distribution			\$1,465,000	This amount should equal the amount on line 9			

Class D Tax

How to Calculate Class D Tax

Use the worksheet below to calculate the tax for each Class D beneficiary. Tax is calculated on the total amount each beneficiary is receiving. Do **not** combine the amount all Class D beneficiaries are receiving prior to calculating the tax. The worksheet is intended to calculate the tax due for **one** beneficiary; the tiered tax rates are applicable on an individual basis.

Class D Beneficiary Worksheet			
Individual Beneficiary's share: \$ _____ ← If this amount is \$499 or less, this beneficiary has no tax.*			
		Rate	Tax
1. First \$700,000.....	_____ x 15%	=	_____
2. Amount over \$700,000	_____ x 16%	=	_____
		Total Tax	_____
Total (line 1 plus line 2).....	_____ ←	This amount should match the individual beneficiary's share.	

*For Class D beneficiaries, if an individual beneficiary is receiving less than \$500 (\$0-\$499), there is no tax due on that amount. However, if an individual Class D beneficiary receives \$500 or more, the **total amount** is taxable.

Examples of Class D Tax Calculations

Example: A decedent's Estate is payable to two Class D beneficiaries as follows:

- Beneficiary #1 receives \$ 300,000
- Beneficiary #2 receives \$1,500,000

The two worksheets below show how the tax on each share is calculated.

- Beneficiary #1** receives \$300,000. The applicable tax rate is 15% on the total amount of \$300,000.

Class D Beneficiary Worksheet			
Individual Beneficiary's share: \$ 300,000 ← If this amount is \$499 or less, this beneficiary has no tax.*			
		Rate	Tax
1. First \$700,000.....	\$ 300,000 x 15%	=	\$ 45,000
2. Amount over \$700,000	_____ x 16%	=	_____
		Total Tax	\$ 45,000
Total (line 1 plus line 2).....	\$ 300,000 ←	This amount should match the individual beneficiary's share.	

2. **Beneficiary #2** receives \$1,500,000. The applicable tax rates are 15% on the first \$700,000 and 16% on the remaining \$800,000.

Class D Beneficiary Worksheet					
Individual Beneficiary's share: \$ <u>1,500,000</u> ← If this amount is \$499 or less, this beneficiary has no tax.*					
			Rate		Tax
1. First \$700,000.....	\$ 700,000	x	15%	=	\$ 105,000
2. Amount over \$700,000	\$ 800,000	x	16%	=	\$ 128,000
Total Tax					\$ 233,000
Total (line 1 plus line 2).....	\$ 1,500,000	← This amount should match the individual beneficiary's share.			

Once the tax has been calculated for each beneficiary, combine the total of each beneficiary's share and total tax amounts. The combined totals are then entered on the IT-R Summary Page on line 13 for Class D, as shown below:

	Tax Class	Total Beneficiaries in each Tax Class	Total Distribution for each Tax Class	Total Exemption for each Tax Class	Total Taxable Amount	Tax Calculation	
10.	A–Spouse*					10.	
11.	A–Other					11.	
12.	C					12.	
13.	D	2	\$ 1,800,000	\$ 0	\$ 1,800,000	13.	\$ 278,000
14.	E					14.	
Total Distribution			\$ 1,800,000	This amount should equal the amount on line 9			

Lines 10–14: Distribution and Tax Calculation by Column

Sample distributions are provided in the “Distribution Examples” section below.

Tax Class (prefilled):

- Line 10: A–Spouse
- Line 11: A–Other
- Line 12: Class C
- Line 13: Class D
- Line 14: Class E

Total Beneficiaries in Each Tax Class

On each line, enter the total number of the beneficiaries that are in each Tax Class.

Note: Line 10 A–Spouse can never be more than 1.

Total Distribution for Each Tax Class

On each line, enter the total amount of funds to be distributed for that Tax Class of beneficiaries.

Total Distribution Box

Add the distributions in this column from lines 10–14 and enter the total in the Total Distribution box. This amount should equal **Line 9 – Balance of Estate**. If it does not equal, you may not have distributed the balance of the Estate correctly, which may result in an incorrect tax calculation.

Total Exemption for Each Tax Class

Enter the total exemption amount for each Tax Class.

Lines 10, 11, and 14

Class A and E beneficiaries are exempt from Inheritance Tax. Therefore, the Total Exemption for each Tax Class column will equal the Total Distribution for each Tax Class column on lines 10, 11, and 14.

Line 12

Each Class C beneficiary is entitled to a maximum exemption of \$25,000 on the amount they are to receive. If any Class C beneficiary is receiving less than \$25,000, their exemption will only be equal to the amount they are to receive. Add together the exemption amounts for all beneficiaries in Class C and enter the total.

Line 13

Class D beneficiaries receive no exemption.

Exception: Any Class D beneficiary who receives a **total** of \$499 or less will be exempt from Inheritance Tax on the amount they receive. This does not mean that there is a \$499 exemption for each Class D beneficiary. If a Class D beneficiary receives \$500 or more, the entire amount is taxable. Add up the exemption amounts for all Class D beneficiaries who receive \$499 or less and enter the total on this line. (Example 2 below)

Total Taxable Amount

For each line, subtract the amount in the Total Exemption column from the Total Distribution column and enter the result.

Lines 10, 11, and 14 (Class A and E beneficiaries) have been prefilled with zero (0). These beneficiaries are exempt from Inheritance Tax; there is no taxable amount.

Tax Calculation

For Class C and D beneficiaries (lines 12 and 13), use the Tax Calculation worksheets to calculate the tax due on lines 12 and 13. If there are **multiple beneficiaries in a tax class**, you must calculate the tax on each beneficiary separately, then add together all of the resulting tax amounts. Enter the total tax of each tax class in this column.

Distribution Examples – Lines 10–14

Example 1: A decedent has a Balance of Estate on line 9 of \$171,000. The Estate is distributed as follows:

- One child (Class A) receiving \$100,000
- One sibling (Class C) receiving \$50,000
- A niece and a nephew (Class D) each receiving \$10,000, and
- A charity (Class E) receiving \$1,000.

	Tax Class	Total Beneficiaries in each Tax Class	Total Distribution for each Tax Class	Total Exemption for each Tax Class	Total Taxable Amount	Tax Calculation	
10.	A–Spouse*					10.	
11.	A–Other	1	\$ 100,000	\$ 100,000	\$ 0	11.	\$ 0
12.	C	1	\$ 50,000	\$ 25,000	\$ 25,000	12.	\$ 2,750
13.	D	2	\$ 20,000	\$ 0	\$ 20,000	13.	\$ 3,000
14.	E	1	\$ 1,000	\$ 1,000	\$ 0	14.	\$ 0
Total Distribution			\$ 171,000	This amount should equal the amount on line 9			

Example 2: A decedent has a balance of the Estate on line 9 of \$65,400. The Estate is distributed as follows:

- Two siblings (Class C)
 - The first sibling is receiving \$50,000
 - The second is receiving \$15,000
- One friend (Class D) is receiving \$400.

	Tax Class	Total Beneficiaries in each Tax Class	Total Distribution for each Tax Class	Total Exemption for each Tax Class	Total Taxable Amount	Tax Calculation	
10.	A–Spouse*					10.	
11.	A–Other					11.	
12.	C	2	\$ 65,000	\$ 40,000	\$ 25,000	12.	\$ 2,750
13.	D	1	\$ 400	\$ 400	\$ 0	13.	\$ 0
14.	E					14.	
Total Distribution			\$ 65,400	This amount should equal the amount on line 9			

Example 3: A decedent has a balance of the Estate on line 9 of \$100,000. The Estate is distributed as follows:

- Two nephews (Class D), each receiving \$50,000

	Tax Class	Total Beneficiaries in each Tax Class	Total Distribution for each Tax Class	Total Exemption for each Tax Class	Total Taxable Amount	Tax Calculation	
10.	A–Spouse*					10.	
11.	A–Other					11.	
12.	C					12.	
13.	D	2	\$ 100,000	\$ 0	\$ 100,000	13.	\$ 15,000
14.	E					14.	
Total Distribution			\$ 100,000	This amount should equal the amount on line 9			

Example 4: A decedent has a balance of the Estate on line 9 of \$72,700. The Estate is distributed as follows:

- One child (Class A) is receiving \$34,800
- Two Class D
 - One cousin receiving \$27,900
 - One non-relative receiving \$10,000

	Tax Class	Total Beneficiaries in each Tax Class	Total Distribution for each Tax Class	Total Exemption for each Tax Class	Total Taxable Amount	Tax Calculation	
10.	A–Spouse*					10.	
11.	A–Other	1	\$ 34,800	\$ 34,800	\$ 0	11.	\$ 0
12.	C					12.	
13.	D	2	\$ 37,900	\$ 0	\$ 37,900	13.	\$ 5,685
14.	E					14.	
Total Distribution			\$ 72,700	This amount should equal the amount on line 9			

Example 5: A decedent has a balance of the Estate on line 9 of \$472,249. The Estate is distributed as follows:

- One stepchild (Class A) is receiving \$127,875
- One sibling (Class C) is receiving \$163,250
- Two Class D
 - One non-relative is receiving \$41,750
 - One step-grandchild is receiving \$76,687
- One charity is receiving \$62,687

	Tax Class	Total Beneficiaries in each Tax Class	Total Distribution for each Tax Class	Total Exemption for each Tax Class	Total Taxable Amount	Tax Calculation	
10.	A–Spouse*					10.	
11.	A–Other	1	\$ 127,875	\$ 127,875	\$ 0	11.	\$ 0
12.	C	1	\$ 163,250	\$ 25,000	\$ 138,250	12.	\$ 15,208
13.	D	2	\$ 118,437	\$ 0	\$ 118,437	13.	\$ 17,766
14.	E	1	\$ 62,687	\$ 62,687	\$ 0	14.	\$ 0
Total Distribution			\$ 472,249	This amount should equal the amount on line 9			

Lines 15 and 16 – Taxes due on Contingent Amount Reported on Line 8

An Estate is responsible for paying Inheritance Tax any time there is a taxable distribution of the decedent's property that had been reported as contingent, or which became part of the decedent's Estate after their death.

A **Compromise Tax** is proposed when the amount of funds to be distributed is known as of the date of death (amount reported on Line 8), but the actual **distribution** of the funds is **unknown until a contingent event occurs**. (See Line 15 instructions below.)

A **Contingent Tax** occurs when the **amount** of funds to be distributed was **unknown** at the date of death, but the **distribution** of any future funds is known (i.e., who the beneficiaries will be). (See Line 16 instructions below.)

Line 15 – Compromise Tax Due

This is the amount of tax proposed based on the contingent amount reported on line 8 and possible future distributions of this amount. The Division will suggest a "compromise" of the tax based on estimates of likely contingent event(s), and the present value of eventual estimated tax. The amount of tax proposed would be paid **immediately** in order to settle the Inheritance Tax proceeding.

Calculation of Compromise Tax. To potentially reduce audit time of the return, you may calculate and propose a compromise tax for the Division's review. For guidance, see the Inheritance [Tax Guide for the Computation of the Compromise Tax](#). The Estate should include an attachment detailing full calculations and enter the proposed tax amount on line 15. If you leave line 15 blank, the Division will propose the compromise tax and notify the Estate of the amount due. The Division reserves the right to reject or alter the Estate's proposed compromise tax. However, barring an error in interpreting the contingencies on the Division's part, or certification of the prior occurrence of a contingency, the Division's offer will be final.

Note: There is no late payment interest on a compromise tax. However, waivers will not be released until the compromise tax is paid or otherwise provided for.

Example of a situation triggering a Compromise Tax. Sandy B. executes a will that leaves the residue of her Estate to her spouse Randy (a Class A). Her will also sets up a trust and devises \$100,000 of her Estate to fund the trust. The trust is stated to be for the benefit of Randy should he need the money for his daily needs or emergency situations. Randy will have the right to use as much of the principal of the trust as needed during his lifetime (this is called "the power to invade"). The terms of the trust also state that, upon Randy's death, funds that remain in the trust (whatever Randy did not use) will then pass to their niece and nephew, Chloe and Joey (Class D beneficiaries).

When Sandy passes away, it is unknown at the date of her death how much, if any, of the assets of the trust Randy will use, and how much will remain to eventually pass to Chloe and Joey (and would then be taxable). Therefore, all of the assets in the trust are considered "contingent" at the date of Sandy's death. At the date of Randy's death (a "future event"), Chloe and Joey would then be responsible for the Class D tax on whatever amount they eventually receive. It could be zero if Randy uses all the money, or it could be \$100,000 if he uses none of it, or any amount in between. Any Inheritance Tax would then have to be paid within two months of the date of Randy's death, or interest on the tax would begin to accrue.

Acceptance of Compromise. To settle Sandy's Estate when her return is filed, and rather than potentially wait for many years for the main contingency to occur (i.e., Randy's death), the Division will offer a lower amount of tax to be paid now based on the present value of the likely amount of tax that would eventually be due. If Sandy's Estate accepts and pays the offered amount, Sandy's Estate would be settled as far as the Division is concerned, and waivers would be issued. No matter what contingencies then occur in the future with the trust, the tax would not be reassessed.

Rejection of Compromise. If Sandy's Estate representative chooses to reject the compromise, and instead wait to pay the tax (if any) until the contingencies happen, the Estate representative would be required to file a bond (annually until contingencies occur) of **double** the amount of the maximum possible tax on the \$100,000 in order to receive waivers. Sandy's Estate would remain open until either the trust is exhausted or Randy dies. In the event of Randy's death with funds still remaining in the Trust, the tax on the remainder would then become a "Contingent Tax" (see below).

Line 16 – Contingent Tax

There are two types of contingent tax, each with different payment due dates and interest rules.

- 1. Occurrence of Contingency:** Upon the occurrence of a contingency set up in a will, trust, deed, transfer, or other instrument that called for assets to be distributed at a future time based on future events, or transfers via a "power of appointment," the tax on the amount distributed must be paid within two months of the date of the occurrence of the contingency.

Interest Rules: If not paid within two months, interest will be assessed on the unpaid tax at 10% per year from the expiration of the two-month period until the tax is paid.

Example: In the example described under “Line 15 – Compromise Tax,” Sandy’s Estate representative rejected the offer of compromise because Randy was relatively young with an active lifestyle and probably would use up the funds in the trust for his own use. Thus, the assumption was that there probably would be no Inheritance Tax due from Chloe and Joey. However, within a year of filing the return, Randy passes away without having used any significant funds from the trust and \$100,000 still remaining in trust. This amount now “vests” for Chloe and Joey who owe 15% Class D tax (\$100,000 x 15% = \$15,000) as a contingent tax on the inheritance from Sandy’s Estate. This amount must be paid within two months of Randy’s death or interest will accrue as stated above.

2. Wrongful Death: Certain funds recovered as a result of a wrongful death action filed on behalf of the decedent are includible in the taxable Estate. The amount of funds that eventually became part of the Estate could not have been known at the date of the decedent’s death. Therefore, the tax on these funds is considered a contingent tax. The tax must be paid within 30 days of the receipt of the award or settlement.

Interest Rules: If the tax is not paid within 30 days of receipt, interest at 10% per year will begin to accrue after eight months from the date of the award determination (i.e., the date of the judgment or settlement of the lawsuit) until the tax is paid.

Example: Roberto dies in 2019 as a result of an infection contracted in a nursing home where he resided prior to his death. Following his death, Roberto’s executor files an Inheritance Tax return. The tax is paid on the assets currently in his Estate, and assets are distributed to the beneficiaries, his brother and sister (Class C). Roberto’s Estate then institutes a wrongful death lawsuit against the nursing home. Proceeds from the lawsuit will not be received until some unknown point in the future, if at all. No tax is due when the return is filed because it cannot be calculated or estimated. The beneficiaries are known, but the amount is unknown. No compromise can be offered because there are no funds from the action currently to the decedent’s credit.

On February 12, 2023, the lawsuit is settled, and Roberto’s beneficiaries receive a check for part of the settlement on June 15, 2023. They are required to amend the Inheritance Tax return, report the settlement amount as a contingent asset, and pay Inheritance Tax by July 15, 2023.

Calculation and reporting of contingent tax. The amount of tax due is calculated as direct tax. Attach a letter thoroughly describing the full details of the event and the direct contingent tax based on the outcome of the event. The contingent tax calculated on the attached sheet should be entered on line 16.

Note: No interest can accrue on any contingent tax until the expiration of the eight-month period after the original decedent’s death. If a contingency of either type occurs prior to the expiration of this eight-month period, contingent funds can be included in direct tax distributions and tax calculations. However, an explanation of the details of the contingent event must still be provided.

Line 18 – Interest Due

If you are paying any part of the tax due after the eight-month due date has passed, late payment interest is due. The interest rate is 10% annually on any tax calculated on lines 12 and 13 that is still owed until the date the tax is paid. (See “Examples of Interest Calculation” below).

Note: If an estimated payment was made prior to the due date, but the payment did not fully satisfy the tax due as calculated on lines 12 and 13, interest is calculated only on the remaining balance due.

Examples of Interest Calculation

Example 1: Filing return late with payment, no prior payments made

Date of Death	August 22, 2022
Return and payment due (and interest starts to accrue)	April 22, 2023
Return filed	July 17, 2023
Tax Due (Summary Page line 12 + line 13)	\$8,125
Number of days late (number of days from April 22 to July 17)	86 days
Interest Rate	10% annual rate

Calculate Interest due as follows:

1. Multiply the Tax Due by 10%. This is the amount of interest due for one year:

Calculation: $\$8,125 \times 10\% = \$812.50$ total yearly interest

2. Divide the total yearly interest by 365 (days in a year). This is the amount of interest due for every day the payment is late:

Calculation: $\$812.50 / 365 = \$2.226$ interest due per day.

3. Multiply the interest due per day by the number of days late.

Calculation: $\$2.226 \times 86 = \$191.44$ total interest due. Enter this amount on **line 18**.

Report the amounts on lines 17–21 of the Summary Page:

17.	Total Tax Due	17.	8,125	00
18.	Interest Due @10% per annum from 4/22/23 to 7/17/23 ($\$8,125 \times 10\% \times (86/365)$)	18.	191	44
19.	Total Amount Due ($8,125 + 191.44$)	19.	8,316	44
20.	Payments made prior to filing return	20.	0	00
21.	If line 20 is less than line 19, enter balance due. Pay this amount with Form IT-R ($8,316.44 - 0$)	21.	8,316	44

Example 2: Filing return late with payment, with prior payments made

Date of Death	September 18, 2023
Return and payment due (and interest starts to accrue)	May 18, 2024
Return filed	July 20, 2024
Tax Due (Summary Page line 12 + line 13)	\$68,389.70
Payment #1 prior to filing of return: May 12, 2024.....	\$16,974.56
Number of days late Payment #1	0 days
Payment #2 prior to filing of return: June 12, 2024.....	\$31,927.02
Number of days late Payment #2 (number of days from May 18 to June 12)	25 days
Payment #3 to be paid with filing of return: July 20, 2024	\$20,046.83
Number of days late Payment #3 (number of days from June 12 to July 20).....	38 days
Interest Rate	10% annual rate

Interest Due Calculation for Payment #1

None. The payment was made prior to the eight (8) month due date.

Interest Due Calculation for Payment #2

1. Subtract the payment made prior to filing the return (before the return due date on 5/12/24) from the Tax Due.

Calculation: $\$68,389.70 - \$16,974.56 = \$51,415.14$ remaining unpaid balance

2. Multiply the remaining unpaid balance by 10%. This is the amount of interest due for one year on the late unpaid balance.

Calculation: $\$51,415.14 \times 10\% = \$5,141.51$ total yearly interest

3. Divide the total yearly interest by 365 (days in a year). This is the amount of interest due for every day the payment is late:

Calculation: $\$5,141.51 / 365 = \$14.086$ interest due per day

4. Multiply the interest due per day by the number of days late for payment #2 made 6/12/24:

Calculation: $\$14.086 \times 25 = \$352.15$ interest due 5/18/24–6/12/24

5. Add the interest due 5/18/24–6/12/24 to the remaining unpaid balance (as calculated in number 1).

Calculation: $\$51,415.14 + \$352.15 = \$51,767.29$ total amount due 6/12/24

6. Subtract payment #2 from the total amount due 6/12/24.

Calculation: $\$51,767.29 - \$31,927.02 = \$19,840.27$ balance remaining after payment #2

Interest Calculation on Payment #3 with the return filed

1. Multiply the balance remaining after payment #2 by 10%. This is the amount of interest due for one year on the late unpaid balance.

Calculation: $\$19,840.27 \times 10\% = \$1,984.03$ total yearly interest

2. Divide the total yearly interest by 365 (days in a year). This is the amount of interest due for every day the payment is late.

Calculation: $\$1,940.03 / 365 = \$5.436$ interest due per day

3. Multiply the interest due per day by the number of days late for payment #3 made 7/20/24.

Calculation: $\$5.436 \times 38 = \$206.56$ interest due 6/12/24–7/20/24

Total Interest Due

1. Add the interest due on payment #2 to the interest due on payment #3.

Calculation: $\$352.15 + \$206.56 = \$558.71$ total interest due. Enter this amount on **line 18**.

Report the amounts on lines 17–21 of the Summary Page:

17.	Total Tax Due	17.	68,389	70
18.	Interest Due @10% per annum from 5/18/24 to 7/20/24 (352.15 + 206.56)	18.	558	71
19.	Total Amount Due (68,389.70 + 558.71)	19.	68,948	41
20.	Payments made prior to filing return (16,974.56 + 31,927.02)	20.	48,901	58
21.	If line 20 is less than line 19, enter balance due. Pay this amount with Form IT-R (68,948.41 – 48,901.58)	21.	20,046	83

Schedule A – New Jersey Real Property

Report on this schedule all New Jersey real estate in which the decedent had any ownership share, either by deed or inheritance.

Exemptions (nonreporting):

- Do not report real property held by the decedent as “tenants by the entirety” with a **surviving** spouse or civil union partner;
- Do not report real property located outside New Jersey.

Report on other schedules:

- Co-ops are not considered real property and should be reported on Schedule B-2, Part II;
- Real property that the decedent transferred into a trust during their lifetime should be reported on Schedule C.

Completing Schedule A**Column A – Description**

Make sure **all** the fields are completed for each property the decedent owned individually or in which they had a fractional, percentage, or joint interest. You must include **all** the items listed below:

County. The New Jersey county where the property is located.

Fractional or percentage interest. Report the fractional (i.e., one-half, one-third, etc.) or percentage (i.e., 50%, 33%, etc.) interest of the decedent if they owned less than 100%.

- A fractional interest (less than 100%) occurs when the property was held as “tenants in common,” not “joint with rights of survivorship.” (See “[Types of Real Estate Ownership](#)”).
- A copy of the deed must be included in all cases in which a fractional share is indicated.
- If decedent was sole owner, enter 100%.

Street number and street. This should include apartment or unit number if applicable.

Lot and block number. Be aware that some properties contain more than one lot.

Note: Certain types of realty may not have a traditional address and/or lot and block (such as undeveloped land). If this is the case, you may use a general description as found on the deed of record. Enter this information below the “Fractional or Percent Interest” line or attach copies of any deeds or tax bills. The Division will determine how to complete the tax waiver.

Municipality. City, township, etc., where the property is located. Mailing address is not always definitive. Always check the property tax records or deed.

Owner(s) name(s)/Property Title. Include all owners’ names listed on the property. If a previously deceased person’s name(s) is still on the deed, include the name(s), write “Predeceased” and provide dates of death for each.

Mortgage Lien. Check the box only if there are any outstanding mortgage liens and/or home equity loans against the property. The date of death value of these liens should be reported on Schedule D, Part II.

A tax waiver cannot be issued if any of the above fields are not complete. Without a waiver, you will not be able to transfer or sell the property with clear title. The information reported on this schedule goes directly onto the tax waiver that is required to be filed with the County Clerk.

Note: The best way to ensure that the Division issues the correct waiver is to match the information on the city tax records or current tax bill for the property to the fields on the return.

Column B – Tax Assessed Value

Enter the local property tax assessed value of the entire property for the year of death.

This information can be found in the city tax records or on the tax bill for the year of death. In some cases, the tax assessment value is also available on the municipality’s website.

Column C – Full Market Value

Enter the estimated fair market value of the entire property as of the decedent’s date of death. (See Fair Market Value explanation below).

Column D – Value of Decedent’s Interest

Enter the value of the decedent’s interest only. This value does not include the balance of any mortgage liens against the property. Show this as a dollar amount (not a fraction or percentage).

If the decedent owned 100% of the interest, the amount will be the same as the amount in column C.

Total of all Additional Schedules

If you submitted additional copies of Schedule A, enter the total of all those schedules here.

Total of all New Jersey Real Property

Total the values in column D, and enter the amount on the IT-R Summary Page, line 1 – Real Property.

Additional Information – Real Property

Types of Real Estate Ownership

Tenants by the Entirety

Tenants by the Entirety is a type of ownership in which real property is held jointly by two spouses or civil union partners. The deed will usually state that the property is held as “tenants by the entirety,” “husband and wife,” or “H/W.” Some older deeds may use the term “*et ux*,” which means “and spouse.”

Property held under Tenants by the Entirety does not need to be reported on Schedule A by the surviving spouse or civil union partner. No waiver is required to transfer the property either to the surviving spouse or civil union partner, or by the survivor to a third party.

Joint Tenants (with Rights of Survivorship)

Joint Tenants (with Rights of Survivorship) is a type of ownership in which real property is held by two or more people (non-spouses) and the deed states the owners are joint owners.

The word “joint” must be present in some form (i.e., “joint tenants,” “joint owners,” “joint tenants with right of survivorship”). Otherwise, the property will be considered “tenants in common.”

Tenants in Common

Tenants in Common is a type of ownership in which property is held by two or more people and each person holds an individual partial ownership interest.

If the deed does not state the specific percentage or fraction each party owns, it is normally assumed that each owner has an equal share. This may not be true if the property was inherited in unequal shares from a prior decedent or decedents.

- Property that is devised to two or more people under a will is generally considered to be tenants in common to the beneficiaries. If no deed was executed, attach a copy of the prior will showing the bequest.

Fair Market Value

Fair market value is the price that the property would sell for on the open market in its condition as of the date of the decedent's death.

Class A note: If reported real estate is passing directly to Class A beneficiaries, it is not necessary to obtain an appraised market value.

Fair market value (FMV) can be estimated several ways. Below are examples of valuation methods that are considered the best methods to estimate FMV:

- **Appraisal.** Appraisal by a certified real estate appraiser (attach copy with return)
- **Sale via "Arm's-Length Transaction."** This method is most definitive if the sale is within a short time after the date of death. (Attach a copy of the contract or HUD-1/Closing Disclosure)
- **Market Analysis.** Comparative market analysis completed by a qualified Realtor/Appraiser with comparable sales no more than one year* prior to the date of death (attach copy with return)

*This is a suggested timeframe only. The closer to the date of death of comparable sales, the more accurate an appraisal is likely to be. The Division will determine if the comparable sale time frame is reasonable based on market conditions during the period prior to, and up to, the date of death.

The following methods are **not** recommended as definitive of market value and may lead to a Division audit if used. This may delay the closing of the Estate by several months.

- Realtor opinion letter
- Website-generated values (Zillow, etc.)
- Current list price
- Application of local tax equalization ratio
- Local property tax assessed value
- "Interested Party" sale**

If the property was sold to an "interested party" (i.e., surviving tenant-in-common, close family member of the decedent, etc.) for less than what the property would sell for on an open market, this is **not considered an "arm's-length transaction," and the Division will **not** consider the sale price as fair market value without independent verification.

If documentation that supports the fair market value is included, check the box at the bottom of Schedule A.

The Division **has the right to conduct an appraisal** in all cases, and may not agree with the reported value no matter which method is used. The Division's Property Administration Section may contact the Estate to request additional documentation.

Other Types of Real Property Interests

Condominiums. An interest in a condominium is considered real property and should be reported on Schedule A. The description information required in column A must be reported. In some instances, the Lot number may also have a Qualifier. Make sure to report the Lot information exactly as it is written on any tax documents.

Co-ops. If the decedent had a membership certificate or stock held in a cooperative housing unit (co-op), this is **not** considered real estate. The membership shares should be reported on Schedule B-2, Part II. If the co-op is located in New Jersey, a tax waiver is required for the membership shares even if held by husband and wife or civil union partners. These shares must be reported no matter where the property is located.

Debt Obligations in Connection With Real Property

Mortgages. List any mortgages or lines of credit against the property as deduction(s) on Schedule D, Part II, Section A. Report the balance of the mortgage or line of credit due as of the date of death. Any balances deducted must be verified as of the date of death.

Other Liens (as of date of death). Unpaid real estate taxes and assessments, accrued interest on mortgages, judgments, or any other lien that attaches to the property should be listed on Schedule D, Part III.

What to Submit With This Schedule

- A Copy of Deed is required if the decedent's ownership was anything other than a 100% sole ownership. This is optional if the decedent was the sole owner, but may be helpful for waiver purposes.
- Submit a copy of any appraisals or other documents that you used to estimate the market value, and check the box at the bottom of the schedule. If there was extensive damage to the real property existing on the date of death claimed to affect the market value, provide photos of the damage and any paid invoices/receipts of repairs made to the property after death.
- If the real property was sold or is under contract for sale by the Estate, submit a copy of any such contracts of sale or closing agreements.
- If a discount for a decedent's fractional interest is claimed (tenants in common only), the Estate must submit the basis for the claim. The Division will make a determination as to whether a discount is warranted. **Note:** Discounts will not be automatically granted.

Example:

Shannon Doe, a resident decedent, owned two properties in New Jersey.

1. Shannon individually owned a condominium at 123 Main Ave in Anytown, NJ in Mercer County. She had a mortgage lien against the property of \$49,123.
2. Shannon had 50% ownership in a single family residence on 456 Shore St. in East Ocean, NJ in Atlantic County. The property was held with her brother, Thomas Doe, as "Tenants in Common." There was no outstanding mortgage. The fair market value of the property was determined by an appraisal, a copy of which will be submitted.

In addition to reporting the property on Schedule A, a copy of the deed must be submitted for the second property because Shannon had a fractional interest. A complete copy of the appraisal also will be submitted. (See "What to Submit With This Schedule" above).

Below is an example of how Shannon Doe's property interests would be reported on Schedule A:

(A) Description of New Jersey Real Estate (All fields required)	(B) Tax Assessed Value for year of death for entire property	(C) Full Market Value* at Date of Death	(D) Value of Decedent's Interest (Not including mortgage balances)	(E) Division Use Only
1. <u>Mercer</u> <u>New Jersey County</u> Fractional or percent interest <u>100%</u> <u>123 Main Avenue, Unit 6</u> Street address with number, unit <u>45.6</u> <u>9</u> Lot(s) Block <u>Anytown</u> Municipality <u>Shannon Doe</u> Owner(s) name(s)/Property Title ☒ Check if there is a mortgage lien against this property reported on Schedule D.	\$123,000	\$150,000	\$150,000	
2. <u>Atlantic</u> <u>New Jersey County</u> Fractional or percent interest <u>50%</u> <u>456 Shore Street</u> Street address with number, unit <u>78</u> <u>10</u> Lot(s) Block <u>East Ocean</u> Municipality <u>Shannon Doe and Thomas Doe, T.I.C.</u> Owner(s) name(s)/Property Title ☐ Check if there is a mortgage lien against this property reported on Schedule D.	\$185,000	\$250,000	\$125,000	
Total of all additional schedules (if none, enter zero)			\$0	
Total of all New Jersey real property. Enter here and on Form IT-R Summary Page, line 1			\$275,000	

*Check if documentation that supports the reported full market value is included (see instructions) ☒

Schedule B – Closely Held Businesses

A "Closely Held" business is generally considered to be a corporation, partnership, joint venture, and/or sole proprietorship owned by one person or a limited number of persons. If stock is issued, it is not usually publicly traded. Therefore, the clear market value of these businesses cannot be determined using such measures as published stock prices, or sale by an arm's-length transaction. The date of death value of these businesses must be determined by an appraisal of the assets, liabilities, and equity of the business.

In all cases, the clear market value on the date of the decedent's death of the entire business must first be determined. The decedent's share or equity will then be determined based on their ownership percentage.

There is specific information requested on this schedule for the various types of closely held businesses (listed below). However, the following information is required to be submitted for **each** business owned by the decedent in whole or in part. Family Limited Partnerships have different requirements (see "Family Limited Partnerships" below).

1. **Financial Statements.** For the three-year period preceding the decedent's date of death, submit full financial statements, including detailed balance sheet and profit and loss statement for the business. Include a balance sheet adjusted to reflect date of death clear market value of all assets and debts of the business. **Note:** Any amortization or depreciation is not applicable.
2. **Real Property.** Describe any real property interests owned by the business and state the tax-assessed value and market value of each property as of the decedent's date of death.
3. **Basis for Value.** Describe in detail the basis for determining the clear market value of the business as reported in column B. If a certified business appraisal was completed for date of death value, submit a complete copy of the appraisal.

Closely Held Corporations

If the decedent had any interest in a closely held corporation, in addition to the general information required above and the information required by column A, submit:

1. For the three-year period preceding the decedent's date of death:
 - a. A list of salaries paid to officers;
 - b. A list of dividends paid, together with the name(s) of the payees;
2. Copy/copies of any stock purchase or option agreement entered into by the decedent as of the date of death;
3. Copy/copies of any insurance policy/policies on the decedent's life payable to the corporation as beneficiary and a statement of the benefits payable under the terms of the policy;
4. The total number of shares of all classes of stock issued and outstanding and the par value of the shares;
5. A list of stockholders with the number of shares held by each.

Partnerships or Joint Ventures

If the decedent had any interest in a partnership or joint venture, in addition to the general information required above and the information required by column A, submit:

1. A copy of the partnership agreement in effect on the date of death;
2. A copy/copies of any mutual purchase agreement(s) entered into by the decedent as of the date of death;
3. A copy/copies of any insurance policy/policies on the decedent's life payable to the surviving partners as beneficiary and a statement of the benefits payable under the terms of the policy.

Sole Proprietorships

If the decedent had any interest in a sole proprietorship or single member LLC, in addition to the general information required above, submit a list of any and all sole proprietorship assets that are reported on other schedules of this return (i.e., Schedule A).

Family Limited Partnerships

What is a family limited partnership?

This is a partnership where more than 50% of the partners are related by blood or marriage/civil union/domestic partnership, and does not have a true business purpose.

A "true business purpose" is defined as 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. The family limited partnership may or may not hold an interest in another partnership or other asset that has a true business purpose.

Valuing a Family Limited Partnership

To determine the value of the decedent's interest in any family limited partnership, the market value will be the cash value of the total underlying assets of the partnership on the date of death of the decedent.

Example: Decedent owns 40% of a family limited partnership that has as its only asset a mutual fund with a value of \$200,000 on the date of death. The decedent's interest will be \$80,000 (\$200,000 x 40%).

Note: Discounts for family limited partnership interests are not accepted unless the Director determines that they are appropriate based on the nature of and risk associated with the underlying assets of the partnership.

Completing Schedule B

Column A: Business Information

List the business name, Federal Employer Identification Number (also known as an EIN), and type of business or business activity. Indicate if the business is a family limited partnership, the percent ownership the decedent had in the business and/or the number and type of shares held by the decedent in the business.

Column B: Market Value – Entire Business

Enter the market value of the entire business as of the date of death as determined based on the above required information for each business. The Estate should make its best determination of the market value.

Column C: Market Value – Decedent's Share

Enter the date of death market value of the decedent's share of the business. This is determined by taking the amount in column B multiplied by the decedent's percentage of ownership.

- Report values as a dollar amount (not a fraction or percentage).
- If the decedent owned 100%, the amount will be the same as the amount in column B.

Documentation Check Boxes

Check the box next to all documentation that is applicable to the decedent's business and attach copies.

Total of all Additional Schedules

If you submitted additional copies of Schedule B, enter the total of all those schedules here.

Total of all Closely Held Businesses

Total the values in column C and enter the amount on the IT-R Summary page, line 2 – Closely Held Businesses.

Example: Maria Ramirez had 75% interest in a rental partnership called "Ramirez Partners." Her partner, Hector, owned the remaining 25%. The Estate provided supplemental documentation for the business.

This is how the decedent's interest in the partnership would be reported on Schedule B:

(A) Business Information	(B) Market Value at Date of Death – Entire Business	(C) Market Value at Date of Death – Decedent's Share	(E) Division Use Only
1. Business Name: <u>Ramirez Rentals LLP</u> Federal EIN: <u>21-123456</u> Type of Business: <u>Rental Property</u> Is this a Family Limited Partnership? ☐ Yes ☒ No (See instructions) Decedent's percentage of ownership: <u>Maria Ramirez, 75%</u> Number of shares held (if applicable): <u>No shares issued</u>	\$1,000,000	\$750,000	
☒ Partnership agreement ☒ Schedules K & K-1 of Form 1065 Partnership Return for last full year prior to death ☐ Form 1120 US Corporation Income Tax Return for last full year prior to death ☒ Financial statements for three full years prior to death ☐ Buy-Sell agreement ☐ Certified Business appraisal (if available)			

Schedules B-1 to B-4 – Personal Property

General Instructions

On Schedules B-1 through B-4, you will report everything that was owned by or in possession of the decedent, either individually or jointly, on the date of death (other than real estate or businesses). If the decedent's name appears on the asset, it must be reported on one of these schedules. Assets that may be passing to a nontaxable beneficiary should still be reported on the appropriate schedule by category:

B-1: Financial Institution Accounts

B-2: Stocks and Co-ops

All property must be reported at the full date of death value.

Property Held as Joint Tenants With Rights of Survivorship



Do not automatically report joint assets at one-half value.

All joint assets, including those passing to exempt beneficiaries (i.e., Class A), must be reported with full market value as of date of death. Even if a surviving joint owner of an account is **claiming partial or complete contribution*** to the asset, the account will still need to be reported and the full value of the asset reflected in the appropriate "Date of Death Value" column. For financial assets, any required tax waivers will need to reflect the full balance on the date of death in order to transfer the account to the surviving joint owner.

*Partial Ownership Claims: Jointly held assets are presumed to have been the sole property of the decedent. If a surviving joint owner wishes to claim that all or part of the asset was due to their contribution, an affidavit from the surviving joint tenant detailing the amount they contributed, together with whatever documents can be provided to support the contribution (copies of cancelled checks, written agreements, etc.) must be submitted to support the claim.

Additional Schedules

Additional copies of all schedules are available. Attach as many additional pages as required to report all property the decedent owned. Check the box "Check if additional copies of the schedule are attached" at the top of any schedule for which additional sheets are included.

Schedule B-1: Financial Institution Accounts

The following are types of accounts that, if held in a banking or financial services institution, are required to be reported under Schedule B-1:

- Savings accounts, checking accounts, or certificates of deposit;
- Money market funds ;
- Credit union accounts;
- IRAs;
- Brokerage accounts;
- Mutual funds (usually reported on Schedule B-2 as stock);
- 401(k)s (usually reported on Schedule B-4, All Other Property).

Brokerage Accounts

Brokerage accounts often encompass a wide variety of investments and asset types. Report on Schedule B-1 only the full value of the account on the date of death. **Do not separate the assets held within the account and report them among Schedules B-1 to B-4.** Financial institutions require a tax waiver reflecting the total value of the account on the date of death. If the various assets are reported on different schedules, the tax waiver issued will be incorrect and the financial institution will not release the account to the Estate representative.

Note: A date of death account statement must be submitted with the return for each brokerage account held by the decedent.

Manner of Registration of Accounts

Indicate how the accounts owned by the decedent were titled and the registered owners listed on each account. The following are examples of types of registration with common acceptable abbreviations in parentheses:

- Individually by the decedent (NOD);
- Joint tenants with rights of survivorship (JTWS or JTWSOS);
- In trust for (ITF): Name of Beneficiary(s);
- Payable on death (POD): Name of Beneficiary(s);
- Transfer on death (TOD): Name of Beneficiary(s);
- Tenants in Common (TIC) (this is seldom used for bank accounts).

If an account was held by the decedent in any manner of registration other than individually, the name of the joint tenant(s) or registered beneficiary(ies) of the account must be reported.

Note: The tax waiver issued by the Division for each account is required to reflect both the full date of death balance and the correct manner of registration for ITF, POD, and TOD accounts. JTWRs waivers must have the names of all joint tenants on the account, even if any of them are deceased.

Completing Schedule B-1

Column A – Name of Institution, Last Four Digits of Account Number, and Registered Owners

For each asset held at a bank or financial institution that the decedent owned individually or jointly, report the following information:

Institution/Account Number. Enter the full name of each bank or other financial services institution where the account was held, followed by at least the last four digits of the account number.

Name(s) on account. Enter the name(s) of the registered owner(s) or registered beneficiary(s) on each account. If a surviving joint owner can prove their contribution to the asset, indicate the percentage claimed. (See “Property Held as Joint Tenants With Rights of Survivorship” above.)

Column B – Full Date of Death Value

Report the full date of death balance of each account. Brokerage accounts require only the account total. See “Specific Instructions for Brokerage Accounts” above.

Column C – Value of Decedent’s Equity

Report the decedent’s equity as a dollar amount. If the decedent owned the account **individually**, the amount in column C will equal the amount in column B.

If the account was **jointly owned**, enter the amount directly attributed to the decedent. If a surviving joint owner has proven their contribution to the asset, report only the decedent’s interest in the account as a dollar amount.

Total of all Additional Schedules

If you submitted additional copies of Schedule B-1, enter the total of those schedules.

Total of all Financial Institution Accounts

Total the values in column C, and enter the amount on line 1 of the B1–B4 Recap schedule.

Schedule B-2: Stock/Co-ops

Stock. Report all shares of stock the decedent owned in any publicly traded corporation. All shares of stock the decedent owned, or held jointly, must be reported regardless of where the company is incorporated. However, only shares of stock in New Jersey corporations require a tax waiver to transfer the shares.

Co-ops. A membership certificate or stock held in a cooperative housing corporation (co-op) is **not** considered real estate. It is intangible personal property and must be reported no matter where the co-op is located. If the co-op shares are in a New Jersey corporation, a tax waiver is required for the transfer of the shares (even if held by husband and wife or civil union partners).

Do not report shares of stock held within a brokerage account (i.e., held in “street name”) on this schedule. See “Specific instructions for brokerage accounts” in the instructions for Schedule B-1: Financial Institution Accounts.

Completing Schedule B-2

Part I – Stocks

Column A – Name of Corporation/Registered Owner(s)

State the full name of the company and the name(s) of the registered owner(s) or registered beneficiary(ies) on the certificate. If a surviving joint owner can prove their contribution to the asset, indicate the percentage claimed. (See “Property Held as Joint Tenants With Rights of Survivorship” above.)

Column B – Ticker Symbol

For publicly traded stock, list the registered ticker symbol.

Column C – NJ Corporation

Check the box if the corporation listed in column A is incorporated in the State of New Jersey.

Column D – Number of Shares

List the number of shares owned, individually or jointly, on the decedent's date of death for each stock. Any dividends issued or shares split after death are not reportable here. (See Schedule B-4 instructions.)

Column E – Per Share Value on Date of Death

Report the per share market value of each stock as of the date of death. This is calculated by finding the historical price information for the decedent's date of death and taking the average of the "High" and the "Low" price for that day.

If the decedent's date of death was on a weekend, or non-trading day, the per-share value can be determined by averaging the "High" and "Low" prices of the trading day before the decedent's date of death and the first trading day after the date of death.

Column F – Total Market Value

Calculate the total market value of the shares of stock as of the decedent's date of death. This is done by multiplying the number of shares in column D by the per share value in column E.

Column G – Value of Decedent's Equity

Report the decedent's equity as a dollar amount. If the decedent owned the stock individually, the amount in column G will equal the amount in column F.

If the stock was **jointly owned**, enter the amount directly attributed to the decedent. If a surviving joint owner has proven their contribution to the asset, report only the decedent's interest in the stock as a dollar amount.

Total – Part I

Enter the total of all stocks reported in Part I, column G.

Part II – Co-ops**Column A – Name of Company Issuing the Shares of Co-op**

List the name of the company issuing the co-op shares or membership certificate. Provide the Co-op Board contact information (if available) on an attached document.

Note: The tax waiver is required to reflect the company issuing the co-op shares or certificate.

Column B – Registered Owner and Address of Co-op

Registered Owner(s). Report the name(s) of the registered owner(s) or registered beneficiary(ies) of the co-op shares. If a surviving joint owner can prove their contribution to the asset, indicate the percentage claimed. (See "Property Held as Joint Tenants With Rights of Survivorship" above.)

Address of Co-op. Indicate the address of the co-op, including the unit or apartment number.

Column C – Number of Shares

List the number of shares owned in the co-op on the decedent's date of death.

Column D – Total Market Value

Report the total market value of the decedent's interest in the co-op. If this is a residential co-op, such as an apartment or condominium, the value would be of the unit that the decedent owned. This value can be determined in a number of ways. Below are examples of valuation methods that are considered the best methods to estimate the market value of the co-op:

- **Appraisal.** Appraisal by a certified appraiser (attach copy with return);
- **Sale via "Arm's-length transaction".** This method is most definitive if the sale is within a short time after the date of death; (Attach copy of contract)
- **Market Analysis.** Comparative market analysis with comparable sales completed by a certified appraiser (attach copy with return). Generally, these should involve sales of other units within the same co-op;
- **Co-op company letter.** Letter from the company issuing the co-op shares or membership certificate determining the value on the date of the decedent's death (attach a copy with the return).

Column E – Value of Decedent's Equity

Report the decedent's equity as a dollar amount. If the decedent owned the stock individually, the amount in column E will match the amount in column D.

If the co-op shares were **jointly owned**, enter the amount directly attributed to the decedent. If a surviving joint owner has proven their contribution to the asset, report only the decedent's interest in the co-op shares as a dollar amount.

