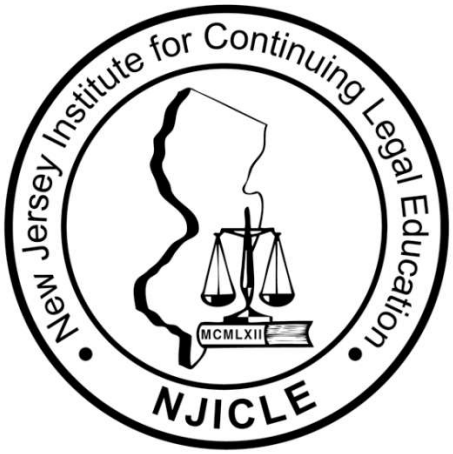
# 2026 ESTATE PLANNING AND ADMINISTRATION SUMMER INSTITUTE

## 2026 Seminar Material

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# 2026 ESTATE PLANNING AND ADMINISTRATION SUMMER INSTITUTE

**Moderators**

**Robert T. Borteck, Esq.**
*Borteck & Czapek, P.C.*
*(Florham Park)*

**Gerard G. Brew, Esq.**
*McCarter & English, LLP*
*(Newark)*

**Speakers**

**Benjamin E. Akselrad, Esq.**
*Bressler, Amery & Ross, P.C.*
*(Florham Park; New York City)*

**Robert I. Aufseeser, Esq., LL.M.**
*Law Office of Robert Aufseeser LLC*
*(East Brunswick)*

**Eric Carosia, Esq.**
*Berkowitz, Lichtstein, Kuritsky, Giasullo & Gross LLC (Roseland)*

**Crystal West Edwards, Esq.**
*Certified as an Elder Law Attorney by the National Elder Law Foundation*
*Porzio, Bromberg & Newman, P.C.*
*(Parsippany)*

**Andrew C. Egan, Esq.**
*Bressler, Amery & Ross, P.C.*
*(Florham Park)*

**Timothy F. Ferges, Esq.**
*McCarter & English, LLP*
*(Newark; New York City)*

**Abbey M. Horwitz, Esq.**
*McCarter & English, LLP*
*(Newark)*

**Laura A. Kelly, Esq.**
*McCarter & English, LLP*
*(Newark)*

**Angela Titus McEwan, Esq.**
*Day Pitney LLP*
*(Parsippany)*

**Anita J. Siegel, Esq.**
*Bressler, Amery & Ross, P.C.*
*(Florham Park)*

**Tara S. Sinha, Esq.**
*Witman Stadtmauer, P.A.*
*(Florham Park)*

**Laura N. Wilensky, Esq.**
*Orloff, Lowenbach, Stifelman & Siegel, P.A.*
*(Morristown)*

**Leonard J. Witman, Esq.**
*Witman Stadtmauer, P.A.*
*(Florham Park)*

In cooperation with the New Jersey State Bar Association **Real Property, Trust, and Estate Law Section**

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# Ethics for Estate Planners

Susan M. Holzman, Esq. and Laura N. Wilensky, Esq.
Orloff, Lowenbach, Stifelman & Siegel, P.A.
sholzman@olss.com
lwilensky@olss.com

## 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. We also 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: https://www.njcourts.gov/attorneys/rules-of-court.

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 Edition[1], 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

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[1] For the Sixth Edition of the ACTEC Commentaries on the Model Rules of Professional Conduct, see https://www.actec.org/wp-content/uploads/2023/08/ACTEC_Commentaries_6th_Rev.pdf

period for New Jersey attorneys has increased from four to **five credit hours** and must include at least **two credit hours** of coursework in diversity, inclusion, and the elimination of bias.

**What's new in 2025/2026:**

**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

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[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 2026, the Judiciary issued a Notice to the Bar containing a template for a basic AI firm policy[5]. Acknowledging that AI usage is more commonplace and such technology is embedded in many platforms and programs used by attorneys, the Notice encourages attorneys in the state to create, adopt, and regularly update AI policies to maintain professional competence and ethical compliance. For example, a firm's AI policy should address maintaining client confidentiality while utilizing AI and appropriate reliance on AI-produced documents or research. The Notice also highlights that a policy is only as good as its users and encourages appropriate training and education regarding AI use.

**Technology-Related CLE**

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.[6] 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

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

[5] https://www.njcourts.gov/notices/notice-responsible-use-of-artificial-intelligence-ai-and-related-technologies-benefits-of

[6] https://njsba.com/wp-content/uploads/2024/05/NJSBA-TASK-FORCE-ON-AI-AND-THE-LAW-REPORT-final.pdf

requirement for "technology-related subjects".[7] Members of the bar will be required to complete one CLE credit in this area per two-year reporting period. The new CLE requirement will take effect on January 1, 2027. The Court issued a Notice in April 2026, confirming the amendment to the CLE regulations to implement the new requirement and specifically define "technology-related subjects".[8]

**DRB Docket Potpourri**

Several recent cases from New Jersey's Disciplinary Review Board ("**DRB**") addressed attorneys providing estate planning services. These disciplinary matters highlight the importance of ethical duties for estate planning attorneys. Two of those matters are discussed below.

- Docket No. 24-258[9]: This disciplinary matter, decided in April 2025, involves a reciprocal disciplinary action against a New Jersey licensed attorney for actions he took with respect to a Maryland client. The client ("**Marsh**") was an elderly woman with a long-standing Maryland estate planning attorney ("**Kent**"). Kent assisted Marsh and her husband in establishing a trust for their benefit. In 2009/2010, Marsh became the sole beneficiary of that trust, which contained significant assets, following her husband's death. Marsh also designated Kent as her agent and successor trustee. In 2018, when Marsh was 92 years old, a full-time live-in caregiver was hired for Marsh, to be paid out of the trust. Marsh's son, who allegedly suffered from physical and cognitive disabilities, married the caregiver. The son soon became ill and was hospitalized, resulting in Kent becoming trustee of Marsh's trust in 2020.

  Shortly thereafter, the caregiver/daughter-in-law ("**DIL**") reached out to the attorney in question, who was a friend of her family, for help and assistance in "sort[ing] things out" in connection with Marsh's estate planning. Initially, the attorney sent a letter to Kent demanding Kent to turn over Marsh's estate planning documents and to amend Marsh's power of attorney to name DIL as a co-agent.

  After Kent refused, the attorney prepared engagement letters for both Marsh and DIL, which included waivers of the conflict that existed between them as

[7] https://www.njcourts.gov/notices/notice-attorney-responsibilities-cybersecurity-emerging-technologies-new-requirement-of-one

[8] https://www.njcourts.gov/notices/notice-and-order-continuing-legal-education-amendments-court-rule-r-142-1-and-cle

[9] https://drblookupportal.judiciary.state.nj.us/DocumentHandler.ashx?document_id=1188198

mother-in-law and daughter-in-law. Now allegedly retained by Marsh as her attorney, the attorney in question engaged in egregious conduct over the next few months in his representation of Marsh, including sending repeated and threatening demands to Kent to turn over Marsh's estate planning documents and to amend Marsh's documents, drafting an amendment to Marsh's trust to replace Kent as a fiduciary with the attorney's long-time associate, directing a freeze on all distributions from Marsh's trust made by Kent except for distributions to DIL, objecting to the emergency guardianship actions that were filed by Kent, objecting to a court-ordered medical examination of Marsh in that guardianship action and subsequently accusing Kent of kidnapping Marsh when he brought Marsh to her medical examination, and representing DIL in motions to dismiss the guardianship action and have DIL appointed as sole healthcare agent for Marsh.

The Circuit Court in the guardianship action determined that the attorney was prohibited from representing Marsh and DIL as he was not licensed in Maryland and had not obtained sponsorship from any Maryland-licensed attorney. Shortly thereafter, the attorney terminated the representation of Marsh and sent Marsh's court-appointed guardian a $160,000 invoice for his "legal services". He also sued Kent for tortious interference with his contract with Marsh to perform legal services. When Maryland's Attorney Grievance Commission filed a petition for disciplinary action against the attorney, he argued that he was not engaged in the practice of law in Maryland. Maryland found the attorney had violated numerous rules of professional conduct and suspended his ability to practice law in that state. In particular, the Commission found that Marsh's interests were "directly adverse" to that of the DIL, creating a non-waivable conflict of interest.

Following the attorney's Maryland suspension, the New Jersey Office of Attorney Ethics submitted a motion for reciprocal discipline in New Jersey, asserting that the attorney's conduct in Maryland violated RPC 1.4(c) (requiring attorney to explain matter sufficiently for client to make informed decisions), RPC 1.5(a) (reasonable fees), RPC 1.7(a)(1) (conflict of interest), RPC 1.16(a)(1) (duty to terminate representation when a conflict exists), RPC 3.1 (prohibition on frivolous litigation), RPC 5.5(a)(1) (unauthorized practice of law), RPC 8.4(a) (violating the RPC), and RPC 8.4(d)(prohibition on conduct prejudicial to the administration of justice). Under New Jersey Court Rule 1.20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state… is guilty of unethical conduct in another jurisdiction as an attorney or otherwise in connection with the practice of law, shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state".

The DRB found the facts were sufficient to provide "clear and convincing evidence" of the RPC violations for all but RPC 8.4(a). Thus, the sole issue to be decided by the DRB was the discipline to be imposed. The DRB suspended the attorney for three years for his "egregious and unrelenting conduct towards a vulnerable client and her trusted advocates".

- Docket No. 25-270[10]: In this disciplinary matter, decided in April 2026, the DRB reviewed alleged violations of the duties of competence and diligence, the duty to keep a client reasonably informed, and the duty to cooperate with disciplinary authorities. After preparing and submitting initial drafts of estate planning documents to her clients, the attorney in question became unresponsive. The attorney remained unresponsive for three months, at which point the client threatened to file an ethics grievance. Three months later, the client had still received no response and filed an ethics complaint. The attorney subsequently failed to respond to numerous attempts by the ethics committee's investigator to contact the attorney. The attorney never responded to the formal ethics complaint within the appropriate deadline, so the ethics committee certified the matter to the DRB as a default.

  The attorney ultimately responded to the disciplinary notices from the DRB and explained that her unresponsiveness in both the client matter and the disciplinary process was due to various medical conditions that she was facing during that time. Nonetheless, the attorney was found to have violated RPC 1.3 (diligence), RPC 1.4(b) (keeping client reasonably informed), and RPC 8.1(b) (failing to cooperate with a disciplinary authority). The attorney was not found to violate RPC 1.1(b) (negligence) because such a violation requires at least three instances of neglect in distinct client matters and the attorney's conduct related to a single client.

**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,

[10] https://drblookupportal.judiciary.state.nj.us/DocumentHandler.ashx?document_id=1203768

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.

**Committee on Attorney Advertising – Opinion 49[11]**

A September 2025 opinion from the Committee on Attorney Advertising provides updated guidance on the use of client endorsements and testimonials in attorney advertising. The Committee expressed concern that endorsements and testimonials could contain material misrepresentations of fact or law or create unjustified expectations about results achievable by the attorney but did not impose a complete ban on such types of advertisements. To safeguard against these risks, the opinion, which supersedes opinions 15 and 33, includes three clear requirements. First, the opinion continues the requirement that the person providing the testimonial or endorsement be identified by name to ensure that he or she is an "identifiable person who actually received the services." The opinion also continues the requirement that the advertising includes the following disclaimer if the testimonial or endorsement contains statements regarding the lawyer's past performance: "Results may vary depending on your particular facts and legal circumstances". The opinion details more specific requirements for the disclaimer depending on the medium of advertising (e.g. audio, video, or written). Lastly, the opinion reiterates the prohibition on comparative language in testimonials and endorsements. Such comparative language is generally prohibited with the exception of awards, honors and accolades (discussed further in this outline).

**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

[11] https://www.njcourts.gov/notices/committee-attorney-advertising-opinion-49-use-of-client-endorsements-and-testimonials

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?[12]

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).

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[12] 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 rule[13]:

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

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[13] 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 devises -- 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.[14] Passwords like "1234"

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[14] 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.[15]

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.[16] 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?

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(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.

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

[16] 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.[17] 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

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[17] 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.[18]
>
> **(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

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[18] 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.[19] If there is a real question about capacity, the attorney

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[19] 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.

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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**.[20]

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)**)[21] For example, the engagement letter can provide that the

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[20] 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.

[21] 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.[22] 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.**

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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.

[22] 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.[23]

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

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[23] 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.[24]

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?

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[24] 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. Guttmann III dated May 25, 2004, which can be found at http://www.actec.org/Documents/misc/FlBarLttr.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 17, 2026

*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.*

# EXHIBIT A
## Sample Engagement Letter

ORLOFF
LOWENBACH
STIFELMAN &
SIEGEL P.A.

44 Whippany Road — Suite 100
Morristown, New Jersey 07960
p: 973.622.6200 • f: 973.622.3073

5 Penn Plaza — 19th Floor
New York, New York 10001
p: 646.453.8297 • f: 973.622.3073
www.olss.com

LAURA N. WILENSKY
lwilensky@olss.com
973.507.2418

Member of NJ & NY Bars

Refer to File No.: _____

_____, 2026

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 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.

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




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## Standard Terms and Conditions of Engagement

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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 disclosure 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 <u>in proximity</u> 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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# Planning for the Federal Estate Tax

Benjamin E. Akselrad, Esq.
Bressler, Amery & Ross, P.C.

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# Current "Numbers to Know"

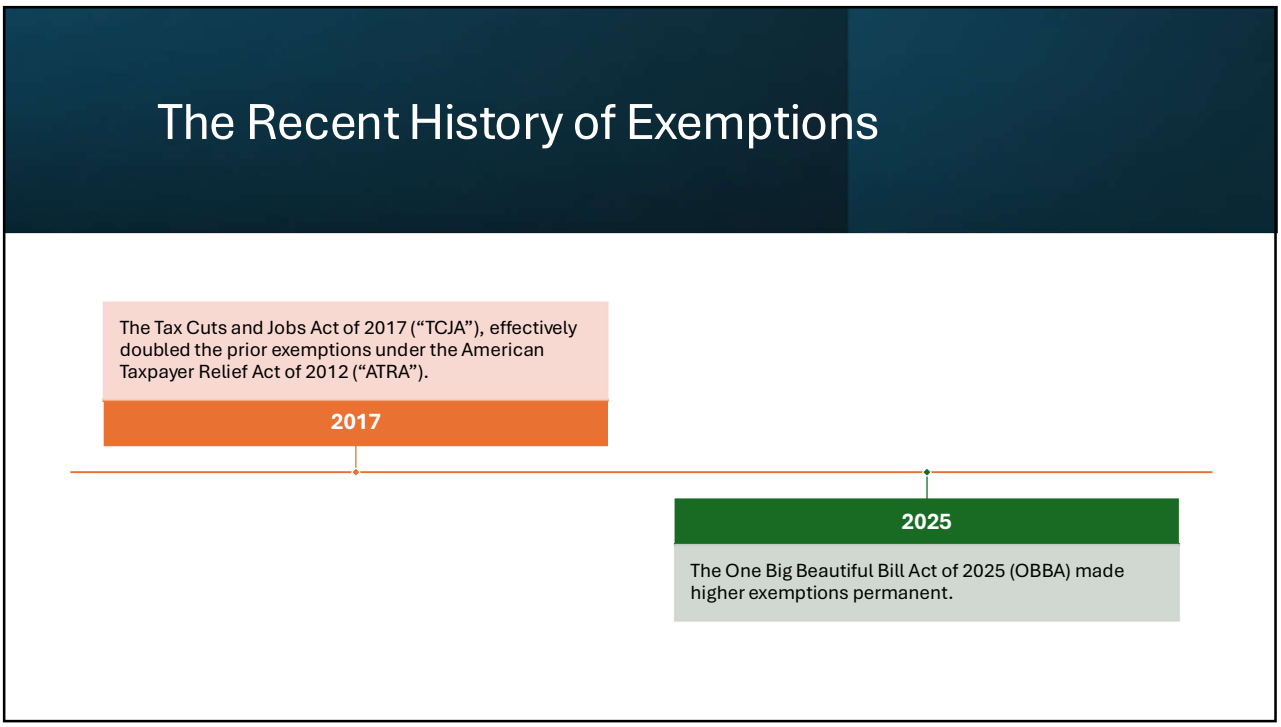
The Basic Exclusion Amount for 2026 is $15,000,000 -- This is the current federal estate, gift, and GST tax exemption.

The gift tax annual exclusion for 2026 is $19,000.

The annual exclusion for gifts to a non-citizen spouse in 2026 is $194,000.

These amounts are indexed for inflation. The IRS publishes a Revenue Procedure annually with changes to any amounts, most recently, Rev. Proc. 2025-32.

Expect meaningful inflation adjustments in 2027.


The Recent History of Exemptions
The Tax Cuts and Jobs Act of 2017 ("TCJA"), effectively doubled the prior exemptions under the American Taxpayer Relief Act of 2012 ("ATRA").
2017
2025
The One Big Beautiful Bill Act of 2025 (OBBA) made higher exemptions permanent.

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# 26 Years of the FET Exemption

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

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# Testamentary FET Planning

Generally, 3 broad approaches to testamentary FET planning:

1. Outright to surviving 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.*

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# 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 included 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:*

    - *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).

# FET Planning through Lifetime Gifts

- 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) get the most attention, keep in mind that all the 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, 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 x 2) x 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.
- August 7520 rate (the so-called "hurdle rate" to beat for a successful zeroed-out GRAT or CLAT) is 5.2%
- 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.
- GRAT/s 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).
- 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 the 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.
  - 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***

*The Trustee may 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. The sooner we have these conversations with clients who will benefit from them, the better.

# Planning for the New Jersey Inheritance Tax

Abbey M. Horwitz, Esq.
(973) 639-2091
ahorwitz@mccarter.com

McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
www.mccarter.com

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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.

Earlier this year, legislation was introduced to limit the scope of the New Jersey inheritance tax. One of the bills that was introduced proposes to expand the exemption to siblings of the decedent. A separate bill has been introduced to include step grandchildren as a Class A beneficiary. Additionally, a bill has been prefiled for the 2026 legislative session which would repeal the New Jersey inheritance tax altogether. 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 readopted on November 17, 2025, with additional amendments taking effect on December 15, 2025. These updated regulations are scheduled to remain in effect through November 17, 2032.

## II. Transfer Inheritance Tax and Estate Tax Rules

The New Jersey Division of Taxation readopted and amended the Transfer Inheritance Tax and Estate Tax Rules, effective as of December 15, 2025, introducing some notable updates.

### 1. Expanded Definition of Class A Beneficiaries

The regulations now expressly provide that non-biological children conceived through assisted reproduction technology are included as a Class A beneficiary, and thus exempt from inheritance tax.

Specifically, N.J.A.C. 18:26-1.1 now provides that "A Class A transferee also includes a non-biological child of a decedent where the child was the offspring of a biological parent partner conceived by the assisted reproduction of that parent during the term of a marriage, civil union, or

domestic partnership with the decedent unless it is otherwise shown that the non-biological parent had not intended to be the parent of the child".

2. **Requirements for Tax Waivers**

N.J.A.C. 18:26-11, which describes when and how the Division requires waivers to transfer property such to the transfer inheritance tax and estate tax was amended.

Specifically, "banking institution," "trust company," or "safe deposit company" have been removed in place of "financial institutions". This was done to account for any current or future types of institutions that are organized pursuant to the laws of the State of New Jersey.

As amended, N.J.A.C. 18:26-1.1 add a definition of "financial institution" which means "…any entity that holds funds or assets to the credit of a person or persons. This includes, but is not limited to, banks, trust companies, savings institutions, building and loans, savings and loan associations, brokerage houses, financial advisors, credit unions, and corporation."

3. **Timing for Tax Waivers**

Previously, the regulations included a waiting period for the issuance of a tax waiver. From the 1947 regulations, tax waivers could be issued no earlier than ten business days following receipt of the tax payment.

The waiting period, which was previously included in N.J.A.C. 18:26-11, has been removed, potentially allowing for faster administration and distribution of estate assets.

4. **Power of Appointment Defined**

The amended regulations now include a definition of "power of appointment" because the Division experienced trouble in administering the Inheritance and Estate Tax laws. The new definition is designed to inform and assist taxpayers and their representative in understanding and meeting the requirements of those laws because "power of appointment is not defined by statute. Further, the Division wanted to expressly distinguish power of appointment form a power of attorney, which is not effective after the death of the principal.

Under the amended regulations, "power of appointment" is defined as "…the right given to a decedent or transferee to effect the beneficial enjoyment, distribution, or disposition of trust property."

5. **Clarification Regarding Executor's Commissions**

The amendments clarify that no deduction may be taken for an executor's commission related to the transfer of real property made by specific bequest.

Specifically, N.J.A.C. 18:26-7.10(d) has been amended to provide "Executor's or administrator's commissions are only allowed on real estate that is actually sold by the executor or administrator or which is expressly directed to be sold by the terms of the decedent's will. The real estate must be sold by the representative on behalf of the estate and not by or on behalf of the beneficiary or beneficiaries of specifically devised real estate in order to qualify."

Additionally, as amended there are several examples provided to further clarify 18:26-7.10(d).

## III. 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: | $ | 48,000 | |
| 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.

## IV. 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.

## V. 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.

## VI. 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 x .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.

## VII. 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 Jersy 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.

## VIII. 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 banks, trust companies, savings institutions, building and loans, savings and loan associations, brokerage houses, financial advisors, credit unions, and corporation.

- 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 <u>cannot</u> 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 answers. 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.

## IX. 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.

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# Amendments to the 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

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**"I certify to the best of my knowledge, information, and belief, and based on a good faith inquiry, that, with respect to the data elements listed below: (1) the manufacturer does not maintain New Jersey specific data; (2) the manufacturer cannot obtain New Jersey specific data from third parties such as, without limitation, wholesalers, PBMs, logistics providers, and pharmacies; and (3) obtaining New Jersey specific data would require the use of assumptions and information that cannot be reasonably relied upon to produce accurate product-specific and New Jersey-specific data"; and***

2. Report national data to the Division within 20 days of a price increase or introduction of a new drug or biosimilar that requires notification to the Division pursuant to N.J.S.A. 45:14-82.3.a or b. ***The 20-day timeframe shall be tolled from the date the manufacturer submits its proof that it does not have access to State-specific data and has no way of obtaining it and submits its certification pursuant to (c)1 above until the Division notifies the manufacturer whether the submitted proof is satisfactory to the Division.**

**(d) A manufacturer submitting reports and notifications pursuant to (a) and (b) above shall submit information on the products in a drug group made by that manufacturer and not on the products in that drug group made by other manufacturers.***

*[(d)]* ***(e)*** A manufacturer shall certify the reporting pursuant to this section as accurate and complete under penalty of perjury, including reporting on its behalf by subsidiaries, employees, contractors, or any third parties.

13:45K-1.5 Pharmacy benefits manager reporting

(a) The Division shall notify a pharmacy benefits manager annually of the specific drugs or drug groups for which reporting is required. Within 60 days, the pharmacy benefits manager shall report to the Division the information at N.J.S.A. 45:14-82.4.a and any other data requested by the Division to make clear the major components of prescription drug pricing, along the supply chain, and the impacts on insurance premiums and consumer cost sharing pursuant to the Data Collection Manual.

(b) A pharmacy benefits manager shall certify the reporting pursuant to this section as accurate and complete under penalty of perjury, including reporting on its behalf by subsidiaries, employees, contractors, or any third parties.

(c) The Division shall consider the following factors in determining the specific drugs or drug groups for which reporting is required:

1. Information from other reporting entities, including without limitation, drugs that are the subject of:

i. Manufacturer notification of price increases and introduction of new drugs or biosimilars pursuant to N.J.S.A. 45:14-82.3; and

ii. Reporting by carriers pursuant to N.J.S.A. 45:14-82.6;

2. Whether the drug is listed on the New Jersey Prescription Drug Price Registry available at https://www20.state.nj.us/LPSCA_DRUG/ due to the frequency with which it is prescribed;

3. Historical prices and price increases;

4. Whether there are alternatives to the drug and, if so, their cost and availability;

5. Whether the drug appears on the current Model List of Essential Medicines or Essential Medicines List for Children adopted by the World Health Organization available at https://www.who.int/groups/expert-committee-on-selection-and-use-of-essential-medicines/essential-medicines-lists;

6. The drug's efficacy in treating a life-threatening health condition or a chronic condition that substantially impairs the person's ability to engage in activities of daily living; and

7. Any other information relevant to making clear the major components of prescription drug pricing along the supply chain and the impacts on insurance premiums and consumer cost sharing.

13:45K-1.6 Wholesaler reporting

(a) The Division shall notify a wholesaler annually of the specific drugs or drug groups for which reporting is required. Within 60 days, the wholesaler shall report to the Division the information at N.J.S.A. 45:14-82.5.a and any other data requested by the Division to make clear the major components of prescription drug pricing along the supply chain and the impacts on insurance premiums and consumer cost sharing pursuant to the Data Collection Manual.

(b) A wholesaler shall certify the reporting pursuant to this section as accurate and complete under penalty of perjury, including reporting on its behalf by subsidiaries, employees, contractors, or any third parties.

(c) The Division shall consider the following factors in determining the specific drugs or drug groups for which reporting is required:

1. Information from other reporting entities, including without limitation, drugs that are the subject of:

i. Manufacturer notification of price increases and introduction of new drugs or biosimilars pursuant to N.J.S.A. 45:14-82.3; and

ii. Reporting by carriers pursuant to N.J.S.A. 45:14-82.6;

2. Whether the drug is listed on the New Jersey Prescription Drug Price Registry available at https://www20.state.nj.us/LPSCA_DRUG/ due to the frequency with which it is prescribed;

3. Historical prices and price increases;

4. Whether there are alternatives to the drug and, if so, their cost and availability;

5. Whether the drug appears on the current Model List of Essential Medicines or Essential Medicines List for Children adopted by the World Health Organization available at https://www.who.int/groups/expert-committee-on-selection-and-use-of-essential-medicines/essential-medicines-lists;

6. The drug's efficacy in treating a life-threatening health condition or a chronic condition that substantially impairs the person's ability to engage in activities of daily living; and

7. Any other information relevant to making clear the major components of prescription drug pricing along the supply chain and the impacts on insurance premiums and consumer cost sharing.

13:45K-1.7 Carrier reporting

(a) A carrier that issues a health benefits plan with a prescription drug benefit shall report to the Division annually within 60 days of the close of each calendar year the information at N.J.S.A. 45:14-82.6.b and any other data requested by the Division to make clear the major components of prescription drug pricing along the supply chain and the impacts on insurance premiums and consumer cost sharing for the top 25 drugs and drug groups at N.J.S.A. 45:14-82.6.a pursuant to the Data Collection Manual.

(b) A carrier shall certify the reporting pursuant to this section as accurate and complete under penalty of perjury, including reporting on its behalf by subsidiaries, employees, contractors, or any third parties.

13:45K-1.8 Pharmacy services administrative organization reporting

(a) A pharmacy services administrative organization shall report to the Division annually within 60 days of the close of each calendar year the information at N.J.S.A. 45:14-82.7.a and any other data requested by the Division to make clear the major components of prescription drug pricing along the supply chain and the impacts on insurance premiums and consumer cost sharing pursuant to the Data Collection Manual.

(b) A pharmacy services administrative organization shall certify the reporting pursuant to this section as accurate and complete under penalty of perjury, including reporting on its behalf by subsidiaries, employees, contractors, or any third parties.

13:45K-1.9 State-specific data

In the event that State-specific data is unavailable to the manufacturer, other reporting entities shall comply within 60 days with a request from the Division for State-specific data for any drug or drug group on which a manufacturer reported pursuant to N.J.A.C. 13:45K-1.4(a) and (b).

# TREASURY—TAXATION

## (a)

### DIVISION OF TAXATION

### Transfer Inheritance Tax and Estate Tax

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

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

Proposed: August 18, 2025, at 57 N.J.R. 1806(a).

Adopted: November 17, 2025, by Marita Sciarrotta, Director, Division of Taxation.
Filed: November 17, 2025, as R.2025 d.152, **without change**.
Authority: N.J.S.A. 54:38-7 and 54:50-1.
Effective Dates: November 17, 2025, Readoption; December 15, 2025, Amendments and Repeals.
Expiration Date: November 17, 2032.

**Summary** of Public Comment and Agency Response:

Comments were received from Christine Socha Czapek, Esq., Chair of the New Jersey Transfer Inheritance Tax Committee.

1. COMMENT: The Division of Taxation (Division) received a comment from Christine Socha Czapek, Esq., in which she took issue with the Division's policy on revocable living trusts. The commenter stated that the Division disallows expense deductions on inheritance tax returns related to certain real property because the Division treats the real property held by the trust as not being owned by the decedent. As a result, the commenter believes that the Division disallows certain expense deductions on inheritance tax returns related to such real property. The commenter believes that this is a flawed interpretation, as there is no meaningful legal distinction between real property held by a decedent directly and that held in a revocable trust. The commenter states that the Division's position is flawed because it treats real property held in a decedent's revocable trust as being "owned" by the decedent for purposes of inclusion in the taxable estate, yet otherwise deductible expenses relating to the sale of that same real property are not deductible because the real property is not legally owned by the decedent. The commenter states that the decedent has all of the same incidents of ownership of that real property as if titled in the name of the decedent as of the date of death and it is a distinction without a difference. The commenter believes that the tax is increased solely due to the fact that the revocable trust is selling the real property instead of the individual, and based on the fiduciary who sells it, whether the individual is an executor or trustee.

RESPONSE: The Division thanks Ms. Socha Czapek for her comments and continued collaboration with the Division. However, the Division disagrees with the commenter's statements. N.J.A.C. 18:26-7.12 allows deductions for realtor commissions only when the property is sold by the executor or administrator of the estate, or when a will expressly directs such a sale. When a trust holds and sells real estate, the trustee, not the executor, effectuates the transaction. Thus, these sale expenses do not qualify for deduction on the inheritance tax return, even though the underlying property was included in the decedent's taxable estate as a transfer, because the deduction is allowed only if the executor or administrator is the selling party as representative of the estate and not as trustee for a trust.

In accordance with N.J.A.C. 18:26-5.8, when a decedent retains an interest in a revocable trust, the revocable trust property is treated as a transfer to take effect at or after death. Although the transfer is taxable for inheritance tax purposes, the trust legally owns the property. Revocable trust property, while included in the decedent's estate for inheritance tax purposes, is not part of the probate estate and is administered independently by the trustee. Any expenses associated with the trust property are the responsibility of the trust. The trust, not the estate, incurs its own expenses. These expenses are deducted from the trust directly, not from the estate's inheritance tax return. This separation exists because the property passes pursuant to the trust terms and not by will or intestacy. The trust's non-probate property is not subject to the same administration expenses as a probate estate. While trustees cannot claim expense deductions for New Jersey inheritance tax purposes, they can claim those deductions on Form NJ-1041 Fiduciary Income Tax Return.

**Federal Standards Statement**

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

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 18:26.

**Full text** of the adopted amendments follows:

SUBCHAPTER 1. DEFINITIONS

18:26-1.1 Definitions

In addition to those terms that are defined in the Act, the following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Act," "the Law," or "the Tax Act" means Chapters 33 through 38 of Title 54 of the Revised Statutes of New Jersey.

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

. . .

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

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

1. A parent, grandparent, grandchild, spouse, civil union partner, or domestic partner;

2. A child or children of a decedent, including any stepchild of a decedent or child or children adopted by a decedent in conformity with the laws of this State, of any of the United States, or of a foreign country. A Class A transferee also includes a non-biological child of a decedent where the child was the offspring of a biological parent partner conceived by the assisted reproduction of that parent during the term of a marriage, civil union, or domestic partnership with the decedent, unless it is otherwise shown that the non-biological parent had not intended to be the parent of the child;

3.-4. (No change.)

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

1. A sibling of a decedent;

2. A spouse/civil union partner or surviving spouse/civil union partner of a child of a decedent.

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

. . .

"Clear market value" means the market value of any property included in any transfer, less any deductions allowable pursuant to the Law.

. . .

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

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

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

"Market value (date determined)" means the value of property as of the date of death of the transferor, whether or not the transfer was made during the lifetime of the transferor.

. . .

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

. . .

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

SUBCHAPTER 2. IMPOSITION AND COMPUTATION OF TAX

18:26-2.1 Nature of tax

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

1.-2. (No change.)

18:26-2.11 Renunciation or disclaimer

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

(b) (No change.)

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

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

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

(d) (No change.)

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

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

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

The New Jersey property is subject to the ratio tax pursuant to this section and the tax on such transfer is computed as follows: First, a tax is computed on the value of the entire estate as if such estate were located in New Jersey (that is, $100,000 x 15 percent, the rate applicable for property passing to a Class "D" transferee or $15,000 tax). Second, the tax so computed is then multiplied by a fraction whose numerator is the value of the real or tangible personal property located in this State and whose denominator is the value of all property of the estate, real or personal, tangible or intangible, wherever situated (that is, 10/100 x $15,000 = $1,500 tax, which is the ratio tax on the property passing to Mr. B.).

If Mr. A had specifically devised the property in New Jersey to his nephew, said property would not be subject to the ratio tax, but rather, it would be taxed directly to the devisee at the New Jersey resident tax rates.

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

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

18:26-3.1 Estates subject to tax

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

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

18:26-3.2 Amount and nature of tax

(a) The New Jersey estate tax is that amount representing the difference between the gross amount of the inheritance, legacy, and succession taxes actually paid to this State and any other states, territories, possessions, or the District of Columbia and the amount of the credit allowable against the Federal estate tax in effect on December 31, 2001, due to the United States.

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

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

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

(a) (No change.)

(b) All or any part of the estate tax due this State, if not paid within nine months from the date of the death, will bear interest at the rate of 10 percent per annum from the expiration of the said nine months until the date of actual payment, unless an extension of time to file the Federal estate tax return is granted, in which case, the Director may reduce the interest rate to six percent per annum until the expiration of the extension or the filing of the Federal estate tax return, whichever is earlier. If the decedent was a member of the United States armed forces, the estate tax will not bear interest until the expiration of nine months after receipt of official notification of the decedent's death by the decedent's spouse, parent, or next of kin.

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

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

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

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

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

(f) (No change.)

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

(a) (No change.)

(b) All or any part of the estate tax due this State, if not paid within nine months from the date of death, will bear interest at the rate of 10 percent per annum from the expiration of the said nine months until the date of actual payment, unless an extension of time to file the Federal estate tax return is granted, in which case, the Director may reduce the interest rate to six percent per annum until the expiration of the extension. If the decedent was a member of the United States armed forces, the estate tax will not bear interest until the expiration of nine months after receipt of official notification of the decedent's death by the decedent's spouse, civil union partner, parent, or next of kin. The Director may, for cause shown, extend the time for payment with interest at the rate of 10 percent per annum, for such period as the circumstances, in the Director's discretion, may require. In those cases where a Federal estate tax return is not required to be filed and where an extension of time to file the Federal estate tax return is not requested, the Director may reduce the interest rate to six percent per annum for the period until the expiration of any extension of time requested and granted for the filing of the New Jersey estate tax return. The request must be filed on or before the due date of the return.

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

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

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

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

(c) Examples:

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

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

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

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

(a) (No change.)

(b) All or any part of the estate tax due this State, if not paid within nine months from the date of death, will bear interest at the rate of 10 percent per annum from the expiration of the said nine months until the date of actual payment, unless an extension of time to file the Federal estate tax return is granted, in which case, the Director may reduce the interest rate to six percent per annum until the expiration of the extension. If the decedent was a member of the United States armed forces, the estate tax will not bear interest until the expiration of nine months after receipt of official notification of the decedent's death by the decedent's spouse, civil union partner, parent, or next of kin. The Director may, for cause shown, extend the time for payment with interest at the rate of 10 percent per annum, for such period as the circumstances, in the Director's discretion, may require. In those cases where a Federal estate tax return is not required to be filed and where an extension of time to file the Federal estate tax return is not requested, the Director may reduce the interest rate to six percent per annum for the period until the expiration of any extension of time requested and granted for the filing of the New Jersey estate tax return. The request must be filed on or before the due date of the return.

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

SUBCHAPTER 4. COMPROMISES (INHERITANCE AND ESTATE TAXES)

18:26-4.1 Domicile doubtful; terms of settlement

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

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

SUBCHAPTER 5. TRANSFERS SUBJECT TO TAX

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

(a) (No change.)

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

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

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

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

2.-3. (No change.)

(c) (No change.)

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

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

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

(b) (No change.)

18:26-5.7 Transfers made in contemplation of death

(a) (No change.)

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

(c) (No change.)

18:26-5.9 Certain profit sharing and retirement plans

The proceeds of a profit sharing or retirement plan payable at the date of death of a decedent to a beneficiary named by the decedent or in accordance with the preference schedule of beneficiaries is deemed to be a transfer that takes effect at or after death and is as such subject to the tax.

18:26-5.10 Transfers not deemed to take effect at or after death

Any transfer of property by deed, grant, bargain, sale, gift, or interest through which the transferor is entitled to some income, right, interest, or power including the possession or enjoyment of the property, either expressly or by operation of law, is not deemed a transfer to take effect at or after the transferor's death if the transferor at any time more than three years prior to death completely and irrevocably disposes of all of their reserved income, rights, interests, and powers in and over the transferred property, including any right to possession, use, and enjoyment of the property.

18:26-5.11 Jointly held property

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

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

(a) Transfers are subject to the New Jersey transfer inheritance tax, where, by transfer of a resident decedent of real or tangible personal property within this State or of intangible personal property wherever situated, or by transfer of a nonresident decedent of real or tangible personal property within this State, a transferee comes into the possession or enjoyment of:

1. An estate in expectancy of any kind or character that is contingent or defeasible; or

2. Property transferred pursuant to a power of appointment.

(b) (No change.)

18:26-5.17 Proceeds of retirement contracts

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

18:26-5.19 Annuity contracts

Annuity contracts purchased by or vested in a decedent and made payable by the decedent to another person at or after their death are subject to the New Jersey transfer inheritance tax.

SUBCHAPTER 6. EXEMPTIONS

18:26-6.1 Class "A" transfers

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

18:26-6.2 Class "C" transfers

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

(b) (No change.)

18:26-6.3 (Reserved)

18:26-6.4 Tenancy by the entirety

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

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

(a) (No change.)

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

(c) (No change.)

18:26-6.14 State pensions

(a) All payments at death pursuant to the Teachers' Pension and Annuity Fund, the Public Employees' Retirement System of New Jersey, and the Police and Firemen's Retirement System of New Jersey, and such other State, county, and municipal systems as may have a tax exemption clause as broad as that of the three major State systems addressed in this section, whether such payments either before or after retirement are made on death to the employee's estate or to their specifically designated beneficiary, are exempt from the New Jersey transfer inheritance tax.

(b) (No change.)

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

(d) (No change.)

SUBCHAPTER 7. DEDUCTIONS

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

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

1. (No change.)

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

(b) (No change.)

18:26-7.7 Estates subject to escheat

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

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

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

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

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

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

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

(e) (No change.)

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

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

1. The real estate was the subject of a contract of sale entered into by the decedent during their lifetime;

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

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

4. The real estate was not specifically devised.

SUBCHAPTER 8. ASSESSMENT AND VALUATION

18:26-8.8 Valuations generally

(a) (No change.)

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

18:26-8.12 Partnerships

(a) In the case of a decedent who was a member of one or more partnerships, the partnership interest of such decedent is given a value as of the date of death, based upon the following information, which is to be submitted with the return:

1.-5. (No change.)

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

7. (No change.)

(b) (No change.)

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

(a) To the extent that the valuation of stock of a "close" or "family" corporation is generally incapable of being appraised on the basis of arms-

length sales of stock, the Director will base the value of such corporation on the following data to be submitted with the return:

1.-4. (No change.)

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

6.-7. (No change.)

18:26-8.18 Discretionary and legal common trust funds

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

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

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

3.-4. (No change.)

SUBCHAPTER 9. RETURNS, PAYMENT, AND PENALTIES

18:26-9.2 By whom filed

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

1. (No change.)

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

3. (No change in text.)

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

5. (No change in text.)

18:26-9.4 Resident decedents' returns

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

1.-5. (No change.)

18:26-9.6 Amendment to original return

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

18:26-9.7 Confidential nature of returns

(a) All New Jersey transfer inheritance tax returns and data filed in connection therewith are considered privileged communications pursuant to N.J.S.A. 54:33-8 and 54:50-8 and are not to be inspected or copied by any person other than:

1.-2. (No change.)

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

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

18:26-9.8 Payment due dates

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

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

18:26-9.10 Persons responsible

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

18:26-9.12 Late payment; general provisions

(a) (No change.)

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

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

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

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

(a) (No change.)

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

(c) If the executor or trustee elects to defer the adjustment of the taxes due until the person or entity beneficially interested in the property chargeable with the tax comes into actual possession or enjoyment of the property, such executor or trustee must execute a bond to the State of New Jersey in twice the amount of the tax imposed at the highest possible rate, with such surety or sureties as approved by the New Jersey Department of Banking and Insurance or by the Director, conditioned to pay the tax and interest at the time or period when such contingency occurs.

SUBCHAPTER 10. COLLECTION AND REFUND

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

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

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

(d) (No change.)

SUBCHAPTER 11. WAIVERS—CONSENT TO TRANSFER

18:26-11.1 Consent to transfer; generally

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

1. Such property is held by an executor, administrator, trustee, individual, firm, association, partnership, organization, or corporation including any financial institution organized pursuant to the laws of New Jersey or operating in this State; and

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

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

1. It must, however, be established in detail that the decedent was legally domiciled in a jurisdiction other than New Jersey to the satisfaction of the trustee, individual, firm, association, partnership, organization, or corporation (its transfer agent) including any financial institution organized pursuant to the laws of New Jersey or otherwise operating in this State. To do this, the personal representative of the estate should file with the proper party an affidavit providing details as to domicile, including the following:

i.-iv. (No change.)

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

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

(c) The Director waives the requirement to file a waiver in the case of certain transfers to Class "A" transferees, in the estate of a New Jersey domiciled decedent. In order to satisfy a corporation or its transfer agent, including any financial institution organized pursuant to the laws of New Jersey or operating in this State that intangible assets may be released to the Class "A" transferee, an Affidavit of Waiver (Form L-8) can be executed by the Class "A" transferee or the personal representative of the decedent's estate.

1.-5. (No change.)

(d) (No change.)

18:26-11.3 Consent to transfer not issued

(a) (No change.)

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

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

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

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

(c) (No change.)

18:26-11.5 Leasehold interest

A waiver is required to transfer any leasehold or chattels real, which a decedent owned or in which a decedent had an interest.