Total – Part II

Enter the total of co-op interests reported in Part II, column E.

Total of Part I and Part II of all Additional Schedules

Enter the total of any additional schedules attached.

Total of all Stocks

Add the total line from Part I, column G, the total line from Part II, column E, the total line from additional schedules, and enter the result. Also enter this amount on Schedule B1–B4 Recap, line 2.

Schedule B-3: Municipal and Corporate Bonds

Do not report municipal and corporate bonds held within a brokerage account on this schedule. See “Specific instructions for brokerage accounts” in the instructions for Schedule B-1: Financial Institution Accounts.

Column A – Name of Bond and Registered Owner

For each bond held individually or jointly, report the following information:

- Name of the company or entity holding the bond;
- All terms of the bond;
- The names of all registered owners on each bond, including payable on death (POD), transfer on death, or other registered beneficiary. If a surviving joint owner can prove their contribution to the asset, indicate the percentage claimed. (See “Property Held as Joint Tenants With Rights of Survivorship” above.)

Column B – Date of Death Value

Report the full date of death value of the bond. Accrued dividends (or interest) should be included in the date of death value.

Column C – Value of the Decedent's Equity

Report the decedent's equity as a dollar amount. If the decedent owned the bond individually, the amount in column C will match the amount in column B.

If the bond was **jointly owned**, enter the amount directly attributed to the decedent. If a surviving joint owner has proven their contribution to the asset, report only the decedent's interest in the bond as a dollar amount.

Note: U.S. Savings Bonds should be listed on Schedule B-4: All Other Property.

Total of all municipal and corporate bonds

Total the values in column C and enter the amount on Schedule B1–B4 Recap, line 3.

Schedule B-4: All Other Property

All other property owned by the decedent as of the date of death that does not fall under the reporting guidelines for Schedules A, B, B-1, B-2, or B-3 should be reported on this schedule. Schedule B-4 provides examples of the types of assets generally reported here.

If the decedent's Last Will and Testament devises certain personal property items, such as jewelry, automobiles, artwork, etc., to a specific beneficiary, make sure to list each of these items separately on this schedule. Include the estimated value of each item devised.

Completing Schedule B-4

Column A – Other Property – Individually or Jointly Owned

Include a brief description of the property being reported. For the following asset types, include the indicated information:

U.S. Savings Bonds. Series E and EE bonds should be reported at the date of death redemption value (not the face value) of the bond. Series HH savings bonds are reported at face value. You may attach a printed inventory from a savings bond calculator or spreadsheet. For more information on the valuation of savings bonds, see the Treasury Direct website. Include the following information for each bond:

- Names registered on the bond and manner of registration (including any POD/TOD beneficiaries)

- Series/type
- Denomination/Face value
- Bond Serial number
- Issue Date

Vehicles. Provide make, model, year, mileage, and general condition.

Mortgages/Notes. Provide copy of note or loan agreement.

Unclaimed Property. The New Jersey Unclaimed Property Administration recovers and records abandoned intangible and tangible property. If a search of the New Jersey Unclaimed Property Administration [website](#) reveals any accounts or property items that belonged to the decedent, the amounts recovered are required to be reported. Include a copy of the check for the amount paid and a list of the assets that were recovered.

Column B – Date of Death Value

Report the full date of death value of the property. Submit any verification obtained or appraisals performed to support the fair market value of the asset.

Personal Property Appraisals. If an appraisal was performed on any of the decedent's personal property items, such as jewelry or collections (i.e., coins, stamps, firearms, antique furniture, artwork, etc.), submit a copy of the appraisal report as an attachment to this schedule.

Column C – Decedent's Equity

Report the decedent's equity as a dollar amount. If the decedent owned the assets or property items individually, the amount in column C will match the amount in column B.

If an asset was **jointly owned**, enter the amount directly attributed to the decedent. If a surviving joint owner has proven their contribution to the asset, report only the decedent's interest in the asset as a dollar amount.

Total of all Other Property

Total the values in column C, and enter the amount on Schedule B1–B4 Recap, line 4.

Schedules B1–B4 Recap – All Other Personal Property

Completing Schedule B-1– B-4: Recap Page

On this schedule, enter the totals from each of Schedules B-1, B-2, B-3, and B-4 as follows:

Line 1: Enter the total from Schedule B-1: Financial Institution Accounts.

Line 2: Enter the total from Schedule B-2: Stock / Co-ops.

Line 3: Enter the total from Schedule B-3: Municipal and Corporate Bonds.

Line 4: Enter the total from Schedule B-4: All Other Property.

Line 5: Total lines 1–4 and enter on line 3 of the **Resident Decedent Summary Page**.

Note: If there are no assets reported on any of these schedules or a specific schedule is not applicable to the decedent, report "0" on the line corresponding to that schedule.

Schedule C – Transfers

Transfers

Inheritance Tax law presumes that all transfers of personal property, whether tangible or intangible, made during a person's lifetime within three (3) years of their death, or that take effect on or after death (no matter when they were made) are made in "contemplation of death." A "transfer" here means property that was not paid for by the transferee, or for which the transferor did not get full value. All such transfers must be reported, whether claimed to be taxable or not.

If any transfers are claimed to be untaxable, or not in contemplation of death, submit a supplemental affidavit containing a detailed statement of facts on which this claim is based. Include proof as to decedent's mental and physical condition and overall health at the time of the transfer. The Division will make a determination after considering all relevant facts.

Note: Incidental non-material transfers, such as birthday gifts, holiday presents, life-event gifts (weddings, graduations, childbirth, etc.) are generally not considered transfers in contemplation of death. However, any unusually large or material gifts that do not fit a previous pattern of gift-giving will require an explanation per the above.

Transfers to Exempt Beneficiaries (Class A or Class E) should still be reported on this schedule to provide a complete accounting of the decedent's Estate.

A transfer may be to a person or an entity (such as a business, trust, government, charity, etc.).

Disposition of funds

If the decedent had any significant sale of assets prior to death, indicate in a separate document what disposition was made of the money and/or where the funds might be reflected on the return (i.e., put into a bank account, spent for living/medical expenses, given to beneficiaries, etc.).

Completing Schedule C

Part I – Transfers During Decedent's Lifetime

Line 1

Check the appropriate box. If answering "No," go to Part II. If answering "Yes," list each transfer in Part I as follows:

Column A: Date of Transfer

The date the transferee took possession or had the right to possession of the property.

Column B: Describe Property Transferred

State what was transferred (i.e., cash, bank account, real estate, stock, etc.). Be as specific as possible. If New Jersey real estate was transferred, provide the address, including lot and block information.

Column C: Name of Transferee

State the name of all people or entities that received the property. If property was transferred to a trust (either revocable or irrevocable), name the trust and submit a complete copy of the trust agreement.

Column D: Relationship of Transferee to Decedent

Provide the transferee's exact relationship to the decedent (i.e., niece, nephew, spouse, child, trust, etc.).

Column E: Market Value of Property as of Date of Death

Report the value of the transfer as of the date of death. Monetary transfers are reported at face value. Real estate, stock, bonds, or other non-cash assets are reported at the market value of the asset **as of the date of death**.

If real property was sold by the beneficiary prior to death in an "arm's-length" transaction, report the sale price and submit a copy of the contract of sale and/or settlement statement for the sale. If stocks were sold, submit documents from the institution holding the stock to indicate the date and value of the sale. See [Schedule A](#) instructions for explanation of an "arm's-length" transaction.

If any transfers were made by a Power of Attorney, submit a complete copy of the applicable Power of Attorney forms.

Total – Part I

Enter the total of column E.

Part II – Incomplete Transfers

Check the appropriate box. If answering "No," go to Part III. If answering "Yes," enter each transfer in Part II. Complete each column in the same manner as Part I.

Answer "Yes" if the decedent transferred property, without being paid full value for it, into the name of another person or entity while still keeping an interest in the property. This means, for example, they still had use or enjoyment of the property or still received income from the property. These are considered "incomplete transfers" and should be reported on this schedule. For New Jersey Inheritance Tax purposes, there is no time limit or "look-back" for these types of transfers. Therefore, all transfers of this kind are to be included.

Example: One of the most common of this kind of incomplete transfer involves a life estate in real property. This occurs when a person puts their house into a relative's name, but keeps for themselves the right to live there for the rest of their lives. The transfer would only take full effect when the grantor passes away, because the beneficiary can't fully claim the property until the original owner dies. (If the decedent had abandoned the life estate by no longer living in the property, the

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transfer would take effect at the time of abandonment). Even if the “life estate” is not specifically stated in the deed, an implied life estate can be inferred if the decedent continued to live in the property, rent free, after the transfer.

In these types of transfers, the Division will give primary consideration to what actually occurred rather than “paper transfers” and implied intentions of the decedent.

Total – Part II

Enter the total of column E.

Total of Part I and Part II of all Additional Schedules

Enter the total of any additional schedules attached.

Part III – Payable on Death Policies/Plans

Check the appropriate box. If answering “No,” go to the Total section at the bottom of Part III. If answering “Yes,” complete Part III as follows:

Report in Section A any plan, annuity, or contract payable on death to a **named beneficiary**. Life insurance policies payable to a named beneficiary are not required to be reported. Each beneficiary under a contract should be listed on a separate line in Section A.

Report in Section B any plan, annuity, contract or policy payable on death to the **Estate** as named beneficiary or by default. Life insurance policies payable to the decedent’s **Estate** are required to be reported on this schedule.

Note: Companies that issue life insurance and/or annuities are required to report to the Division of Taxation all such contracts on which they have made a payment as the result of the death of a New Jersey resident. These payments are reported to the Division on Form 0-71 at the time payment is made to the beneficiaries. All beneficiaries are required to be notified by the company that New Jersey Inheritance Tax may be due on the amount received.

Column A: Type of Policy

Indicate the type of policy reported (i.e., pension plan, annuity contract, life insurance, etc.).

Column B: Name of the Company Issuing the Policy and Policy Number

Enter the name of each company that issued a policy or annuity in the decedent’s name, and the policy number for each. The policy number may be repeated if there are multiple beneficiaries to one policy or plan.

Column C: Name of Beneficiary

Enter the name of the person or entity that is the named beneficiary. If there are multiple beneficiaries on a single policy, each beneficiary should be listed on a separate line.

Column D: Relationship of Beneficiary to Decedent

Provide the exact relationship to the decedent of the beneficiary (i.e., niece, nephew, spouse, child, trust, etc.).

Column E: Date of Death Value of Proceeds

Enter the amount payable as of the date of death for the policy/contract, including any accrued dividends or interest to the date of death. Annuities that are to be paid over a term of months or years should be reported at the present value, as of the date of decedent’s death, of the eventual payments. This value should be available from the company upon request.

Note: The “cash surrender value” of a life insurance policy is not necessarily the date of death value of the proceeds.

Total – Part III

Enter the total of column E, Sections A and B.

Total of Part III of all Additional Schedules

Enter the total of any additional schedules attached.

Total of all Transfers

Enter the total of Part I, Part II, and Part III plus all additional schedules here and on IT-R Summary Page line 4, Transfers.

Schedule D – Deductions Claimed

General Instructions

Schedule D is for reporting debts of the decedent and certain administration expenses that are allowed to be deducted from the decedent’s gross estate for Inheritance Tax purposes.

Debts of the decedent must be due and unpaid as of the date of death. Debts are also required to be paid out of the assets of the Estate in order to be claimed as a deduction on this schedule. For example, outstanding medical expenses that will be reimbursed by any form of medical insurance cannot be claimed as a deduction.

Administration expenses are incurred in the course of finalizing the decedent's Estate. See Part I below for the specific types of administration expenses that are allowed to be deducted.

Note: Just because an expense is paid on behalf of the Estate does not necessarily mean it may be deducted on the Inheritance Tax return. To be deductible, an expense must either have been due at the date of death, or meet the requirements for an allowable administration expense.

Important: Copies of documentation in the form of bills, invoices, receipts, statements, or other notices supporting the debts that are claimed should be provided. If the documentation is not provided with the filing, the Division may request documentation to support any deduction taken on Schedule D.

Completing Schedule D

Part I – Allowable Administration Expenses

Funeral

A deduction is allowed for all reasonable funeral-related expenses including, but not limited to:

- Funeral costs (after subtracting prepaid funeral expenses);
- Interment costs if purchased after death (e.g., cemetery plot, mausoleum, cremation, headstone/lettering)*;
- Funeral luncheon, flowers, and acknowledgments;
- Clergyperson who conducted funeral service;
- Obituaries and other death notices.

*In the case of a purchase of a multiple-use or family plot, monument, or mausoleum, only the share attributed to the decedent will be allowed.

Administration

Deductions are allowed for expenses directly related to the administration of the Estate, including, but not limited to:

- Surrogate Court probate fees;
- Executor or Administrator Bonding fees;
- Fees for death certificate and will copies,
- Certified mailing or postage fees to notify beneficiaries, creditors, and/or other interested parties;
- Executor or Administrator travel expenses to attend to necessary Estate business (documentation required).

Note: Travel, lodging, and food for family members or other interested parties are not considered administration expenses.

Professional Fees

Professional fees are typically those paid to the person or firm that is handling the gathering of Estate information and the filing of the Inheritance Tax return.

Counsel Fees

A deduction is allowed for “reasonable” counsel fees. This means fees paid to a New Jersey attorney for their work in gathering Estate information and preparing and filing the Inheritance Tax return. When determining what is “reasonable,” the Division will consider the complexity of settling the Estate; the monetary value of the Estate is not a determinative factor.

In the event there were extraordinary circumstances that caused legal fees to be larger than usual, submit documentation to support the claim, including an affidavit of services provided.

Not allowable

- Counsel fees paid to an attorney who is **not** a member of the New Jersey Bar.
- Counsel fees for services that are not directly related to the administration of the Estate and filing of the Inheritance Tax return.

CPA/Enrolled Agent Fees

A deduction is allowed for reasonable CPA or Enrolled Agent fees in connection with the preparation and filing of the Inheritance Tax return.

Other Accounting Fees

Accounting fees regarding any unfiled Income Tax returns that the decedent was required to file prior to their death, or other Estate accounting-related fees should be claimed under Administration expenses.

Not allowable:

- Accounting fees for the preparation of any State or federal Fiduciary Income Tax returns (otherwise known as Form 1041) regarding income after the date of death.

Executor's or Administrator's Commissions

An Executor or Administrator can elect to take a commission for their role in executing the terms of the decedent's will or in compliance with the laws of intestacy. The commissions are calculated as a percentage of the decedent's assets that are includable for Inheritance Tax purposes, with the following exceptions:

- Real estate that has not been sold by the executor or administrator or directed to be sold by the decedent in the Last Will and Testament;
- Jointly held property (where the joint owner survives the decedent);
- "In trust for," "payable on death," or "transfer on death" assets;
- Property transferred during the lifetime of the decedent (including property held in trusts);
- Property that is subject to a transfer taking effect at or after death.

Use the worksheets below to determine the value of the assets on which commissions can be calculated and the maximum allowable Executor's or Administrator's Commissions for one representative.

Note: Executors and Administrators are not required to take the maximum allowable commission. However, the amount claimed cannot exceed this amount in the absence of a court order per the provisions of N.J.A.C. 18:26-7.10.

Available Probate Assets for Commission Calculation (Table A)			
1.	Gross Estate (Line 5 on IT-R Summary Page)		
2.	Realty not sold by Estate		
3.	Joint assets		
4.	"In trust for," "payable on death," "transfer on death" assets		
5.	Transfers prior to death		
6.	Property that is subject to a transfer taking effect at or after death.		
7.	Total of Assets Not Included in Commissions (add lines 2-6)		
8.	Available Probate Assets for Commissions (subtract line 7 from line 1)		

Calculation of Maximum Commission (Table B)			
Available Probate Assets for Commissions (amount from Table A, line 8)			
	Amount of Probate Assets	Commission Rate	Total
1.	First \$200,000	5%	
2.	Amount over \$200,000 up to \$1,000,000	3.5%	
3.	Any amount over \$1,000,000	2%	
Total Maximum Allowable Commissions (add lines 1-3)			

Additional Executors or Administrators. If there is more than one executor or administrator appointed who is claiming commissions, add 1% to the Commission Rates for each additional executor or administrator. (For example, 5% of the first \$200,000 will become 6% of the first \$200,000.) No single executor or administrator is entitled to a greater commission than what is allowed if only one executor or administrator had been appointed.

Earned Income. Executor/Administrator's commissions are considered earned income for Income Tax purposes. If commissions are taken, the representative's Social Security number must be reported on this schedule.

Column A – Type of Expense

Allowable types of administration expenses are pre-filled. Any additional expenses of these types can be listed in Part III.

For Professional Fees, check the box indicating if the fees are estimated or agreed upon (or paid) for all that applies of counsel, CPA, or enrolled agents.

Column B – Name of Business/Person Owed

Indicate the name of the business or person that was paid or will be paid for services. If the Executor or Administrator is claiming commissions, list the full name and Social Security number of the court-appointed executor or administrator.

Column C – Amount

Report the amount due or paid for each expense.

Total – Part I

Enter the total of administration expenses reported in Part I, column C.

Part II – Real Property Debts of the Decedent

Section A – Mortgages on Real Property Reported on Schedule A

Only outstanding mortgages or lines of credit in the name of the decedent, which are a lien on a reported parcel of real estate, are allowed as a deduction. The deduction cannot exceed the value of the property as reported on Schedule A.

You can only deduct the outstanding mortgage balance **as of the decedent's date of death**. You cannot include mortgage interest accrued after death.

List each mortgage separately along with the address of the property reported on Schedule A to which each mortgage is attached.

You **must** submit verification of mortgage/loan balances as of the date of death, as provided by the lender (i.e., a bank, mortgage company, private party, etc.).

Note: HUD-1 closing statements are **not** usually considered verification of date of death balances of mortgages.

Do not report mortgage loans against any real property that is not subject to New Jersey Inheritance Tax (i.e., realty held as "tenants by the entirety" where the spouse/civil union partner survives the decedent, out-of-state real property, etc.).

Section B – Debts Associated With the Sale of the Decedent's Real Property

Certain expenses associated with the sale of the decedent's real property may be deducted **only** if the Estate has sold the decedent's real property (meaning sold by the executor or administrator as representative of the Estate) or the property is required to be sold in order to administer the Estate.

Allowable expenses of sale include:

- Realtor/broker commissions;
- Attorney fees related to the sale (if not reported in Part I);
- Other expenses required to sell the property or bring it to the reported fair market value (full verification, including receipts, cancelled checks, etc., are required).

Non-allowable real property expenses are considered expenses of the beneficiaries and include:

- Property taxes or other municipal taxes accrued after death;
- Utilities (sewer, water, electric) accrued after death;
- HOA/condo fees due after death;
- Accrued mortgage payments since death;
- Property maintenance costs;
- Any fees or expenses related to the sale of non-NJ property.

Sections A and B**Column A – Type of Expense**

List the type of real property debt and the address of the real property the debt is against.

For example, “Home Equity Line of Credit on 123 Main St.” or “Realtor Commissions for sale of 456 Taxation Ave.”

Column B – Name of Business/Person Owed

Indicate the name of the business or person that was paid or will be paid on behalf of the Estate.

Column C – Amount

Report the amount due for each real property debt.

Total – Part II (Section A and Section B)

Enter the total of Real Property debts claimed in Part II, column C.

Part III – Other Administration Expenses or Debts of the Decedent as of the Date of Death

Use this section to report additional deductions from Parts I and II and any debts of the decedent that were due and unpaid as of the decedent's death.

Allowable Deductions

The following lists may be used as a guide to determine allowable Estate deductions. For any debts or bills claimed, indicate the time period covered.

Debts of the Decedent, Owing and Unpaid at Time of Death

- Final bills due as of the date of death (i.e., credit card, medical bills not paid by insurance, utilities, etc.)
- Personal loans (see “Personal Loans” below)
- Other loans due as of the date of death (i.e., car loan)
- Judgments against the decedent or their Estate
- Divorce decree debts (see “Divorce Decree Debts” below)
- Unfulfilled documented charitable pledges
- Unpaid Inheritance Tax on the decedent's interest in a prior Estate
- Federal, State, county and local taxes accrued before death

Other Administration Expenses

- Appraisal of real estate (if real estate is reportable on the return)
- Appraisal of personal effects
- Storage of property if delivery to a beneficiary is not possible within a reasonable time
- Collection costs
- Court costs
- Cost on recovery or discovery of assets

Personal Loans

If a personal loan to the decedent (including reimbursement for expenses paid prior to death) is being claimed as a deduction, submit verification for the money lent to the decedent or spent on the decedent's behalf. Verification should include, but is not limited to, an affidavit from the lender detailing the circumstances surrounding the loan, and copies of the note or loan agreement.

Divorce Decree Debts

If a deduction being claimed against the decedent's Estate is enforceable based on a divorce decree, submit a copy of the decree with the filing.

Non-Allowable Deductions

No debt or claim can be reported on Schedule D that is not due and owing as of the decedent's date of death. **Do not** list any taxes that are due for any period after the date of death.

In addition to the **non-allowable expenses** mentioned in the previous sections above, the following are examples of other non-allowable deductions:

- Real estate and property maintenance costs after the date of death (including utilities);
- Real estate brokers' commissions (except if the real property is sold during administration of the Estate);
- State, county, and local taxes accruing after date of death (i.e., property taxes);
- Storage expenses (except as mentioned above);
- Debts paid or reimbursed by insurance (i.e., reimbursed medical expenses);
- Medical expenses paid prior to death;
- Liabilities of a corporation in which decedent was a shareholder;
- Transfer Inheritance Tax on this Estate;
- Federal estate tax on this Estate;
- Co-signed student loan debt or other co-signed debt;
- Debts secured by real or tangible property located outside of New Jersey.

Column A – Type of Expense

List the additional administration expense or other debt of the decedent due as of the date of death. For example, "Final credit card bill" or "Final electric bill 456 Main Ave."

Column B – Name of Business/Person Owed

Indicate the name of the business or person that is owed or was paid on behalf of the Estate.

Column C – Amount

Report the amount due for each administration expense, or the date of death balance due of the debt.

Total – Part III

Enter the total of all other debts reported in Part III, column C.

Total of all additional schedules

Enter the total any additional schedules attached.

Total of all deductions claimed

Enter the total of Part I, Part II, Part III, and any additional schedules here and on IT-R Summary Page, line 6.

Schedule E

General Instructions

Report all of the beneficiaries of the decedent's Estate, whether living or deceased. **This schedule must be completed for all returns in all cases.**

Note: If additional space is needed to list all beneficiaries of the Estate, additional copies of Schedule E – Part I are provided.

A "**beneficiary**" of a decedent's Estate is any person or entity that received, or has the right to receive, any assets from a deceased person's Estate. A beneficiary includes anyone who:

- Is a surviving joint tenant, payable on death beneficiary, transfer on death beneficiary, beneficiary listed on an account, or heir-at-law;
- Received any transfers either during the decedent's lifetime or as a result of the decedent's death;
- Is named in the decedent's Last Will and Testament as receiving any part of the Estate;
- Receives any part of the Estate through a trust document in which the decedent had the power to dispose of their assets upon their death;
- Is a surviving next of kin entitled to inherit under the laws of intestacy.

Completing Schedule E

Part I – Beneficiaries

Column A – Beneficiary Name and Address

Report the full name and address of all persons or entities who are beneficiaries (as defined above) of the Estate.

Column B – Relationship to Decedent

List the relationship of each beneficiary to the decedent (i.e., spouse, sister, nephew, charity, etc.). If the beneficiary is a person who is not a relative, enter “none” or “no relation.”

When listing relatives, be as precise as possible as to the relationship. If a marriage/civil union/domestic partnership is involved, please report the legal status as of the date of the decedent’s death.

Note: Sometimes a person’s Last Will and Testament may refer to people by relationships that are not necessarily the actual legal relationship, or one that has changed since the will was written. You should report the legal relationship as it existed at the date of death, and include a note to explain if it differs from the will.

Domestic Partnership. If a beneficiary is claiming the relationship of Domestic Partner, a certified copy of the Certificate of Domestic Partnership is **required**. A certified copy of the certificate can be obtained from the Local Registrar of Vital Statistics where the partnership was registered or at the [State Office of Vital Statistics and Registry](#).

Column C – Tax Class

Enter the letter of the Tax Class assigned to that beneficiary’s relationship to the decedent. The beneficiary’s tax class will either be A, C, D, or E. For a full description of the Tax Classes, see [“Beneficiary Tax Classes”](#) or our [website](#).

Interest of Beneficiary in Estate (Columns D and E)

Column D – Fractional Share, Percentage of Residuary Estate, and/or Specific Assets

List each type of asset, devise, or bequest due to each beneficiary. Multiple assets in one of the categories below can be grouped together (see examples):

- **Beneficiary’s Share.** If the beneficiary is to receive a percentage of the residual Estate or a fractional share, either through the decedent’s Last Will and Testament/Trust Agreement or by the laws of intestacy (if there was no will), list that share, even if they are receiving other assets. **Examples:** “50% Residue,” “1/3 of Estate,” “100% Residue.”
- **Specific Bequest Assets.** If the beneficiary is to receive a specific asset through a bequest in the Last Will and Testament (i.e., real estate, personal property item, bank account, or a cash amount) list the asset(s). **Examples:** “\$5,000 cash bequest,” “grandfather clock,” “2020 Toyota Corolla.”
- **Surviving Joint Owner/ POD/TOD Assets.** If a beneficiary is to receive a specific asset as surviving joint tenant or as a POD/TOD beneficiary, or was listed as a designated beneficiary on an account, indicate the specific asset or account they are to receive. **Examples:** “Capital One POD accounts” or “50% of 123 Real Estate Ave.”
- **Recipients of any Transfers (Schedule C).** Received any amounts reported as a transfer on Schedule C, either during decedent’s lifetime or that took effect at death. **Examples:** “First Life Annuity,” “Transfer of 123 Real Estate Ave.”

Column E – Dollar Amount

Report the total dollar amount of each beneficiary’s share or the value of each specific asset after subtracting allowable deductions from Schedule D. Do **not** deduct Inheritance Taxes from anyone’s share.

Column F – Age

Report the age as of the decedent’s date of death of any beneficiary who is receiving a life interest or is a contingent beneficiary, or if there are any provisions mentioning the age of the beneficiary under the decedent’s will or trust. It is not necessary to list the ages of residual beneficiaries or heirs-at-law.

Part II – Deceased Beneficiaries

List any beneficiary who would have inherited a share of the Estate if they survived the decedent and any beneficiary who died after the decedent’s date of death. Beneficiaries who died after the decedent’s date of death should also be listed in Part I.

Column A – Name

Report the full name of the deceased beneficiary.

Column B – Date of Death

List the date of death of the deceased beneficiary, if known. Estimate or year only is acceptable if exact information is not available.

Column C – Relationship

Indicate the relationship of the deceased beneficiary to the decedent (i.e., spouse, sister, nephew, friend, etc.).

Column D – Domicile at Death

Indicate which state or foreign country the beneficiary lived in at the time of their passing.

Distribution Examples**For Schedule E, Part I – Beneficiaries**

The following examples are demonstrations of some common Estate distributions. They are for illustrative purposes only. No actual taxpayer information was used.

Example 1 – Residual Beneficiaries Only

The decedent's Last Will and Testament names two beneficiaries, both nephews, that are each to receive an equal share of the residual Estate. There are no other beneficiaries. The total amount left in the decedent's Estate for distribution after Schedule D deductions is \$100,000. (This is also the amount that should appear on the IT-R Summary Page on line 9 - Balance of Estate). The Estate would be distributed as follows:

Beneficiary #1: Justin Time, the decedent's nephew, is a Class D beneficiary. They received the following distribution:

- One-half residue through the Last Will and Testament – 50% of the remainder of the Estate or \$50,000

Beneficiary #2: Russel Sprout, the decedent's nephew, is a Class D beneficiary. They received the following distribution:

- One-half residue through the Last Will and Testament – 50% of the remainder of the Estate or \$50,000

Below is how each beneficiary's share in Example 1 would be reported on Schedule E:

Part I–Beneficiaries					
(A) Beneficiary and address of each person who has an interest (vested, contingent, or otherwise) in this Estate	(B) Relationship to Decedent	(C) Tax Class	Interest of Beneficiary in Estate		(F) Age*
			(D) Fractional/percentage of residuary Estate and/or specific asset	(E) Dollar Amount	
Name: Justin Time Address: 12 First Street Inheritance, NJ 01324	Nephew	D	50% Residue	\$50,000	
Name: Russel Sprout Address: 14 First Street Inheritance, NJ 01324	Nephew	D	50% Residue	\$50,000	

Example 2 – POD's/Beneficiary account, Cash Bequest, and one Residual Beneficiary

The decedent left assets to three beneficiaries. The total amount available for distribution on IT-R line 9 is \$72,700. The beneficiaries are to receive assets through both direct beneficiary designations and the decedent's Last Will and Testament.

Beneficiary #1: Ella Fant, the decedent's cousin, is a Class D beneficiary. They received the following assets:

- POD Account – One Credit Union of NJ account as a payable on death (POD) beneficiary. Date of Death value – \$1,700
- Primary Beneficiary – One Fidelity IRA account as the named primary beneficiary on the account. Date of death value – \$26,200

Beneficiary #2: Paige Turner, the decedent's caregiver, is a Class D beneficiary. They received the following assets:

- Bequest in the Last Will and Testament – Cash bequest of \$10,000

Beneficiary #3: Otto Graff, the decedent's son, is a Class A beneficiary. They receive the following assets:

- Residual share through the Last Will and Testament – The total amount left in the decedent's Estate for distribution after Schedule D deductions, distribution of POD and direct beneficiary accounts, and cash bequest through the Last Will and Testament. Residue – \$34,800

Below is how each beneficiary's share from Example 2 would be reported on Schedule E:

Part I—Beneficiaries					
(A) Beneficiary and address of each person who has an interest (vested, contingent, or otherwise) in this Estate	(B) Relationship to Decedent	(C) Tax Class	Interest of Beneficiary in Estate		(F) Age*
			(D) Fractional/percentage of residuary Estate and/or specific asset	(E) Dollar Amount	
Name: Ella Fant Address: 123 Main Street Taxation, NJ 01234	Cousin	D	Credit Union of NJ POD Fidelity IRA beneficiary	\$27,900	
Name: Paige Turner Address: 10 Inheritance Ave. Estate, NJ 01789	No Relation	D	Cash Bequest	\$10,000	
Name: Otto Graff Address: 10 Inheritance Ave. Estate, NJ 01789	Son	A	100% Residue	\$34,800	

Example 3 – Multiple Beneficiaries with multiple asset types

The decedent left assets to five beneficiaries. The total amount for distribution on line 9 is \$472,250. The beneficiaries are to receive assets through the decedent's Last Will and Testament, as surviving owner and direct beneficiary designations, and as recipients of a transfer (Schedule C).

Beneficiary #1: Rita Book, the decedent's sibling, is a Class C beneficiary. They received the following assets:

- Surviving owner and POD account – One TD Bank account as surviving joint owner and one TD Bank account as payable on death (POD) beneficiary. Date of death values – Joint account \$10,500 and POD account \$2,000
- Devise in Last Will and Testament – Real Property. Date of death value – \$150,000
- Bequest in the Last Will and Testament – Diamond ring. Date of death value – \$750

Beneficiary #2: Teri Dactyl, the decedent's friend, is a Class D beneficiary. They received the following assets:

- TOD Account – One Wells Fargo Bank account as transfer on death (TOD) beneficiary. Date of Death value – \$1,500
- Schedule C Transfer – Direct beneficiary of a Prudential Annuity (payable on death plan). Date of death value of Payment Proceeds – \$15,250.00
- Bequest in the Last Will and Testament – Cash bequest of \$25,000

Beneficiary #3: Sandy Beech, the decedent's stepchild, is a Class A beneficiary. They received the following assets:

- Devise in Last Will and Testament – Coin collection. Date of death value – \$2,500.00
- Residual share through the Last Will and Testament – The total amount left in the decedent's Estate for distribution after Schedule D deductions, joint, POD, TOD accounts, transfer property (Schedule C), and assets through the Last Will and Testament is \$250,750. One-half of the remainder of the Estate or \$125,375.

Beneficiary #4: Earl E. Byrd, the decedent's step-grandchild is a Class D beneficiary. They received the following assets:

- Schedule C Transfer – Cash gift within three years prior to the date of death (transfers during the decedent's lifetime). Market value of property as of date of death – \$14,000

- Residual share through the Last Will and Testament – The total amount left in the decedent's Estate for distribution after Schedule D deductions, joint, POD, TOD accounts, transfer property (Schedule C), and assets through the Last Will and Testament is \$250,750. Date of death value – One-quarter of the remainder of the Estate or \$62,687.50

Beneficiary #5: Giving to Others Charity, a charitable organization, is a Class E beneficiary. They received the following assets:

- Residual share through the Last Will and Testament – The total amount left in the decedent's Estate for distribution after Schedule D deductions, joint, POD, TOD accounts, transfer property (Schedule C), and assets through the Last Will and Testament is \$250,750. Date of death value – one-quarter of the remainder of the Estate or \$62,687.50

Below shows how each beneficiary's share from Example 3 would be reported on Schedule E:

Part I—Beneficiaries					
(A) Beneficiary and address of each person who has an interest (vested, contingent, or otherwise) in this Estate	(B) Relationship to Decedent	(C) Tax Class	Interest of Beneficiary in Estate		(F) Age*
			(D) Fractional/percentage of residuary Estate and/or specific asset	(E) Dollar Amount	
Name: Rita Book Address: 123 Main Street Taxation, NJ 01234	Sibling	C	TD Bank-1 Joint and 1 POD account Real Property Diamond Ring	\$163,250	
Name: Teri Dactyl Address: 10 Inheritance Ave. Estate, NJ 01789	No Relation	D	Wells Fargo TOD account Prudential Annuity \$25,000 Cash Bequest	\$41,750	
Name: Sandy Beech Address: 10 Inheritance Ave. Estate, NJ 01789	Stepchild	A	Coin collection 1/2 Residue	\$127,875	
Name: Earl E. Byrd Address: 123 Main Street Taxation, NJ 01234	Step-Grandchild	D	Cash Gift prior to death 1/4 Residue	\$76,687	
Name: Giving to Others Charity Address: 501-C3 Main Street Taxation, NJ 01234	Charity	E	1/4 Residue	\$62,687	

Connect With Us

Call the Inheritance Tax Hotline at (609) 292-5033

Email Inheritance Tax questions to Taxation.NJInheritancetax@treas.nj.gov

[Email](#) your general State tax questions (other than Inheritance Tax)

[Visit](#) a Regional Information Center

This document is designed to provide guidance to taxpayers and is accurate as of the date issued.

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Form L-9 NR
Affidavit of Non-Resident Decedent Requesting
Real Property Tax Waiver(s)

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7/07

L-9 NR

AFFIDAVIT OF NON-RESIDENT DECEDENT REQUESTING REAL PROPERTY TAX WAIVER(S)

**STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
INDIVIDUAL TAX AUDIT BRANCH
TRANSFER INHERITANCE & ESTATE TAX
PO BOX 249
TRENTON, NEW JERSEY 08695-0249**

(609) 292-5033

Do not file this form if you are a surviving spouse or a surviving civil union partner, and the New Jersey real property was owned by you and the decedent as tenants by the entirety. An Inheritance tax waiver is not necessary and will not be issued.

INSTRUCTIONS

Form L-9 NR is an affidavit executed by the executor, administrator, or joint tenant (when an executor or administrator has not been appointed). This form is used to request an inheritance tax waiver for real property located in New Jersey which was held by a non-resident decedent. **This form can be used only when all beneficiaries of the entire estate, no matter where the assets of the estate are located, are Class "A" beneficiaries or charities (N.J.S.A. 54:34-4d). Class "A" beneficiaries include spouse/ civil union partner on or after 2/19/07, children, grandchildren, legally adopted children and their children, step-children (not step-grandchildren), parents, grandparents, and domestic partner on or after 7/10/04.**

If this form is not fully and properly completed and/or it does not have the required attachments, it will be returned.

- Answer all questions.
- Attach a copy of the decedent's death certificate.
- Attach a copy of letters testamentary or letters of administration.
- Attach a copy of the decedent's will, codicils, and any trust agreements.
- Attach a copy of the first two pages of the decedent's last full year's Federal income tax return.
- Attach a copy of the deed for the NJ realty and provide the assessed and market values on the decedent's date of death. If the realty was held by multiple owners, state the names of the owners and their relationship to the decedent.
- List all beneficiaries who shared in the estate either by will, intestacy, trust, or operation of law. Also list all beneficiaries who were recipients of transfers intended to take effect at the decedent's death and transfers made within three years of the decedent's death. State their relationship to the decedent and their interest in the estate.
- In the case of a surviving spouse/civil union partner or domestic partner, submit a copy of the appropriate certificate establishing the relationship.

This form is not a tax waiver and is not to be filed with the County Clerk.

This complete form and attachments should be forwarded to the NJ Division of Taxation, Inheritance and Estate Tax, PO Box 249, Trenton, NJ 08695-0249.

Additional information pertaining to the use of Form L-9 NR may be obtained by calling the Inheritance and Estate Tax section at 609-292-5033.

THIS FORM MAY BE REPRODUCED IN ITS ENTIRETY

Decedent's Name: _____
(Last) (First) (MI)

Decedent's SS No. _____ Date of Death (mm/dd/yy) _____ State of Domicile: _____

THE FOLLOWING QUESTIONS MUST BE ANSWERED:

1. The decedent died ☐ Testate ☐ Intestate
- at _____
(Address)
- _____ on _____
(City) (State) (Date)
- A. The decedent's actual place of residence was: _____
(Address)
- Where he/she lived from _____ to _____
- B. The decedent's voting address was _____
- and he/she last voted in _____
(Year)
- C. The decedent's last Income Tax Return listed his/her address as: _____
- D. The decedent formerly lived in New Jersey at: _____
- but moved to _____ on _____
(Address) (Date)
2. Does the value of the decedent's entire estate, **wherever located**, exceed \$675,000? ☐ Yes ☐ No
- Approximate value: \$ _____
3. Did the decedent own any assets, **located anywhere**, that were jointly owned with someone other than a Class "A" beneficiary? ☐ Yes ☐ No
4. Did the decedent transfer any assets, located anywhere, to someone other than a Class "A" beneficiary during the 3 year period prior to death? ☐ Yes ☐ No If yes, explain _____
5. Did the decedent transfer any asset at any time during his/her lifetime, in which he/she retained the use of the asset for the rest of his/her lifetime? ☐ Yes ☐ No If yes, explain _____
6. Did the decedent own any annuity contract(s) payable on death to someone other than a Class "A" beneficiary? ☐ Yes ☐ No

206		Full Assessed Value for Year of Death	Full Market Value at Date of Death
Description of New Jersey Real Estate			
Street and Number			
Municipality	County		
Lot	Block		
Owner(s) of Record: (If decedent owned a fractional interest state how held and fractional value thereof).			
Amount of Mortgage Balance (if any) \$			
Street and Number			
Municipality	County		
Lot	Block		
Owner(s) of Record: (If decedent owned a fractional interest state how held and fractional value thereof).			
Amount of Mortgage Balance (if any) \$			

RIDERS MAY BE ATTACHED WHERE NECESSARY

Beneficiaries State Full names of all who have an interest in the Estate (vested, contingent, operation of law, transfer, etc.)	Relationship to the Decedent	Interest of Beneficiary in the Estate

Deponent further states the following schedule contains the names of all beneficiaries who predeceased the decedent.

Name	Date of Death	Domicile at Death

Complete and Notarize

Mailing Address Name _____ Phone () _____

To Send Street _____

All Correspondence City _____ State _____ Zip _____

State of: _____ County of: _____

That _____ being duly sworn, has reviewed the information contained in this form and declares to the best of his/her knowledge it is true, correct, and complete. Deponent authorizes the party listed above to act as the estate's representative and to receive the waiver(s) requested herein.

Subscribed and sworn before me

this _____ day of _____, 20_____ Affidavit of: ☐Executor ☐ Administrator ☐ Joint Tenant

(Signature of Notary Public or Attesting Officer)

Signature of Deponent

Form IT-NR
Inheritance Tax Non-Resident Return

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IT-NR

Inheritance Tax
Non-Resident Return
(8-10)



Transfer Inheritance Tax Non-Resident Decedent

New Jersey Division of Taxation
Inheritance and Estate Tax
PO Box 249
Trenton, New Jersey 08695-0249

(609) 292-5033

www.state.nj.us/treasury/taxation

Do not file this form if you are a surviving spouse or a surviving civil union partner, and the New Jersey real property was owned by you and the decedent as tenants by the entirety. An Inheritance tax waiver is not necessary and will not be issued.

Situations where a Non-Resident Inheritance Tax Return must be filed:

1. Non-resident decedent died owning an interest in New Jersey real estate.
2. Non-resident decedent died owning tangible personal property located in New Jersey.

Note: Please read items 2 and 3 below for exceptions.

Situations where a Non-Resident Inheritance Tax Return is not required to be filed:

1. If a non-resident decedent died owning only intangible personal property in New Jersey such as bank accounts, stock, etc and did not own any real estate or tangible personal property in New Jersey, no forms are required to be filed. There is no New Jersey Inheritance Tax. See Question 28 of New Jersey Non-Resident Inheritance Tax frequently asked questions on the Division's website for information on how to close a New Jersey bank account or sell New Jersey stock without a waiver.
2. If a non-resident decedent died owning only New Jersey real estate held as tenants by the entirety between husband and wife or civil union couple (for dates of death after February 18, 2007) and the spouse or civil union partner survived the decedent there is no Inheritance Tax and it is not necessary to file any forms. A tax waiver is not required for real property held as tenants by the entirety.
3. If the entire estate both inside of New Jersey and outside of New Jersey is being inherited by Class "A" beneficiaries, the most common of which are spouse, children, grandchildren (see page 2 for a complete list of Class "A" beneficiaries), there is no need to file the Non-Resident Inheritance Tax Return. Since an Inheritance Tax waiver is needed for the New Jersey real estate, Form L9-NR should be filed to obtain said waiver.

**New Jersey Non-Resident Inheritance Tax Most Frequently Asked
Questions can be found on the Division's Website
(@) <http://www.state.nj.us/treasury/taxation/prntinh.shtml>**

There is no New Jersey Estate Tax for the estates of non-resident decedents.

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**Completed New Jersey Non-Resident Inheritance Tax Returns
and Worksheets can be found on the Division's Website
(@) <http://www.state.nj.us/treasury/taxation/prntinh.shtml>**

INTRODUCTION

NEW JERSEY TRANSFER INHERITANCE TAX - ESTATE TAX

GENERAL

New Jersey has had a Transfer Inheritance Tax since 1892 when a 5% tax was imposed on property transferred from a decedent to a beneficiary. Currently, the law imposes a graduated Transfer Inheritance Tax ranging from 11% to 16% on the transfer of real and personal property with a value of \$500.00 or more to certain beneficiaries. **There is no New Jersey Estate Tax for the estates of non-resident decedents.**

BENEFICIARY CLASSES

The Transfer Inheritance Tax recognizes five beneficiary classes, as follows:

Class “A” - Father, mother, grandparents, spouse/civil union partner (on or after 2/19/07), domestic partner (on or after 7/10/04), child or children of the decedent, adopted child or children of the decedent, issue of any child or legally adopted child of the decedent and step-child but not step-grandchild of the decedent.

Class “B” - Eliminated by statute effective July 1, 1963.

Class “C” - Brother or sister of the decedent, including half brother and half sister, wife/civil union partner (on or after 2/19/07) or widow/surviving civil union partner (on or after 2/19/07) of a son of the decedent, or husband/civil union partner (on or after 2/19/07) or widower/surviving civil union partner (on or after 2/19/07) of a daughter of the decedent.

Class “D” - Every other transferee, distributee or beneficiary who is not included in Classes “A”, “C” or “E”.

Class “E” - The State of New Jersey or any political subdivision thereof, or any educational institution, church, hospital, orphan asylum, public library or Bible and tract society or to, for the use of or in trust for religious, charitable, benevolent, scientific, literary or educational purposes, including any institution instructing the blind in the use of dogs as guides, no part of the net earnings of which inures to the benefit of any private stockholder or other individual or corporation; provided, that the exemption does not extend to transfers of property to such educational institutions and organizations of other states, the District of Columbia, territories and foreign countries which do not grant an equal, and like exemption on transfers of property for the benefit of such institutions and organizations of this State.

NOTES: If any beneficiary is claimed to be the mutually acknowledged child of the decedent, said claim should be set forth in the detailed manner prescribed under N.J.A.C. 18:26-2.6.

For the purposes of the New Jersey Transfer Inheritance Tax an adopted child is accorded the same status as a natural child and, therefore, his relations are treated in the same manner as those of a natural child. (i.e. if the decedent’s adopted son marries/enters into a civil union, his spouse/civil union partner is “the wife/civil union partner of a son of the decedent” and therefore a class “C” beneficiary).

The offspring of a biological parent conceived by the artificial insemination of that parent who is a partner in a civil union is presumed to be the child of the non-biological partner. In the Matter of the Parentage of the Child of Kimberly Robinson, 383 N.J. Super. 165; 890 A.2d 1036 (Ch. Div. 2005) (Non-biological parent of New York registered domestic partnership recognized in New Jersey, presumed to be the biological parent of child conceived by the other partner through artificial insemination where the non-biological partner has "show[n] indicia of commitment to be a spouse and to be a parent to the child.").

A devise of real property to a husband and wife or civil union couple as “tenants by the entirety” provides each with a vested life estate, the remainder being contingent. See N.J.A.C. 18:26-8.12.

The issue of stepchildren ARE Class “D” (NOT Class “A”) beneficiaries.

The following ARE Class “D” (NOT Class “C”) beneficiaries: stepbrother or stepsister of the decedent, husband/wife/civil union partner/domestic partner or widow/widower/surviving civil union partner/surviving domestic partner of a step-child or mutually acknowledged child of the decedent.

The fact that a beneficiary may be considered “nonprofit” by the Internal Revenue Service does not necessarily mean that it qualifies for exemption as a Class “E” beneficiary since the criteria are different.

TAX RATES

Each class of beneficiary has its own separate tax rate. See the Rate Schedule below:

CLASS “A” AND “E” BENEFICIARIES AND TRANSFEREES ARE ENTIRELY EXEMPT

CLASS “C” BENEFICIARIES AND TRANSFEREES

First	\$ 25,000	Exempt
Next	1,075,000	11%
Next	300,000	13%
Next	300,000	14%
Over	1,700,000	16%

CLASS “D” BENEFICIARIES AND TRANSFEREES

First	\$ 700,000	15%
Over	700,000	16%

EXEMPTIONS

- The transfer of real property in this State held by a husband and wife/civil union couple as “tenants by the entirety” to the surviving spouse/civil union partner is not taxable for New Jersey Inheritance Tax purposes.
- The transfer of intangible personal property such as stocks, bonds, corporate securities, bank deposits and mortgages owned by a nonresident decedent is not subject to the New Jersey Inheritance Tax. However, it is used to compute the New Jersey resident tax on the appropriate worksheet.
- Any sum recovered under the New Jersey Death Act as compensation for wrongful death of a decedent is not subject to the New Jersey Inheritance Tax except as provided below:
 - Any sum recovered under the New Jersey Death Act representing damages sustained by a decedent between the date of injury and date of 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.

- b. Where an action is instituted under the New Jersey Death Act and terminates through the settlement by a compromise payment without designating the amount to be paid under each count, the amount which must be included in the inheritance tax return is an amount, to the extent recovered, which is equal to specific expenses related to the injury. These expenses are similar to those mentioned in section a. above and include funeral expenses, hospitalization and medical expenses, and other expenses incident to the injury. Any amount which is recovered in excess of these expenses is considered to be exempt from the tax.
4. The proceeds of any contract of insurance insuring the life of a resident or nonresident decedent paid or payable, by reason of the death of such decedent, to one or more named beneficiaries other than the estate, executor or administrator of such decedent are exempt for New Jersey Inheritance Tax purposes.
5. 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 by reason of the death of such decedent, is exempt from the New Jersey Inheritance Tax irrespective of whether such beneficiary or beneficiaries have a present, future, vested, contingent or defeasible interest in such trust.
6. The transfer of life insurance proceeds insuring the life of a resident or nonresident decedent, paid or payable by reason of the death of such decedent to a trustee or trustees of a trust created by such decedent during his lifetime for the benefit of one or more beneficiaries irrespective of whether such beneficiaries have a present, future, vested, contingent or defeasible interest in such trust, is exempt from the New Jersey Inheritance Tax.
7. 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.
8. Any amount recovered (under the Federal Liability for Injuries to Employees Act) for injuries to a decedent by the personal representative for the benefit of the classes of beneficiaries designated in that Statute, whether for the pecuniary loss sustained by such beneficiaries as a result of the wrongful death of the decedent or for the loss and suffering by the decedent while he lived, or both is not subject to the Inheritance Tax.

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

This exemption does not entitle any person to a refund of any tax heretofore paid on the transfer of property of the nature aforementioned; and does not extend to that part of the estate of

any decedent composed of property, when such property was received by the decedent before death. 213

9. The proceeds of any pension, annuity, retirement allowance, return of contributions or benefit payable by the Government of the United States pursuant to the Civil Service Retirement Act, Retired Serviceman's Family Protection Plan and the Survivor Benefit Plan to a beneficiary or beneficiaries other than the estate or the executor or administrator of a decedent are exempt.
10. All payments at death under the Teachers Pension and Annuity Fund, the Public Employees' Retirement System for New Jersey, and the Police and Firemen's Retirement System of New Jersey, and such other State, county and municipal systems as may have a tax exemption clause as broad as that of the three major State systems aforementioned, whether such payments either before or after retirement are made on death to the employee's estate or to his specifically designated beneficiary, are exempt from the New Jersey Inheritance Tax.

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

The death benefits paid by the Social Security Administration or railroad Retirement Board to the spouse of a decedent are also exempt. For purposes of filing a return these amounts need not be reported nor are they to be deducted from the amount claimed as a deduction for funeral expenses.

In all other cases the death benefit involved should either be reported as an asset of the estate or deducted from the amount claimed for funeral expenses.

11. Other pensions. An exemption is provided for payments from any pension, annuity, retirement allowance or return of contributions, which is a direct result of the decedent's employment under a qualified plan as defined by section 401(a), (b), and (c) or 2039(c) of the Internal Revenue Code, which is payable to a surviving spouse or domestic partner.
12. The amount payable by reason of medical expenses incurred as a result of personal injury to the decedent should be reflected by reducing the amount claimed for medical expenses as a result of the accident.

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

The amount paid at death to any person under the essential services benefits section is exempt from taxation.

The claim for funeral expense is to be reduced by the amount paid under the funeral expenses benefits section of the law.

WHERE TO FILE

All returns should be sent to: New Jersey Division of Taxation, Inheritance and Estate Tax, PO Box 249, Trenton, New Jersey 08695-0249.

WHEN TAX RETURNS ARE DUE

A Transfer Inheritance Tax Return must be filed and the tax paid on the transfer of real and personal property within eight months after the death of a nonresident decedent. No tax is imposed on non-resident decedents for real and tangible personal property located outside of New Jersey and intangible personal property wherever situated. However, even though these items are not taxed they are used in the formula for computing the nonresident tax (see the "N.J. Resident Tax" line on each tax computation worksheet).

The tax is a lien on all New Jersey real property for fifteen years unless paid sooner or secured by an acceptable bond. Interest accrues on unpaid taxes at the rate of 10% per annum.

WAIVERS

A waiver is required for New Jersey real estate owned by a nonresident decedent except if the real estate is owned by a husband and wife/civil union couple as "tenants by the entirety".

A membership certificate or stock in a cooperative housing corporation is considered intangible personal property and, therefore, is not subject to tax or waiver requirements in the estate of a non-resident decedent.

Waivers are not required for automobiles, bank accounts, stocks, household goods, personal effects, accrued wages or mortgages, but these items must be reported in the return filed.

AMENDMENT TO ORIGINAL RETURN

Any assets and/or liabilities not originally disclosed in the original return may be filed by notarized letter and submitted to the Branch. The letter should include a detailed description of the asset that is now being reported or verification of a claim that is now being made. Also advise the reason that the item was not reported in the original return.

ESTATE TAX

There is no New Jersey Estate Tax for the estate of non-resident decedents.

METHODS OF FILING

Four methods may be used to compute the Inheritance Tax on the New Jersey Non-Resident Return. An election once made may not be changed and is irrevocable.

- **METHOD 1 – SIMPLIFIED TAX COMPUTATION**
- **METHOD 2 - RATIO TAX USING NET ESTATE**
- **METHOD 3 - RATIO TAX USING GROSS ESTATE**
- **METHOD 4 - DIRECT TAX ON SPECIFIC DEVISE, JOINTLY OWNED
AND TRANSFERS OF NEW JERSEY REAL AND TANGIBLE PERSONAL PROPERTY**
- **METHOD 1 – SIMPLIFIED TAX COMPUTATION**

This is an optional method. It can be used instead of any of the above methods. Method 1 requires the least amount of paperwork. Page 1 of the Inheritance Tax Return and the appropriate schedule are the only items required to be completed. The tax is computed by multiplying the total of the New Jersey assets by a 15% tax rate. Complete only the schedule which applies to the asset being reported and answer the first 4 questions of Schedule “E”.

Use worksheet 1. See example on pages 14 and 16.

In the event all beneficiaries are Class “A” (see page 2 for a list of Class “A” beneficiaries) Form L9-NR should be used as Class “A” beneficiaries are not subject to tax.

- **METHOD 2 - RATIO TAX USING NET ESTATE**

This method requires that all of the decedent’s assets be reported on the various schedules. This includes assets in New Jersey as well as those located in other states or countries. A deduction is permitted for all qualified debts and expenses of the estate (see back of Schedule “C” for allowable deductions). A tax is first computed on the entire net estate. The tax due New Jersey is then determined by multiplying the tax so computed by a fraction the numerator of which is the adjusted value of the New Jersey property and the denominator of which is the adjusted value of the entire net estate. This method requires that all of the schedules be completed (Schedules A – F).

Use worksheet 2. See example on pages 14 and 17.

➤ **METHOD 3 - RATIO TAX USING GROSS ESTATE (FLAT TAX METHOD)**

This method of filing is easier and quicker than Method 2 since it requires that only a total number be given for the decedent's assets wherever located. All assets do not need to be listed on the various schedules as required under Method 2. Mortgage or liens due as of the decedent's date of death are the only allowable deductions. Only page 1 and Schedules A, E, F and sometimes B (1) are required to be completed. Minimal information is reported on each. The tax computed using this method will in a large number of instances approximate the tax computed under Method 2. **THIS METHOD REQUIRES THE ENTRY OF THE TOTAL ESTATE EVERYWHERE ON PAGE 1, LINES 5 AND 9 BEFORE COMPLETING THE WORKSHEET.**

Use worksheet 3. See example on pages 14 and 18.

Note: The filing of a separate flat tax affidavit is not required since the requirements for filing same are met by completing Page 1 and Schedules A,E,F and B(1) of Form IT-NR.

➤ **METHOD 4 - DIRECT TAX – SPECIFIC DEVISE, JOINTLY OWNED AND TRANSFERS OF NEW JERSEY REAL AND TANGIBLE PERSONAL PROPERTY**

This method must be used if any of the following situations apply:

- A. When real estate or tangible personal property located in New Jersey is specifically devised by the decedent's Last Will and Testament or Trust Instrument. This includes the right to use the property for life (life estate). A specific devise is a devise of specifically identified property such as "my home at 4 Tioga Street, Maplewood, New Jersey".
- B. When the New Jersey real estate or tangible personal property is held or registered in the name of the decedent and another individual as Joint Tenants with the Right of Survivorship.
- C. When the real estate or tangible personal property located in New Jersey is transferred during the 3 year period prior to the decedent's date of death and the decedent did not receive the total (actual) fair market value of the property in money or money's worth, or when the New Jersey real or tangible personal property is transferred but the decedent retained a right in the property for his/her lifetime.

Examples of tangible personal property are household furniture, automobiles, boats, artwork, jewelry and other items located in New Jersey either permanently or for an indefinite period of time.

This method only requires the filing of page 1 and Schedule A and F and sometimes Schedule B (1) and E.

Use worksheet 4. See example on pages 14 and 19.

SEE PAGES 14 THRU 19 FOR EXAMPLES OF THE ABOVE METHODS.

IMPORTANT REMINDERS

ITEMS TO SUBMIT WITH THE RETURN

- A. If you are filing a return using Method 1, submit items 1, 2, and 6, 7 (if appropriate).
 - B. If you are filing a return using Method 4, submit items 1, 2, 3, 6 and 7 (if appropriate).
 - C. If you are filing a return using Method 2 or 3, submit all of the items listed.
 - D. If you have more than one New Jersey taxable asset and are filing a return using either Method 4 or 1, submit items 1, 2, 3, 6 and 7 (if appropriate). If using a combination of Methods 4 or 1 along with Methods 2 or 3, submit all of the items on the list.
-
- 1. If the decedent died testate you must submit a legible copy of the Last Will and Testament, all codicils thereto and any separate writings.
 - 2. Copy of the decedent's death certificate.
 - 3. Copies of all trust agreements created by the decedent.
 - 4. Copy of the decedent's last full year's federal income tax return.
 - 5. Copy of letters testamentary or of administration.
 - 6. Copy of Form Hud-1 (closing statement) if the New Jersey real estate was sold after the decedent's death.
 - 7. Copy of the deed to the New Jersey real estate, but only if the real estate was held in the names of the decedent with others or transferred to another within 3 years prior to decedent's date of death.

PAYMENTS ON ACCOUNT

- 1. Payments on account may be made to avoid the accrual of interest. Form IT-EP is used for this purpose. It may be found on Taxation's website.
- 2. It is suggested that payments be made by certified check to avoid a possible delay in the issuance of waivers.
- 3. All checks should be made payable to New Jersey Inheritance Tax and sent to New Jersey Division of Taxation, Inheritance and Estate Tax, 50 Barrack Street, PO Box 249, Trenton, NJ, 08695-0249.

Note: All returns and forms must be signed, notarized and contain the decedent's social security number. All correspondence must contain the decedent's name and social security number.

WORKSHEET 1**METHOD 1****SIMPLIFIED TAX COMPUTATION**

Decedent's Name

Decedent's SS NO

This is an optional method of computing the tax. It is used when the representatives of the estate choose not to file the information required for Methods 2, 3 and 4 and therefore choose not to compute the tax using Methods 2, 3 and 4. This method allows the representative to pay tax on the gross value of the New Jersey real and tangible personal property at a 15% rate and file a minimal amount of paperwork. If the real estate is subject to a mortgage, the balance due on the decedent's date of death is deducted on Schedule "A".

IMPORTANT INSTRUCTIONS

1. If the decedent owned real estate located in New Jersey on his/her date of death complete Schedule "A". Include New Jersey real estate only.
2. If the decedent owned tangible personal property located in New Jersey on his/her date of death complete Schedule "B(1)". Include New Jersey tangible personal property only. Examples of tangibles personal property are household furniture, automobiles, boats, artwork, jewelry and other items located in New Jersey either permanently or for an indefinite period of time.
3. If the decedent, during the 3 year period prior to his/her date of death, transferred New Jersey real estate or tangible personal property without receiving the total (actual) fair market value of the property transferred or if the decedent transferred New Jersey real or tangible personal property but retained a right in the property for his/her lifetime then complete the bottom section of Schedule "E".

TAX COMPUTATION WORKSHEET

1. Enter total from Schedule A.....	1	
2. Enter total from Schedule B (1).....	2	
3. Enter total from Schedule E.....	3	
4. Total of above lines 1, 2 and 3.....	4	
5. Multiply line 4 by 15%.....	5	x 15%
6. New Jersey Non-Resident Inheritance Tax..... (Insert this number on IT-NR page 1 line 11)	6	

WORKSHEET 2

METHOD 2

RATIO TAX USING NET ESTATE

Decedent's Name Decedent's SS NO

For use when no amount of the New Jersey taxable property is specifically devised or jointly owned (joint tenants with the right of survivorship), or transferred to one or more individuals within three (3) years of the decedent's death, or to take effect at or after the decedent's date of death. If the New Jersey taxable property or any amount thereof is specifically devised or jointly owned (joint tenants with the right of survivorship), or transferred as indicated above, that amount is not subject to the ratio tax but rather is taxed directly to the devisee(s) or surviving joint tenant(s) at the resident tax rates. If any of these situations apply see instructions for Method 4 or optional Method 1.

TAX COMPUTATION WORKSHEET

1. Gross value of New Jersey real estate and tangible personal property..... [From Schedule "A" and/or "B(1)"]	1	
2. Total gross estate wherever situate (IT-NR, page 1, Line 5).....	2	
3. Gross to gross ratio (Line 1 divided by Line 2).....	3	
4. Total of administration expense, counsel fees and commissions..... (From <u>subtotal line</u> in Schedule "C")	4	
5. Deduction from gross value New Jersey taxable property..... (Line 4 multiplied by Line 3)	5	
6. Net New Jersey taxable property (Line 1 minus Line 5).....	6	
7. Net estate wherever situate (IT-NR, page 1, Line 7).....	7	
8. Ratio (Line 6 divided by Line 7) (not to exceed 100%).....	8	
9. New Jersey resident tax on amount reported on Line 7 (See page 2 of the instructions for classes of beneficiaries and tax rates).....	9	
10. New Jersey nonresident ratio tax (Line 8 multiplied by Line 9)..... (Insert this number on IT-NR page 1, line 11)	10	

NOTE

In the event that any amount of the estate is contingent, the ratio calculated on Line 8 above should be applied to the resident compromise tax to compute the nonresident compromise tax due.

All decimals are to be rounded to four places.

WORKSHEET 3

METHOD 3

RATIO TAX USING GROSS ESTATE

Decedent's Name Decedent's SS NO

For use when no amount of the New Jersey taxable property is specifically devised or jointly owned (joint tenants with right of survivorship), or transferred to one or more individuals within three (3) years of the decedent's death, or to take effect at or after the decedent's date of death.

If the New Jersey taxable property or any amount thereof is specifically devised or jointly owned (joint tenants with the right of survivorship), or transferred as indicated above, that amount is not subject to the ratio tax but rather is taxed directly to the devisee(s) or surviving joint tenant(s) at the resident tax rates. If any of these situations apply see the instructions for Method 4 or optional Method 1.

TAX COMPUTATION WORKSHEET

1. Gross value of New Jersey real estate and tangible personal property... 1
[from Schedule "A" and/or B (1)].
2. Value of gross estate both in and outside of New Jersey 2
(From IT-NR, Page 1, Line 5)
3. Gross to gross ratio (Line 1 divided by Line 2) 3
4. New Jersey resident tax on amount reported on Line 2 above..... 4
(See page 2 of the instructions for classes of beneficiaries and tax rates.)
5. Ratio tax (Line 3 multiplied by Line 4) 5
(Insert this number on IT-NR page 1, Line 11)

NOTE

In the event that any amount of the estate is contingent, the ratio calculated on Line 3 above should be applied to the resident compromise tax to compute the nonresident compromise tax due.

All decimals are to be rounded to four places.

WORKSHEET 4**METHOD 4****DIRECT TAX WORKSHEET**Decedent's Name Decedent's SS NO

This method is required to be used if the decedent either made a specific devise of New Jersey property, or owned New Jersey property with another as Joint Tenants with the Right of Survivorship, or transferred New Jersey property to another during the 3 year period prior to the decedent's date of death without receiving the total (actual) fair market value of the property transferred, or where the decedent transferred New Jersey real or tangible personal property but retained a right in the property for his/her lifetime. For a more complete description of the above situations see those given on page 6 for Method 4.

IMPORTANT INSTRUCTIONS

1. If the decedent made a specific devise of New Jersey real estate complete Schedule "A". Only include the New Jersey real estate. If there was a specific bequest of tangible personal property located in New Jersey complete Schedule B(1). Only include the New Jersey tangible personal property.
2. If the decedent owned New Jersey real estate or New Jersey tangible personal property as Joint Tenants with the Right of Survivorship complete Schedule A or Schedule B (1) or both, if both situations apply. Only include New Jersey real estate or New Jersey tangible personal property. Do not include any other assets.
3. If the decedent transferred New Jersey real estate or New Jersey tangible personal property during the 3 year period prior to his/her date of death without receiving the total (actual) fair market value of the property or if the decedent transferred New Jersey real estate or tangible personal property but retained a right in the property for his/her lifetime complete Schedule "E".

TAX COMPUTATION WORKSHEET

1. Enter total from Schedule A	1
2. Enter total from Schedule B (1)	2
3. Enter total from Schedule E	3
4. Total of above lines 1, 2 and 3.....	4
5. New Jersey Resident Tax on amount reported on line 4..... (See page 2 of the instructions for classes of beneficiaries and tax rates)	5
6. New Jersey Non-Resident Inheritance Tax - Same as line 5..... (Insert this number on IT-NR page 1, line 11).	6

Decedent's Name Decedent's SS NO

For use when there are two (2) or more New Jersey taxable assets and at least one of them is specifically devised or jointly owned (joint tenants with right of survivorship), or transferred to one or more individuals within three (3) years of the decedent's death, or to take effect at or after the decedent's date of death and the other New Jersey taxable assets are held in the decedent's name alone or as tenants in common with another individual.

If the New Jersey taxable property or any amount thereof is specifically devised or jointly owned (joint tenants with right of survivorship), or transferred as indicated above, that amount is not subject to the ratio tax but rather is taxed directly to the devisee(s) or surviving joint tenant(s) at the resident tax rates.

TAX COMPUTATION WORKSHEET

1. Direct tax on New Jersey taxable property specifically devised, jointly owned, or transferred as indicated above. Use worksheet 4, page 11 to compute the tax for this line..... 1
2. Value of New Jersey taxable property not specifically devised, jointly owned, or transferred as indicated above..... 2
3. Value of gross estate both in and outside of New Jersey (not including the New Jersey property specifically devised, jointly owned, or transferred as indicated above) (IT-NR, Page 1, Line 5 less New Jersey property described herein from worksheet 4, line 4)..... 3
4. Ratio (Line 2 divided by Line 3) 4
5. Total of administration expenses, counsel fees, and commissions (from **subtotal line** in Schedule "C")..... 5
6. Amount of Line 5 to be deducted from New Jersey taxable property not specifically devised, jointly owned, or transferred as indicated above. (Line 4 multiplied by Line 5) 6
7. Net New Jersey property subject to the ratio tax (Line 2 minus Line 6) 7
8. Net estate wherever situate (not including the New Jersey property specifically devised, jointly owned, or transferred as indicated above) (IT-NR, Page 1, Line 7, less the New Jersey property described herein from worksheet 4, line 4)..... 8
9. Ratio (Line 7 divided by Line 8) (not to exceed 100%)..... 9
10. New Jersey resident tax on amount reported on Line 8 above (See page 2 of the instructions for classes of beneficiaries and tax rates) 10
11. New Jersey Non-Resident Ratio tax (Line 9 multiplied by Line 10)..... 11
12. Total New Jersey Non-Resident direct tax and ratio tax (Line 1 plus Line 11) (Insert this amount on IT-NR page 1, Line 11)..... 12

NOTE

In the event that any amount of the estate is contingent, the ratio calculated on Line 9 above should be applied to the resident compromise tax to compute the nonresident compromise tax due.

All decimals are to be rounded to four places.

WORKSHEET 6 COMBINATION DIRECT TAX AND RATIO TAX USING GROSS ESTATE WORKSHEET

Decedent's Name Decedent's SS NO

For use when there are two (2) or more New Jersey taxable assets and at least one of them is specifically devised or jointly owned (joint tenants with right of survivorship), or transferred to one or more individuals within three (3) years of the decedent's death, or to take effect at or after the decedent's date of death and the other New Jersey taxable assets are held in the decedent's name alone or as tenants in common with another individual.

If the New Jersey taxable property or any amount thereof is specifically devised or jointly owned (joint tenants with right of survivorship), or transferred as indicated above, that amount is not subject to the ratio tax but rather is taxed directly to the devisee(s) or surviving joint tenant(s) at the resident tax rates.

TAX COMPUTATION WORKSHEET

1. Direct tax on New Jersey taxable property specifically devised, jointly owned, or transferred as indicated above. Use worksheet 4, page 11 to compute the tax for this line..... 1
2. Value of New Jersey taxable property not specifically devised, jointly owned, or transferred as indicated above..... 2
3. Value of gross estate both in and outside of New Jersey (not including the New Jersey property specifically devised, jointly owned, or transferred as indicated above) (IT-NR Page 1, Line 5 less New Jersey property described herein)..... 3
4. Ratio (Line 2 divided by Line 3) 4
5. New Jersey resident tax on amount reported on Line 3 above (see page 2 of the instructions for classes of beneficiaries and tax rates)... 5
6. New Jersey Non-Resident ratio tax on the amount reported on line 3. (Line 4 multiplied by Line 5) 6
7. Total New Jersey direct tax and ratio tax (Line 1 plus Line 6) (Insert this amount on IT-NR Page 1, Line 11)..... 7

NOTE

In the event that any amount of the estate is contingent, the ratio calculated on Line 4 above should be applied to the resident compromise tax to compute the nonresident compromise tax due.

All decimals are to be rounded to four places.

Transfer Inheritance Tax
PO Box 249
Trenton, NJ 08695-0249

STATE OF NEW JERSEY
Inheritance Tax Return
NON-RESIDENT DECEDENT

(Instructions on reverse side)

(67) For Division Use Only

Decedent's Name _____ Decedent's S.S. No. _____ / _____ / _____
(Last) (First) (Middle)

Date of Death (mm/dd/yy) _____ / _____ / _____ State of Residence _____ Testate ☐ Intestate ☐

Mailing Address
to send all
correspondence

Name _____ Phone () _____

Street _____

City _____ State _____ Zip Code _____

Do you expect to file a Federal Estate Tax Return? ☐ Yes ☐ No

1. Schedule A Real Property	1.		
2. Schedule B Closely Held "Businesses"	2.		
3. Schedule B(1)	3.		
4. Schedule E Transfers	4.		
5. Total Estate Wherever Situate (Add Lines 1 thru 4)	5.		
6. Schedule C Deductions	6.		
7. Net Estate Wherever Situate (Line 5, minus Line 6)	7.		
8. Contingent Amount Included in Line 7 (See instructions on reverse side)	8.		
9. Balance of Estate (Line 7, minus Line 8)	9.		
10. Method Used for Tax Calculation: ☐ Method 1 ☐ Method 2 ☐ Method 3 ☐ Method 4			
11. Tax Due Based on Calculation Method (from attached worksheet)	11.		
12. Compromise Tax Due on Line 8 Amount (See instructions on reverse side)	12.		
13. Contingent Tax (See instructions on reverse side)	13.		
14. Total Tax Due (Total - Line 11 thru Line 13)	14.		
15. Interest Due (If applicable) (See instructions on reverse side)	15.		
16. Total Amount Due (Line 14, plus Line 15)	16.		
17. Payment on Account (If applicable)	17.		
18. If Line 17 (Payments) is LESS THAN Line 16, Enter BALANCE DUE - PAY WITH FORM NR-PMT →	18.		
19. If Line 17 (Payments) is MORE THAN Line 16 Enter REFUND AMOUNT →	19.		

Deponent says, under penalty of perjury, "I declare that I have examined this return and all accompanying schedules and to the best of my knowledge and belief, it is true, correct and complete." I hereby authorize the party(s) set forth above to act as the estate's representative, to receive confidential information, and to make presentations on behalf of the estate.

Subscribed and sworn before me

this _____ day of _____, _____.

(Executor - Administrator - Heir-at-law)

Address: _____

Official Title (Notarized)

THIS FORM MAY BE REPRODUCED

IT-NR - Page 1

Lines 8, 12 and 13

In the case of a transfer or transfers made subject to a contingency or condition which renders a definite determination of the Transfer Inheritance Tax due impossible, the Division will suggest a compromise of the tax based upon immediate payment and final disposition of the tax. N.J.A.C. 18:26-2.14, N.J.S.A. 54:36-6 AND 54:36-5.

Therefore, enter on Line 8, the amount of the estate that is "Contingent".

In the event you wish to compute a compromise for the Division's review, you should include a rider setting forth full computations and details and enter the proposed amount on Line 12. Following this procedure may speed the auditing of the decedent's return.

Be advised that where all or any portion of the contingent amount has vested in a beneficiary by reason of the happening of any contingency event, full details should be set forth on a rider, the tax computed on a rider and entered on Line 13.

Line 15

Interest accrues at the rate of 10% per annum on any tax due or portion thereof not paid within eight months of the decedent's death.

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, shall bear interest at the rate of 10% per annum.

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.

Line 17

Payments on account may be made at any time to avoid further accrual of interest on the amount so paid. Any overpayment will be refunded upon determination of the amount actually payable provided that such determination is made within three years of the date of the actual payment. Make checks payable to: NJ Inheritance and Estate Tax, PO Box 249, Trenton, NJ 08695-0249.

Line 18

When making a payment with the return, complete form NR-PMT and attach check.

Examples of Interest Computations

Date of Death 5-28-90
Interest Date (eight months) 1-28-91

Tax Assessed	\$7,120.48
Interest @ 10% per annum from 1-28-91 to 9-19-91 ($\$7,120.48 \times 10\% \times 234/365$)	456.49
Total	7,576.97
Payment on Account (9-19-91)	(7,120.48)
Balance Due (plus interest @ 10% per annum from 9-19-91 to date of final payment)	456.49

Date of Death 8-29-90
Interest Date (eight months) 4-29-91

Tax Assessed	\$68,389.70
Payment on Account (4-19-91)	(16,974.56)
Balance	51,415.14
Payment on Account (4-28-91)	(31,927.02)
Balance	19,488.12
Interest @ 10% per annum from 4-29-91 to 5-10-91 ($\$19,488.12 \times 10\% \times 11/365$)	58.73
Total	19,546.85
Payment on Account (5-10-91)	(27,048.67)
Overpayment (to be refunded)	7,501.82

NR-PMT (8-10)
226
Transfer Inheritance Tax
PO Box 249
Trenton, NJ 08695-0249

STATE OF NEW JERSEY
DIVISION OF TAXATION
INHERITANCE AND ESTATE TAX

For Division Use Only

Non-Resident Inheritance Tax Payment

Decedent's Name _____
(Last) (First) (Middle)

Decedent's S.S. No. ____/____/____

Date of Death (mm/dd/yy) ____/____/____ State of Residence _____

AMOUNT PAID WITH RETURN (From Line 18)

(Code 67) 1. Non-Resident Inheritance Tax (total of all checks) \$ _____

2. Total Amount Remitted with this Form \$ _____

Payments on account may be made at any time to avoid further accrual of interest on the amount so paid. All applications for the refund of an overpayment must be made in writing within the three year statutory period in accordance with and in the manner set forth in N.J.A.C. 18:26-3A.12 (Estate Tax) and N.J.A.C. 18:26-10.12 (Inheritance Tax).

**Make checks payable to "NJ Inheritance and Estate Tax", PO Box 249, Trenton, NJ 08695-0249
(include decedent's name and social security number on check)**

ATTACH CHECKS HERE

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Decedent's Social Security Number

Method 1 or 4, insert this total on page 1, lines 1, 5 and 9

Method 2, insert this total on page 1, line 1

Method 3, do not insert on page 1

(If additional space is required, attach riders of the same size)

INSTRUCTIONS FOR SCHEDULE "A"

Real property in New Jersey should be described by the name of the town or city and county wherein said property is located, and by lot and block number and street number, if any.

- Explain how any fractional ownership in realty was derived. Indicate also whether held as tenants in common, as joint tenants or by entireties.
- Submit verification of the balance at the decedent's date of death of any mortgage on New Jersey real estate.
- Submit a copy of any appraisal, contract of sale, or closing statement.

(See Instructions on reverse side)

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INSTRUCTIONS FOR SCHEDULE "B"

GENERAL

If the taxpayer had any interest in a closely held corporation, partnership, joint venture or sole proprietorship, the following information is required (in each instance):

1. A detailed balance sheet and profit and loss statement, revised to reflect the market value of the assets thereof as distinguished from the net book value, as of the decedent's date of death, or as near thereto as the Director may deem acceptable.
2. For the five year period preceding the decedent's date of death:
 - A. Detailed balance sheets.
 - B. Detailed profit and loss statements.
3. The nature of the business.
4. Describe and state the assessed and market value of any real property.
5. Set forth your basis for determining the clear market value as reported.

CLOSELY HELD CORPORATIONS

If the decedent had any interest in a closely held corporation, submit (in addition to the general information required above):

1. For the five year period preceding the decedent's date of death:
 - A. A listing of salaries paid to officers.
 - B. A listing of dividends paid, together with the name(s) of the payees.
2. Copy/copies of any stock purchase or option agreement to which the decedent was a party as of the date of death.
3. Copy/copies of any insurance policy/policies on the decedent's life payable to the corporation as beneficiary together with a statement of the benefits payable thereunder.
4. The number of shares of stock of all classes issued and outstanding and the par value thereof.
5. List of stockholders setting forth the number of shares held by each.

PARTNERSHIPS OR JOINT VENTURES

If the decedent had any interest in a partnership or joint venture, submit (in addition to the general information required above):

1. Copy of the partnership agreement.
2. Copy/copies of any mutual purchase agreement(s) to which the decedent was a party at the date of death.
3. Copy/copies of any insurance policy/policies on the decedent's life payable to the surviving partners as beneficiary together with a statement of the benefits payable thereunder.

SOLE PROPRIETORSHIPS

If the decedent had any interest in a sole proprietorship, submit (in addition to the general information required above):

1. If any of the sole proprietorship's assets are listed elsewhere on this return, (i.e. Schedule "A"), make full disclosure.

SCHEDULE "B (1)" ALL OTHER PERSONAL PROPERTY
NON-RESIDENT DECEDENT
(See Instructions on reverse side)

Decedent's Name		/ / Decedent's Social Security Number
All Other Personal Property Owned Individually or Jointly; Indicate the Manner of Registration	Market Value at Date of Death	This Column for Division Use
1.		
Method 1 or 4, insert this total on page 1, lines 3, 5 and 9		
Method 2, insert this total on page 1, line 3		
Method 3, do not insert on page 1		

INSTRUCTIONS FOR SCHEDULE "B (1)"

List all tangible and intangible personal property (excluding that on Schedule B) wherever situated.

This schedule must disclose not only all other personal property owned individually by the decedent but also all other personal property standing in joint names (such as United States Savings Bonds, bank accounts, shares of stock, etc.) which may be claimed by another or others as survivors. The deceased joint tenant is deemed to have been the absolute owner of the property and the survivor/survivors are presumed to have received a devise or bequest of the whole and not a part of the property. This presumption can be rebutted to the extent that the survivor can prove contributions out of funds separate and apart from those that originated in the decedent.

This schedule must list all other intangible personal property such as, but not limited to, United States Savings Bonds; treasury certificates; cash on hand; cash in the bank; deposits in Federal or State Credit Unions; mutual funds; bonds and mortgages; promissory notes; claims; accounts receivables; corporate bonds; corporate stocks; accrued interest; dividends; salaries or wages; insurance payable to the estate or its representatives; interest in any undistributed estate or income from any property held in trust under the will or agreement of another.

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(If additional space is required, attach riders of the same size)

INSTRUCTIONS FOR SCHEDULE “C”

If any notes, brokerage accounts or other claims are secured by collateral, describe the collateral pledged, with its value as of the date of death of the decedent and state whether or not said collateral is included among the assets disclosed in Schedule B or B(1). If collateral is not pledged, state after each loan “No collateral pledged”.

NOTE: No debt or claim is to be listed in this schedule unless still owing and unpaid at the time of death and unless such debt or claim is to be paid out of the assets of the estate.

(EXAMPLE: That portion of medical bills paid or reimbursed by Medicare or other medical insurance should not be claimed on this schedule).

Contested claims must be explained in detail. Do not list any taxes, either real, personal or income, chargeable for any period subsequent to date of death.

The estate agrees to advise the Division if the amount actually paid in settlement of any fee, commission or debt is greater or less than the estimated amount allowed and further agrees to the correction of the assessment, if necessary.

For mortgages see instructions for Schedule “A”.

Executor Commissions: See N.J.A.C. 18:26-7.10 or questions 25, 26 and 27 New Jersey Non-Resident Inheritance Tax Most Frequently Asked Questions or Taxation’s website for guidelines on how to compute same.

Examples of Allowable Deductions

FUNERAL EXPENSES:

Cemetery Plot (immediate family)
 Funeral Luncheon
 Flowers
 Minister/Rabbi/Priest/Imam
 Monument/Lettering
 Funeral Costs
 Acknowledgments

Cost on recovery and/or discovery of assts

Realty commissions in accordance with N.J.A.C. 18:26-7.12
 Storage of property if delivery to legatee not possible within reasonable time

ADMINISTRATION EXPENSES:

Appraisal of real estate
 Appraisal of personal effects
 Surrogate’s fees
 Probate expenses
 Fee to notify creditors
 Death certificates
 Telephone tolls
 Cost of Executor’s or Administrator’s Bond
 Collection costs
 Court costs
 Cost on recovery and/or discovery of assets

DEBTS OF DECEDENT OWING and UNPAID AT TIME OF DEATH:

Personal accounts
 Judgments
 Federal income and gift taxes
 Real estate mortgage:
 (a) Interest accrued before death, deducted in Schedule C
 (b) Principal offset in Schedule A
 Charitable pledges
 State, county and local taxes accrued before death
 Unpaid Inheritance Tax on interrelated estate
 Transfer Taxes paid to other states
 Debts on property located outside of New Jersey

Examples of Non-Allowable Deductions

Contingent liabilities

Storage expense

Mortgage, taxes and accrued interest on tenants by entirety property

Litigated and disputed claims

Debts paid by insurance

State, county and local taxes accruing after date of death

Medical expenses paid prior to death

New Jersey Transfer Inheritance Tax

Liabilities of corporation of which decedent was a shareholder

Real estate brokers commissions, except if real property sold during administration of estate

Real estate and property maintenance costs

Federal Estate Tax

Decedent's Name		/ Decedent's Social Security Number
Details of Real and Tangible Personal Property subject to the jurisdiction of the State of New Jersey. CONSENTS TO TRANSFER WILL BE GRANTED ONLY ON REAL ESTATE INCLUDED IN THIS SCHEDULE.		
1. List below all New Jersey realty owned by decedent. 2. Also list all tangible goods, wares and merchandise in New Jersey. (Note: Waivers are not required to transfer any intangibles such as bank accounts, mortgages, or bonds and stocks of New Jersey corporations.)	Market Value of Decedent's Equity	This Column for Division Use

**SCHEDULE "E" TRANSFERS
NON-RESIDENT DECEDENT**

Decedent's Name

Decedent's Social Security Number

(ALL QUESTIONS MUST BE ANSWERED)

1. Did decedent, within three years of death, transfer property, valued at \$500.00 or more, without receiving full financial consideration therefor? ☐ Yes ☐ No
2. Did decedent, at any time, transfer property, reserving (in whole or in part) the use, possession, income, or enjoyment of such property? ☐ Yes ☐ No
3. Did decedent, at any time, transfer property on terms requiring payment of income to decedent from a source other than such property? ☐ Yes ☐ No
4. Did decedent, at any time, transfer property, the beneficial enjoyment of which was subject to change because of a reserved power to alter, amend, or revoke, or which could revert to decedent under terms of transfer or by operation of law? ☐ Yes ☐ No
If answer to any of above questions is "yes", set forth a description of property transferred, the fair market value at date of death, dates of transfers, and to whom transferred. Submit copy of trust deed or agreement, if any. (If transfers are claimed to be untaxable, also submit detailed statement of facts on which such claim is based, proof as to decedent's physical condition and copy of death certificate.)
5. Was decedent a participant in any pension plan that provided for payment of an annuity or lump sum on or after death to another? ☐ Yes ☐ No
6. Did decedent purchase or in any manner participate in any contract or plan providing for payment of an annuity or lump sum on or after death to another, *except life insurance contracts* payable to a designated beneficiary? ☐ Yes ☐ No
(Matured endowment policies, claim settlement certificates, supplementary contracts, annuity contracts and refunds thereunder and interest income certificates even though issued by an insurance company are not considered life insurance contracts.)
7. Was a single premium life insurance policy issued on decedent's life in conjunction with an annuity contract? ☐ Yes ☐ No
If answer to questions 5, 6 or 7 is "Yes", attach a copy of all such contracts, plans, and policies.
8. Were any accumulated dividends due on any contract of insurance? (If yes, list below) ☐ Yes ☐ No

Date of Transfer; Description of Property, Both Real and Personal: Actual Consideration if Any; Names and Relationship to Decedent of Donees, Assignees, Transferees, etc.	Market Value at Date of Death	This Column for Division Use
Method 1 or 4, insert total on Page 1, lines 4, 5, and 9		
Method 2, insert total on Page 1, line 4		
Method 3, do not insert on page 1		

Method 1 and 4 filers answer questions 1-4
Method 2 and 3 filers answer all questions

ATTACH COPY OF WILL AND CODICILS HERE

Decedent's Social Security Number

[illegible]

NAME	DATE OF DEATH	DOMICILE AT DEATH

IT-NR Page 13

EXAMPLE 1 – USED FOR METHODS 1, 2 AND 3

The decedent died a resident of Pennsylvania owning real estate in Ocean City, New Jersey with a date of death fair market value of \$100,000.00 and an assessed value of \$85,000.00. The decedent also owned a boat, which was kept in New Jersey that had a value of \$10,000.00.

Other assets consisted of real estate in Pennsylvania with a value of \$200,000.00, stock valued at \$160,000.00, two bank accounts, one in Pennsylvania with a date of death balance of \$10,000.00 and one in New Jersey with a balance of \$20,000.00. The total gross value of the estate everywhere is \$500,000.00.

The expenses of this estate are: attorney's fees \$3,000.00, executor's commissions \$2,000.00, administration expenses \$1,300.00, funeral expenses \$6,000.00, credit card debt \$8,000.00, telephone and electric bills owed at death \$230.00. Total expenses \$20,530.00.

Gross Estate Everywhere	\$500,000.00
Total Expenses Everywhere	<u>20,530.00</u>
Net Estate Everywhere	\$479,470.00

Beneficiaries – The decedent's niece is the only beneficiary.

EXAMPLE 2 – USED FOR METHOD 4 OR OPTIONAL METHOD 1

The decedent died a resident of Florida owning real estate in Florida worth \$210,000.00 and bank accounts with date of death balances totaling \$105,000.00. Debts and administration expenses amounted to \$26,000.00.

The decedent also owned real estate, located in Cape May, New Jersey with a nephew as Joint Tenants with the Right of Survivorship. The fair market value as of the decedent's date of death was \$160,000.00 and the assessed value was \$132,000.00.

The New Jersey real estate was purchased in 1993. The decedent paid the full purchase price, the nephew did not make any contributions towards purchasing the real estate. Therefore, the full \$160,000.00 value of the property will be used in the Inheritance Tax Return and on the tax computation worksheet.

As required by New Jersey Statute the full value of the New Jersey real estate must be used unless the surviving joint tenant can prove to the satisfaction of the Director, Division of Taxation, State of New Jersey that they contributed toward the purchase price.

The beneficiary of an asset owned as Joint Tenants with the Right of Survivorship is the surviving joint tenant. In this particular matter the joint tenant is the decedent's nephew, a Class "D" beneficiary.

Since the real estate was owned as Joint Tenants with the Right of Survivorship the estate is required to use method 4 to compute the tax unless the optional method 1 is chosen.

Methods 1 and 4 use only the value of the New Jersey taxable assets in the tax computation. No other assets are required to be reported or debts of the estate allowed to be claimed.

**EXAMPLE 3 – USED FOR COMBINATION DIRECT TAX AND RATIO TAX OR
COMBINATION DIRECT TAX AND FLAT TAX OR OPTIONAL METHOD 1 WORKSHEETS**

The decedent died a resident of New York owning real estate in New York worth \$200,000.00, a bank account with a date of death balance of \$12,000.00 and stock valued at \$8,000.00.

They also owned 2 parcels of real estate in New Jersey.

Parcel #1 was held in the decedent's name alone. It was located in Florence, New Jersey and had a date of death fair market value of \$190,000.00 and an assessed value of \$140,000.00.

Parcel #2 was held in the name of the decedent and a cousin as Joint Tenants with the Right of Survivorship. It was located in Atlantic City and had a fair market value of \$170,000.00 as of the date of death and an assessed value of \$151,000.00.

The jointly owned New Jersey real estate was purchased in 2002. The decedent paid the full purchase price, the cousin did not make any contributions towards purchasing the real estate. Therefore, the full \$170,000.00 value of the property will be used in the Inheritance Tax Return and on the tax computation worksheet.

As required by New Jersey Statute the full value of the New Jersey real estate must be used unless the surviving joint tenant can prove to the satisfaction of the Director, Division of Taxation, State of New Jersey that they contributed toward the purchase price.¹

The beneficiary of an asset owned as Joint Tenants with the Right of Survivorship is the surviving joint tenant. In this particular matter the joint tenant is the decedent's cousin, a Class "D" beneficiary.

The expenses of the estate are: attorney's fees \$5,000.00, executor's commissions \$4,000.00, administration expenses \$1,300.00, funeral expenses \$6,000.00, credit card debt \$8,000.00 and a telephone bill of \$100.00. Total expenses \$24,400.00.

Gross estate everywhere	\$580,000.00
Total expenses everywhere	<u>24,400.00</u>
Net estate everywhere	555,600.00

Beneficiaries –

The decedent's cousin who is the joint tenant of parcel #2 inherits that parcel by right of survivorship.

The decedent's niece inherits the remainder of the estate.

¹ N.J.S.A. 54:34-1 f

DIRECTIONS FOR COMPLETING THE INHERITANCE TAX RETURN USING THE INFORMATION GIVEN IN EXAMPLE 1 ON PAGE 14.**Schedule A** Enter the description and values of the New Jersey real estate. Do not include any other real estate.**Schedule B(1)** Enter the description and value of the boat located in New Jersey. Do not include any other assets.
Note that the bank account in New Jersey is not included when reporting assets for this method of filing since it is not tangible personal property. It is considered intangible personal property.**Directions for completing the worksheet using the numbers given in the example .****Line 1** Enter the value of the NJ real estate reported on Schedule "A".**Line 2** Enter the value of the boat reported on Schedule "B(1)".**Line 3** This line is left blank since there were no assets reported on Schedule "E"**Line 4** Add lines 1, 2 and 3.**Line 5** Multiply line 4 by 15% and enter the result on line 6.**Line 6** This is the New Jersey Non-Resident Inheritance Tax.

WORKSHEET 1 - METHOD 1		SIMPLIFIED TAX	
1	Enter total from Schedule A	1	100,000.00
2	Enter total from Schedule B (1)	2	10,000.00
3	Enter total from Schedule E	3	
4	Total of above lines 1, 2 and 3	4	110,000.00
5	Multiply line 4 by 15%	5	X 15%
6	New Jersey Non-Resident Inheritance Tax (Insert this number on IT-NR page 1 line 11)	6	16,500.00

DIRECTIONS FOR COMPLETING THE INHERITANCE TAX RETURN USING THE INFORMATION GIVEN IN EXAMPLE 1 ON PAGE 14.