18:26-11.7 (Reserved)

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

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

(e) The bank is required to retain the same control over the substituted account as the original account until the waiver is received.

18:26-11.9 From one fiduciary to another

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

18:26-11.10 Transfer from joint fiduciaries to successors

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

18:26-11.11 Transfer of partnership interest

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

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

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

1.-9. (No change.)

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

11. Funds to a decedent's credit in a Credit Union plan organized pursuant to N.J.S.A. 17:13-73 et seq., in addition to any matching sums paid pursuant to any type of Credit Union plan in the form of a life insurance where said matching sum is directed to be paid to a decedent's estate or the estate's executor or administrator. However, funds held pursuant to the Federal Credit Union Act must be reported and a waiver obtained.

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

18:26-11.14 Exempt property not subject to waiver

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

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

(a) If the gross estate of a resident decedent that for tax purposes does not exceed $200.00 where a person other than a Class "A" beneficiary of the decedent is the applicant, and the applicant furnishes a financial institution with an affidavit in lieu of administration that has been obtained from the Surrogate of the county wherein the decedent died a resident, such financial institution may release the funds on deposit to the credit of a resident decedent without a waiver upon the applicant executing Form O-80, or such form or affidavit as the Director may designate for this purpose.

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

1.-5. (No change.)

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

18:26-11.16 Blanket waiver

(a) Notwithstanding any other section in this chapter, regarding the release of funds; any financial institution organized pursuant to the laws of this State; or operating in this State may release, without a waiver, any amount up to 50 percent of the entire amount of funds on hand held in deposit, which belong to or stand in the name of a resident decedent or in the joint names of such decedent and one or more other persons, to:

1.-4. (No change.)

5. Trust beneficiary;

6. The estate of a minor where title to said funds are held in the name of a custodian for said minor;

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

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

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

(c) In addition to the amount permitted to be released by an institution mentioned in this section, financial institutions may, without a waiver:

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

2. Pay any checks in any amount for which there are sufficient funds held in deposit, drawn on any account owned by a decedent individually, jointly, or otherwise, representing full or partial payment of any New Jersey transfer inheritance tax or estate tax, and made payable to "New Jersey Inheritance and Estate Tax";

3. (No change.)

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

(e) (No change.)

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

(a) Except as otherwise indicated in this chapter, unless a waiver is first obtained, no banking or other financial institution organized pursuant to the laws of the State of New Jersey operating in this State may release or transfer any funds, securities, deposits, or other assets belonging to or on deposit to the credit of a decedent whether held:

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

2. As rental security deposits pursuant to the provisions at N.J.S.A. 46:8-19 et seq.

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

Upon the death of a named beneficiary on a bank or other financial account, no waiver is required to transfer or release the funds to the principal owner of the account. A waiver is required, however, to transfer or release such funds to the beneficiary upon the death of the principal.

18:26-11.19 Transfer of collateral

(a) A State financial institution having in its possession, custody, or control, securities or other assets pledged as collateral for a loan of a decedent, may, for the purpose of liquidating a loan or other debt due from a resident decedent:

1. Transfer such collateral from the name of the decedent to its own name upon receiving a waiver;

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

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

18:26-11.20 Release of safe deposit box contents

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

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

(a) A waiver is required in order to transfer the stock of a corporation organized pursuant to the laws of this State standing in the name of or belonging to a resident decedent or in the joint names of such a decedent and one or more persons, or in trust for a resident decedent.

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

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

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

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

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

(a) Any person or financial institution that fails to obtain a waiver, allow an examination, or give notice as provided in this chapter is liable to pay the amount of the tax and interest due or which becomes due upon the securities, deposits, shares of stock, or other assets transferred or delivered and, in addition, is liable to a penalty of $1,000, which may be enforced in an action at law in the name of the State.

(b) A financial institution or person is not liable for the tax and interest or penalty provided at (a) above, where such entity or person delivers securities, deposits, shares of stock, or other assets belonging to or

standing in the names of two or more persons to one of such persons without knowledge or reasonable ground to believe that another one of such persons is dead.

SUBCHAPTER 12. ADMINISTRATION AND FORMS

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

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

1. No transfer inheritance tax report on the estate of a resident decedent will be accepted nor any administrative matter communicated with regard to the estate matters of a resident decedent unless such estate is represented by:

i.-iii. (No change.)

iv. A certified public accountant of the State of New Jersey, provided such accountant is designated for such purpose, in writing, by any of the persons enumerated at (a)1ii or iii above, subject to the condition that the client be notified, in writing, before the certified public accountant commences work on the return, that review of the return by a qualified attorney may be desirable because of the possible application of legal principles to the preparation of the tax return. A copy of the properly executed notification must be filed with the transfer inheritance tax return; or

v. An IRS enrolled agent, provided such enrolled agent is designated for such purpose, in writing, by any of the persons enumerated at (a)1ii or iii above subject to the condition that the client be notified, in writing, before the enrolled agent commences work on the return, that review of the return by a qualified attorney may be desirable because of the possible application of legal principles to the preparation of the tax return. A copy of the properly executed notification must be filed with the transfer inheritance tax return.

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

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

4. (No change.)

18:26-12.9 Review and protest

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

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

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

i.-iii. (No change.)

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

18:26-12.11 Appeal to Tax Court

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

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# 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. 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 ReleasingInstitution

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**

(02/18)

# 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)** |
|---|---|---|
| | | |
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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

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**<br>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)** |
|---|---|---|
| | | |
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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.: ____ / ____ / ____

**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 |
|---|---|---|---|
| | | | ☐ |
| | | | ☐ |
| | | | ☐ |
| | | | ☐ |
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| | | | ☐ |
| | | | ☐ |
| | | | ☐ |

(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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# IT-R

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

☐ Check if amended return

**New Jersey Division of Taxation**

## Inheritance Tax Return
## Resident Decedent Cover Page

**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 _____, _____

_____
Official Title (Notarized)

Signature: _____
Circle one: Executor Administrator Heir-at-law

Print Name: _____

Address _____

_____

Daytime Phone (____) _____

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

☐ Check if amended return

**New Jersey Division of Taxation**

# Inheritance Tax Return
# Resident Decedent Summary Page

**(67) For Division Use Only**

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<br>Fractional or percent interest ☐<br>_____ Street address with number, unit<br>_____ Lot(s) _____ Block<br>_____ Municipality<br>_____ Owner(s) name(s)/Property Title<br>☐ Check if there is a mortgage lien against this property reported on Schedule D. | | | | |
| 2. _____ New Jersey County<br>Fractional or percent interest ☐<br>_____ Street address with number, unit<br>_____ Lot(s) _____ Block<br>_____ Municipality<br>_____ Owner(s) name(s)/Property Title<br>☐ Check if there is a mortgage lien against this property reported on Schedule D. | | | | |
| 3. _____ New Jersey County<br>Fractional or percent interest ☐<br>_____ Street address with number, unit<br>_____ Lot(s) _____ Block<br>_____ Municipality<br>_____ Owner(s) name(s)/Property Title<br>☐ 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: _____<br>Federal EIN: _____<br>Type of Business: _____<br>Is this a Family Limited Partnership? ☐ Yes ☐ No (See instructions)<br>Decedent's percentage of ownership: _____<br>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: _____<br>Federal EIN: _____<br>Type of Business: _____<br>Is this a Family Limited Partnership? ☐ Yes ☐ No (See instructions)<br>Decedent's percentage of ownership: _____<br>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: _____<br>Federal EIN: _____<br>Type of Business: _____<br>Is this a Family Limited Partnership? ☐ Yes ☐ No (See instructions)<br>Decedent's percentage of ownership: _____<br>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 ... | | |

☐ Check if amended return

| 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 _____<br>Name(s) on account _____ | | | |
| 2. | Institution/Account Number _____<br>Name(s) on account _____ | | | |
| 3. | Institution/Account Number _____<br>Name(s) on account _____ | | | |
| 4. | Institution/Account Number _____<br>Name(s) on account _____ | | | |
| 5. | Institution/Account Number _____<br>Name(s) on account _____ | | | |
| 6. | Institution/Account Number _____<br>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.

| (A) **Name of Corporation/ Registered Owner(s)** | (B) **Ticker Symbol** | (C) **Check Box if NJ Corp.** | (D) **Number of Shares** | (E) **Per Share Value on Date of Death** | (F) **Total Market Value** (Col D x Col E) | (G) **Value of Decedent's Equity** | **Division Use Only** |
|---|---|---|---|---|---|---|---|
| | | ☐ | | | | | |
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| | | ☐ | | | | | |
| Total – Part I ..... | | | | | | | |

**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: _____<br>Address: _____<br>_____ | | | | |
| | Name: _____<br>Address: _____<br>_____ | | | | |
| 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** |
|---|---|---|---|
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| | | | |
| 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** |
|---|---|---|---|
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| | | | |
| 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**<br>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..... | | | | | |

| 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<br>Counsel Fees ☐ ☐ | Name(s): | | |
| CPA/Enrolled Agent Fees ☐ ☐ | Name(s): | | |
| Executor's or Administrator's Commissions *(Commissions must be reported on your Income Tax return)* | Name(s): _____<br>SS# ____ / ____ / ____<br>Name: _____<br>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. | | | |
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| 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: _____ | | | | | |

*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.

| (A) **Name** | (B) **Date of Death** | (C) **Relationship** | (D) **Domicile at Death (State or Country)** |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

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

**New Jersey Division of Taxation**
**Inheritance and Estate Tax**

# Inheritance Tax Payment

**For Division Use Only**

**For use only when filing IT-R return. For other payments, use Form IT-EP.**

Decedent's Name _____
Last First Middle

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

Date of Death (mm/dd/yy) ____ / ____ / ____ County of Residence _____

**Do not include address if you are not submitting a payment.**

Name _____ Daytime Phone (____) _____

Street _____

City _____ State _____ ZIP Code _____

Email Address _____

**Amount paid with return (From IT-R Summary Page, line 21)**

**Attach Checks Here**

(Code 67) 1. Inheritance Tax (Total of checks remitted with this form)..... $ _____

Payments on account can 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. 18:26-10.10 (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)**

**If remitting more than one check, list each check individually below:**

$ _____
$ _____
$ _____
$ _____
$ _____
$ _____
$ _____
$ _____
$ _____
$ _____
$ _____

**Total** of all checks (Enter on line 1 above) $ _____

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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.

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**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. | | | |

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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:

1. Beneficiary #1 receives $ 300,000
2. Beneficiary #2 receives $1,500,000

The two worksheets below show how the tax on each share is calculated.

**1. 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: $ 1,500,000 ← 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 |

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**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 x 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 x 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 x 10% x (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 x 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 x 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 x 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 x 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. Mercer<br>New Jersey County<br>Fractional or percent interest 100%<br>123 Main Avenue, Unit 6<br>Street address with number, unit<br>45.6 (Lot(s)) 9 (Block)<br>Anytown<br>Municipality<br>Shannon Doe<br>Owner(s) name(s)/Property Title<br>☒ Check if there is a mortgage lien against this property reported on Schedule D. | $123,000 | $150,000 | $150,000 | |
| 2. Atlantic<br>New Jersey County<br>Fractional or percent interest 50%<br>456 Shore Street<br>Street address with number, unit<br>78 (Lot(s)) 10 (Block)<br>East Ocean<br>Municipality<br>Shannon Doe and Thomas Doe, T.I.C.<br>Owner(s) name(s)/Property Title<br>☐ 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: Ramirez Rentals LLP<br>Federal EIN: 21-123456<br>Type of Business: Rental Property<br>Is this a Family Limited Partnership? ☐ Yes ☒ No<br>(See instructions)<br>Decedent's percentage of ownership: Maria Ramirez, 75%<br>Number of shares held (if applicable): No shares issued | $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

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B-3: Municipal and Corporate Bonds

B-4: All other Property

**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 (JTWRS or JTWROS);
- 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.

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**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

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.

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## 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** (D) Fractional/percentage of residuary Estate and/or specific asset | (E) Dollar Amount | (F) **Age*** |
| **Name:** | Justin Time | Nephew | D | 50% Residue | $50,000 | |
| **Address:** | 12 First Street<br>Inheritance, NJ 01324 | | | | | |
| **Name:** | Russel Sprout | Nephew | D | 50% Residue | $50,000 | |
| **Address:** | 14 First Street<br>Inheritance, NJ 01324 | | | | | |

**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** (D) Fractional/percentage of residuary Estate and/or specific asset | **Interest of Beneficiary in Estate** (E) Dollar Amount | (F) **Age*** | |
| **Name:** Ella Fant<br>**Address:** 123 Main Street<br>Taxation, NJ 01234 | Cousin | D | Credit Union of NJ POD<br>Fidelity IRA beneficiary | $27,900 | | |
| **Name:** Paige Turner<br>**Address:** 10 Inheritance Ave.<br>Estate, NJ 01789 | No Relation | D | Cash Bequest | $10,000 | | |
| **Name:** Otto Graff<br>**Address:** 10 Inheritance Ave.<br>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 life-time). 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<br>**Address:** 123 Main Street<br>Taxation, NJ 01234 | Sibling | C | TD Bank-1 Joint and 1 POD account<br>Real Property Diamond Ring | $163,250 | |
| **Name:** Teri Dactyl<br>**Address:** 10 Inheritance Ave.<br>Estate, NJ 01789 | No Relation | D | Wells Fargo TOD account<br>Prudential Annuity<br>$25,000 Cash Bequest | $41,750 | |
| **Name:** Sandy Beech<br>**Address:** 10 Inheritance Ave.<br>Estate, NJ 01789 | Stepchild | A | Coin collection<br>1/2 Residue | $127,875 | |
| **Name:** Earl E. Byrd<br>**Address:** 123 Main Street<br>Taxation, NJ 01234 | Step-Grandchild | D | Cash Gift prior to death<br>1/4 Residue | $76,687 | |
| **Name:** Giving to Others Charity<br>**Address:** 501-C3 Main Street<br>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**

# NON RESIDENT DECEDENTS ONLY



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

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| Description of New Jersey Real Estate | | Full Assessed Value for Year of Death | Full Market Value at Date of Death |
|---|---|---|---|
| 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<br>State Full names of all who have an interest in the Estate<br>(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 is 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

1. 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.
2. 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.
3. 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:
   a. 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.

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.**

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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 subtotal line 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.

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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… [from Schedule "A" and/or B (1)]. 1 _____

2. Value of gross estate both in and outside of New Jersey ……. (From IT-NR, Page 1, Line 5) 2 _____

3. Gross to gross ratio (Line 1 divided by Line 2) …… 3 _____

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 _____

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 | |

WORKSHEET 5 **COMBINATION DIRECT TAX AND RATIO TAX USING NET 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 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 <u>subtotal line</u> 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.

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**IT-NR** (8-10)

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**

# INSTRUCTIONS FOR 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 x 10% x 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 x 10% x 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)

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

**STATE OF NEW JERSEY**
**DIVISION OF TAXATION**
**INHERITANCE AND ESTATE TAX**

# Non-Resident Inheritance Tax Payment

**For Division Use Only**
221

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** . . . . . $_____

**ATTACH CHECKS HERE**

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)**

**This page intentionally left blank**

**SCHEDULE "A" REAL PROPERTY**
**NON-RESIDENT DECEDENT**
(See Instructions on reverse side)

_____ _____/_____/_____
Decedent's Name Decedent's Social Security Number

| Description of Real Estate (List all real estate both outside and within New Jersey) | Full Assessed Value for Year of Death | Full Market Value at Date of Death | Value of Decedent's Equity (and how determined) | This Column for Division Use |
|---|---|---|---|---|
| 1. Street and Number<br>Municipality:<br>Lot: Block:<br>County: State:<br>Owner of Record:<br>Mortgage Balance: $<br>Mortgage Insurance: $ | | | | |

Has any of the real estate reported in this schedule been sold?

☐ Yes ☐ No

If Yes is checked, submit a copy of the closing statement or HUD 1 Form

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.

**SCHEDULE "B" CLOSELY HELD "BUSINESSES"**
**NON-RESIDENT DECEDENT**
(See Instructions on reverse side)

_____ _____/_____/_____
Decedent's Name Decedent's Social Security Number

| Name and Federal Identification Number of Any Sole Proprietorship, Partnership, Joint Venture and/or Closely Held Corporation in Which the Decedent Held Any Interest | Market Value at Date of Death | This Column for Division Use |
|---|---|---|
| 1. | | |
| Insert this total on page 1, line 2 . . . . . | | |

(If additional space is required, attach riders of the same size)

## 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

(If additional space is required, attach riders of the same size)

## 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.

**SCHEDULE "C" DEDUCTIONS CLAIMED**
**NON-RESIDENT DECEDENT**
(See Instructions on reverse side)

_____ Decedent's Name

_____/_____/_____ Decedent's Social Security Number

| Debt or Claim of | Nature of Same | Amount | This Column for Division Use |
|---|---|---|---|
| Name(s): _____<br>_____<br>If more than 2 attach a rider<br><br>Name(s): _____<br>_____<br>SS# _____/_____/_____<br><br>SS# _____/_____/_____ | Estimated Expenses for:<br>☐ Administration . . . . . .<br>(Attach an itemized list)<br><br>Counsel Fees:<br>☐ Agreed Upon . . . . . .<br>☐ Estimated . . . . . .<br><br>Executor's or Administrator's Commissions<br>(Must not be claimed unless reported for Income Tax purposes.)<br><br>**SUBTOTAL . . . . . .**<br>**(Insert on Worksheet 2 Line 4)**<br><br>Funeral . . . . . .<br><br>Transfer taxes paid to other states . . . . . .<br>(itemize by state)<br><br>Other Deductions (list individually) | | |
| Total of entire column. Insert this total on page 1, line 6 . . . . . | | | |

(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

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
- 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

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
- Mortgage, taxes and accrued interest on tenants by entirety property
- Debts paid by insurance
- Medical expenses paid prior to death
- Liabilities of corporation of which decedent was a shareholder
- Real estate and property maintenance costs
- Storage expense
- Litigated and disputed claims
- State, county and local taxes accruing after date of death
- New Jersey Transfer Inheritance Tax
- Real estate brokers commissions, except if real property sold during administration of estate
- Federal Estate Tax

## SCHEDULE "D" NON-RESIDENT DECEDENT

_____ _____/_____/_____

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.<br>2. Also list all tangible goods, wares and merchandise in New Jersey.<br>(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 . . . . . <br> Method 2, insert total on Page 1, line 4 . . . . . <br> 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

(If additional space is required, attach riders of the same size)

## SCHEDULE "F" BENEFICIARIES
## NON-RESIDENT DECEDENT

**ATTACH COPY OF WILL AND CODICILS HERE**

_____ _____/_____/_____

Decedent's Name | Decedent's Social Security Number

In case of intestacy, the parentage of all collateral heirs (such as nieces, nephews, cousins, etc.) must be set forth. The relationship of step-parent, step-child, step-brother or step-sister must be so stated.

| BENEFICIARIES AND ADDRESSES (State full names and addresses of all who have an interest, vested, contingent or otherwise, in estate) | Relationship | Class | Survived Decedent State Yes or No | Age At Death of Decedent | Interest of Beneficiary In Estate |
|---|---|---|---|---|---|
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Deponent further says the following schedule contains the names of all beneficiaries who died before or after decedent's death:

| NAME | DATE OF DEATH | DOMICILE AT DEATH |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

Under authority of Federal law, the Division of Taxation of the Department of the Treasury of the State of New Jersey and the Internal Revenue Service have entered into a Federal/State Agreement for the mutual exchange of tax information for purpose of tax administration.

## 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 | 20,530.00 |
| 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 | 24,400.00 |
| 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

**WORKSHEET 1**
**METHOD 1**

**SIMPLIFIED TAX**

**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 |

**WORKSHEET 2**
**METHOD 2**

**RATIO TAX USING NET ESTATE**

**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 page1, 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 |

All decimals are to be rounded to four places.

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**WORKSHEET 3**
**METHOD 3**

**RATIO TAX USING GROSS ESTATE**

**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-Residen 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.

**WORKSHEET 4**
**METHOD 4**

**DIRECT TAX**

**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 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. Total of administration expenses, counsel fees, and commissions **(from subtotal line 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**

Revised Edition 2012

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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 | x .69179 |
| 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 | – 69,179 |
| 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 x 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 x .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 x .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% = | x 968.26 |
| | | $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, totwo 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 | x .43441 |
| Value of life estate | $130,323 |
| | |
| Value of trust | $300,000 |
| Less: Value of life estate | – 130,323 |
| 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) |
| | x 11.00 | (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 | x .43441 | 47,785.10 |
| | | $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 | – 62,214.90 |
| Value of the contingent portion to sister | $107,462.10 |
| | |
| 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% | + 9,070.83 |
| 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 | |
| | x .32436 | |
| 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 | – 162,180 | |
| Contingent portion of Trust A | | $337,820 |
| Value of Trust B | $600,000 | |
| Less: Prior distributions to decedent's brother | – 50,000 | |
| 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:

| | Contingent tax |
|---|---|
| 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:

| | | Contingent tax |
|---|---|---|
| Distribution of $25,000 per annum from the trust to the decedent's brother | | |
| Annual distribution x | $25,000 | |
| Current life expectancy (based upon the brother's current age of 69) | x 13.43 | |
| | $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 | |
| | x .06 | |
| Annual income | 33,000 | |
| Current life expectancy | x 13.43 | |
| | $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 | x 13.43 | |
| | $671,500 x 11% | |
| | | $73,865.00 |

Present values of possible contingent taxes

Trust A

| | Contingent tax | P.V. Contingent tax |
|---|---|---|
| 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 |

Trust B

| | Contingent tax | P.V. Contingent tax |
|---|---|---|
| Distribution of $25,000 per annum from the trust Present value based upon ½ 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 – ½ 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 ¾ 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 (PV. 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 ½ 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 Value of life estate to wife/female domestic partner(after 07/10/2004)/female civil union partner (after 02/19/2007) | $300,000<br>x .58017<br><br>$174,051 |
| Residue x Life estate factor for sister, female age 55 | $300,000<br>x .75050 |
| 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) | – 174,051 |
| 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

| | Contingent tax | P.V. Contingent tax |
|---|---|---|
| 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<br>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 = | + 2,846.45 |
| | $9,243.35 |

$9,243.35 ÷ 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 ½ 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 ½ 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 | | | x .62489 |
| 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 x .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 ½ 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 3½ years shorter than sister B's. Therefore, although this contingency is not the most probable, it does have a good chance ofoccurrence.

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% = | – 0 – |
| | $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%)

| | |
|---|---|
| 588031.62454 | (Nx – 18 years) |
| – 360052.63244 | (Nx – 26 years) |
| 227978.99210 | |
| | |
| ÷227978.99210 | = 6.20 |
| 36781.50319 | (Dx – 17 years) |

| | |
|---|---|
| Trust principal | $300,000 |
| | x .06 |
| Annual income (at the statutory rate of 6%) | $18,000 |
| | x 6.20 |
| 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 | – 111,600 |
| 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 |
| | | x 8 years |
| Total value of annual distributions | | $40,000 |
| *Less: Estate for a term of years in this portion of the trust | $40,000 | |
| | x .06 | |
| | $2,400 | |
| | x 6.20 years | |
| | | $14,880 |
| Contingent portion of annual distributions | | $25,120 |
| | | x 15% |
| 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 | | x .792094 |
| 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 | – 25,120.00 |
| | 163,280.00 |
| | x .15 |
| 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 | x .627412 |
| 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 |
| | x .15 |
| 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 | x .627412 |
| | $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 |
| | | | x 4 years |
| Total value of annual distributions | | | $20,000 |
| Less: Estate for a term of years in this portion of the trust | $20,000 | | |
| | x .06 | | |
| | $1,200 | | |
| | x 6.20 | years | – 7,440 |
| Contingent portion of annual distributions | | | $12,560 |

| | |
|---|---|
| Contingent portion of annual distributions | $12,560 |

| | |
|---|---|
| | x 15% |
| 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<br>x .889996 |
| Present value of contingent tax on annual distributions | $1,676.75 |
| Contingent portion of estate | $188,400 |
| Less: Contingent portion of annual principal distributions | – 12,560<br>$175,840 |
| | x .15 |
| 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 | x .792094<br>$20,892.27 |
| Present value of contingent tax on distribution to niece in 4 years | |

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 ¼ 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 ⅓ 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 ¼ of the trust principal, the value of an estate for a term of 14 years (female, age 21 to 35) in ¼ of the trust principal (⅓ of the remaining ¾), and the value of an estate for a term of 19 years (female, age 21 to 40) in ½ 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)

| | |
|---|---|
| 460713.72144 | (Nx – 22 years) |
| – 298653.57835 | (Nx – 29 years) |
| 162060.14309 | |
| ÷162060.14309 | = 5.57 |
| 29083.21898 | (Dx – 21 years) |

| | |
|---|---|
| Trust principal | $100,000 |
| | x .06 |
| Annual income (at the statutory rate of 6%) | 6,000 |
| | x 5.57 |
| 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)

| | |
|---|---|
| 460713.72144 | (Nx – 22 years) |
| – 191308.15443 | (Nx – 36 years) |
| 269405.56701 | |
| ÷269405.56701 | = 9.26 |
| 29083.21898 | (Dx – 21 years) |

| | |
|---|---|
| Trust principal | $100,000 |
| | x .06 |
| Annual income (at the statutory rate of 6%) | 6,000 |
| | x 9.26 |
| 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)

| | |
|---|---|
| 460713.72144 | (Nx – 22 years) |
| – 137737.31891 | (Nx – 41 years) |
| 322976.40253 | |
| ÷322976.40253 | = 11.11 |
| 29083.21898 | (Dx – 21 years) |

| | |
|---|---|
| Trust principal | $200,000 |
| | x .06 |
| Annual income (at the statutory rate of 6%) | 12,000 |
| | x 11.11 |
| 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 | |
| | | 222,300 |
| 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) | | $177,700 |

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% = | 16,668.00 |
| | $23,991.80 |

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 | 44,440 | |
| | $111,020 | x 11% = $12,212.20 |
| Nephew | | |
| Remainder of the contingent portion of the estate ($177,700 – $111,020) | $66,680 | x 15% = 10,002.00 |
| | | $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

| | Contingent tax | P.V. Contingent tax |
|---|---|---|
| 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 |
| | x .665057 |
| | $4,870.74 |

| | Contingent tax | P.V. Contingent tax |
|---|---|---|
| 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<br>x .526788<br>$8,780.50 | | |
| 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 $4,870.74 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<br>x .442301<br>$2,162.14 | | |
| 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<br>x .371364<br>$3,714.38 | | |

| | Contingent tax | P.V. Contingent tax |
|---|---|---|
| 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 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 – factor 7 years. .665057 – as determined above – $4,870.74 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 – .442301 –as determined above –– $2,162.14 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 40 years of age – current age 21 – factor 19 years (21 to 40) – .330513. Remainder interest passing in final distribution – | $19,547 | $9,457.13 |

| | |
|---|---|
| [$66,680 ($200,000–133,320) @ 11%] | $7,334.80 |
| | x .330513 |
| | $2,424.25 |

Probability of the various contingent taxes

The most probable contingent tax is $19,547 (P.V. $9,457.13). This is the amount of tax that will become due if 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) survives to 40 years of age. The other three possible contingent taxes have low probabilities of occurrence.

Computation of the compromise tax

The compromise tax offered in this estate will be determined by assigning a percentage chance of probability to the present value to each possible contingent tax. The proposed compromise tax would be $9,727.95, determined as follows:

| | Present value of contingent tax | Percentage probability of occurrence | |
|---|---|---|---|
| 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% | 8,984.27 |
| | | | $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 | x .75227 |
| 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 | – 225,681 |
| 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 x 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 ÷ 2) x 11%].

Present value of possible contingent taxes

| | Contingent tax | P.V. Contingent tax |
|---|---|---|
| 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:

| | Present value of contingent tax | Percentage probability of occurrence | |
|---|---|---|---|
| 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 Provisions

### Statutes

| | |
|---|---|
| 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 d 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 turn 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 Information

### Books

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.
Telephone number : (609) 292-5033

# 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 x 12 = $2,400 x 13.2491 = $32,028.00

B. A female age 50 receives $50,000 for life with remainder over.
   $50,000 x .80070 = $40,035.00 Value of the life estate
   $50,000 – $40,030.50 = $9,965.00 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 o the life tenant. (See B)

A. A male age 50 receives $200 per month for life.
   $200 x 12 = $2,400 x 12.5378 = $30,090.72

B. A male age 50 receives $50,000 for life with remainder over.
   $50,000 x .75227 = $37,613.50 Value of the life estate
   $50,000 – 37,613.50 = $12,386.50 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 ÷ 49282.82506 = 8.83580
8.83580 x $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 form 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 ÷ 49192.02741 = 8.81410
8.81410 x $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

**Leonard J. Witman, Esq.**
**Tara S. Sinha, Esq.**
**Witman Stadtmauer, P.A.**
**26 Columbia Turnpike, Suite 100**
**Florham Park, NJ 07932**
**(973) 822-0220**

# 2026 Contribution and Benefits Limits

| | | Additional Catch Up – 50+ |
|---|---|---|
| Individual Retirement Account (IRA) | $7,500 | $1,100 |
| Roth IRA | $7,500 | $1,100 |
| Employee contribution to a 401(k) or 403(b) plan | $24,500 | $8,000*<br>*special rule for ages 60-63 only ($11,250) |
| Maximum annual contribution to defined contribution participant's account (including 401(k) EEE contribution) | $72,000 | |
| Maximum annual benefit payable from a defined benefit plan | $290,000 | |

# 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
- 2026 – If making catch-up contributions to a 401(k) and earn more than $150,000 in FICA wages, catch-up contributions can only be to a Roth

# 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 then 10 years younger beneficiary

# Post-SECURE Planning

The Treasury Dept. has 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

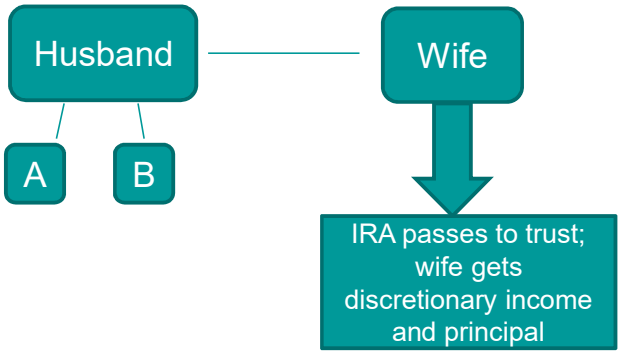
| Type of Beneficiary | Death Before Required Beginning Date (RBD) | Death After Required Beginning Date (RBD) |
|---|---|---|
| Eligible Designated Beneficiary (EDB) | EDB can "stretch" using own life expectancy OR (in limited circumstances) EDB can elect 10-year rule (plan allows account holder or 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.

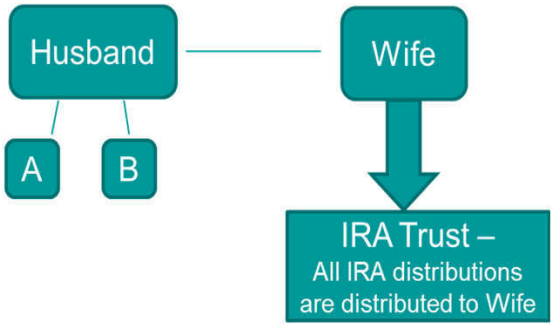
# IRA Passing to Surviving Spouse

## 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 Distribution (QCD)
  - Up to $55,000 (2026 amount; indexed for inflation)
- "Split-interest entity" – CRAT, CLUT, charitable gift annuity

# SECURE 2.0 – Split-Interest QCD

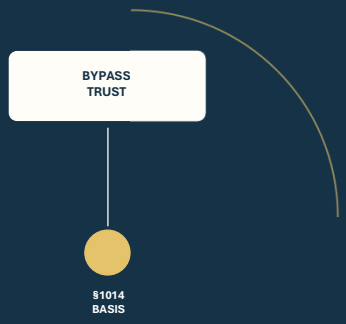
- Requirements –
  - No individual other than IRA Owner or spouse holds income interest
  - Income interest is non-assignable
  - Entire remainder interest qualifies for income tax deduction
- All income from entity is reported as ordinary income

# Planning Techniques to Consider

- When to stop contributing to retirement?
- Contributions to Roth vs. traditional accounts
- Convert IRA or 401(k) to Roth, especially from 62 to 70
- Qualified charitable distributions (QCD) – over 70 ½ from IRA directly to a qualified charity

# Bypass Trusts in a High-Exemption World

## Planning for Basis Not Estate Tax




July 2026

Robert I. Aufseeser, J.D., LL.M.

# Voyager Spacecraft

Extraordinary designs can outlive the assumptions on which they were built.




Voyager 1: launched in 1977; still communicating from interstellar space

### Voyager

In 1977, NASA launched the twin Voyager spacecraft on a mission originally designed to study Jupiter, Saturn, Saturn's rings, and the larger moons of those planets. No one reasonably expected that nearly half a century later, the same spacecraft would still be communicating with Earth from interstellar space.

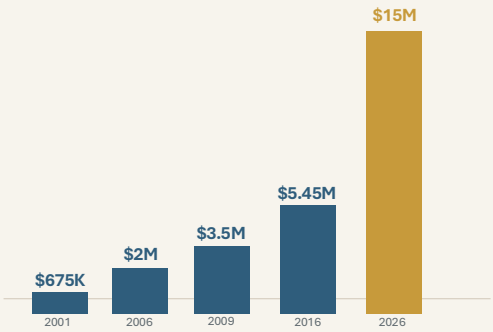
The spacecraft have remained useful because engineers have repeatedly revisited old assumptions, conserved dwindling power, reprogrammed aging systems, and improvised solutions for problems no one could have fully anticipated in 1977.

Voyager source: NASA mission overview; JPL, "Voyager 1 Revives Backup Thrusters Before Command Pause" (2025). Image credit: NASA/JPL-Caltech.

2

# The Tax World Moved

Federal transfer-tax pressure fell for many families; basis pressure rose.




**Federal portability**

Available for estates of decedents dying after December 31, 2010, if timely elected on Form 706; applies to federal estate and gift tax, but not GST exemption or state estate tax.

**New Jersey**

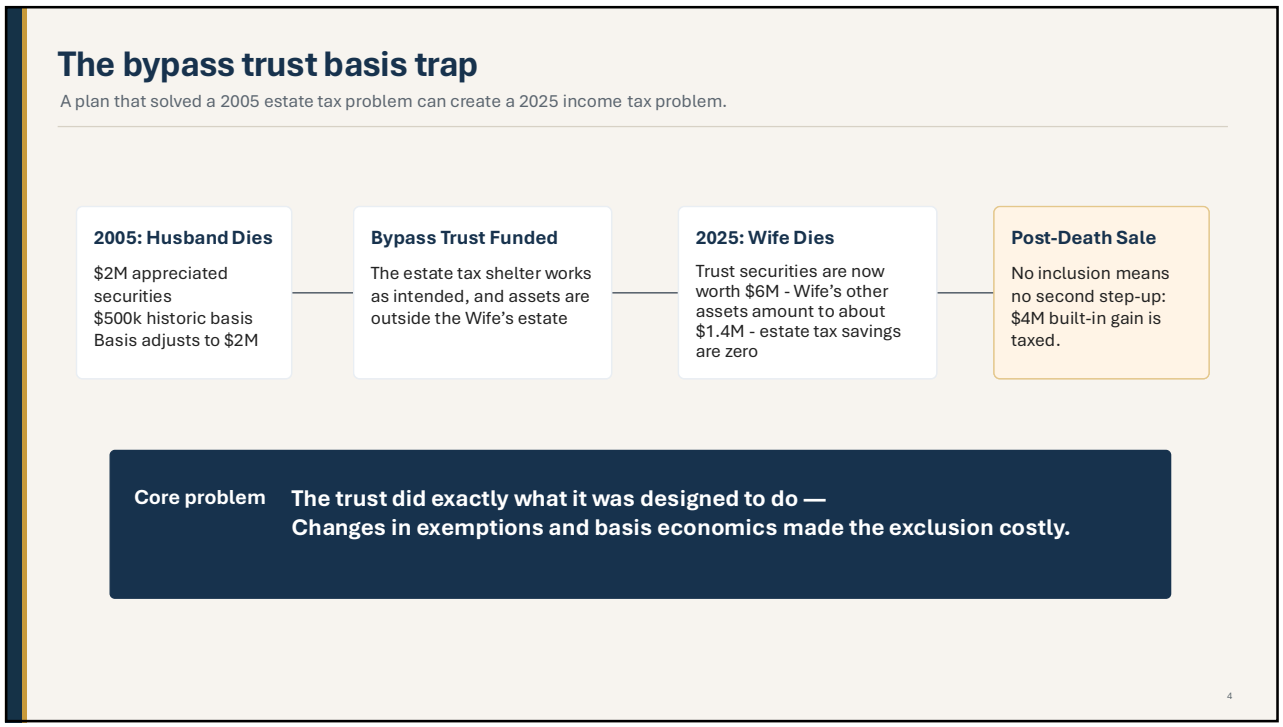
No estate tax for deaths on or after January 1, 2018; inheritance tax still requires a beneficiary-class check.

**New York caution**

Separate estate tax, no state portability, and a cliff make formula planning essential.

**Same trust, different tax risk**

3


The bypass trust basis trap
A plan that solved a 2005 estate tax problem can create a 2025 income tax problem.
2005: Husband Dies
$2M appreciated securities
$500k historic basis
Basis adjusts to $2M
Bypass Trust Funded
The estate tax shelter works as intended, and assets are outside the Wife's estate
2025: Wife Dies
Trust securities are now worth $6M - Wife's other assets amount to about $1.4M - estate tax savings are zero
Post-Death Sale
No inclusion means no second step-up: $4M built-in gain is taxed.
Core problem
The trust did exactly what it was designed to do —
Changes in exemptions and basis economics made the exclusion costly.
4

4

# What the basis trap costs

Assumes sale after Mom's death, 15% federal LTCG bracket each, no 3.8% NIIT, Adam is a NJ resident, Beth is a FL resident.

### Embedded gain

**$6.0M**

Sale value after Wife's death

**– $2.0M**

Trust basis from Husband's death

**$4.0M gain**

### No estate inclusion

**Adam (NJ)** **$515k**

$300k federal
$215k NJ

**Beth (FL)** **$300k**

$300k federal
$0 FL income tax

### Estate inclusion / step-up

**Basis resets to $6M**

Immediate sale produces little or no gain.

**$0**

federal / NJ / FL income tax on the sale

**The kids paid an $815,000 income tax bill to save ZERO in estate taxes**

Rough illustration: Federal tax = 15% of $2M gain each; NJ tax shown at 10.75% for Adam due to other income. Florida has no individual income tax. Could be more if NIIT applies.

5

# Federal Law Creates the Pathway

What actions can we take now to trigger a 1014 basis adjustment

**§ 1014**

Basis adjustment for property acquired from a decedent.

**Estate inclusion opens the basis door**

**§ 2041**

General power of appointment causes gross-estate inclusion.

**Section 1014(b)(9) is the bridge from inclusion to basis.**

I.R.C. §§ 1014(a), 1014(b)(9), 2041(a)(2), 2041(b)(1); Treas. Reg. §§ 1.1014-2, 20.2041-1.

## Section 1014: estate inclusion is the basis doorway

What does “acquired from a decedent” really mean

### 1014(a): the basis rule

Property “acquired from a decedent” generally takes a basis equal to fair market value at death.

The adjustment can be a step-up or a step-down. IRD is excluded.

### 1014(b)(9): the gateway

Property acquired through the exercise **or non-exercise** of a power of appointment if such property is required to be included in determining the value of the decedent’s gross estate.

### Bypass-trust implication

If the beneficiary possesses a power of appointment such that mere possession would trigger the underlying assets to be includible for estate tax purposes, then those underlying assets are treated under section 1014(a) as having been acquired from a decedent, entitling them to basis adjustment.

Authorities: I.R.C. § 1014(a), (b)(9), (c), (e); Treas. Reg. § 1.1014-1(a); see also Rev. Rul. 2023-2 for application to grantor trust theory.

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## Section 2041: General Powers of Appointment are the inclusion lever

Does the beneficiary hold a power that brings the trust property into his or her gross estate

### 2041(a)(2): estate inclusion

Property is included if the decedent possessed a general power of appointment at death.

Mere possession can be enough; exercise is not required.

*I.R.C. § 2041(a)(2); Treas. Reg. § 20.2041-1(b)(1)*

→

### What makes a power "general"?

A power exercisable in favor of the decedent, the decedent's estate, or the creditors of either.

Substance controls over labels.

*I.R.C. § 2041(b)(1); Treas. Reg. § 20.2041-1(c)(2)*

→

### Key limits / drafting guardrails

A power limited by an ascertainable standard for health, education, support, or maintenance is not general.

Joint-consent rules and releases require separate review.

*I.R.C. § 2041(b)(1)(A), (C); Treas. Reg. § 20.2041-1(c)(2), -3*

**Planning Point: A formula testamentary general power can target select assets and be limited to the amount that fits within the unused exemption**

Authorities: I.R.C. §§ 2041(a)(2), 2041(b)(1), 1014(b)(9); Treas. Reg. §§ 20.2041-1(b)(3), 20.2041-1(c)(2), 20.2041-2, 20.2041-3.

8

## State law does the plumbing

Federal law tells us what creates inclusion; state law tells us whether we can install it.

### New Jersey

- **NJ UTC consent modification:** modify noncharitable irrevocable trust with trustee + all beneficiaries if not inconsistent with a material purpose.
- **Court modification:** unanticipated circumstances / ineffective administration; reformation for mistake; construction to probable intent.
- **Tax-objective modification:** court may modify terms to achieve settlor's tax objectives; retroactive effect possible.
- **Decanting by common law / discretionary power:** case law permits exercise of appointment power in further trust; use cautiously to add a formula testamentary GPOA.
- **Useful cases:** *Wiedenmayer v. Johnson*, 106 N.J. Super. 161 (App. Div. 1969).

### New York

- **EPTL 10-6.6 decanting:** authorized trustee may appoint principal to an appointed trust; with unlimited discretion, may grant a beneficiary a power of appointment if that beneficiary could receive principal outright.
- **EPTL 10-6.6(c):** If the original trust is strictly limited to a HEMS standard, the trustee's power is technically "limited" under EPTL 10-6.6(c)
- **Power-of-appointment rules:** EPTL Article 10 governs exercise and over-/under-exercise; decanting exercise is treated as special POA. EPTL § 10-10.1 often prevents an overly casual conclusion that a spouse-trustee can simply distribute selected assets to herself.
- **Surrogate's Court / equitable reformation:** use for mistake, construction, and tax-driven reformation when supported by intent and record.
- **Useful authority:** N.Y. Surr. Ct. Proc. Act (SCPA) § 2106; SCPA § 1420 and whether asking the court to "construe" the trust as having always intended to maximize the family's net-after-tax wealth is a viable alternative.