- Schedule A** Enter the description and values of the New Jersey and Pennsylvania real estate.
- Schedule B** Since there are no assets of this type owned enter the word "none".
- Schedule B(1)** Enter the description and values of the bank accounts, stock, and boat.
- Schedule C** Attorney's fees, executor's commissions, and administration expenses are entered in the upper section of the schedule. Note that the expenses in this section are added and entered on the subtotal line. Then this total is entered on line 4 of worksheet 2. In this example the subtotal is \$6,300. Credit card debt, telephone and electric bills and funeral expenses are entered in the lower section of the schedule. The expenses on the entire schedule are then added to give you the total expenses of the estate. In this example the total expenses are \$20,530.
- Schedule E** Answer the questions at the top of the schedule. If any are answered yes then complete the bottom section.
- Schedule F** Enter the name and address of each beneficiary and complete each column.

Directions for completing the worksheet using the numbers given in the example.

- Line 1** Enter the total value of the New Jersey real estate (\$100,000) and the boat (\$10,000) that was kept in New Jersey.
- Line 2** Enter the gross estate everywhere (\$500,000).
- Line 3** Divide line 1 by line 2 to get the ratio of the New Jersey taxable assets to the total (gross) estate everywhere. All decimals are to be carried to 4 places. The ratio in this example is .2200.
- Line 4** Enter the amount from the subtotal line in Schedule "C".
- Line 5** Multiply line 4 by line 3. This gives you the portion of the expenses listed on line 4 which will be subtracted from the value of the New Jersey assets listed on line 1. (\$1,386)
- Line 6** Subtract line 5 from line 1. This gives you a reduced value of the New Jersey assets that will be taxed. (\$108,614)
- Line 7** Enter the value of the net estate from IT-NR page 1, line 7. (\$479,470).
- Line 8** Divide line 6 by line 7. This gives you the ratio of the reduced value of the New Jersey assets to the total net estate everywhere. The ratio in this example is .2265.
- Line 9** Enter the New Jersey resident tax on the total net estate everywhere. Since the beneficiary in this estate is a Class "D" beneficiary (the tax rate for a Class "D" beneficiary is 15%) the tax is computed by multiplying the net estate by 15% (\$479,470 X 15%). The result is \$71,920.50. This is the tax that would be due if the decedent was a resident of New Jersey and all of his assets listed in the example were located in New Jersey.
- Line 10** Multiply the amount on line 9 by the ratio on line 8. This gives you the New Jersey Non-resident Inheritance Tax \$16,290.00. Insert this number on IT-NR page 1, line 11.

WORKSHEET 2 - METHOD 2		RATIO TAX USING NET ESTATE	
1	Gross value of New Jersey real estate & tangible personal property [from Schedule "A" and/or "B(1)"]	1	110,000.00
2	Total gross estate wherever situate (IT-NR page 1, line 5)	2	500,000.00
3	Gross to gross ratio (line 1 divided by line 2)	3	0.2200
4	Total of administration expense, counsel fees and commissions (from subtotal line of Schedule "C")	4	6,300.00
5	Deduction from gross value of NJ taxable property (Line 4 multiplied by line 3)	5	1,386.00
6	Net New Jersey taxable property (line 1 minus line 5)	6	108,614.00
7	Net estate wherever situate (IT-NR, page 1, line 7)	7	479,470.00
8	Ratio (line 6 divided by line 7) (not to exceed 100%)	8	0.2265
9	New Jersey Resident Tax on amount reported on line 7 (see page 2 of instructions for classes of beneficiaries and tax rates)	9	71,920.00
10	New Jersey Non-Resident Ratio Tax (Line 8 multiplied by line 9) (insert this number on IT-NR page 1, line 11)	10	16,290.00

DIRECTIONS FOR COMPLETING THE INHERITANCE TAX RETURN USING THE INFORMATION GIVEN IN EXAMPLE 1 ON PAGE 14.

- IT-NR - Page 1** Enter the total (gross) estate everywhere on IT-NR page 1, line 5 and line 9. **(IMPORTANT)**
- Schedule A** Enter the description and values of only the New Jersey real estate
- Schedule B** Do not complete this schedule.
- Schedule B(1)** Enter the description and value of only the boat located in New Jersey
- Schedule C** Do not complete this schedule.
- Schedule E** Answer the questions at the top of the schedule. If any are answered yes then complete the bottom section. If assets are reported on this schedule then advise whether or not they are included in the total (gross) estate everywhere figure reported on IT-NR page 1, line 5.
- Schedule F** Enter the name and address of each beneficiary and complete each column

Directions for completing the worksheet using the numbers given in the example .

- Line 1** Enter the total value of the New Jersey real estate (\$100,000) and the boat (10,000) that was kept in New Jersey.
- Line 2** Enter the gross estate everywhere from IT-NR page 1, line 5.
- Line 3** Divide line 1 by line 2 to get the ratio of the New Jersey taxable assets to the total (gross) estate everywhere. All decimals are to be carried to 4 places. The ratio in this example is .2200.
- Line 4** Enter the New Jersey Resident Tax on the total (gross) estate everywhere. Since the beneficiary in this estate is a Class "D" beneficiary (the tax rate for a Class "D" beneficiary is 15%) the tax is computed by multiplying the gross estate by 15% (\$500,000 x 15%). The result is \$75,000. This is the tax that would be due if the decedent was a resident of New Jersey and all of his assets listed in the example were located in New Jersey.
- Line 5** Multiply the amount of line 4 by the ratio on line 3. This gives you the New Jersey Non-Resident Inheritance Tax. \$16,500. Insert this number on IT-NR page 1, line 11.

WORKSHEET 3 - METHOD 3**RATIO TAX USING GROSS ESTATE**

1 Gross value of New Jersey real estate & tangible personal property [from Schedule "A" and/or "B(1)"]	1	110,000.00
2 Value of gross estate both in and outside of New Jersey (from IT-NR page 1, line 5)	2	500,000.00
3 Gross to gross ratio (line 1 divided by line 2)	3	0.2200
4 New Jersey resident tax on amount reported on line 2 above (see page 2 of the instructions for classes of beneficiaries and tax rates)	4	75,000.00
5 Ratio tax (line 3 multiplied by line 4) (insert this number on IT-NR page 1, line 11)	5	16,500.00

All decimals are to be rounded to four places.

DIRECTIONS FOR COMPLETING THE INHERITANCE TAX RETURN USING THE INFORMATION GIVEN IN EXAMPLE 2 ON PAGE 14

Schedule A Enter the description and values of the jointly owned New Jersey real estate
Do not include any other real estate.

Note that if the New Jersey real estate was not owned as Joint Tenants with the Right of Survivorship but was held in the decedent's name alone and it was specifically devised in the decedent's Last Will and Testament to the decedent's nephew this method would be used to compute the tax and the same information would be entered on Schedule "A".

If the above two mentioned situations did not apply but instead the New Jersey real estate was transferred to the nephew during the 3 year period prior to the decedent's date of death this method would be used and the information regarding the real estate would be entered on the bottom section of Schedule "E" instead of Schedule "A".

Directions for completing the worksheet using the numbers given in the example .

- Line 1** Enter the total value of the New Jersey real estate reported on Schedule "A".
Line 2 This line is left blank since there were no assets reported on Schedule "B (1)".
Line 3 This line is left blank since there were no assets reported on Schedule "E".
Line 4 Add lines 1, 2 and 3.
Line 5 Enter the New Jersey Resident Inheritance Tax on the amount reported on line 4. Since the beneficiary in this estate is a Class "D" beneficiary (the tax rate for a Class "D" beneficiary is 15%) the tax is computed by multiplying the amount on line 4 by 15% (\$160,000.00 x 15%). The result is \$24,000.00.
Line 6 Enter the amount from line 5. In these three forms of ownership the New Jersey Resident Tax and New Jersey Non-Resident Tax is the same.

WORKSHEET 4 - METHOD 4		DIRECT TAX	
1	Enter total from Schedule A	1	160,000.00
2	Enter total from Schedule B (1)	2	
3	Enter total from Schedule E	3	
4	Total of above lines 1, 2 and 3	4	160,000.00
5	New Jersey Resident Tax on amount reported on line 4 (See page 2 of the instructions for classes of beneficiaries and tax rates)	5	24,000.00
6	New Jersey Non-Resident Inheritance Tax - Same as line 5 (Insert this number on IT-NR page 1 line 11)	6	24,000.00

WORKSHEET 5 COMBINATION DIRECT TAX AND RATIO TAX USING NET ESTATE WORKSHEETDecedent's Name: Decedent's SS NO

For use when there are two (2) or more New Jersey taxable assets and at least one of them is specifically devised or jointly owned (joint tenants with right of survivorship), or transferred to one or more individuals within three (3) years of the decedent's death, or to take effect at or after the decedent's date of death and the other New Jersey taxable assets are held in the decedent's name alone or as tenants in common with another individual.

If the New Jersey taxable property or any amount thereof is specifically devised or jointly owned (joint tenants with right of survivorship), or transferred as indicated above, that amount is not subject to the ratio tax but rather is taxed directly to the devisee(s) or surviving joint tenant(s) at the resident tax rates.

SEE EXAMPLE 3 ON PAGE 15 FOR INFORMATION USED TO COMPLETE THIS WORKSHEET.

1. Direct tax on New Jersey taxable property specifically devised, jointly owned, or transferred as indicated above. Use worksheet 4, page 19 to compute the tax for this line.....	1	\$25,500.00
2. Value of New Jersey taxable property not specifically devised, jointly owned, or transferred as indicated above.....	2	\$190,000.00
3. Value of gross estate both in and outside of New Jersey (not including the New Jersey property specifically devised, jointly owned, or transferred as indicated above) (IT-NR, Page 1, Line 5 less New Jersey property described herein from Worksheet 4, Line 4).....	3	\$410,000.00
4. Ratio (Line 2 divided by Line 3)	4	0.4634
5. Total of administration expenses, counsel fees, and commissions (from <u>subtotal line</u> in Schedule "C").....	5	\$10,300.00
6. Amount of Line 5 to be deducted from New Jersey taxable property not specifically devised, jointly owned, or transferred as indicated above. (Line 4 multiplied by Line 5)	6	\$4,773.00
7. Net New Jersey property subject to the ratio tax (Line 2 minus Line 6)	7	\$185,227.00
8. Net estate wherever situate (not including the New Jersey property specifically devised, jointly owned, or transferred as indicated above) (IT-NR, Page 1, Line 7 less the New Jersey property described herein from Worksheet 4, Line 4).....	8	\$385,600.00
9. Ratio (Line 7 divide by Line 8) (not to exceed 100%).....	9	0.4804
10. New Jersey resident tax on amount reported on Line 8 above (See Page 2 of the instructions for classes of beneficiaries and tax rates) ...	10	\$57,840.00
11. New Jersey Non-Resident Ratio tax (Line 9 multiplied by Line 10).....	11	\$27,786.00
12. Total New Jersey Non-Resident direct tax and ratio tax (Line 1 plus Line 11) (Insert this amount on IT-NR page 1, Line 11).....	12	\$53,286.00

NOTE

In the event that any amount of the estate is contingent, the ratio calculated on Line 9 above should be applied to the resident compromise tax to compute the nonresident compromise tax due.

All decimals are to be rounded to four places.

WORKSHEET 6 COMBINATION DIRECT TAX AND RATIO TAX USING GROSS ESTATE WORKSHEET
Decedent's Name: Decedent's SS NO

For use when there are two (2) or more New Jersey taxable assets and at least one of them is specifically devised or jointly owned (joint tenants with right of survivorship), or transferred to one or more individuals within three (3) years of the decedent's death, or to take effect at or after the decedent's date of death and the other New Jersey taxable assets are held in the decedent's name alone or as tenants in common with another individual.

If the New Jersey taxable property or any amount thereof is specifically devised or jointly owned (joint tenants with right of survivorship), or transferred as indicated above, that amount is not subject to the ratio tax but rather is taxed directly to the devisee(s) or surviving joint tenant(s) at the resident tax rates.

SEE EXAMPLE 3 ON PAGE 15 FOR INFORMATION USED TO COMPLETE THIS WORKSHEET.

1. Direct tax on New Jersey taxable property specifically devised, jointly owned, or transferred as indicated above. Use worksheet 4, page 19 to compute the tax for this line.....	1	\$25,500.00
2. Value of New Jersey taxable property not specifically devised, jointly owned, or transferred as indicated above.....	2	\$190,000.00
3. Value of gross estate both in and outside of New Jersey (not including the New Jersey property specifically devised, jointly owned, or transferred as indicated above) (IT-NR Page 1, Line 5 less New Jersey property described herein from Worksheet 4, Line 4).....	3	\$410,000.00
4. Ratio (Line 2 divided by Line 3)	4	0.4634
5. New Jersey resident tax on amount reported on Line 3 above (see page 2 of the instructions for classes of beneficiaries and tax rates)	5	\$61,500.00
6. New Jersey Non-Resident ratio tax on the amount reported on line 3. (Line 4 multiplied by Line 5)	6	\$28,499.00
7. Total New Jersey direct tax and ratio tax (Line 1 plus Line 6) (Insert this amount on IT-NR Page 1, Line 11).....	7	\$53,999.00

NOTE

In the event that any amount of the estate is contingent, the ratio calculated on Line 4 above should be applied to the resident compromise tax to compute the nonresident compromise tax due.

All decimals are to be rounded to four places.

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**New Jersey Transfer Inheritance Tax
Guide for Computation of the Compromise Tax**

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NEW JERSEY TRANSFER INHERITANCE TAX

GUIDE FOR COMPUTATION OF THE COMPROMISE TAX



**Transfer Inheritance and Estate Tax Branch
New Jersey Division of Taxation
3 John Fitch Way
PO Box 249
Trenton, New Jersey 08646-0249**

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Introduction

When the tax on a transfer of property cannot be definitely determined until the occurrence of contingencies, the tax liability may be immediately adjusted by the payment of a compromise tax. The compromise tax is the amount of tax that the Branch will accept in satisfaction of a tax liability which, if not settled in this manner, will be held in abeyance for an indefinite period. The compromise tax is determined after a consideration of the tax that may become due upon the occurrence of various contingencies, the present value of the tax, and the probability of the various contingencies occurring.

The settlement of tax on the contingent portion of an estate (that portion subject to the occurrence of contingencies before the tax may be definitely determined) prior to the occurrence of the contingencies is advantageous to both the Branch and the estate representatives.

The Branch prefers an immediate, fair and equitable settlement of the tax. In most cases it eliminates the need to maintain active files for an indefinite period, it eliminates the necessity of making multiple assessments of tax in the same estate, and it provides for the immediate receipt of tax revenue. The representatives of estates usually prefer the immediate settlement of the transfer inheritance tax liability because it results in a more expeditious completion of the inheritance tax proceeding and because it eliminates the requirement that a bond be filed in twice the highest amount of tax that may become due until the contingencies have occurred and the resulting tax liability has been satisfied.

A compromise tax on the contingent portion of an estate may be computed by the estate representative and reported on the inheritance tax return. When a compromise tax is reported on the return, a rider should be attached setting forth the computations and basis for the amount of compromise tax reported. If, upon review of the computations by the Branch, it is determined that the compromise tax is acceptable, and, if none of the contingencies have occurred prior to the completion of the assessment of tax by the Branch, the assessment will be completed on the basis of the amount of compromise tax reported on the return.

If the compromise tax reported on the inheritance tax return is not acceptable, or, if the representative of an estate does not wish to compute a compromise tax for the Branch's review, the Branch will propose a compromise tax on the contingent portion of the estate. If the compromise tax proposed by the Branch is both accepted by the executor, administrator, trustee, or other proper representative of the estate and paid prior to the occurrence of the contingencies, payment of the compromise tax will result in a final adjustment of the tax on the contingent portion of the estate. In most cases the tax on the contingent portion of an estate is settled by the payment of a compromise tax.

Procedure for Computing the Compromise Tax

The following steps are necessary in the computation of a compromise tax:

- 1) Determine the value, for inheritance tax purposes, of the contingent portion of the estate. The contingent portion is that portion of the estate upon which the tax cannot be definitely determined until the occurrence of contingencies. The contingent portion of the estate is reported on line 8 of the recital page of the inheritance tax return.
- 2) Determine the amount of contingent tax (tax on the contingent portion of an estate) that will become due upon the occurrence of the various contingencies. In some cases the tax will not vary and there will be only one possible contingent tax; however, in most cases there will be several possible contingent taxes that may result from the occurrence of various contingencies. When several contingent tax possibilities exist, the computation of the compromise tax should be based upon a minimum of three possible contingent taxes. The three possible contingent taxes which should be considered are the contingent tax that will become due upon the occurrence of the most probable contingencies, the highest possible contingent tax, and the lowest possible contingent tax (may be zero if the occurrence of the contingencies could result in no contingent tax liability). If, however, a large amount of contingent tax is involved, a sufficient number of contingent tax possibilities should be considered in order to provide a basis for the proper determination of the compromise tax.
- 3) Determine the present value of each of the possible contingent taxes calculated in step 2. It is necessary to determine the value, in present dollars, of the contingent tax that will become due upon the occurrence of the various contingencies. Therefore, for each possible contingent tax, it must be estimated when the contingencies will occur. The period of time that will pass between the immediate settlement of the potential tax liability by the payment of a compromise tax and the payment of a contingent tax upon the occurrence of contingencies is used for the purpose of determining the present values of the contingent taxes. The present value of the contingent tax is then determined by multiplying the contingent tax by the factor for this period of time from a table for the present value of \$1.00 at an interest rate of 6% compounded annually.
- 4) Determine the probability of the various contingencies and resulting contingent taxes occurring. This step involves the assignment of a relative probability of occurrence to each of the contingent taxes computed in step 2.

- 5) Determine the compromise tax. After a review of the relative probabilities of the various contingent taxes, the next step is to determine the compromise tax. Since this step is based on judgment, there is no set procedure or specific formula used exclusively in the computation of the compromise tax. Three possible methods of completing the computation of the compromise tax are set forth below:
- a) Start with the present value of the most probable contingent tax and then adjust this value upward or downward on the basis of the present values of the other contingent tax possibilities. For example, if the most probable contingent tax is much lower than most of the other less probable contingent taxes, the present value of the contingent tax with the highest probability of occurrence would be adjusted upward to allow for the possibility of the higher contingent taxes;
 - b) A second method is the assignment of weights to the contingent tax possibilities on the basis of their relative probability of occurrence. For example, if three contingent taxes were computed in step 2, the most probable might be assigned a weight of 3, the highest possible contingent tax, which is the second most probable contingent tax, might be assigned a weight of 2 and the lowest possible contingent tax, also the tax with the lowest probability of occurrence, might be assigned a weight of 1. Then the present value of the most probable contingent tax would be multiplied by 3, the present value of the highest possible contingent tax would be multiplied by 2 and the present value of the lowest contingent tax would be multiplied by 1. The compromise tax is then determined by adding the products and dividing the result by 6;
 - c) A third method is to assign a percentage of probability to each contingent tax determined in step 2 and, also to the probability, if one exists, that the occurrence of contingencies may result in no contingent tax liability. The total of the percentages assigned would equal 100%. The assigned percentages would then be multiplied by the present value of each contingent tax determined in step 3. The compromise tax is then determined by adding the products.

Examples of the Computation of a Compromise Tax

The computations are based upon the rates of tax and exemptions for use in estates of decedent's dying on or after July 1, 1988.

Factors used in the computations were taken from the Transfer Inheritance Tax Tables for Use in Estates of Decedent's Dying on or after August 5, 2008 as follows:

Annuities Life Estates and Remainder Interests – Life Estate Table, Single Life, Female, 6% and Life Estate Table, Single Life, Male, 6%

Life Expectancies – Expectancy of Life Table, Life Table for Females: United States 1999 – 2001 and Expectancy of Life Table, Life Table for Males: United States 1999 – 2001

Temporary Annuities and Estates for a Term of Years – Table for Computing Temporary Annuities and Estates for a Term of Years, Female Lives, 6% and Table for Computing Temporary Annuities and Estates for a Term of Years, Male Lives, 6%

Present Values – Discount Table, Present value of \$1.00 at 6% compound interest for anytime from 1 to 100 years

Note – In estates of decedent's dying on or after July 1, 1988, Class "C" beneficiaries are brothers, sisters, wife or widow of a son/surviving civil union partner (after 02/19/2007), husband or widower of a daughter/surviving civil union partner (after 02/19/2007) have a \$25,000 exemption. Some of the Class "C" beneficiaries in the examples, however, were not given the \$25,000 exemption in the computation of the possible contingent taxes that would result from the occurrence of contingencies. These Class "C" beneficiaries have received life estates or other interests in the estate and the \$25,000 exemption would have been used in the computation of the direct tax (tax due and payable immediately on that portion of the estate which was not subject to the occurrence of contingencies).

1) Life estate in residue and the remainder is contingent

The decedent's wife/female domestic partner (after 07/10/2004)/female civil union partner (after 02/19/2007) has a life estate in the residue of his estate and the remainder passes to the decedent's brother, if he survives the wife/female domestic partner (after 07/10/2004)/female civil union partner (after 02/19/2007), or, if he does not survive, to two nephews of the decedent, per stirpes.

Value of the residue for inheritance tax purposes – \$100,000

The wife/female domestic partner (after 07/10/2004)/female civil union partner (after 02/19/2007), brother and nephews all survived the decedent

Age of wife/female domestic partner (after 07/10/2004)/female civil union partner (after 02/19/2007) on decedent's date of death – 60 years

Age of brother on decedent's date of death – 62 years

Ages of nephews – 32 years and 35 years

Life estate factor for a female, aged 60 – .69179

Wife's/female domestic partner (after 07/10/2004)/female civil union partner (after 02/19/2007) life expectancy as of the decedent's date of death – 23.09 years

Brother's life expectancy as of the decedent's date of death – 18.23 years

Value of residue	\$100,000

x Life estate factor female, 60 years of age	<u>x .69179</u>

Value of wife's/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) life estate (subject to tax immediately upon the decedent's death)	\$69,179

Value of residue	\$100,000

Less: Wife's/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) life estate	<u>– 69,179</u>

Contingent remainder (amount to be reported on line 8 of the inheritance tax return)	\$30,821

Possible contingent taxes:

All to brother \$5,821 ($\$30,821 - \$25,000$) x 11% = \$640.31

All to two nephews or their issue (each Class "D" beneficiary will receive at least \$500 and less than \$700,000) $\$30,821 \times 15\% = \$4,623.15$

In this estate the only two possible contingent taxes would be \$640.31 and \$4,623.15. The contingent taxes are present valued by multiplying the tax by the factor from the table for the present value of \$1.00 at 6% compound interest. The wife's/female domestic partner (after 07/10/2004)/female civil union partner (after 02/19/2007) life expectancy is 23 years and upon her death the contingent tax will become payable, therefore, the factor for 23 years (.261797) is used in the computation.

Present value of the contingent tax if the contingent remainder passes to the decedent's brother –
 $\$640.31 \times .261797 = \$167.63$

Present value of the contingent tax if the contingent remainder passes to the decedent's nephews or their issue – $\$4,623.15 \times .261797 = \$1,210.33$

The wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) has a longer life expectancy than the brother and, therefore, the contingent tax payable in the event that the contingent portion of the estate passes to nephews, or their issue, has the highest probability of occurrence. It is determined that the probability of the contingent tax payable in the event that the decedent's brother survives the wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) is 20% and the probability of the contingent tax payable in the event that the brother does not survive the wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007), and the contingent portion of the estate passes to nephews, or their issue, is 80% The proposed compromise tax would be \$1,001.79 determined as follows:

\$167.63 (P.V. of contingent tax, all to brother) x 20% =	\$33.53
\$1,210.33 (P.V. of contingent tax, all to nephews or their issue) x 80% =	<u>x 968.26</u>
	\$1,001.79

- 2) Life estate in trust, the life tenant has a right to limited withdrawals of principal, additional principal distributions may be made to the life tenant by the trustee and the life tenant has a general power of appointment

The decedent's brother has a life estate in a trust and he has the power to invade the principal; however, annual distributions of principal shall not exceed \$5,000.00 or 5% of the value of the trust principal on the last day of the year, whichever is larger. The power to invade principal is not cumulative and will lapse on the last day of each year the power is held. The trustee has a right to distribute, in addition to the amounts that may be requested by the decedent's brother, such amounts of principal as he may deem necessary for the brother's health, maintenance and welfare. The decedent's brother has a general power of appointment with respect to the principal of the trust which he may exercise at his death by will. If he does not exercise his power of appointment, the principal balance of the trust will pass upon the brother's death to the decedent's sister, if living, or, if she does not survive the brother, to two nephews of the decedent, per stirpes.

Value of trust for inheritance tax purposes – \$300,000

Age of brother – 73 years

Living relatives of the brother – a sister, age 67, and two nephews,
ages 40 and 45

Life estate factor for a male, age 73 – .43441

Life expectancy of a male, age 73 – 11 years

Life expectancy of a female, age 67 – 17.60 years

Annual income of the brother – \$20,000

Health of brother – good

The contingent portion of the trust is determined by subtracting the brother's life estate from the value of the trust.

Value of trust	\$300,000
x Life estate factor, male, age 73	<u>x .43441</u>
Value of life estate	\$130,323

Value of trust	\$300,000
Less: Value of life estate	<u>– 130,323</u>
Value of the contingent portion of the trust (amount to be reported on line 8 of the inheritance tax return)	\$169,677

There are numerous contingent tax possibilities in this estate. The most probable and highest and lowest possible contingent taxes will be determined.

Most probable contingent tax

If \$10,000 per annum in principal from the trust is distributed to the decedent's brother, and, if upon his death, the principal in the trust passes to the decedent's sister, the contingent tax will be \$15,914.47.

Brother –	\$10,000	(annual use of trust principal)
	<u>x 11.00</u>	(life expectancy)
	\$110,000	Total value of principal distributions

Total value of principal distributions	\$110,000

*Less: Value of a life estate to the decedent's brother in the amount of the principal distributions	\$110,000

x Life estate factor, male age 73 Contingent portion of the estate to the decedent's brother	<u>x .43441</u>	<u>47,785.10</u>
		\$62,214.90

*Note: If a life tenant receives principal distributions from a trust which are contingent in character, the principal distributions are reduced by the amount of the life tenant's vested life estate value.

Value of the contingent portion of the estate	\$169,677.00
Less: Value of contingent portion to brother	<u>– 62,214.90</u>
Value of the contingent portion to sister	<u>\$107,462.10</u>

Contingent tax on property to brother	
\$62,214.90 x 11% =	\$6,843.64

Contingent tax on property to sister	
\$82,462.10 (\$107,462.10–25,000) x 11%	<u>+ 9,070.83</u>
Most probable contingent tax	\$15,914.47

Highest possible contingent tax

If no principal of the trust is distributed to the decedent's brother during his lifetime, and, if the brother exercises his power of appointment and devises the principal to his nephews upon his death, the contingent tax will be \$25,451.55

[\$169,677 (contingent portion of the estate) x 15% = \$25,451.55]

Lowest possible contingent tax

If no principal of the trust is distributed to the decedent's brother during his lifetime, and, if the brother exercises his power of appointment in favor of a charity, there will be no contingent tax payable on the contingent portion of the estate.

In the determination of the present value of the contingent taxes, it should be noted that the contingent tax payable on that portion of the principal of the trust distributed to the decedent's brother during his lifetime is present valued by using one-half of the brother's life expectancy. It is assumed that annual distributions of principal from the trust will be made to the brother during his lifetime, and, since a contingent tax will become payable on each principal distribution, the average present value of the contingent tax payable on these distributions will approximate one-half the brother's life expectancy.

Present value – most probable contingent tax

\$6,843.64 (contingent tax on property to brother) x .704961 (factor for the P.V. of \$1.00 at 6% compound interest for 6 years – ½ life expectancy of brother, rounded to nearest year) =	\$4,824.50

\$9,070.83 (contingent tax on property to sister) x.526788 (factor for P.V. of \$1.00 at 6% compound interest for life expectancy of brother, rounded to 11 years) =	+ 4,778.40 \$9,602.90

Present value – highest possible contingent tax

\$25,451.55 x .526788(factor for P.V. of \$1.00 at 6% compound interest for life expectancy of brother	\$13,407.57

Present value – lowest possible contingent tax

– 0 –

In this case it is determined that the present value of the most probable contingent tax should be adjusted upward in calculating the compromise tax. There is a greater probability that the brother will exercise his power of appointment in favor of nephews than in favor of a charitable organization. Another reason for the upward adjustment of the present value of the most probable contingent tax is that if the brother does not exercise his power of appointment, and, if he is not survived by his sister, the principal balance of the trust will pass to nephews upon his death. The proposed compromise tax would be around \$11,100.

- 3) Life estate in Trust A, principal distributions may be made to the life tenant at the discretion of the trustee and the life tenant has a general power of appointment; income and principal distributions from Trust B at discretion of trustee, balance of Trust B to charity upon death of income and principal beneficiary

The decedent's last will and testament provides for the creation of two trusts. Trust A is funded with the least amount of principal needed to reduce the federal estate tax to the lowest possible amount and Trust B is funded with the residue of the estate.

The decedent's husband/male domestic partner (after 07/10/2004)/male civil union partner (after 02/19/2007) is to receive all income from Trust A during his lifetime, payable annually, principal distributions may be made from the trust for his health, support, and maintenance at the discretion of the trustee, and he has a general power of appointment over the principal of the trust which he may exercise by will at his death. If he does not exercise his power of appointment, the principal balance of Trust A will, upon his death, pass to Trust B.

The trustee of Trust B shall distribute to the decedent's brother as much of the income and principal of the trust as, in his discretion, he believes desirable for the brother's health, support and maintenance. Upon the brother's death, the remaining principal and undistributed income will pass to charity.

Value of Trust A for inheritance tax purposes – \$500,000

Value of Trust B for inheritance tax purposes – \$600,000

Age of husband/male domestic partner (after 07/10/2004)/male civil union partner after 02/19/2007) – 80 years

Age of brother – 67 years

Relatives of husband/male domestic partner (after 07/10/2004)/civil union partner male (after 02/19/2007) – a sister, age 90 and a nephew age 65

Life estate factor for a male, age 80 – .32436

Life expectancy of husband/male domestic partner (after 07/10/2004)/civil union partner male (after 02/19/2007), age 80 – 7.44 years

Life expectancy of brother, age 67 – 14.74 years

Life expectancy of husband's/male domestic partner (after 07/10/2004)/civil union partner male (after 02/19/2007) sister, age 90 – 4.71 years

The decedent's husband/male domestic partner (after 07/10/2004)/civil union partner male (after 02/19/2007) has annual income of over \$200,000 and is in good health

The decedent's brother has an annual income of \$10,000 and is handicapped, requiring constant medical care; his handicap, however, is not expected to shorten his normal life expectancy

The decedent's husband/male domestic partner (after 07/10/2004)/civil union partner male (after 02/19/2007) currently has a last will and testament providing for the exercise of his power of appointment, upon his death, in favor of his nephew

Note – In this estate it was necessary to hold the assessment of tax in abeyance pending final determinations in the federal estate tax proceeding. For this reason the compromise tax is being computed two years after the decedent's date of death. In determining the present values of the possible contingent taxes, the life expectancy factors will be adjusted to reflect the current ages of beneficiaries. Also, \$50,000 in income and principal of Trust B has been distributed to the decedent's brother. This distribution occurred prior to the offer, acceptance and payment of a compromise tax and, therefore, will be subject to a contingent tax assessment.

Contingent portion of the estate

Value of Trust A x Life estate factor male, age 80	\$500,000	
	<u>x .32436</u>	
Value of life estate to husband/male domestic partner (after 07/10/2004)/male civil union partner (after 02/19/2007)	\$162,180	
Value of Trust A	\$500,000	
Less: Life estate	<u>– 162,180</u>	
Contingent portion of Trust A		\$337,820
Value of Trust B	\$600,000	
Less: Prior distributions to decedent's brother	<u>– 50,000</u>	
Contingent portion of Trust B		550,000
Contingent portion of estate be reported on line 8 of the inheritance tax return)		\$887,820

Possible contingent taxes

There are numerous contingent tax possibilities in this estate. The contingent tax on the distribution of principal from Trust A will range from zero, if all principal is distributed to the decedent's husband/male domestic partner (after 07/10/2004)/male civil union partner (after 02/19/2007), to \$50,673 if all principal passes to one Class D beneficiary. The contingent tax on the distribution of income and principal from Trust B will range from zero, if all income and principal passes to charity to \$60,500 if all income and principal is distributed to the decedent's brother.

In view of the large amount of possible contingent tax in this estate, several possible contingent taxes will be calculated.

The decedent's husband/male domestic partner (after 07/10/2004)/male civil union partner (after 02/19/2007) has an annual income of over \$200,000 and, in addition, a life estate in a \$500,000 trust; therefore, it will be assumed that the trustee of Trust A will distribute very little, if any, of the principal of this trust for his benefit.

If it is assumed that no principal will be distributed to the decedent's husband/male domestic partner (after 07/10/2004)/male civil union partner (after 02/19/2007) from Trust A, some of the possible contingent taxes resulting from the distribution of principal from this trust are:

	<u>Contingent tax</u>
All principal to charity	– 0 –
\$100,000 devise to a Class D beneficiary; remainder to charity	\$15,000
One-half to decedent's brother; one-half to charity	\$18,580.10
All to decedent's sister-in-law	\$50,673
All to nephew of husband/male domestic partner (after 07/10/2004)/male civil union partner (after 02/19/2007)	\$50,673

*May result from decedent's husband/male domestic partner (after 07/10/2004)/male civil union partner (after 02/19/2007) exercising his power of appointment or the passage of principal from Trust A to Trust B upon the husband/male domestic partner (after 07/10/2004)/male civil union partner (after 02/19/2007)'s death.

In a determination of possible contingent taxes that may become payable upon the distribution of the contingent portion of Trust B, consideration should be given to the brother's low annual income, his medical status, and the fact that he has received an average of \$25,000 per annum in income and/or principal from the trust during the two year period subsequent to the decedent's death. Any interest and principal of this trust which is not distributed to the decedent's brother will pass to charity and be exempt from tax. Some possible contingent taxes that may result from the distribution of income and principal from this trust are:

	<u>Contingent tax</u>
Distribution of \$25,000 per annum from the trust to the decedent's brother	
Annual distribution x	\$25,000
Current life expectancy	<u>x 13.43</u>
(based upon the brother's current age of 69)	\$335,750 x 11%
	\$36,932.50
Distribution of trust income (assume 6% annual income) to brother during his lifetime	

Contingent portion of trust	\$550,000	
	<u>x .06</u>	
Annual income	33,000	
Current life expectancy	<u>x 13.43</u>	
	\$443,190 x 11%	
		\$48,750.90

Distribution of an average of \$50,000 per annum from the trust to the decedent's brother (on an assumption that cost of living and medical care will increase and the current annual distribution of \$25,000 will be increased by approximately \$5,000 per year)

Annual distribution	\$50,000	
Current life expectancy	<u>x 13.43</u>	
	\$671,500 x 11%	
		\$73,865.00

Present values of possible contingent taxes

	<u>Trust A</u>	<u>Contingent tax</u>	<u>P.V. Contingent tax</u>
All principal to charity		– 0 –	– 0 –
\$100,000 devise to Class D beneficiary; remainder to charity. Present value based upon current life expectancy of husband/male domestic partner (after 07/10/2004)/male civil union partner (after 02/19/2007) (current age 82) – 6.6 years – round to 7 years – factor 7 years – .665057		\$15,000	\$9,975.86
One-half to decedent's brother; one-half to charity Present value factor – .665057		\$18,580.10	\$12,356.83
All to decedent's sister-in-law Present value factor – .665057		\$50,673	\$33,700.43
All to nephew of decedent's husband/male domestic partner (after 07/10/2004)/male civil union partner (after 02/19/2007) Present value factor – .665057		\$50,673	\$33,700.43

<u>Trust B</u>		<u>Contingent tax</u>	<u>P.V. Contingent tax</u>
Distribution of \$25,000 per annum from the trust Present value based upon $\frac{1}{2}$ current life expectancy of brother since equal annual payments are assumed and since the contingent tax will become payable as payments are made – Current life expectancy (current age 69) – 13.43 years – $\frac{1}{2}$ rounded to 7 years – .665057		\$36,932.50	\$24,562.22
Distribution of trust income (assumed @ 6% per annum) to brother for lifetime; Present value factor – .665057		\$48,750.90	32,422.13
Distribution of an average of \$50,000 per annum to brother; Present value based upon the fact that the brother will be receiving larger annual distributions each year (see comments in contingent tax computation) and since a larger amount of contingent tax will become payable in each succeeding year, the P.V. in this situation will be based upon $\frac{3}{4}$ of the brother's current life expectancy 10.07 (13.43 x .75) – rounded to 10 years – .558395		\$73,865	\$41,245.85

Probability of the various contingent taxes and computation of the compromise tax

In the proposal of a compromise tax in this estate, particular attention must be given to the following factors:

- 1) The decedent's husband/male domestic partner (after 07/10/2004)/male civil union partner (after 02/19/2007) has substantial annual income; therefore the probability that principal from Trust A will be distributed to him is very low;

- 2) The decedent's husband/male domestic partner (after 07/10/2004)/male civil union partner (after 02/19/2007) has a last will and testament in which he exercises his power of appointment over the principal of Trust A in favor of his nephew; therefore, the probability that the principal of Trust A will be distributed to the husband's/male domestic partner (after 07/10/2004)/male civil union partner (after 02/19/2007) nephew is very high;
- 3) The decedent's brother has a low annual income, medical expenses which will continue during his lifetime, and a history of receiving income and principal from the trust (\$50,000 in two years); therefore, there is a high probability that he will receive a substantial portion, if not all, of the income and principal from Trust B.

The most probable contingent tax will result from a distribution of the principal of Trust A to a nephew of the decedent's husband/male domestic partner (after 07/10/2004)/male civil union partner (after 02/19/2007) (P.V. of contingent tax is \$33,700.43) and a distribution of the contingent portion of Trust B to the decedent's brother equal to the average of the distribution of trust income (assuming 6% annual income) (P.V. of contingent tax is \$32,422.13) and the distribution of an average of \$50,000 per annum (P.V. of contingent tax is \$41,245.85).

	P.V. of Contingent Tax
Distribution of principal of Trust A to nephew of the decedent	\$33,700.43
Distribution of Trust B income to brother for life time	\$32,422.13
Distribution of an average of \$50,000 per annum to brother from Trust B	\$41,245.85

P.V. value of total contingent tax on Trust B is $\$32,422.13 + \$41,245.85 = \$73,667.98$. If $\frac{1}{2}$ of Trust B was distributed to the brother, P.V. of contingent tax will be $\$36,833.99$. The present value of most probable contingent tax is $\$36,833.99 + \$33,700.43 = \$70,534.42$.

There are many other possible contingent taxes, however, and it should be noted that the present values of several of the other possible contingent taxes are lower than the most probable. Therefore, some downward adjustment in the present value of the most probable contingent tax is necessary in order to determine a proper compromise tax offer.

After reviewing the present values of the probable contingent taxes and considering that the most probable contingent tax would be lower if the decedent's husband/male domestic partner (after 07/10/2004)/male civil union partner (after 02/19/2007) receives principal from Trust A, if the decedent's husband/male domestic partner (after 07/10/2004)/male civil union partner (after 02/19/2007) changes his will and exercises his power of appointment over the principal in Trust A in favor of a charity, if the decedent's husband/male domestic partner (after 07/10/2004)/male civil union partner (after 02/19/2007) does not exercise his power of appointment and the principal balance of Trust A at the time of his death passes through Trust B to the decedent's brother and/or a charity, and, if the decedent's brother does not receive a substantial portion of the income and principal from Trust B, the compromise tax proposal would be around \$70,000.

- 4) Life estates to wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007), subsequent life estate to sister and remainder to nephew

The decedent devises the residue of his estate to a trust in which his wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) receives the income during her lifetime, upon her death the income is payable to the decedent's sister for the remainder of her life, and, upon the death of both the decedent's wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) and sister, the principal of the trust passes to the decedent's nephew.

Value of the residuary portion of the estate – \$300,000

The wife/female domestic partner (after 07/10/2004)/female civil union partner (after 02/19/2007), brother and nephew all survived the decedent

Age of wife/female domestic partner (after 07/10/2004)/female civil union partner (after 02/19/2007) – 68 years

Age of sister – 55 years

Life estate factor for a female, age 68 – .58017

Life estate factor for a female, age 55 – .75050

Life expectancy of wife/female domestic partner (after 07/10/2004)/civil union partner female (after 02/19/2007) – 16.86 years

Life expectancy of sister – 27.31 years

Contingent portion of the estate

The tax on the life estate of the decedent's wife/female domestic partner (after 07/10/2004)/female civil union partner (after 02/19/2007) and the remainder interest of the decedent's nephew is immediately due and payable. The subsequent life estate of the decedent's sister-in-law is contingent, however, because she must survive the decedent's wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) in order to receive income from the trust.

In order to determine the value of the contingent portion of the estate, it is necessary to calculate the values of life estates in the residue based upon the life estate factors for the wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) and the sister, The value of the wife's/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) life estate is then subtracted from the value of the sister's life estate and the difference in value between the two life estates represents the contingent portion of the estate. It should be noted that if the subsequent life tenant's life estate is equal to or less than the original life tenant, the subsequent life estate has no value for inheritance tax purposes. The calculations are as follows:

Residue x Life estate factor for wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007), female age 68	\$300,000 <u>x .58017</u>
Value of life estate to wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007)	\$174,051
Residue x Life estate factor for sister, female age 55	\$300,000 <u>x .75050</u>
Value of life estate to sister	\$225,150
Value of sister's subsequent life estate equals –	
Value of life estate to sister	\$225,150
Less: Value of life estate to wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007)	<u>– 174,051</u>
Contingent portion of the estate (amount to be reported on page 8 of the inheritance tax return)	\$51,099

Possible contingent taxes

In this estate there are only two possible contingent taxes. If the decedent's sister survives his wife/female domestic partner (after 07/10/2004)/female civil union partner (after 02/19/2007), she will obtain her interest in the income from the trust and upon the death of the decedent's wife/female domestic partner (after 07/10/2004)/female civil union partner (after 02/19/2007), a contingent tax will become payable on the value of the sister's subsequent life estate. If the decedent's sister does not survive his wife/female domestic partner (after 07/10/2004)/female civil union partner (after 02/19/2007), however, the contingent portion of the estate will pass to the decedent's nephew. If the decedent's sister survives his wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007), the contingent tax will be \$2,870.89 [\$26,099 (\$51,099 – \$25,000) x 11%] and, if the decedent's sister does not survive the wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007), the contingent tax will be \$7,664.85 (\$51,099 x 15%)

Present values of possible contingent taxes

	<u>Contingent tax</u>	<u>P.V. Contingent tax</u>
Decedent's sister survives his wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) and receives a subsequent life estate Present value factor – .371364 (17 years) (Based upon the life expectancy of the decedent's wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007); upon her death the decedent's sister will acquire her subsequent life estate in the trust and a contingent tax would become payable – life expectancy of wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) – 16.86 years rounded to 17)	\$2,870.89	\$1,066.15
Decedent's wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) survives the decedent's sister and the contingent portion of the estate passes to the decedent's nephew Present value factor (same as above) – .371364	7,664.85	2,846.45

Probability of possible contingent taxes and computation of compromise tax

The life expectancy of the decedent's sister is approximately 10 years longer than the decedent's wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) and, for this reason, the most probable contingent tax will result from the decedent's sister surviving his wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) and receiving a subsequent life estate in the residuary trust. After considering the relative probabilities of the two possible contingent taxes, it is determined that the contingent tax resulting from the sister surviving the wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) should have a weight of 6 and the contingent tax resulting from the sister predeceasing the wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) should have a weight of 1.

The compromise tax proposal would be in the amount of \$1,320.48, determined as follows:

(P.V. of contingent tax, sister survives wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) \$1,066.15 x 6 =	\$6,396.90
(P.V. of contingent tax, wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) survives sister) \$2,846.45 x 1 =	<u>+ 2,846.45</u>
	\$9,243.35
$\$9,243.35 \div 7 = \$1,320.48$	

5) Income from trust to two sisters, in equal shares, and to the survivor; upon the death of both sisters, the remainder passes to a charity.

The decedent devises the residue of his estate to a trust in which his two sisters receive the income, in equal shares, during their lifetimes. Upon the death of one life tenant, the income is payable to the survivor. Upon the death of both life tenants, the remainder passes to a charity.

Value of residue – \$900,000
 Both life tenants survived the decedent
 Age of sister A – 70
 Age of sister B – 65
 Life estate factor, sister A – .54838
 Life estate factor, sister B – .62489
 Life expectancy of sister A – 15.40 years
 Life expectancy of sister B – 19.12 years

Contingent portion of the estate

The tax on each life tenant's right to $\frac{1}{2}$ of the income from the trust during her lifetime is immediately due and payable. The remainder interest in the trust will pass to charity and be exempt from tax.

The subsequent life estate that will be received by the life tenant with the longer life expectancy if she survives the life tenant with the shorter life expectancy is contingent, however, and the value of the possible subsequent life estate is the contingent portion of the estate.