## Does a State Court Action Always Work?

Use caution when asking the court to do something to which only the IRS would object

### Bosch

*Comm'r v. Estate of Bosch, 387 U.S. 456 (1967)*

A lower state-court decree does not bind the IRS in a federal tax controversy when the United States was not a party. Federal authorities give "proper regard" to state rulings; the state high court controls.

### Rev. Rul. 73-142

*Rev. Rul. 73-142, 1973-1 C.B. 405*

The Service respected a final, unappealed pre-death state-court decree eliminating a retained removal power, even though the decree conflicted with prior state high-court law. Timing and finality mattered. Narrow ruling limited to the facts.

### Rapp

*Estate of Rapp v. Comm'r, 140 F.3d 1211 (9th Cir. 1998)*

A post-death probate order could not salvage the desired QTIP tax result. The Ninth Circuit distinguished Rev. Rul. 73-142 because the order came after death and lacked meaningful support under state law.

**Practice Point: A probate court decision may be ignored when determining federal tax consequences, even when that order is final, if the decision is contrary to state law.**

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## PLR 202206008: a trust modification that worked

A modern roadmap for pairing GST-sensitive modification with calibrated estate inclusion for basis planning.

### Facts / posture

Pre-Sept. 25, 1985 GST-grandfathered trust; no post-creation additions.

Court-approved settlement resolved beneficiary litigation.

Trustee authorized to grant child a testamentary GPOA over a Defined Portion.

### GST ruling

Catch-all safe harbor applied.

No shift of beneficial interests to lower-generation beneficiaries.

No extension of vesting period; GST-grandfathered status preserved.

### Estate inclusion result

Only property subject to child's testamentary GPOA was includible.

Inclusion arose under § 2041(a)(2).

The ruling did not address § 1014. If the subject property is included under § 2041 and otherwise satisfies § 1014(b)(9), the statutory basis-adjustment consequence should follow.

Authorities: PLR 202206008; Treas. Reg. § 26.2601-1(b)(4)(i)(D); I.R.C. §§ 2041(a)(2), 1014(b)(9). See also PLRs 202619006, PLR 202622002 ; PLRs are not precedential authority. See § 6110(k)(3).

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## PLR 202301001: a trust decanting that worked

A second modern ruling showing how testamentary GPOAs can create estate inclusion without destroying grandfathered GST status.

### Transaction posture

Pre-Sept. 25, 1985 GST-exempt trust.

Decanted under state statute with court authorization (subject to receiving a favorable private letter ruling.

The new trust kept the same distribution standard and termination provision, though it added many bells and whistles.

### Multi-Step Approach

Step 1: Situs shift to state with favorable decanting statute.

Step 2: Create Trust B and Decant (subject to a favorable PLR).

Step 3: Maintain same class of beneficiaries and same vesting period for favorable GST ruling.

### Result

New robust trust created to achieve more than just tax savings.

Each sole lifetime beneficiary received a testamentary GPOA.

Property subject to each power includible under § 2041(a)(2).

Trust B 100% GST Exempt

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## Powers to Invade: check whether the trust already creates § 2041 inclusion argument

Before modifying or decanting, test whether the spouse's existing fiduciary / invasion powers are already broad enough to be a GPOA.

### Estate of Jones v. Commissioner

New Jersey testamentary trust for surviving spouse.

Spouse was both life beneficiary and co-trustee with a bank.

Trustees could invade principal for emergencies or situations affecting spouse's "care, maintenance, health, welfare and well-being."

Issue: whether that co-trustee/invasion power was limited by an ascertainable HEMS standard.

See also Peoples Trust Co. of Bergen Cty. v. United States, 412 F.2d 1156 (3d Cir. 1969)

### Holding + takeaway

**Holding**

"Welfare" and "well-being" exceeded health, education, support, and maintenance.

Corporate co-trustee did not save the power. Not an adverse party.

Result: spouse held a general power over corpus for federal estate-tax purposes.

**Takeaway**

Co-trustee cases can already contain the estate-inclusion plumbing needed for basis planning, but it's a double-edged sword requiring careful attention.

**Practice Point** A state savings clause such as N.J.S.A. § 3B:11-4.1 may nevertheless apply to restrict an overbroad power to invade principal, limiting the utility of *Jones* and *Peoples Trust*. It's still necessary to review the terms of the trust closely before a decision to modify is made.

Estate of Jones v. Comm'r, 56 T.C. 35 (1971); See also Rev. Rul. 95-58, which might create an inclusion argument if the beneficiary has an unrestricted right to remove and replace a trustee.

13

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## New Jersey Court Action

Modification path for adding or confirming inclusion-causing powers in a legacy bypass trust.

| | | |
|---|---|---|
| § 3B:31-11 | Nonjudicial settlement | Interested persons may enter a binding nonjudicial settlement agreement if it does not violate a material purpose and contains only terms the court could approve. Useful to build consensus and record tax-sensitive settlement terms. |
| § 3B:31-27 | Modification by consent | Court may modify a noncharitable irrevocable trust with beneficiary consent; even without unanimous consent, court may approve if nonconsenting beneficiaries are adequately protected. |
| § 3B:31-28 | Unanticipated circumstances | Court may modify administrative or dispositive terms because of unanticipated circumstances, or where continuation would be impracticable, wasteful, or impair administration. Strong fit for high-exemption / low-basis mismatch. |
| § 3B:31-33 | Tax objectives | Court may modify a trust to achieve the settlor's tax objectives and may give the modification retroactive effect. Best statutory hook for calibrated GPOA / basis planning. |
| § 3B:31-34 | Combination and division | Trustee or court can combine or divide trusts. Use before modifying. Isolate low-basis appreciated assets and avoid forcing high-basis or loss assets into the same inclusion decision. |

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## How Much Inclusion Do You Want?

The best answer is often selective, not total.

**What is the least amount of inclusion that solves the tax problem?**

**Full inclusion**

Use only when headroom is clear and non-tax concerns are manageable.

**Asset-specific inclusion**

Apply the power to identified appreciated assets.

**Formula inclusion**

Include the largest tax-neutral amount, with buffers.

**Division-first strategy**

Separate an includible share from a protected/excluded share.

I.R.C. § 2041; Treas. Reg. § 20.2041-1(b)(3); Priv. Ltr. Rul. 202206008.

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## Selecting the Right GPOA Clause

The right clause depends on the particular facts, and no single clause should be used automatically.

**Match the clause to the tax headroom, the asset mix, and the time available to implement.**

**1. Broad Testamentary GPOA over Appreciated Non-IRD Assets**

**2. Automatic Asset-Priority Formula GPOA *Default***

**3. Schedule A Priority-List GPOA**

**See Handout for example of each**

Practice point: The purpose of any clause is to give the spouse a GPOA over a defined portion of the trust.

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## Professional Risk and Liability Concerns

No duty to predict future law — but in New Jersey, failing to flag a fixable tax problem now…can cause trouble.

### New Jersey: controlling standard

**Christakos v. Boyadjis**, 262 N.J. 447 (2026), adopted the narrow Restatement § 51 framework for attorney duties to nonclients: invited reliance under § 51(2), or a client's clear intent that the lawyer's services benefit the nonclient under § 51(3).

**Rejected** the broad California (Lucas v. Hamm) balancing test.

**Estate of Albanese v. Lolio** (App. Div. 2007): allowed the executrix/client and estate to pursue tax-advice claims but found no corresponding duty to the other beneficiaries merely because the advice affected their inheritances.

**Pivnick v. Beck** still allows a beneficiary claim only where drafting defeats the client's intent.

### The estate's route in

**Schneider v. Finmann** (N.Y. 2010): the personal representative may sue for negligent tax planning — the estate "stands in the shoes" of the decedent.

**Stevens v. Wheeler** (1st Dep't 2023) applied it; **but strict privity still bars beneficiary suits.**

**Caution — Sec. Bank & Trust v. Larkin** (Minn. 2018): a $1.65M GSTT claim failed because the harm accrued only at death.

### The modern bypass-trust risk

**No hindsight:** a trust drafted in 2003 is not negligent because the law later changed.

**Risk arises now:** when you review, restate, fund, or administer the trust — or the client asks if the plan is current — and miss the trapped gain.

**Controls:** identify the basis issue, weigh current tax utility, warn the fiduciary/client, and document the decision to act or not act.

**Practice point: Be proactive. When a legacy bypass trust crosses your desk, screen for the basis trap, present the options, and paper the file — silence on a known, fixable problem is where exposure lives.**

Sources: Christakos v. Boyadjis, 262 N.J. 447, 348 A.3d 966 (2026); Estate of Albanese v. Lolio, 393 N.J. Super. 355 (App. Div. 2007); Pivnick v. Beck, 165 N.J. 670 (2000); Estate of Schneider v. Finmann, 15 N.Y.3d 306 (2010); Stevens v. Wheeler, 216 A.D.3d 537 (2023); Sec. Bank & Trust Co. v. Larkin, 916 N.W.2d 491 (Minn. 2018).

## The Emergency Option: Making an Outright Distribution

A blunt instrument may be justified when the basis opportunity will otherwise be lost.

### When it may fit

- Time is short and death is foreseeable.
- The instrument already authorizes discretionary principal distributions to the spouse.
- Asset protection and long-term trust control are secondary to preserving the basis opportunity.

### What it can solve

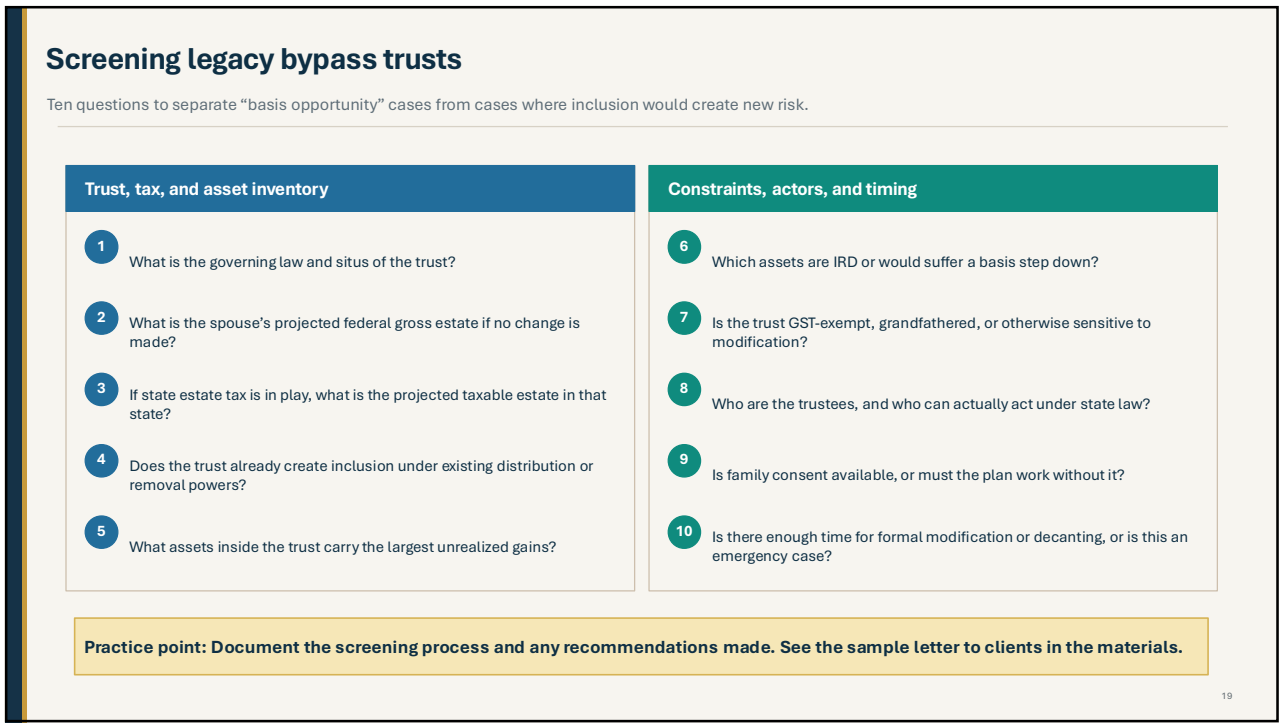
- Moves appreciated assets from the bypass trust into the spouse's name before death.
- Should allow a § 1014 basis adjustment when those assets are included in the spouse's estate under § 2033.
- Faster than modification, decanting, or a contested court application when timing is an issue.

### What it costs

- Sacrifices spendthrift and creditor protection. GST exemption can be lost.
- May expose assets to creditors and impact how assets would have been inherited by the next generation.
- Can complicate post-distribution planning if the spouse dies before clean-up steps are completed.

**Practice point: do not make outright distribution the default. But in the right emergency, a legally available blunt instrument is better than losing a large basis opportunity while waiting for a perfect plan.**

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Screening legacy bypass trusts
Ten questions to separate “basis opportunity” cases from cases where inclusion would create new risk.
Trust, tax, and asset inventory
1 What is the governing law and situs of the trust?
2 What is the spouse’s projected federal gross estate if no change is made?
3 If state estate tax is in play, what is the projected taxable estate in that state?
4 Does the trust already create inclusion under existing distribution or removal powers?
5 What assets inside the trust carry the largest unrealized gains?
Constraints, actors, and timing
6 Which assets are IRD or would suffer a basis step down?
7 Is the trust GST-exempt, grandfathered, or otherwise sensitive to modification?
8 Who are the trustees, and who can actually act under state law?
9 Is family consent available, or must the plan work without it?
10 Is there enough time for formal modification or decanting, or is this an emergency case?
Practice point: Document the screening process and any recommendations made. See the sample letter to clients in the materials.
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## Legacy Bypass Trusts Should Be Reviewed Proactively

ROBERT I. AUFSEESER, J.D., LL.M.
Law Office of Robert Aufseeser LLC
1 Tower Center Blvd, Suite 1702
East Brunswick, NJ 08816-1145
www.robertaufseeser.com
732-201-6460

**Questions**

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# Reference Appendix: Selected Authorities

### Federal statutes

I.R.C. §§ 1014(a), 1014(b)(9), 1014(c), 1014(e), 1014(f), 2033, 2041(a)(2), 2041(b)(1), 6035, 691, 2010(c), 2631.

### Regulations

Treas. Reg. §§ 1.1014-1, 1.1014-2, 20.2041-1; 26 C.F.R. § 20.2010-2(a).

### IRS rulings / guidance

Rev. Rul. 2023-2, 2023-16 I.R.B. 658; Rev. Rul. 73-142, 1973-1 C.B. 405; Rev. Rul. 95-58, 1995-2 C.B. 191; Notice 2011-101, 2011-52 I.R.B. 932; CCA 202352018 (Dec. 29, 2023).

### Private letter rulings

Priv. Ltr. Rul. 202206008; Priv. Ltr. Rul. 202301001; Priv. Ltr. Rul. 201634016; *See* I.R.C. § 6110(k)(3).

### Cases

Comm'r v. Estate of Bosch, 387 U.S. 456 (1967)
Estate of Rapp v. Comm'r, 140 F.3d 1211 (9th Cir. 1998)
Estate of Jones v. Comm'r, 56 T.C. 35 (1971)
Peoples Trust Co. of Bergen Cty. v. United States, 412 F.2d 1156 (3d Cir. 1969)
Estate of Vissering v. Comm'r, 990 F.2d 578 (10th Cir. 1993)
Estate of Schneider v. Finmann, 15 N.Y.3d 306, 933 N.E.2d 718, 907 N.Y.S.2d 119 (2010))

### New Jersey authorities

N.J.S.A. 3B:31-11, -27, -28, -33, -34; N.J.S.A. § 3B:11-4.1
Wiedenmayer v. Johnson, 106 N.J. Super. 161 (App. Div. 1969), aff'd sub nom. Wiedenmayer v. Villanueva, 55 N.J. 81 (1969)
Christakos v. Boyadjis, 262 N.J. 447, 348 A.3d 966 (2026)
Estate of Albanese v. Lolio, 393 N.J. Super. 355, 923 A.2d 325 (App. Div. 2007)
Pivnick v. Beck, 165 N.J. 670, 762 A.2d 653 (2000)

### Current tax data

IRS, What's New - Estate and Gift Tax; N.J. Div. of Tax'n, Inheritance and Estate Tax; N.Y. State Dep't of Tax'n & Fin., Estate Tax.

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# Bypass Trusts in a High-Exemption World

*Planning for Basis, Not Estate Tax*

Robert I. Aufseeser, J.D., LL.M.
July 2026

## Sample Testamentary General Power of Appointment Clauses

The following sample clauses are illustrative only for educational purposes and are not intended for use in any particular plan without individualized review of the governing instrument, fiduciary authority, GST status, gift-tax issues, creditor issues, state tax exposure, asset basis, and family circumstances.[1]

For federal estate tax purposes, a general power of appointment generally includes a power exercisable in favor of the powerholder, the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate. A testamentary general power of appointment possessed at death can cause the subject property to be included in the powerholder's gross estate under Code section 2041(a)(2), whether or not the power is exercised. Under Code section 1014(b)(9), property acquired through the exercise or nonexercise of a power of appointment generally receives a basis adjustment if it is required to be included in the decedent's gross estate. Important limitations include income in respect of a decedent under sections 691 and 1014(c), the one-year transfer rule in section 1014(e), and entity-level basis rules.

Summary:

1. **Broad Testamentary GPOA over Appreciated Non-IRD Assets** — simplest; best when all appreciated non-IRD trust assets can safely be included.

2. **Automatic Asset-Priority Formula GPOA** — self-executing; best when basis data is reliable, and no one wants to maintain a separate asset schedule.

3. **Schedule A Priority-List GPOA** — most practical and easiest to document; best for high-value or mixed-asset trusts when an Independent Trustee maintains a current asset schedule.

[1] Where the Trust is GST-exempt or grandfathered, any use of these clauses must be vetted against Treas. Reg. section 26.2601-1(b)(4)(i) and the Service's ruling practice (for example, PLR 202206008, PLR 202301001, and PLR 202619006, released May 8, 2026), to confirm that granting the GPOA does not shift beneficial interests to lower generations or extend the vesting period.

**Illustrative Clause 1. Broad Testamentary GPOA over Appreciated Non-IRD Assets**

Notwithstanding any other provision of this Trust, immediately before and at the Surviving Spouse's death, the Surviving Spouse shall hold a testamentary general power of appointment over all trust property other than Excluded Property.

The Surviving Spouse may exercise this power only by a Will or codicil admitted to probate that specifically refers to this power. The Surviving Spouse may appoint such property, outright or in further trust, to or for the benefit of the Surviving Spouse's estate or the creditors of the Surviving Spouse's estate.

Any appointive property not effectively appointed, and all Excluded Property as defined herein, shall be held, administered, and distributed as otherwise provided in this Trust.

"Excluded Property" means any asset, separate security tax lot, or fractional interest whose adjusted income-tax basis equals or exceeds its fair market value at the Surviving Spouse's death; any item of income in respect of a decedent within the meaning of Code section 691; and any property that is not eligible for a basis adjustment under Code section 1014 by reason of Code section 1014(c), 1014(e), or another applicable provision.

**Description of Clause 1: A testamentary GPOA over every appreciated non-IRD asset in the trust, in full. The clause has no embedded dollar cap on inclusion: every appreciated non-IRD lot in the trust at the spouse's death is included. The Excluded Property carve-out is intended to avoid loss assets, at-basis assets, IRD, and other property that would not benefit from section 1014.**

**Pros.** Simple, easy to explain, and easy to administer if the spouse has enough estate tax capacity. No further action by the trustee is required after the clause is added. No pre-death asset schedule or discretionary asset selection by a trustee is required.

**Cons.** May be too blunt if the trust value could exceed the spouse's remaining exemption. It does not rank assets by anticipated tax benefit and may cause unnecessary federal or state death tax, creditor exposure, a change in GST transferor, or inclusion of entity interests whose underlying assets do not receive a corresponding inside-basis adjustment.

**Primary candidate.** A New Jersey surviving spouse has a modest separate estate, no meaningful federal or state estate-tax exposure, and the trust holds appreciated marketable securities that can all be included without jeopardizing the trust's material non-tax purposes.

### Illustrative Clause 2. Automatic Asset-Priority Formula GPOA

Notwithstanding any other provision of this Trust, immediately before and at the Surviving Spouse's death, the Surviving Spouse shall hold a testamentary general power of appointment over the Appointive Property.

The Surviving Spouse may exercise this power only by a Will or codicil admitted to probate that specifically refers to this power. The Surviving Spouse may appoint the Appointive Property, outright or in further trust, to or for the benefit of the Surviving Spouse's estate or the creditors of the Surviving Spouse's estate.

Any Appointive Property not effectively appointed, and all trust property not included in the Appointive Property, shall be held, administered, and distributed as otherwise provided in this Trust.

For purposes of this Section, "Appointive Property" means the Eligible Appreciated Property having an aggregate fair market value, as finally determined for federal estate tax purposes, equal to the Maximum Appointive Amount.

If the aggregate fair market value of all Eligible Appreciated Property, as finally determined for federal estate tax purposes, is less than or equal to the Maximum Appointive Amount, all Eligible Appreciated Property shall be Appointive Property.

If the aggregate fair market value of all Eligible Appreciated Property, as finally determined for federal estate tax purposes, exceeds the Maximum Appointive Amount, the Appointive Property shall consist of Eligible Appreciated Property selected automatically, asset-by-asset and tax-lot-by-tax-lot, in descending order of the ratio of built-in gain to fair market value. For this purpose, the ratio shall be determined by dividing the excess of fair market value, as finally determined for federal estate tax purposes, over adjusted income-tax basis, by fair market value as finally determined for federal estate tax purposes.

Selection shall continue until the Maximum Appointive Amount is reached or all Eligible Appreciated Property has been included. If the next asset or tax lot would cause the aggregate fair market value of the Appointive Property, as finally determined for federal estate tax purposes, to exceed the Maximum Appointive Amount, only the fractional interest in that asset or tax lot necessary to reach the Maximum Appointive Amount shall be Appointive Property.

"Eligible Appreciated Property" means each asset, separate tax lot, or fractional interest in property held by the Trust immediately before the Surviving Spouse's death whose fair market value at death, as finally determined for federal estate tax purposes, exceeds its adjusted income-tax basis determined immediately before any basis adjustment under Code section 1014. Eligible Appreciated Property does not include any item of income in respect of a decedent within the meaning of Code section 691 or any property that is not eligible for a basis adjustment under Code section 1014 by reason of Code section 1014(c), 1014(e), or another applicable provision.

"Maximum Appointive Amount" means the largest aggregate fair market value of trust property, as finally determined for federal estate tax purposes, that may be included in the Surviving Spouse's gross

estate by reason of this Section without increasing the federal estate tax payable by reason of the Surviving Spouse's death over the amount that would have been payable if this Section were disregarded.

In computing the Maximum Appointive Amount, there shall be taken into account the Surviving Spouse's gross estate from all other sources, adjusted taxable gifts, allowable deductions and expenses, applicable credits, the basic exclusion amount under Code section 2010(c), and any deceased spousal unused exclusion amount available to the Surviving Spouse by reason of a valid portability election made by the estate of the Surviving Spouse's last deceased spouse, reduced by any prior use of that amount.

If the Surviving Spouse is subject at death to a state estate, inheritance, succession, or similar death tax, the Maximum Appointive Amount shall be further limited to the largest amount that may be included without increasing that tax over the amount that would have been payable if this Section were disregarded. This determination shall take into account the identity and tax classification of the appointees and default beneficiaries and the treatment of appointive property under applicable state law.

If no federal estate tax return is required to be filed by reason of the Surviving Spouse's death, all values referenced in this Section as "finally determined for federal estate tax purposes" shall instead mean values as finally determined for purposes of any applicable state death-tax return required to be filed by reason of the Surviving Spouse's death or, if no such return is required, values determined in good faith by the Independent Trustee using principles consistent with Code section 2031 and the regulations thereunder and a qualified appraisal when appropriate.

The Appointive Property shall be determined under this objective formula as of the Surviving Spouse's death. Any valuation, basis determination, tax calculation, or allocation performed after death shall be ministerial only and shall not give any person discretion to add property to, or remove property from, the power possessed at death.

**Description of Clause 2: This clause automatically selects the appreciated assets with the highest built-in gain percentages by ranking each asset or tax lot according to built-in gain as a percentage of fair market value.**

**Pros.** Self-executing and objective. It does not require Schedule A to be maintained. It is designed to maximize gross basis increase per dollar of estate inclusion and can operate when time is short.

**Cons.** More complicated to administer after death. Ranking by gain percentage is designed to maximize gross basis increase per dollar of estate inclusion, but it does not necessarily maximize actual after-tax savings. The formula does not account for differing tax rates, holding periods, state sourcing, valuation discounts, entity-level basis consequences, or other asset-specific factors. The fiduciary must determine value, adjusted basis, IRD status, and the gain ratio for each asset or tax lot. If values or bases are disputed, the ranking may

change. If there are many different assets or hard-to-value assets, this may not be the best tool.

**Primary candidate.** A trust holding mostly marketable securities with reliable basis records, where the surviving spouse has limited estate-tax headroom and the family wants an objective, formula-driven result rather than fiduciary asset selection.

**When not to use.** Trusts heavily weighted toward illiquid or hard-to-value assets, or trusts with significant basis-record uncertainty.

### Illustrative Clause 3. Schedule A Priority-List GPOA

Notwithstanding any other provision of this Trust, immediately before and at the Surviving Spouse's death, the Surviving Spouse shall hold a testamentary general power of appointment over the Appointive Property.

The Surviving Spouse may exercise this power only by a Will or codicil admitted to probate that specifically refers to this power. The Surviving Spouse may appoint the Appointive Property, outright or in further trust, to or for the benefit of the Surviving Spouse's estate or the creditors of the Surviving Spouse's estate.

Any Appointive Property not effectively appointed, and all trust property not included in the Appointive Property, shall be held, administered, and distributed as otherwise provided in this Trust.

"Appointive Property" means the property listed on Schedule A, in the order listed, but only to the extent that the aggregate fair market value of such property, as finally determined for federal estate tax purposes, does not exceed the Maximum Appointive Amount. If a listed asset is not held by the Trust at the Surviving Spouse's death, is income in respect of a decedent within the meaning of Code section 691, has an adjusted income-tax basis equal to or greater than its fair market value at the Surviving Spouse's death, as finally determined for federal estate tax purposes, or is otherwise not eligible for a basis adjustment under Code section 1014, that asset shall be skipped.

If inclusion of the next listed asset would cause the aggregate fair market value of the Appointive Property, as finally determined for federal estate tax purposes, to exceed the Maximum Appointive Amount, only the fractional interest in that asset necessary to reach the Maximum Appointive Amount shall be Appointive Property.

"Maximum Appointive Amount" means the largest aggregate fair market value of trust property, as finally determined for federal estate tax purposes, that may be included in the Surviving Spouse's gross estate by reason of this Section without increasing the federal estate tax payable by reason of the Surviving Spouse's death over the amount that would have been payable if this Section were disregarded.

In computing the Maximum Appointive Amount, there shall be taken into account the Surviving Spouse's gross estate from all other sources, adjusted taxable gifts, allowable deductions and expenses, applicable credits, the basic exclusion amount under Code section 2010(c), and any deceased spousal unused exclusion amount available to the Surviving Spouse by reason of a valid portability election made by the estate of the Surviving Spouse's last deceased spouse, reduced by any prior use of that amount.

If the Surviving Spouse is subject at death to a state estate, inheritance, succession, or similar death tax, the Maximum Appointive Amount shall be further limited to the largest amount that may be included without increasing that tax over the amount that would have been payable if this Section were disregarded. This determination shall take into account the identity and tax classification of the

appointees and default beneficiaries and the treatment of appointive property under applicable state law.

"Schedule A" means the most recent written schedule signed by the Independent Trustee before the Surviving Spouse's death and maintained with the Trust records. Schedule A may be amended or replaced by the Independent Trustee at any time before the Surviving Spouse's death and shall identify each asset, separate tax lot, or fractional interest with reasonable specificity and in the intended order of priority. No amendment or replacement may be made by, at the direction of, or with the required consent of the Surviving Spouse.

If no federal estate tax return is required to be filed by reason of the Surviving Spouse's death, all values referenced in this Section as "finally determined for federal estate tax purposes" shall instead mean values as finally determined for purposes of any applicable state estate or inheritance tax return required to be filed by reason of the Surviving Spouse's death, or, if no such return is required, values determined by the Independent Trustee using standards consistent with Code section 2031 and the regulations thereunder.

The Appointive Property shall be determined under Schedule A and the objective Maximum Appointive Amount formula as of the Surviving Spouse's death. Any valuation, basis determination, tax calculation, or fractional allocation performed after death shall be ministerial only and shall not give any person discretion to add property to, or remove property from, the power possessed at death.

**Description of Clause 3: A testamentary GPOA over property identified by a pre-death Schedule A, taken in the order listed, capped at the Maximum Appointive Amount. The trustee fills the cap by working down the schedule from item 1; the marginal asset is included as a fractional interest sized to bring the aggregate exactly to the cap. Loss lots, at-basis lots, IRD, and assets the trust no longer owns are skipped automatically.**

**Pros.** Pre-death clarity about which assets are intended for inclusion. The schedule allows the Independent Trustee, family, and counsel to evaluate tax rates, entity-level consequences, non-tax considerations, and asset-specific risks that an automatic percentage-gain formula cannot measure. It also creates a contemporaneous record that may assist Form 706 reporting and, when applicable, basis-consistency statements under Code sections 1014(f) and 6035.

**Cons.** Requires active maintenance by a qualified Independent Trustee. Schedule A should be reviewed when assets are sold, substituted, materially appreciated or depreciated, rebalanced, or affected by a change in tax law or family circumstances. A stale or incomplete schedule may produce a partial or suboptimal result. The clause assumes that the power becomes effective immediately before and at death. If applicable law instead treats the spouse as possessing the power during life, removing property from Schedule A may require lapse-or-release analysis under Code sections 2041(b)(2), 2514(b), and 2514(e), in addition to state-law analysis.

**Primary candidate.** A high-value trust holds a mixed portfolio, including highly appreciated securities, possible loss positions, real estate, partnership or S corporation interests, or assets subject to different tax rates, and the Independent Trustee can maintain a reliable pre-death record.

**When not to use.** Trusts where no qualified Independent Trustee is available or likely to maintain the schedule reliably, or where the surviving spouse may die before the initial schedule is completed.

# [LAW FIRM LETTERHEAD]

**Sample Client Letter - Bypass Trust Basis Review**

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[Date]

**Via Email and Regular Mail**

[Client Name]

[Address]

**Re: Review of Bypass Trust / Credit Shelter Trust for Possible Income Tax Planning Opportunities**

Dear [Client Name]:

I am writing to recommend that we review the bypass trust created after [deceased spouse's name]'s death. As you know, you are a beneficiary and co-trustee of that trust.

When many bypass trusts were drafted, the primary goal was to reduce or avoid estate tax at the death of the surviving spouse. That planning often made sense at the time. However, because the federal estate tax exemption is now historically high, and because New Jersey no longer has a separate estate tax, some older bypass trusts should be reviewed to determine whether they still produce the best overall tax result for the family.

The issue is that a bypass trust may continue to keep assets outside the surviving spouse's taxable estate (*i.e.* your taxable estate) even when there would be no estate tax due if those assets were included. That can create an unnecessary income tax problem.

### Simple example

Assume a bypass trust owns stock worth $1,000,000. The trust's income tax basis in the stock is only $300,000. If the trust later sells the stock, there may be $700,000 of taxable capital gain.

If, instead, the trust assets were properly included in the surviving spouse's estate at death - and if the surviving spouse's estate remained below the applicable estate tax exemption - the family might be able to obtain a new income tax basis equal to the fair market value at death.

In that example, the basis could potentially increase from $300,000 to $1,000,000, reducing or eliminating the built-in capital gain for the next generation.

This does not mean that the trust should automatically be changed. Bypass trusts can still serve important purposes, including creditor protection, remarriage protection, control over ultimate disposition, generation-skipping transfer tax planning, and protection for children or other

beneficiaries. However, in many cases, it is worth evaluating whether the trust contains appreciated assets and whether a modification, decanting, trust division, or targeted power of appointment could improve the overall tax result without undermining the original purpose of the trust.

For [New Jersey] residents, this review is especially important because the estate tax concern that drove many older plans may no longer apply in the same way, while capital gains tax exposure may be quite real.

I recommend that we schedule a consultation to discuss the following items:

1. the terms of the bypass trust;
2. the current value of the trust assets;
3. the income tax basis of those assets;
4. which assets have the largest unrealized gains;
5. your current personal estate and projected estate tax exposure;
6. the intended beneficiaries after your death;
7. whether the trust has creditor, divorce, remarriage, or GST-tax concerns that should be preserved; and
8. whether any planning options are available under New Jersey law.

Before that meeting, it would be helpful to gather the most recent trust account statement, [a copy of the trust agreement,] available cost basis information, and any recent appraisals for real estate, closely held business interests, or other nonmarketable assets held in the trust.

The purpose of the review is not to force a change, but to determine whether the trust is still accomplishing the family's goals in light of today's tax laws. In some cases, the best answer may be to leave the trust as-is. In other cases, careful planning may allow the family to preserve the benefits of the trust while improving the income tax result for the next generation.

Please contact my office so we can schedule a time to review the trust and discuss whether any basis-planning opportunities may be available.

Very truly yours,

[Attorney Name]

This letter is intended only to alert you to a potential planning issue. Whether any action is appropriate depends on the specific terms of the trust, the nature of the trust assets, your personal estate, your risk tolerance, and your family circumstances. No action should be undertaken without individualized legal and tax advice. Tax laws, exemptions, and rates may change, and any recommendation should be based on the law and facts in effect at the time of the review.

**Internal Revenue Service**

Number: **202206008**
Release Date: 2/11/2022

Index Number: 2601.00-00; 2041.02-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-111029-21

Date:
November 03, 2021

Legend

| | |
|---|---|
| Grantor | = |
| Spouse | = |
| Trust A | = |
| Trust B | = |
| Date 1 | = |
| Date 2 | = |
| Date 3 | = |
| Child | = |
| Beneficiary 1 | = |
| Beneficiary 2 | = |
| Trustee | = |
| Court | = |

Dear :

This letter responds to your authorized representative's letter dated April 12, 2021, and subsequent correspondence, requesting rulings on the estate and generation-skipping transfer (GST) tax consequences of a proposed modification of a trust pursuant to a court-approved settlement agreement.

The facts and representations submitted are summarized as follows:

Under Clause 3. of Grantor's will, dated Date 1, Grantor bequeathed all of the rest and remainder of Grantor's property to two trusts, Trust A and Trust B. Trust B is the subject of this ruling request. Grantor died on Date 2, a date prior to September 25, 1985.

Under Clause 5., Trust B is established for the benefit of Grantor's sole surviving child, Child. Under Clause 5., Paragraph (1), Trustee must distribute all of the net income from Trust B to Child during Child's life. Clause 5., Paragraph (5) provides that Trustee has the authority in the exercise of its sole and absolute discretion to withdraw from the corpus of the trust, such sum or sums as it may deem necessary for the maintenance, education, welfare and comfort of any beneficiary or beneficiaries, and such exercise of discretion by Trustee shall be final and not subject to question by any person or persons. Under Clause 5., Paragraph (2), upon Child's death, Trust B terminates and is to be distributed, *per stirpes*, to Child's surviving descendants, if any, and if none, to the heirs at law of Grantor's wife, Spouse.

You represent that no additions have been made to Trust B since it was created.

A controversy arose regarding the administration of Trust B and Trustee's desire to exercise its discretion to provide Child with a power of appointment over certain assets of Trust B. Trustee asserts that the exercise of this discretionary authority is to carry out the intent of Grantor to keep trust assets in the hands of Grantor's descendants upon Child's death and to minimize transfer taxation upon Trust B assets. However, according to Trustee, due to family dynamics, including separation and divorce, as well as changing tax laws, Grantor's intent may not be carried out.

Child and the other beneficiaries of Trust B have been in negotiations regarding Trustee's proposed exercise of its discretionary authority for approximately several months. During this time, Beneficiary 1 and Beneficiary 2 (individually and as representative of his minor children) opposed the proposed exercise of Trustee's discretionary authority. Litigation was commenced, but after further negotiations, the parties were able to reach a settlement agreement. Court has approved, after a hearing on the matter, the settlement agreement in an order, dated Date 3 (Settlement Agreement), subject to a favorable private letter ruling by the Internal Revenue Service.

Settlement Agreement provides that Trust B, Clause 5., Paragraph (2) is modified to grant Child a testamentary general power of appointment to appoint a "Defined Portion" of Trust B principal to Child's estate. The term "Defined Portion" means the largest portion of Trust B that could be included in Child's federal estate without increasing the total amount of the "Transfer Taxes" actually payable at Child's death over and above the amount that would have been actually payable in the absence of this provision. The term "Transfer Taxes" means all inheritance, estate, and other death taxes, plus all federal and state GST taxes, actually payable by reason of Child's death. In the event Child fails to exercise this power, and to the extent the trust property is not subject to this power, upon Child's death, Trustee shall distribute such property, *per stirpes*, to Child's then living descendants, if any, and if none, to the heirs at law of Spouse.

You request the following rulings:

(1) The exercise by Trustee of its discretionary authority over Trust B principal upon the terms of the Settlement Agreement will not result in a transfer of property that is subject to GST tax and Trust B will retain its GST exempt status.

(2) The exercise by Trustee of its discretionary authority over Trust B principal upon the terms of the Settlement Agreement will result in only the trust property subject to Child's testamentary general power of appointment to be included in Child's gross estate under § 2041(a)(2).

LAW AND ANALYSIS

Ruling 1

Section 2601 imposes a tax on every generation-skipping transfer. The term "generation-skipping transfer" is defined in § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Under § 1433(a) of the Tax Reform Act of 1986 (Act) and § 26.2601-1(a) of the Generation-Skipping Transfer Tax Regulations, the GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i), the GST tax does not apply to a transfer under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax under § 26.2601-1(b) will not cause the trust to lose its exempt status.

Section 26.2601-1(b)(4)(i)(D) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy § 26.2601-1(b)(4)(i)(A), (B), or (C)) by judicial reformation or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. A modification of an exempt trust will result in a shift in beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST transfer or the creation of a new GST transfer. A modification that is administrative in nature that only indirectly increases the amount transferred will not be considered to shift a beneficial interest in the trust.

In this case, pursuant to the proposed modification to Trust B, the trust will be modified to grant Child a testamentary general power of appointment under § 2041(a)(2) to appoint a "Defined Portion" of Trust B principal to Child's estate. In the event Child fails to exercise this power, and to the extent Trust property is not subject to this power, upon Child's death, Trustee shall distribute such property, *per stirpes*, to Child's then living descendants, if any, and if none, to the heirs at law of Spouse.

Under these circumstances, we conclude that the modification of Trust B pursuant to Court order will not shift any beneficial interest in Trust B to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification and the modification will not extend the time for vesting of any beneficial interest in Trust B beyond the period provided for in Trust B. Accordingly, based on the facts submitted and the representations made, we conclude that the modifications of Trust B pursuant to the Date 3 Court order will not cause Trust B to lose its exempt status from the GST tax or otherwise become subject to the GST tax.

Ruling 2

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2033 provides that the value of the gross estate includes the value of all property to the extent of the interest therein of the decedent at the time of death.

Section 2041(a)(2) provides that to the extent of any property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive. For purposes of this paragraph (2), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

In this case, the modification of Trust B to grant Child a testamentary general power of appointment pursuant to the Court-approved Settlement Agreement will not cause Trust B property to be includible in Child's gross estate. However, the exercise by Child of Child's testamentary general power of appointment will result in the appointed property being includible in Child's gross estate under § 2041(a)(2). Accordingly, based on the facts submitted and the representations made, we conclude that the exercise by Trustee of its discretionary authority over Trust B principal upon the

terms of the Settlement Agreement will result in only the trust property subject to Child's testamentary general power of appointment to be included in Child's gross estate under § 2041(a)(2).

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

*Leslie H. Finlow*

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
Copy for § 6110 purposes

cc:

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**Internal Revenue Service**

Number: **202301001**
Release Date: 1/6/2023

Index Number: 2601.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-107550-22

Date:
October 07, 2022

Legend

| | |
|---|---|
| Trust A | = |
| Trust B | = |
| Grantor | = |
| Grantor's Spouse | = |
| Son | = |
| Son's Spouse | = |
| Daughter | = |
| Daughter's Spouse | = |
| Grandchild 1 | = |
| Grandchild 2 | = |
| Grandchild 3 | = |
| Grandchild 4 | = |
| Grandchild 5 | = |
| GGC 1 | = |
| GGC 2 | = |
| GGC 3 | = |
| GGC 4 | = |
| GGC 5 | = |
| GGC 6 | = |
| GGC 7 | = |
| GGC 8 | = |
| GGC 9 | = |
| GGC 10 | = |
| GGGC 1 | = |
| GGGC 2 | = |
| Date 1 | = |
| Date 2 | = |

Date 3 =
Date 4 =
State 2 Statute =
State 1 =
State 2 =
Trust Company =
Court =
x =
y =

Dear :

This letter responds to your authorized representative's letter dated March 22, 2022, requesting a ruling concerning the federal generation-skipping transfer (GST) and estate tax consequences of the proposed modification of Trust A.

The facts and representations submitted are summarized as follows:

On Date 1, a date prior to September 25, 1985, Grantor established and funded an irrevocable trust, Trust A, for the benefit of his descendants. Trust A is administered under the laws of State 1.

Section 2 of Trust A provides, in relevant part, that the trustee is to pay all or such part of the net income or principal of Trust A, or both, to Son, Daughter, the spouses of Son and Daughter, and the issue of Son and Daughter at such times and in such proportions as the trustee in its sole discretion deems advisable, without the duty of equalizing among the beneficiaries.

Section 3 provides, in relevant part, that Trust A is to terminate after the death of Grantor, Grantor's Spouse, Son, and Daughter upon the latest to occur of (i) the youngest issue of Grantor living on Date 1 attaining the age of x or (ii) the expiration of a y-year period after the death of Grantor, Grantor's Spouse, Son, or Daughter. Upon termination, all of the property is to be distributed in equal shares *per stirpes* to the issue of Grantor.