The value of the life estates and possible subsequent life estate equals the value of a life estate in the entire trust to the life tenant with the longest life expectancy. Therefore, by subtracting the life estate of each life tenant in $\frac{1}{2}$ of the trust from a life estate in the full value of the trust determined by using the life estate factor for the life tenant (sister B) with the longest life expectancy, the value of the contingent portion of the estate may be determined. The calculations are as follows:

Value of Trust	\$900,000
x Life estate factor, female, age 65	<u>x .62489</u>
Value of a life estate in the trust to the life tenant with the longest life expectancy	\$562,401

Less: \$450,000 (½ trust) x .54838) L.E. factor,
female, age 70) = 246,771.00

\$450,000 x .62489 (L.E. factor, female, age 65) = 281,200.50 527,971.50

Value of the contingent portion of the estate
(amount to be reported on line 8 of the inheritance
tax return) \$34,429.50

Possible contingent taxes

There is only one possible contingent tax that may become due in this estate. If sister B survives sister A she will receive a subsequent life estate in a ½ share of the income from the trust and the contingent tax will be \$3,787.25 (\$34,429.50 x 11%). If, however, sister A survives sister B, the contingent portion of the estate will pass to a charity, as part of the remainder, and be exempt from tax. Sister A would not acquire a subsequent life estate in the trust because she has a shorter life expectancy than sister B.

Present value of contingent tax

The present value of the contingent tax (\$3,787.25) that will become due and payable if sister B survives sister A is determined by multiplying the tax by the factor for the P.V. of \$1.00 at 6% compound interest for 15 years (sister A's life expectancy, 15.40 years rounded to 15). The computation is as follows:

$$\$3,787.25 \times .417265 = \$1,580.29$$

Probability of contingencies occurring

The contingency that has the highest probability of occurrence is that sister B will survive sister A and receive a subsequent life estate in $\frac{1}{2}$ of the income from the trust. Some consideration, however, must also be given to the probability that sister A will survive sister B and that the contingent portion of the estate will be exempt from tax. It should be noted that sister A's life expectancy is approximately $3\frac{1}{2}$ years shorter than sister B's. Therefore, although this contingency is not the most probable, it does have a good chance of occurrence.

Computation of the compromise tax

After giving consideration to the relative probabilities of the two possible contingencies occurring (sister A survives sister B or sister B survives sister A) it was determined that the probability of sister B surviving sister A (P.V. of contingent tax \$1,580.29) has a 70% chance of occurrence and the probability of sister A surviving sister B has a 30% chance of occurrence. The proposed compromise tax would be \$1,106.20 determined as follows:

(P.V. of contingent tax if sister B survives sister A)	
\$1,580.29 x 70% =	\$1,106.20
 (Contingent tax if sister A survives sister B)	
0 x 30% =	<u> 0 </u>
	\$1,106.20

6) Estate for a term of years and the remainder is contingent

The decedent devises the residue of this estate to a trust. The trustee is to pay or apply the income from the trust to or for the benefit of the decedent's grandniece until she attains the age of 25 years. The trustee may also distribute to or for the benefit of the grandniece so much of the principal of the trust as he deems necessary for the grandniece's support, maintenance and education. When the grandniece has attained the age of 25 years, the trustee shall pay to the grandniece the remaining principal of the trust. If the grandniece does not survive to age 25, the trustee shall, upon her death, pay the remaining principal of the trust to the decedent's niece.

Value of trust principal – \$300,000

The grandniece and niece both survived the decedent

Age of grandniece – 17 years

Age of niece – 47 years

Life expectancy of grandniece – 63.19 years

Life expectancy of niece – 34.47 years

Contingent portion of the estate

The tax on the grandniece's right to receive income from the trust until age 25 is immediately due and payable. The remainder interest in the estate, however, is contingent. Therefore, the contingent portion of the estate is determined by subtracting the value of the grandniece's estate for a term of years from the value of the principal of the trust.

Valuation of the grandniece's estate for a term of years (based upon data from the Table for Computing Temporary Annuities and Estates for a Term of Years, Female Lives, 6%)

$$\begin{array}{r} 588031.62454 \text{ (Nx – 18 years)} \\ - 360052.63244 \text{ (Nx – 26 years)} \\ \hline 227978.99210 \end{array}$$

$$\frac{227978.99210}{36781.50319 \text{ (Dx – 17 years)}} = 6.20$$

Trust principal	\$300,000
	<u>x .06</u>
Annual income (at the statutory rate of 6%)	\$18,000
	<u>x 6.20</u>
Value of grandniece's estate for a term of years	\$111,600
Trust Principal	\$300,000
Less: Value of estate for a term of years	<u>- 111,600</u>
Value of contingent portion of the estate (amount to be reported on line 8 of the inheritance tax return)	\$188,400

The contingent tax in this estate will be \$28,260 (\$188,400 x 15%) except in the unlikely event that the decedent's niece receives a portion of the contingent remainder of the estate and this portion of the estate has a value of less than \$500. Since that unlikely event would lower the contingent tax by less than \$75 (\$500 x 15%), it will be disregarded in the determination of the compromise tax.

Present value of the contingent tax

The present value of the contingent tax will be determined upon the basis of three possible distributions of the remainder interest in the trust.

A possible distribution will be based upon the grandniece receiving \$5,000 per annum in principal from the trust for each of the 8 years until she attains the age of 25, and, at that time she will receive the remaining principal of the trust. The present value of the contingent tax in this event will be \$18,351.18 (\$2,984.61 + \$15,366.57), determined as follows:

Annual principal distributions	\$5,000
	<u>x 8</u> years
Total value of annual distributions	\$40,000
*Less: Estate for a term of	
years in this portion of the trust	\$40,000
	<u>x .06</u>
	\$2,400
	<u>x 6.20</u> years
	\$14,880
Contingent portion of annual distributions	\$25,120
	<u>x 15%</u>
Contingent tax on annual distributions	\$3,768
Present value – based upon ½ the total period during	
which payments will be made – since a portion of the	
contingent tax will become due each year – ½ the total	
period equals the average time in which the contingent	
tax will become payable on the annual distributions	
factor 4 years – .792094	<u>x .792094</u>
Present value of contingent tax on annual distributions	\$2,984.61

*Since the beneficiary of the annual principal distributions has received an estate for a term of years in the principal of the trust which was immediately vested and subject to direct tax, the distributions must be reduced by the value of the beneficiary's estate for a term of years in that portion of the trust.

Contingent portion of estate	\$188,400.00
Less: Contingent portion of annual principal distributions	<u>– 25,120.00</u>
	163,280.00
	<u>x .15</u>
Contingent tax on principal distributed to the grandniece when she attains 25 years of age	\$24,492.00
Present value – based upon the 8 year period until the distribution will be made and the contingent tax will become payable – factor 8 years – .627412	<u>x .627412</u>
Present value of contingent tax on principal distribution to grandniece when she attains 25 years of age	\$15,366.57

If the grandniece does not receive any distributions of principal from the trust prior to attaining 25 years of age, the present value of the contingent tax will be \$17,730.66, determined as follows:

Principal distribution at age 25 – the entire contingent portion of estate	\$188,400.00
	<u>x .15</u>
Contingent tax	\$28,260.00
Present Value – based upon the 8 year period until the principal is distributed and the contingent tax becomes payable – factor 8 years – .627412	<u>x .627412</u>
	\$17,730.66

If the grandniece receives \$5,000 per annum for 4 years, is deceased at age 21, and is survived by the decedent's niece, the present value of the contingent tax will be \$22,569.02 (\$1,676.75 + \$20,892.27) determined as follows:

Annual principal distributions	\$5,000
	<u>x 4</u> years
Total value of annual distributions	\$20,000
Less: Estate for a term of years in this portion of the trust	\$20,000
	<u>x .06</u>
	\$1,200
	<u>x 6.20</u> years
	<u>– 7,440</u>
Contingent portion of annual distributions	\$12,560
Contingent portion of annual distributions	\$12,560

	<u>x 15%</u>
Contingent tax on annual distributions Present value – based upon ½ the total period during which payments will be made – 2 years – factor 2 years – .889996	\$1,884.00
	<u>x .889996</u>
Present value of contingent tax on annual distributions	\$1,676.75
Contingent portion of estate	\$188,400
Less: Contingent portion of annual principal distributions	<u>– 12,560</u>
	\$175,840
	<u>x .15</u>
Contingent tax on distribution to niece in 4 years	\$26,376
Present Value – based upon the 4 year period until the distribution will be made – factor 4 years – .792094	<u>x .792094</u>
Present value of contingent tax on distribution to niece in 4 years	\$20,892.27

Determination of compromise tax

If the grandniece dies within a short period of time after the decedent, the contingent tax would become payable and not subject to present value consideration. The amounts to be considered in the computation of the compromise tax range from a high of \$28,260, which represents the total contingent tax with no present value consideration, to a low of \$17,730.66 which would represent the present value of the contingent tax if the entire contingent portion of the estate passes to the decedent's grandniece when she attains 25 years of age.

The most probable present value of the contingent tax will fall between the present value of the contingent tax in the event that the grandniece receives the entire contingent remainder at the age 25 (\$17,730.66) and the present value of the contingent tax if the grandniece uses \$5,000 per annum from the trust in principal distributions and the remainder at the age of 25 (\$18,351.18).

After giving consideration to the various possibilities for the amounts and dates of distribution of the contingent portion of the estate and the present values of the resulting contingent tax, the proposed compromise tax would be around \$18,040.

7) Estates for a term of years and the remainder is contingent

The decedent devises the residue of his estate to a trust. The trustee is to pay or apply the income from the trust to the decedent's daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07). When the daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) attains 28 years of age the trustee shall distribute to her $\frac{1}{4}$ of the principal of the trust as it shall then exist. When the daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) attains 35 years of age, the trustee shall distribute to her $\frac{1}{3}$ of the principal of the trust as it shall then exist. When the daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) attains 40 years of age, the trustee shall distribute to her the remaining principal of the trust and the trust shall terminate; If the daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) dies before receiving all of the principal distributions, any principal of the trust remaining on the date of her death is to be distributed to a nephew of the decedent.

Value of trust – \$400,000, Age of daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) – 21 years

Contingent portion of the estate

The decedent's daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) has three estates for a term of years (temporary annuities) in the trust and the tax on these three estates is immediately due and payable. The remainder interest in the trust, however, is contingent.

The value of the three estates for a term of years is determined by calculating the value of an estate for a term of 7 years (female, age 21 to 28) in $\frac{1}{4}$ of the trust principal, the value of an estate for a term of 14 years (female, age 21 to 35) in $\frac{1}{4}$ of the trust principal ($\frac{1}{3}$ of the remaining $\frac{3}{4}$), and the value of an estate for a term of 19 years (female, age 21 to 40) in $\frac{1}{2}$ of the trust principal (the principal remaining after the distribution at age 35). Factors from the Table for computing Temporary Annuities and Estates for a Term of Years, Female Lives, 6% were used in the calculations.

Valuation of an estate for 7 years (female, age 21 to 28) in \$100,000 (¼ of trust principal)

$$\begin{array}{r}
 460713.72144 \quad (\text{Nx} - 22 \text{ years}) \\
 - 298653.57835 \quad (\text{Nx} - 29 \text{ years}) \\
 \hline
 162060.14309 \\
 \div 162060.14309 = 5.57 \\
 29083.21898 \quad (\text{Dx} - 21 \text{ years})
 \end{array}$$

Trust principal	\$100,000
	<u>x .06</u>
Annual income (at the statutory rate of 6%)	6,000
	<u>x 5.57</u>
Value of an estate for 7 years (female, age 21 to 28) in trust principal of \$100,000	\$33,420

Valuation of an estate for 14 years (female, age 21 to 35) in \$100,000 (¼ of trust principal)

$$\begin{array}{r}
 460713.72144 \quad (\text{Nx} - 22 \text{ years}) \\
 - 191308.15443 \quad (\text{Nx} - 36 \text{ years}) \\
 \hline
 269405.56701 \\
 \div 269405.56701 = 9.26 \\
 29083.21898 \quad (\text{Dx} - 21 \text{ years})
 \end{array}$$

Trust principal	\$100,000
	<u>x .06</u>
Annual income (at the statutory rate of 6%)	6,000
	<u>x 9.26</u>
Value of an estate for 14 years (female, age 21 to 35) in trust principal of \$100,000	\$55,560

Valuation of an estate for 19 years (female, age 21 to 40) in \$200,000 (½ of trust principal)

$$\begin{array}{r}
 460713.72144 \quad (\text{Nx} - 22 \text{ years}) \\
 - 137737.31891 \quad (\text{Nx} - 41 \text{ years}) \\
 \hline
 322976.40253 \\
 \div 322976.40253 = 11.11 \\
 29083.21898 \quad (\text{Dx} - 21 \text{ years})
 \end{array}$$

Trust principal	\$200,000
	<u>x .06</u>
Annual income (at the statutory rate of 6%)	12,000
	<u>x 11.11</u>
Value of an estate for 19 years (female age 21 to 40) in trust principal of \$200,000	\$133,320

Total value of trust principal		\$400,000
Less: Estate for 7 years in \$100,000	33,420	
Estate for 14 years in \$100,000	55,560	
Estate for 19 years in \$200,000	133,320	
		<u>222,300</u>
Value of the remainder interest in the trust – the contingent portion of the estate (amount to be reported on line 8 of the inheritance tax return)		<u>\$177,700</u>

Possible contingent taxes

There are four possible contingent taxes that may become payable in this estate.

If the daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) dies before attaining 28 years of age, the entire contingent portion of the estate will pass to the decedent's nephew and the contingent tax will be \$26,655 (\$177,700 x 15%)

If the daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) dies between the ages of 28 and 35, she will receive a distribution of \$100,000 in trust principal. The remainder interest (portion subject to contingent tax) in this distribution is \$66,580 [\$100,000 – \$33,420 (valuation of the estate for 7 years)] and this amount will be taxable to the decedent's daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07). The remainder of the contingent portion of the estate will pass to the decedent's nephew. The contingent tax in this event will be \$23,991.80, determined as follows:

(portion of contingent remainder to daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) \$66,580 x 11% =	\$7,323.80
portion of the contingent remainder to nephew) \$111,120 x 15% =	<u>16,668.00</u>
	<u>\$23,991.80</u>

If daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) dies between the ages of 35 and 40, she will receive two distributions of trust principal, a distribution in the amount of \$100,000 at age 28 and a distribution in the amount of \$100,000 at age 35. The remainder interest in the distribution at age 28 is \$66,580 as determined above and the remainder interest in the distribution at age 35 is \$44,440 [\$100,000 – \$55,560 (valuation of the estate for 14 years)]. The contingent tax, in this event, will be \$22,214.20 determined as follows:

Daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07)

Remainder interest in principal distribution at age 28	\$66,580	
Remainder interest in principal distribution at age 35	<u>44,440</u>	
	\$111,020	x 11% = \$12,212.20

Nephew

Remainder of the contingent portion of the estate (\$177,700 – \$111,020)	\$66,680	x 15% = <u>10,002.00</u>
		\$22,214.20

If the daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) survives to age 40 and receives all three principal distributions from the trust, the contingent tax will be \$19,547 (\$177,700 x 11%).

Present value of possible contingent taxes

	<u>Contingent tax</u>	<u>P.V. Contingent tax</u>
Daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) dies before attaining 28 years of age Present value – the daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) may die at any time between 21 and 28 years of age – use ½ the 7 year period – 3.5 years – rounded to 4 –factor 4 years .792094	\$26,655	\$21,113.27
Daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) dies between the ages 28 and 35 years Present value – two present value determinations are necessary – for the contingent tax that will become payable when the daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) attains 28 years of age – P.V. factor for 7 years (21 to 28) – factor .665057	23,991.80	13,651.24
Contingent tax (\$66,580 @ 11%)	\$7,323.80	
	<u>x .665057</u>	
	<u>\$4,870.74</u>	

	<u>Contingent tax</u>	<u>P.V. Contingent tax</u>

for the contingent tax that will become payable upon the death of the daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) between 28 and 35 years of age – based upon mid-point between the ages – 31.5 – rounded to 32 – current age 21 – 32 minus 21 = 11 years – factor 11 years – .526788

Contingent tax (\$111,120 @ 15%)	\$16,668
	<u>x .526788</u>
	<u>\$8,780.50</u>

Daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) dies between the ages of 35 and 40 Present value – three present value determinations are necessary – for the contingent tax that will become payable when the daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) attains 28 years of age – P.V. for 7 years – as determined above <u>\$4,870.74</u> for the contingent tax that will become payable when the daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) attains 35 years of age – factor 14 years (21 to 35) – .442301	\$22,214.20	\$10,747.26

Contingent tax (\$44,440 @ 11%)	\$4,888.40
	<u>x .442301</u>
	<u>\$2,162.14</u>

for the contingent tax that will become payable upon the date of death of the daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) may occur at any time between 35 and 40 years of age – based upon the midpoint between the ages – 37.5 – rounded to 38 – 21 (current age) to 38 – 17 years – factor 17 years – .371364. Remainder of the contingent portion of the estate to decedent's nephew –

Contingent tax (\$66,680 @ 15%)	\$10,002.00
	<u>x .371364</u>
	<u>\$3,714.38</u>

	Present value of <u>contingent tax</u>	Percentage probability <u>of occurrence</u>	
Daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) dies before attaining 28 years of age	\$21,113.27	x 1.5%	\$316.70
Daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) dies between the ages of 28 and 35	13,651.24	x 1.75%	238.90
Daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) dies between the ages of 35 and 40	10,747.26	x 1.75%	188.08
Daughter-in-law/female domestic partner of a son (after 7/10/04)/female civil union partner of a son (after 2/19/07) survives to the age of 40	\$9,457.13	x 95%	<u>8,984.27</u>
			\$9,727.95

8) Devise of real property to husband and wife/domestic partner (after 07/10/2004)/civil union partner (after 02/19/2007) as tenants by the entirety

The decedent devises a parcel of real property to his son and daughter-in-law/ female domestic partner of a son (after 07/10/2004)/female civil union partner of a son (after 02/19/2007) as tenants by the entirety.

Value of real property – \$300,000

Age of son –50 years

Age of daughter-in-law/female domestic partner of a son (after 07/10/2004)/female civil union partner of a son (after 02/19/2007)–45 years

Life estate factor for a male, age 50– .75227

Life estate factor for a female, age 45 – .84206

Life expectancy of son – 27.79 years

Life expectancy daughter-in-law/female domestic partner of a son (after 07/10/2004)/female civil union partner of a son (after 02/19/2007) – 36.31 years

Contingent portion of the devise

The contingent portion of the devise of real property to a husband and wife/domestic partner (after 07/10/2004)/civil union partner (after 02/19/2007) as tenants by the entirety is determined in accordance with the provisions of N.J.A.C. 18:26–8.12. A life estate in the real property is computed on the basis of the devisee with the lesser life expectancy and the value of the life estate is vested in the husband and wife/domestic partner (after 07/10/2004)/civil union partner (after 02/19/2007) in equal shares. The tax on this portion of the real property is immediately due and payable. The contingent portion of the devise is then determined by subtracting the life estate from the value of the property.

Value of real property	\$300,000
x Life estate factor for the decedent's son; the devisee with the lesser life expectancy	<u>x .75227</u>
Value of a life estate to a male, age 50	\$225,681
Value of real property	\$300,00
Less: Value of life estate to a male, age 50	<u>– 225,681</u>
Value of the contingent portion of the devise (amount to be reported on line 8 of the inheritance tax return)	\$74,319

Possible contingent taxes

If the decedent's son survives the daughter-in-law/female domestic partner of a son (after 07/10/2004)/female civil union partner of a son (after 02/19/2007) and acquires the remainder interest (the contingent portion of the devise) in the property, there will be no contingent tax payable on the contingent portion of the estate.

If the decedent's daughter-in-law/female domestic partner of a son (after 07/10/2004)/female civil union partner of a son (after 02/19/2007) survives the son and acquires the remainder interest in the property, the contingent tax will be \$8,175.09 ($\$74,319 \times 11\%$).

If the remainder interest in the property is shared equally by the decedent's son and daughter-in-law/female domestic partner of a son (after 07/10/2004)/female civil union partner of a son (after 02/19/2007) as a result of a sale of the property during their joint lifetimes or the entry of a judgment of divorce, the contingent tax will be \$4,087.55 [$(\$74,319 \div 2) \times 11\%$].

Present value of possible contingent taxes

	<u>Contingent tax</u>	<u>P.V. Contingent tax</u>
Son survives the daughter-in-law/female domestic partner of a son (after 07/10/2004)/female civil union partner of a son (after 02/19/2007) and acquires the remainder interest in the property	– 0 –	– 0 –
Daughter-in-law/female domestic partner of a son (after 07/10/2004)/female civil union partner of a son (after 02/19/2007) survives the son and acquires the remainder interest in the property Present value – based upon the life expectancy of the decedent's son – 28 years – factor 28 years – .195630	\$8,175.09	\$1,599.29
Remainder interest in the property shared equally by son and daughter-in-law/female domestic partner of a son (after 07/10/2004)/female civil union partner of a son (after 02/19/2007) Present value – based upon a sale of the property or a divorce – assume sale or divorce in 10 years – factor 10 years – .558395	\$4,087.55	\$2,282.47

Probability of possible contingent taxes

The most probable contingent tax (\$4,087.55) will result from the passage of the remainder interest in the property to the decedent's son and daughter-in-law/female domestic partner of a son (after 07/10/2004)/female civil union partner of a son (after 02/19/2007) in equal shares as a result of a sale or divorce. The contingent tax (\$8,175.09) resulting from the decedent's daughter-in-law/female domestic partner of a son (after 07/10/2004)/female civil union partner of a son (after 02/19/2007) surviving the son and acquiring the remainder interest in the property also has a relatively high probability of occurrence. The probability of the decedent's son surviving the daughter-in-law/female domestic partner of a son (after 07/10/2004)/female civil union partner of a son (after 02/19/2007) and acquiring the remainder interest in the property, which would result in no contingent tax liability, is, however, very low.

Computation of the compromise tax

The compromise tax offer in this situation will be determined by assigning a percentage chance of probability to the present value of the contingent tax resulting from each possible distribution of the remainder interest in the real property. The proposed compromise tax would be \$1,895.08 determined as follows:

	<u>Present value of contingent tax</u>	<u>Percentage probability of occurrence</u>	
Son survives the daughter-in-law/female domestic partner of a son (after 07/10/2004)/female civil union partner of a son (after 02/19/2007) and acquires the remainder interest in the property	– 0 –	x 5%	– 0 –
Daughter-in-law/female domestic partner of a son (after 07/10/2004)/female civil union partner of a son (after 02/19/2007) survives the son and acquires the remainder interest in the property	1,599.29	x 40%	639.72
Remainder interest in property shared equally by son and daughter-in-law/female domestic partner of a son (after 07/10/2004)/female civil union partner of a son (after 02/19/2007)	\$2,282.47	x 55%	1,255.36
			\$1,895.08

Points to Remember

- 1) If distributions, at the discretion of a trustee, may be made from a trust for the education, health and/or support of a beneficiary, the estate representative should, to the extent possible, advise the Branch of the status of the beneficiary's education, health and/or financial condition.
- 2) If the probability of a tax becoming payable on the contingent portion of an estate is remote, the Branch may determine that the probability of tax is too remote to compromise and exempt the contingent portion of the estate from tax.
- 3) If the amount of contingent tax that will become payable upon the occurrence of contingencies is known (for example, all potential beneficiaries are Class D and will receive at least \$500 but less than \$700,000 each), a compromise tax offer may be made on the basis of the present value of the tax. Situations of this nature are contingent because, although the amount of the tax liability is known, the date upon which it will become payable, the beneficiaries, and the amount to be received by each beneficiary is dependent upon the occurrence of contingencies.
- 4) A beneficiary's unrestricted power to invade the principal of a trust subjects the principal of the trust to the immediate assessment of tax. *Laffey Estate v Taxation Division Director*, 8 N.J. Tax 100.
- 5) The right of a beneficiary to request that a limited sum be paid to him or her annually, but with no right to terminate the trust, is a contingent interest for inheritance tax purposes. N.J.A.C.18:-8.21(b).
- 6) When real property is devised or transferred to a husband and wife/domestic partner (after 07/10/2004)/civil union partner (after 02/19/2007) as tenants by the entirety, a life estate computed on the basis of the devisee or grantee with the lesser life expectancy is vested, in equal shares, and subject to the immediate assessment of tax. The remainder is contingent in nature and may be settled by the agreement to and payment of a compromise tax. N.J.A.C. 18:26-8.12.
- 7) A subsequent life estate (life estate taking effect upon the death of a prior life tenant) is always a contingent interest. It is contingent because the subsequent life tenant must survive the original life tenant in order to acquire his or her subsequent life estate. The value of a subsequent life estate is determined by subtracting the value of the life estate of the original life tenant from the value of the life estate of the subsequent life tenant. If the subsequent life tenant has a life estate factor equal to or less than the original life tenant, his or her subsequent life estate has no value for inheritance tax purposes. The present value of the contingent tax that may become payable on a subsequent life estate is based upon the life expectancy of the original life tenant.

- 8) Interests in an estate which are subject to a power of appointment are usually contingent in nature and the tax on these interests does not become due and payable until the power is exercised. If, however, a general power of appointment may be exercised during the lifetime of the holder of the power in favor of himself, his estate, his creditors, or the creditors of his estate, the tax is immediately due and payable. N.J.S.A. 54:36–4, N.J.A.C. 18:26–5.12 and N.J.A.C. 18:26–8.24.
- 9) If a possible contingent tax is based upon equal annual distributions from a trust to a beneficiary during his or her lifetime, the Branch uses one-half of the beneficiary's life expectancy in the determination of the present value of the tax. If, however, the beneficiary of a trust acquires a right to a distribution only upon the death of a life tenant, the full life expectancy of the life tenant is used in the determination of the present value of the tax.
- 10) If two or more years have elapsed since the decedent's date of death, the current ages of life tenants and beneficiaries should be used in calculating the present value of the tax that may become due upon the occurrence of contingencies.
- 11) If tax on the contingent portion of an estate is not settled by the payment of a compromise tax, the administrator, executor, trustee, or other proper representative of an estate must file a bond, subject to the approval of the Director, Division of Taxation, in twice the highest amount of tax that may become payable upon the occurrence of the contingencies. N.J.S.A. 54:36–6 and N.J.A.C. 18:26–9.16(c).

Statutory and Administrative Code ProvisionsStatutes

N.J.S.A. 54:34 –1(d) Transfers Taxable

54:36 – 1 Vested remainders after estate for life or years

54:36 – 2 Valuation of estates for life or years

54:36 – 3 Executory devises or contingent or defeasible estates in expectancy

54:36 – 4 Estates subject to a power of appointment

54:36 – 5 Taxes on executory devises, contingent future estates, estates subject to a power of appointment; when payable

54:36 – 6 Composition of taxes in certain estates; bond in lieu of present payment

Administrative Code

N.J.A.C. 18:26 – 2.14 Composition of taxes on certain transfers

18:26 – 2.15 Bond in lieu of payment

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

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

18:26 – 8.21 Contingent or defeasible estates

18:26 – 8.22 Estates for life, estates for a term of years and annuities

18:26 – 8.23 Vested remainders after estate for life, estate for a term of years and annuity

18:26 – 8.24 Estates subject to power of appointment

18:26 – 9.9 Payment

18:26 – 9.14 Payment on executory devise or transfer subject to a contingency or power of appointment

18:26 – 9.16 Composition of taxes, bond

Other Sources of InformationBooks

1) New Jersey Inheritance and Estate Taxes

Author: David Beck, Esq.

Publisher: Gann Law Books, Newark, N.J.

Copyright 1993

2) New Jersey Transfer Inheritance Tax Manual

Author: Walter S. Kane, Esq.

Publisher: K. Hansen and Co., Morristown, N. J.

Copyright 1991

Inheritance Tax Branch

Taxpayer Information Section, 6th Floor, Taxation Building,

3 John Fitch Way, Trenton, N.J.

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**STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION**



TRANSFER INHERITANCE TAX TABLES

**For use in Estates of Decedents
Dying On or After August 5, 2008**

These tables are based upon the mortality data set forth in the U.S. Decennial Life Tables for 1999 – 2001 (Life Tables for Males: United States and Life Tables for Females: United States).

EXPECTANCY OF LIFE TABLE
Life Table for Females: United States, 1999-2001

Age	Expectation of life in years	Age	Expectation of life in years	Age	Expectation of life in years
0	79.45	38	42.87	76	11.36
1	78.95	39	41.92	77	10.75
2	77.99	40	40.98	78	10.16
3	77.01	41	40.04	79	9.59
4	76.03	42	39.10	80	9.05
5	75.04	43	38.17	81	8.52
6	74.06	44	37.24	82	8.01
7	73.07	45	36.31	83	7.53
8	72.08	46	35.39	84	7.06
9	71.09	47	34.47	85	6.62
10	70.09	48	33.56	86	6.20
11	69.10	49	32.65	87	5.80
12	68.11	50	31.74	88	5.41
13	67.12	51	30.85	89	5.05
14	66.13	52	29.95	90	4.71
15	65.15	53	29.06	91	4.39
16	64.17	54	28.18	92	4.09
17	63.19	55	27.31	93	3.81
18	62.22	56	26.45	94	3.54
19	61.24	57	25.59	95	3.29
20	60.27	58	24.75	96	3.06
21	59.30	59	23.91	97	2.85
22	58.33	60	23.09	98	2.65
23	57.35	61	22.27	99	2.46
24	56.38	62	21.47	100	2.29
25	55.41	63	20.67	101	2.13
26	54.44	64	19.89	102	1.99
27	53.46	65	19.12	103	1.85
28	52.49	66	18.36	104	1.73
29	51.52	67	17.60	105	1.62
30	50.55	68	16.86	106	1.51
31	49.58	69	16.12	107	1.42
32	48.61	70	15.40	108	1.33
33	47.65	71	14.68	109	1.25
34	46.69	72	13.99		
35	45.73	73	13.30		
36	44.77	74	12.64		
37	43.82	75	11.99		

EXPECTANCY OF LIFE TABLE
Life Table for Males: United States, 1999-2001

Age	Expectation of life in years	Age	Expectation of life in years	Age	Expectation of life in years
0	74.10	38	38.41	76	9.36
1	73.66	39	37.49	77	8.85
2	72.70	40	36.58	78	8.36
3	71.73	41	35.67	79	7.89
4	70.75	42	34.77	80	7.44
5	69.77	43	33.88	81	7.01
6	68.78	44	32.99	82	6.60
7	67.79	45	32.10	83	6.20
8	66.81	46	31.23	84	5.83
9	65.82	47	30.36	85	5.47
10	64.83	48	29.50	86	5.13
11	63.83	49	28.64	87	4.81
12	62.84	50	27.79	88	4.50
13	61.85	51	26.94	89	4.22
14	60.87	52	26.10	90	3.95
15	59.90	53	25.27	91	3.69
16	58.94	54	24.44	92	3.45
17	57.99	55	23.62	93	3.23
18	57.04	56	22.81	94	3.02
19	56.10	57	22.02	95	2.82
20	55.17	58	21.24	96	2.64
21	54.24	59	20.47	97	2.47
22	53.31	60	19.71	98	2.31
23	52.39	61	18.96	99	2.16
24	51.46	62	18.23	100	2.03
25	50.54	63	17.51	101	1.90
26	49.60	64	16.80	102	1.78
27	48.67	65	16.11	103	1.68
28	47.73	66	15.42	104	1.58
29	46.79	67	14.74	105	1.48
30	45.85	68	14.08	106	1.40
31	44.91	69	13.43	107	1.32
32	43.97	70	12.80	108	1.25
33	43.04	71	12.19	109	1.19
34	42.11	72	11.59		
35	41.18	73	11.00		
36	40.25	74	10.43		
37	39.33	75	9.89		

LIFE ESTATE TABLE

Single Life, Female, 6%, showing the present worth of an annuity, of a life interest and a remainder interest.

The following table shows the present value of an income for the ages stated.

To find the value of a life estate where the amount is specified, the yearly amount is multiplied by the factor in the annuity column opposite the age of the annuitant. (See A)

Where the income is payable on the corpus of a trust, the amount of the corpus is multiplied by the factor in the life estate column opposite the age of the life tenant. (See B)

A. A female age 50 receives \$200 per month for life.

$$\$200 \times 12 = \$2,400 \times 13.2491 = \$32,028.00$$

B. A female age 50 receives \$50,000 for life with remainder over.

$$\$50,000 \times .80070 = \$40,035.00 \text{ Value of the life estate}$$

$$\$50,000 - \$40,030.50 = \$9,965.00 \text{ Value of the remainder}$$

LIFE ESTATE TABLE
Single life, Female, 6% showing present worth of an annuity,
of a life interest and remainder interest

Age	Annuity	Life Estates	Remainder
0	16.2879	0.97727	0.02273
1	16.3706	0.98223	0.01777
2	16.3605	0.98163	0.01837
3	16.3469	0.98081	0.01919
4	16.3315	0.97989	0.02011
5	16.3146	0.97887	0.02113
6	16.2962	0.97777	0.02223
7	16.2766	0.97659	0.02341
8	16.2555	0.97533	0.02467
9	16.2330	0.97398	0.02602
10	16.2091	0.97254	0.02746
11	16.1835	0.97101	0.02899
12	16.1565	0.96939	0.03061
13	16.1282	0.96769	0.03231
14	16.0989	0.96594	0.03406
15	16.0688	0.96413	0.03587
16	16.0380	0.96228	0.03772
17	16.0064	0.96038	0.03962
18	15.9736	0.95842	0.04158
19	15.9393	0.95636	0.04364
20	15.9030	0.95418	0.04582
21	15.8646	0.95188	0.04812
22	15.8240	0.94944	0.05056
23	15.7812	0.94687	0.05313
24	15.7358	0.94415	0.05585
25	15.6879	0.94127	0.05873
26	15.6372	0.93823	0.06177
27	15.5836	0.93502	0.06498
28	15.5271	0.93162	0.06838
29	15.4676	0.92805	0.07195
30	15.4050	0.92430	0.07570
31	15.3393	0.92036	0.07964
32	15.2703	0.91622	0.08378
33	15.1981	0.91188	0.08812
34	15.1225	0.90735	0.09265

LIFE ESTATE TABLE
Single life, Female, 6% showing present worth of an annuity,
of a life interest and remainder interest

Age	Annuity	Life Estates	Remainder
35	15.0436	0.90261	0.009739
36	14.9610	0.89766	0.10234
37	14.8747	0.89248	0.10752
38	14.7845	0.88707	0.11293
39	14.6904	0.88142	0.11858
40	14.5922	0.87553	0.12447
41	14.4899	0.86939	0.13061
42	14.3832	0.86299	0.13701
43	14.2719	0.85631	0.14369
44	14.1557	0.84934	0.15066
45	14.0343	0.84206	0.15794
46	13.9075	0.83445	0.16555
47	13.7753	0.82652	0.17348
48	13.6376	0.81825	0.18175
49	13.4942	0.80965	0.19035
50	13.3450	0.80070	0.19930
51	13.1899	0.79140	0.20860
52	13.0287	0.78172	0.21828
53	12.8613	0.77168	0.22832
54	12.6878	0.76127	0.23873
55	12.5083	0.75050	0.24950
56	12.3233	0.73940	0.26060
57	12.1331	0.72798	0.27202
58	11.9376	0.71626	0.28374
59	11.7366	0.70420	0.29580
60	11.5298	0.69179	0.30821
61	11.3173	0.67904	0.32096
62	11.0996	0.66597	0.33403
63	10.8767	0.65260	0.34740
64	10.6485	0.63891	0.36109
65	10.4148	0.62489	0.37511
66	10.1737	0.61042	0.38958
67	9.9251	0.59551	0.40449
68	9.6696	0.58017	0.41983
69	9.4076	0.56445	0.43555

LIFE ESTATE TABLE
Single life, Female, 6% showing present worth of an annuity,
of a life interest and remainder interest

Age	Annuity	Life Estates	Remainder
70	9.1396	0.54838	0.45162
71	8.8657	0.53194	0.46806
72	8.5866	0.51520	0.48480
73	8.3036	0.49822	0.50178
74	8.0182	0.48109	0.51891
75	7.7316	0.46389	0.53611
76	7.4447	0.44668	0.55332
77	7.1578	0.42947	0.57053
78	6.8716	0.41230	0.58770
79	6.5868	0.39521	0.60479
80	6.3040	0.37824	0.62176
81	6.0241	0.36145	0.63855
82	5.7477	0.34486	0.65514
83	5.4756	0.32854	0.67146
84	5.2084	0.31250	0.68750
85	4.9468	0.29681	0.70319
86	4.6914	0.28148	0.71852
87	4.4427	0.26656	0.73344
88	4.2014	0.25209	0.74791
89	3.9679	0.23807	0.76193
90	3.7426	0.22456	0.77544
91	3.5259	0.21155	0.78845
92	3.3181	0.19909	0.80091
93	3.1194	0.18716	0.81284
94	2.9299	0.17580	0.82420
95	2.7499	0.16499	0.83501
96	2.5792	0.15475	0.84525
97	2.4179	0.14508	0.85492
98	2.2660	0.13596	0.86404
99	2.1231	0.12739	0.87261
100	1.9893	0.11936	0.88064
101	1.8641	0.11185	0.88815
102	1.7474	0.10485	0.89515
103	1.6389	0.09833	0.90167
104	1.5382	0.09229	0.90771

LIFE ESTATE TABLE
Single life, Female, 6% showing present worth of an annuity,
of a life interest and remainder interest

Age	Annuity	Life Estates	Remainder
105	1.4450	0.08670	0.91330
106	1.3588	0.08153	0.91847
107	1.2794	0.07677	0.92323
108	1.2064	0.07239	0.92761
109	1.1395	0.06837	0.93163

LIFE ESTATE TABLE

Single Life, Male, 6%, showing the present worth of an annuity, of a life interest and a remainder interest.

The following table shows the present value of an income for the ages stated.

To find the value of a life estate where the amount is specified, the yearly amount is multiplied by the factor in the annuity column opposite the age of the annuitant. (See A)

Where the income is payable on the corpus of a trust, the amount of the corpus is multiplied by the factor in the life estate column opposite the age of the life tenant. (See B)

A. A male age 50 receives \$200 per month for life.

$$\$200 \times 12 = \$2,400 \times 12.5378 = \$30,090.72$$

B. A male age 50 receives \$50,000 for life with remainder over.

$$\$50,000 \times .75227 = \$37,613.50 \text{ Value of the life estate}$$

$$\$50,000 - \$37,613.50 = \$12,386.50 \text{ Value of the remainder}$$

LIFE ESTATE TABLE
Single life, Male, 6% showing present worth of an annuity,
of a life interest and remainder interest

Age	Annuity	Life Estates	Remainder
0	16.1395	0.96837	0.03163
1	16.2353	0.97412	0.02588
2	16.2186	0.97312	0.02688
3	16.1981	0.97188	0.02812
4	16.1747	0.97048	0.02952
5	16.1490	0.96894	0.03106
6	16.1214	0.96728	0.03272
7	16.0919	0.96551	0.03449
8	16.0604	0.96362	0.03638
9	16.0267	0.96160	0.03840
10	15.9906	0.95943	0.04057
11	15.9520	0.95712	0.04288
12	15.9111	0.95467	0.04533
13	15.8688	0.95213	0.04787
14	15.8258	0.94955	0.05045
15	15.7830	0.94698	0.05302
16	15.7405	0.94443	0.05557
17	15.6981	0.94189	0.05811
18	15.6557	0.93934	0.06066
19	15.6126	0.93675	0.06325
20	15.5683	0.93410	0.06590
21	15.5229	0.93138	0.06862
22	15.4764	0.92858	0.07142
23	15.4278	0.92567	0.07433
24	15.3763	0.92258	0.07742
25	15.3209	0.91925	0.08075
26	15.2612	0.91567	0.08433
27	15.1972	0.91183	0.08817
28	15.1289	0.90773	0.09227
29	15.0565	0.90339	0.09661
30	14.9803	0.89882	0.10118
31	14.9002	0.89401	0.10599
32	14.8159	0.88896	0.11104
33	14.7276	0.88365	0.11635
34	14.6352	0.87811	0.12189

LIFE ESTATE TABLE
Single life, Male, 6% showing present worth of an annuity,
of a life interest and remainder interest

Age	Annuity	Life Estates	Remainder
35	14.5386	0.87232	0.12768
36	14.4378	0.86627	0.13373
37	14.3326	0.85995	0.14005
38	14.2228	0.85337	0.14663
39	14.1086	0.84652	0.15348
40	13.9900	0.83940	0.16060
41	13.8667	0.83200	0.16800
42	13.7387	0.82432	0.17568
43	13.6059	0.81636	0.18364
44	13.4683	0.80810	0.19190
45	13.3259	0.79956	0.20044
46	13.1788	0.79073	0.20927
47	13.0269	0.78161	0.21839
48	12.8698	0.77219	0.22781
49	12.7069	0.76242	0.23758
50	12.5378	0.75227	0.24773
51	12.3619	0.74171	0.25829
52	12.1793	0.73076	0.26924
53	11.9900	0.71940	0.28060
54	11.7945	0.70767	0.29233
55	11.5934	0.69561	0.30439
56	11.3876	0.68325	0.31675
57	11.1774	0.67064	0.32936
58	10.9631	0.65778	0.34222
59	10.7442	0.64465	0.35535
60	10.5202	0.63121	0.36879
61	10.2915	0.61749	0.38251
62	10.0588	0.60353	0.39647
63	9.8224	0.58934	0.41066
64	9.5825	0.57495	0.42505
65	9.3392	0.56035	0.43965
66	9.0885	0.54531	0.45469
67	8.8326	0.52996	0.47004
68	8.5727	0.51436	0.48564
69	8.3101	0.49860	0.50140

LIFE ESTATE TABLE
Single life, Male, 6% showing present worth of an annuity,
of a life interest and remainder interest

Age	Annuity	Life Estates	Remainder
70	8.0455	0.48273	0.51727
71	7.7787	0.46672	0.53328
72	7.5098	0.45059	0.54941
73	7.2401	0.43441	0.56559
74	6.9708	0.41825	0.58175
75	6.7030	0.40218	0.59782
76	6.4377	0.38626	0.61374
77	6.1747	0.37048	0.62952
78	5.9147	0.35488	0.64512
79	5.6583	0.33950	0.66050
80	5.4060	0.32436	0.67564
81	5.1583	0.30950	0.69050
82	4.9158	0.29495	0.70505
83	4.6789	0.28074	0.71926
84	4.4481	0.26689	0.73311
85	4.2239	0.25343	0.74657
86	4.0064	0.24039	0.75961
87	3.7962	0.22777	0.77223
88	3.5934	0.21560	0.78440
89	3.3983	0.20390	0.79610
90	3.2111	0.19267	0.80733
91	3.0319	0.18191	0.81809
92	2.8607	0.17164	0.82836
93	2.6977	0.16186	0.83814
94	2.5428	0.15257	0.84743
95	2.3959	0.14375	0.85625
96	2.2570	0.13542	0.86458
97	2.1259	0.12755	0.87245
98	2.0024	0.12015	0.87985
99	1.8864	0.11319	0.88681
100	1.7777	0.10666	0.89334
101	1.6759	0.10055	0.89945
102	1.5808	0.09485	0.90515
103	1.4922	0.08953	0.91047
104	1.4098	0.08459	0.91541

LIFE ESTATE TABLE
Single life, Male, 6% showing present worth of an annuity,
of a life interest and remainder interest

Age	Annuity	Life Estates	Remainder
105	1.3332	0.07999	0.92001
106	1.2621	0.07573	0.92427
107	1.1963	0.07178	0.92822
108	1.1355	0.06813	0.93187
109	1.0793	0.06476	0.93524

TABLE FOR COMPUTING TEMPORARY ANNUITIES AND ESTATES FOR A TERM OF YEARS

Female Lives, 6%

Take factor in Nx column opposite age of annuitant plus one year, subtract there from factor in Nx column opposite age at termination of annuity plus one year, and divide result by factor in Dx column opposite age at which annuity begins. The factor thus obtained multiplied by the amount of the annuity gives the value of the temporary estate.