Section 7 of Trust A provides, in relevant part, that Trust A is not to continue for a period longer than 21 years after the death of the survivor of certain named beneficiaries who were alive on Date 1. At the end of this period, the entire trust is to be paid over and distributed as provided in the trust document, notwithstanding that the time for distribution may not otherwise have arrived.

Grantor and Grantor's Spouse are deceased. Son and Daughter are currently alive. The youngest issue of Grantor living on Date 1 has attained the age of x. The current and/or contingent beneficiaries of Trust A consist of Son, Son's Spouse, Daughter, Daughter's Spouse, Grandchild 1, Grandchild 2, Grandchild 3, Grandchild 4,

Grandchild 5, GGC 1, GGC 2, GGC 3, GGC 4, GGC 5, GGC 6, GGC 7, GGC 8, GGC 9, GGC 10, GGGC1, and GGGC2.

On Date 2, Court accepted jurisdiction over the administration of Trust A. Pursuant to court order, Court changed the law governing the administration of Trust A to that of State 2 and changed the trustee of Trust A to Trust Company. State 1 law continues to govern the validity, duration, and construction of Trust A.

On Date 3, Trust Company, pursuant to its authority under State 2 Statute, appointed all of the principal and accumulated income of Trust A to a new trust, to be known as Trust B, contingent upon receipt of a court order from Court and upon a favorable private letter ruling. On Date 4, Court authorized the appointment of principal and accumulated income of Trust A to Trust B without further order of the court, contingent upon receipt of a favorable private letter ruling. State 2 Statute was not in effect on Date 1.

The class of beneficiaries and the distribution standard in Article 3.1 of Trust B is identical to the class of beneficiaries and the distribution standard in Section 2 of Trust A. Under Article 3.1 of Trust B, the trustee may distribute to or for the benefit of any one or more of the beneficiaries as much of the net income from and/or principal of Trust B as the trustee may from time to time deem necessary or advisable, in such amounts or proportions as the trustee may from time to time select, for any purpose. Article 3.1 further provides that the trustee, in the trustee's discretion, may set a distribution policy providing annual distributions to the beneficiaries, or any one or more of them, equal to a percentage of Trust B's value as of the first of the year. Article 3.3 of Trust B provides, in relevant part, that the trustee need not apportion such distributions equally among the beneficiaries, nor make distributions to each of them, and in exercising its discretion to make such distributions, may take into consideration the respective needs and other individual circumstances of the beneficiaries.

The termination provision of Trust B is also identical to the termination provision of Trust A. Article 3.4 of Trust B provides that Trust B is to terminate y years after the death of Son and Daughter, whichever is later. However, instead of providing an outright distribution of assets to the beneficiaries, Article 3.5 of Trust B provides that the balance of the trust estate is to be allocated and distributed in separate trusts to the living descendants of Grantor, *per stirpes*, as described in Article 4 of Trust B.

Article 4 of Trust B provides, in relevant part, that each separate trust named for a descendant of Grantor is to be held, managed, administered, and distributed under the terms of the article (Article 4 Trust). Each descendant of Grantor for whom a separate trust is created, named, and held is to be the beneficiary of his or her separate trust.

Article 4.1 of Trust B provides, in relevant part, that for each separate trust, the trustee is to distribute to or for the benefit of the beneficiary as much of the net income

from and/or principal of the separate trust as the trustee may from time to time deem necessary or advisable, in such amounts or proportions as the trustee may from time to time select, for any purpose. Without limiting the trustee's discretion with regard to these distributions, the trustee, in the trustee's discretion, may set a distribution policy providing that annual distributions to the beneficiary be equal to a percentage of the separate trust's value as of the first of the year. Any net income not so distributed is to be accumulated and annually added to principal.

Article 4.2 of Trust B provides, in relevant part, that if the beneficiary dies before the separate trust is completely distributed, the trustee is to distribute the remaining assets of the separate trust, including any accrued income, to any such person or persons in such amount or amounts as the beneficiary is to appoint in the beneficiary's last will and testament, specifically referring to this testamentary general power of appointment. In default of appointment, the remaining balance of the separate trust is to be allocated and distributed to the beneficiary's then surviving descendants, *per stirpes*. Article 12.6(10) defines the term "general power of appointment" to mean a power of appointment that may be exercised by the donee of such power, outright or in trust in favor of one or more of the permissible appointees or their estates, in such portions as the donee of the power may appoint, including, without limitation, the donee, the donee's estate or the creditors of either.

The terms of Trust B include modifications to the administrative terms of the trust. Article 7 of Trust B provides for the future appointment of a distribution committee that is granted the authority to make discretionary distribution decisions; Article 8 of Trust B provides for the future appointment of an investment committee that is granted the authority to make investment and administrative decisions; and Article 6 provides for the future appointment of a Trust Protector to protect the interests of the beneficiaries and to accomplish Grantor's intentions as set forth in Trust A. Other provisions in Trust B provide that the Trust Protector must be an individual who is not Grantor or a beneficiary or any person related or subordinate to Grantor or the beneficiary within the meaning of § 672(c) of the Internal Revenue Code (Code) and must also be a currently licensed certified public accountant or attorney with significant experience in estate planning and trust matters.

Article 9.2 of Trust B provides, in relevant part, that the trustee must be a corporate trustee. Other provisions of Trust B provide that the corporate trustee must be a trust company or national or state banking institution having trust or fiduciary powers. The corporate trustee must also not be Grantor or a beneficiary or any person related or subordinate to Grantor or the beneficiary within the meaning of § 672(c).

Article 11.6 of Trust B provides for a perpetuities period that is identical to that of Trust A. The article provides that Trust B and any trusts created under Trust B are not to continue for a period longer than 21 years after the life of the survivor of the named beneficiaries in Article 7 of Trust A, who were alive on Date 1.

It is represented that no additions, actual or constructive, have been made to Trust since September 25, 1985.

You have requested the following rulings:

1. The proposed transfer of Trust A assets to a successor trust, Trust B, and the modifications caused by the distribution to Trust B, will not cause the loss of exempt status from the GST tax under § 2601 of the Code.

2. As a result of a beneficiary's testamentary power to appoint in Article 4.2 of Trust B with respect to the property of that beneficiary's Article 4 Trust, the property subject to the power will be includible in that beneficiary's gross estate under § 2041.

LAW AND ANALYSIS

Rulings 1 and 2

Section 2041(a)(2) provides that the value of the gross estate includes the value of all property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, the property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive.

Under § 2041(b)(1) the term "general power of appointment" is defined, in relevant part, to mean a power that is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.

Section 2601 imposes a tax on every GST, which is defined under § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Section 1433(b)(2)(A) of the Tax Reform Act of 1986 (the Act), 1986-3 (Vol. 1) C.B. 1, and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, provide that the GST tax shall not apply to any GST under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer was not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax under § 26.2601-1(b)(1), (b)(2), or (b)(3), will not cause the trust to lose its exempt status. The rules of § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax

purposes. The rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(A) provides that the distribution of trust principal from an exempt trust to a new trust or retention of trust principal in a continuing trust will not cause the new or continuing trust to be subject to the provisions of chapter 13, if either the terms of the governing instrument of the exempt trust authorize distributions to the new trust or the retention of trust principal in a continuing trust, without the consent or approval of any beneficiary or court; or at the time the exempt trust became irrevocable, state law authorized distributions to the new trust or retention of principal in the continuing trust, without the consent or approval of any beneficiary or court; and the terms of the governing instrument of the new or continuing trust do not extend the time for vesting of any beneficial interest in the trust in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date the original trust became irrevocable, extending beyond any life in being at the date the original trust became irrevocable plus a period of 21 years, plus if necessary, a reasonable period of gestation.

Section 26.2601-1(b)(4)(i)(D)(*1*) provides that a modification of the governing instrument of an exempt trust by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

Section 26.2601-1(b)(4)(i)(D)(*2*) provides that for purposes of § 26.2601-1, a modification of an exempt trust will result in a shift in beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST transfer or the creation of a new GST transfer. To determine whether a modification of an irrevocable trust will shift a beneficial interest in a trust to a beneficiary who occupies a lower generation, the effect of the instrument on the date of the modification is measured against the effect of the instrument in existence immediately before the modification. If the effect of the modification cannot be immediately determined, it is deemed to shift a beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. A modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered to shift a beneficial interest in the trust.

Section 26.2601-1(b)(4)(i)(E), *Example 10*, considers the following situation. In 1980, Grantor established an irrevocable trust for the benefit of Grantor's issue, naming a bank and five other individuals as trustees. In 2002, the appropriate local court approves a modification of the trust that decreases the number of trustees which results in lower administrative costs. The modification pertains to the administration of the trust and does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. In addition, the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the trust will not be subject to the provisions of chapter 13.

Section 2652(a) provides, in relevant part, that in the case of any property subject to the tax imposed by chapter 11, the term “transferor” means the decedent.

State 2 Statute provides that a trustee of an original trust may, without authorization by the court, exercise the discretionary power to distribute principal or income to or for the benefit of one or more current beneficiaries of the original trust by appointing all or part of the principal or income of the original trust subject to the power in favor of a trustee of a second trust. The trustee of the original trust may exercise this power whether or not there is a current need to distribute principal or income under any standard provided in the terms of the original trust. The trustee's special power to appoint trust principal or income in further trust under this section includes the power to create the second trust. The second trust may be a trust created under the same trust instrument as the original trust or under a different trust instrument; however, the terms of the second trust are subject to certain limitations related to maintaining the beneficial interests set forth in the original trust, including: (1) only beneficiaries of the original trust may be beneficiaries of the second trust; (2) a power of appointment may be conferred upon a beneficiary to whom the trustee has the power to distribute principal or income of the original trust, subject to State's rule against perpetuities statute.

In the instant case, Trust A does not expressly authorize the trustee to distribute principal from Trust A to Trust B. While State 2 Statute authorizes the trustee to make such a distribution, to satisfy the requirement in § 26.2601-1(b)(4)(i)(A), the state law must be in effect at the time the exempt trust became irrevocable. In this case, State 2 Statute was enacted and become applicable to Trust A subsequent to the execution of Trust A. Accordingly, the effect of the proposed distribution of Trust A principal to Trust B on the exempt status of the trusts will be evaluated under the rules in § 26.2601-1(b)(4)(i)(D).

Article 3.1 of Trust B sets forth income and principal distribution terms and conditions identical to those in Section 2 of Trust A. Article 3.4 of Trust B provides for termination of Trust B at the same time Trust A would have terminated under Section 3, taking into account that Grantor and Grantor’s Spouse are now deceased and the youngest issue of Grantor living on Date 1 has already attained the age of x. Article 3.5

of Trust B identifies the same class of remainder beneficiaries as in Section 3 of Trust A. Trust B differs from Trust A, however, by providing in Article 4 for the creation of separate trusts for each Article 3.5 beneficiary after the termination of Trust B.

Under Article 4.1 and 4.2 of Trust B, the beneficiary of each Article 4 Trust is the sole lifetime beneficiary of the trust and is granted a testamentary general power of appointment over the principal of such trust. The grant of a testamentary general power of appointment to the sole lifetime beneficiary of a trust is viewed as functionally equivalent to granting outright ownership. *See* Restatement (Second) of Property § 19.4 (1986). For transfer tax purposes, the grant of the power will cause the value of each beneficiary's Article 4 Trust to be includible in the gross estate of the beneficiary at his or her death under § 2041(a)(2) and the beneficiary to be treated as the transferor of the Article 4 Trust for GST tax purposes under § 2652(a)(1). Therefore, with respect to these provisions of Trust B, the distribution of principal from Trust A to Trust B will not cause a shift of a beneficial interest to a lower generation beneficiary nor extend the time for vesting of any beneficial interest beyond the period provided for in the original trust.

Trust B additionally differs from Trust A by modifying the provisions relating to the administration of trust, including provisions for (1) the future appointment of a Distribution Committee that is granted the authority to make discretionary distribution decisions, (2) the appointment of an Investment Committee whose authority is limited to investment and administrative decisions, and (3) the future appointment of a Trust Protector. Trust B provides that certain individuals and classes of individuals are prohibited from serving as corporate trustee and Trust Protector. Pursuant to § 26.2601-1(b)(4)(i)(D)(*2*), modifications that are administrative in nature that only indirectly increase the amount transferred will not be considered to shift a beneficial interest in the trust. *See Example 10* of § 26.2601-1(b)(4)(i)(E). Therefore, with respect to these Trust B administrative provisions, the distribution of principal from Trust A to Trust B will not cause a shift of a beneficial interest to a lower generation beneficiary nor extend the time for vesting of any beneficial interest beyond the period provided for in the original trust.

Accordingly, based upon the facts submitted and the representations made, we conclude that the proposed distribution of assets from Trust A to Trust B satisfies the requirements of § 26.2601-1(b)(4)(i)(D) and will not cause Trust A or Trust B to lose their exempt status for GST tax purposes. We also conclude that each named beneficiary of an Article 4 Trust will possess a general power of appointment described in § 2041(b)(1) with respect to the property subject to this power. The value of the property subject to this power at the time of the beneficiary’s death will be includible in the beneficiary’s gross estate under § 2041(a)(2).

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

A copy of this letter should be attached to any gift, estate, or GST tax returns that you may file relating to this matter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

*Karlene M. Lesho*

_____

[Karlene M. Lesho]
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
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cc:

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# 2026 PLR LEXIS 97

US Internal Revenue Service

February 9, 2026

PLR 202619006

**Reporter**
2026 PLR LEXIS 97 *; PLR 202619006

## Private Letter Ruling 202619006

## Summary

RULINGS: [1]-Where on Date 1 Grantor executed irrevocable Trust for benefit of Daughter and on Date 3 Court approved Modifications to Issue Trust benefitting Contingent Beneficiaries upon Daughter's death, IRS ruled that Modifications did not cause Trust to lose GST exempt status under Treas. Reg. § 26.2601-1(b)(1)(i) because Modifications did not shift beneficial interest to any beneficiary occupying lower generation under IRC § 2651 than person who held beneficial interest; Modifications did not cause inclusion of value of any property of Trust in Grantor's gross estate under IRC § 2033 because Grantor retained no interest in Trust property after Date 1; Modifications did not constitute transfer of property that would cause Daughter, Grantor, or remaindermen to be subject to gift tax under IRC § 2501 because Modifications did not change or transfer interests of Daughter or Contingent Beneficiaries.

## Applicable Sections

Section 2033 -- Property in Which Decedent Had an Interest

Section 2035 -- Inclusion of Certain Property in Gross Estate

Section 2036 -- Transfers With Retained Life Estate (Included v. Not Included in Gross Estate)

Section 2037 -- Transfers Taking Effect at Death (Included v. Not Included in Gross Estate)

Section 2038 -- Revocable Transfers (Included v. Not Included in Gross Estate)

Section 2501 -- Imposition of Gift Tax (Imposed v. Not Imposed)

Section 2601 -- Tax On Generation Skipping Transfers

**[*1]**

**Reference:** Refer Reply To: CC:PT&E:B04

PLR-113276-25

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**UI List:** Index Number: 2033.00-00, 2035.00-00, 2036.00-00, 2036.01-00, 2037.00-00, 2038.00-00, 2501.00-00, 2601.00-00, 2601.04-00, 2601.04-03

February 9, 2026

## Core Terms

decedent, modify, beneficiary, gross estate, daughter, grantor, terminate, beneficial interest, appointing power, proposed modification, gift, exempt, modify, gift tax, terms of the trust, trust property, transfer of property, property value, skip, vest, contingent beneficiary, irrevocable trust, inclusion, occupy, redact, appoint, die

## Text

Number: **202619006**

Release Date: 5/8/2026

Index Number: 2033.00-00, 2035.00-00, 2036.00-00, 2036.01-00, 2037.00-00, 2038.00-00, 2501.00-00, 2601.00-00, 2601.04-00, 2601.04-03

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:
[TEXT REDACTED], ID No. [TEXT REDACTED]

Telephone Number:
[TEXT REDACTED]

Refer Reply To:
CC:PT&E:B04
PLR-113276-25

Date:
February 09, 2026

Dear [TEXT REDACTED]:

This letter responds to your authorized representative's letter received July 11, 2025, and subsequent correspondence, requesting gift, estate, and generation-skipping transfer (GST) tax rulings with respect to the proposed modifications of Trust. The facts and representations submitted are summarized as follows:

On Date 1, a date that is prior to September 25, 1985, Grantor executed an irrevocable trust, Trust, for the benefit of Daughter. Grantor has two children, Daughter and Son ("Children"). Daughter has three children, Grandchild 1, Grandchild 2, and Grandchild 3. Grantor made an initial transfer of property **[*2]** to Trust. Trustee is currently serving as trustee of Trust, which is administered under the laws of State.

Under the terms of Article Second of Trust, the trustee must distribute, at least annually, x percent of net income to Daughter. Article Second further provides that the remaining annual income shall be accumulated and added to the principal of Trust, provided that if the trustee considers such income payments to be insufficient, the trustee may distribute principal to Daughter for Daughter's welfare, comfortable support, and education.

Article Third of Trust provides that, unless sooner terminated by its terms, Trust will terminate on the date of Daughter's death. Upon Daughter's death, Article Third provides that the remaining trust assets are to be paid, subject to retention in a separate trust pursuant to Article Fourth until age y, to the then-living issue of Daughter in equal shares, per stirpes. Article Third provides that upon the death of Daughter leaving no issue surviving, the remaining trust assets are to be paid to the then-living issue of Grantor in equal shares, per stirpes, and in default of such issue, to the estate of Daughter.

Article Fourth of Trust provides, **[*3]** in part, during the administration of the separate trust, the trustee may distribute to or for the benefit Daughter's issue so much of the income and principal as the trustee deems advisable for the welfare, comfortable support and education of said issue. Upon such issue attaining the age of y as provided in Article Fourth of Trust, the share held for such issue is to be distributed to such issue free of any trust. If any of the surviving issue shall die prior to reaching the age of y, the trust share held for such issue is to be distributed to the estate of such issue.

Article Fifth of Trust identifies powers of the trustee that are in addition to powers vested in trustees by law. Paragraph J of Article Fifth provides that in making any payments of income or principal pursuant to the terms of Trust, the trustee may, in its sole discretion, make any such payments directly to the beneficiary or indirectly on behalf of the beneficiary.

Article Ninth of Trust provides that the trustee may resign at any time by petitioning a court of competent jurisdiction to designate and appoint a successor trustee. Article Ninth provides direction regarding a trustee's compensation.

Article Eleventh of **[*4]** Trust outlines the spendthrift provisions that apply to Daughter and any remainderman.

State Statute 1 provides, in part, that a noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries even if the modification or termination is inconsistent with a material purpose of the trust. State's common law rule against perpetuities applies to the administration of Trust and thus, property of Trust must vest in one or more of the remainder beneficiaries no later than twenty-one (21) years after the death of a life in being at the time of the creation of the interest. *See* State Statute 2.

On Date 2, Grantor, Daughter, and all contingent beneficiaries of Trust executed a modification agreement to modify the terms of Trust, effective upon the issuance of a favorable private letter ruling and a County Court decree approving modification of Trust in accordance with the terms of the modification agreement.

Grantor and Daughter, with the consent of all Trust contingent beneficiaries, petitioned County Court to approve the modification agreement regarding Trust, and, on Date 3, County Court issued an order (Date 3 Order) approving the modification **[*5]** agreement.

The relevant provisions of Trust, as modified by the Date 3 Order, are summarized as follows:

Article Third of Trust, as modified, continues to provide that upon the death of Daughter, the remaining trust assets are to be allocated to the then-living issue of Daughter in equal shares, per stirpes, and in default of such issue, to the then-living issue of Grantor in equal shares, per stirpes, and in default of such issue, to the estate of Daughter. Further, under Article Fourth, as modified, the property that is allocated to Daughter's issue shall be retained in a separate issue trust (Issue Trust) for each of Daughter's issue.

Article Fourth of Trust, as modified, provides for the same distributions of income and principal to the beneficiary of an Issue Trust as provided in Article Second of Trust, and provides that, unless sooner distributed in full, the Issue Trust terminates upon the earlier of (i) the death of the beneficiary, or (ii) the day prior to the date that is twentyone (21) years after the death of the last to die of Grantor's Children. If the Issue Trust terminates upon the death of the beneficiary, Article Fourth, as modified, grants the beneficiary a testamentary **[*6]** general power to appoint the trust property, including undistributed income. To the extent not effectively appointed by such beneficiary, Article Fourth, as modified, provides the remaining trust property shall be paid to the beneficiary's estate. If the Issue Trust

terminates the day prior to the date that is twenty-one (21) years after the death of the last to die of Grantor's Children, the remaining trust property shall be paid to the beneficiary.

Article Fifth, Paragraph J of Trust, as modified, confirms that the trustee's discretionary power to make payments of income or principal directly to a beneficiary or indirectly on behalf of a beneficiary applies in the case of payments to or on behalf of Daughter's issue or issue of Grantor.

Article Ninth of Trust, as modified, provides for the resignation and appointment of an additional and successor trustee.

Article Eleventh of Trust, as modified, confirms the spendthrift clause applies equally to Daughter, Daughter's issue, and Grantor's issue.

It is represented that no actual or constructive additions have been made to Trust after September 25, 1985. It is also represented that Grantor has retained no ownership interest in, and no aspects **[*7]** of ownership over, Trust or the assets of Trust.

Rulings Requested

You have requested the following rulings:

1. The proposed modifications to the terms of Trust will not cause Trust or any separate Issue Trust subsequently created under the terms of Trust to lose its exempt status for purposes of the GST tax.
2. The proposed modifications to the terms of Trust will not result in the inclusion of the value of any Trust property in the gross estate of the Grantor for Federal estate tax purposes.
3. The proposed modifications to the terms of Trust will not cause the Grantor to have made a gift for Federal gift tax purposes.
4. The proposed modifications to the terms of Trust will not cause any beneficiary of Trust to have made a gift for Federal gift tax purposes.

Law and Analysis
Ruling 1
Law

Section 2601 imposes a tax on every GST, which is defined under § 2611(a) as a taxable distribution, a taxable termination, and a direct skip.

Section 2612(a) provides that the term "taxable termination" means a termination (by death, lapse of time, release of a power, or otherwise) of an interest in property held in a trust unless (A) immediately after such termination, a non-skip person has an interest in such property, or (B) at no time after such termination may a distribution (including distributions **[*8]** on termination) be made from such trust to a skip person. Section 2612(b) provides that the term "taxable distribution" means any distribution from a trust to a skip person (other than a taxable termination or a direct skip). Under § 2612(c)(1), a direct skip is a transfer subject to federal estate or gift tax of an interest in property to a skip person.

Under § 1433(a) of the Tax Reform Act of 1986 (Act) and § 26.2601-1(a) of the Generation-Skipping Transfer Tax Regulations, the GST tax is generally applicable to GSTs made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i), the GST tax does not apply to a transfer under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer is not made out of corpus added to the Trust after September 25, 1985 (or out of income attributable to corpus so added). Under § 26.2601-1(b)(1)(ii), any trust in existence on September 25, 1985, will be considered irrevocable unless the settlor had a power that would have caused inclusion of the trust in his or her gross estate under § 2038 or § 2042, if the settlor had died on September 25, 1985.

Section 26.2601-1(b)(1)(ii)(A) provides that any trust in existence on September 25, 1985, is considered an irrevocable trust except as otherwise provided in § 26.2601-1(b)(1)(ii)(B) or (C), which relate to property includible in a grantor's gross estate **[*9]** under §§ 2038 and 2042.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax under § 26.2601-1(b)(1), (b)(2), or (b)(3) (hereinafter referred to as an exempt trust), will not cause the trust to lose its exempt status. The rules of § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. The rules (unless specifically noted) do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of capital gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D)(*1*) provides, in part, that a modification of the governing instrument of an exempt trust by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, **[*10]** and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

Section 26.2601-1(b)(4)(i)(D)(*2*) provides that for purposes of § 26.2601-1, a modification of an exempt trust will result in a shift in beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST transfer or the creation of a new GST transfer. To determine whether a modification of an irrevocable trust will shift a beneficial interest in a trust to a beneficiary who occupies a lower generation, the effect of the instrument on the date of the modification is measured against the effect of the instrument in existence immediately before the modification. If the effect of the modification cannot be immediately determined, it is deemed to shift a beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification.

Section 26.2601-1(b)(4)(i)(E), *Example 10*, considers the following situation. In 1980, Grantor established an irrevocable trust for the benefit of Grantor's issue, naming a bank and five other individuals as trustees. **[*11]** In 2002, the appropriate local court approves a modification of the trust that decreases the number of trustees which results in lower administrative costs. The modification pertains to the administration of the trust and does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. In addition, the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the trust will not be subject to the provisions of chapter 13.

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive.

Section 2041(b)(1) defines **[*12]** a general power of appointment as one that exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate. Section 20.2041-1(a) of the Estate Tax Regulations provides that a decedent's gross estate includes the value of property in respect of which the decedent possessed, exercise, or released certain powers of appointment.

Section 20.2041-1(b)(1) provides, in part, that the term "power of appointment" includes all powers that are in substance and effect powers of appointment regardless of the nomenclature used in creating the power and regardless of local property law connotations. For example, if a trust instrument provides that the beneficiary may appropriate or consume the principal of the trust, the power to consume or appropriate is a power of appointment. Similarly, a power given to a decedent to affect the beneficial enjoyment of trust property or its income by altering,

amending, or revoking the trust instrument or terminating the trust is a power of appointment. Further, a power in a donee to remove or discharge a trustee and appoint himself may be a power of appointment.

Section 20.2041-1(c)(1) defines the term "general power of appointment" as any power of appointment exercisable in favor of the decedent, **[*13]** his estate, his creditors, or the creditors of his estate. A power of appointment is not a general power if by its terms it is either --(a) exercisable only in favor of one or more designated persons or classes other than the decedent or his creditors, or the decedent's estate, or the creditors of his estate, or (b) expressly not exercisable in favor of the decedent or his creditors, or the decedent's estate or the creditors of his estate.

Section 20.2041-3(a)(1) provides that property subject to a power of appointment created after October 21, 1942, is includible in the gross estate of the holder of the power under varying conditions depending on whether the power is (i) general in nature, (ii) possessed at death, or (iii) exercised or released.

Section 2652(a)(1) provides that the term transferor means, in the case of any property subject to the tax imposed by chapter 11, the decedent, and in the case of any property subject to the tax imposed by chapter 12, the donor. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Analysis

In the present case, Trust is exempt from the GST tax because Trust was irrevocable on September 25, 1985. You have represented that no additions, **[*14]** actual or constructive, have been made to Trust after that date. Accordingly, pursuant to § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i), Trust is not currently subject to the GST tax.

After the proposed modifications to Trust, Daughter and contingent beneficiaries have the same interests they had before the proposed modifications, except that property of Trust that would have been distributed free from trust to Daughter's issue, will be retained in a separate trust (i.e., Issue Trust) for the lifetime benefit of such beneficiary, unless otherwise terminated earlier on the date of the first to occur of the following events: (i) the distribution of the entire trust property, (ii) the death of the beneficiary, or (iii) the day prior to the date that is y years after the death of the last to die of Grantor's Children. With respect to each Issue Trust created, the beneficiary of such Issue Trust is granted a testamentary general power of appointment under § 2041(a)(2) and § 20.2041-3 over the Issue Trust, and each such Issue Trust must terminate and vest within the period prescribed by State's rule against perpetuities.

For transfer tax purposes, the grant of the testamentary general power of appointment will cause the Issue Trust to be includible in **[*15]** the gross estate of the beneficiary of such Issue Trust at his or her death under § 2041(a)(2) and § 20.2041-3, and such beneficiary will be the transferor of the trust for GST tax purposes under § 2041(a)(2). Therefore, the proposed modifications to Trust will not cause a shift of a beneficial interest to a lower generation beneficiary nor extend the time for vesting of any beneficial interest beyond the period provided for in the original trust.

Proposed modifications to Article Fifth, Article Ninth, and Article Eleventh are conforming modifications to Trust and are administrative in nature to apply equally to any Issue Trust thereafter created under the terms of Trust. Therefore, we conclude that the modifications to Article Fifth, Article Ninth, and Article Eleventh of Trust will not shift a beneficial interest in Trust to any beneficiary occupying a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modifications, and the modifications will not extend the time for vesting of any beneficial interest in Trust beyond the period provided for in the original governing instrument of Trust. *See Example 10* of § 26.2601-1(b)(4)(i)(E).

Accordingly, based on the facts submitted and the representations **[*16]** made, we conclude that the proposed modifications to Trust or any Issue Trust subsequently created under the terms of Trust pursuant to the Date 3 Order do not cause Trust or any Issue Trust to lose GST exempt status or otherwise become subject to the GST tax.

Ruling 2Ruling 2
Law

Section 2001(a) provides that a tax is imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2033 provides that the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

Section 2035(a) provides that if (1) the decedent transferred an interest in property or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and (2) the value of the property (or interest therein) would have been included in the gross estate under §§ 2036, 2037, 2038, or 2042 if the interest or power had been retained by the decedent on the date of death, then the value of the gross estate shall include the value of any property (or interest therein) that would have been so included. Under § 2035(b), the gross estate shall be increased by the amount of any gift tax paid by the decedent or his estate on any **[*17]** gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent's death.

Section 2036(a) provides, generally, that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death: (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Section 2037(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if (1) the possession or enjoyment of the property can, through ownership **[*18]** of such interest, be obtained only by surviving the decedent, and (2) the decedent has retained a reversionary interest in the property and the value of the reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of the property.

Section 2038(a)(1) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished during the three-year period ending on the date of the decedent's death. Section 20.2038-1(a)(2) provides that § 2038 does not apply if the decedent's retained power could be exercised only with the consent of all parties having an interest in the property and the power **[*19]** adds nothing to the rights of the parties under local law.

In order for §§ 2035 through 2038 to apply, a decedent must have made a transfer of property or any interest therein under which the decedent retained an interest in, or power over, the income or corpus of the transferred property. Grantor retained no interest in or power over Trust property after Date 1. Accordingly, based on the facts submitted and the representations made, we conclude that the proposed modifications to Trust will not result in the inclusion of the value of any property of Trust in the gross estate of Grantor for federal estate tax purposes.

Ruling 3 and Ruling 4
Law

Section 2501(a)(1) imposes a tax for each calendar year on the transfer of property by gift during the calendar year by any individual.

Section 2511(a) provides that, subject to certain limitations, the gift tax applies whether the transfer is in trust or otherwise, direct or indirect, and whether the property transferred is real or personal, tangible or intangible.

Section 25.2511-1(c)(1) of the Gift Tax Regulations states that any transaction in which an interest in property is gratuitously passed or conferred upon another, regardless of the means or device employed, constitutes a gift subject to tax.

Section 2512(a) provides that if the gift is made in property, **[*20]** the value thereof at the date of the gift is considered the amount of the gift.

Section 2512(b) provides that where property is transferred for less than adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration is deemed to be a gift, and is included in computing the amount of gifts made during the calendar year.

Analysis

In this case, the proposed modifications to Trust do not change or transfer the interests of Daughter or any contingent beneficiaries of Trust, nor do they confer any new rights to any beneficiaries. Accordingly, based on the facts submitted and the representations made, we conclude that the proposed modifications to Trust do not constitute a transfer, direct or indirect, of property that will cause Daughter, Grantor, or any remainderman to be subject to gift tax under § 2501.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained **[*21]** in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

A copy of this letter should be attached to any gift, estate, or GST tax returns that you may file relating to this matter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel

Passthroughs, Trusts, and Estates

Melissa C. Liquerman

Melissa C. Liquerman

Senior Counsel, Branch 4

Office of the Associate Chief Counsel

(Passthroughs, Trusts, and Estates)

Enclosure

Copy for § 6110 purposes

cc: [TEXT REDACTED]

cc: [TEXT REDACTED]

**Load Date:** 2026-05-09

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# 2026 PLR LEXIS 136

US Internal Revenue Service

March 2, 2026

PLR 202622002

**Reporter**
2026 PLR LEXIS 136 *; PLR 202622002

## Private Letter Ruling 202622002

## Summary

RULINGS: [1]-Where Decedent died testate, survived by Spouse, Children 1 and 2, and Grandchildren 1, 2, and 3; where Will provided for Residuary Trust to be managed by Advisory Committee; where Trust was to be divided into Shares with 1 share benefiting each Child and that Child's issue, but after Child 2 died without issue, changes were made to Trust under Court Orders; and where such Orders culminated in Settlement Agreement that modified Trust in various respects, but required IRS approval for implementation, IRS held that Trust would continue to be GST-tax exempt per IRC § 2601; that powers granted to Advisory Committee was not a general power of appointment per IRC § 2041(a); that modifications did not cause Trust or any beneficiary to be subject to gift tax per IRC § 2501 nor be deemed a sale, exchange, or other disposition resulting in realization of gain or loss per IRC § 1001.

## Applicable Sections

Section 1001 -- Determination of Amount of and Recognition of Gain or Loss

Section 2041 -- Powers of Appointment (Included v. Not Included in Gross Estate)

Section 2501 -- Gift v. Not a Gift

Section 2601 -- Wills or Revocable Trusts Executed Before October 22, 1986

**[*1]**

**Reference:** Refer Reply To:CC: PT&E:B04, PLR-113827-25

**UI List:** Index Number: 2601.00-00, 2601.04-00, 2601.04-01, 2041.00-00, 2041.03-00, 2501.01-00, 1001.00-00

March 2, 2026

## Core Terms

modify, gift, beneficial interest, proposed modification, exempt, decedent, appointing power, court order, beneficiary, settlement agreement, grandchild, irrevocable, modify, died, general power of appointment, successor trustee, gross estate, grandchild

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## Text

Release Date: 5/29/2026

Index Number: 2601.00-00, 2601.04-00, 2601.04-01, 2041.00-00, 2041.03-00, 2501.01-00, 1001.00-00

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

[TEXT REDACTED], ID No. [TEXT REDACTED]

Telephone Number:

[TEXT REDACTED]

Refer Reply To:

CC:PT&E:B04

PLR-113827-25

Date:

March 02, 2026

Dear:

This letter responds to a letter dated July 16, 2025, and subsequent correspondence, submitted by your authorized representative requesting income, gift, estate, and generation-skipping transfer (GST) tax rulings with respect to a proposed modification of Trust.

The information submitted and representations made are summarized as follows:

Decedent died testate on Date 1, a date prior to September 25, 1985, survived by Spouse, Child 1, Child 2, Grandchild 1, Grandchild 2, and Grandchild 3. Decedent's will provides for a number of specific bequests, and further provides that the remainder of the estate is to pass to a residuary trust (Trust) to be held in trust until twenty-one (21) years after the death of the last survivor **[*2]** among Decedent's children and grandchildren who are in being at the time of Decedent's death. Upon termination, the principal of Trust shall be divided among its income beneficiaries, per stirpes. Pursuant to the terms of Decedent's will, Trust was divided into two equal shares, Fund A and Fund B, one for the benefit of each of Decedent's two children and their children.

Trustee represents that there have been no additions, actual or constructive, to Trust after September 25, 1985.

Fund A is for the benefit of Child 1 and Child 1's children. The terms that govern Fund A provide that during Child 1's life, Child 1 receives two-thirds of the net income and Child 1's children receive one-third of the net income. At Child 1's death, all of the income is payable to Child 1's surviving issue per stirpes. If Child 1 and all of Child 1's issue die before the Trust terminates, the entire assets of Fund A are to be added to the assets of Fund B.

The terms that govern Fund B are identical to Fund A, except that Fund B is to be held for the benefit of Child 2 and Child 2's children. Child 2 died on Date 2 (a date prior to September 25, 1985), without issue. According to the terms of Decedent's will, **[*3]** Fund A and Fund B were combined as of Child 2's death (hereinafter, Trust).

Pursuant to the terms of Trust, the trustee acts at the direction of an Advisory Committee consisting of Spouse, Child 1, and Child 2. A majority of adult beneficiaries may remove and replace the trustee with a bank doing trust business in State 1 and having capital stock of a minimum specified amount.

On Date 3, Trust was modified by court order to extend the life of the Advisory Committee beyond the life of Child 1 by providing that Child 1's living children would serve on the Advisory Committee at Child 1's death, and to provide successor provisions following the death of Child 1's children.

On Date 4, Trust was modified by court order to expand the Advisory Committee to include Grandchild 1, Grandchild 2, and Grandchild 3 (collectively, Grandchildren) as members of the Advisory Committee with Child 1 during Child 1's lifetime, and to add successor provisions following the death of Grandchild 1.

On Date 5, Trust was modified by court order to convert each beneficiary's income interest from a share of net income to a share of an established unitrust amount.

On Date 6, Child 1 died (predeceased by Spouse) and was **[*4]** survived by Grandchildren. Following Child 1's death, Grandchildren serve as the sole members of the Advisory Committee.

On Date 7, Trustee and the beneficiaries of Trust executed a nonjudicial settlement agreement (Settlement Agreement) to modify the terms of Trust effective upon the issuance of a favorable private letter ruling. On Date 8, Trustee petitioned Court to approve the Settlement Agreement and on Date 9, Court entered an order approving the Settlement Agreement (Court Order).

The modification pursuant to Court Order removes the requirement that a successor trustee be a bank doing trust business in State 1 and provides instead that a successor trustee must be a bank or trust company (but without any specific geographical requirement), and adds provisions regarding successor trustee indemnification, payment of fees, and resignation.

The modification pursuant to Court Order also adds a new paragraph to Trust that provides the Advisory Committee with the power to direct the trustee as to the investments of Trust, including the power to direct the trustee to purchase, sell, and retain all Trust assets; to exercise voting, management, and similar rights with respect to ownership **[*5]** interest in entities held by Trust; to direct the trustee to borrow and lend money and to guarantee the loans of entities owned by Trust; and to create new business entities. The new paragraph also provides for the method of issuing such direction, trustee liability and indemnification, and other similar provisions related to the Advisory Committee's investment direction power. The new paragraph applies only if the trustee resides in State 2 and provides that, in exercising these powers, the Advisory Committee is acting in a fiduciary capacity.

Trustee represents that the Advisory Committee has no power or authority to alter how, or to whom, the income or principal of the trust is distributed.

You have requested the following rulings:

1. The proposed modification will not violate the transition rules under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and, thus, the Trust will continue to be exempt from GST tax.

2. The powers granted to the members of the Advisory Committee pursuant to the proposed modification will not cause the members of the Advisory Committee to possess, individually or collectively, a general power of appointment within the meaning of § 2041(a).

3. The proposed modification will not cause the Trust or any of the beneficiaries **[*6]** to be subject to federal gift tax with respect thereto.

4. The proposed modification will not be considered a sale, exchange, or other disposition of property and will not cause the Trust or any of the beneficiaries to realize a gain or loss for purposes of § 1001.

LAW AND ANALYSIS

Ruling 1:

Section 2601 imposes a tax on every GST. Section 2611(a) defines a GST as a taxable distribution, a taxable termination, and a direct skip.

Under § 1433(b)(2)(A) of the Tax Reform Act of 1986 and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations, the GST tax provisions do not apply to any GST under a trust that was irrevocable on September 25, 1985. However, this exemption does not apply if additions (actual or constructive) are made to the trust after September 25, 1985.

Section 26.2601-1(b)(1)(ii)(A) provides that any trust in existence on September 25, 1985, will be considered an irrevocable trust except as provided in § 26.2601-1(b)(1)(ii)(B) or (C), which relate to property includible in a grantor's gross estate under § 2038 and § 2042.

Section 26.2601-1(b)(4) provides rules for determining when a modification, judicial construction, settlement agreement or trustee action with respect to a trust that is exempt from the GST tax under § 26.2601-1(b)(1), (2), or (3) (hereinafter referred to as an exempt trust) will not cause the trust to lose its exempt status. In general, unless specifically provided otherwise, **[*7]** the rules contained in § 26.2601-1(b)(4) are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. Unless specifically noted, the rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D)(*1*) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy § 26.2601-1(b)(4)(i)(A), (B), or (C)) by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

Section 26.2601-1(b)(4)(i)(D)(*2*) provides that for purposes of this section, a modification **[*8]** of an exempt trust will result in a shift in beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST or the creation of a new GST. To determine whether a modification of an irrevocable trust will shift a beneficial interest in a trust to a beneficiary who occupies a lower generation, the effect of the instrument on the date of the modification is measured against the effect of the instrument in existence immediately before the modification. If the effect of the modification cannot be immediately determined, it is deemed to shift a beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. A modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered to shift a beneficial interest in the trust.

Section 26.2601-1(b)(4)(i)(E), *Example 10*, considers a situation where in 1980, Grantor executed an irrevocable trust for the benefit of Grantor's issue, naming a bank and five other individuals as trustees. **[*9]** In 2002, the appropriate local court approves a modification of the trust that decreases the number of trustees which results in lower administrative costs. The modification pertains to the administration of the trust and does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. In addition, the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the trust will not be subject to the provisions of chapter 13 of the Internal Revenue Code.

State 1 Statute 1 provides, in part, that interested persons (persons whose consent would be required to achieve a binding settlement were the settlement to be approved by the court) may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

State 1 Statute 2 provides, in part, that a noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the **[*10]** trust.

Trustee represents that Trust was irrevocable on September 25, 1985, and that there have been no additions, constructive or otherwise, to Trust after September 25, 1985. Consequently, Trust is currently exempt from GST tax.

The proposed modification of Trust approved by Court Order to remove the geographical requirement that a successor trustee be a bank doing trust business in State 1 and to add provisions regarding successor trustee indemnification, payment of fees, and resignation, is viewed as pertaining to the administration of the trust, comparable to the administrative modification in *Example 10* of § 26.2601-1(b)(4)(i)(E).

In addition, the provision of the Advisory Committee with the power to direct the trustee as to the investments of Trust (and accompanying provisions) are viewed as administrative in nature and, under § 26.2601-1(b)(4)(i)(D)(2), will not be considered to shift a beneficial interest to a lower generation in the trust or extend the time for vesting of any beneficial interest in the trust beyond the period provided for in Trust.

Accordingly, based upon the facts submitted and the representations made, we conclude that after the proposed modification of Trust approved by Court Order, Trust will continue to **[*11]** be exempt from GST tax.
Ruling 2:

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under §§ 2035 to 2038, inclusive.

Section 2041(b)(1) provides that a general power of appointment is a power which is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate.