Example: Female age 12 receives \$500 per year until 25 years of age or dying meanwhile.

$$795505.72233 - 360052.63244 = 435453.08989$$

$$435453.08989 \div 49282.82506 = 8.83580$$

$$8.83580 \times \$500 = \$4,417.90$$

\$4,417.90 Value of temporary annuity

**TABLE FOR COMPUTING TEMPORARY ANNUITIES AND
ESTATES FOR A TERM OF YEARS
Female Lives, 6%**

Age	Dx	Nx	Mx
0	100000.00000	1727684.24351	2206.55225
1	93750.07426	1627684.24351	1617.00387
2	88402.99293	1533934.16925	1576.53052
3	83375.67668	1445531.17633	1553.15727
4	78638.48246	1362155.49965	1535.34097
5	74173.22174	1283517.01718	1521.31511
6	69963.12241	1209343.79544	1509.70003
7	65992.92850	1139380.67302	1499.68286
8	62248.67677	1073387.74452	1490.87991
9	58717.45274	1011139.06776	1483.16589
10	55387.09593	952421.61501	1476.43848
11	52245.97169	897034.51908	1470.43288
12	49282.82506	844788.54738	1464.60539
13	46486.75982	795505.72233	1458.13403
14	43847.45436	749018.96251	1450.15460
15	41355.60874	705171.50815	1440.24035
16	39002.77168	663815.89941	1428.28681
17	36781.50319	624813.12773	1414.72237
18	34685.10233	588031.62454	1400.29340
19	32707.38381	553346.52221	1385.88255
20	30842.19798	520639.13840	1372.05807
21	29083.21898	489796.94042	1358.86386
22	27424.27209	460713.72144	1346.13691
23	25859.73464	433289.44935	1333.91675
24	24384.27111	407429.71471	1322.21179
25	22992.81116	383045.44360	1310.99360
26	21680.55201	360052.63244	1300.21432
27	20442.92335	338372.08043	1289.78672
28	19275.57873	317929.15708	1279.58871
29	18174.40470	298653.57835	1269.48517
30	17135.53974	280479.17365	1259.36009
31	16155.41621	263343.63392	1249.17278
32	15230.64987	247188.21771	1238.86397
33	14357.98911	231957.56784	1228.31546
34	13534.38711	217599.57873	1217.42983

**TABLE FOR COMPUTING TEMPORARY ANNUITIES AND
ESTATES FOR A TERM OF YEARS
Female Lives, 6%**

Age	Dx	Nx	Mx
35	12757.03718	204065.19161	1206.17728
36	12023.37705	191308.15443	1194.61359
37	11330.97916	179284.77738	1182.78422
38	10677.48512	167953.79822	1170.66639
39	10060.64409	157276.31307	1158.21128
40	9478.35006	147215.66898	1145.38767
41	8928.63584	137737.31891	1132.18383
42	8409.70251	128808.68307	1118.64498
43	7919.87553	120398.98056	1104.83890
44	7457.58024	112479.10502	1090.83844
45	7021.28983	105021.52478	1076.67522
46	6609.51860	98000.23495	1062.33549
47	6220.82901	91390.71635	1047.76960
48	5853.87032	85169.88734	1032.93330
49	5507.37773	79316.01702	1017.79186
50	5180.18017	73808.63929	1002.33266
51	4871.18330	68628.45912	986.55354
52	4579.35353	63757.27582	970.45112
53	4303.69408	59177.92229	954.00036
54	4043.22418	54874.22821	937.13579
55	3796.99009	50831.00403	919.76345
56	3564.05278	47034.01394	901.75010
57	3343.58449	43469.96116	883.02065
58	3134.90285	40126.37667	863.59851
59	2937.45267	36991.47382	843.59566
60	2750.69366	34054.02115	823.10756
61	2573.98109	31303.32748	802.09463
62	2406.66298	28729.34639	780.47356
63	2248.24875	26322.68341	758.28554
64	2098.31307	24074.43466	735.60922
65	1956.44619	21976.12159	712.51478
66	1822.52630	20019.67539	689.33713
67	1696.10816	18197.14909	666.08085
68	1576.66863	16501.04093	642.64744
69	1463.72612	14924.37230	618.95033

**TABLE FOR COMPUTING TEMPORARY ANNUITIES AND
ESTATES FOR A TERM OF YEARS
Female Lives, 6%**

Age	Dx	Nx	Mx
70	1356.86709	13460.64619	594.94372
71	1255.77012	12103.77910	570.65055
72	1160.05879	10848.00898	546.02050
73	1069.30830	9687.95019	520.93376
74	983.15498	8618.64189	495.30733
75	901.33281	7635.48691	469.13544
76	823.63698	6734.15410	442.45844
77	749.98220	5910.51713	415.42463
78	680.24216	5160.53492	388.13641
79	614.31229	4480.29276	360.71082
80	552.10858	3865.98046	333.27950
81	493.56596	3313.87188	305.98830
82	438.63613	2820.30592	278.99618
83	387.28492	2381.66979	252.47342
84	339.48883	1994.38487	226.59912
85	295.23097	1654.89604	201.55761
86	254.49634	1359.66507	177.53416
87	217.26637	1105.16873	154.70965
88	183.51313	887.90236	133.25450
89	153.19321	704.38924	113.32212
90	126.24182	551.19603	95.04204
91	102.56733	424.95421	78.51332
92	82.04704	322.38688	63.79872
93	64.52439	240.33984	50.92024
94	49.80841	175.81546	39.85659
95	37.67560	126.00705	30.54312
96	27.87447	88.33146	22.87457
97	20.13266	60.45699	16.71057
98	14.16616	40.32433	11.88366
99	9.68987	26.15816	8.20922
100	6.42848	16.46829	5.49631
101	4.12654	10.03982	3.55824
102	2.55664	5.91328	2.22193
103	1.52490	3.35664	1.33491
104	0.87327	1.83173	0.76958

**TABLE FOR COMPUTING TEMPORARY ANNUITIES AND
ESTATES FOR A TERM OF YEARS
Female Lives, 6%**

Age	Dx	Nx	Mx
105	0.47885	0.95847	0.42460
106	0.25072	0.47962	0.22357
107	0.12499	0.22890	0.11204
108	0.05917	0.10390	0.05328
109	0.02651	0.04474	0.02398

TABLE FOR COMPUTING TEMPORARY ANNUITIES AND ESTATES FOR A TERM OF YEARS

Male Lives, 6%

Take factor in Nx column opposite age of annuitant plus one year, subtract the factor in Nx column opposite age at termination of annuity plus one year, and divide result by factor in Dx column opposite age at which annuity begins. The factor thus obtained multiplied by the amount of the annuity gives the value of the temporary estate.

Example: Male age 12 receives \$500 per year until 25 years of age or dying meanwhile.

$$781618.41178 - 348035.18534 = 433583.22644$$

$$433583.22644 \div 49192.02741 = 8.81410$$

$$8.81410 \times \$500 = \$4,407.05$$

\$4,407.05 Value of temporary annuity

**TABLE FOR COMPUTING TEMPORARY ANNUITIES AND
ESTATES FOR A TERM OF YEARS
Male Lives, 6%**

Age	Dx	Nx	Mx
0	100000.00000	1712417.32222	3070.71761
1	93621.27878	1612417.32222	2352.37375
2	88273.55248	1518796.04344	2303.93511
3	83245.40451	1430522.52097	2272.43163
4	78510.95826	1347277.11645	2249.98941
5	74049.79007	1268766.15819	2232.83772
6	69843.94550	1194716.36812	2218.49071
7	65877.81865	1124872.42262	2205.79473
8	62137.62006	1058994.60397	2194.52927
9	58610.85835	996856.98390	2184.99134
10	55285.62593	938246.12555	2177.35468
11	52150.06043	882960.49962	2171.16423
12	49192.02741	830810.43919	2165.02142
13	46399.16064	781618.41178	2156.60903
14	43759.59881	735219.25114	2143.41479
15	41263.38998	691459.65232	2124.16438
16	38902.49737	650196.26234	2098.93535
17	36670.44068	611293.76947	2068.90682
18	34561.24296	574623.32429	2035.39442
19	32569.46514	540062.08132	1999.91337
20	30689.58143	507492.61618	1963.58429
21	28915.33128	476803.03475	1926.48026
22	27240.96994	447887.70347	1888.83578
23	25662.11786	420646.73353	1851.92540
24	24174.79664	394984.61567	1817.17688
25	22774.63369	370809.81903	1785.39865
26	21456.78035	348035.18534	1756.67552
27	20216.08010	326578.40499	1730.51000
28	19047.56029	306362.32490	1706.29661
29	17946.39271	287314.76461	1683.29283
30	16908.22974	269368.37190	1660.96340
31	15929.35969	252460.14216	1639.16296
32	15006.37041	236530.78247	1617.83555
33	14135.85465	221524.41207	1596.73699
34	13314.63477	207388.55741	1575.65982

**TABLE FOR COMPUTING TEMPORARY ANNUITIES AND
ESTATES FOR A TERM OF YEARS
Male Lives, 6%**

Age	Dx	Nx	Mx
35	12539.80000	194073.92265	1554.48362
36	11808.71873	181534.12265	1533.20235
37	11118.90298	169725.40393	1511.80465
38	10467.92722	158606.50094	1490.20075
39	9853.47576	148138.57373	1468.27347
40	9273.39393	138285.09797	1445.93556
41	8725.74090	129011.70404	1423.19161
42	8208.71200	120285.96314	1400.07258
43	7720.53369	112077.25114	1376.53834
44	7259.51501	104356.71745	1352.53101
45	6824.07755	97097.20244	1328.00949
46	6412.71444	90273.12489	1302.91492
47	6024.08324	83860.41045	1277.26755
48	5657.03854	77836.32721	1251.20870
49	5310.57646	72179.28867	1224.95635
50	4983.69196	66868.71221	1198.67051
51	4675.32451	61885.02025	1172.39883
52	4384.36261	57209.69575	1146.07795
53	4109.71265	52825.33314	1119.59946
54	3850.24844	48715.62048	1092.76049
55	3604.89701	44865.37204	1065.34765
56	3372.65964	41260.47503	1037.16105
57	3152.71684	37887.81539	1008.12351
58	2944.41607	34735.09855	978.27841
59	2747.29012	31790.68249	947.81753
60	2560.88020	29043.39237	916.91442
61	2384.56822	26482.51234	885.55809
62	2217.67576	24097.94412	853.64118
63	2059.70136	21880.26837	821.19561
64	1910.20562	19820.56700	788.28673
65	1768.78772	17910.36139	754.99368
66	1635.77943	16141.57367	722.10545
67	1510.32113	14505.79423	689.23844
68	1391.83603	12995.47310	656.24321
69	1279.81465	11603.63707	623.00501

**TABLE FOR COMPUTING TEMPORARY ANNUITIES AND
ESTATES FOR A TERM OF YEARS
Male Lives, 6%**

Age	Dx	Nx	Mx
70	1173.91441	10323.82242	589.54711
71	1073.95860	9149.90801	556.03927
72	979.71832	8075.94941	522.58911
73	890.86468	7096.23109	489.19122
74	807.10530	6205.36641	455.85815
75	728.23099	5398.26111	422.66904
76	654.09124	4670.03012	389.74991
77	584.63954	4015.93888	357.32225
78	519.77366	3431.29934	325.54917
79	459.40283	2911.52568	294.59949
80	403.44428	2452.12285	264.64488
81	351.81942	2048.67857	235.85648
82	304.44954	1696.85915	208.40091
83	261.25137	1392.40961	182.43573
84	222.13242	1131.15825	158.10460
85	186.98648	909.02582	135.53218
86	155.68928	722.03935	114.81913
87	128.09498	566.35006	96.03743
88	104.03334	438.25509	79.22645
89	83.30833	334.22175	64.39012
90	65.69814	250.91342	51.49549
91	50.95697	185.21528	40.47308
92	38.81859	134.25831	31.21906
93	29.00172	95.43972	23.59947
94	21.21676	66.43801	17.45612
95	15.17370	45.22124	12.61401
96	10.59030	30.04754	8.88950
97	7.20012	19.45724	6.09877
98	4.75948	12.25712	4.06568
99	3.05286	7.49764	2.62847
100	1.89623	4.44477	1.64464
101	1.13811	2.54854	0.99386
102	0.65863	1.41043	0.57880
103	0.36668	0.75180	0.32416
104	0.19595	0.38511	0.17415

**TABLE FOR COMPUTING TEMPORARY ANNUITIES AND
ESTATES FOR A TERM OF YEARS
Male Lives, 6%**

Age	Dx	Nx	Mx
105	0.10027	0.18917	0.08956
106	0.04902	0.08890	0.04399
107	0.02284	0.03988	0.02058
108	0.01012	0.01703	0.00916
109	0.00425	0.00691	0.00386

DISCOUNT TABLE

**Present value of \$1.00 at compound interest
for any time from 1 to 100 years.**

YEARS	5%	6%	7%	8%
1	0.952381	0.943396	0.934579	0.925926
2	0.907029	0.889996	0.873439	0.857339
3	0.863838	0.839619	0.816298	0.793832
4	0.822702	0.792094	0.762895	0.735030
5	0.783526	0.747258	0.712986	0.680583
6	0.746215	0.704961	0.666342	0.630170
7	0.710681	0.665057	0.622750	0.583490
8	0.676839	0.627412	0.582009	0.540269
9	0.644609	0.591898	0.543934	0.500249
10	0.613913	0.558395	0.508349	0.463193
11	0.584679	0.526788	0.475093	0.428883
12	0.556837	0.496969	0.444012	0.397114
13	0.530321	0.468839	0.414964	0.367698
14	0.505068	0.442301	0.387817	0.340461
15	0.481017	0.417265	0.362446	0.315242
16	0.458112	0.393646	0.338735	0.291890
17	0.436297	0.371364	0.316574	0.270269
18	0.415521	0.350344	0.295864	0.250249
19	0.395734	0.330513	0.276508	0.231712
20	0.376889	0.311805	0.258419	0.214548
21	0.358942	0.294155	0.241513	0.198656
22	0.341850	0.277505	0.225713	0.183941
23	0.325571	0.261797	0.210947	0.170315
24	0.310068	0.246979	0.197147	0.157699
25	0.295303	0.232999	0.184249	0.146018
26	0.281241	0.219810	0.172195	0.135202
27	0.267848	0.207368	0.160930	0.125187
28	0.255094	0.195630	0.150402	0.115914
29	0.242946	0.184557	0.140563	0.107328
30	0.231377	0.174110	0.131367	0.099377

DISCOUNT TABLE

**Present value of \$1.00 at compound interest
for any time from 1 to 100 years.**

YEARS	5%	6%	7%	8%
31	0.220359	0.164255	0.122773	0.092016
32	0.209866	0.154957	0.114741	0.085200
33	0.199873	0.146186	0.107235	0.078889
34	0.190355	0.137912	0.100219	0.073045
35	0.181290	0.130105	0.093663	0.067635
36	0.172657	0.122741	0.087535	0.062625
37	0.164436	0.115793	0.081809	0.057986
38	0.156605	0.109239	0.076457	0.053690
39	0.149148	0.103056	0.071455	0.049713
40	0.142046	0.097222	0.066780	0.046031
41	0.135282	0.091719	0.062412	0.042621
42	0.128840	0.086527	0.058329	0.039464
43	0.122704	0.081630	0.054513	0.036541
44	0.116861	0.077009	0.050946	0.033834
45	0.111297	0.072650	0.047613	0.031328
46	0.105997	0.068538	0.044499	0.029007
47	0.100949	0.064658	0.041587	0.026859
48	0.096142	0.060998	0.038867	0.024869
49	0.091564	0.057546	0.036324	0.023027
50	0.087204	0.054288	0.033948	0.021321
51	0.083051	0.051215	0.031727	0.019742
52	0.079096	0.048316	0.029651	0.018280
53	0.075330	0.045582	0.027711	0.016925
54	0.071743	0.043001	0.025899	0.015672
55	0.068326	0.040567	0.024204	0.014511
56	0.065073	0.038271	0.022621	0.013436
57	0.061974	0.036105	0.021141	0.012441
58	0.059023	0.034061	0.019758	0.011519
59	0.056212	0.032133	0.018465	0.010666
60	0.053536	0.030314	0.017257	0.009876

DISCOUNT TABLE

**Present value of \$1.00 at compound interest
for any time from 1 to 100 years.**

YEARS	5%	6%	7%	8%
61	0.050986	0.028598	0.016128	0.009144
62	0.048558	0.026980	0.015073	0.008467
63	0.046246	0.025453	0.014087	0.007840
64	0.044044	0.024012	0.013166	0.007259
65	0.041946	0.022653	0.012304	0.006721
66	0.039949	0.021370	0.011499	0.006223
67	0.038047	0.020161	0.010747	0.005762
68	0.036235	0.019020	0.010044	0.005336
69	0.034509	0.017943	0.009387	0.004940
70	0.032866	0.016927	0.008773	0.004574
71	0.031301	0.015969	0.008199	0.004236
72	0.029811	0.015065	0.007662	0.003922
73	0.028391	0.014213	0.007161	0.003631
74	0.027039	0.013408	0.006693	0.003362
75	0.025752	0.012649	0.006255	0.003113
76	0.024525	0.011933	0.005846	0.002883
77	0.023357	0.011258	0.005463	0.002669
78	0.022245	0.010620	0.005106	0.002471
79	0.021186	0.010019	0.004772	0.002288
80	0.020177	0.009452	0.004460	0.002119
81	0.019216	0.008917	0.004168	0.001962
82	0.018301	0.008412	0.003895	0.001817
83	0.017430	0.007936	0.003640	0.001682
84	0.016600	0.007487	0.003402	0.001557
85	0.015809	0.007063	0.003180	0.001442
86	0.015056	0.006663	0.002972	0.001335
87	0.014339	0.006286	0.002777	0.001236
88	0.013657	0.005930	0.002596	0.001145
89	0.013006	0.005595	0.002426	0.001060
90	0.012387	0.005278	0.002267	0.000981

DISCOUNT TABLE

**Present value of \$1.00 at compound interest
for any time from 1 to 100 years.**

YEARS	5%	6%	7%	8%
91	0.011797	0.004979	0.002119	0.000909
92	0.011235	0.004697	0.001980	0.000841
93	0.010700	0.004432	0.001851	0.000779
94	0.010191	0.004181	0.001730	0.000721
95	0.009705	0.003944	0.001616	0.000668
96	0.009243	0.003721	0.001511	0.000618
97	0.008803	0.003510	0.001412	0.000573
98	0.008384	0.003312	0.001319	0.000530
99	0.007985	0.003124	0.001233	0.000491
100	0.007604	0.002947	0.001152	0.000455

PRESENT WORTH TABLE

**Present WORTH of \$1.00 each year
for any time from 1 to 100 years.**

YEARS	5%	6%	7%	8%
1	0.952381	0.943396	0.934579	0.952926
2	1.859410	1.833393	1.808018	1.783265
3	2.723248	2.673012	2.624316	2.577097
4	3.545951	3.465106	3.387211	3.312127
5	4.329477	4.212364	4.100197	3.992710
6	5.075692	4.917324	4.766540	4.622880
7	5.786373	5.582381	5.389289	5.206370
8	6.463213	6.209794	5.971299	5.746639
9	7.107822	6.801692	6.515232	6.246888
10	7.721735	7.360087	7.023582	6.710081
11	8.306414	7.886875	7.498674	7.138964
12	8.863252	8.383844	7.942686	7.536078
13	9.393573	8.852683	8.357651	7.903776
14	9.898641	9.294984	8.745468	8.244237
15	10.379658	9.712249	9.107914	8.559479
16	10.837770	10.105895	9.446649	8.851369
17	11.274066	10.477260	9.763223	9.121638
18	11.689587	10.827603	10.059087	9.371887
19	12.085321	11.158116	10.335595	9.603599
20	12.462210	11.469921	10.594014	9.818147
21	12.821153	11.764077	10.835527	10.016803
22	13.163003	12.041582	11.061240	10.200744
23	13.488574	12.303379	11.272187	10.371059
24	13.798642	12.550358	11.469334	10.528758
25	14.093945	12.783356	11.653583	10.674776
26	14.375185	13.003166	11.825779	10.809978
27	14.643034	13.210534	11.986709	10.935165
28	14.898127	13.406164	12.137111	11.051078
29	15.141074	13.590721	12.277674	11.158406
30	15.372451	13.764831	12.409041	11.257783

PRESENT WORTH TABLE

**Present WORTH of \$1.00 each year
for any time from 1 to 100 years.**

YEARS	5%	6%	7%	8%
31	15.592811	13.929086	12.831814	11.349799
32	15.802677	14.084043	12.646555	11.434999
33	16.002549	14.230230	12.753790	11.513888
34	16.192904	14.368141	12.854009	11.586934
35	16.374194	14.498246	12.947672	11.654568
36	16.546852	14.620987	13.035208	11.717193
37	16.711287	14.736780	13.117017	11.775179
38	16.867893	14.846019	13.193473	11.828869
39	17.017041	14.949075	13.264928	11.878582
40	17.159086	15.046297	13.331709	11.924613
41	17.294368	15.138016	13.394120	11.967235
42	17.423208	15.224543	13.452449	12.006699
43	17.545912	15.306173	13.506962	12.403240
44	17.662773	15.383182	13.557908	12.077074
45	17.774070	15.455832	13.605522	12.108402
46	17.880066	15.524370	13.650020	12.137409
47	17.981016	15.589028	13.691608	12.164267
48	18.077158	15.650027	13.730474	12.189136
49	18.168722	15.707572	13.766799	12.212163
50	18.255925	15.761861	13.800746	12.233485
51	18.338977	15.813076	13.832473	12.253227
52	18.418073	15.861393	13.862124	12.271506
53	18.493403	15.906974	13.889836	12.288432
54	18.565146	15.949976	13.915735	12.304103
55	18.633472	15.990543	13.939939	12.318614
56	18.698545	16.028814	13.962560	12.332050
57	18.760519	16.064919	13.983701	12.344491
58	18.819542	16.098980	14.003458	12.356010
59	18.875754	16.131113	14.021924	12.366676
60	18.929290	16.161428	14.039181	12.376552

PRESENT WORTH TABLE

Present WORTH of \$1.00 each year
for any time from 1 to 100 years.

YEARS	5%	6%	7%	8%
61	18.980276	16.190026	14.055309	12.385696
62	19.028834	16.217006	14.070383	12.394163
63	19.075080	16.242458	14.084470	12.402003
64	19.119124	16.266470	14.097635	12.409262
65	19.161070	16.289123	14.109940	12.415983
66	19.201019	16.310493	14.121439	12.422207
67	19.239066	16.330654	14.132186	12.427969
68	19.275301	16.349673	14.142230	12.433305
69	19.309810	16.367617	14.151617	12.438245
70	19.342677	16.384544	14.160389	12.442820
71	19.373978	16.400513	14.168588	12.447055
72	19.403788	16.415578	14.176251	12.450977
73	19.432179	16.429791	14.183412	12.454608
74	19.459218	16.443199	14.190104	12.457971
75	19.484970	16.455848	14.196359	12.461084
76	19.509495	16.467781	14.202205	12.463967
77	19.532853	16.479039	14.207668	12.466636
78	19.555098	16.489659	14.212774	12.469107
79	19.576284	16.499679	14.217546	12.471396
80	19.596460	16.509131	14.222005	12.473514
81	19.615677	16.518048	14.226173	12.475476
82	19.633978	16.526460	14.230069	12.477293
83	19.651407	16.534396	14.233709	12.478975
84	19.668007	16.541883	14.237111	12.480532
85	19.683816	16.548947	14.240291	12.481974
86	19.698873	16.555610	14.243262	12.483310
87	19.713212	16.561896	14.246040	12.484546
88	19.726869	16.567827	14.248635	12.485691
89	19.739875	16.573421	14.251061	12.486751
90	19.752262	16.578699	14.253328	12.487732

PRESENT WORTH TABLE

**Present WORTH of \$1.00 each year
for any time from 1 to 100 years.**

YEARS	5%	6%	7%	8%
91	19.764059	16.583679	14.255447	12.488641
92	19.775294	16.588376	14.257427	12.489482
93	19.785994	16.592808	14.259277	12.490261
94	19.796185	16.596988	14.261007	12.490983
95	19.805891	16.600932	14.262623	12.491651
96	19.815134	16.604653	14.264134	12.492269
97	19.823937	16.608163	14.265546	12.492842
98	19.832321	16.611475	14.266865	12.493372
99	19.840306	16.614599	14.268098	12.493863
100	19.847910	16.617546	14.269251	12.494318

PLANNING CONSIDERATIONS FOR RETIREMENT ASSETS AFTER THE SECURE ACTS

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2025 Contribution and Benefits Limits

		Additional Catch Up – 50+
Individual Retirement Account (IRA)	\$7,000	\$1,000
Roth IRA	\$7,000	\$1,000
Employee contribution to a 401(k) or 403(b) plan	\$23,500	\$7,500* *special rule for ages 60-63 only (\$11,250)
Maximum annual contribution to defined contribution participant's account (including 401(k) EEE contribution)	\$70,000	
Maximum annual benefit payable from a defined benefit plan	\$280,000	

Who does an IRA pay to?

- Individual Retirement Accounts (“IRAs”) are non-probate assets
- IRA is governed by beneficiary designation form (“BDF”), not by decedent’s Will or Revocable Trust
- Unlike many pension accounts, IRAs are generally not required to be paid to an account holder’s spouse.

How are IRAs taxed?

Estate/inheritance tax – IRAs are included in the deceased account holder's estate and are subject to federal and state (if applicable) estate tax and inheritance tax (if applicable). NOTE: 691(c) deduction will apply if federal estate tax is incurred.

NJ inheritance tax – beneficiary gets a tax basis equal to value of account reported on Form IT-R (if subject to tax)

How are IRAs taxed?

Income tax – Income taxation of an IRA depends if the account is a traditional or Roth IRA. Federal and state laws differ. Roth IRA distributions are generally income tax free. Distributions from a traditional IRA are taxed as ordinary income (federal, states vary). Therefore, the law imposes withdrawal requirements upon IRA holders during life and beneficiaries after death.

SECURE IRA Changes – Account Holder

- Minimum distribution age changed – used to be 70 ½
 - Now, if born from 1951-1959 – age 73; from 1960 or after – age 75
 - New life expectancy tables adopted in 2022
 - No age limits on contributions to IRA – can continue to contribute after RBD
-

SECURE IRA Changes – Account Holder

- Excise tax liability for failure to withdraw RMD
 - Previously 50% liability
 - Then reduced to 25%, then reduced to 10%
 - If make qualified charitable distributions (QCDs) after 70 ½, amount of QCD is reduced by any IRA contribution made after 70 ½
-

SECURE Changes – Account Holder

- Enhanced catch-up contributions for qualified plans
 - Inflation adjustments
 - Requirement of catch-up contributions for those making over \$145,000 only to Roth 401(k) delayed until 2026
-

SECURE – Student Loan Match

Under certain conditions, employers can elect to treat employees' qualified student loan repayments as contributions to employer-sponsored plan for matching purposes

Penalty-Free Withdrawals

- Up to \$5,000 per parent for a new child within a year of birth (still owe income tax)
- \$1,000 for personal emergency expense (if not repaid within 3 years, can only take once in a 3 year period)
- Up to \$10,000 for domestic abuse victims (taxes refunded if repaid within 3 years)

SECURE 2.0 – 529 Plan Rollover

- The beneficiary of a 529 plan may rollover up to \$35,000 to a Roth IRA (lifetime limit)
- 529 plan must have been in existence at least 15 years for a designated beneficiary
- Subject to limits on Roth IRA contributions; Roth owner must have earned income at least equal to the amount of the rollover
- Permitted rollover limited to the amount of contributions (plus earnings) before the 5-yr. period ending on the date of the rollover

SECURE Beneficiaries

- SECURE has three categories of beneficiaries --
(1) Designated beneficiaries (DB) – with certain exceptions (below), individuals and certain types of trusts, which must receive all distributions from the IRA by the end of the 10th year after the IRA holder's death.
-

SECURE Beneficiaries

(2) Eligible designated beneficiaries (EDB) – special exceptions to the DB rules that are still allowed to take a form of life expectancy payouts

(3) Non-designated beneficiary – an estate, charity, or non-qualified trust. For a non-DB, the 5-year rule still applies, unless the account holder was in distribution status, then you can apply the owner's remaining life expectancy (ghost rule)

SECURE Beneficiaries

5 types of Eligible Designated Beneficiaries –

- (1) Surviving spouse
 - (2) Minor child (not grandchild) – 10-year rule applies upon reaching majority
 - (3) Disabled beneficiary
 - (4) Chronically ill beneficiary
 - (5) Less than 10 years younger beneficiary
-

Post-SECURE Planning

In 2022, the Treasury Dept. issued Proposed Regulations to the SECURE Act that SIGNIFICANTLY changed how we understand SECURE and how payments are to be made to beneficiaries, making it clear that a defining line is drawn whether an account holder dies before or after his/her

REQUIRED BEGINNING DATE (RBD)!

Post-SECURE Planning

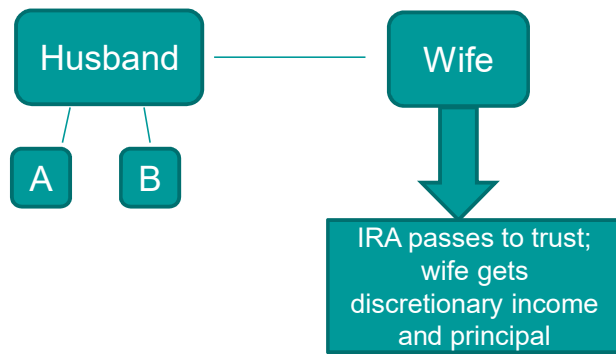
Type of Beneficiary	Death Before Required Beginning Date (RBD)	Death After Required Beginning Date (RBD)
Eligible Designated Beneficiary (EDB)	EDB can “stretch” using own life expectancy OR (in limited circumstances) EDB can elect 10-year rule (plan allows account holder or beneficiary to elect 10 year rule) NOTE: default rule for EDB is life expectancy payout	Life expectancy distributions over the longer of the EDB’s life expectancy or the account holder’s life expectancy (ghost rule) (be careful for older beneficiaries!); spouse can still rollover; no option for 10 year rule
Designated Beneficiary (DB)	10 year rule – no distributions required until end of year 10	Annual distributions based on longer of account holder or DB’s life expectancy but whole account must come out by year 10!
Non-Designated Beneficiary	5 year rule – no distributions required until end of year 5	Ghost rule – continue RMDs based on decedent’s life expectancy, finish distributions within 5 years

Post-SECURE Administration

- Surviving spouse – Most planning for surviving spouse remains the same.
- Spouse can still roll decedent's IRA to his/her own IRA.
- A conduit trust for the surviving spouse is still eligible for lifetime RMDs. Accumulation trust does not work and 10-year rule applies.
- Upon spouse's death, 10-year rule applies.

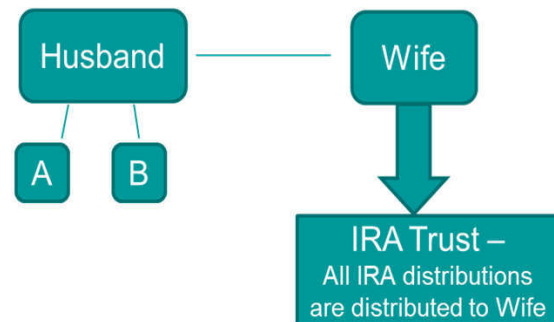
IRA Passing to Surviving Spouse

Accumulation Trust



Not a SECURE EDB; 10-year distribution status

Conduit Trust



This satisfies SECURE; trust is an EDB – lifetime distributions

Post-SECURE Administration

Disabled beneficiaries- definitions coincide with Social Security definition; Section 72(m) of the Code relating to early distributions defines disabled as “unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or be of long-continued and indefinite duration...”

Post-SECURE Administration

Chronically-ill beneficiaries – utilizes long-term care insurance definitions. Looks at inability to perform at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity or presence of a disability or requirement of substantial supervision to protect individual's health and safety due to cognitive impairment.

Post-SECURE Administration

- Less than 10 years younger beneficiary – i.e. siblings, unmarried partner, friend
- Proposed Regulations make it clear that look to exact birthdate (i.e. month/day), not just year, to determine if <10 years younger
- After death of 10 year younger EDB,
subsequent beneficiaries have 10-year rule.

Post-SECURE Administration

- Proposed Regulations clarify – age of majority for children is **21**; take RMDs based on life expectancy
- After reaching majority, 10 year rule applies; but, they still must continue to take RMDs based on life expectancy until 31, by which time full balance of account must have paid out
- REMEMBER – tolling to age of majority is for CHILDREN only, not GRANDCHILDREN

Post-SECURE - TRUSTS

To qualify for EDB extended payout provisions, trusts for surviving spouse, minor children, and 10-year younger beneficiaries **MUST** be conduit trusts. Accumulation trusts **DO NOT** work. This is because the EDB is considered the “sole designated beneficiary” of the IRA since he/she is the sole beneficiary of the trust.

Post-SECURE - TRUSTS

- Disabled and chronically-ill beneficiaries get a benefit other EDBs do not – trusts can be accumulation trusts.
 - This is beneficial because retirement distributions will not interfere with any benefits the EDB may be receiving from third parties.
-

SECURE 2.0 – Special Needs Trusts

- SECURE 2.0 allows favorable treatment for trusts for disabled or chronically ill beneficiaries
 - A trust may have a charity as a remainder beneficiary without losing beneficial treatment for EDB (organization described in § 408(d)(8)(B)(i) - any public charity other than a donor advised fund or supporting organization)
-

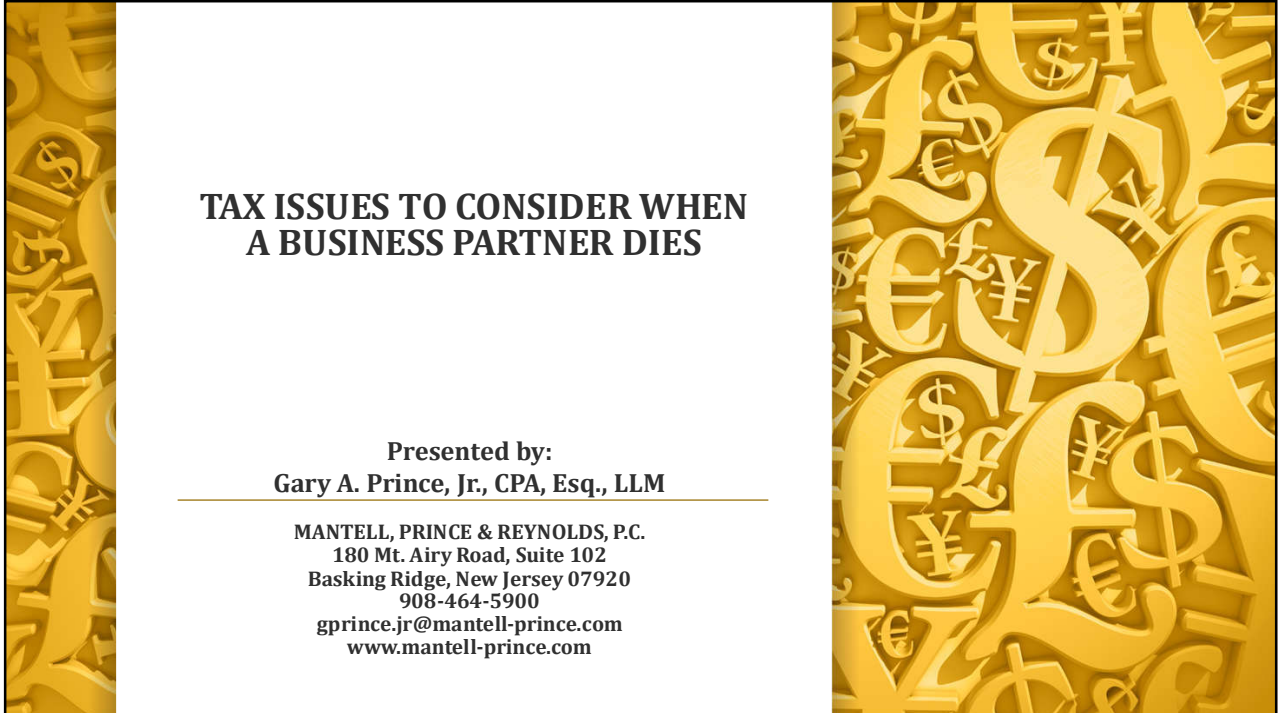
SECURE 2.0 – Split-Interest QCD

- IRA Owners can make a one-time election to
 - ▣ Qualify an IRA distribution to a “split-interest entity” as a Qualified Charitable Deduction (“QCD”)
 - ▣ Up to \$53,000 (2024 amount; indexed for inflation)
 - “Split-interest entity” – CRAT, CLUT, charitable gift annuity
-

SECURE 2.0 – Split-Interest QCD

- Requirements –
 - ❑ No individual other than IRA Owner or spouse holds income interest
 - ❑ Income interest is non-assignable
 - ❑ Entire remainder interest qualifies for income tax deduction
 - All income from entity is reported as ordinary income
-

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TAX ISSUES TO CONSIDER WHEN A BUSINESS PARTNER DIES

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TAX ISSUES TO CONSIDER WHEN A BUSINESS PARTNER DIES



INTRODUCTION

- Partnerships, Limited Liability Companies and Corporations
- Death of a Partner-Impact on Business and Deceased Partner's Estate
- Closing of Tax Year and Reporting of Income in Year of Death
 - Partnerships
 - S Corporations
- Reporting of Income (Decedent and Estate) in Year of Death
- Income Tax Basis issues-Partnership and Corporation
- Partnership IRC §754 Election vs. S Corp. Step-Up in Basis in Stock
- Suspended Losses upon the Death of an Owner
- Material Participation
- Business Planning and Buy-Sell Basics-Time Permitting



Partnerships, LLCs and Corporations

- Partnerships
 - General Partnership
 - Limited Partnership
- LLCs
- Corporations
 - C Corporation
 - S Corporation



DEATH OF A PARTNER

- Is there a Buy-Sell Agreement?
 - Cross-Purchase Agreement
 - Entity Purchase/Redemption Agreement
- Option vs. Mandatory Sale
- Are there Permitted Transferees allowed?
- Impact of Death upon the Business
- Deceased Partner's Estate and related Estate Administration



ALLOCATION OF PARTNERSHIP ITEMS IN YEAR OF DEATH

- Partnership's Tax Year - IRC§ 706(b)(1)
- Partner's Tax Year - IRC§ 706(b)(2)
- Except in case of (i) termination of P-Ship and (ii) disposition of entire interest, "the taxable year of P-Ship" shall **not** close as a result of death, entry of new partner or liquidation/sale or exchange of interest. (IRC§ 706(c)(1))
- However, taxable year of P-Ship shall close "with respect to a partner who dies". In such case, partner includes distributive share of income through date of termination. (IRC§ 706(c)(2)(A))



ALLOCATION OF PARTNERSHIP ITEMS IN YEAR OF DEATH

- The Partnership is required to issue a final K-1 to the deceased partner with allocations through the date of death.
- The successor in interest would receive a Schedule K-1 for the balance of the year.
- There are varying interest rules to determine how to allocate partnership items for (i) the year of death, (ii) “interim closing of the books method,” which is the default method, and (iii) the “proration method.”
- Communication and coordination between lawyers, accountants and business.



ALLOCATION OF S CORPORATION ITEMS IN YEAR OF DEATH

- General rule is that Shareholder's pro rata share of income and loss is allocated based on shares outstanding on each day. IRC§ 1377(a)(1)
- Election can be made under IRC§ 1377(a)(2) to do an "interim closing of the books," essentially creating two tax years. All shareholder must consent. Could be costly, but could be beneficial, i.e., gain pre-death when estate tax is due.
- Communication and coordination between lawyers, accountants and business.



ANOTHER S CORPORATION ISSUE TO CONSIDER

- Beware of possibility of inadvertent termination of S Election.
- Corporation may not even be aware that shareholder has died, who the successor in interest is and whether any required timely elections are being made.
- Common scenario is when the decedent owned S corporation shares in a Revocable Trust, which becomes irrevocable upon death and then has its own income tax filing requirements. An IRC§ 645 Election may be made. When does the successor trust need to make an S Election?
- Rev. Proc. 2013-30 could provide relief.



PARTNERSHIP TERMINATION

- Technical Termination - occurs if deceased Partner owned 50% or more of capital and profits interest in Partnership.
 - Also occurs at deceased Partner's death if aggregate 50% or more change within 12 months of death.
 - Partnership tax year closes as of date of death of deceased Partner.
- Two-Person partnership.
 - Death of Partner results in termination if winding-up occurs
 - If successor in interest stays in the game-no termination. §1.708-1(b)(1)(i).
- If a Partnership's business operations cease upon death, the Partnership is terminated for tax purposes. Partnership is terminated up winding-up. Example would be death of a single partner running the business.

PARTNERSHIP BASIS ISSUES

- Outside Basis = Partner's Basis in the Partnership Interest.
- Inside Basis = Partnership's Basis in underlying assets and determines gain or loss at the Partnership level.
- If both Limited and General Partner, Partner has one unitary combined Basis. Rev. Rul. 84-52
- Disregarded entities (e.g., single member LLC) = no Outside Basis
- Outside Basis is important when determining maximum loss that can pass through, gain or loss from sale of Partnership interest, tax consequences of a cash distribution and tax consequences of a property distribution.
- Outside Basis and Inside Basis are usually equal at the formation of the Partnership.



PARTNERSHIP BASIS ISSUES

- Outside Basis can be estimated by adding Partner's share of liabilities and IRC§ 743(b) basis adjustments to the Capital Account
- Contributions increase Outside Basis
- Distributions decrease Outside Basis
- Increase or decrease in share of liabilities adjust Outside Basis
- Distributive share of income increases Outside Basis
- Distributive share of loss decreases Outside Basis



PARTNERSHIP BASIS EXAMPLE

- Three children inherit family business that is taxed as a Partnership. Step-up to Outside Basis occurs pursuant to IRC §1014. Three children continue to operate business successfully for many years. In fact, they do so well that they accumulate a significant amount of marketable securities inside the Partnership. Lawyer representing the children regarding estate planning identifies liability concern regarding the marketable securities. Can the marketable securities be distributed without tax consequence?
- The general rule is that partners do not recognize gain or loss on pro rata “current” distributions either at the Partner or Partnership level. IRC §731.
- Exception: To the extent “Money” is distributed in excess of Outside Basis. Money is defined to include marketable securities. IRC §731(c).
- Therefore, current distribution of the marketable securities in excess of Outside Basis could cause capital gain.



PARTNERSHIP BASIS EXAMPLE

- Lifetime planning options. Consider restructuring Partnership to include a parent company and distributing the marketable securities “upstream”.
- Estate Panning Issues.
 - Partnership Agreement-Planning among three siblings, permitted transferees, valuation, etc.
 - Death of one of the siblings, tax issues, IRC §754 election, etc.



IRC§ 754 ELECTION

- Upon death of a Partner there is a basis step-up in the Partnership interest (i.e., Outside Basis), not in the actual assets of the Partnership.
- IRC§ 754 provides for an election to adjust Inside Basis of Partnership assets (under IRC§ 743(b)) when Partnership interest is transferred upon Partner's death. Also applies if interest is sold.
- Eliminates discrepancy between Outsider Basis of Partnership Interest (as adjusted by IRC §1014) and the successor's share of Partnership's Inside Basis in its assets. Ensures Partnership interest and underlying assets reflect current FMV.
- This election only benefits the new Partner. Can provide for depreciation deductions and lower capital gain upon sale of Partnership assets.
- Regs under IRC§ 754 provide that election is made by filing a written statement with Form 1065 for year that transfer is made.



IRC§ 754 ELECTION

- IRC§ 754 must be filed on a timely filed Form 1065, including extensions.
- IRC§ 754 election must state name and address of Partnership, be signed by a Partner and make an affirmative declaration of the election under IRC§ 754 to apply the provisions of IRC§ 734(b) and 743(b).
- Various forms of relief available for improper election



IRC§ 754 ELECTION-EXAMPLE

- Triangle LLC has 3 partners, C, S and R. C dies, O is the successor in interest. Triangle owns a building with FMV \$9M and basis of \$3M.
- O receives step-up to \$3M in 1/3 interest in Triangle. O's Inside basis remains at \$1M.
- If building is sold for \$9M, Triangle has gain of \$6M and each S, R and O would receive Schedule K-1 reflecting a reportable capital gain of \$2M (ignoring any recapture)
- With an IRC§ 754 election in place, O receives Inside Basis increase of \$2M. O's \$2M reportable capital gain would be offset by the \$2M special basis adjustment and O would not recognize any gain.
- Triangle should maintain proper records tracking the basis adjustments under IRC§ 734(b) and IRC§743(b).



IRC§ 754 PRACTICAL CONSIDERATIONS

- Estate Administration-proper communication among all parties. Attorney prepared estate administration outline is highly recommended.
- IRC§ 754 should be part of this outline and provided to the accountant who is responsible for preparing the Form 1065.
- Election remains in effect until revoked.
- Appraisals

THERE IS NO IRC§ 754 EQUIVILENT FOR S CORPORATIONS

- When a Shareholder dies the basis in the Shares are stepped-up to FMV as of date of death IRC§ 1014(a)(1). However, there is no available adjustment to the basis of the corporation's assets.
- In prior example-If building is sold for \$9M, Triangle has gain of \$6M and each S, R and O would receive Schedule K-1 reflecting a reportable capital gain of \$2M (ignoring any recapture). O has a gain, but also gets to increase his stock basis by \$2M. However, the increase in stock basis is of no use to O at the present time.
- Possible Solution - Create a capital loss to offset the capital gain. Property sale and liquidation of the corporation must be done in the same year. Distribution of assets in complete liquidation is treated as a sale.
- In prior example-Stock basis of O would be increased to \$3M at death, \$2M gain would increase this further to \$5M. Upon liquidation (treated as sale) in same year, O has Amount Realized of \$3M, less basis in stock of \$5M, creating a \$2M capital loss which could offset the \$2M gain generated by the sale of the property.



THERE IS NO IRC§ 754 EQUIVILENT FOR S CORPORATIONS

- From O's standpoint, the liquidation is treated as O selling the shares back to Triangle in exchange for his proportionate share of Triangle assets which are distributed to O in the liquidation.
- It is the timing of the basis adjustment to the shares that creates the capital loss needed to offset the capital gain from the sale of the property.
- Same would hold true if the property were distributed to the shareholders in complete liquidation-deemed sale at FMV rule. In this case, beneficiary's basis in the property would be the FMV at time of distribution, which would minimize gain upon future sale.
- Estate Administration-proper communication among all parties. Attorney prepared estate administration outline is highly recommended.



SUSPENDED LOSSES UPON DEATH OF AN OWNER

- Owner of an interest in a business may have suspended losses that were not deductible because of basis rules, passive activity rules and at-risk rules. Upon the death of the owner, suspended loss treatment can be confusing.
- IRC§ 704(d)-losses suspended due to insufficient basis. These losses are generally lost at death upon transfer to beneficiaries.
- IRC§ 469-Passive Activity Rules. Suspended Passive Activity losses will be allowed on decedent's final Form 1040 only to the extent that they exceed the basis step-up. For example, if suspended Passive Losses were \$20,000 and Partnership Interest was stepped-up from \$2,000 to \$15,000 (or \$13,000); the difference of \$7,000 (\$20,000-\$13,000) would be deductible on the decedent's final Form 1040.
- IRC§ 465-At-Risk Rules. These losses are generally lost at death upon transfer to beneficiaries.