Section 20.2041-1(b)(1) of the Estate Tax Regulations provides, in part, that the term "power of appointment" includes all powers which are in substance and effect powers of appointment regardless of the nomenclature used in creating the power and regardless of local property law connotations. For example, if a trust instrument provides that the beneficiary may appropriate or consume the principal of the trust, the power to consume or appropriate is a power of appointment. **[*12]** A power in a donee to remove or discharge a trustee and appoint himself may be a power of appointment. For example, if under the terms of a trust instrument, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and the decedent has the unrestricted power to remove or discharge the trustee at any time and appoint any other person including himself, the decedent is considered as having a power of appointment. However, the mere power of management, investment, custody of assets, or the power to allocate receipts and disbursements as between income and principal, exercisable in a fiduciary capacity, whereby the holder has no power to enlarge or shift any of the beneficial interests therein except as an incidental consequence of the discharge of such fiduciary duties is not a power of appointment.

In the present case, the proposed modification provides the Advisory Committee with the power to direct the trustee regarding the investments of Trust. The powers of the Advisory Committee are exercisable in a fiduciary capacity. Further, under the terms of Trust, the trustee has no discretionary power with respect to **[*13]** distributions of trust income and principal and the Advisory Committee does not have the power to remove and replace the trustee. Accordingly, based on the facts submitted and the representations made, we conclude that the powers granted to

the Advisory Committee under the proposed modification will not cause the members of the Advisory Committee to possess, individually or collectively, a general power of appointment within the meaning of § 2041(a).

Ruling 3:

Section 2501(a)(1) imposes a tax for each calendar year on the transfer of property by gift during such calendar year by any individual resident or nonresident.

Section 2511(a) provides that the tax imposed by § 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 2512(a) provides that if the gift is made in property, the value thereof at the date of the gift is considered the amount of the gift.

Section 2512(b) provides that where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift, and shall be included in computing the amount **[*14]** of gifts made during the calendar year.

In this case, because the proposed modification of Trust does not change the interests of the beneficiaries, no transfer of property is deemed to occur. *See* § 26.2601-1(b)(4)(i)(E), *Example 10*. Accordingly, we conclude that the proposed modification of Trust will not cause a transfer, direct or indirect, of property that will be subject to the gift tax imposed by § 2501.

Ruling 4:

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining loss over the amount realized.

Section 1001(b) provides that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. Under § 1001(c), except as otherwise provided in subtitle A, the entire amount of gain or loss determined under § 1001 on the sale or exchange of property shall be recognized.

Section 1.1001-1(a) of the Income Tax Regulations provides that the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or loss sustained.

Because the proposed modification **[*15]** of Trust does not change the interests of the beneficiaries, no transfer of property is deemed to occur. Accordingly, the proposed modification of Trust will not cause Trust or any of the beneficiaries to realize any gain or loss under § 1001.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel

Passthroughs, Trusts, and Estates

By: Leslie H. Finlow

Senior Technician Reviewer, Branch 4

Office of the Associate Chief Counsel

(Passthroughs, Trusts, and Estates)

Enclosure:

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# CHARITABLE PLANNING IN THE CURRENT TAX AND ECONOMIC ENVIRONMENT

**ANITA J. SIEGEL, ESQ.**
Bressler Amery & Ross, P.C.
325 Columbia Turnpike, Suite 301
Florham Park, NJ 07932
973-514-1200 ext. 2896
973-660-4437 direct dial
asiegel@bressler.com
July 7, 2026


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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 2026 under the Big Beautiful Tax Act, up from $13,990,000 under prior 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 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 by 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 once again 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 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, rose 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 after the Bill passed (for 2025) there is a standard deduction of $15,000 for single filers or $30,000 for joint filers. But there is a new income tax charitable 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 law 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.

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)

   d 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, and increases further in coming years)

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 and in 2026 the limit is now $111,000 per donor

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 $111,000 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" started 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 federal 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 $111,000 2026 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 still 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.

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 deductable 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 <u>to the CRT</u> 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) Paired up with a remainder of the CRUT to a DAF after a term of years or death of the initial beneficiary avoids being locked into initial or amended remainder beneficiaries getting the remainder outright, allows for multigenerational charitable grants from the balance by donor advisors selected for the DAF after the term of years or initial beneficiary's death

(5) **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

(6) **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 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.

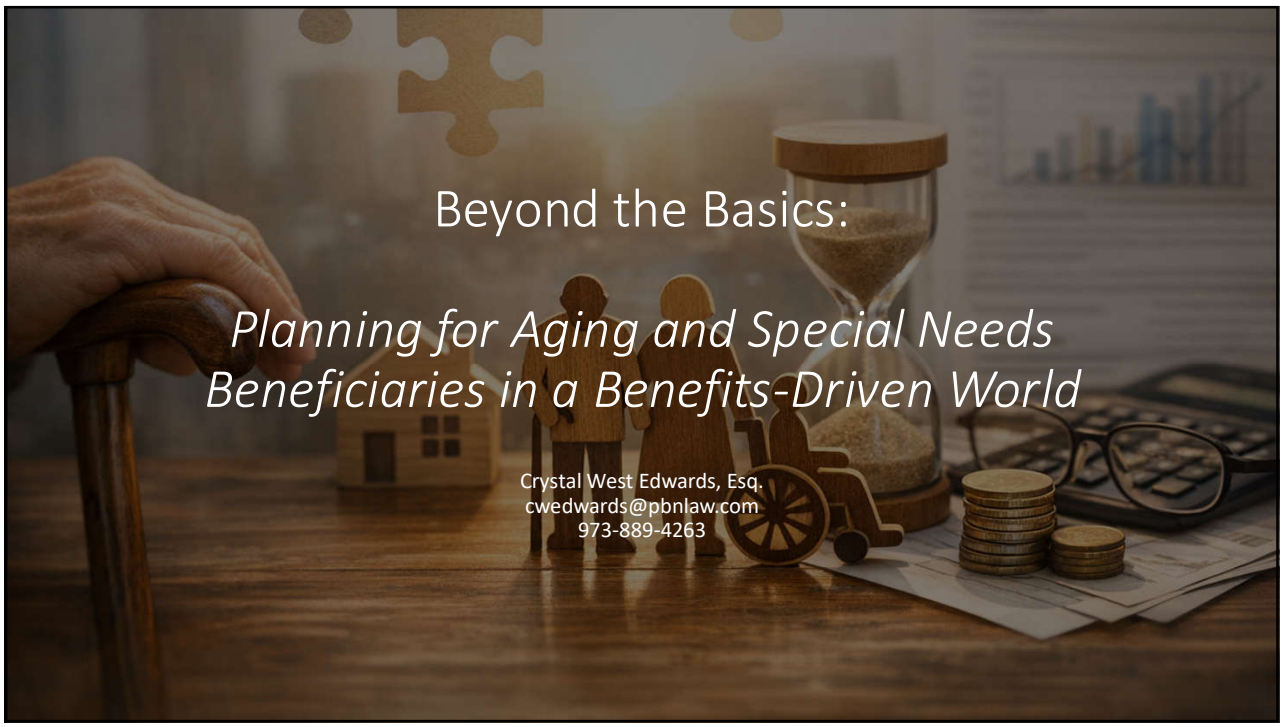
3. Care should be taken in drafting the tax clause for a decedent making a charitable provision, especially if all or a portion of the residuary estate is to pass to charity
   a. If charity is to receive all or a portion of the residue, a circular computation results and a payment of tax on the tax
   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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# Beyond the Basics:

## *Planning for Aging and Special Needs Beneficiaries in a Benefits-Driven World*

Crystal West Edwards, Esq.
cwedwards@pbnlaw.com
973-889-4263

# Who is the Beneficiary?

Identify The Services The Beneficiary Receives Or Will Receive At A Future Time To Determine Distribution Structure Or Considerations In The Plan...

- Nature Of Disability
- Onset
- Current Care Services
- Future Care Services

# Target Populations per Medicaid Program

| | |
|---|---|
| SSI Categorically Linked | Unable To Engage In Substantial Gainful Activity (SGA Is $1,690 In 2026) |
| NJ Family Care (Medicaid Expansion through ACA) | Low Income Individuals And Families |
| NJ Workability | Individuals With Disabilities Aged 16+ |
| Managed Long Term Services and Supports (MLTSS) | Aged, Blind Or Disabled (Need Assistance With Three Activities Of Daily Living (Eating, Dressing, Bathing, Toileting, Transferring And Incontinence) |
| Supports Program (SP) | Individuals With Intellectual And/Or Developmental Disabilities |
| Community Care Program (CCP) | Individuals With Intellectual And/Or Developmental Disabilities |

# Medicaid Services

Doctor checkups and sick visits
Specialist services
Vaccinations
Emergency care
Inpatient and outpatient hospital treatment
Laboratory tests and X-rays
Behavioral Health
Substance use disorder treatment
Early and Periodic Screening, Diagnostic and Treatment

**HOME HEALTH CARE**

Physician services
Nurse-midwife services
Family planning and any necessary supplies

**NURSING FACILITIES**

Treatment in residential treatment centers
Vision care, including optometry services
Dental care
Chiropractic services
Psychologist
Podiatrist
Prosthetics and orthotics

**DRUGS NECESSARY DURING LONG TERM CARE**

Drugs at retail cost

**DURABLE MEDICAL EQUIPMENT**

Hearing services, including hearing aids

**HOSPICE CARE**

Transportation

**PERSONAL CARE SERVICES**

Licensed practitioner services

**PRIVATE DUTY NURSING**

Services in a clinic

**PHYSICAL, OCCUPATIONAL AND SPEECH THERAPY**

Inpatient psychiatric care
Breast feeding equipment
Doula

# Services by the DDD (SP/CCP)

| | | |
|---|---|---|
| Assistive Technology | Behavioral Supports | Career Planning |
| Community Inclusion Services | Community Transition Services | Day Habilitation |
| Environmental Modifications | Goods & Services | Natural Supports Training |
| Occupational Therapy | Personal Emergency Response System (PERS) | Physical Therapy |
| Respite | Speech, Language and Hearing Therapy | Support Coordination |
| Supported Employment – Individual and Small Group | Transportation | Vehicle Modifications |

# Special Needs Trust Objectives

- Provide Assets For The Beneficiary's Special Needs So That The Beneficiary Can Live A More Productive And Comfortable Life
- Avoid Having Trust Assets Count As A Resource To The Beneficiary
- Avoid Having Trust Distributions Count As Income To The Beneficiary

# Types of Special Needs Trusts

- Special Needs Trust "First-party" Or "Payback Trust"
  - 42 U.S.C. §1396p(d)(4)(a)
- Third Party Special Needs Trust
  Also Known As Supplemental Benefits Trust
- Sole Benefit Trust
  - Transfer Of Assets From Person Who Needs Medicaid To Trust For Individual With Disabilities
  - Payback Provision Required
- Pooled Trust
  - 42 U.S.C. §1396p(d)(4)(c) -- Managed By Non-profit
  - Separate Account For Each Person
  - Established By Parent, Grandparent, Guardian, Court ***OR*** Individual With Disabilities
  - Remaining Assets In Account May Be Subject To Payback Or Retention By Non-profit

# Third-Party Trusts

- Types:
  - Irrevocable Inter Vivos (Living) Trust
  - Testamentary Trust Created By Will
  - Revocable
- No Payback Provision Required (Not To Be Confused With A Sole Benefit Trust).
- Include Specific Dispositive Provisions For Final Disposition Of Trust Assets.

# Third-Party Trusts

- Periodic Additions Can Be Made Through Lifetime Giving Or Inheritances.
- Rights Of Withdrawal ("Crummey" Rights) Should Be Incorporated In Situations Of Lifetime Giving To Reduce Or Possibly Eliminate Potential Gift Tax Reporting
  - See IRS Notice 2010-19, Issuing Guidance Under IRS §2511(c)
- **Must** Exclude Beneficiary With Disabilities From Serving As Crummey Power Holder.

## Beneficiary Restrictions

Cannot be the Trustee

Cannot compel distributions

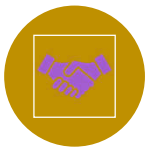
# Characteristics of a successful trustee



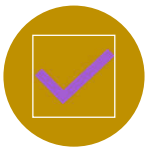
Knowledge Of The Beneficiary And Understanding Of His Or Her Needs



Understanding Of The Government Benefits Programs For Which The Beneficiary Participates



Personal Knowledge Or Access To Effective Counsel To Advise On Impact Of Trust Distributions On Continued Eligibility For Benefits



Thick Skin And Patience ☺

11

# Trustee Appointments

Family members

Corporate

Non-profit

Professional

Trust protectors

# Family Members

| Advantages | Disadvantages |
|---|---|
| Close familial relationship | Often challenging to say no |
| Understanding of the beneficiary's need | Lack of understanding about Medicaid eligibility rules |
| | Lack of understanding about intersection between government benefits and trust administration |
| | Increased legal fees to obtain proper advice on the funding and management of the trust |
| | More complex redetermination or annual accounting process if records are not pristine. |

# Corporate

| Advantages | Disadvantages |
|---|---|
| Better understanding of Medicaid eligibility rules | Often distanced from the beneficiary |
| Ability to issue spot | Increased administration costs to hire care managers |
| Accounting and tax work often handled internally | May not wish to be adverse to Medicaid agency or challenge unreasonable opinions |
| Often maintains better records for annual reporting purposes (including redeterminations) | Increased administration fees including investment fees |

# Non-Profit

| Advantages | Disadvantages |
|---|---|
| Better understanding of Medicaid eligibility rules | Increased administration fees including investment fees |
| Ability to issue spot | Accounting and tax work may be outsourced |
| Often maintains better records for annual reporting purposes (including redeterminations) | May not wish to be adverse to Medicaid agency or challenge unreasonable opinions |
| Social workers on staff to assist with challenging issues or check-in on beneficiary | |
| Often will accept a trust with much less in assets than a corporate trustee | |

# Professional

| Advantages | Disadvantages |
|---|---|
| Better understanding of Medicaid eligibility rules | Often lacks back-office support to handle a demanding trust beneficiary |
| Ability to issue spot | May outsource tax and accounting work |
| Often maintains better records for annual reporting purposes (including redeterminations) | Bifurcated fee system (for example, investment advisor and trust administration duties) |

# Trust Protectors

- If Using A Non-family Member **AS TRUSTEE**, Consider A Trust Protector.
- No Disadvantage To A Trust Protector
- Appointment Will Allow An Individual To Remove And Replace The Trustee Consistent With The Terms Chosen By The Grantor/Settlor



Questions?

# ADMINISTERING RETIREMENT ASSETS AFTER DEATH UNDER THE SECURE ACTS

**Leonard J. Witman, Esq.**
**Tara S. Sinha, Esq.**
**Witman Stadtmauer, P.A.**
**26 Columbia Turnpike, Suite 100**
**Florham Park, NJ 07932**
**(973) 822-0220**

# 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.

# Who does an IRA pay to?

- If IRA did not designate a beneficiary, have to look at master plan document to determine beneficiary; if owner was married, may be spouse; otherwise, typically the estate.
- If account pays to estate, must be distributed within 5 years, unless “ghost” rule applies if owner was in distribution status. This rule also applies for any non-“designated beneficiary” – i.e. charities, non-qualified trusts (trusts discussed later).

# 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.

# Post-SECURE Administration

- 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.

# Post-SECURE Administration

(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)

# Post-SECURE Administration

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 then 10 years younger beneficiary

# Post-SECURE Administration

The Treasury Dept. has 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)!**

# SECURE 2.0 – Required Beginning Date

- Required beginning date increased to age 73 started in 2023
- Required beginning date increased to age 75 beginning in year 2033
- Born before 1951 – no effect

  1951-1959 – RMD at age 73

  1960 and later – RMD at age 75

# Post-SECURE Administration

| 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 post-death 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.

# 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 – Tax and Timing

So, you inherit an IRA and you fall within the 10-year rule – what does this mean?

- First issue - Did the decedent die before or after RBD? Will determine distribution options
- Timing – All distributions must be made by 12/31 of the year that marks the 10th anniversary of the account holder's death.

# Post-SECURE – Tax and Timing

- Income Tax Considerations – Unless the IRA is a Roth, the distributions will be taxed as ordinary income (remember, states and fed differ). Therefore, timing of distributions have important income tax consequences. Must consider both federal and state income tax implications.

# Post-SECURE – Tax and Timing

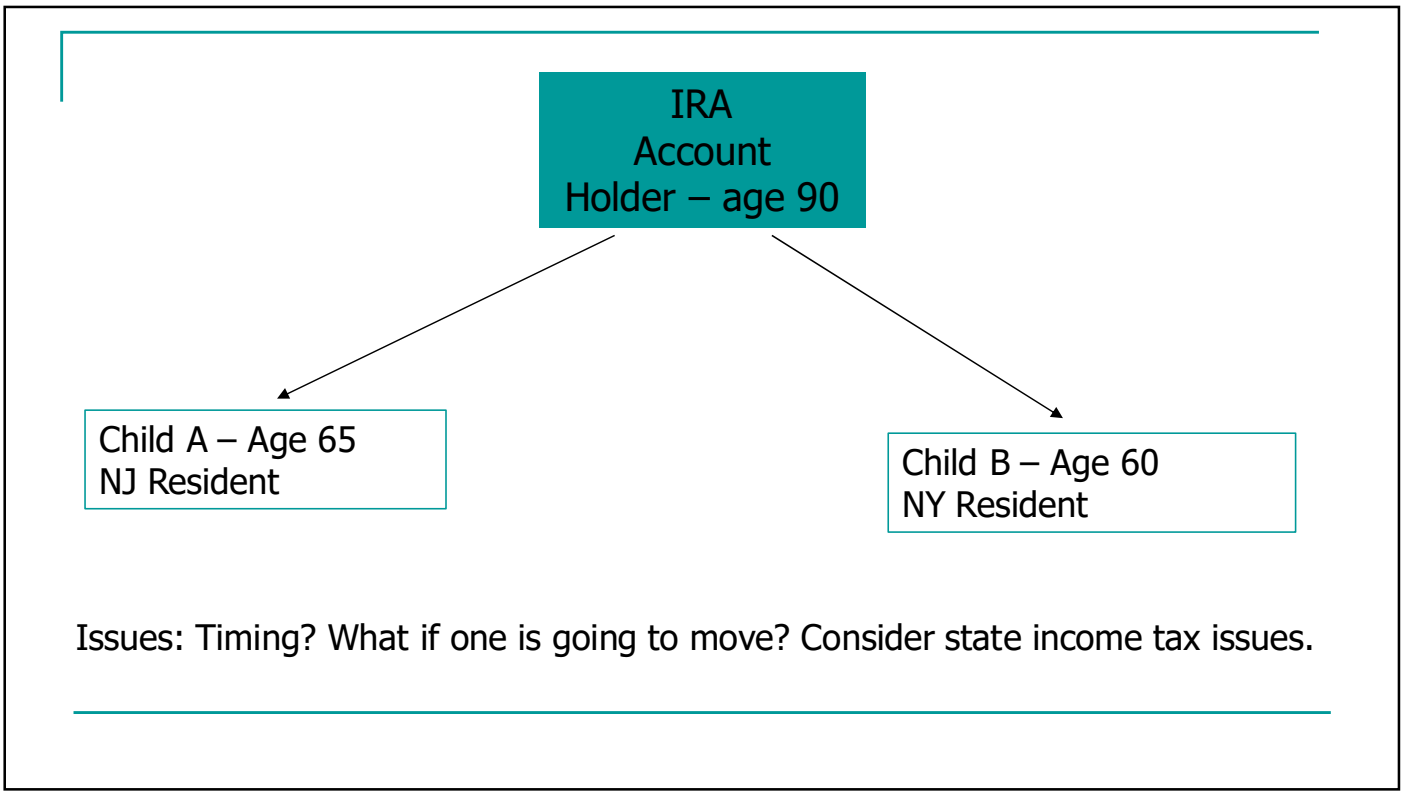
- Things to consider when timing distributions:
  - Market conditions
  - Income taxation of individual beneficiaries
  - Income taxation of trusts and whether trusts pass through benefit to individual
  - Can you defer larger distributions to Year 10 to maximize growth in IRA? Bigger tax bill? What if a Roth?
  - Creditors
  - Beneficiary's estate planning – contribute to 401(k), Roth?

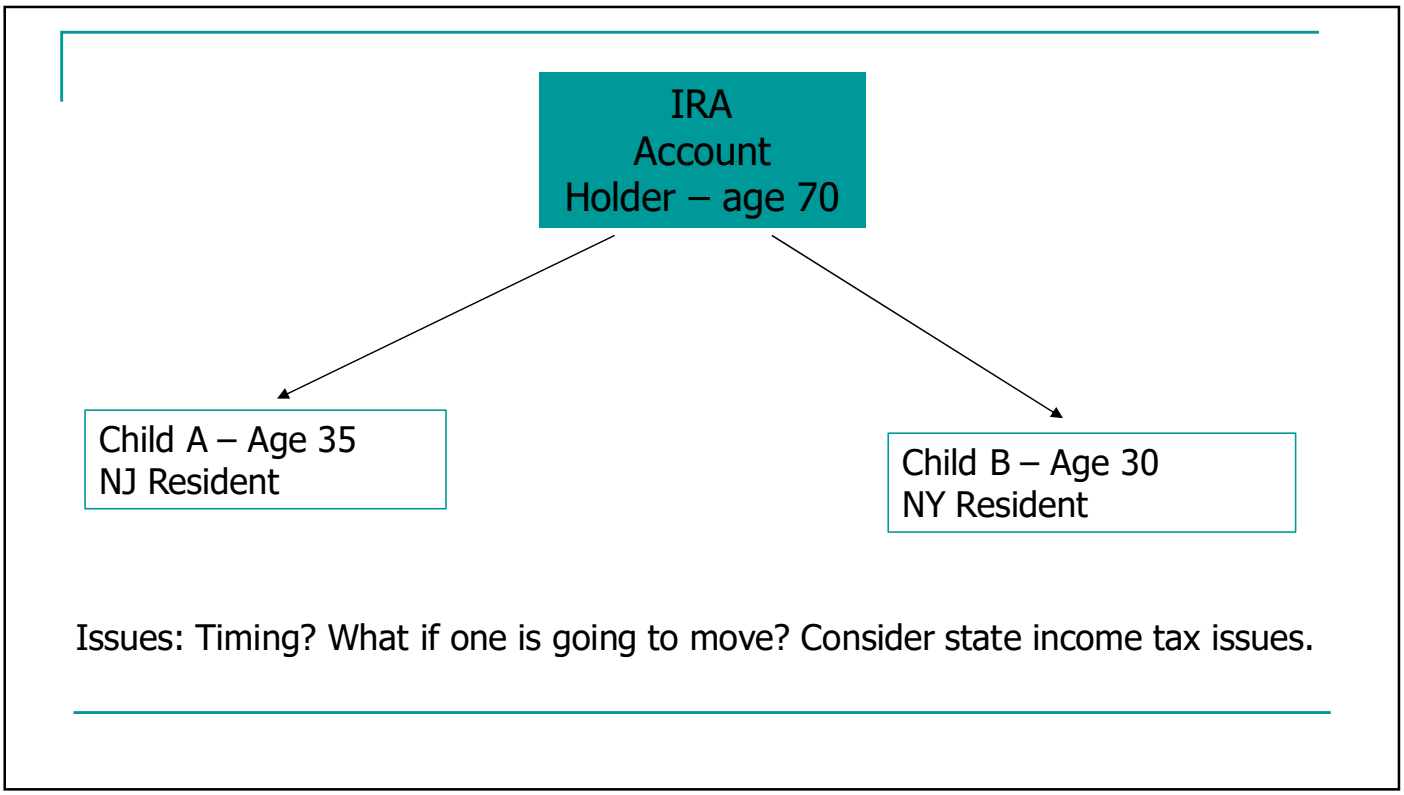
# SECURE 2.0 – Excise Tax Rates

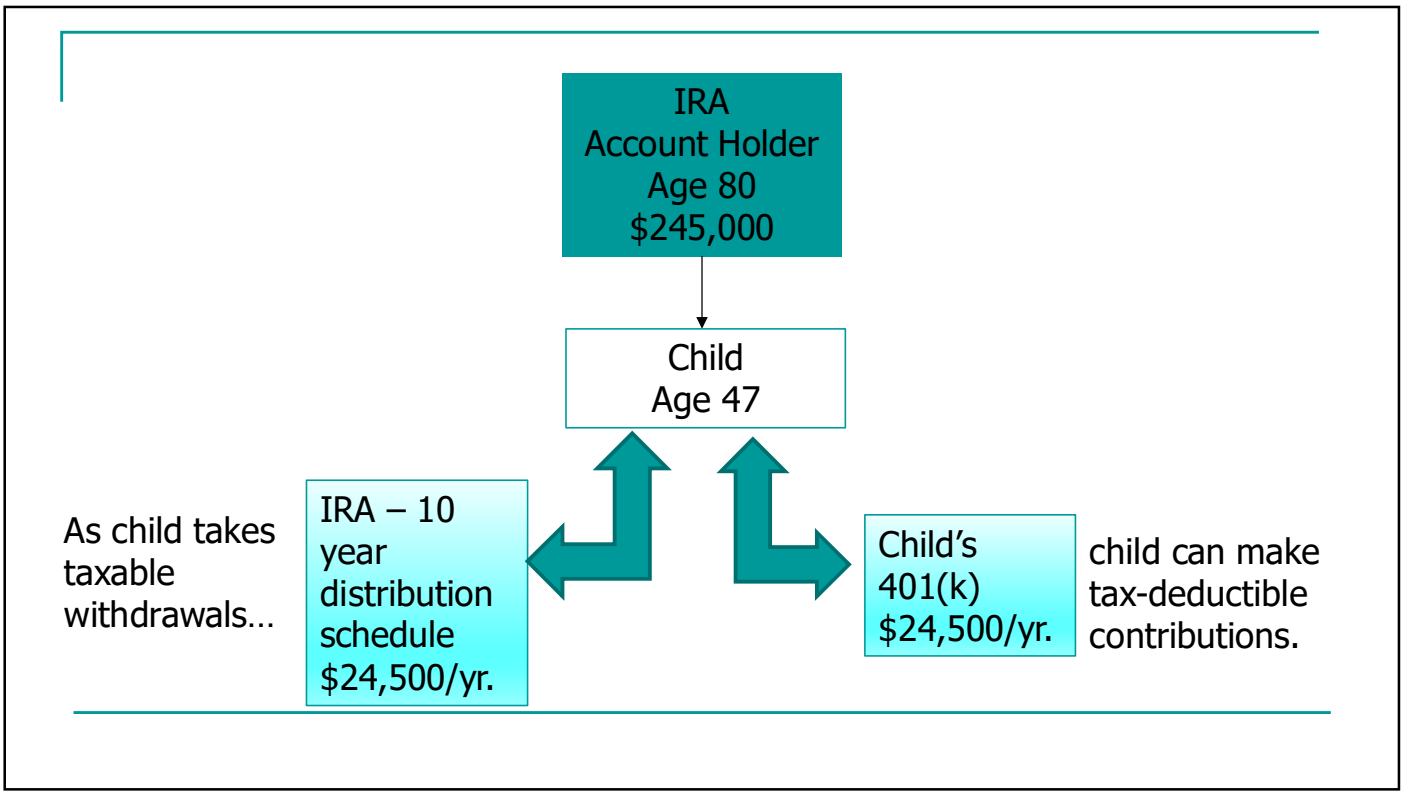
- Starting in 2023, the § 4974 excise tax rate for failure to withdraw RMDs was decreased to 25%
- This rate is reduced to 10% if the failure to withdraw is corrected and return is filed within 2 years and before deficiency notice is issued or assessment at 25%
- Query: will these new rates change IRS policy on waiver?
- Consider IRS Notice 2024-35 regarding RMDs

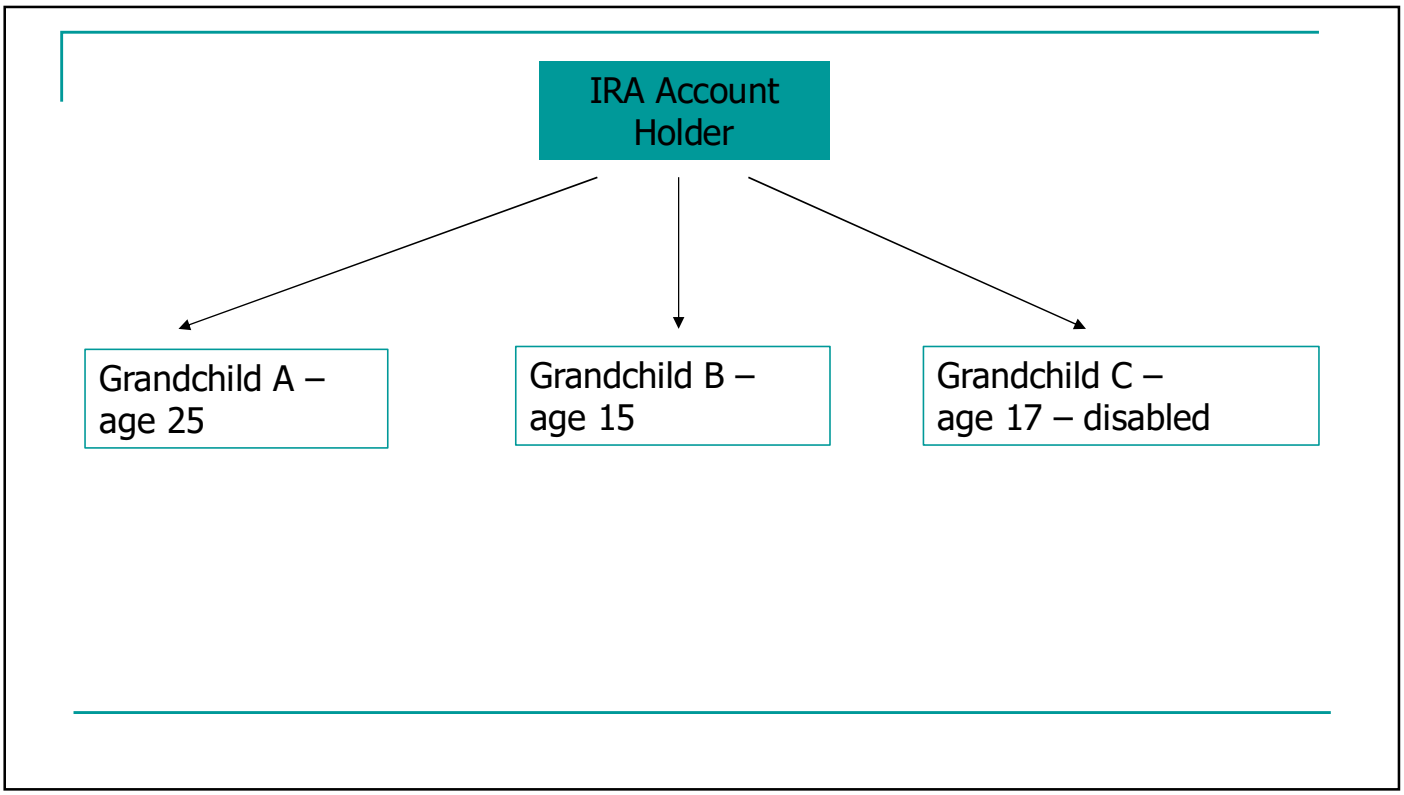
# Post-Death Planning Considerations

- Can disclaim IRA to maximize benefits
- Don't default to spouse as beneficiary – split benefits between spouse and children, grandchildren?
- Division of Roth/traditional among beneficiaries based on respective income tax scenarios
- Use of life insurance to mitigate income tax
- Charitable planning?

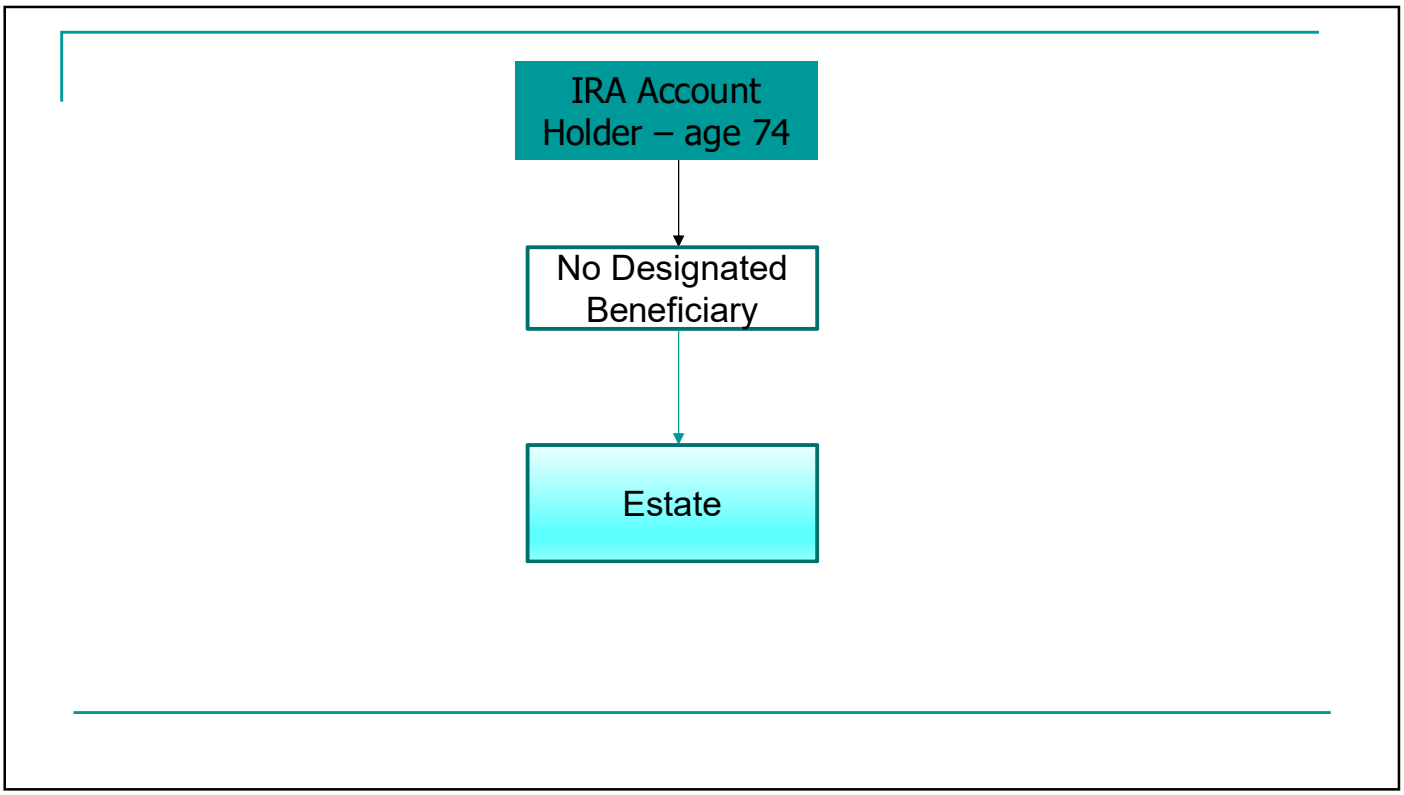

IRA
Account
Holder – age 90
Child A – Age 65
NJ Resident
Child B – Age 60
NY Resident
Issues: Timing? What if one is going to move? Consider state income tax issues.


IRA
Account
Holder – age 70
Child A – Age 35
NJ Resident
Child B – Age 30
NY Resident
Issues: Timing? What if one is going to move? Consider state income tax issues.


IRA
Account Holder
Age 80
$245,000
Child
Age 47
As child takes taxable withdrawals…
IRA – 10 year distribution schedule $24,500/yr.
Child's 401(k) $24,500/yr.
child can make tax-deductible contributions.


IRA Account Holder
Grandchild A – age 25
Grandchild B – age 15
Grandchild C – age 17 – disabled

25


IRA Account Holder – age 74
No Designated Beneficiary
Estate

# Trends and Developments in the New Jersey Uniform Trust Code

By Angela C. Titus McEwan, Esq.

The New Jersey Uniform Trust Code ("NJ UTC"), enacted to modernize and harmonize the state's trust law with national standards, represents a significant shift in how trusts are created, administered, and enforced within the state. Derived substantially from the Uniform Trust Code developed by the Uniform Law Commission in 2000, New Jersey's version is codified in *N.J.S.A.* § 3B:31-1 *et. seq.*, and became effective for all trusts created prior to, on or after July 17, 2016. The NJ UTC brings clarity, consistency, and increased flexibility to the creation and administration of trusts in the state, increased certainty for creditor rights and transparency of trustee duties and liability for breaches of trust. This outline focuses on several key provisions of the NJ UTC that lawyers have implemented in practice and that have been the topic of court actions over the past ten years since its enactment.

Non-Judicial Settlement Agreements: *N.J.S.A.* § 3B:31-11

Non-judicial settlement agreements (NJSAs) had long been utilized by practitioners to resolve trust-related disputes among parties to a trust. NJSAs are now statutorily authorized under *N.J.S.A.* § 3B:31-11. The use of NJSAs offers a powerful mechanism for interested parties to resolve trust-related matters without court intervention. This approach gives control to the interested parties, promotes mutual cooperation, reduces legal fees, and enables the trust to operate more efficiently.

Under *N.J.S.A.* § 3B:31-11(b) and (d), an NJSA may be used to address "any matter involving a trust," including the following specific examples set forth in the statute:

(1) The interpretation or construction of the trust terms;
(2) Approval of a trustee's report or accounting;
(3) Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
(4) The resignation or appointment of a trustee and the determination of a trustee's compensation;
(5) Transfer of a trust's principal place of administration; and
(6) Liability of a trustee for an action relating to the trust.

Under *N.J.S.A.* § 3B:31-11(a) and (c), to be valid, all "interested persons" must participate, the agreement must not violate a material purpose of the trust, and the agreement must include terms and conditions that could be approved by a court. "Interested persons" is defined in *N.J.S.A.* § 3B:31-11(a) as those whose consent would be required to achieve a binding settlement if the matter were being resolved in court. Interested persons could include trustees, qualified beneficiaries, and other beneficiaries who could have a future interest in the trust. "Qualified beneficiaries" are defined in *N.J.S.A.* § 3B:31-3 as beneficiaries, who on the particular date of an action, are (i) distributees or permissible distributees of trust income or principal, (ii) would be distributees or permissible distributees of trust income or principal if the interests of those identified in (i) terminated on that date, or (iii) would be distributees or permissible

distributees of trust income or principal if the trust terminated on that date. "Beneficiaries" are defined as (i) those having a present or future interest, vested or contingent, (ii) those holding a power of appointment over trust property in a capacity other than that of trustee, (iii) owners of a trust interest by assignment or other transfers and (iv) for charitable trusts, those who are entitled to enforce the trust. Where a charity is an interested person, the Attorney General is an interested person. *See N.J.S.A.* § 3B:31-11(a); *N.J.S.A.* § 3B:31-10(c); *N.J.S.A.* § 3B:31-22(c). The inclusion of all necessary parties ensures the binding nature of the settlement and helps prevent future disputes or challenges.

In addition to being unable to use an NJSA where it would affect a material purpose of the trust, an NJSA cannot be used to produce a result that is contrary to other sections of title 3B, including, but not limited to, terminating or modifying a trust in an impermissible manner. *See N.J.S.A.* § 3B:31-11(f). Such limitations are intended to protect the settlor's intent and ensure that the trust remains administered as the settlor envisioned. Consequently, an NJSA will likely be used to address administrative and interpretive issues; substantive changes, such as affecting beneficial interests, will likely not be permitted and would remain subject to judicial oversight.

Although the use of an NJSA is intended avoid judicial involvement, *N.J.S.A.* § 3B:31-11(e) permits interested persons to request judicial approval of the NJSA; determine whether representation of the interested parties is adequate; and to determine if the agreement contains terms and conditions that the court could have properly approved.

Overall, NJSAs represent a practical, cost-effective tool for trust administration under the NJ UTC, balancing the need for private resolution with safeguards designed to preserve the integrity of the trust and the settlor's intent.

Representation: *N.J.S.A.* §§ 3B:31-13 through 3B:31-17

The representation provisions of the NJ UTC, found in§§ 3B:31-13 through 3B:31-17, set out rules that allow certain individuals to act on behalf of others in trust matters. These provisions are essential when some beneficiaries—such as minors, incapacitated individuals, unborn beneficiaries, or those not yet identified—are unable to participate directly. They help ensure that decisions made about the trust, especially through NJSAs, remain valid and enforceable even as new persons become beneficiaries of the trust over time. By authorizing designated individuals to represent and bind others, the NJ UTC promotes smoother trust administration, limits the need for court involvement, and helps prevent delays in resolving trust issues.

The representation provisions of the NJ UTC allow representation based upon certain relationships between the representative and the person being represented:

(1) A holder of a general power of appointment over a trust may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power, as long as there is no conflict of interest. *N.J.S.A.* § 3B:31-14.
(2) A guardian of the property may represent and bind the estate that the guardian controls. *N.J.S.A.* § 3B:31-15(a).

(3) A guardian of the person may represent and bind the ward if no guardian of the property has been appointed. *N.J.S.A.* § 3B:31-15(b).
(4) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal. *N.J.S.A.* § 3B:31-15(c).
(5) A trustee may represent and bind the beneficiaries of the trust. *N.J.S.A.* § 3B:31-15(d).
(6) A personal representative of a decedent's estate may represent and bind "persons interested" in the estate. *N.J.S.A.* § 3B:31-15(e).
(7) Parents may represent and bind their minor or unborn child if a guardian for the child has not been appointed. *N.J.S.A.* § 3B:31-15(f).

Perhaps the most widely-used provision is that found in *N.J.S.A.* § 3B:31-16, which permits a person having a substantially identical interest with respect to the particular question or dispute to represent and bind a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and cannot reasonably be ascertained. This concept is often employed when two or more beneficiaries share aligned interests, such as remainder beneficiaries of the same class, and allows for what is known as "horizontal" representation. For example, one sibling beneficiary may represent another sibling if both have the same contingent interest in the trust and no competing claims. This concept is distinct from the long-standing concept of virtual representation, found in N.J. Ct. R. 4:26-3, which allows for "vertical" representation. Under NJ. Ct. R. 4:26-3, unlike *N.J.S.A.* § 3B:31-16, a parent does not automatically represent a child simply because of the parent-child relationship, but can represent a child if the parent is the presumptive taker whose interest aligns with the child's interest.

A common requirement for all of the foregoing representations to be valid, however, is that there must be no conflict of interest between the representative and the person being represented. The specific guidance on this in the applicable provisions is found in *N.J.S.A.* § 3B:31-14(b), which confirms that a person holding a general power of appointment that he or she may exercise in favor of himself or herself or his or her estate shall not be deemed to have a conflict of interest with permissible appointees and takers in default. Thus, evaluating potential conflicts of interest will be imperative to ensure proper representation.