MATERIAL PARTICIPATION OF A TRUST OWNING A BUSINESS INTERST

- The Material Participation rules under IRC§ 469 are important to determine if losses are deductible and whether IRC§ 1411 Net Investment Income Tax applies
- The participation of a deceased taxpayer is not attributed to his or her estate or beneficiaries.
- Frank Aragona Trust v. Commissioner, 142 T.C. 9 (2014). Trust real estate business was operated through an LLC. Following Grantor's death, 5 kids and a third-party became co-trustees. Three of the kid/trustees were employed by the LLC. The Trust wanted to deduct/carryback losses and the issue was whether the losses were deductible or were they passive and therefore not deductible. The Court held that the Trust materially participated in the business and satisfied the requirements of IRC§ 469.



BUY-SELL TRIGGERING EVENTS

- Death
- Disability
- Divorce
- Retirement
- Bankruptcy
- Bad Acts



TYPES OF BUY-SELL AGREEMENTS

- Cross-Purchase Agreements
- Entity Purchase/Redemption Agreements
- Option vs. Mandatory Sale
- Establishing Value
 - Agreed Value
 - Agreed Formula
 - Appraisal



FUNDING MECHANISMS

- Installment Sales
 - Redemption
 - Cross-Purchase
 - Hybrid
- Third-Party Borrowing
- Life Insurance
 - Types of Life Insurance
 - Provisions in the Agreement regarding Life Insurance



CONNELLY V. UNITED STATES 602 U.S. 257 (JUNE 6, 2024)

- Two brothers, Michael (77%) and Thomas (23%) executed a corporate agreement
 - Survivor had option to purchase deceased brother's shares
 - If not exercised, Company required to purchase shares (Redemption)
- Agreement called for annual "Certificate of Value", otherwise appraisal was required
- Company owned \$3M of life insurance on each brother
- Taxpayer argued life insurance was not part of value of Company because it was offset by redemption obligation
- Court rejected Taxpayer's argument and included life insurance proceeds as part of Company's value without reduction for the redemption obligation

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CONNELLY V. UNITED STATES 602 U.S. 257 (JUNE 6, 2024)

- Review client's current Shareholder and Operating Agreements
 - Consider cross-purchase arrangements
 - How to restructure company owned life insurance and "transfer for value" concerns
 - Risk of shareholder not maintain life insurance policy in cross-purchase arrangement
- With high Estate Tax exemption maybe higher company value (Redemption) does not matter, in fact, higher income tax basis could be beneficial

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OTHER KEY PROVISIONS AND ISSUES

- Develop a Form Document
- Mandatory Tax Subsidy Distributions
- S Corporation Issues
- Death
- Disability
- Divorce
- Termination of Employment
- Tag-Along/Drag-Along Rights



OTHER KEY PROVISIONS AND ISSUES

- Anti-Dilution Provision
- Business Plan Provisions
- Personal Guarantees/Loans
- Restrictive Covenants
- Voting Issues – unanimous, majority, etc.
- Deadlock Clause

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**What Charitable Strategies Should We
Focus on in the Current Tax and
Interest Rate Environment
While Keeping an Eye on the
The new tax law just enacted**

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1. Choice of Asset to Donate During Life or Bequest at Death

- a. Donor can minimize capital gains taxes and avoid the issue of step up in or new basis on death or not by contributing long-term appreciated assets during life
- b. Eliminate capital gains taxes on beneficiaries of estate in the event we lose step up in basis on death by making a bequest of assets with low basis to charity instead of to individual beneficiaries or trusts for individuals
- c. Possible offset of capital gain tax on appreciation of assets in estate by bequests to charity
- d. Also consider the benefit of the tax avoided vs. the benefit of the deduction when making lifetime charitable gifts of appreciated assets
 - i. ie the effective cost of the deduction
 - ii. With a capital gain asset, the lower the basis, the more the capital gain is avoided, the more the benefit of the capital gain tax avoided and therefore the bigger the total benefit of the charitable deduction and therefore the lower actual cost to the donor of the donation

2. Charitable Deduction Limitations

Federal income tax deduction limitations for lifetime charitable gifts: the income tax charitable deduction for an individual donor is subject to limitations depending upon a number of factors, including but not limited to the following:

- a. "Contribution base" means the individual's adjusted gross income without regard to any net operating loss carryback to the year. IRC §170(b)(1)(F)
- b. The income tax deduction is now allowed only to the extent the aggregate contributions exceed .5% of the taxpayer's contribution base for the year of the gifts
- c. General rule: the deduction is at the fair market value of the asset contributed
- d. Exceptions to FMV rule:
 - i. tangible personal property that is put to an un-related use by the donee organization is reduced by any long-term gain that would have been realized if the property had been sold. IRC §170(e)(1)(B)(i).
 - ii. long-term capital gain property reduced to its basis for deduction purposes to use the 50% limitation in place of the 30% limitation. IRC §170(e)(1)(C)(iii)

- e. **NOTE:** the SALT and standard deduction increases have a significant impact on lifetime charitable giving.

- i. The standard deduction is now \$15,000 for a single taxpayer and \$30,000 for a couple (2025 amounts), and the new deduction for only charitable gifts in excess of 0.5% of AGI mean that charitable gifts must be larger to obtain any deduction
- ii. For a married couple with state and local income and property tax deduction limitation at \$40,000 and no mortgage interest deduction, they have to come up with substantial charitable donations to get their first dollar of itemized deductions. The typical donor does not give large levels each year.

- f. **NOTE:** The limitation on excess itemized deductions discussed above is not a real limitation on the charitable deduction for most clients making significant charitable gifts:

- i. The 2025 standard deduction is now \$15,000 for a single taxpayer and \$30,000 for a couple, so the gifts must be larger to obtain the deduction
- ii. Example: assume a couple has adjusted gross income of \$500,000 and charitable contributions of \$50,000, mortgage interest of \$20,000 (limited to the interest on a mortgage of no more than \$750,000), state income tax of \$35,000 and real property tax of \$40,000:

Adjusted gross income	\$500,000
Mortgage interest expense	\$ 20,000
State income tax and real property	
Tax deduction allowed (of the	
\$75,000 paid, only \$40,000 is	
Allowed)	\$ 40,000
Charitable contributions	\$ 50,000

Here, the couple's mortgage interest and state income tax and real property tax take them into itemized deduction territory so that the entire charitable deduction is available, reduced by 0.5% of the AGI of \$500,000 or by \$2,500 to \$47,500.

- g. At this time, there is no charitable deduction for New Jersey income tax purposes.
- h. There are no percentage limitations for the gift and estate tax charitable deductions – the full amount of the charitable component of the gift or bequest to charity is deductible for gift or estate tax purposes, respectively.

3. Bunching of charitable gifts in one year to accelerate deductions for income tax purposes

- a. New increased limitation on SALT deductions and personal standard deductions has greatly limited the benefit of charitable giving during life for individuals who make modest charitable gifts each year.
- b. These prior and new limitations have and will impact charities and charitable giving, especially for individuals who did not have sufficient mortgage interest, medical and other itemized deductions that did not allow them to get the benefit of their charitable contributions
- c. However, by bunching their charitable gifts for multiple years into one year, the taxpayer could obtain an income tax deduction where the taxpayer otherwise would not obtain the tax benefit from the charitable giving
- d. How to best bunch the charitable gifts without actually making all your charitable gifts in one year? The DAF

4. Donor Advised Funds – bunching to accelerate deductions for income tax purposes and substitute for family foundation

- a. Certain community foundations (ie New Jersey Community Foundation), religious organizations (ie Jewish Community Foundation of Greater MetroWest NJ) and other organizations (ie Fidelity Charitable Services and certain brokerage houses) offering the equivalent of community foundations offer a type of account called a donor advised fund, these are the “sponsoring organizations” organized as a §501(c)(3) public charity.
- b. The donor establishes a fund with the sponsoring organization and retains the right to the donor (and/or other specified individuals, such as spouse and children) to make requests as to the recipients of distributions from the fund from time to time.
- c. Although the sponsoring organization is not obligated to make the requested distributions, unless there is a compelling reason not to do so, the sponsoring organization usually follows the request.
- d. This is the equivalent of a simplified private foundation since the donor obtains the benefit of the administrative services of the sponsoring organization and the investment expertise for the donor’s separate fund at the sponsoring organization and most, if not all, distributions are made at the request or with the approval of the donor.
- e. The other benefit of using the donor advised fund is that the sponsoring organization qualifies as a public charity and so is not subject to the private foundation rules and excise taxes, and the income tax deduction limitations for the donor are those of a public charity and not the lower limitations of gifts to a private foundation.
- f. This can also be used as a vehicle to educate younger generations about philanthropy, getting them involved in the family donor directed fund early with the hope they will continue it after donor’s death and even add to it
- g. The DAF allows the donor

- i. To minimize capital gains taxes by contributing long-term appreciated assets to a public charity, and to bunch the gifting in one year to obtain the best deduction for income tax purposes
 - ii. With the contributed assets ability to grow in the DAF tax free until the donor directs the distribution to charity(ies) over the course of many years
 - iii. The donor and/or other donor advisors select the charity(ies) to receive the funds in that and/or future years
- h. Alternative ways to use DAFs:
 - i. An individual – any person can establish a DAF and be the donor advisor
 - a. A DAF can be set up and funded very quickly
 - b. When you need or want that income tax charitable deduction, even close to year end
 - c. When you have had a big bonus or realization event such as a golden parachute or sale of a business
 - ii. A family –group, all named as the donor advisors and all may contribute to the DAF
 - a. Multiple generations – grandparents and their descendants
 - (i) To educate generations on philanthropic philosophy and giving
 - b. Same generation - siblings
 - iii. A group of friends or colleagues
 - a. A giving circle with a common cause – a long term desire to donate for a specific cause
 - b. In memory of a loved one, to donate to causes special to the deceased
 - c. Pooling assets to make a larger impact on a charity or cause
 - iv. An employer can establish a DAF to encourage employee giving, even through payroll deduction and/or employer matching, and allow the employee to make the grant recommendation with respect to his/her own sub-fund or amounts
 - v. To convert an existing private foundation to one of more DAFs for the advantages of the DAF
 - a. A longstanding multi-generation private foundation no longer has a senior person willing to do all the work required to run a private foundation and the remaining group does not want to hire someone at substantial cost to do the work which is also expensive and sees the cost savings of going to a DAF so they convert the PF to a DAF with the members of the board of the PF becoming the donor advisers at the DAF.
 - b. A longstanding multi-generation private foundation has run into disagreements among the second or third generation members and it is time to divide the foundation by the branches of the family tree – each branch takes its share of the foundation to a

DAF, one or more of which taking advantage of the advisory council of JCF to assist them with the running of their DAF.

- i. Potential Proposals that may be brought back up with respect to DAFs:
 - i. Possible requirements to distribute the funds from the DAF at a rapid pace, possibly a specified period of years, where there is no such requirement now
 - ii. Possible creation of 3 new categories of DAFs that would have different rules for each with respect to deductibility of contributions, requirements with respect to the timing of charitable distributions from the DAFs and the recipients of DAF distributions
 - iii. The proposals would constitute substantial changes to the way DAFs work and the way the sponsoring organizations and donor advisors work together and there has been little traction on these proposals so far.

5. Offsetting Roth conversions with charitable contributions

- a. A Roth conversion is the conversion of a traditional IRA to a Roth IRA so that income tax is paid on the account at the full amount at the time of the conversion so that all withdrawals from the Roth IRA in the future, including the growth thereon, are not subject to income tax.
- b. When converting an IRA to a Roth IRA, the income tax is due on the full amount of the converted IRA as ordinary income, taxes at ordinary income tax rates, and that tax must be paid from assets other than the IRA in the year of the conversion.
- c. The amount of tax due can be reduced by making a charitable gift in the same year as the year of the conversion since the AGI in this year is very high allowing for a substantial charitable gift deduction to offset with the charitable gift of other assets and sheltering it from income tax, thereby greatly reducing the income tax cost of the conversion.
- d. 2025 could be the year to do this, ie before the income tax rates go up and limitations are imposed on the charitable deduction.

6. Qualified Charitable Distributions or the QCD under IRC §408(d)(8)

- a. Requirements for QCD:
 - i. individual at least 70½ years old (remains 70 ½ even though RMDs do not start until 73 (if you reach age 72 after Dec. 31, 2022))
 - ii. may direct a transfer of up to \$100,000 in a given year
 - (A) NOTE: under **SECURE 2.0 new §408(d)(8)(G) of the Code** after 2023, the \$100,000 amount is indexed for inflation
 - iii. from IRA only (not employer sponsored retirement plans, SIMPLE IRAs or SEPs)
 - iv. to qualified charity(ies) (ie public charities as defined in §170(c)(1)(A) other than support organizations and donor advised funds)
 - v. then the distribution amount is not included in the donor's federal taxable income and there is no charitable deduction
 - vi. only direct transfers to charities – no split interest gifts, except as in (c) below

- vii. must be otherwise fully deductible – ie no quid pro quo for the gift
- b. Under **SECURE 2.0 which added §408(d)(8)(F)** to the Code, the QCD can partner with life income plans as follows:
 - c. New “QCD to life income plans” started in 2023 and is available to taxpayers at least age 70 ½
 - d. The life income plan must be a charitable remainder trust (charitable remainder unitrust or charitable remainder annuity trust, “CRT”, IRC §664(d)(1) or (2)) (see Section C (4) on page 12 below) or charitable gift annuity (“CGA”, IRC §501(m)(5)) (see Section C (3) on page 12 below)
 - e. The QCD to life income plan does not qualify for an income tax charitable deduction itself but the CRT or CGA must so qualify to obtain the benefit of excluding the QCD from income tax
 - f. This is a one time only, maximum of \$50,000 in a single year, with no additions to the CRT or CGA in any future year from an IRA or otherwise
 - g. The amount used for a QCD to life income plan here counts toward the overall \$100,000+ QCD limit for that year
 - h. Distributions must be fully taxable to the beneficiary at ordinary income tax rates – no tax free or tax at capital gain rate for distributions
 - i. Beneficiary must be the IRA owner and/or spouse – no other beneficiary permitted for the CRT/CGA
 - j. Spouses may each contribute \$50,000 to their own CRT/CGA or they can both contribute to one joint CRT/CGA up to the \$100,000+ total
 - k. It must be a new CRT– IRA owner cannot contribute to a pre-existing CRT
 - l. For a deferred payment CGA, the payments to the donor and/or spouse must start within one year of funding, and the payout rate must be at least 5%
 - m. The income interest in the CRT or CGA must be non-assignable
 - n. Distributions excludable under this provision are not taken into consideration in determining the deduction for charitable contributions under §170 and its limitations
 - o. Distributions excludable under this provision are taken into consideration as satisfying all or part of the donor’s RMD for the year
 - p. The QCD is better than a withdrawal from the IRA and then contribution because the QCD is not included in the FEDERAL taxable income of the IRA owner with a deduction for the gift since the deduction may not fully offset the income due to things such as charitable deduction limitations, the partial disallowance of excess itemized deductions for high income earners, AMT, the standard deduction, etc.
 - q. The high income tax rates on high income taxpayers (37%), high standard deduction and the reduction of itemized deductions are incentives for the use of the QCD for eligible taxpayers
 - r. Caveat: The above are all the rules with respect to making a QCD for federal income tax purposes. New Jersey does not recognize the QCD procedure so any amount directed to be paid as a QCD will be taxable for NJ income tax purposes as if the IRA owner had withdrawn the amount of the QCD and then gave the funds to charity.

7. Using the Charitable Remainder Unitrust (CRUT) to replace the stretch IRA for the non-spouse beneficiary since the SECURE Act plus other benefits

- a. See the main outline for the basic requirements for a CRUT.
- b. Depending on the age of the individual beneficiary and the amount of the unitrust, the estate tax charitable deduction may be substantial – but it is not the full amount of the assets passing to the CRUT so there may be some estate tax still due on the amount going to the CRUT, which must be paid from assets other than the amount passing to the CRUT
- c. CRUT pays no federal income tax on benefits received and reinvests the entire amount (net of NJ income tax if the CRUT is subject to NJ income tax, but that may be avoided)
- d. Since the CRUT pays no federal income tax, the unitrust payments may be more than an outright payment in just a couple of years, and if the individual(s) live a long time, the additional amounts may be substantial - the beneficiaries and charities get more and only the IRS gets less
- e. Although the CRUT must collect in the retirement benefits in the 5 years after the participant's death under the SECURE Act, the trust continues for the lifetime of the beneficiary, spreading the income tax hit over the lifetime of the beneficiary along with the distributions from the CRUT under its pass-through rules
- f. Potential creditor protection for the CRUT beneficiaries which may not be available to the beneficiary receiving the retirement benefits outright depending on where the beneficiary lives
- g. Example: An IRA worth \$500,000 is payable on parent's death to a charitable remainder unitrust for the benefit of child, age 50, providing a 5% unitrust interest for child's life, remainder to parent's favorite charities:
 - (i) Assuming a §7520 rate of 4.2% (it changes monthly), the estate tax charitable deduction is \$133,750 and the taxable bequest is \$366,250. Potential Federal Estate Tax savings of \$53,500 at 40% estate tax rate if parent was in that .01% of estates that even pay Federal Estate Tax.
 - (ii) There is no federal income tax on the CRUT on its receipt of the IRA funds
 - (iii) If the trustee of the CRUT is not a New Jersey resident or New Jersey bank, there should be no New Jersey income tax on the receipt by the CRUT of the IRA funds.
 - (iv) If the trustee is a New Jersey resident or New Jersey bank, the trustee may collect the IRA over the 5 year period permitted for a trust that is not a Designated Beneficiary and spread the New Jersey income tax over the 5 year period allowed to a trust.
 - (v) Child receives distributions equal to 5% of the value of the trust each year, which child can accumulate and invest.
 - (vi) The first \$500,000 child receives over the years of the CRUT is all ordinary income as it was IRA money taxable as ordinary income to child. It will take approximately 20 years to receive that total of

\$500,000 amount which means child will have spread the income tax on the IRA over approximately 20 or possibly more years in place of at most 10 years under the SECURE ACT if paid outright or 5 years in a non-qualifying trust.

- (vii) Child will have the benefit of the protection of the IRA assets from child's creditors since it is all in trust (auto accident, professional liability, divorce, etc.).
- (viii) The trust will not be taxable in child's estate since child does not have a general power of appointment over the trust assets.
- (ix) If parent is concerned about the descendants of child (the grandchildren no) not receiving the IRA that would have been payable to their parent (\$500,000 minus estate tax on it), parent can create an irrevocable life insurance trust (ILIT) with life insurance on parent's life or child's life of \$500,000 or other amount to replace the amount child will not receive outright, which amount will not be taxable in parent's or child's estate. Or,
- (x) Child can use some of the unitrust distributions child receives to fund an irrevocable life insurance trust with a life insurance policy on child's life of \$500,000 or other amount to replace the amount that child did not receive, that will not be taxable in child's estate.
- (xi) Upon child's death, the balance in the CRUT, which should be actually more than \$500,000, as the trust should earn more than the 5% it has to pay out, will pass to parent's favorite charities or child's choice of charities, the remainder beneficiary, but at the end of child's life, probably more than 30 years in the future based on age 50.
- (xii) At the end of the CRUT (upon child's death), the designated charities receive the balance in the CRUT all taxes free and child had the benefit of spreading the income tax on the IRA over a much longer period than permitted under the SECURE Act, and receiving a 5% distribution on the pot in the CRUT unreduced by income tax on parent's death. In addition, child's descendants receive the balance in the ILIT(s) established by parent and/or child, if done properly, estate and generation skipping tax free, and all the intended beneficiaries of parent and child receive much more without the hand of Uncle Sam dipping in.

8. Other great uses of the CRUT

- a. low income producing assets or unproductive assets converted to higher yield by transfer to CRUT, sell in CRUT and then invest with the higher pay-out required by CRUT
- b. holding property with large built in capital gain and not wanting to incur that capital gain tax but desire to sell and get cash flow from the property
- c. as a supplement to retirement funding in the equivalent of a non-qualified plan with the NIM-CRUT

NOTE: The high income tax rates, 3.8% surtax on investment income and

the exemption of the CRT from federal income tax on income retained in the trust increase the benefit of the CRT where it is used partially to diversify a concentrated holding or to sell assets to increase the yield from non- or under-productive property

d. Example:

- a. Suppose client has \$1,000,000 in stock with a basis of \$10,000 and dividends paid at 1% per year, and client needs more cash flow to pay client's living expenses.
- b. Client creates a 5% CRUT for client's life. The independent Trustee, not required to sell, sells the stock with a \$990,000 capital gain but pays no federal income tax on the gain. If the trustee is not a NJ individual or bank, there is no NJ income tax on the gain, as well. The trust has \$1,000,000 to invest to throw off 5% per year for client to pay client's living expenses at no tax cost.
- c. The asset could be a parcel of real estate inherited many years ago that client wants to sell and make it income producing. Same results.
- d. Distributions to grantor could be ordinary income plus some capital gains depending on how assets were invested inside CRUT

9. Impact of changing interest rates on use of CRUT and CLT – see main outline page 22 to show the differences.

10. Shift from bequest to portion of IRA or retirement funds for charity, or a lifetime gift vs. bequest

- a. A bequest provides the donor's estate with an estate tax charitable deduction, but that is only valuable if the donor's estate is large enough to benefit from the estate tax deduction.
- b. But providing the charity with all or a portion of an IRA or other retirement funds provides the same estate tax deduction to the donor's estate but also eliminates the income tax due on these retirement funds that any beneficiary other than a charity would have to pay on those retirement funds since charities do not pay federal or state income tax, providing a double vs a single deduction.
- c. Similarly, a lifetime gift to charity provides an income tax charitable deduction and a reduction of the estate by the asset given is not included in the estate for estate tax purposes, the equivalent of an estate tax deduction, whereas a bequest only provides an estate tax deduction, again a double vs a single deduction.

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CHARITABLE PLANNING IN THE CURRENT TAX AND ECONOMIC ENVIRONMENT

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CHARITABLE PLANNING IN THE CURRENT TAX AND ECONOMIC ENVIRONMENT

There are many different charitable giving vehicles that a prospective donor may consider. As interest rates and the Internal Revenue Code (IRC) §7520 rate (IRS discount rate for the computation of the charitable deduction for split gifts) fluctuate, some vehicles become more or less advantageous. The income, gift and estate tax rates have a large impact on charitable giving, as well. The benefit of the charitable deduction changes as the tax rates change and estate tax exemptions and income tax standard deductions change and as the §7520 rates change. For federal income tax, the donor must also consider the alternative minimum tax. For gift and estate tax purposes, the donor must consider if there is a split interest gift, the gift and estate tax benefit and cost to the non-charitable portion of the gift. Since the estate and gift tax rate is currently 40%, the gift and estate tax applicable exclusion is \$15,000,000 (for gifts and deaths in 2025 under the Big Beautiful Tax Act, up from \$13,990,000 under pre-new law), the portability of the Federal Estate Tax exemption between spouses, the benefit of split interest gifts may be reduced or eliminated as fewer people are in the Federal Estate Tax and Federal Gift Tax paying arena. We must also consider that the New Jersey Estate Tax has been repealed starting with deaths on or after 1/1/18, but may come back due to our large deficits. As we do our estate planning we must also consider the impact of the new SECURE Act, adopted in December, 2019, and SECURE 2.0 adopted December 2022, as they impact how we leave our IRA, §401(k) plan benefits and other qualified retirement benefits to our beneficiaries. In light of all of these recent and substantial potential future changes with the recent and future changes in the president and Congress, the estate and gift tax benefits and costs of the various vehicles are less important considerations in deciding the charitable gifts to make with the new tax rules so that it is the people with true philanthropic intent and desire who will be making the charitable gifts. In addition, the depressed and frequently fluctuating value of some assets as well as the unrealized gain or loss in an asset can impact which charitable vehicle to be used and its benefits and costs. The low application of gift and estate tax due to the high exemptions, high but possibly changing gift and estate tax exemptions, low (but now increasing) IRC §7520 rates, reduction of availability of income tax deductions with the new standard deduction, and depressed and maybe increasing values of assets have had a major impact on planned giving since 2008.

A few key elements under the Big Beautiful Bill (now Act) that could impact high income/high net worth families:

- **SALT Deduction.** The existing \$10,000 cap on state and local tax, or SALT deductions, such as state income and property taxes, is rising to \$40,000 starting for 2025 (\$40,400 for 2026 and increase by 1% each year thereafter), but with a phaseout for anyone earning more than \$500,000 per year. The new law also preserves a popular workaround for owners of pass-through entities, such as partnerships and S corporations, under certain state laws.
- **Senior Deduction.** For relatively low income seniors, (over 65, income not more than \$75,000 per senior) there is a \$6,000 deduction (which reduces with income over \$75,000)
- **Standard Deduction and Itemized Deductions.** Only approximately 10% of taxpayers itemize their deductions for income tax purposes. Starting immediately (for 2025) there is a standard deduction of \$15,000 for single filers or \$30,000 for joint filers. But there is a new deduction limitation threshold of 2/37ths for taxpayers in the highest 37% tax bracket starting in 2026. That means those taxpayers are taxed at a 37% rate but only get a deduction at a 35% rate.

- **Charitable Deductions.** For charitable donors who itemize their income taxes, the value of their charitable deduction will be subject to a new 0.5% floor, meaning they only get a deduction for donations that exceed 0.5% of their adjusted gross income, or AGI. For example, a donor with \$1 million of AGI will not get any tax benefit for their first \$5,000 of charitable donations. In addition, for the approximate 90% of taxpayers who don't itemize their deductions, the new tax bill allows taxpayers to take the standard deduction and claim a charitable deduction of up to \$1,000 for single filers and \$2,000 for joint filers.
- **Exemption Amount.** The historically high gift, estate and generation-skipping transfer tax exemption amount of \$13.99 million per person in 2025 was increased to \$15 million per person (or \$30 million for married couples) starting in 2026. The new exemption amount is indexed for inflation and made "permanent" – which means it is not set to automatically expire like previous tax bills, but could still be changed down the road by a future administration.
- **No tax:** on qualified tips up to \$25,000 or qualified overtime pay up to \$12,500

A. Charitable Deduction Limitations

1. Federal income tax deduction limitations for lifetime charitable gifts: the income tax charitable deduction for an individual donor is subject to limitations depending upon a number of factors, including but not limited to the following:
 - a. "Contribution base" means the individual's adjusted gross income without regard to any net operating loss carryback to the year. IRC §170(b)(1)(F)
 - b. The income tax deduction is now allowed only to the extent the aggregate contributions exceed .5% of the taxpayer's contribution base for the year of the gifts
 - c. General rule: the deduction is at the fair market value of the asset contributed
 - d. Exceptions to FMV rule:
 - i. tangible personal property that is put to an un-related use by the donee organization is reduced by any long-term gain that would have been realized if the property had been sold. IRC §170(e)(1)(B)(i).
 - ii. long-term capital gain property reduced to its basis for deduction purposes to use the 50% limitation in place of the 30% limitation. IRC §170(e)(1)(C)(iii)
 - e. Carryover of excess gift: contributions that exceed the above deduction limitations may be carried over for deduction in the next 5 succeeding years for a total of 6 years to take the deduction
 - i. exception: contributions for the use of a private foundation do not qualify for the carryover, based on a PLR issued by the IRS 8824039, but a contribution to a CLT was allowed carryover status PLR 200010036
 - ii. Note: if donor dies with unused carryovers, they are lost
- e. **NOTE:** the SALT and standard deduction increases have a significant impact on lifetime charitable giving.
 - i. The standard deduction is now \$15,000 for a single taxpayer and

\$30,000 for a couple (2025 amounts), and the new deduction for only charitable gifts in excess of 0.5% of AGI mean that charitable gifts must be larger to obtain any deduction

- ii. For a married couple with state and local income and property tax deduction limitation at \$40,000 and no mortgage interest deduction, they have to come up with substantial charitable donations to get their first dollar of itemized deductions. The typical donor does not give large levels each year.
- f. **NOTE:** The limitation on excess itemized deductions discussed in (e) above is not a real limitation on the charitable deduction for most clients making significant charitable gifts:

- i. The 2025 standard deduction is now \$15,000 for a single taxpayer and \$30,000 for a couple, so the gifts must be larger to obtain the deduction
- ii. Example: assume a couple has adjusted gross income of \$500,000 and charitable contributions of \$50,000, mortgage interest of \$20,000 (limited to the interest on a mortgage of no more than \$750,000), state income tax of \$35,000 and real property tax of \$40,000:

Adjusted gross income	\$500,000
Mortgage interest expense	\$ 20,000
State income tax and real property	
Tax deduction allowed (of the	
\$75,000 paid, only \$40,000 is	
Allowed)	\$ 40,000
Charitable contributions	\$ 50,000

Here, the couple's mortgage interest and state income tax and real property tax take them into itemized deduction territory so that the entire charitable deduction is available.

- 2. At this time, there is no charitable deduction for New Jersey income tax purposes. Former Gov. Christie had attempted a couple of times to pass a NJ income tax charitable deduction but that effort did not succeed.
- 3. There are no percentage limitations for the gift and estate tax charitable deductions – the full amount of the charitable component of the gift or bequest to charity is deductible for gift or estate tax purposes, respectively.

B. Gifts Currently Enjoyed by Charity.

1. Outright Transfers.

- a. Subject to certain limitations, outright transfers of cash, tangible and intangible personal property, and real property are deductible for income, gift and estate tax purposes. IRC §170, §2055, §2522

2. Bargain Sales. IRC §1011(b); Reg. 1.170A-4(c)(2); Reg. 1.1011-2

- a. A sale of a capital asset to charity for a price less than the fair market value of the asset is treated as a part sale and part gift.
- b. The amount received by the donor may in part be treated as a capital gain. The donor's basis in the property is allocated proportionately between the portion of the asset given and the portion sold based on the relative values of the two portions by comparing the sales price and the fair market value of the property.
- c. The donor will have gain in the amount realized reduced by the allocable share of the basis. The donor will have a charitable contribution deduction in the amount of the fair market value of the property transferred reduced by the amount realized.
- d. If any nonrecognition provision of the tax law is applicable, the donor would not pay any tax, i.e. like-kind exchange, IRC §121 \$250,000/\$500,000 exclusion on the sale of a principal residence.
- e. If property subject to indebtedness is given to charity, the transaction is treated as a bargain sale. The amount realized is the amount of such indebtedness of which the donor is relieved. Guest 77 T.C. 9 (1981)

NOTE: This could be a good way for a donor with real property which the donor cannot otherwise sell to get rid of it, getting some cash out of the property and a charitable income tax deduction for the difference between the selling price and its appraised value, resulting in tax savings which is more cash in the donor's pocket.

3. Gifts of Undivided Interest in Property. IRC §170(f)(3)(B)(ii); Reg. 1.170A-7(b)(1)(i).

- a. An undivided interest in property must include an undivided portion of each and every substantial right or interest owned by the donor and must extend over the same term as the donor's interest in the property, i.e. 20% undivided interest in real property, 1/2 interest in donor's life estate in real property, and 20% interest in remainder of trust owned by donor.

4. Charitable Lead Trust. IRC §170(f)(2)(B).

- a. A charitable lead trust is a trust from which a charity (or charities) receives a fixed dollar amount (annuity) or a fixed percentage of the net fair market value of the trust assets (unitrust) at least annually, and upon the end of a term of years or upon the death of an individual, the remainder passes to the donor or another non-charitable beneficiary (or beneficiaries).
- b. Certain requirements.
 - (1) There is no minimum percentage that must be paid to charity if the trust payment is in the form of an annuity or unitrust amount. However, the amount must be paid at least annually to the charity.
 - (2) The trust cannot provide that the charity is to receive all the income, or any other provisions other than an annuity or unitrust to obtain the income tax benefits of the CLT.
 - (3) The term of the trust may be for any number of years or may be measured by the life or lives of individuals alive at creation of the trust.
 - (4) The trust agreement must contain specific provisions and private foundation rules.
- c. Income Tax Aspects. IRC §170(f)(2)(B); Reg. 1.170A-6(c).
 - (1) The donor is allowed an income tax deduction for the actuarial value of the income interest on the date of funding of the trust, but only if the

trust is considered a grantor trust. The deduction is limited to 20% of the donor's contribution base as it is a gift "for the use of" and not "to" charity, and no carryover is permitted.

- (2) If the trust qualifies for the income tax deduction, then each year of the term of the trust during the lifetime of the grantor any taxable income of the trust is taxable to the donor as it is earned, in effect recapturing the deduction.
- (3) If the trust is a testamentary trust or is not a grantor trust, undistributed income is taxed to the trust each year, if any, and there is no income tax deduction in the year of the funding for the grantor.
- (4) Under the grantor trust rules, if the assets of the trust revert to the grantor or the grantor's spouse at any time (if the value of the reversion is at least 5% of the value at the time of the transfer), the trust is considered a grantor trust.
- (5) The longer the term of the trust, or the larger the annuity or unitrust amount, the larger the amount the current income tax deduction will be.

d. Gift Tax Aspects. IRC §2522(c)(2)(B).

- (1) Whether the CLT is a grantor trust or not, a gift tax charitable deduction is allowed in the amount of the actuarial value of the annuity interest or unitrust interest. The value is determined by the dollar annuity or percentage unitrust amount and the term of years or life expectancy using the IRS tables.
- (2) The gift tax charitable deduction is available whether or not the CLT is a grantor trust and is not limited as the income tax deduction.
- (3) The value of the remainder is a taxable gift to the remainder beneficiary(ies), not eligible for the \$16,000 annual gift tax exclusion as it is a future interest. (The annual exclusion had been \$15,000 for a number of years and just increased to \$16,000 starting in 2022) The remainder passing to a spouse qualifies for the gift tax marital deduction. §2523. The value of the remainder is the value of the entire transfer to the trust reduced by the value of the charitable annuity or unitrust interest.

e. Estate Tax Aspects. IRC §2055(e)(2)(B).

- (1) If the CLT was established during the lifetime of the grantor, the gift of the remainder interest is an adjusted taxable gift for estate tax purposes.
- (2) If the CLT is established upon the death of the grantor by will or in a revocable living trust, the estate tax charitable deduction is allowed in the amount of the value of the annuity interest or unitrust interest established in the trust, calculated as described above in d.
- (3) If the remainder passes to a spouse, that gift qualifies for the estate tax marital deduction under IRC §2056.
- (4) There is no limitation on the amount of this estate tax charitable deduction.

f. Advantages of CLT.

- (1) The CLT permits the transfer of assets to the individual beneficiary at a later date with a greatly reduced estate or gift tax cost, i.e. for minor children or grandchildren.
- (2) The lifetime CLT is useful to an individual who has high income tax in the year of the transfer to the CLT and not in the future, i.e. retiree, or

someone with a large severance package or capital gain in a given year and lower income in the future, since the grantor trust CLT produces an income tax deduction in the year of the transfer to the trust and taxable income in later years.

- (3) If the CLT is not a grantor trust for income tax purposes, then the income earned in the CLT reduced by the distributions to the charities is taxable to the CLT, both federal and NJ.

g. IRS sample safe harbor forms for CLUTs and CLATs:

- (1) inter vivos CLUT: Rev. Proc. 2008-45, 2008-30 IRB 224 (7/25/08)
- (2) testamentary CLUT: Rev. Proc. 2008-46, 2008-30 IRB 238 (7/25/08)
- (3) inter vivos CLAT: Rev. Proc. 2007-45, 2007-29 IRB 89
- (4) testamentary CLAT: Rev. Proc. 2007-46, 2007-29 IRB 102

NOTE: The charitable lead annuity trust is very sensitive to the fluctuation in the §7520 rate. The higher the §7520 rate, the lower the value of the charitable annuity and therefore the smaller the charitable deduction. Hence, CLTs are more tax valuable with low §7520 rates. See the chart below on pages 21-22.

NOTE: The taxpayer must consider the new income tax rates, 3.8% surtax on investment income and reduction of itemized deductions in deciding whether to make the CLT a grantor trust or not – depending on the type of assets or income generated to fund the trust vs. during the administration of the trust

5. Gifts of tangible personal property

- a. If an item of tangible personal property is given outright to a charity and the charity can use the item in connection with its charitable purposes, then the donor may have an income and gift tax charitable deduction, with certain limitations.
- b. But for a contribution of a partial interest in tangible personal property, there are relatively new very strict rules, as follows in (c) and (d)
- c. Old rule: taxpayer could obtain a charitable deduction for a contribution of an undivided portion of an item of tangible personal property, ie artwork for part of the year. This allowed the taxpayer to give portions of the item over a period of years with a new charitable deduction with each gift and providing increased deductions as the item appreciated in value
- d. The Pension Protection Act of 2006 ("PPA") (modified by the Technical Corrections Act of 2007) severely limited and possibly closed this opportunity by adding provisions to §170(o)(1) providing as follows:
 - (1) no income tax charitable deduction is allowed for a contribution of an undivided portion of an item of tangible personal property unless immediately before such contribution all interests in the item are owned
 - (A) by the donor, or
 - (B) by the donor and the donee organization
 - (2) To determine the deductible amount for income tax purposes of each additional contribution of an interest in the same item, the fair market value is the lesser of:
 - (A) the value used for purposes of determining the charitable deduction for the initial fractional contribution; and
 - (B) the fair market value of the item at the subsequent contribution date

- (3) If the donor makes an initial contribution of an undivided portion to a charitable donee and then fails to contribute the balance of the interests in the item to the same donee by the earlier of 10 years after the initial gift and the death of the donor, then the income and gift tax charitable deductions are recaptured (plus interest) plus 10% of the amount recaptured as additional tax. IRC §170(o)(3), §2522(e)(3)
- (4) If the donee organization of a contribution of a fractional interest in an item of tangible personal property fails to take substantial physical possession of the item by the earlier of 10 years after the initial gift and the death of the donor, or fails to use the item for an exempt purpose during that period, then the donor's income and gift tax charitable deductions are recaptured (plus interest) plus 10% of the amount recaptured as additional tax. IRC §170(o)(3)(A) and (B), IRC §2522(e)(3)(A) and (B)
- (5) This new rule only applies to partial interest gifts made after enactment, even if a prior partial interest gift was made
- (6) Although initially this limitation was to apply to the gift and estate tax charitable deduction as well as the income tax charitable deduction, the above Technical Corrections Act removed that provision due to the punitive consequences of that

6. Qualified Charitable Distributions from an IRA ("QCD") IRC §408(d)(8)

- a. IRA charitable rollover: after more than 8 years of uncertainty as to whether the QCD would continue, finally, at the end of 2015, the QCD provisions were made permanent. However, there has been modification of these rules by the SECURE Act and SECURE 2.0.
- b. Requirements for QCD:
 - i. individual at least 70½ years old (remains 70 ½ even though RMDs do not start until 73 (if you reach age 72 after Dec. 31, 2022))
 - ii. may direct a transfer of up to \$100,000 in a given year
 - (A) NOTE: under **SECURE 2.0 new §408(d)(8)(G) of the Code** after 2023, the \$100,000 amount will be indexed for inflation
 - iii. from IRA only (not employer sponsored retirement plans, SIMPLE IRAs or SEPs)
 - iv. to qualified charity(ies) (ie public charities as defined in §170(c)(1)(A) other than support organizations and donor advised funds)
 - v. then the distribution amount is not included in the donor's federal taxable income and there is no charitable deduction
 - vi. only direct transfers to charities – no split interest gifts, except as in (c) below
 - vii. must be otherwise fully deductible – ie no quid pro quo for the gift
 - viii. CAVEAT: The \$100,000 amount (or future indexed amount) of the QCD is reduced by any contributions to an IRA after age 70 ½ since that prohibition was lifted by the SECURE Act and there was a concern about double dipping.
- c. Under **SECURE 2.0 adding §408(d)(8)(F)** to the Code, the QCD can partner with life income plans as follows:
 - i. New "QCD to life income plans" starts in 2023 and is available to taxpayers at least age 70 ½
 - ii. The life income plan must be a charitable remainder trust (charitable remainder unitrust or charitable remainder annuity trust, "CRT", IRC §664(d)(1) or (2)) (see Section C (4) on page 12 below) or charitable gift

- annuity ("CGA", IRC §501(m)(5)) (see Section C (3) on page 12 below)
- iii. The QCD to life income plan does not qualify for an income tax charitable deduction itself but the CRT or DGA must so qualify to obtain the benefit of excluding the QCD from income tax
- iv. This is a one time only, maximum of \$50,000 in a single year, with no additions to the CRT or CGA in any future year from an IRA or otherwise
- v. The amount used for a QCD to life income plan here counts toward the overall \$100,000 QCD limit for that year
- vi. Distributions must be fully taxable to the beneficiary at ordinary income tax rates – no tax free or tax at capital gain rate for distributions
- vii. Beneficiary must be the IRA owner and/or spouse – no other beneficiary permitted for the CRT/CGA
- viii. Spouses may each contribute \$50,000 to their own CRT/CGA or they can both contribute to one joint CRT/CGA up to the \$100,000 total
- ix. It must be a new CRT– IRA owner cannot contribute to a pre-existing CRT
- x. For a deferred payment CGA, the payments to the donor and/or spouse must start within one year of funding, and the payout rate must be at least 5%
- xi. The income interest in the CRT or CGA must be non-assignable
- d. Distributions excludable under this provision are not taken into consideration in determining the deduction for charitable contributions under §170 and its limitations
- e. Distributions excludable under this provision are taken into consideration as satisfying all or part of the donor's RMD for the year
- f. The QCD is better than a withdrawal from the IRA and then contribution because the QCD is not included in the FEDERAL taxable income of the IRA owner with a deduction for the gift since the deduction may not fully offset the income due to things such as charitable deduction limitations, the partial disallowance of excess itemized deductions for high income earners, AMT, the standard deduction, etc.
- g. The high income tax rates on high income taxpayers (37%), 3.8% surtax on investment income, high standard deduction and the reduction of itemized deductions are all incentives for the use of the QCD for eligible taxpayers
- h. Caveat: The above are all the rules with respect to making a QCD for federal income tax purposes. New Jersey does not recognize the QCD procedure so any amount directed to be paid as a QCD will be taxable for NJ income tax purposes as if the IRA owner had withdrawn the amount of the QCD and then gave the funds to charity.

C. Deferred Gifts to Charity.

There are several types of split interest remainder transfers to charity which qualify for the income, gift and estate tax charitable deduction, which may also be paired with marital planning and the marital deduction. If the transfer is not in one of the specified forms, with strictly adherence to the tax rules in the documents and administration of the trust or other split interest gift, no charitable deduction will be allowed, even though there is an actual transfer to a charity at some time. These forms include the following: remainder interest in personal residence or farm, remainder interest in pooled income funds, charitable gift annuity, remainder interest in charitable remainder annuity trusts and unitrusts, and private foundations.

NOTE: Because these are charitable gifts that are deferred into the future, the §7520 rates are used to value the gift and the charitable component. The lower the §7520 rate, the smaller the charitable remainder in a CRUT, but by small amounts. The lower the §7520 rate, the larger the remainder of a life estate in a personal residence, increasing the charitable gift. See the chart below at pages 21-22.

1. Remainder Interest in Personal Residence or Farm. IRC §170(f)(3)(B)(i).
 - a. Donor gives to charity a remainder interest in a personal residence or farm subject to a non-charitable interest for the life of individual(s) or for a term of years. Reg. 1.170A-7(b)(3)
 - b. Reserved life estate can be for donor and spouse so that after first death, the surviving spouse may continue to live in the property
 - c. "Personal residence" means any residence even though it is not the principal one, including stock in a co-op if the apartment is used by the donor. Reg. 1.170A-7(b)(3).
 - d. "Farm" means any land used for the production of crops or livestock. Reg. 1.170A-7(b)(4).
 - e. The amount of the deduction for income, gift and estate tax purposes is the actuarial value of the remainder interest after the life estate or term of years computed using the IRS tables for income interests in the month of the transfer.
 - f. If the reserved life estate is for donor and spouse, then there is a charitable gift tax deduction for the actuarial value of the remainder interest, no gift for the value of the donor's life estate and marital deduction for the incremental value of the spouse's life estate after donor, if any, or if the property was in joint names, no gift for the reserved life estates. On the death of the first spouse, the property is included in the federal taxable estate eligible for estate tax marital deduction for the spouse's life estate and charitable deduction for the remainder interest, so no tax. Inclusion in the second spouse's estate is totally offset with the estate tax charitable deduction when the property then passes to the charity.
 - g. The remainder interest cannot be in a trust, other than possibly a grantor trust.
 - h. The charity must receive the property after the death of the life tenant(s). The document of transfer cannot require the sale of the property with the proceeds to go to the charity.
 - i. The basis in the property is stepped up at the death of the life tenant(s) since the property is included in the taxable estate under IRC §2036. This could be important if there is a sale of the property during the lifetime of a successor life tenant (ie spouse) if the life tenant can no longer reside there. The proceeds would be divided between life tenant and charity remainderman based on the actuarial values of the respective interests at the time of the sale.
 - j. If the life tenant can no longer live on the property and does not want or need any proceeds from a sale, then the life tenant can disclaim or release the life estate and obtain a charitable deduction for the value of the remaining life estate at that time.
 - k. For New Jersey Inheritance Tax purposes, the charitable remainder is a gift to a Class E beneficiary, not subject to inheritance tax. If the spouse or a descendant is the life tenant, there is no inheritance tax on the lifetime interest. For New Jersey Estate Tax purposes (if any), the federal rules above apply.
2. Pooled Income Funds. IRC §642(c)(5); Reg. 1.642(c)-5.
 - a. A pooled income fund is an investment fund created and maintained by a public

charity (i.e. educational institution, church, hospital) which consists of property contributed by more than one donor which is commingled. Each donor transfers property to the PIF and either retains in him or herself and/or creates for another individual a life income interest therein, thereby creating a charitable remainder interest. All property so transferred is invested together. Each donor (or donor's designated life income beneficiary) receives the pro rata share of the income of the PIF each year for life. On the death of the income beneficiary, (or successor individual beneficiary) the charity withdraws the donor's share of assets from the PIF and uses them for its charitable purposes.

- b. **Certain Requirements. Reg. 1.642(c)-5.**
 - (1) The transfer to the PIF creates an irrevocable remainder interest in a charity.
 - (2) Donor either retains for him or herself or creates for another individual(s), who is alive at the time of the transfer, a life interest in the income of the PIF.
 - (3) All property in the PIF is commingled with property transferred by other donors.
 - (4) Neither the transferred property nor investments by the fund may include tax exempt securities.
 - (5) The fund must be maintained by the same charity to or for the use of which the remainder interest is contributed.
 - (6) No donor or beneficiary may be a trustee of the fund.
- c. **Income Tax Aspects. IRC §170(f)(2)(A); Reg. 1.642(c)-6(a)(1) and (2).**
 - (1) The donor is allowed a charitable income tax deduction in the amount of the value of the remainder interest based on the age of the income beneficiary (or beneficiaries) and actuarial tables found in the Regulations.
 - (2) The donor does not recognize any capital gain upon transferring appreciated non-mortgaged assets to the PIF. The fund takes the property with the donor's basis and holding period, which are important in the event the asset is sold in the PIF due to the income pass through to the beneficiaries of the PIF.
- d. **Gift Tax Aspects. IRC §2522(c)(2)(A).**
 - (1) The transfer to a PIF has two components, namely the gift of the income interest(s) and the gift of the remainder interest to charity, calculated based on the age of the income beneficiary and the tables in the month of the transfer.
 - (2) The value of the charitable remainder is deductible.
 - (3) The value of the income interest is a taxable gift eligible for the \$16,000 annual gift tax exclusion since it is a present interest of income for life. If the donor is the income beneficiary, there is no taxable gift. If the donor's spouse is the income beneficiary, the donor may elect to qualify this as QTIP property for the gift tax marital deduction. IRC §2523(f).
- e. **Estate Tax Aspects. IRC §2055(e)(2)(A).**
 - (1) Transfer inter vivos
 - i. If the donor was the sole income beneficiary, the value of the fund is includible in the donor's gross estate. The estate then

receives a charitable deduction for the full value of the fund passing to charity. §2055(a).

- ii. If the income beneficiary is other than the donor, the fund is not includible in the gross estate as it was a completed gift upon the transfer to the PIF.
- iii. If the donor retained the income interest and on donor's death the income interest goes to another income beneficiary, then the fund is includible in the donor's gross estate under §2036 and the estate is entitled to a charitable deduction in the amount of the value of the charitable remainder (or the entire amount if the second income beneficiary does not survive the donor). IRC §2055(e)(2)(A), leaving the value of the life estate as a taxable devise.
- iv. The marital deduction is available where the spouse is the income beneficiary, if the decedent or the decedent's executor makes the election for this QTIP property. IRC §2056(b)(7).

(2) Testamentary transfer:

- i. The amount of the devise to the PIF is includible in the gross estate and the estate is entitled to a charitable deduction in the amount of the value of the charitable remainder. §2055(e)(2)(A).
- ii. If the spouse is the income beneficiary, the executor can make the IRC §2056(b)(7) QTIP election to get the marital deduction. On the spouse's death, the fund is included in the spouse's estate under §2044 and then the full amount is deductible as a charitable contribution. IRC §2055(a).

- (4) For New Jersey Inheritance purposes, the charitable remainder is a gift to a Class E beneficiary, not subject to inheritance tax. If the spouse or a descendant is the PIF beneficiary, there is no inheritance tax on the PIF interest.

3. Charitable Gift Annuity: Certain charities have qualified to issue gift annuities to donors in exchange for donations to the charity. The donor receives an annuity (fixed dollar amount distributed per quarter) for life (or directs the annuity be paid to another individual) and upon the death of the annuitant, any balance remaining belongs to the charity for its purposes. If the donor purchases an annuity from a charitable organization, the donor is allowed an income tax charitable deduction for the excess of the amount paid for the annuity over the value of the annuity. If there is no excess, there is no deduction. Reg. 1.1011-2(a)(4). This is usually used for relatively small gifts from individuals who want or need to retain cash flow from the assets but want to irrevocably dedicate the balance to the charity, and who either are not giving enough or do not want to be bothered with a charitable remainder trust, below.

NOTE: See B(6)(c) on page 8 above for the use of the QCD distribution to a CGA

4. Charitable Remainder Annuity Trust and Unitrust.

- a. A charitable remainder annuity trust or unitrust is a trust from which a non-charitable beneficiary receives a fixed dollar amount (not less than 5% nor more than 50% of the initial fair market value of the transferred property) (annuity) or a fixed percentage (not less than 5% nor more than 50%) of the net fair market value of the trust assets (unitrust) at least annually, and upon the death of the

income beneficiary(ies), or after the specified term of years, charity(ies) receives the remainder of the trust. IRC §664.

- b. The unitrust may provide that the trustee pay the amount of trust income if that amount is less than the unitrust amount ("NI-CRUT").
 - (1) The trust may also provide that any deficiencies so created, when the income is less than the specified unitrust percentage, may be made up in later years ("NIM-CRUT"). IRC §664(d)(3).
 - (2) The trust may flip from one type to another, or combine methods of determining the unitrust amount, if certain criteria are met, as provided in the Regulations. Reg. 1.664-3(a)(1)(c)
- c. Certain Requirements –model forms found in Rev. Proc. 2005-52 to 59 give us even more guidance.
 - (1) A sum certain, in the case of an annuity trust, or a specific percentage of the trust assets valued each year, in the case of a unitrust, must be designated as payable at least annually to a non-charitable beneficiary(ies) living at the time the trust is created for the life (lives) of the beneficiary or a term of years (not in excess of 20 years). IRC §664(d)(1)(A) and (d)(2)(A).
 - (2) The annual amount paid to the non-charitable beneficiary cannot be less than 5% nor more than 50% of the initial fair market value of all assets placed in trust for an annuity trust, or must be a stated percentage of at least 5% but not more than 50% of the fair market value of the trust assets valued annually for a unitrust. IRC §664(d)(1)(A) and (d)(2)(A).
 - (3) The remainder must have an actuarial value of at least 10% of the value of the assets transferred to the trust. IRC §664(d)(1)(D) and (d)(2)(D).
 - (5) The remainder must be transferred to, or for the use of, qualified charitable organization(s), or retained by the trust for such use. No part of the remainder can go to or for anyone other than a charity. IRC §664(d)(1)(C) and (d)(2)(C).
 - (5) The trust must provide that if at the time of distribution the remainderman is not a qualified charitable organization, the remainder is to be paid to one or more alternative qualified charitable organizations. Reg. 1.664-2(a)(6)(iv); Reg. 1.664-3(a)(6)(iv).
 - (6) The donor may retain for him or herself, or grant to the non-charitable beneficiary, the right to change the charitable remainder beneficiaries (add and delete charities, alter percentages, etc.) during life or by will, so long as the new beneficiary is a qualified charity.
 - (7) No amounts other than the specified annuity or unitrust may be paid to or for the use of anyone other than a charitable organization. No invasions of principal for the benefit of the non-charitable beneficiaries are permitted, except those necessary to make the payment of the annuity or unitrust. IRC §664(d)(1)(B) and (d)(2)(B).
 - (8) No additions are permitted to an annuity trust. Unitrust governing instruments must either prohibit additions or make specific provisions therefor. Reg. 1.664-2(b) and Reg. 1.664-3(b).
- d. Income Tax Aspects.
 - (1) The CRT is exempt from federal income tax on the income earned in the trust. IRC §664(c).

- (2) Under the Regulations, distributions to beneficiaries retain the income tax character to the beneficiary as to the trust and are taxable to the receiving beneficiary even though the income would not have been taxed in the trust. Distributions to non-charitable beneficiaries are characterized in the following order of priority:
- i. First, ordinary income to the extent the trust has ordinary income for the year and undistributed ordinary income for prior years;
 - ii. Next, capital gain to the extent the trust has capital gains for the year and undistributed capital gains for prior years;
 - iii. Next, other income to the extent of the trust's other income for the current year and undistributed income for prior years;
 - iv. Lastly, tax-free distribution of trust corpus;
 - v. but, within each category of income, if there are separate classes of income in the category, the distribution from that category is treated as being made from each class, until exhaustion of that class, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest Federal income tax rate (ie non-qualified dividends before qualified 15% dividends)
- IRC §664(b).
- (3) If the CRT is funded during the lifetime of the donor, an income tax charitable deduction is allowed to the donor in the amount of the value of the remainder interest, calculated actuarially based on the age of the income beneficiary(ies) or the term of years, percentage unitrust or annuity, §7520 IRS discount rate for the month of the transfer, all in accordance with the Regulations under IRC §170(f)(2)(A).
- i. If the remainder beneficiary is a 50% charity, the 50% deduction ceiling applies if the remainder is distributed to the charity and not held in further trust for the charity. Reg. 1.170A-8(a)(2).
- (4) The donor does not recognize any capital gain on the transfer of appreciated property to the trust.
- (5) For federal income tax purposes, no capital gain is recognized by the donor on a subsequent sale of assets by the trust unless assets are sold and the proceeds are invested in tax exempt securities pursuant to an express or implied agreement between the donor and the trustee.
- (6) Until a number of years ago, NJ had taken the informal position that the CRT is also exempt from NJGIT even though the statute provides that only a wholly charitable trust is exempt from NJGIT. A CRT is not wholly charitable due to the annuity or unitrust interest of one or more individuals but the Division followed the federal rule informally. The NJ Division of Taxation announced a number of years ago that the CRT is not a tax exempt entity for NJGIT, and now regularly assesses income tax on the income of a CRUT that has not been distributed to the unitrust or annuity beneficiary like a regular trust.
- (7) **NOTE:** However, if the trustee is a non-NJ resident individual or non-NJ bank (ie Delaware bank), the trust holds only liquid assets (no NJ source income ie from NJ real estate), the NJ income tax may not apply to the CRT even though the annuity or unitrust beneficiary is a NJ resident, who will pay NJ income tax on taxable distributions.

- e. Gift Tax Aspects. IRC §2522
- (1) As with a pooled income fund, the donor makes two gifts: the income interest and the remainder interest to charity, calculated actuarially based on the age of the income beneficiary or term of years and the IRS tables.
 - (2) The value of the charitable remainder is deductible under IRC §2522(c)(2)(A).
 - (3) The value of the income interest is a taxable gift eligible for the \$16,000 annual gift tax exclusion. If the donor is the income beneficiary, there is no taxable gift. If the donor's spouse is the income beneficiary, the gift qualifies for the gift tax marital deduction. IRC §2523(g). Note: for the marital deduction to be available, the CRT must have no non-charitable beneficiary other than the donor and spouse.
 - (4) The value of the charitable remainder is calculated using the §7520 rate for the month of the gift (funding of the CRT), or, at the election by the donor made on the Form 709, for either of the two months prior to death. The donor should determine which IRC §7520 rate provides the largest charitable deduction for the donor – ie the higher the §7520 rate, the larger the charitable remainder. Note: if the donor and/or spouse are the sole lifetime beneficiary, the combination of no gift to donor, the marital deduction for the gift to the spouse and charitable deduction will zero out the trust and this election is not necessary.
- f. Estate Tax Aspects. IRC §2055
- (1) Inter vivos trust
 - i. If the donor was the sole income beneficiary, the value of the trust assets is includible in the donor's gross estate under IRC §2036(a); Reg. 20.2036-1(c)(1)(i). The estate then receives a charitable deduction for the full value of the trust assets under IRC §2055(a).
 - ii. If the income beneficiary is other than the donor, the trust is not includible in the donor's gross estate, as a completed gift at the time of creation and funding.
 - iii. If the donor retained the income interest and on the donor's death the income interest goes to another lifetime beneficiary, the value of the trust assets is includible in the donor's gross estate. IRC §2036(a). If the second income beneficiary has not survived the donor, the full amount of the trust assets is deductible as passing to charity at that time. If the second income beneficiary survives the donor, the estate has a deduction in the amount of the value of the remainder based on the age of the income beneficiary or the term of years and the amount of the annuity or percentage unitrust, leaving the beneficiary's life estate as a taxable devise. IRC §2055(e)(2)(A). If the second income beneficiary is the donor's spouse, the marital deduction is allowed for the assets in the trust. IRC §2056(b)(8). Note: for the marital deduction to be available, the CRT must have no non-charitable beneficiary other than the donor and spouse.
 - (2) Testamentary Trust: If the trust is created by the donor's will or at

donor's death, the donor's estate is entitled to a charitable deduction in the amount of the value of the remainder interest based upon the age of the income beneficiary or term of years and the amount of the annuity or percentage unitrust. IRC §2055(e)(2)(A). If the donor's spouse is the income beneficiary the marital deduction is allowed for such income interest. IRC §2056(b)(8). Note: for the marital deduction to be available, the CRT must have no non-charitable beneficiary other than the donor and spouse. Note: the marital deduction is under IRC §2056(b)(8), not IRC §2056(b)(5) or (7), so the trust is not then includible in the spouse's estate under IRC §2044, which could be beneficial as not impacting the possible use of IRC §303 redemption, §6166 installment payment of tax, filing requirements, etc.

- (3) This IRC §2056(b)(8) marital deduction is not as a QTIP or power of appointment trust so that there is no inclusion in the spouse's estate when the second spouse dies.
- (4) The value of the charitable remainder is calculated using the IRC §7520 rate for the month of death, or, at the election by the executor made on the Form 706 Schedule O, for either of the two months prior to death. The executor should determine which IRC §7520 rate provides the largest charitable deduction for the estate – ie the higher the §7520 rate, the larger the charitable remainder. Note: if the spouse is the sole lifetime beneficiary, the combination of the marital deduction and charitable deduction will zero out the trust and this election is not necessary.
- (5) For New Jersey Inheritance Tax purposes, the charitable remainder is a gift to a Class E beneficiary, not subject to inheritance tax. If the spouse or a descendant is the annuity or unitrust beneficiary, there is no inheritance tax on the annuity or unitrust interest. For New Jersey Estate Tax purposes (if any), the federal rules above apply.

g. Good uses of the CRUT:

- (1) low income producing assets or unproductive assets converted to higher yield by transfer to CRUT, sell in CRUT and then invest with the higher pay-out required by CRUT
- (2) holding property with large built in capital gain and not wanting to incur that capital gain tax but desire to sell and get cash flow from the property
- (3) as a supplement to retirement funding in the equivalent of a non-qualified plan with the NIM-CRUT
- (4) **NOTE:** The high income tax rates, 3.8% surtax on investment income and the exemption of the CRT from federal income tax on income retained in the trust increase the benefit of the CRT where it is used partially to diversify a concentrated holding or to sell assets to increase the yield from non- or under-productive property
- (5) **NOTE:** See Section B(6)(c) on page 8 about the use of a QCD distributed directly to a CRUT or CRAT and its limitations

- h. PLR 200441024 provides guidance regarding the consequences of the early termination of a CRUT and pay-out of the balance in the trust to the unitrust beneficiary and remainder charities actuarially under Reg. 1.664-4 using the IRC §7520 rate at the time of termination. The IRS concluded that the plan did not violate the self dealing or taxable expenditure rules nor did it constitute the

termination of a private foundation (so that nothing could go back to the donor), and that the amount realized by the beneficiary constituted long term capital gain.

- i. PLR 200502037 deals with the division of a CRUT established to provide the unitrust to husband for life and then to wife, in connection with their divorce. The CRUT was divided into two separate CRUTs with each spouse as the sole non-charitable beneficiary of his or her respective CRUT. The IRS ruled that the old and new CRUTs were qualified CRUTs, IRC §1041(a) avoided Cottage Savings gain to the parties, the successor trusts tacked their holding periods to the original CRUT's holding period, and the division was not an act of self-dealing or taxable expenditure.
 - j. IRS sample safe harbor forms for CRUTs and CRATs:
 - (1) CRUT: Rev. Proc. 2005-52 to 59, 2005-34 IRB 412
 - (2) CRAT: Rev. Proc. 2003-53, 2003-2 CB 230 and Rev. Proc. 2003-60, 2003-2 CB 274
 - k. Warning: under Atkinson v. Comm'r, 309 F.3d 1290 (11 Cir. 2002), aff'g 115 T.C. 26 (2000), if a charitable remainder trust is not properly administered during the lifetime of the donor, then the estate is denied the estate tax charitable deduction in the donor's estate by finding the CRT was not a valid CRT. A CRT must be set up under §664 of the Code and then also comply with the statutory and regulatory requirements of a CRT.
5. Certain Marital Trusts (QTIP Trust) with Remainder to Charity.
- a. A QTIP trust is a trust established for the benefit of the spouse of the donor so that all income of the trust is paid to the spouse for life. The QTIP trust may have certain other provisions, as well. Upon the death of the spouse, the balance of the trust passes as provided in the trust agreement, which may be charity or partially to charity. A QTIP trust with a remainder to charity does not qualify for the income, gift or estate tax charitable deduction for the donor. However, if the donor (inter vivos) or the donor's executor (transfer at death), makes the QTIP marital deduction election, the full value of the trust (or the portion so elected) would qualify for the gift or estate tax marital deduction. §2523(f) for an inter vivos transfer and §2056(b)(7) for a trust upon the death of the donor. On the death of the second spouse, the assets are included in the spouse's estate under §2044, but that estate is allowed a charitable deduction for the portion or all of the remainder as property passing to a charity under §2055(a).
 - b. Advantages of QTIP over CRTs.
 - (1) The surviving spouse will receive all the income of the trust, not just the annuity or unitrust amount.
 - (2) The principal of the trust may be invaded for the benefit of the spouse.
 - (3) The trust document is simpler to draft and the trust is simpler to administer.
 - (4) The remainder can be split among charitable and non-charitable beneficiaries.
 - c. Disadvantages of QTIP as compared with CRTs.
 - (1) A qualified charitable remainder trust is an income tax exempt entity and

pays no income tax on income earned in the CRT, both ordinary and capital gains. The unitrust or annuity beneficiary has income up to the amount of the distribution, with the same character as earned inside the CRT. But a QTIP is subject to tax on capital gain and the spouse pays income tax on all ordinary taxable income, and any capital gain that passes to the spouse with a distribution of principal.

- (2) No income tax deduction is available upon the creation of the QTIP with remainder to charity. The donor spouse (or executor of donor spouse's estate) may make the QTIP election to obtain the benefit of the gift or estate tax marital deduction for the gift or devise.
- (3) If the QTIP election is made, the value of the trust assets is included in the surviving spouse's estate under IRC §2044, which could have an impact on special use valuation IRC §2032A, extension of time to pay taxes IRC §6166, or an IRC §303 redemption of stock due to percentage limitations, and other matters relating to the gross estate.

	QTIP by first spouse for surviving spouse with remainder to charity	CRUT by first spouse for surviving spouse
Income	SS must receive all income	SS receives unitrust % of assets or annuity
Principal	SS may receive principal if needed	No principal invasions
Remainder of trust	Can be divided among individuals and charities	Only charities can receive the remainder of the trust
Income tax	SS is taxed on all ordinary income, and may be taxed on principal if there is capital gain passing through with principal distributions	CRUT distribution carries income out up to the amount distributed, with character of income to the trust
Federal Estate Tax treatment in first estate	§2056(b)(7) in D's estate, §2055 in SS's estate to extent of charities receiving remainder	§2056(b)(8) with respect to SS and §2055(e)
SS's estate	Assets of QTIP are included in SS's federal taxable estate, subject to a charitable deduction for the balance (or portion) passing to charity, but the inclusion could impact special use valuation, closely held business redemption, installment payment of tax, etc.	The CRUT is not included in SS's federal taxable estate
Trust	Much simpler to draft and administer	Complex to draft and administer

6. Private Foundation

- a. The typical private foundation is established by the donor as a trust or non-profit corporation which satisfies the requirements of IRC §501(c)(3) with respect to purposes but whose support is limited in the number and type of donors so as not to meet the §509(a) public support tests.
- b. There are many types of Private Foundations.
- c. There are very strict rules that must be observed in the operation of a Private Foundation under IRC §4940 et seq., i.e. no self dealing, minimum distributions, no excess business holdings, etc.
- d. Donor obtains an income and gift or estate tax deduction up front and the funds are paid out to charity or charities over many years.
- e. Private Foundations are useful in the year of high income where the donor does not want to decide which charities to give to or does not want to give the full amount in year one.
- f. The private foundation also allows for junior family members to be involved in the charitable and philanthropic activities of the senior family members and

- ultimately continue these activities in the name of the family
- g. Note the income tax deduction limitations above
- h. This can be used as a vehicle to educate younger generations about philanthropy, getting them involved in the family foundation early with the hope they will continue it after donor's death and even add to it

7. Donor Advised Funds (the "DAF")

- a. Certain community foundations (ie New Jersey Community Foundation), religious organizations (ie Jewish Community Foundation of Greater MetroWest NJ) and other organizations (ie Fidelity Charitable Services and certain brokerage houses) offering the equivalent of community foundations offer a type of account called a donor advised fund.
- b. The donor establishes a fund with the foundation and retains the right to the donor (and/or other specified individuals, such as spouse and children) to make requests as to the recipients of distributions from the fund from time to time.
- c. Although the foundation is not obligated to make the requested distributions, unless there is a compelling reason not to do so, the foundation usually follows the request.
- d. This is the equivalent of a simplified private foundation since the donor obtains the benefit of the administrative services of the foundation and the investment expertise for the donor's separate fund at the foundation and most, if not all, distributions are made at the request or with the approval of the donor.
- e. The other benefit of using the donor advised fund is that the foundation qualifies as a public charity and so is not subject to the private foundation rules and excise taxes, and the income tax deduction limitations for the donor are those of a public charity and not the lower limitations of gifts to a private foundation.
- f. This can also be used as a vehicle to educate younger generations about philanthropy, getting them involved in the family donor directed fund early with the hope they will continue it after donor's death and even add to it

8. Special uses of CRTs and Private Foundations

- a. Appreciated property
 - (1) Sale and donation of proceeds vs. donation of property and sale by CRT
 - (2) Since the CRT is exempt from federal income tax, when the asset is sold, the proceeds remain in the trust for reinvestment, undiminished by federal income tax on any gain upon the sale (but possibly subject to NJ income tax)
 - (3) Useful for diversification of holdings at little tax cost
 - (4) Convert low basis/low income producing assets into higher yielding assets for increased cash flow free of federal income tax (but possibly not NJ income tax) – possibly to better cover expenses of an aging donor or spouse
- b. Large qualified employee benefits or IRA
 - (1) If the individual has substantial qualified employee benefits, the family may net as little as 20% after estate, inheritance, income, etc. taxes
 - (2) The enactment of the new SECURE Act, forcing the family (other than spouse) to withdraw the benefits within 10 years of the death of the participant in most cases, accelerates and in most cases increases the income tax on the benefits, will encourage charitable gifting from the benefits, which are less valuable to the descendants of the participant.

- (3) If there is any charitable intent, the CRT for family and charity may be an excellent place to send the benefits upon the death of the participant since the CRT pays no federal income tax (but there may be NJ income tax), and the distribution of the benefits to the trust must be made during the 5 years after the death of the participant, as under prior law.
- (4) All or a portion of the qualified benefits passing to charity outright on death by beneficiary designation
 - i. No estate, GST or inheritance tax, and
 - ii. Charity pays no income tax – federal or NJ
- (5) All or a portion passing to the CRUT
 - i. Depending on the age of the individual beneficiary and the amount of the annuity or unitrust, the estate tax deduction may be substantial – but it is not total so there may be some estate tax, which must be paid from other assets
 - ii. CRUT pays no federal income tax on benefits received and reinvests the entire amount (net of NJ income tax if subject to NJ income tax at all, which may be avoided)
 - iii. Since the CRUT pays no federal income tax, the annuity or unitrust payments may be more than an outright payment in just a couple of years, and if the individual(s) live a long time, the additional amounts may be substantial - the beneficiaries and charities get more and only the IRS gets less
 - iv. Although the CRUT must collect in the benefits in the 5 years after the participant's death, the trust continues for the lifetime of the beneficiary, spreading the income tax hit to the beneficiary over the lifetime of the beneficiary along with the distributions from the CRUT, coming close to the old benefit of the lifetime spread of the IRA for beneficiaries other than a spouse with the additional benefit of creditor protection
 - iv. Potential creditor protection for the CRUT beneficiaries which may not be available to the beneficiary receiving the benefits outright.

9. Virtual Endowment

- a. If an individual wants to endow a program for a charitable organization but cannot afford a large gift during life, a virtual endowment can be used
- b. Example: individual wants to endow a chair at a university, which would cost \$40,000 per year and the university wants a \$1,000,000 gift for this endowment
 - (1) individual can make annual gifts of \$40,000 per year during life
 - (2) on individual's death, the individual can leave a bequest of \$1,000,000 to the university for the funding of the future years of the chair
 - i. Bequest under Will or Trust
 - ii. Beneficiary of an IRA or qualified plan, or portion thereof
 - iii. Beneficiary of a life insurance policy, or portion thereof
 - iv. Remainder of a charitable remainder trust

10. IRAs, IRC §401(k) plans, qualified plan benefits

- a. An IRA, IRC §401(k) or other qualified plan benefits can be a great source of charitable giving by the designation of a charity as beneficiary of all or part of such benefits

- b. This can be accomplished by a percentage or fractional interest, but generally not a specific dollar amount
- c. The designation of a charity results in the Federal Estate Tax charitable deduction, New Jersey Estate Tax charitable deduction (if any), probably other state estate tax charitable deduction, and charity is a Class E exempt beneficiary for New Jersey Transfer Inheritance Tax purposes
- d. In addition, the charity does not pay any income tax when it receives the benefits.
- e. The SECURE Act and SECURE 2.0 will encourage charitable giving from the IRA, etc., due to the acceleration of the collection of the benefits to a non-spouse beneficiary to no more than 10 years after the death of the participant which accelerates and probably increases the payment of the income tax by the beneficiary.

11. Replacing amounts passing to charity for the family

- a. Concern: although charitable gifts result in substantial tax savings, the family of the donor may feel cheated out of part of their "inheritance"
 - (1) With a CRT, if the donor lives a long time, the donor may replace assets passing to charity through investing the distributions but if the donor dies shortly after establishing the trust, the estate may suffer depletion. Similarly, a CRT for the benefit of a child allows the child to reinvest the distributions for the child's beneficiaries.
 - (2) One solution: the donor may use the income tax savings from the income tax deduction on creation to buy life insurance in an amount to replace (in whole or part) the amount passing to charity, and similarly, the donor or other non-charitable beneficiary may use some of the annuity or unitrust distributions to pay for life insurance on the beneficiary's life for such beneficiary's intended beneficiaries
 - (3) Single life insurance on the life of the donor or second to die insurance on the lives of donor and spouse
 - (4) When the CRT is established, also establish an irrevocable life insurance trust with Crummey powers
 - (5) Recall: if the ILIT is properly established and maintained, the proceeds of the life insurance will be outside donor's (or child or other beneficiary's) taxable estate
 - (5) Hence, the assets in the CRT pass to charity free of estate and inheritance tax due to the estate tax charitable deduction and inheritance tax exemption for gifts to charity, and the insurance proceeds pass to the family free of estate and inheritance tax

D. Impact of IRC §7520 rate on various charitable vehicles:

CHARITABLE VEHICLE	SAMPLE IRC §7520 RATE	CHARITABLE DEDUCTION FOR INCOME, GIFT AND ESTATE TAX PURPOSES	NON-CHARITABLE GIFT	SENSITIVITY TO §7520 RATE
CRUT: 1 life, age 65, 5% unitrust	1.2%	44.699% of addition to trust	Unitrust beneficiary: usually donor but could be donor and spouse or someone else, which could create taxable gift or bequest	Minor
	3.0%	42.281% of addition to trust		
	5.0%	42.676% of addition to trust		
				Note: depending on the age of the donor (or lifetime beneficiary), the 10% remainder requirement gets harder to satisfy for younger clients with a low IRC §7520 rate
CLAT: 20 years, annuity = 5% of initial value in trust	1.2%	88.436% of initial funding of trust for gift and estate tax – but no income tax deduction unless is a grantor trust	Remainder beneficiaries: taxable gift or bequest and not eligible for annual exclusion for lifetime CLAT	Very significant
	3.0%	74.387%		
	5.0%	62.311%		
Remainder after Life Estate in Personal Residence or Farm: age 65	1.2%	81.346% of appraised value of property at time of deed gift	Retained life estate for donor with or without spouse – no gift or estate tax since passes to charitable remainder beneficiary on donor's death, unless a non-spouse has a continuing life estate prior to passing to charity	Very significant
	3.0%	61.170%		
	5.0%	46.037%		

Charitable gift annuity			The lower the IRC §7520 rate the smaller the charitable deduction, but the larger the exclusion ratio, meaning less of each payment received is subject to income tax each year	

NOTE: The current §7520 rate for July 2025 is 5.0% but has been as high as 11% and as low as .6% over the period 1989 through 2025.

E. Lifetime donations vs. testamentary gifts: **NOTE:** With the higher applicable exclusions for Federal Estate Tax and Federal Gift Tax, the Federal Income tax charitable deduction will be the only tax benefit and savings to a charitable gift for most clients.

1. Income tax deductions

- a. A charitable gift made during life may be eligible for an income tax charitable deduction, subject to the limitations of IRC §170 as to the type of organization and percentage of adjusted gross estate limitations per year, with carryovers for up to five years thereafter and subject to the standard deduction increase, discussed above.
- b. A split interest trust may be eligible for a current income tax deduction in the amount of the actuarial value of the charitable portion of the gift while the donor retains certain significant benefits from the property (ie CRT, gift annuity, gift of remainder interest in a residence) if it qualifies under IRC §170 and §664
- c. There is no income tax deduction allowed to an estate for a charitable bequest or charitable transfer as a result of the death of the donor (ie beneficiary of IRA, life insurance, etc.)
- d. See above discussion of the income tax consequences of the various forms of gifts
- e. A charitable gift during life may result in income tax savings immediately, and then keep all or a portion of the assets out of the taxable estate thereby obtaining the equivalent of an estate tax charitable deduction for the same gift or bequest – a double benefit
- f. A charitable gift during life which keeps the assets out of the gross estate may also have the benefit of permitting the estate to qualify for certain benefits based on the percentage of the estate consisting of certain assets, ie IRC §303 redemption, IRC §6166 installment payment of taxes, etc.
- g. But note that with the higher standard deduction (\$25,900 for a married couple, \$12,950 for an individual in 2022) and the limitation on deductions for state and local income and property tax to \$10,000 (SALT deduction), a donor has to give away enough to get over that threshold before getting any income tax benefit from the charitable gift.

2. Gift tax deductions

- a. A charitable gift made during life may be eligible for a gift tax charitable deduction, subject to the limitations of IRC §2522
- b. A split interest trust may be eligible for a gift tax deduction in the amount of the actuarial value of the charitable portion of the gift while the donor retains certain

- c. significant benefits or grants such benefits to another under IRC §2522(c)(2)
- c. The value of the charitable gift or charitable portion of a split gift is deductible in full, not subject to percentage limitations as with the income tax deduction
- d. There is no gift tax or gift tax deduction to an estate for a charitable bequest or charitable transfer as a result of the death of the donor as it is not considered a gift – the transfer tax is the estate tax
- e. See above discussion of the gift tax consequences of the various forms of gifts

3. Estate tax deductions

- a. A charitable bequest or transfer as the result of the death of the donor (ie under a trust, by beneficiary designation, etc.) may be eligible for the estate tax charitable deduction if it satisfies the requirements under IRC §2055
- b. A split interest gift may be eligible for the estate tax charitable deduction in the amount of the actuarial value of the charitable portion of the gift while one or more individuals are granted benefits of the assets under IRC §2055(e)(2)
- c. The value of the charitable bequest or transfer or charitable portion of a split gift is deductible in full, not subject to percentage limitations as with the income tax deduction, even to the full amount of the residuary estate
- d. A bequest or transfer to charity at death may have the benefit of the estate tax deduction, but did not get the benefit of an income tax deduction during the lifetime of the donor
- e. See above discussion of the estate tax consequences of the various forms of gifts.

4. Non-tax benefits of lifetime giving

- a. educate and be a role model for family members
- b. strengthen family bonds working together for charity and other this way
- c. enjoy the gratitude charities and beneficiaries express
- d. the personal satisfaction donor may enjoy seeing the help donor provides to those less fortunate or to an organization donor feels strongly about
- e. provide guidance to family or foundation/community fund administrators as to donor's philanthropic desires – creating a track record of donative intent for future use in administering the foundation or community fund or to guide the family

F. Allocation of estate and inheritance taxes

1. Limitation on federal estate tax charitable deduction

- a. IRC §2055 provides for the estate tax charitable deduction for funds passing to charity (ie outright) or for charity (ie CRT, CLT, remainder interest in personal residence or farm, charitable trust, etc.) in the amount actually passing to or for charity, determined actuarially for split interest gifts
- b. If the charitable bequest is charged with any estate or inheritance or other death tax on the estate, then the charitable deduction is reduced by the amount of such tax
- c. Split interest trusts (CRT, CLT) must specifically provide that no estate, inheritance or other death tax will be paid from the trust funds or funds passing from the donor or the estate to the trust or the trust will not be a qualified split interest trust

2. New Jersey Transfer Inheritance Tax treatment of charitable gifts

- a. Charities are Class E beneficiaries, not subject to NJ Transfer Inheritance Tax

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

- b. Charities include tax exempt entities and organizations, including the State of NJ and its political subdivisions, educational, charitable, scientific, religious organizations, hospitals, public libraries and other non-profits.
 - c. Charitable organizations of foreign jurisdictions are not exempt for NJ Transfer Inheritance Tax purposes unless the foreign jurisdiction offers an equal and like exemption for transfers to or for NJ organizations.
 - d. The United States government or any agency thereof is not exempt.
3. Care should be taken in drafting the tax clause for a decedent making a charitable provision, especially if all or a portion of the residuary estate is to pass to charity
- a. If charity is to receive all or a portion of the residue, a circular computation results and a payment of tax on the tax
 - b. If a portion of the "residue" is desired, the bequest should be defined as a percentage or fraction of the gross estate or gross estate reduced by all §2053 deductions, before taxes, to avoid the circular computation
 - c. If the will is silent as to the allocation of death taxes due from the estate, then the New Jersey Apportionment Statute N.J.S.A. 3B:24-1 et seq. applies allocating the death taxes among all beneficiaries of the estate (beneficiaries of both probate and non-probate taxable assets) in proportion to their shares of the gross estate. However, the charitable beneficiary obtains the benefit of the tax exempt status under N.J.S.A. 3B:24-4(b) so that the charity does not pay any of the death taxes.

G. Restricted gifts vs. general gifts

- 1. Donor may specify the use of funds – ie scholarships, capital improvements to facility, create a chair in a specific department at a university or hospital, current use vs. endowment, etc.
- 2. Donor may say for the general use of the organization but limit who determines the use ie board of charity, president, etc.
- 3. Donor should not be too specific since the initial purpose may not be possible in the future where the gift may be far into the future, such as with a foundation that continues – ie for finding a cure for a disease for which a cure is found by the time the gift is realized, support a department at a school that no longer exists
- 4. Donor can provide successor uses of the funds in case the first use cannot be obtained
- 5. Donor can spell out a general mission or values to be used in deciding the use of funds providing for flexibility in the actual use
- 6. NOTE: If the charity violates the restrictions or terms of the gift the charity may have to return the gift

H. Pecuniary vs. residuary devises: income tax aspects

- 1. Pecuniary devise: specific dollar amount or specific percent of the gross estate as determined for federal estate tax purposes or gross estate reduced by §2053 deductions
- 2. Residuary devise: entire residue or percent or fraction of the residue
- 3. Funding of pecuniary devise with assets of the estate
 - a. Treated as if the estate sold the asset at the fair market value on the date of distribution and distributed cash so that the estate realizes and recognizes capital gain or loss on the distribution
 - b. Beneficiary takes the asset with a basis equal to the value on the date of transfer as a result of the recognition of gain or loss to the estate
- 4. Funding of portion of residue with assets of the estate

- a. Fairly representative share of the assets of the estate
- b. Generally no income tax consequence to the estate
- c. Beneficiary takes the assets with the basis to the estate, ie date of death or alternate value

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Premarital Planning and Planning Issues for Divorcing Couples

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PREMARITAL AGREEMENTS GENERALLY

- Identify all assets, liabilities, income sources
- Review: tax returns, wills, living wills, trusts, property/marital settlement agreements from prior divorce(s), insurance coverage
 - Disclosure – “silent” trusts?
- Decide client’s goals for premarital agreement
 - Largely dependent on ages, stations in life.
 - Who is being protected?
 - Family law attorney?

PREMARITAL AGREEMENTS – COMMON PROVISIONS

- Palimony/Spousal Support/Alimony
- Equitable Distribution
 - Separate Property/Marital Property
 - Original Property/Increases in Value
- Payment of Household Expenses and Taxes
- Elective Share/Intestacy Rights
 - Life Insurance Obligation in Lieu of Rights?
- ERISA/Beneficiary Rights

PREMARITAL AGREEMENTS – TRANSFER TAX PROVISIONS

- Use of Unified Credit/Deceased Spousal Unused Exclusion (DSUE)
- Payment of Estate Tax Attributable to QTIP Trust (IRC Sec. 2207A Right of Recovery)
- Gift Splitting/Use of Both Spouses' Gift/GST Tax Exemptions – Should the non-Donor Spouse Agree to Split?
- If one spouse is not a U.S. Citizen – QDOT/Marital Deduction

PREMARITAL AGREEMENTS – INCOME TAX PROVISIONS

- Joint or Separate Income Tax Returns
 - Innocent Spouse Relief
- Allocation of Joint Income Tax Liability Between Spouses
- Amounts/Assets Payable in Event of Marriage Termination in Lieu of Spousal Support
 - Eventual Deductibility/Includability (IRC Sec. 1041)
 - Basis of Non-Cash Assets
- Postnuptial Agreement (if permitted) for planning during the marriage?

PLANNING FOR DIVORCING SPOUSES- EXISTING ASSETS AND STRUCTURES

- Separate Property or Marital Property?
 - Accessible for Purposes of Equitable Distribution?
 - How much client access?
 - Attribution of Income for Purposes of Spousal Support? Tannen
- Revocable or Irrevocable?
 - Spouse Removed by Law? NJSA Sec. 3B:3-14
 - Irrevocable Instruments (e.g. ILITs, SLATs, GRATs, QPRTs)
 - Terms of Document vs. Law
 - Review Fiduciaries and Beneficiaries
 - Review all Policies Currently In Force
 - Modification/Decanting Permitted? N.J.S.A. 3B:31-26 through 34. Widenmayer
- Did previous planning involve solely gifting, or structures with a purchase/annuity concept such as a promissory note or private annuity?
 - Income Taxation of Existing Trusts such as SLATs
 - Grantor Trusts (IRC Sec. 672)

PLANNING FOR DIVORCING SPOUSES- NEW TRUSTS

- Court can order the establishment of new trust(s) to secure post-divorce financial obligations.
- Irrevocable Life Insurance Trusts for Post-Divorce Obligations
 - Use Existing or Create New?
 - References in MSA
- Section 2503(c) Trust for Young Children vs. Trust With Crummey Withdrawal Powers

PLANNING FOR DIVORCING SPOUSES- TAX ISSUES

- No gift tax if recipient spouse is U.S. Citizen. IRC Sec. 2523
- No gain or loss on spousal transfers. Carryover basis but tacked holding period. IRC Sec. 1041
 - Also applies to transfers between former spouses if incident to divorce.
 - Within one year of the divorce or “related to the cessation of the marriage.”
 - Pursuant to a divorce or separation agreement and within six years of the divorce (or by modification/amendment of the agreement).
 - If not within six year, then rebuttable presumption of not related to the cessation of the marriage.
- Grantor Trusts/Tax Reimbursement Powers
- Transfer of IRA to spouse/former spouse by divorce/separation agreement is not subject to income tax. IRC Sec. 408(d)
- Joint Return Deficiencies
 - The IRS is not bound by a divorce agreement allocating responsibility for joint tax return deficiencies. IRC 6013(d)
 - Innocent Spouse Relief and Equitable Relief

About the Panelists...

Robert D. Borteck, Borteck & Czapek, P.C. in Florham Park, New Jersey, concentrates his practice in estate and tax planning matters, estate administration and contested probate matters, and handles individual financial and business planning as well as trust department work for leading financial institutions in New Jersey. He has been designated as an Accredited Estate Planner by the National Association of Estate Planners and often serves as an expert witness in contested probate matters.

Admitted to practice in New Jersey, New York and the District of Columbia, and before the United States District Court for the District of New Jersey, the United States Tax Court and the United States Supreme Court, Mr. Borteck is a Fellow of the American College of Trust & Estate Counsel (ACTEC), a member of the organization's Fiduciary Litigation Committee and is a former New Jersey State Chair and Mid-Atlantic Representative. He is a former Co-Chair of the New Jersey Practice and Procedure Committee and the NJSBA Death Tax Committee, and has served as Chair of the New Jersey State Bar Association Real Property, Probate and Trust Section's Inheritance Tax Rules and Regulations Committee. Mr. Borteck is also a past President and Director of the Northwestern New Jersey Estate Planning Council and has been a member of the American Bar Association's Real Property, Probate and Trust Law Section. A Life Member of the National Registry of *Who's Who*, he is a frequent lecturer on estate and tax planning topics for ICLE, ACTEC and other private and professional groups.

Mr. Borteck attended Colby College and Hebrew University, and received his B.A. from New York University, where he was elected to *Omicron Delta Epsilon*. He received his J.D. from New York University School of Law, where he was Editor of the *New York University Journal of International Law and Politics* and a participant in the Moot Court Competition.

Adam M. Grenker is a Partner in Fox Rothschild LLP in the firm's Morristown, New Jersey, and New York City offices. He focuses his practice in sophisticated estate planning; estate and trust administration; federal estate, gift and income taxation; living trusts; tax matters affecting nonprofits and charitable planning; and business succession planning.

Admitted to practice in New Jersey and New York, Mr. Grenker is a member of the American and New York State Bar Associations, and serves on the Board of Consultants of the New Jersey State Bar Association Real Property, Trust & Estate Law Section. He has also been a member of the Estate Planning Council of Northern New Jersey and the Society of Financial Service Professionals. He is a lecturer for ICLE and other public and private organizations, has contributed to articles on tax law and is a co-author of the Fourth Edition of ICLE's *Estate Planning Strategist*.

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Admitted to practice in New Jersey and New York, Ms. Horwitz is a member of the Board of Consultors of the New Jersey State Bar Association Real Property, Trust and Estate Law Section. She is also a Trustee and Vice President of the Greater Middlesex/Somerset Estate Planning Council.

Ms. Horwitz received her B.A. from Washington University (St. Louis), her J.D. from New York Law School and her LL.M. in Taxation from Villanova University's Charles Widger School of Law.

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Admitted to practice in New Jersey, Ms. Lebowitz is a Fellow of the American College of Trust and Estate Counsel (ACTEC), Chair of ACTEC's New Jersey Chapter, Past Chair of the New Jersey State Bar Association's Real Property, Trust and Estate Law Section and a member of the Section's Board of Consultors. She is Past President and a Trustee of the Greater Middlesex/Somerset Estate Planning Council and was the 2024 recipient of the Dorothy G. Black Award for Distinguished Service bestowed by the NJSBA Real Property, Trust and Estate Law Section. She was also honored at the Executive Women of New Jersey's Policy Makers Gala for outstanding professional achievements and commitment to advancing women's representation in leadership roles.

Ms. Lebowitz received her B.A. from New York University, her J. D. from Rutgers School of Law-Newark and her LL.M. in Taxation from New York University School of Law.

Gary A. Prince, Jr. is a Shareholder in Mantell, Prince & Reynolds, P. C. in Basking Ridge, New Jersey, where he concentrates his practice in tax, business planning and business transactions, corporate law, estate and trust planning, estate administration, and serving as an expert and as an expert witness in tax and estate related litigation. For more than 25 years he has worked professionally on behalf of individuals, business owners and fiduciaries to provide creative and comprehensive tax, estate, business and legal solutions. He also represents families in matters including gifting strategies, marital agreements, income tax preparation and other personal and business issues; and counsels fiduciaries, beneficiaries and corporate shareholders, officers and directors on how litigation can be avoided or minimized.

Admitted to practice in New Jersey and Pennsylvania, and before the United States District Court for the District of New Jersey and the United States Tax Court, Mr. Prince is a member of the New Jersey Bar Association's Taxation, Small Firm and Probate and Trust Sections as well as the Union County Bar Association and the Taxation Section of the American Bar Association. He is also a Certified Public Accountant and a member of the American Institute of Certified

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Frederick K. Schoenbrodt, II is a Principal of Bressler, Amery & Ross, P.C. in Florham Park, New Jersey, and New York City. Managing Principal of the firm's Florham Park office, he is Chair of the firm's Management Committee and serves as the Practice Group Leader of Bressler's Private Client Practice. He represents wealthy individuals and families in trust and estate matters, including sophisticated estate and tax planning, charitable planning, and the administration of estates and trusts; serves as counsel to private foundations and public charities; and advises individual and corporate trustees on the administration of charitable and non-charitable trusts.

Admitted to practice in New Jersey, New York and Maryland, and before the United States District Court for the District of New Jersey, Mr. Schoenbrodt served on the Board of Consultants of the New Jersey State Bar Association's Real Property, Trust and Estate Law Section, and is a member of the U.K.-based Society of Trust and Estate Practitioners (STEP) and the American, New Jersey State and Maryland State Bar Associations. He is a former Trustee and Executive Committee member of the Community Foundation of New Jersey. Prior to entering private practice, he served as an officer in the U.S. Army Judge Advocate General's Corps and was assigned to the 25th Infantry Division at Schofield Barracks in Hawaii.

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