While the foregoing provisions afford a less invasive means to achieve representation, court-appointed representation remains an option when other alternatives cannot produce a desired result. Under *N.J.S.A.* § 3B:31-17, where proper representation cannot be achieved under the other provisions of the Article, a court may appoint a guardian ad litem or other representative to act on behalf of one or more minor, incapacitated, unborn, or unascertainable persons. The person so appointed may thereafter act on behalf of the person represented for any purpose under the NJ UTC, regardless of whether a judicial proceeding is involved. For example, the person so appointed may receive notice, give consent, and otherwise represent, bind, and act on behalf of the representee.

Together, these sections provide a comprehensive and flexible system for representation in trust matters, balancing administrative efficiency with the protection of beneficiaries' interests. By codifying and expanding virtual representation, the NJ UTC reduces the need for costly court proceedings while maintaining procedural fairness and achieving binding agreements.

Creditor Rights: *N.J.S.A.* §§ 3B:31-35 through 3B:31-40

Sections 3B:31-35 through 3B:31-40 of the NJ UTC address the rights of creditors and others to access trust assets to satisfy a beneficiary's debts. These provisions balance the interests of creditors in collecting valid claims with the public policy favoring the protection of trust assets and the settlor's intent for asset protection. They distinguish between revocable and irrevocable trusts and consequently between the rights of creditors to collect against the settlor and other beneficiaries.

New Jersey does not permit the creation of domestic asset protection trusts and generally prohibits a settlor from creating a trust and transferring assets to the trust to avoid creditor claims. Under *N.J.S.A.* § 3B:31-39(a), during the settlor's lifetime, property contained in the settlor's revocable trust is fully accessible to satisfy creditor claims, and when the settlor dies, the now irrevocable trust may be reached to satisfy creditor claims, costs of administration of the settlor's estate, and expenses of funeral to the extent the probate estate is insufficient. Where the settlor creates an irrevocable trust, creditors can reach assets that may be distributable to the settlor or for the settlor's benefit during the settlor's lifetime.

The remaining provisions of the Article address creditor rights against other beneficiaries of a trust. As a general rule, if a trust does not contain a spendthrift provision, a beneficiary's creditor may reach the beneficiary's interest in the trust or attach present or future distributions. *See* *N.J.S.A.* § 3B:31-35. Section 3B:31-36 describes the requirements, validity and effect of a spendthrift provision, including the following:

(1) The provision must restrain both voluntary and involuntary transfers of a beneficiary's interest in the trust;
(2) It must include language stating that the interest of a beneficiary is held subject to a "spendthrift trust" or words of similar import;
(3) The effect is to prohibit a beneficiary from transferring his or her interest in the trust in violation of a valid spendthrift provision, and a creditor may not reach the interest until it is received by the beneficiary;
(4) The spendthrift protection applies even if the beneficiary is the sole trustee or a co-trustee of the trust; and
(5) The spendthrift provision does not prevent the beneficiary from exercising any power of appointment over the property.

Regardless of the existence of a spendthrift provision, a creditor cannot compel a distribution even if the trustee's discretion is subject to a standard of distribution or the trustee has abused the discretion. *See* *N.J.S.A.* § 3B:31-38. However, if the trust requires "mandatory distributions" of income or principal to a beneficiary, such as income for life or principal at certain ages or upon termination, the funds required to be distributed may be reached by the beneficiary's creditors if not distributed by the trustee within a reasonable time following the mandated distribution date. *See* *N.J.S.A.* § 3B:31-40.

Special consideration is given in *N.J.S.A.* § 3B:31-37 to special needs trusts, including both self-settled special needs trusts (i.e., OBRA '93 trusts), which are created by or for the

benefit of the "protected person" and funded with his or her own assets, and third-party trusts, which are created by and funded with the assets of other individuals, for the benefit of persons who are aged, blind, or disabled. If a trust qualifies as a special needs trust, no creditor of the protected person may reach such protected person's interest or compel a distribution to satisfy the creditor's claim.

Modification and Termination of Irrevocable Trusts: *N.J.S.A.* §§ 3B:31-26 through 3B:31-34

Sections 3B:31-26 through 3B:31-34 of the NJ UTC provide a flexible framework for the modification and termination of trusts, marking a significant evolution from traditional common law principles treating irrevocable trusts as static and unalterable. These provisions recognize that family circumstances, as well as applicable state and federal substantive and tax laws, change over time, which could render archaic the utility of the trust as originally drafted. The modification and termination provisions of the NJ UTC empower both the courts and trust beneficiaries to adapt or end trusts while still honoring the settlor's intent. These provisions of the NJ UTC are arguably among the most utilized provisions of the code.

Section 3B:31-26 of the NJ UTC contains the general common law rule, which is that a trust will terminate pursuant to its terms; if no purpose of the trust remains to be achieved, or if the purpose of the trust has become unlawful, contrary to public policy of the State, or impossible to achieve. Where a court action is necessary or desirable to confirm a modification or termination, a trustee or a beneficiary has standing to bring a court action to modify or terminate a trust.

Sections 3B:31-28 through 3B:31-33 of the NJ UTC contain specific reasons and mechanisms for effecting a modification or termination:

- Unanticipated Circumstances – *N.J.S.A.* § 3B:31-28. A court may modify the administrative or dispositive terms of a trust, or terminate it entirely, if because of unanticipated circumstances, doing so will further the purposes of the trust. The court may also modify the trust's administrative terms if on-going administration under the present terms would be impracticable or wasteful or would impair the trust's administration.
- Charitable purpose becomes unlawful, impracticable, impossible to achieve or wasteful – § 3B:31-29. For charitable trusts, *N.J.S.A.* § 3B:31-29 incorporates the doctrine of *Cy Pres*, allowing the court to modify or redirect the trust's assets if its original purpose becomes unlawful, impossible, impracticable, or wasteful—unless the trust instrument explicitly directs otherwise.
- The trust assets are of an insufficient value to continue the administration – *N.J.S.A.* § 3B:31-30. Economic inefficiency is another basis for terminating a trust. *N.J.S.A.* § 3B:31-30 allows a trustee, without court involvement, to terminate a trust valued under $100,000 by notifying qualified beneficiaries if the costs of administration are excessive in relation to the trust's value. The court also has the authority to modify or terminate a trust for this reason, regardless of its size, when it determines that continuation is not economically viable. The court may also modify the trust or change the trustee to promote administrative efficiency of a smaller valued trust under this provision.

- Reformation to correct a mistake and conform to the probable intent – *N.J.S.A.* § 3B:31-31. Upon application, a court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's probable intent if it is proved by clear and convincing evidence that there was a mistake of fact or law, whether in expression or inducement.
- Construction to conform trust terms to probable intent – *N.J.S.A.* § 3B:31-32. Reaffirms the court's power to construe the terms of a trust, even if unambiguous, to conform to the settlor's probable intent.
- To achieve settlor's tax objectives – *N.J.S.A.* § 3B:31-33. Upon application, a court may modify a trust in a manner consistent with the settlor's probable intent to achieve the settlor's tax objectives. This modification can be retroactive.

Arguably the most advantageous strategy to modify or terminate a trust is found in *N.J.S.A.* § 3B:31-27, which sets forth the general rules for modifying and terminating a trust by consent. Under this section, a trust can be modified or terminated with the consent of the trustee and all beneficiaries, as long as the change is not inconsistent with a material purpose of the trust. For purposes of this provision, a spendthrift provision is not presumed to constitute a material purpose of the trust.

Where not all the trustees and beneficiaries consent, under *N.J.S.A.* § 3B:31-27(b), the court may approve such changes upon unanimous beneficiary consent, provided that either the continuation of the trust is no longer necessary to fulfill a material purpose or the proposed modification does not conflict with one. Under *N.J.S.A.* § 3B:31-27(e), even if not all beneficiaries consent, a court may still allow modification or termination if it finds that those who did not consent are adequately protected and that the outcome would have been the same had all agreed.

In addition to modification and termination, the NJ UTC also provides mechanisms for consolidating or dividing trusts under *N.J.S.A.* § 3B:31-34. Trusts may be combined or separated—even if the settlors, instruments, or trustees are different—so long as doing so does not impair the rights of any beneficiaries or interfere with the trust's purposes.

Outside of judicial modification and reformation, most changes are implemented through NJSAs, as authorized by *N.J.S.A.* § 3B:31-11. Representation is critical insofar as all beneficiaries, not just qualified beneficiaries or those who would otherwise constitute "interested persons" for an NJSA to be effective, must participate in a modification or termination under this section.

**The Decanting Alternative**

Decanting is a strategy used to modify the terms of an irrevocable trust by moving its assets into a new trust with improved or updated terms. This approach can be especially helpful when the original trust contains outdated or problematic provisions and a modification cannot be effected through other available means.

Decanting is typically accomplished by a trustee using their authority to distribute principal from the trust and usually does not require court approval or beneficiary consent. Some

trust documents include specific language permitting decanting, while others rely on state laws or common law principles that allow it when a trustee has broad discretion over distributions. If a trust lacks decanting provisions, a trustee might still accomplish decanting by moving the trust to a more flexible jurisdiction or using legal principles where the trustee's authority to distribute is interpreted broadly enough to permit this action.

Although New Jersey does not have a decanting statute, well-settled case law provides trustees with the authority to decant if the trustee enjoys absolute and uncontrolled discretion over principal distributions.

In *Wiedenmayer v. Johnson*,[1] the trust gave the trustees broad authority to distribute assets to the beneficiary, John Seward Johnson, Jr., whenever they deemed it in his best interests, including the ability to give him all or part of the trust outright. The trustees exercised this authority by distributing the trust property to John on the condition that he immediately transfer it to a new trust, which excluded two of his descendants. The court upheld the trustees' action, reasoning that if they had the power to give the property outright, they could condition that distribution on the creation of a successor trust to protect John's interests. The court also emphasized that "best interests" could include non-financial considerations, such as peace of mind, and that the trust's primary concern was John's well-being. Because the trust gave the trustees "absolute and uncontrolled discretion," the court stated it would not second-guess their decision unless it was shown to be an abuse of discretion—meaning it was made in bad faith or without proper consideration of all facts and attendant circumstances.

Before decanting, trustees must carefully evaluate the trust's language and whether their discretion is broad enough to justify the transfer. Even with strong discretionary powers, trustees must act in the best interests of the beneficiaries and avoid breaching fiduciary duties. For instance, removing or disadvantaging certain beneficiaries through decanting may raise legal concerns about impartiality. There are also important procedural considerations—whether to transfer assets directly to a new trust or to distribute them first to the beneficiary with the understanding that they will be re-contributed. Each approach carries potential risks, including tax and creditor implications. Finally, great care must be taken in drafting the new trust to avoid unintended consequences, particularly with regard to taxes and the protection of beneficiary interests.

It is important to note that under § 3B:31-5, the NJ UTC contains mandatory provisions that cannot be changed, either by the settlor or through a modification. These include, for instance, the duty of a trustee to respond to a beneficiary 35 years of age or older's request for information reasonably related to the trust's administration.

**Tax Implications of Decanting, Modifying, or Terminating a Trust**

The tax implications of decanting, modifying, or terminating a trust are complex and continue to evolve in the absence of definitive guidance from the Internal Revenue Service

[1] 106 N.J. Super. 161 (App. Div. 1969), *aff'd sub nom. Wiedenmayer v. Villanueva*, 55 N.J. 81 (1969).

("IRS"). While the IRS requested public input on this issue in Notice 2011-101, it has yet to issue formal rules addressing the full range of tax consequences. The topic remains under active consideration, and practitioners are advised to proceed cautiously, especially in light of Revenue Procedure 2026-3, which lists several relevant areas as "areas in which rulings or determination letters will not ordinarily be issued." As such, the IRS will not issue private rulings or determination letters on these topics until formal guidance is released through regulations, revenue rulings, or other authoritative forms.

According to Rev. Proc. 2026-3, areas in which rulings or determination letters will not ordinarily be issued include whether a decanting that changes beneficial interests qualifies as a distribution for purposes of the income tax deduction under Internal Revenue Code (IRC) § 661 or triggers inclusion in gross income under § 662. The IRS will also not issue a ruling or determination letter regarding whether such a transfer might be considered a gift under § 2501 and whether it could impact a trust's generation-skipping transfer (GST) tax-exempt status under §§ 2601 and 2663. Further, the IRS will not issue rulings on whether modifications, changes in administration, or trust distributions will affect GST exemption for trusts previously grandfathered under the GST regulations. This uncertainty places a premium on careful planning and documentation when considering changes to an irrevocable trust.

From an income tax perspective, most decantings or modifications do not involve a beneficiary exercising a power of appointment to create a new trust and consequently do not change the identity of the grantor. Accordingly, these actions are typically not treated as a sale or exchange of property, and therefore do not result in a recognition event for capital gains purposes. However, it is essential to confirm that the recipient trust is not classified as a foreign trust, as doing so could trigger adverse U.S. tax consequences.

Gift tax consequences are more nuanced and depend heavily on the nature of the changes being made and the roles of the parties involved. If a modification affects only administrative provisions and does not alter beneficial interests, it is generally not considered a taxable gift. However, when changes affect beneficial rights or involve certain powers, gift tax issues may arise. For example, if a beneficiary who serves as trustee effectuates the change, or if a beneficiary has the power to object but fails to do so, the IRS may view the action as a taxable gift. Additionally, if a power of appointment is exercised in a way that defers vesting or alters distribution timing, the so-called "Delaware Tax Trap" may be triggered, potentially leading to unintended transfer tax consequences.

The estate tax implications of modifying or decanting a trust center on the degree of control retained by the grantor or beneficiary. If a grantor participates in or consents to changes that give them retained powers or interests, the trust assets may be included in the grantor's estate under IRC §§ 2036 or 2038. Likewise, if a beneficiary gains a general power of appointment through the modification, the assets of the trust may be includable in the beneficiary's estate. Furthermore, if a beneficiary had the power to prevent the change and failed to act, this inaction may be construed as a taxable transfer or result in estate inclusion.

Finally, generation-skipping transfer (GST) tax implications deserve special attention. For trusts that are already GST-exempt—either because they are grandfathered or have been allocated GST exemption—it is critical to ensure that changes do not forfeit that status. Actions

that postpone vesting or shifting beneficial interests to lower generations may jeopardize the exemption.

Treasury Regulations provide some guidance in the form of "safe harbors" under § 26.2601-1(b)(4)(i)(A)-(D), which lists instances where modification will not result in a loss of GST tax exemption. These include: specific authority in the trust instrument or under applicable state law to distribute assets to a new trust (i.e., the decanting exception); court-approved settlements resolving a bona-fide dispute; judicial constructions resolving ambiguities or errors; and other changes that do not shift generational interests or extend vesting timelines. Importantly, these rules apply only to GST status and do not address income, gift, or estate tax implications, which must be analyzed separately.

The IRS has and continues to issue private letter rulings (PLRs) that serve as guidance as to when a modification or decanting will carry adverse GST tax implications. The following are illustrations of IRS-approved changes in this context:

| Category | Permitted Action | Tax Outcome |
|---|---|---|
| **Administrative Changes** | Modify trust terms for administration (e.g., clarify trustee powers, revise payment mechanics, correct scrivener's errors) | No gift, estate, income, or GST tax consequences if beneficial interests are unchanged |
| | Construction of ambiguous terms via court order (e.g., clarify "descendants") | No adverse GST, gift, or income tax consequences when consistent with applicable state law that the state's highest court would apply |
| **Trust Division or Merger** | Divide a trust into multiple subtrusts for beneficiaries | Permitted if division is proportional and does not shift beneficial interests |
| | Merge GST-exempt trusts with substantially identical terms | Allowed if no change in beneficiary class or distribution pattern |
| **Power of Appointment Changes** | Grant general powers of appointment to beneficiaries | Allowed when it causes estate inclusion, which avoids shifting beneficial interests and extending vesting schedule |
| | Court sanctioned limitation on class of permissible appointees of beneficiary's testamentary power of appointment | Permitted as no general power of appointment was granted or deemed exercised or released |
| **Trust Duration Modifications** | Extend trust term for a beneficiary's lifetime | Permitted if it does not delay vesting or shifting benefits to lower generations |
| **Court-Approved Terminations or Reformations** | Terminate trust when no material purpose remains | No GST or gift tax if distributions preserve beneficiaries' existing interests |

| Category | Permitted Action | Tax Outcome |
|---|---|---|
| | Modify dispositive terms with court approval (e.g., convert outright gifts into continued trusts) | Permissible when beneficiaries' interests remain substantively the same |
| **Settlement Agreements** | Implement court-approved settlement of a trust dispute | No gift or GST tax when interests are not shifted or extended |
| **Tax-Driven Reformations** | Modify trust to comply with tax code requirements (e.g., charitable remainder trust rules) | Permitted when done to comply with applicable tax statutes and valuation rules |
| | Court reformation to correct scrivener's errors to achieve desired tax protections | Permitted when changes do not confer a general power of appointment |

A notable exception – which serves as a reminder that PLRs are not binding – is that in 2023, the IRS reversed its prior position and now treats beneficiary-approved modifications to allow reimbursement of a grantor's income taxes as a taxable gift from the beneficiaries to the grantor.

As a matter of best practices, parties to a proposed modification, termination or decanting may wish to follow certain guidelines. First, judicial construction to resolve ambiguities rather than modifying the trust by consent may minimize adverse tax implications. Second, avoid changes that alter beneficiaries or delay the vesting of interests. Third, consider obtaining a private letter ruling specific to the trust before implementing changes where tax implications are a significant concern.

While decanting, modifying, or terminating a trust can provide important flexibility for trustees and beneficiaries, these actions carry potential tax implications. Until the IRS issues comprehensive guidance, practitioners must rely on a patchwork of regulatory interpretations, informal memoranda, and evolving best practices to avoid adverse tax consequences.

Trustee Duties and Liabilities for Breach of Trust: *N.J.S.A.* §§ 3B:31-54 through 3B:31-80

Sections 3B:31-54 through 3B:31-80 of the NJ UTC set forth the duties and liabilities of trustees, codifying both longstanding fiduciary principles and modern administrative standards. These provisions define the core responsibilities of a trustee, establish expectations for their conduct, and outline the consequences of breaching those duties. The purpose of this portion of the NJ UTC is to ensure that trustees manage trust assets with loyalty, care, and prudence, always placing the interests of the beneficiaries above their own.

At the heart of these provisions is the duty of loyalty, detailed in *N.J.S.A.* § 3B:31-55, which prohibits self-dealing and conflicts of interest unless specifically authorized. Trustees must act in good faith and solely in the interest of the beneficiaries. Relatedly, *N.J.S.A.* § 3B:31-56 reaffirms the duty of impartiality, so that if a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, and give due

regard to all the beneficiaries' respective interests. . These duties serve as the foundation for fiduciary accountability and are central to a trustee's role.

A significant change to common law came with the enactment of § 3B:31-67, which requires trustees to keep qualified beneficiaries reasonably informed about the trust administration and to provide material facts necessary for them to protect their interests. Trustees must also promptly respond to any beneficiary's request for information relating to the trust administration unless it's unreasonable under the circumstances. Moreover, trustees must provide a copy of the trust instrument to any beneficiary requesting it. Additional sections cover the trustee's duty to administer the trust prudently, keep adequate records, separate trust property from personal assets, and control and protect property.

Sections 3B:31-71 through 3B:31-80 of the NJ UTC detail the liability rules that apply when a trustee breaches a duty. Beneficiaries may seek remedies such as financial redress, compulsion of the trustee to act or refrain from acting, or removal of the trustee. Trustees may also be held liable for failing to remedy a breach by a co-trustee or for improper delegation. *See* § 3B:31-48. However, *N.J.S.A.* §§ 3B:31-75 through 3B:31-80 offer defenses to liability, such as beneficiary consent, release, or ratification under certain conditions or actions undertaken consistent with the terms of the trust.

Sections 3B:31-74 and 3B:31-67(c) of the NJ UTC provide the trustee with limitations on liability. Specifically, a beneficiary receiving a report from the trustee that adequately discloses the existence of a potential claim for breach of trust and informs the beneficiary of the time allowed for commencing a proceeding cannot initiate an action against the trustee for breach more than six months after the date that the trustee sends the report. Under *N.J.S.A.* § 3B:31-67(c), the report should contain a list of the trust property, liabilities, receipts and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets, and, if feasible, the value of the trust's assets. If this provision does not apply to limit a trustee's exposure to liability, a beneficiary must commence an action within five years after the first of a list of triggering events, including the removal, resignation or death of the trustee; the termination of the beneficiary's interest in the trust; or the termination of the trust, and those deadlines can be further delayed until five years after the beneficiary attains the age of majority; has knowledge of the existence of the trust; and has knowledge that he or she was a beneficiary of the trust.

Noncharitable Purpose Trusts: *N.J.S.A.* § 3B:31-25

Section 3B:31-25 of the NJ UTC authorizes the creation of a trust for a noncharitable but otherwise valid purpose without an ascertainable beneficiary, or for a noncharitable purpose to be selected by the trustee. A trust created under this section may be enforced by the settlor, by a person appointed in the terms of the trust, or, if no person is appointed, by a person appointed by the court. Trust property can only be used for the trust's intended purpose. If a court determines that the value of the trust property exceeds the amount required for the intended use or purpose, the property that is not required must be distributed to the living settlor or settlor's estate, unless the trust states otherwise.

3B:31-25 was derived substantially from UTC § 409. The key difference is that § 409 provides that a noncharitable trust cannot be enforced for more than 21 years. New Jersey did not include this limitation, consistent with its abrogation of the rule against perpetuities under § 46:2F-9.

Delaware provides broader statutory treatment of noncharitable purpose trusts, particularly following its 2025 amendments to 12 Del. C. § 3556. This section validates the creation of noncharitable trusts with a declared, achievable purpose, even if the trust lacks an ascertainable beneficiary. Unlike New Jersey and the UTC, Delaware expressly provides that a person is not deemed a beneficiary solely because the person receives disbursements from the trust. This clarification helps preserve the purpose-driven nature of the trust and reduces the risk that disbursement recipients will acquire beneficiary rights merely by receiving trust distributions.

Delaware also provides a more developed enforcement framework. The trust, or a court, can appoint an enforcer. The enforcer is given exclusive standing to enforce the terms of the trust. Unless the trust provides otherwise, an enforcer is treated as a fiduciary when exercising this authority. Delaware further permits the enforcer to function as an interested person of the trust, allowing the enforcer to effectuate nonjudicial settlement agreements and modifications regarding the trust, without beneficiary participation.

**Examples of noncharitable purposes for which a purpose trust may be created (where permitted by applicable law and subject to applicable limits on validity, duration, definiteness, enforceability, public policy, and administration) may include:**

1. Providing for the care of designated pets or other animals.
    a. To the extent authorized by a separate animal-trust statute or other applicable law. For example, in New Jersey, animal trusts are governed by *N.J.S.A.* § 3B:31-24.
2. Maintaining a family cemetery, grave site, mausoleum, or monument.
3. Preserving a family vacation home, compound, or residence.
4. Maintaining a privately owned historic residence.
5. Preserving family heirlooms, antiques, artwork, jewelry, or collections.
6. Maintaining a private library, archive, or collection of family records or papers.
7. Preserving intellectual property rights, such as copyrights, trademarks, or patents.
8. Holding and voting shares of a family-owned business.
9. Promoting continuity of family-business ownership or governance.
10. Maintaining a family ranch, farm, or timberland.
11. Preserving environmentally sensitive land for private purposes.
12. Maintenance of a yacht, aircraft, vehicle, or other family-use assets.
13. Operating a private club, museum, or recreational facility.
14. Maintaining religious or cultural artifacts for family use.
15. Funding family meetings, councils, or educational programs.
16. Holding assets for a specified commercial, investment, or governance objective.

# Adventures in Generation Skipping

*Laura A. Kelly*
*McCarter & English, LLP*
*Newark, New Jersey*

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I. Generation-Skipping (*Very* Generally)

A. Section 2601 of the Internal Revenue Code (the "Code") imposes a tax on "every generation-skipping transfer."

B. What is a generation-skipping transfer? Section 2611 of the Code defines it as a:

1. Direct Skip – a transfer to a skip person that is subject to gift or estate tax.[1]

a. Who is a skip person? A natural person who is two or more generations below the generation assignment of the transferor.[2]

Example: Elizabeth gives a house to her grandson William.

b. A trust can also be a skip person, if all of the interests in the trust are held by skip persons[3] or if no one has an interest in the trust, but at no time after the transfer may a distribution be made to anyone other than a skip person.[4]

Example: Elizabeth gives a house to a trust for the benefit of her grandchildren William, Harry, Beatrice, and Eugenie.

2. Taxable Termination - the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a trust unless (i) immediately after such termination, a non-skip person has an interest in such property, or (ii) at no time after such termination may a distribution (including distributions on termination) be made from such trust to a skip person.[5]

a. Example: Elizabeth creates an irrevocable trust. The trustees have discretion to pay income and principal to Elizabeth's son Charles and her grandson William. If Charles dies, a taxable termination would occur because the only beneficiary at that point would be a skip person (William).

b. Compare: Elizabeth creates an irrevocable trust. The trustees have discretion to pay income and principal to Elizabeth's son Charles, her daughter Anne, and her grandson William. If Charles dies, a taxable termination would NOT occur because Anne (a non-skip person) still has an interest in the trust.

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[1] Internal Revenue Code §2612(c)(1).
[2] IRC §2613(a)(1).
[3] IRC §2613(a)(2)(A).
[4] IRC §2613(a)(2)(B).
[5] IRC §2612(a).

3. Taxable Distribution – any distribution from a trust to a skip person unless the distribution is a direct skip or a taxable termination.[6]

   Example: Elizabeth creates an irrevocable trust. The trustees have discretion to pay income and principal to Elizabeth's son Charles and her grandson William. If the trustees make a distribution to William, this is a taxable distribution.

C. Who is the transferor?

1. Look to the most recent transfer subject to federal gift or estate tax.[7] For a lifetime gift, the transferor is the donor.[8] For a gift at death, the transferor is usually the decedent.[9]

2. However, a QTIP trust is included in the gross estate of the surviving spouse under Section 2044 of the Code. This would make the surviving spouse the transferor.

   a. For this reason, a "reverse QTIP election" is sometimes made in order to allocate to the QTIP trust the generation-skipping tax exemption of the first spouse to die.[10]

   b. The effect *for generation-skipping tax purposes* is that the QTIP election was not made (preventing the transferor switch when the surviving spouse dies).[11]

3. Property over which someone holds a general power of appointment is included in that person's gross estate for estate tax purposes under Section 2041 of the Code. The power holder becomes the new transferor of the property.

   a. Example: Elizabeth creates an irrevocable trust. The trustees have discretion to pay income and principal to Elizabeth's son Charles for his life. Charles is given a testamentary limited power of appointment over the trust property. At Charles's death, unless he exercises the limited power of appointment, the trust property will pass to Elizabeth's grandson William.

      Property subject to a limited power of appointment is not included in the holder's gross estate. Elizabeth, as the person most recently

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[6] IRC §2612(b).
[7] Treasury Regulations §26.2611-1.
[8] IRC §2652(a)(1)(B).
[9] IRC §2652(a)(1)(A).
[10] IRC §2652(a)(3).
[11] IRC §2652(a)(3).

subject to gift tax in connection with the property, remains the transferor. A taxable termination occurs at Charles's death.

b. Example: Elizabeth creates an irrevocable trust. The trustees have discretion to pay income and principal to Elizabeth's son Charles for his life. Charles is given a testamentary general power of appointment over the trust property. At Charles's death, unless he exercises the general power of appointment, the trust property will pass to Elizabeth's grandson William.

Property subject to a general power of appointment is included in the holder's gross estate. The transferor switches from Elizabeth to Charles, and no generation-skipping transfer is deemed to have occurred.

If the terms of the trust permit it, granting a general power of appointment to a non-skip person could be a good way of preventing a generation-skipping tax that might occur in a non-GST exempt trust.

D. Notes

1. Any transfer that, if made during life by an individual, would not be treated as a taxable gift under section 2503(e) (certain transfers for educational or medical expenses), is not a "generation-skipping transfer."[12]

2. Any transfer to the extent the transferred property previously was subject to generation-skipping tax, the transferee in the prior transfer was the same generation (or a lower one) than the current transfer, and the transfers don't have the effect of avoiding tax, also isn't considered a "generation-skipping transfer."[13]

Example: Elizabeth creates an irrevocable trust. The trustees have discretion to pay income and principal to Elizabeth's son Charles and her grandson William. If Charles dies, a taxable termination would occur because the only beneficiary at that point would be a skip person (William). After that tax, the trustees decide to make a distribution to William. This distribution isn't considered a generation-skipping transfer under the "previously-taxed" exception.

[12] IRC §2611(b)(1).
[13] IRC §2611(b)(2).

3. Only one direct skip occurs when a single transfer of property skips two or more generations.[14]

II. Help - I think a generation-skip just occurred!

A. Are you sure it's a problem?

1. Is the trust "grandfathered"? If the trust was irrevocable on September 25, 1985 and no additions were made to the trust after that date, the trust is exempt from generation-skipping tax.[15]

a. The general rule is that any trust in existence on that date is considered to be irrevocable,[16] BUT:

i. If the grantor retained a power that would cause the trust to be included in his or her gross estate under Section 2038 of the Code (to alter, amend, revoke, or terminate, to add beneficiaries etc.), it is not irrevocable.[17]

ii. If the trust held life insurance and the grantor possessed any incidents of ownership over that policy that would have caused inclusion in the grantor's estate under Section 2042 of the Code, the trust is not irrevocable.[18]

b. Special situations

i. QTIP Trusts – Trusts for which a qualified terminable interest property election was made prior to September 25, 1985 are not subject to generation-skipping tax.[19] The trust is treated as if a reverse QTIP election were made under Section 2652(a)(3) of the Code, treating the grantor/ decedent as the transferor.

ii. Transition Rule #1 - Generation-skipping tax will not apply to a revocable trust that (i) was in existence on October 21, 1986 and was not amended at any time after October 21, 1986 in any way that results in the creation of, or an increase in the amount of, a generation-skipping transfer, and (ii) had no additions made to it after October 21, 1986, that results in the creation of, or an increase in the amount

[14] Regs §26.2612-1(a).
[15] Regs §26.2601-1(b)(i).
[16] Regs §26.2601-1(b)(ii).
[17] Regs §26.2601-1(b)(ii)(B).
[18] Regs §26.2601-1(b)(ii)(C).
[19] Regs §26.2601-1(b)(iii).

of, a generation-skipping transfer, IF the decedent dies before January 1, 1987.[20]

iii. Transition Rule #2 - If the person was unable to change the disposition of his or her property because of a mental disability from October 22, 1986 that continued until death, no generation-skip will be deemed to have occurred (i) from a trust that is included in the decedent's gross estate, or (ii) in connection with a direct skip that happens at the decedent's death.[21]

When claiming this exception in connection with direct skips that happen at a decedent's death, the instructions for Form 706 state that if the decedent had been adjudged mentally incompetent, a copy of the judgment or decree must be filed with the return. If the decedent had not been adjudged mentally incompetent, the executor must file with Form 706 a certification from a qualified physician stating that in the physician's opinion the decedent had been mentally incompetent at all times on and after October 22, 1986, and that the decedent had not regained the competence to modify or revoke the terms of the trust or will prior to the decedent's death.

c. Were any additions made to the grandfathered trust?

i. If an addition is made to a grandfathered trust after September 25, 1985, a pro rata portion of subsequent distributions from (and terminations of interests in property held in) the trust is subject to generation-skipping tax. *See* Regs §26.2601-1(b)(1)(iv) for the mechanics of this.

ii. The post-September 25, 1985, release, exercise, or lapse of a general power of appointment over a grandfathered trust is considered to be a constructive addition.[22] The value of the trust property subject to the power is treated as if that portion had been withdrawn and immediately retransferred to the trust at the time of the release, exercise, or lapse.

iii. The post-September 25, 1985, release, exercise, or lapse of a limited power of appointment over a grandfathered trust is not considered to be a constructive addition as long as the exercise does not postpone the vesting of the interest

[20] Regs §26.2601-1(b)(2)(i).
[21] Regs §26.2601-1(b)(3).
[22] Regs §26.2601-1(b)(1)(v)(A).

beyond the rule against perpetuities.[23] If the limited power is exercised in a way that creates a second power, no constructive addition will occur as long as the second power may not be exercised in a way that could postpone the vesting of the interest beyond the perpetuities period of the original trust.[24]

2. Was GST exemption affirmatively allocated to the trust on a timely-filed gift or estate tax return? Obtain copies of gift and estate tax returns filed in connection with transfers to the trust.

   a. Schedule D of Form 709 is where the donor's GST exemption is allocated in connection with lifetime gifts. Make sure that the GST exemption was allocated correctly.

      i. In general, an annual exclusion gift made to an individual also will qualify for the GST annual exclusion.[25]

      ii. However, a gift to a trust that may qualify for the gift tax annual exclusion (because of the presence of a Crummey withdrawal power, for example) will <u>not</u> qualify for the GST annual exclusion unless the trust is a "2642(c) trust": a trust (i) for a single beneficiary and, (ii) the terms of which, if the trust continues until the beneficiary's death, would include the trust property in the beneficiary's estate.[26] A gift tax return preparer may have claimed the GST annual exclusion where it isn't permitted and under-allocated the donor's GST exemption to the transfer.

   b. A decedent's GST exemption is allocated on Schedule R of Form 706.

      Remember to look for the "reverse QTIP election" made under Section 2652(a)(3) of the Code for a QTIP trust, which will result in the first spouse being treated as the transferor for GST purposes (not the surviving spouse). There used to be a box to check for this. Now, if a qualifying interest is listed in Part 1, Line 9 of Schedule R, you're deemed to have made a reverse QTIP election.

[23] Regs §26.2601-1(b)(1)(v)(B).
[24] Regs §26.2601-1(b)(1)(v)(B).
[25] IRC §2642(c)(1).
[26] IRC §2642(c)(2).

3. No return? No affirmative election? – Was GST exemption automatically allocated?

   a. If any individual makes a direct skip during life, his or her unused GST exemption will be allocated to the property transferred so that the property is exempt from generation-skipping tax.[27]

   b. If any individual makes an indirect skip during life to a "GST trust", his or her unused GST exemption will be allocated to the property transferred so that the property is exempt from generation-skipping tax.[28]

      A "GST trust" is a trust that could have a taxable distribution or taxable termination in the future, unless it falls into one of the following exceptions:[29]

      i. The trust provides that more than 25% of the principal must be distributed to or may be withdrawn by one or more individuals who are non-skip persons (i) before the date that the individual attains age 46, (ii) on or before one or more dates specified in the trust that will occur before the date that such individual attains age 46, or (iii) upon the occurrence of an event that may reasonably be expected to occur before the date that such individual attains age 46.

      ii. The trust provides that more than 25% of the principal must be distributed to or may be withdrawn by one or more individuals who are non-skip persons and who are living on the date of death of another person identified in the instrument (by name or by class) who is more than 10 years older than such individuals.

      iii. The trust instrument provides that, if one or more individuals who are non-skip persons die on or before a date or event described in (i) or (ii) above, more than 25 percent of the principal either must be distributed to the estate or estates of one or more of such individuals or is subject to a general power of appointment exercisable by one or more of such individuals.

      iv. The trust is a trust any portion of which would be included in the gross estate of a non-skip person (other than the

[27] IRC §2632(b)(1).
[28] IRC §2632(c)(1).
[29] IRC §2632(c)(3)(B).

transferor) if such person died immediately after the transfer.

v. The trust is a charitable lead annuity trust, a charitable remainder annuity trust, or a charitable remainder unitrust, or

vi. The trust is a charitable lead unitrust that is required to pay principal to a non-skip person if such person is alive when the yearly payments for which the deduction was allowed terminate.

c. If you do have a gift tax return, the donor will have claimed the automatic allocation of GST exemption on Schedule A, Part 4 of Form 709. One of the options is for the automatic allocation of GST exemption to apply to that year's gift and all subsequent transfers to the trust.[30]

d. Regs §26.2632-1(d)(2) provides that, after someone dies, his or her unused GST exemption is automatically allocated on the due date for filing the decedent's federal estate tax return to the extent not otherwise allocated by the decedent's executor on or before that date. The automatic allocation occurs whether or not a return is actually required to be filed.

i. Unused GST exemption is allocated:

First, pro rata, on the basis of the value of the property as finally determined for federal estate tax purposes, to direct skips treated as occurring at the transferor's death.

The balance (if any), pro rata, on the basis of the federal estate tax value of the nonexempt portion of the trust property (or in the case of trusts that are not included in the gross estate, on the basis of the date of death value of the trust) to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made.[31]

ii. The automatic allocation of GST exemption is irrevocable, and an allocation made by the executor after the automatic allocation is made is ineffective. [32]

[30] Regs §26.2632-1(b)(3)(i).
[31] Regs §26.2632-1(d)(2).
[32] Regs §26.2632-1(d)(2).

iii. No automatic allocation of GST exemption is made to a trust that will have a new transferor with respect to the entire trust prior to the occurrence of any GST with respect to the trust.[33]

B. Calculation of Tax

1. GST Exemption

a. Every individual is allowed a generation-skipping transfer tax ("GST") exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.[34]

b. The amount of the GST exemption is equal to the basic exclusion amount for federal estate tax purposes.[35] As of January 1, 2026, the amount is equal to a permanent, flat $15 million, indexed for inflation.[36]

2. Applicable Fraction / Inclusion Ratio

a. The applicable fraction is a fraction in which the numerator of the applicable fraction is the amount of GST exemption allocated to the trust (or to the transferred property in the case of a direct skip that isn't to a trust), and the denominator of the applicable fraction is the value of the property transferred to the trust (or transferred in a direct skip that isn't to a trust) reduced by the sum of (i) any Federal estate tax and any State death tax incurred by reason of the transfer that is chargeable to the trust and is actually recovered from the trust, (ii) the amount of any charitable deduction allowed with respect to the transfer, and (iii) in the case of a direct skip, the value of the portion of the transfer that is a nontaxable gift. [37]

b. The inclusion ratio is the excess of 1 over the applicable fraction.[38] A transfer with an inclusion ratio of zero is completely exempt from generation-skipping tax. A transfer with an inclusion ratio of one is completely non-exempt from generation-skipping tax.

c. Generation-skipping tax is imposed at an applicable rate that is equal to the maximum federal estate tax rate (at the time of the

[33] Regs §26.2632-1(d)(2).
[34] IRC §2631(a).
[35] IRC §2631(c).
[36] IRC §2010(c)(3).
[37] IRC §2642(a)(2).
[38] IRC §2642(a)(1).

generation-skip) multiplied by the inclusion ratio.[39] In 2025 (and beyond) the maximum federal estate tax rate is 40%.

3. Examples

a. Elizabeth makes a gift of $119,000 to her grandson William. $19,000 of this gift qualifies for the generation-skipping tax annual exclusion. Elizabeth allocates $100,000 of her GST exemption to the transfer.

i. The applicable fraction is $100,000 / $100,000 = 1.

ii. The inclusion ratio is zero (1 – the applicable fraction). No generation-skipping tax is due in connection with this direct skip.

b. Elizabeth makes a gift of $119,000 to a trust for her grandson William, her granddaughter Beatrice, and her granddaughter Eugenie. This gift does not qualify for the gift tax or generation-skipping tax annual exclusions. Elizabeth allocates $119,000 of her GST exemption to the transfer.

i. The applicable fraction is $119,000 / $119,000 = 1.

ii. The inclusion ratio is zero (1 – the applicable fraction). No generation-skipping tax is due in connection with this direct skip.

c. Elizabeth makes a gift of $119,000 to a trust for her grandson William, her granddaughter Beatrice, and her granddaughter Eugenie. This gift does not qualify for the gift tax or generation-skipping tax annual exclusions. Due to a mix-up, Elizabeth's accountant makes an affirmative election NOT to apply any of Elizabeth's GST exemption to the transfer.

i. The applicable fraction is $0 / $119,000 = 0.

ii. The inclusion ratio is 1 (1 – the applicable fraction). Generation-skipping tax is due in connection with this direct skip. The applicable rate of tax is 40% (the maximum federal estate tax rate) x 1 (the inclusion ratio) = 40%.

d. Elizabeth makes a gift of $119,000 to a trust for her grandson William, her granddaughter Beatrice, and her granddaughter Eugenie. William has a Crummey withdrawal right that qualifies

[39] IRC §2641(a).

$19,000 of the gift for the gift tax annual exclusion. This gift does not qualify for the generation-skipping tax annual exclusion, but Elizabeth's accountant thinks it does. The accountant allocates $100,000 of Elizabeth's GST exemption to the transfer.

i. The applicable fraction is $100,000 / $119,000 = 0.840.

ii. The inclusion ratio is 0.16 (1 – the applicable fraction). Generation-skipping tax is due in connection with this direct skip. The applicable rate of tax is 40% (the maximum federal estate tax rate) x 0.16 (the inclusion ratio) = 6.4%.

C. Liability for Tax

1. The transferee pays the generation-skipping tax on a taxable distribution.[40]

Example: William will pay the generation-skipping tax in connection with a distribution to him from a non-GST exempt trust created by his grandmother Elizabeth.

2. The trustee pays the generation-skipping tax on a taxable termination or a direct skip from a trust.[41]

Example: The trustee of a non-GST exempt trust created by Elizabeth for the benefit of her son Charles and his descendants will pay the generation-skipping tax on the taxable termination that will occur at Charles's death.

3. The transferor pays the generation-skipping tax on a direct skip.[42]

Example: Elizabeth will pay any generation-skipping tax due in connection with a gift she makes to her grandson William.

4. Unless the governing instrument otherwise directs, the tax is paid out of the transferred property itself.[43]

[40] IRC §2603(a)(1).
[41] IRC §2603(a)(2).
[42] IRC §2603(a)(3).
[43] IRC §2603(b).

D. GST Reporting Requirements

1. Direct skips made during life

a. An individual reports direct skips made during his life on Schedule A, Part 2 of Form 709. These gifts are then carried over to Schedule D, Part 1 of Form 709, where the net transfer is determined.

b. The net transfer is then carried over to Schedule D, Part 3 of Form 709, where the amount of generation-skipping tax is calculated or a portion of the donor's exemption is allocated to the transfer so that no tax is due.

2. Direct skips at the death of a decedent.

a. Form 706, Schedule R is used to determine the generation-skipping tax on direct skips that is payable by the decedent's estate. Schedule R-1 is used to determine the generation-skipping tax on direct skips that is payable by a trust that is included in the decedent's estate.

b. Recall that the trustee pays the generation-skipping tax on a direct skip from a trust.[44] Schedule R-1 is the notice from the executor to the trustee that the tax is due. The executor completes Schedule R-1, files one copy with Form 706, and gives the trustee two copies – one to be used as a payment voucher for the IRS, and one to be kept with the trust's files.

c. If any of the executors is also one of the trustees of the trust, the direct skip is reported on Schedule R (not Schedule R-1). This makes sense: there is no need to provide Schedule R-1's notification.

d. Schedule R – Part 2 or Part 3

i. Part 2 calculates the generation-skipping tax on transfers in which the property interests transferred are to bear the generation-skipping tax on the transfers. (This is the default rule.)

ii. Part 3 calculates the generation-skipping tax on transfers in which the property interests transferred do <u>not</u> bear the

[44] IRC §2603(a)(2).

generation-skipping tax on the transfers (because the will or trust specifically directs).

3. Taxable Distributions

a. Recall that the transferee pays the generation-skipping tax on a taxable distribution.[45]

b. The trustee notifies the IRS and the distributee of the taxable distribution on Form 706-GS(D-1).

i. Form 706-GS(D-1) must be filed even in connection with taxable distributions from GST-exempt trusts (i.e., trusts with a zero inclusion ratio).

ii. Part A of the form is filed with the IRS and includes a section to remind the preparer that the inclusion ratio must be recalculated when assets are transferred to a pre-existing trust. Part B of the form serves as notice to the distributee of the transfer and the trust's inclusion ratio.

Note: Consider documenting the automatic allocation of GST exemption if a federal estate tax return is not required to be filed, so that the reporting of future taxable distributions or taxable terminations is simplified.

Example: Philip created an irrevocable trust for the benefit of his son Charles and his descendants ("Charles's Trust"). The trust is GST-exempt. When Philip's wife, Elizabeth, dies, she leaves her estate to Charles's Trust. Elizabeth's estate is not required to file a federal estate tax return. She has more than enough GST exemption remaining to make her gift to Charles's Trust exempt from generation-skipping tax, and the automatic allocation rules would apply.

Several years after Elizabeth's death, a distribution is made from Charles's Trust to Elizabeth and Philip's grandson William. This is a taxable distribution that must be reported on Form 706-GS(D-1), even though Charles's Trust is GST exempt. If Elizabeth's executor had the foresight to prepare a document by which (i) the trustee of Charles's Trust acknowledged Elizabeth's gift to the trust, and (ii) the application of the automatic allocation rules to the gift is recited, it will be much easier for the trustee of Charles's Trust to substantiate how Charles's Trust still has an inclusion ratio of zero (i.e. is completely GST exempt)

[45] IRC §2603(a)(1).

even after Elizabeth's subsequent gift to an existing GST exempt trust.

iii. The form is filed with the IRS and given to the distributee by April 15th of the year following the taxable distribution.

iv. If the trust pays the generation-skipping tax on a taxable distribution, the tax paid is treated as an additional taxable distribution.[46]

c. If the distributee receives Form 706-GS(D-1) from the trustee and the listed inclusion ratio is higher than zero, the distributee files Form 706-GS(D).

i. Form 706-GS(D) is used to calculate and report the tax due on distributions from a trust that are subject to the generation-skipping tax.

ii. The form is due by April 15th of the year following the distribution. An automatic six-month extension of time to file is available.

iii. The distributee does not need to file Form 706-GS(D) if the form he received from the trustee shows that the trust has a zero inclusion ratio.

4. Taxable Terminations

a. Recall that the trustee pays the generation-skipping tax on a taxable termination.[47]

b. The trustee reports the taxable termination by filing Form 706-GS(T) no later than April 15th of the year following the taxable termination. An automatic extension of time to file is available by filing Form 7004, Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.

i. Part I and II of the form require information about the trust and its inclusion ratio.

ii. Schedule A requires information about the identity of the skip people and a description for the reason the taxable termination has occurred.

[46] Regs §26.2612-1(c)(1).
[47] IRC §2603(a)(2).

iii. Property subject to the taxable termination is listed on Schedule A and valued. If the taxable termination occurs because of the death of an individual, the trustee may elect alternate valuation under section 2032. If the trustee elects alternate valuation, the trustee must use it to value all property included in the termination. Alternate value is not allowed unless the election will decrease both the total value of the property interests that were subject to the termination and the total net GST tax due.

iv. The form permits deductions (trustee's fees, administrative expenses, financial advisor's fees, accounting fees, attorney fees, the cost of selling the trust property), which are listed on Part II of Schedule A.

III. How do I fix a trust that is *partially* GST-Exempt?

A. If the goal is to avoid having to pay generation-skipping tax, every effort should be made so that a trust is either entirely exempt or entirely non-exempt from generation-skipping tax.

Example: Elizabeth creates an irrevocable trust for the benefit of her son Andrew and his two daughters, Beatrice and Eugenie, and their descendants ("Andrew's Trust").

1. GST-exempt trusts have an inclusion ratio of zero. If a trust is entirely GST-exempt, distributions to skip people can be prioritized – and distributions can be made as sparingly as possible – to maximize the generation-skipping potential of the trust.

Example: If Elizabeth allocated GST exemption to Andrew's Trust so that it is entirely GST-exempt, the trustee can focus on distributions to Beatrice and Eugenie (and their respective children).

2. GST non-exempt trusts have an inclusion ratio of one. If a trust is entirely GST non-exempt, distributions to non-skip people can be prioritized – and distributions can be made as liberally as the trust terms permit – to minimize any eventual generation-skipping tax. The trustee could consider whether it is possible to grant a general power of appointment to a non-skip person, who may have unused estate tax exemption of his or her own, in order to halt the progress of a generation-skip.

Example: If Elizabeth did not allocate GST exemption to Andrew's Trust, it will be entirely GST non-exempt. The trustees can make any distributions that Andrew might need from this trust but will refrain from any distributions to Beatrice and Eugenie that would incur generation-skipping tax as taxable distributions. If the trust terms allow the trustees to grant Andrew a testamentary general power of appointment, after his

death distributions may be made to Beatrice and Eugenie (and their children) without triggering a generation-skipping tax.

3. Partially GST-exempt trusts have an inclusion ratio of something between zero (exempt) and one (non-exempt). A partially GST-exempt trust is in limbo; every taxable distribution or termination will trigger some amount of generation-skipping tax.

   Example: If Elizabeth did not allocate enough GST exemption to Andrew's Trust, it will be only partially exempt from generation-skipping tax. Elizabeth's allocation resulted in an inclusion ratio of 0.6. The trust is only 40% GST-exempt. The trustees can make any distributions that Andrew might need from this trust, but each distribution to Beatrice and Eugenie (or their respective issue) would trigger generation-skipping tax. The applicable rate of tax is 40% (the maximum federal estate tax rate) x 0.6 (the inclusion ratio) = 24%.

   Granting Andrew a testamentary general power of appointment would be inefficient. The entire trust would be included in Andrew's gross estate for federal estate tax purposes, which would be a waste of the 40% of Elizabeth's GST exemption that was allocated to Andrew's Trust.

B. Qualified Severance

1. Regs. Section 26.2642-6 describes a "qualified severance" – a way to divide an existing trust into two or more trusts so that the separate trusts resulting from the severance are treated as separate trusts for generation-skipping tax purposes and the inclusion ratio of each new resulting trust may be different from the inclusion ratio of the original trust.

   Example: Andrew's Trust has an inclusion ratio of 0.6; it is partially GST exempt. A qualified severance could divide Andrew's Trust into two separate trusts for GST purposes: one that is entirely GST-exempt, and one that is entirely GST non-exempt.

2. Requirements of a qualified severance:

   a. The single trust must be severed pursuant to the terms of the governing instrument, or pursuant to applicable local law.[48] The severance must be effective under local law.[49]

      If the result does not impair rights of any beneficiary or adversely affect the achievement of the purposes of the trust, the trustees of a single trust may divide the trust into two or more separate trusts, in which case distributions provided by the governing instrument may

[48] Regs §26.2642-6(d)(1).
[49] Regs §26.2642-6(d)(2).

be made from one or more of the separate trusts. N.J.S.A. 3B:31-34.

b. The date of severance must be either (i) the date selected by the trustee as of which the trust assets are to be valued in order to determine the funding of the resulting trusts, or (ii) the court-imposed date of funding in the case of an order of the local court with jurisdiction over the trust ordering the trustee to fund the resulting trusts on or as of a specific date.[50]

c. The funding must be commenced immediately upon, and funding must occur within a reasonable time (but in no event more than 90 days) after, the selected valuation date.[51]

d. The single trust (original trust) must be severed on a fractional basis, such that each new trust (resulting trust) is funded with a fraction or percentage of the original trust, and the sum of those fractions or percentages is one or one hundred percent, respectively.[52]

i. The fraction may be expressed as a formula, "for example, that fraction of the trust the numerator of which is equal to the transferor's unused GST tax exemption, and the denominator of which is the fair market value of the original trust's assets on the date of severance."[53]

ii. A pecuniary division will not result in a qualified severance.[54]

iii. Example: Andrew's Trust has an inclusion ratio of 0.6; it is partially GST exempt. The trust holds assets valued at $10 million on January 1st. The trustees may sever Andrew's Trust into a new GST-Exempt Andrew's Trust and a new GST Non-Exempt Andrew's Trust.

Funding GST-Exempt Andrew's Trust with 40% of the trust assets valued on January 1st and funding GST Non-Exempt Andrew's Trust with 60% of the trust assets valued on January 1st would satisfy this requirement.

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[50] Regs §26.2642-6(d)(3).
[51] Regs §26.2642-6(d)(3).
[52] Regs §26.2642-6(d)(4).
[53] Regs §26.2642-6(d)(4).
[54] Regs §26.2642-6(d)(4).

Funding GST-Exempt Andrew's Trust with $4 million and funding GST Non-Exempt Andrew's Trust with $6 million would not satisfy this requirement.

e. Funding. Either:

i. Each of the new separate trusts may be funded with a pro rata share of each asset held by the original trust;[55] or

ii. The assets of the original trust may be divided between the two new trusts on a non-pro rata basis BUT each asset must be valued by multiplying the fair market value of the asset held in the original trust as of the date of severance by the fraction of that asset received by that resulting trust.[56] No discounts may be claimed because one of the new trusts receives less than the entire interest held by the original trust.

i. Example: Andrew's Trust has an inclusion ratio of 0.6; it is partially GST exempt. The trust holds assets valued at $10 million on January 1st: $4 million in cash, and a 22% interest in York, Inc. – a closely-held corporation – valued at $6 million on January 1st. The trustees may sever Andrew's Trust into a new GST-Exempt Andrew's Trust and a new GST Non-Exempt Andrew's Trust.

Funding GST-Exempt Andrew's Trust with $1.6 million of cash (40% of the $4 million) and 8.8% of York, Inc. valued at $2.4 million (40% of the 22% of York, Inc. owned by the original trust) and funding GST Non-Exempt Andrew's Trust with $2.4 million of cash (60% of the $4 million) and 13.2% of York, Inc. valued at $3.6 million (60% of the 22% of York, Inc. owned by the original trust) would satisfy this requirement. (pro-rata funding)

Funding GST-Exempt Andrew's Trust with $4 million of cash (40% of the value of the original trust on the date of severance) and funding GST Non-Exempt Andrew's Trust with 22% of York, Inc. valued at $6 million (60% of the value of the original trust on the date of severance) would satisfy this requirement. (non-pro rata funding)

The trustees decide to split the original trust's interest in York, Inc. equally between the two new trusts. Funding

[55] Regs §26.2642-6(d)(4).
[56] Regs §26.2642-6(d)(4).

GST-Exempt Andrew's Trust with $1 million of cash and 11% of York, Inc. valued at $3 million (40% of the value of the original trust on the date of severance, not claiming any discount because of the division in the ownership of the York, Inc. holding) and funding GST Non-Exempt Andrew's Trust with $3 million of cash and 11% of York, Inc. valued at $3 million (60% of the value of the original trust on the date of severance, not claiming any discount because of the division in the ownership of the York, Inc. holding) would satisfy this requirement. (non-pro rata funding)

f. The terms of the resulting trusts must provide, in the aggregate, for the same succession of interests of beneficiaries as are provided in the original trust.[57]

g. What about trusts where discretionary distributions may be made to one or more of the current beneficiaries? A qualified severance requires:

i. The terms of each of the new trusts to be the same as the terms of the original trust. Each permissible beneficiary of the original trust doesn't need to be a beneficiary of all of the new trusts.[58]

ii. Each beneficiary's interest in the new trusts (collectively) to equal the beneficiary's interest in the original trust, determined by the terms of the trust instrument or, if none, on a per-capita basis.[59]

iii. No shift of a beneficial interest in the trust to any beneficiary in a lower generation than the beneficiaries of the original trust.[60]

iv. No extension of the vesting of any beneficial interest in the trust beyond the period provided for in the original trust.[61]

v. Example: Elizabeth creates an irrevocable trust for the benefit of her son Charles, her daughter Anne, her son Andrew, and her son Edward, and their respective descendants. Upon the last to die of Elizabeth's children,

[57] Regs §26.2642-6(d)(5).
[58] Regs §26.2642-6(d)(5)(i).
[59] Regs §26.2642-6(d)(5)(ii).
[60] Regs §26.2642-6(d)(5)(iii).
[61] Regs §26.2642-6(d)(5)(iv).

the trust is to terminate, and the remaining trust property will be distributed in four equal shares, one share to the descendants of each of Elizabeth's children, per stirpes. The trust has an inclusion ratio of 1 (completely GST non-exempt).

The trustees sever the original trust into four equal new trusts, one for each child. Each of the new trusts also has an inclusion ratio of 1. During a child's life, he or she is the beneficiary. At a child's death, the remaining property of the child's separate trust will be distributed to the child's descendants or, if none, will be added to the separate trusts for the child's siblings.

In the aggregate, the new trusts provide for the same beneficiaries and the same succession of interests as provided in the original trust. The severance does not shift any beneficial interest to a beneficiary who occupies a lower generation than the beneficiary in the original trust.

h. When dividing a trust with an inclusion ratio of either one or zero, the new trusts must also have an inclusion ratio of one or zero.[62] When dividing a partially exempt trust (i.e., one with an inclusion ratio equal to something between one and zero), either:

i. The trust must be severed initially into only two new trusts: one funded with a fractional share equal to the applicable fraction used to determine the inclusion ratio (which will be entirely GST-exempt), and one funded with a fractional share equal to the excess of one over the applicable fraction (which will be entirely GST non-exempt).[63] Each new trust may then be further divided in a second qualified severance, if desired.

Example: Elizabeth creates an irrevocable trust for the benefit of her son Charles, her daughter Anne, her son Andrew, and her son Edward, and their respective descendants (the "Family Trust"). Upon the last to die of Elizabeth's children, the Family Trust is to terminate, and the remaining trust property will be distributed in four equal shares, one share to the descendants of each of Elizabeth's children, per stirpes. The Family Trust has an inclusion ratio of .7 (partially GST-exempt). The Family Trust holds assets valued at $100 million on January 1st.

[62] Regs §26.2642-6(d)(6).
[63] Regs §26.2642-6(d)(7)(ii).

The trustees first sever the Family Trust into a new GST-Exempt Family Trust and a new GST Non-Exempt Family Trust. They fund the GST-Exempt Family Trust with 30% of the trust assets valued on January 1st. They fund the GST Non-Exempt Family Trust with 70% of the trust assets valued on January 1st.

After this qualified severance, the trustees may decide to further divide the Family Trust by a qualified severance into four new trusts, one for each child (as described above).

ii. The trust is severed initially into more than two new trusts. One or more of the resulting trusts *in the aggregate* must be funded with a fractional share that is equal to the applicable fraction used to determine the inclusion ratio of the original trust (both of which will be entirely GST-exempt). Each of the other new trust or trusts will have an inclusion ratio of one.[64]

iii. Example: Elizabeth creates an irrevocable trust during her life. During the ten-year trust term, income is payable to Elizabeth's children Charles and Anne. The trustees have discretion to pay principal to Charles or Anne without charging that person's ultimate share. At the end of the term, the trust property is to be divided into as many shares as are necessary to allocate and distribute one share to each child who is then living, and one share per stirpes to the descendants of each child who is not then living leaving living descendants. The trust has an inclusion ratio of 0.75.

The trustees divide the trust into three new trusts. Trust 1, for the benefit of Charles and his descendants, will receive 50% of the original trust's assets and will have an inclusion ratio of 1. Trust 2, for the benefit of Anne and her descendants, will receive 25% of the original trust's assets and will have an inclusion ratio of 1. Trust 3, for the benefit of Anne and her descendants, will receive 25% of the original trust's assets and will have an inclusion ratio of 0.

[64] Regs §26.2642-6(d)(7)(iii).

3. Reporting a qualified severance

a. When - A qualified severance of a trust may be made at any time prior to the termination of the trust.[65] It must be reported to the Internal Revenue Service no later than April 15th of the year immediately following the year during which the severance occurred (or by the last day of the period covered by an extension of time, if an extension of time is granted, to file the notice).[66]

b. How

i. A qualified severance is reported by filing Form 706-GS(T). The filer must write "Qualified Severance" at the top of the form and attach a Notice of Qualified Severance (Notice).[67]

ii. The Notice must provide information about the original trust:[68]

The name of the transferor;

The name and date of creation of the original trust;

The tax identification number of the original trust; and

The inclusion ratio before the severance.

iii. The Notice must also provide information about each of the new trusts created by the qualified severance:[69]

The name and tax identification number of the trust;

The date of severance;

The fraction of the total assets of the original trust received by the resulting trust;

Other details explaining the basis for the funding of the resulting trust (a fraction of the total fair market value of the assets on the date of severance, or a fraction of each asset); and

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[65] Regs §26.2642-6(f)(1).
[66] Regs §26.2642-6(e)(1).
[67] Regs §26.2642-6(e)(1).
[68] Regs §26.2642-6(e)(2).
[69] Regs §26.2642-6(e)(3).

The inclusion ratio.

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Form **709**

Department of the Treasury
Internal Revenue Service

# United States Gift (and Generation-Skipping Transfer) Tax Return

**Go to *www.irs.gov/Form709* for instructions and the latest information.**
(For gifts made during calendar year 2025)

OMB No. 1545-0020

**2025**

## Part I General Information

| | | |
|---|---|---|
| **1** Donor's first name and middle initial | **2** Donor's last name | **3 Donor's social security number** |
| **4** Address (number and street). If you have a P.O. box, see instructions. | | **5** Apt. no. |
| **6** City, town, or post office. If you have a foreign address, also complete spaces below. | **7** State | **8** ZIP code |
| **9** Foreign country name | **10** Foreign province/state/county | **11** Foreign postal code |
| **12** Legal residence (domicile) | **13** Citizenship (see instructions) | |

| | | Yes | No |
|---|---|---|---|
| **14** | If the donor died during the year, check here ☐ and enter date of death _____, _____. | | |
| **15** | If an amended return, check here ☐ | | |
| **16** | If you extended the time to file this Form 709, check here ☐ | | |
| **17** | Enter the total number of donees listed on Schedule A. Count each person only once _____ | | |
| **18a** | Have you (the donor) previously filed a Form 709 (or 709-A) for any other year? If "No," skip line 18b | | |
| **b** | Has your address changed since you last filed Form 709 (or 709-A)? | | |
| **19** | **Gifts by spouses to third parties.** Did you and/or your spouse make gifts to third parties? See instructions. (If the answer is "Yes," complete Part III on page 2.) | | |
| **20** | Have you applied a deceased spousal unused exclusion (DSUE) amount received from a predeceased spouse to a gift or gifts reported on this or a previous Form 709? If "Yes," complete Schedule C | | |
| **21** | Does any gift or other transfer reported on this Form 709 include a digital asset (or a financial interest in a digital asset)? See instructions | | |

## Part II Tax Computation

| | | | |
|---|---|---|---|
| **1** | Enter the amount from Schedule A, Part 4, line 11 | **1** | |
| **2** | Enter the amount from Schedule B, line 3 | **2** | |
| **3** | Total taxable gifts. Add lines 1 and 2 | **3** | |
| **4** | Tax computed on amount on line 3 (see *Table for Computing Gift Tax* in instructions) | **4** | |
| **5** | Tax computed on amount on line 2 (see *Table for Computing Gift Tax* in instructions) | **5** | |
| **6** | Balance. Subtract line 5 from line 4 | **6** | |
| **7** | Applicable credit amount. If donor has DSUE amount from predeceased spouse(s) or Restored Exclusion Amount, enter amount from Schedule C, line 5; otherwise, see instructions | **7** | |
| **8** | Enter the applicable credit against tax allowable for all prior periods from Schedule B, line 1, col. (c) | **8** | |
| **9** | Balance. Subtract line 8 from line 7. Do not enter less than zero | **9** | |
| **10** | Enter 20% (0.20) of the amount allowed as a specific exemption for gifts made after September 8, 1976, and before January 1, 1977. See instructions | **10** | |
| **11** | Balance. Subtract line 10 from line 9. Do not enter less than zero | **11** | |
| **12** | Applicable credit. Enter the smaller of line 6 or line 11 | **12** | |
| **13** | Credit for foreign gift taxes. See instructions | **13** | |
| **14** | Total credits. Add lines 12 and 13 | **14** | |
| **15** | Balance. Subtract line 14 from line 6. Do not enter less than zero | **15** | |
| **16** | Generation-skipping transfer taxes from Schedule D, Part 3, col. (g), total | **16** | |
| **17** | **Total tax.** Add lines 15 and 16 | **17** | |
| **18** | Gift and generation-skipping transfer taxes prepaid with extension of time to file | **18** | |
| **19** | **Tax due.** If the amount on line 17 is more than the amount on line 18, subtract line 18 from line 17. For details on how to pay, go to *www.irs.gov/Payments* or see the instructions | **19** | |
| **20a** | **Overpayment.** If the amount on line 18 is more than the amount on line 17, subtract line 17 from line 18 and complete lines 20b, 20c, and 20d | **20a** | |
| **b** | Routing number _____ **c** Type: ☐ Checking ☐ Savings | | |
| **d** | Account number _____ | | |

**Sign Here**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than donor) is based on all information of which preparer has any knowledge.

Signature of donor _____ Date _____

May the IRS discuss this return with the preparer shown below? See instructions. ☐ **Yes** ☐ **No**

**Paid Preparer Use Only**

| | | | | |
|---|---|---|---|---|
| Preparer's name | Preparer's signature | Date | Check ☐ if self-employed | PTIN |
| Firm's name | | | Firm's EIN | |
| Firm's address | | | Phone no. | |

## Part III Spouse's Consent on Gifts to Third Parties

| | | Yes | No |
|---|---|---|---|
| 1 | **Gifts by spouses to third parties.** Do you consent to have the gifts (including generation-skipping transfers) made by you and by your spouse to third parties during the calendar year considered as made one-half by each of you? See instructions. (If the answer is "Yes," the following information must be furnished. **If the answer is "No," skip lines 2–7.**) . . . . . | | |
| 2 | Name of consenting spouse | | |
| 3 | SSN of consenting spouse | | |
| 4 | Were you married to one another during the entire calendar year? See instructions . . . . . | | |
| 5 | If line 4 is "No," check whether ☐ married ☐ divorced or ☐ widowed/deceased, and give date. See instructions | | |
| 6 | Will a gift tax return for this year be filed by your spouse? If "Yes," mail both returns in the same envelope . . . . . | | |
| 7 | **Consent of Spouse.** Have you obtained required spousal consent for gifts made to third parties to be considered as made one-half by each spouse? If "Yes," **you must attach a Notice of Consent**. See instructions . . . . . | | |

**SCHEDULE A** **Computation of Taxable Gifts** (Including transfers in trust) (see instructions)

**A** Does the value of any item listed on Schedule A reflect any valuation discount? If "Yes," attach explanation . . . . . ☐ Yes ☐ No

**B** If you elect under section 529(c)(2)(B) to treat any transfers made this year to a qualified tuition program as made ratably over a 5-year period, check here ☐ . See instructions. Attach a statement.

**Part 1—Gifts Subject Only to Gift Tax.** Gifts less political organization, medical, and educational exclusions.

| (a) Item number | (b) Donee's name and address | (c) Relationship to donor (if any) | (d) Description of gift | (e) Donor's adjusted basis of gift | (f) Date of gift | (g) Value at date of gift | (h) For split gifts, enter 1/2 of column (g) | (i) Net transfer (subtract col. (h) from col. (g)) | Check boxes where applicable | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | (j) Reserved for future use | (k) Charitable gift | (l) Deductible gift to spouse | (m) 2652(a)(3) election |
| | | | | | | | | | ☐ | ☐ | ☐ | ☐ |
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| | | | | | | | | | ☐ | ☐ | ☐ | ☐ |
| Gifts made by spouse—*complete* ***only*** *if you are splitting gifts with your spouse and spouse also made gifts.* | | | | | | | | | | | | |
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| | | | | | | | | | ☐ | ☐ | ☐ | ☐ |
| **Total of Part 1.** Add amounts from Part 1, column (i) . . . . . | | | | | | | | | | | | |

*(If more space is needed, attach additional statements.)*

**SCHEDULE A** **Computation of Taxable Gifts** (Including transfers in trust) (see instructions) *(continued)*

**Part 2—Direct Skips.** Gifts that are direct skips and are subject to both gift tax and generation-skipping transfer tax. You must list the gifts in chronological order.

| (a) Item number | (b) Donee's name and address | (c) Relationship to donor (if any) | (d) Description of gift | (e) Donor's adjusted basis of gift | (f) Date of gift | (g) Value at date of gift | (h) For split gifts, enter 1/2 of column (g) | (i) Net transfer (subtract col. (h) from col. (g)) | Check boxes where applicable (j) 2632(b) election out |
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| Gifts made by spouse—*complete* ***only*** *if you are splitting gifts with your spouse and spouse also made gifts.* | | | | | | | | | |
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| **Total of Part 2.** Add amounts from Part 2, column (i) . . . . . | | | | | | | | | |

*(If more space is needed, attach additional statements.)*

**SCHEDULE A** **Computation of Taxable Gifts** (Including transfers in trust) (see instructions) *(continued)*

**Part 3—Indirect Skips and Other Transfers in Trust.** Gifts to trusts that are indirect skips as defined under section 2632(c) or to trusts that are currently subject to gift tax and may later be subject to generation-skipping transfer tax. You must list these gifts in chronological order.

| (a) Item number | (b) Donee's name and address | (c) Relationship to donor (if any) | (d) Description of gift | (e) Donor's adjusted basis of gift | (f) Date of gift | (g) Value at date of gift | (h) For split gifts, enter 1/2 of column (g) | (i) Net transfer (subtract col. (h) from col. (g)) | Check boxes where applicable | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | (j) Reserved for future use | (k) Charitable gift | (l) Deductible gift to spouse | (m) 2652(a)(3) election | (n) 2632(c) election |
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| Gifts made by spouse—*complete* ***only*** *if you are splitting gifts with your spouse and spouse also made gifts.* | | | | | | | | | | | | | |
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| **Total of Part 3.** Add amounts from Part 3, column (i) . . . . . | | | | | | | | | | | | | |

*(If more space is needed, attach additional statements.)*

**SCHEDULE A** **Computation of Taxable Gifts** (Including transfers in trust) (see instructions) *(continued)*

**Part 4—Taxable Gift Reconciliation**

| | | | | | |
|---|---|---|---|---|---|
| 1 | Total value of gifts of donor. Add totals from column (i) of Parts 1, 2, and 3 | | | 1 | |
| 2 | Total annual exclusions for gifts listed on line 1 (see instructions) | | | 2 | |
| 3 | Total included amount of gifts. Subtract line 2 from line 1 | | | 3 | |
| | **Deductions** (see instructions) | | | | |
| 4 | Gifts of interests to U.S. citizen spouse for which a marital deduction will be claimed. Enter the total value of items on Parts 1 and 3 of Schedule A for which the box in column (l) is checked | 4 | | | |
| 5 | Exclusions attributable to gifts on line 4 | 5 | | | |
| 6 | Marital deduction. Subtract line 5 from line 4 | 6 | | | |
| 7 | Charitable deduction. Enter the total value of items on Parts 1 and 3 of Schedule A for which the box in column (k) is checked, less exclusions | 7 | | | |
| 8 | Total deductions. Add lines 6 and 7 | | | 8 | |
| 9 | Subtract line 8 from line 3 | | | 9 | |
| 10 | Generation-skipping transfer taxes payable with this Form 709 (from Schedule D, Part 3, col. (g), total) | | | 10 | |
| 11 | **Taxable gifts.** Add lines 9 and 10. Enter here and on page 1, Part II—Tax Computation, line 1 | | | 11 | |

**Qualified Terminable Interest Property (QTIP) Marital Deduction** (See instructions for Schedule A, Part 4, line 4.)

If a trust (or other property) meets the requirements of qualified terminable interest property under section 2523(f), and:

**a.** The trust (or other property) is listed on Schedule A and the box in column (l) is checked; and

**b.** The value of the trust (or other property) is entered in whole or in part as a deduction on Schedule A, Part 4, line 4, then the donor shall be deemed to have made an election to have such trust (or other property) treated as qualified terminable interest property under section 2523(f).

If less than the entire value of the trust (or other property) that the donor has included in Parts 1 and 3 of Schedule A is entered as a deduction on line 4, the donor shall be considered to have made an election only as to a fraction of the trust (or other property). The numerator of this fraction is equal to the amount of the trust (or other property) deducted on Schedule A, Part 4, line 6. The denominator is equal to the total value of the trust (or other property) listed in Parts 1 and 3 of Schedule A.

If you make the QTIP election, the terminable interest property involved will be included in your spouse's gross estate upon your spouse's death (section 2044). See instructions for line 4 of Schedule A. If your spouse disposes (by gift or otherwise) of all or part of the qualifying life income interest, your spouse will be considered to have made a transfer of the entire property that is subject to the gift tax. See *Transfer of Certain Life Estates Received From Spouse* in the instructions.

You may make the special QTIP election to treat the entire trust as non-QTIP for purposes of the generation-skipping transfer tax by checking the box in column (m).

**12** **Election Out of QTIP Treatment of Annuities**

☐ Check here if you elect under section 2523(f)(6) **not** to treat as qualified terminable interest property any joint and survivor annuities that are reported on Schedule A and would otherwise be treated as qualified terminable interest property under section 2523(f). See instructions. Enter the item numbers from Schedule A for the annuities for which you are making this election.

## SCHEDULE B Gifts From Prior Periods

**If you answered "Yes" on line 18a of page 1, Part I, see the instructions for completing Schedule B. If you answered "No," skip to Part II, Tax Computation on page 1 (or Schedule C or D, if applicable). Complete Schedule A before beginning Schedule B. See instructions for recalculation of the column (c) amounts. Attach calculations.**

| (a) Calendar year or calendar quarter (see instructions) | (b) Internal Revenue office where prior return was filed | (c) Amount of applicable credit (unified credit) against gift tax for periods after December 31, 1976 | (d) Amount of specific exemption for prior periods ending before January 1, 1977 | (e) Amount of taxable gifts |
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## SCHEDULE C Deceased Spousal Unused Exclusion (DSUE) Amount and Restored Exclusion

Provide the following information to determine the DSUE amount and applicable credit received from prior spouses. Complete Schedule A before beginning Schedule C.

| (a) Name of deceased spouse (dates of death after December 31, 2010, only) | (b) Date of death | (c) Portability election made? Yes | (c) No | (d) If "Yes," DSUE amount received from spouse | (e) DSUE amount applied by donor to lifetime gifts (list current and prior gifts) | (f) Date(s) of gift(s) (enter as mm/dd/yy for Part 1 and as yyyy for Part 2) |
|---|---|---|---|---|---|---|
| **Part 1—DSUE Received From Last Deceased Spouse** | | | | | | |
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| **Part 2—DSUE Received From Predeceased Spouse(s)** | | | | | | |
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| **TOTAL** (for all DSUE amounts applied from column (e) for Part 1 and Part 2. Enter here and on line 2 below) | | | | | | |

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|---|---|---|---|
| 1 | Donor's basic exclusion amount (see instructions) | 1 | |
| 2 | Total from column (e), Parts 1 and 2 | 2 | |
| 3 | Restored Exclusion Amount (see instructions) | 3 | |
| 4 | Add lines 1, 2, and 3 | 4 | |
| 5 | Applicable credit on amount on line 4 (see *Table for Computing Gift Tax* in the instructions). Enter here and on line 7, Part II—Tax Computation | 5 | |

*(If more space is needed, attach additional statements.)*

## SCHEDULE D Computation of Generation-Skipping Transfer Tax

**Note:** Inter vivos direct skips that are completely excluded by the GST exemption must still be fully reported (including value and exemptions claimed) on Schedule D.

**Part 1—Generation-Skipping Transfers.** List items from Schedule A first, then items to be reported on Schedule D, including any transfers subject to an Estate Tax Inclusion Period (ETIP).

| (a) Item number (from Schedule A, Part 2, col. (a), then ETIP transfers, if any) | (b) Description (only for ETIP transfers) | (c) Value (from Schedule A, Part 2, col. (i), or close of ETIP described in col. (b)) | (d) Nontaxable portion of transfer | (e) Net transfer (subtract col. (d) from col. (c)) |
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| Gifts made by spouse (for gift splitting only) | | | | |
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*(If more space is needed, attach additional statements.)*

## SCHEDULE D Computation of Generation-Skipping Transfer Tax *(continued)*

### Part 2—GST Exemption Reconciliation (Section 2631)

Complete items 1–8 below if any gifts are listed on Schedule A, Part 2 or 3 (direct skips, indirect skips, and other transfers in trust). See instructions.

| | | | |
|---|---|---|---|
| 1 | Maximum allowable exemption (see instructions) | 1 | |
| 2 | Total exemption used for periods before filing this return | 2 | |
| 3 | Exemption available for this return. Subtract line 2 from line 1 | 3 | |
| 4 | Exemption claimed on this return from Part 3, column (c), total below | 4 | |
| 5 | Automatic allocation of exemption to transfers reported on Schedule A, Part 3. To opt out of the automatic allocation rules, you must attach an "**Election Out**" statement. See instructions | 5 | |
| 6 | Exemption allocated to transfers not shown on line 4 or line 5 above. **You must attach a "Notice of Allocation."** See instructions | 6 | |
| 7 | Add lines 4, 5, and 6 | 7 | |
| 8 | Exemption available for future transfers. Subtract line 7 from line 3 | 8 | |

### Part 3—Tax Computation

| (a) Item number (from Schedule D, Part 1, col. (a)) | (b) Net transfer (from Schedule D, Part 1, col. (e)) | (c) GST exemption allocated | (d) Divide col. (c) by col. (b) | (e) Inclusion ratio (subtract col. (d) from 1.000) | (f) Applicable rate (multiply col. (e) by 40% (0.40)) | (g) Generation-skipping transfer tax (multiply col. (b) by col. (f)) |
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| Total exemption claimed. Enter here and on Part 2, line 4, above. May not exceed Part 2, line 3, above | | **Total generation-skipping transfer tax.** Enter here; on page 6, Schedule A, Part 4, line 10; and on page 1, Part II—Tax Computation, line 16 | | | | |

*(If more space is needed, attach additional statements.)*

# Schedules R and R-1—Generation-Skipping Transfer Tax

## Introduction and Overview

Schedule R (Form 706) is used to figure the generation-skipping transfer (GST) tax that is payable by the estate. Schedule R-1 (Form 706) is used to figure the GST tax that is payable by certain trusts that are includible in the gross estate.

The GST tax reported on Form 706 is imposed on only direct skips occurring at death. Unlike the estate tax, which is imposed on the value of the entire taxable estate regardless of who receives it, the GST tax is imposed on only the value of interests in property, wherever located, that actually pass to certain transferees, who are referred to as *Skip persons* (defined later).

For purposes of Form 706, the property interests transferred must be includible in the gross estate before they are subject to the GST tax. Therefore, the first step in figuring the GST tax liability is to determine the property interests includible in the gross estate by completing Schedules A through I of Form 706.

The second step is to determine who the skip persons are. To do this, assign each transferee to a generation and determine whether each transferee is a natural person or a trust for GST purposes. See section 2613 and Regulations section 26.2612-1(d) for details.

The third step is to determine which skip persons are transferees of interests in property. If the skip person is a natural person, anything transferred is an interest in property. If the skip person is a trust, make this determination using the rules under *Interest in property*, later. These first three steps are described in detail under *Determining Which Transfers Are Direct Skips*, later.

The fourth step is to determine whether to enter the transfer on Schedule R (Form 706) or on Schedule R-1 (Form 706). See the rules under *Dividing Direct Skips Between Schedules R and R-1*, later.

The fifth step is to complete Schedules R and R-1 of Form 706, using the *How To Complete* instructions for each schedule.

## Determining Which Transfers Are Direct Skips

**Effective dates.** The rules below apply only for the purpose of determining if a transfer is a direct skip that should be reported on Schedule R or R-1 of Form 706.

***In general.*** The GST tax is effective for the estates of decedents dying after October 22, 1986.

***Irrevocable trusts.*** The GST tax will not apply to any transfer under a trust that was irrevocable on September 25, 1985, but only to the extent that the transfer was not made out of corpus added to the trust after September 25, 1985. An addition to the corpus after that date will cause a proportionate part of future income and appreciation to be subject to the GST tax. For more information, see Regulations section 26.2601-1(b)(1).

***Mental disability.*** If, on October 22, 1986, the decedent was under a mental disability to change the disposition of property owned and did not regain the competence to dispose of property before death, the GST tax will not apply to any property included in the gross estate (other than property transferred on behalf of the decedent during life and after October 21, 1986). The GST tax will also not apply to any transfer under a trust to the extent that the trust consists of property included in the gross estate (other than property transferred on behalf of the decedent during life and after October 21, 1986).

Under a mental disability means the decedent lacked the competence to execute an instrument governing the disposition of property owned, regardless of whether there was an adjudication of incompetence or an appointment of any other person charged with the care of the person or property of the transferor.

If the decedent had been adjudged mentally incompetent, a copy of the judgment or decree must be filed with this return.

If the decedent had not been adjudged mentally incompetent, the executor must file with the return a certification from a qualified physician stating that in the physician's opinion the decedent had been mentally incompetent at all times on and after October 22, 1986, and that the decedent had not regained the competence to modify or revoke the terms of the trust or will prior to the decedent's death or a statement as to why no such certification may be obtained from a physician.

**Direct skip.** The GST tax reported on Form 706 and Schedule R-1 (Form 706) is imposed only on direct skips. For purposes of Form 706, a direct skip is a transfer that is:

- Subject to the estate tax,
- Of an interest in property, and
- To a skip person.

All three requirements must be met before the transfer is subject to the GST tax. A transfer is subject to the estate tax if you are required to list it on any of Schedules A through I of Form 706. To determine if a transfer is of an interest in property and to a skip person, you must first determine if the transferee is a natural person or a trust, as defined later.

**Trust.** For purposes of the GST tax, a *trust* includes not only an ordinary trust (as defined in *Special rule for trusts other than ordinary trusts*, later), but also any other arrangement (other than an estate) which, although not explicitly a trust, has substantially the same effect as a trust. For example, a trust includes life estates with remainders, terms for years, and insurance and annuity contracts.

Substantially separate and independent shares of different beneficiaries in a trust are treated as separate trusts.

**Interest in property.** If a transfer is made to a natural person, it is always considered a transfer of an interest in property for purposes of the GST tax.

If a transfer is made to a trust, a person will have an interest in the property transferred to the trust if that person either has a present right to receive income or corpus from the trust (such as an income interest for life) or is a permissible current recipient of income or corpus from the trust (that is, may receive income or corpus at the discretion of the trustee).

**Skip person.** A transferee who is a natural person is a skip person if that transferee is assigned to a generation that is two or more generations below the generation assignment of the decedent. See *Determining the generation of a transferee*, later.

532 A transferee who is a trust is a skip person if all the interests in the property (as defined above) transferred to the trust are held by skip persons. Thus, whenever a non-skip person has an interest in a trust, the trust will not be a skip person even though a skip person also has an interest in the trust.

A trust will also be a skip person if there are no interests in the property transferred to the trust held by any person, and future distributions or terminations from the trust can be made only to skip persons.

**Non-skip person.** A non-skip person is any transferee who is not a skip person.

**Determining the generation of a transferee.** Generally, a generation is determined along family lines as follows.

1. Where the beneficiary is a lineal descendant of a grandparent of the decedent (that is, the decedent's cousin, niece, nephew, etc.), the number of generations between the decedent and the beneficiary is determined by subtracting the number of generations between the grandparent and the decedent from the number of generations between the grandparent and the beneficiary.
2. Where the beneficiary is a lineal descendant of a grandparent of a spouse (or former spouse) of the decedent, the number of generations between the decedent and the beneficiary is determined by subtracting the number of generations between the grandparent and the spouse (or former spouse) from the number of generations between the grandparent and the beneficiary.
3. A person who at any time was married to a person described in (1) or (2) above is assigned to the generation of that person. A person who at any time was married to the decedent is assigned to the decedent's generation.
4. A relationship by adoption or half-blood is treated as a relationship by whole-blood.
5. A person who is not assigned to a generation according to (1), (2), (3), or (4) above is assigned to a generation based on the birth date, as follows.
   a. A person who was born not more than 12½ years after the decedent is in the decedent's generation.
   b. A person born more than 12½ years, but not more than 37½ years, after the decedent is in the first generation younger than the decedent.
   c. A similar rule applies for a new generation every 25 years.

If more than one of the rules for assigning generations applies to a transferee, that transferee is generally assigned to the youngest of the generations that would apply.

If an estate, trust, partnership, corporation, or other entity (other than certain charitable organizations and trusts described in sections 511(a)(2) and 511(b)(2)) is a transferee, then each person who indirectly receives the property interests through the entity is treated as a transferee and is assigned to a generation, as explained in the above rules. However, this look-through rule does not apply for the purpose of determining whether a transfer to a trust is a direct skip.

***Generation assignment where intervening parent is deceased.*** A special rule may apply in the case of the death of a parent of the transferee. For terminations, distributions, and transfers after December 31, 1997, the existing rule that applied to grandchildren of the decedent has been extended to apply to other lineal descendants.

If property is transferred to an individual who is a descendant of a parent of the transferor, and that individual's parent (who is a lineal descendant of the parent of the transferor) is deceased at the time the transfer is subject to gift or estate tax, then for purposes of generation assignment, the individual is treated as if the individual is a member of the generation that is one generation below the lower of:

- The transferor's generation, or
- The generation assignment of the youngest living ancestor of the individual who is also a descendant of the parent of the transferor.

The same rules apply to the generation assignment of any descendant of the individual.

This rule does not apply to a transfer to an individual who is not a lineal descendant of the transferor if the transferor has any living lineal descendants.

If any transfer of property to a trust would have been a direct skip except for this generation assignment rule, then the rule also applies to transfers from the trust attributable to such property.

See the examples in Regulations section 26.2651-1(c).

***Generation assignment under Notice 2017-15.*** Notice 2017-15 permits taxpayers to reduce their GST exemption allocated to transfers that were made to or for the benefit of transferees whose generation assignment is changed as a result of the *Windsor* decision. A taxpayer's GST exemption that was allocated to a transfer to (or to a trust for the sole benefit of) one or more transferees whose generation assignment should have been determined on the basis of a familial relationship as the result of the *Windsor* decision and are non-skip persons is deemed void. For additional information, go to *IRS.gov/Businesses/Small-Businesses-Self-Employed/Estate-and-Gift-Taxes*.

***Ninety-day rule.*** For purposes of determining if an individual's parent is deceased at the time of a testamentary transfer, an individual's parent who dies no later than 90 days after a transfer occurring by reason of the death of the transferor is treated as having predeceased the transferor. The 90-day rule applies to transfers occurring on or after July 18, 2005. See Regulations section 26.2651-1 for more information.

***Charitable organizations.*** Charitable organizations and trusts described in sections 511(a)(2) and 511(b)(2) are assigned to the decedent's generation. Transfers to such organizations are therefore not subject to the GST tax.

***Charitable remainder trusts.*** Transfers to or in the form of charitable remainder annuity trusts, charitable remainder unitrusts, and pooled income funds are not considered made to skip persons and, therefore, are not direct skips even if all of the life beneficiaries are skip persons.

**Estate tax value.** Estate tax value is the value shown on Schedules A through I of this Form 706.

***Examples.*** The rules above can be illustrated by the following examples.

1. Under the will, the decedent's house is transferred to the decedent's child for the child's life, with the remainder passing to the child's children. This transfer is made to a

trust even though there is no explicit trust instrument. The interest in the property transferred (the present right to use the house) is transferred to a non-skip person (the decedent's child). Therefore, the trust is not a skip person because there is an interest in the transferred property that is held by a non-skip person. The transfer is not a direct skip.

2. The will bequeaths $100,000 to the decedent's grandchild. This transfer is a direct skip that is not made in trust and should be shown on Schedule R (Form 706).
3. The will establishes a trust that is required to accumulate income for 10 years and then pay its income to the decedent's grandchildren for the rest of their lives and, upon their deaths distribute the corpus to the decedent's great-grandchildren. Because the trust has no current beneficiaries, there are no present interests in the property transferred to the trust. All of the persons to whom the trust can make future distributions (including distributions upon the termination of interests in property held in trust) are skip persons (for example, the decedent's grandchildren and great-grandchildren). Therefore, the trust itself is a skip person and you should show the transfer on Schedule R (Form 706).
4. The will establishes a trust that is to pay all of its income to the decedent's grandchildren for 10 years. At the end of 10 years, the corpus is to be distributed to the decedent's children. All of the present interests in this trust are held by skip persons. Therefore, the trust is a skip person and you should show this transfer on Schedule R (Form 706). You should show the estate tax value of all the property transferred to the trust even though the trust has some ultimate beneficiaries who are non-skip persons.

## Dividing Direct Skips Between Schedules R and R-1

TIP *Report all generation-skipping transfers on Schedule R (Form 706) unless the rules below specifically provide that they are to be reported on Schedule R-1 (Form 706).*

Under section 2603(a)(2), the GST tax on direct skips from a trust (as defined for GST tax purposes) is to be paid by the trustee and not by the estate. Schedule R-1 (Form 706) serves as a notification from the executor to the trustee that a GST tax is due.

For a direct skip to be reportable on Schedule R-1 (Form 706), the trust must be includible in the decedent's gross estate.

If the decedent was a surviving spouse receiving lifetime benefits from a marital deduction power of appointment (or QTIP) trust created by the decedent's spouse, then transfers caused by reason of the decedent's death from that trust to skip persons are direct skips required to be reported on Schedule R-1 (Form 706).

If a direct skip is made **from a trust** under these rules, it is reportable on Schedule R-1 (Form 706) even if it is also made **to a trust** rather than to an individual.

Similarly, if property in a trust (as defined for GST tax purposes) is included in the decedent's gross estate under section 2035, 2036, 2037, 2038, 2039, 2041, or 2042 and such property is, by reason of the decedent's death, transferred to skip persons, the transfers are direct skips required to be reported on Schedule R-1 (Form 706).

**Special rule for trusts other than ordinary trusts.** An ordinary trust is defined in Regulations section 301.7701-4(a) as "an arrangement created by a will or by an inter vivos declaration whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts." Direct skips from ordinary trusts are required to be reported on Schedule R-1 (Form 706) regardless of their size unless the executor is also a trustee (see *Executor as trustee* below).

Direct skips from trusts that are trusts for GST tax purposes but are not ordinary trusts are to be shown on Schedule R-1 (Form 706) only if the total of all tentative maximum direct skips from the entity is $250,000 or more. If this total is less than $250,000, the skips should be shown on Schedule R (Form 706). For purposes of the $250,000 limit, tentative maximum direct skips is the amount you would enter on line 5 of Schedule R-1 (Form 706) if you were to file that schedule.

A liquidating trust (such as a bankruptcy trust) under Regulations section 301.7701-4(d) is not treated as an ordinary trust for the purposes of this special rule.

If the proceeds of a life insurance policy are includible in the gross estate and are payable to a beneficiary who is a skip person, the transfer is a direct skip from a trust that is not an ordinary trust. It should be reported on Schedule R-1 (Form 706) if the total of all the tentative maximum direct skips from the company is $250,000 or more. Otherwise, it should be reported on Schedule R (Form 706).

Similarly, if an annuity is includible on Schedule I (Form 706) and its survivor benefits are payable to a beneficiary who is a skip person, then the estate tax value of the annuity should be reported as a direct skip on Schedule R-1 (Form 706) if the total tentative maximum direct skips from the entity paying the annuity are $250,000 or more.

**Executor as trustee.** If any of the executors of the decedent's estate are trustees of the trust, then all direct skips for that trust must be shown on Schedule R (Form 706) and not on Schedule R-1 (Form 706), even if they would otherwise have been required to be shown on Schedule R-1 (Form 706). This rule applies even if the trust has other trustees who are not executors of the decedent's estate.

## How To Complete Schedules R and R-1 of Form 706

**Valuation.** Enter on Schedules R and R-1 of Form 706 the estate tax value of the property interests subject to the direct skips. If you elected alternate valuation (section 2032) and/or special-use valuation (section 2032A), you must use the alternate and/or special-use values on Schedules R and R-1 of Form 706.

## How To Complete Schedule R (Form 706)

### Part I. GST Exemption Reconciliation

Part I; Part II, line 7; Part III, line 7; and Schedule R-1 (Form 706), Part II, line 7, are used to allocate the decedent's GST exemption. This allocation is made by filing Form 706 and attaching a completed Schedule R (Form 706) and/or Schedule R-1 (Form 706). Once made, the allocation is irrevocable. You are not required to allocate all of the

534 decedent's GST exemption. However, the portion of the exemption that you do not allocate will be allocated by the IRS under the deemed allocation of unused GST exemption rules of section 2632(e).

For transfers made through 1998, the GST exemption was $1 million. The current GST exemption is $13,990,000. The exemption amounts for 1999 through 2025 are as follows.

| Year of transfer | GST exemption |
|---|---|
| 1999 | $1,010,000 |
| 2000 | $1,030,000 |
| 2001 | $1,060,000 |
| 2002 | $1,100,000 |
| 2003 | $1,120,000 |
| 2004 and 2005 | $1,500,000 |
| 2006, 2007, and 2008 | $2,000,000 |
| 2009 | $3,500,000 |
| 2010 and 2011 | $5,000,000 |
| 2012 | $5,120,000 |
| 2013 | $5,250,000 |
| 2014 | $5,340,000 |
| 2015 | $5,430,000 |
| 2016 | $5,450,000 |
| 2017 | $5,490,000 |
| 2018 | $11,180,000 |
| 2019 | $11,400,000 |
| 2020 | $11,580,000 |
| 2021 | $11,700,000 |
| 2022 | $12,060,000 |
| 2023 | $12,920,000 |
| 2024 | $13,610,000 |
| 2025 | $13,990,000 |

The amount of each increase can only be allocated to transfers made (or appreciation that occurred) during or after the year of the increase. The following example shows the application of this rule.

***Example.*** In 2003, Alex made a direct skip of $1,120,000 and applied the full $1,120,000 of GST exemption to the transfer. Alex made a $450,000 taxable direct skip in 2004 and another of $90,000 in 2006. For 2004, Alex can only apply $380,000 of exemption ($380,000 inflation adjustment from 2004) to the $450,000 transfer in 2004. For 2006, Alex can apply $90,000 of exemption to the 2006 transfer, but nothing to the transfer made in 2004. At the end of 2006, Alex would have $410,000 of unused exemption that can apply to future transfers (or appreciation) starting in 2007.

**Special QTIP election.** In the case of property for which a marital deduction is allowed to the decedent's estate under section 2056(b)(7) (QTIP election), section 2652(a)(3) allows you to treat such property for purposes of the GST tax as if the election to be treated as qualified terminable interest property had not been made.

The section 2652(a)(3) election must include the value of all property in the trust for which a QTIP election was allowed under section 2056(b)(7).

If a section 2652(a)(3) election is made, then the decedent will, for GST tax purposes, be treated as the transferor of all the property in the trust for which a marital deduction was allowed to the decedent's estate under section 2056(b)(7). In this case, the executor of the decedent's estate may allocate part or all of the decedent's GST exemption to the property.

You make the election simply by listing qualifying property on Part I, line 9.

**Line 2.** These allocations will have been made either on Forms 709 filed by the decedent or on Notices of Allocation made by the decedent for inter vivos transfers that were not direct skips but to which the decedent allocated the GST exemption. These allocations by the decedent are irrevocable.

Also include on this line allocations deemed to have been made by the decedent under the rules of section 2632. Unless the decedent elected out of the deemed allocation rules, allocations are deemed to have been made in the following order.

1. To inter vivos direct skips.
2. Beginning with transfers made after December 31, 2000, to lifetime transfers to certain trusts, by the decedent, that constituted indirect skips that were subject to the gift tax.

For more information, see section 2632 and related regulations.

**Line 3.** Make an entry on this line if you are filing Form(s) 709 for the decedent and wish to allocate any exemption.

**Lines 4, 5, and 6.** These lines represent your allocation of the GST exemption to direct skips made by reason of the decedent's death. Complete Parts II and III, and Schedule R-1 (Form 706) before completing these lines.

**Line 9.** Line 9 is used to allocate the remaining unused GST exemption (from line 8) and to help you figure the trust's inclusion ratio. Line 9 is a Notice of Allocation for allocating the GST exemption to trusts as to which the decedent is the transferor and from which a GST could occur after the decedent's death.

If line 9 is not completed, the deemed allocation at death rules will apply to allocate the decedent's remaining unused GST exemption. The exemption will first be allocated to property that is the subject of a direct skip occurring at the decedent's death, and then to trusts as to which the decedent is the transferor. To avoid the application of the deemed allocation rules, you should enter on line 9 every trust (except certain trusts entered on Schedule R-1 (Form 706), as described later) to which you wish to allocate any part of the decedent's GST exemption. Unless you enter a trust on line 9, the unused GST exemption will be allocated to it under the deemed allocation rules.

If a trust is entered on Schedule R-1 (Form 706), the amount you entered on Schedule R-1 (Form 706), line 7, serves as a Notice of Allocation and you need not enter the trust on line 9 unless you wish to allocate more than the Schedule R-1 (Form 706), line 7, amount to the trust. However, you must enter the trust on line 9 if you wish to allocate any of the unused GST exemption amount to it. Such an additional allocation would not ordinarily be appropriate in the case of a trust entered on Schedule R-1 (Form 706) when

the trust property passes outright (rather than to another trust) at the decedent's death. However, where section 2032A property is involved, it may be appropriate to allocate additional exemption amounts to the property. See the instructions for *Line 11*, later.

CAUTION *To avoid application of the deemed allocation rules, Form 706 and Schedule R (Form 706) should be filed to allocate the exemption to trusts that may later have taxable terminations or distributions under section 2612 even if the form is not required to be filed to report estate or GST tax.*

***Line 9, column C.*** Enter the GST exemption, included on Schedule R (Form 706), Part I, lines 2 through 6 (discussed above), that was allocated to the trust.

***Line 9, column D.*** Allocate the amount from Part I, line 8, on Part I, line 9, column D of Schedule R (Form 706). This amount may be allocated to transfers into trusts that are not otherwise reported on Form 706. For example, the line 8 amount may be allocated to an inter vivos trust established by the decedent during the decedent's lifetime and not included in the gross estate. This allocation is made by identifying the trust on line 9 and making an allocation to it using column D. If the trust is not included in the gross estate, value the trust as of the date of death. Inform the trustee of each trust listed on line 9 of the total GST exemption you allocated to the trust. The trustee will need this information to figure the GST tax on future distributions and terminations.

***Line 9, column E. Trust's inclusion ratio.*** The trustee must know the trust's inclusion ratio to figure the trust's GST tax for future distributions and terminations. You are not required to inform the trustee of the inclusion ratio and may not have enough information to figure it. Therefore, you are not required to make an entry in column E. However, column E and the worksheet later are provided to assist you in figuring the inclusion ratio for the trustee if you wish to do so.

Inform the trustee of the amount of the GST exemption you allocated to the trust. Line 9, columns C and D, may be used to figure this amount for each trust.

**Note.** This worksheet will figure an accurate inclusion ratio only if the decedent was the only settlor of the trust. Use a separate worksheet for each trust (or a separate share of a trust that is treated as a separate trust).

### WORKSHEET (Inclusion Ratio)

| | | |
|---|---|---|
| **1.** | Total estate and gift tax value of all of the property interests that passed to the trust | |
| **2.** | Estate taxes, state death taxes, and other charges actually recovered from the trust | |
| **3.** | GST taxes imposed on direct skips to skip persons other than this trust and borne by the property transferred to this trust | |
| **4.** | GST taxes actually recovered from this trust (from Schedule R (Form 706), Part II, line 9; or Schedule R-1 (Form 706), Part II, line 9) | |
| **5.** | Add lines 2 through 4 | |
| **6.** | Subtract line 5 from line 1 | |
| **7.** | Add columns C and D of Schedule R (Form 706), Part I, line 9 | |
| **8.** | Divide line 7 by line 6 | |
| **9.** | Trust's inclusion ratio. Subtract line 8 from 1.000 | |

**Line 11. Special-use allocation.** For skip persons who receive an interest in section 2032A special-use property, you may allocate more GST exemption than the direct skip amount to reduce the additional GST tax that would be due when the interest is later disposed of or qualified use ceases. See *Schedule T (Form 706)*, earlier, for more details about this additional GST tax.

Enter on line 11 the total additional GST exemption available to allocate to all skip persons who received any interest in section 2032A property. Attach a special-use allocation statement listing each such skip person and the amount of the GST exemption allocated to that person.

If you do not allocate the GST exemption, it will automatically be allocated under the deemed allocation at death rules. To the extent any amount is not so allocated, it will be automatically allocated to the earliest disposition or cessation that is subject to the GST tax. Under certain circumstances, post-death events may cause the decedent to be treated as a transferor for purposes of chapter 13.

Line 11 may be used to set aside an exemption amount for such an event. Attach a statement listing each such event and the amount of exemption allocated to that event.

### Parts II and III

Use Part II to figure the GST tax on transfers in which the property interests transferred are to bear the GST tax on the transfers. Use Part III to report the GST tax on transfers in which the property interests transferred do not bear the GST tax on the transfers.

Section 2603(b) requires that, unless the governing instrument provides otherwise, the GST tax is to be charged to the property constituting the transfer. Therefore, you will usually enter all of the direct skips on Part II.

You may enter a transfer on Part III only if the will or trust instrument directs, by specific reference, that the GST tax is not to be paid from the transferred property interests.

**Part II, line 4.** Enter zero on this line unless the will or trust instrument specifies that the GST taxes will be paid by property other than that constituting the transfer (as described above). Enter on line 4 the total of the GST taxes shown on Part III and Schedule(s) R-1 (Form 706) that are payable out of the property interests shown on Part II, line 2.

**Part II, line 7.** Do not enter more than the amount on line 6. Additional allocations may be made using Part I.

**Part III, line 4.** See the instructions for Part II, line 4, above. Enter only the total of the GST taxes shown on Schedule(s) R-1 (Form 706) that are payable out of the property interests shown on Part III, line 2.

**Part III, line 7.** See the instructions for Part II, line 7, above.

### How To Complete Schedule R-1 (Form 706)

**Part I, line 8. Filing due date.** Enter the due date of Form 706. You must send the copies of Schedule R-1 (Form 706) to the fiduciary before this date.

**Part II, line 7.** Do not enter more than the amount on line 6. If you wish to allocate an additional GST exemption, you must use Schedule R (Form 706), Part I. Making an entry on line 7 constitutes a Notice of Allocation of the decedent's GST exemption to the trust.

**Line 9.** If the property interests entered on line 2 will not bear the GST tax, multiply line 9 by 40% (0.40).

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**Signature.** The executor(s) must sign Schedule R-1 (Form 706) in the same manner as Form 706. See *Signature(s)*, earlier.

**Filing Schedule R-1 (Form 706).** Attach to Form 706 one copy of each Schedule R-1 (Form 706) that you prepare and send a copy of each Schedule R-1 (Form 706) to the fiduciary.

# Schedule U—Qualified Conservation Easement Exclusion




*If at the time of the contribution of the conservation easement, the value of the easement, the value of the land subject to the easement, or the value of any retained development right was different from the estate tax value, you must complete a separate computation in addition to completing Schedule U (Form 706).*

*Use a copy of Schedule U (Form 706) as a worksheet for this separate computation. Complete lines 4 through 14 of the worksheet Schedule U (Form 706). However, the value you use on lines 4, 5, 7, and 10 of the worksheet is the value for these items as of the date of the contribution of the easement, not the estate tax value. If the date of contribution and the estate tax values are the same, you do not need to do a separate computation.*

*After completing the worksheet, enter the amount from line 14 of the worksheet on line 14 of Schedule U (Form 706). Finish completing Schedule U (Form 706) by entering amounts on lines 4, 7, and 15 through 20, following the instructions later for those lines. At the top of Schedule U (Form 706), enter "worksheet attached." Attach the worksheet to the return.*

Under section 2031(c), you may elect to exclude a portion of the value of land that is subject to a qualified conservation easement. You make the election by filing Schedule U (Form 706) with all of the required information and excluding the applicable value of the land that is subject to the easement on Form 706, Part V, item 12. To elect the exclusion, include on Schedule A, B, E, F, G, or H of Form 706, as appropriate, the decedent's interest in the land that is subject to the exclusion. You must make the election on a timely filed Form 706, including extensions.

The exclusion is the lesser of:

- The applicable percentage of the value of land (after certain reductions) subject to a qualified conservation easement, or
- $500,000.

Once made, the election is irrevocable.

## General Requirements

### Qualified Land

Land may qualify for the exclusion if all of the following requirements are met.

- The decedent or a member of the decedent's family must have owned the land for the 3-year period ending on the date of the decedent's death.
- No later than the date the election is made, a qualified conservation easement on the land has been made by the decedent, a member of the decedent's family, the executor of the decedent's estate, or the trustee of a trust that holds the land.
- The land is located in the United States or one of its territories.

### Member of Family

Members of the decedent's family include the decedent's spouse; ancestors; lineal descendants of the decedent, of the decedent's spouse, and of the parents of the decedent; and the spouse of any lineal descendant. A legally adopted child of an individual is considered a child of the individual by blood.

### Indirect Ownership of Land

The qualified conservation easement exclusion applies if the land is owned indirectly through a partnership, corporation, or trust, if the decedent owned (directly or indirectly) at least 30% of the entity. For the rules on determining ownership of an entity, see *Ownership rules* next.

**Ownership rules.** An interest in property owned, directly or indirectly, by or for a corporation, partnership, or trust is considered proportionately owned by or for the entity's shareholders, partners, or beneficiaries. A person is the beneficiary of a trust only if the person has a present interest in the trust. For additional information, see the ownership rules in section 2057(e)(3) (as in effect before its repeal).

### Qualified Conservation Easement

A qualified conservation easement is one that would qualify as a qualified conservation contribution under section 170(h). It must be a contribution:

- Of a qualified real property interest,
- To a qualified organization, and
- Exclusively for conservation purposes.

**Qualified real property interest.** A qualified real property interest is any of the following.

- The entire interest of the donor, other than a qualified mineral interest.
- A remainder interest.
- A restriction granted in perpetuity on the use that may be made of the real property. The restriction must include a prohibition on more than a de minimis use for commercial recreational activity.

**Qualified organization.** A qualified organization includes the following.

- Corporations and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, without net earnings benefitting any individual shareholder and without activity with the purpose of influencing legislation or political campaigning, which:

  a. Receives more than one-third of its support from gifts, contributions, membership fees, or receipts from sales, admissions fees, or performance of services; or

  b. Is controlled by such an organization.
- Any entity that qualifies under section 170(b)(1)(A)(v) or (vi).

**SCHEDULE R (Form 706)**
(August 2025)
Department of the Treasury
Internal Revenue Service

# Generation-Skipping Transfer Tax

**Attach to Form 706.**
**Go to *www.irs.gov/Form706* for instructions and the latest information.**

OMB No. 1545-0015

Decedent's name as it appears on Form 706

**Decedent's social security number**

The generation-skipping transfer (GST) tax is imposed on taxable transfers of interests in property located outside the United States as well as property located inside the United States. See instructions.

**Note:** To avoid application of the deemed allocation rules, Form 706 and Schedule R (Form 706) should be filed to allocate the GST exemption to trusts that may later have taxable terminations or distributions under section 2612 even if the form is not required to be filed to report estate or GST tax.

## Part I GST Exemption Reconciliation (Section 2631) and Special QTIP Election (Section 2652(a)(3))

**Note:** To make a section 2652(a)(3) (special QTIP) election, list qualifying property in Part I, line 9, below. See instructions for details.

| | | | |
|---|---|---|---|
| **1** | Maximum allowable GST exemption | **1** | |
| **2** | Total GST exemption allocated by the decedent against decedent's lifetime transfers | **2** | |
| **3** | Total GST exemption allocated by the executor, using Form 709, against decedent's lifetime transfers | **3** | |
| **4** | GST exemption allocated on Part II, line 7 | **4** | |
| **5** | GST exemption allocated on Part III, line 7 | **5** | |
| **6** | Total GST exemption allocated on Schedule(s) R-1 (Form 706), Part II, line 7 | **6** | |
| **7** | Total GST exemption allocated to inter vivos transfers and direct skips. Add lines 2, 3, 4, 5, and 6 | **7** | |
| **8** | GST exemption available to allocate to trusts and section 2032A interests. Subtract line 7 from line 1 | **8** | |

**9** List the allocation of GST exemption to trusts (as defined for GST tax purposes):

| **A** Name of trust | **B** Trust's EIN (if any) | **C** GST exemption allocated on lines 2–6 above (see instructions) | **D** Additional GST exemption allocated (see instructions) | **E** Trust's inclusion ratio (optional) (see instructions) |
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| **10** | Total additional GST exemption allocated. Add all amounts in column D. May not exceed line 8, above | **10** | |
| **11** | GST exemption available to allocate to section 2032A interests received by individual beneficiaries. Subtract line 10 from line 8. You must attach special-use allocation statement. See instructions | **11** | |

## Part II Direct Skips Where the Property Interests Transferred Bear the GST Tax on the Direct Skips

1 Enter the direct skips where property interests transferred are to bear the GST tax on the transfers.

| (i) Name of skip person | (ii) Description of property interest transferred | (iii) Estate tax value |
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|---|---|---|---|
| 2 | Total estate tax values of all property interests. Add all amounts in column (iii) | 2 | |
| 3 | Estate taxes, state death taxes, and other charges borne by the property interests listed above | 3 | |
| 4 | GST taxes borne by the property interests listed above but imposed on direct skips other than those shown on this Part II. See instructions | 4 | |
| 5 | Total fixed taxes and other charges. Add lines 3 and 4 | 5 | |
| 6 | Total tentative maximum direct skips. Subtract line 5 from line 2 | 6 | |
| 7 | GST exemption allocated. See instructions | 7 | |
| 8 | Subtract line 7 from line 6 | 8 | |
| 9 | GST tax due. Divide line 8 by 3.5 | 9 | |
| 10 | Enter the amount from Part III, line 9 | 10 | |
| 11 | **Total GST taxes payable by the estate.** Add lines 9 and 10. Enter here and on Form 706, Part II, line 19 | 11 | |

## Part III Direct Skips Where the Property Interests Transferred Do Not Bear the GST Tax on the Direct Skips

1 Enter the direct skips where property interests transferred **do not** bear the GST tax on the transfers.

| (i) Name of skip person | (ii) Description of property interest transferred | (iii) Estate tax value |
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|---|---|---|---|
| 2 | Total estate tax values of all property interests. Add all amounts in column (iii) | 2 | |
| 3 | Estate taxes, state death taxes, and other charges borne by the property interests listed above | 3 | |
| 4 | GST taxes borne by the property interests listed above but imposed on direct skips other than those shown on this Part III. See instructions | 4 | |
| 5 | Total fixed taxes and other charges. Add lines 3 and 4 | 5 | |
| 6 | Total tentative maximum direct skips. Subtract line 5 from line 2 | 6 | |
| 7 | GST exemption allocated. See instructions | 7 | |
| 8 | Subtract line 7 from line 6 | 8 | |
| 9 | GST tax due. Multiply line 8 by 40% (0.40). Enter here and on Part II, line 10 | 9 | |

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**SCHEDULE R-1 (Form 706)**
(Rev. August 2025)
Department of the Treasury
Internal Revenue Service

# Generation-Skipping Transfer Tax

Payment Voucher for Direct Skips From a Trust

**Go to *www.irs.gov/Form706* for instructions and the latest information.**

OMB No. 1545-0015

**Executor:** File one copy with Form 706 and send a copy to the fiduciary. Do not pay the tax shown. See instructions for details.
**Fiduciary:** See the *Instructions for the Trustee*, later, for details. Pay the tax shown on line 9.

## Part I Fiduciary and Executor Information (see instructions)

| | | | |
|---|---|---|---|
| **1** Name of trust | | | **2 Trust's EIN** |
| **3a** Decedent's first name and middle initial | **3b** Decedent's last name | **3c** Decedent's SSN | **4** Service Center where Form 706 was filed |
| **5a** Fiduciary's first name | **5b** Fiduciary's last name | **5c** Fiduciary's title | |
| **5d** Fiduciary's address (number and street) | | | **5e** Apt. or suite no. |
| **5f** City, town, or post office. For foreign addresses, also complete lines 5i, 5j, and 5k. | | **5g** State | **5h** ZIP code |
| **5i** Foreign country name | | **5j** Foreign province/state/county | **5k** Foreign postal code |
| **6a** Executor's first name | **6b** Executor's last name | | |
| **6c** Executor's address (number and street) | | | **6d** Apt. or suite no. |
| **6e** City, town, or post office. For foreign addresses, also complete lines 6h, 6i, and 6j. | | **6f** State | **6g** ZIP code |
| **6h** Foreign country name | | **6i** Foreign province/state/county | **6j** Foreign postal code |
| **7** Decedent's date of death | | **8** Filing due date of Schedule R (Form 706) (with extensions) | |

## Part II GST Tax on the Direct Skip

**1** Enter the estate tax value of all property or interest subject to the direct skip.

| **(i)** Item number | **(ii)** Description of property interests subject to the direct skip | **(iii)** Estate tax value |
|---|---|---|
| **1** | | |
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*(continued on next page)*

Under penalties of perjury, I declare that I have examined this document, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature(s) of executor(s) — Date

Date

Signature of fiduciary or officer representing fiduciary — Date

**Part II GST Tax on the Direct Skip** *(continued)*

If additional entries are needed, duplicate and use this page.

| (i) Item number | (ii) Description of property interests subject to the direct skip | (iii) Estate tax value |
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|---|---|---|---|
| 2 | Add amounts in column (iii) | 2 | |
| 3 | Total from column (iii) from additional Parts II attached to this schedule | 3 | |
| 4 | **Total estate tax value.** Add lines 2 and 3 | 4 | |
| 5 | Estate taxes, state death taxes, and other charges borne by the property interests listed above | 5 | |
| 6 | Tentative maximum direct skip from trust (subtract line 5 from line 4) | 6 | |
| 7 | GST exemption allocated | 7 | |
| 8 | Subtract line 7 from line 6 | 8 | |
| 9 | **GST tax due from fiduciary.** Divide line 8 by 3.5. For details on how to pay, go to *www.irs.gov/Payments* or see the instructions. **(See the Instructions for Form 706 if property will not bear the GST tax.)** | 9 | |

# Instructions for the Trustee

## Introduction

Schedule R-1 (Form 706) serves as a payment voucher for the Generation-Skipping Transfer (GST) tax imposed on a direct skip from a trust, which you, the trustee of the trust, must pay. The executor completes the Schedule R-1 (Form 706) and gives you a copy. Sign and create two copies. File one copy and keep the other one for your records.

## How to pay

All payments made to the federal government are to be processed electronically. Go to *www.irs.gov/Payments* to see all your payment options.

**EFTPS.** Payment of the tax due may be submitted electronically through Electronic Federal Tax Payment System (EFTPS). EFTPS is a free service of the Department of the Treasury. To be considered timely, payments made through EFTPS must be completed no later than 8 p.m. Eastern time the day before the due date. All EFTPS payments must be scheduled in advance of the due date and, if necessary, may be changed or canceled up to 2 business days before the scheduled payment date.

To get more information about EFTPS or to enroll in EFTPS, go to *www.eftps.gov* or call 800-555-4477. To contact EFTPS using Telecommunications Relay Services (TRS) for people who are deaf, hard of hearing, or have a speech disability, dial 711 and then provide the TRS assistant the 800-555-4477 number above or 800-733-4829. Additional information about EFTPS is available in Pub. 966, Electronic Federal Tax Payment System: A Guide to Getting Started.

## Signature

You must sign the Schedule R-1 in the space provided.

## What to mail

Mail the copy of Schedule R-1 that you signed.

## Where to mail

Mail to the Department of the Treasury, Internal Revenue Service, Kansas City, MO 64999.

## When to pay

The GST tax is due and payable 9 months after the decedent's date of death (shown on the Schedule R-1). You will owe interest on any GST tax not paid by that date.

## Automatic extension

You have an automatic extension of time to file Schedule R-1 and pay the GST tax. The automatic extension allows you to file and pay by 2 months after the due date (with extensions) for filing the decedent's Schedule R (shown on the Schedule R-1).

If you pay the GST tax under the automatic extension, you will be charged interest (but no penalties).

## Additional information

For more information on how to complete Schedule R-1, see section 2603(a)(2) and the Instructions for Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

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# Instructions for Form 706-GS(D-1)

(Rev. December 2025)

Use with the December 2025 revision of Form 706-GS(D-1)

**Notification of Distribution From a Generation-Skipping Trust**

Section references are to the Internal Revenue Code unless otherwise noted.

## Future Developments

For the latest information about developments related to Form 706-GS(D-1) and its instructions, such as legislation enacted after they were published, go to *IRS.gov/Form706GSD1*.

## What's New

**Part I, General information.** Entry lines in this section were reorganized. Lines 1b and 2b were modified to include TIN as trust's identification number.

# General Instructions

## Purpose of Form

A trustee uses Form 706-GS(D-1) to report certain distributions from a trust that are subject to the generation-skipping transfer (GST) tax and to provide the skip person distributee with information needed to figure the tax due on the distribution.

## Who Must File

In general, the trustee of any trust that makes a taxable distribution must file a Form 706-GS(D-1) for each skip person. See *Distributions Subject to GST Tax*, later, for a discussion of what constitutes a taxable distribution. The trustee must file a return for each skip person even if the inclusion ratio applicable to the distribution is zero. See *Column (d) Inclusion Ratio*, later.

## When to File

The trustee must file Copy A of Form 706-GS(D-1) with the IRS and send Copy B to the distributee by April 15 of the year following the calendar year when the distribution was made. If the due date falls on a Saturday, Sunday, or legal holiday, file on the next business day.

## Where To File

The trustee must send Copy A of Form 706-GS(D-1) to the following address:

Department of the Treasury
Internal Revenue Service Center
Stop 824G
7940 Kentucky Drive
Florence, KY 41042-2915

If using a private delivery service, send Form 706-GS(D-1) to:

Internal Revenue Service Center
Stop 824G
7940 Kentucky Drive
Florence, KY 41042-2915

## Supplementing Form 706-GS(D-1)

If you find that you must change something on a return that has already been filed, you should:

- File another Form 706-GS(D-1);
- Enter "Supplemental Information" across the top of page 1 of the form;
- Include a statement of what has changed, along with the supporting information; and
- Attach a copy of the original Form 706-GS(D-1) that has already been filed.

For the mailing address for supplemental Form 706-GS(D-1), see *Filing Estate and Gift Tax Returns*.

File the amended Form 706-GS(D-1) at the following address.

Internal Revenue Service Center
Stop 824G
7940 Kentucky Drive
Florence, KY 41042-2915

If you're using a PDS, file at this address.

Internal Revenue Service Center
Stop 824G
7940 Kentucky Drive
Florence, KY 41042-2915

If you have already been notified that the return has been selected for examination, you should provide the additional information directly to the office conducting the examination.

## Trusts

**Nonexplicit trusts.** An arrangement that has substantially the same effect as a trust will be treated as a trust even though it is not an explicit trust. Examples of such arrangements are insurance and annuity contracts, arrangements involving life estates and remainders, and estates for years.

In general, a transfer of property in which the identity of the transferee is conditioned on the occurrence of an event is a transfer in trust. However, this rule does not apply to a testamentary trust if the event is to occur within 6 months of the transferor's date of death.

Nonexplicit trusts do not include decedents' estates.

In the case of a nonexplicit trust, the person in actual or constructive possession of the property involved is

considered the trustee and is liable for filing Form 706-GS(D-1).

If you are filing this return for a nonexplicit trust, see Line 2b Trust's Taxpayer Identification Number, later.

**Separate trusts.** You must treat the following as separate trusts:

- Portions of a trust that are attributable to transfers from different transferors and
- Substantially separate and independent shares of different beneficiaries in a trust.

You must report such separate trusts under different item numbers in column (a) of line 3, even if they have the same inclusion ratios.

## Distributions Subject to GST Tax

In general, all taxable distributions are subject to the GST tax. A taxable distribution is any distribution from a trust to a skip person (other than a taxable termination or a direct skip).

If any GST tax imposed on a distribution is paid out of the trust from which the distribution was made, the amount of tax paid by the trust is also a taxable distribution.

A distribution is not considered a taxable distribution if, had it been made while an individual was alive, it would have been a nontaxable gift because of section 2503(e) (relating to transfers made for certain educational or medical expenses).

Also, a distribution (or any portion thereof) is not a taxable distribution to the extent that:

- The property distributed was previously subject to GST tax and
- The distributee in the prior distribution is assigned to a generation the same as or lower than the distributee in the current distribution.

This rule does not apply if the transfers have the effect of avoiding GST tax for any transfer.

### Exceptions

**Irrevocable trusts.** The GST tax does not apply to any distribution from a trust that was irrevocable on September 25, 1985. Any trust in existence on September 25, 1985, will be considered irrevocable unless:

- On September 25, 1985, the value of the trust could have been included in the settlor's gross estate for federal estate tax purposes by reason of section 2038 if the settlor had died on September 25, 1985, or
- Regarding a policy of life insurance that is treated as a trust under section 2652(b), the insured was an owner on September 25, 1985, and this would have caused the insurance proceeds to be included in the insured's gross estate for federal estate tax purposes if the insured had died on September 25, 1985.

For more information, see Regulations section 26.2601-1(b).

**Trusts containing qualified terminable interest property.** Irrevocable trusts in existence on September 25, 1985, that hold qualified terminable interest property (QTIP) (as defined in section 2056(b)(7)) as a result of an election under section 2056(b)(7) or 2523(f), are treated for purposes of the GST tax as if the QTIP election had not been made. Thus, transfers from such a trust will not be subject to the GST tax.

**Additions to irrevocable trusts.** To the extent that a distribution from a trust is from an addition to an irrevocable trust made after September 25, 1985, such distribution is subject to the GST tax. Additions include constructive additions described in Regulations section 26.2601-1(b)(1)(v).

For purposes of figuring the inclusion ratio (defined later), use only the value of the total additions made to the trust after September 25, 1985.

**Distributions from trusts to which additions have been made.** As described earlier, when an addition is made after September 25, 1985, to an irrevocable trust, only the portion of the trust resulting from the addition is subject to the GST tax. For distributions, this portion is the product of the allocation fraction and the value of the property distributed (including accumulated income and appreciation on that property).

The allocation fraction is a fraction, the numerator of which is the value of the addition as of the date it was made (regardless of whether it was subject to gift or estate tax, but reduced by the amount of federal or state estate or gift tax imposed and paid by the trust). The denominator of the fraction is the fair market value of the entire trust immediately after the addition, less any trust amount that is similar to expenses, indebtedness, or taxes that would be allowable as a deduction under section 2053, and further reduced by the same amount that the numerator was reduced by to reflect federal or state estate or gift taxes paid by the trust.

When there is more than one addition, the allocation fraction is revised after each addition. The numerator of the revised fraction is the sum of:

1. The value of the trust subject to the GST tax immediately before the last addition and
2. The amount of the latest addition.

The denominator of the revised fraction is the total value of the entire trust immediately after the latest addition. If the addition results from a generation-skipping transfer, reduce the numerator and denominator by the amount of any GST tax imposed on the transfer and recovered from the trust. Round off the allocation fraction to five decimal places (for example, "0.00001").

### Transition Rule for Revocable Trusts

The GST tax will not apply to any distributions from a revocable trust, provided:

1. The trust was executed before October 22, 1986;
2. The trust as it existed on October 21, 1986, was not amended after October 21, 1986, in any way that created or increased the amount of a generation-skipping transfer;
3. Except as provided later, no addition was made to the trust; and
4. The settlor died before January 1, 1987.

A *revocable trust* is any trust that on October 22, 1986, was not an irrevocable trust (as defined earlier) and would not have been an irrevocable trust had it been created before September 25, 1985.

The instructions under *Trusts containing qualified terminable interest property* apply also to revocable trusts covered by these transition rules.

**Amendments to revocable trusts.** An amendment to a revocable trust in existence on October 21, 1986, will not be

considered to result in the creation of or an increase in the amount of a generation-skipping transfer where:

- The amendment is administrative or clarifying in nature; or
- It is designed to perfect a marital or charitable deduction for an existing transfer, and it only incidentally increases the amount transferred to a skip person.

**Addition to revocable trusts.** If an addition (including a constructive addition) to a revocable trust is made after October 21, 1986, and before the death of the settlor, all subsequent distributions from the trust will be subject to the GST tax, provided the other requirements of taxability are met. For settlors dying before January 1, 1987, any addition made to a revocable trust after the death of the settlor will be treated as if made to an irrevocable trust.

See Regulations section 26.2601-1(b)(2)(vii) for examples demonstrating the operation of these rules.

### Transition Rule in Case of Mental Disability

If the settlor was under a disability on October 22, 1986, the GST tax may not apply. See Regulations section 26.2601-1(b)(3) for a definition of the term "mental disability" and details on the application of this rule.

### Exceptions to Additions Rule

Do not treat as an addition to a trust any addition that is made pursuant to an instrument or arrangement that is covered by the rules discussed earlier under *Transition Rule for Revocable Trusts* and *Transition Rule in Case of Mental Disability*. This also applies to inter vivos transfers if the same property would have been added to the trust by such an instrument. For examples illustrating this rule, see Regulations section 26.2601-1(b)(4)(ii).

## Definitions

**Skip persons.** For GST tax purposes, *skip person* means:

1. A natural person assigned to a generation that is two or more generations below the settlor's generation, or
2. A trust that meets the following conditions:
   a. All interests in the trust are held by skip persons, or
   b. No person holds an interest in the trust, and at no time after the transfer to the trust may a distribution be made to a non-skip person.

**Non-skip person.** A *non-skip person* is any person who is not a skip person.

**Generation assignment.** A generation is determined along family lines as follows:

1. Where the beneficiary is a lineal descendant of a grandparent of the transferor (for example, the donor's cousin, niece, nephew, etc.), the number of generations between the transferor and the descendant is determined by subtracting the number of generations between the grandparent and the transferor from the number of generations between the grandparent and the descendant.
2. Where the beneficiary is the lineal descendant of a grandparent of a spouse (or former spouse) of the transferor, the number of generations between the transferor and the descendant is determined by subtracting the number of generations between the grandparent and the spouse (or former spouse) from the number of generations between the grandparent and the descendant.
3. For this purpose, a relationship by adoption is considered a blood relationship. A relationship by half-blood is considered a relationship by whole blood.
4. The spouse or former spouse of a transferor or lineal descendant is considered to belong to the same generation as the transferor or lineal descendant, as the case may be.

A person who is not assigned to a generation according to the rules above is assigned to a generation based on their birth date as follows.

1. A person who was born not more than 12 1/2 years after the transferor is in the transferor's generation.
2. A person born more than 12 1/2 years, but not more than 37 1/2 years, after the transferor is in the first generation younger than the transferor.
3. Similar rules apply for a new generation every 25 years.

If more than one of the rules for assigning generations applies to a beneficiary, the beneficiary is generally assigned to the youngest of the generations that apply.

If an entity such as a partnership, corporation, trust, or estate has an interest in the property, each individual who has a beneficial interest in the entity is treated as having an interest in the property. The individual is then assigned to a generation using the rules described above.

Governmental entities and certain charitable organizations are assigned to the transferor's generation. Distributions to them will never be generation-skipping transfers.

**Generation assignment where intervening parent is deceased.** If you made a gift or bequest to your grandchild and at the time you made the gift or bequest, the grandchild's parent (who is your or your spouse's or your former spouse's child) is deceased, then for purposes of generation assignment, your grandchild will be considered to be your child rather than your grandchild. Your grandchild's children will be treated as your grandchildren rather than your great-grandchildren.

This rule is also applied to your lineal descendants below the level of grandchild. For example, if your grandchild is deceased, your great-grandchildren who are lineal descendants of the deceased grandchild are considered your grandchildren for purposes of the GST tax.

This rule also governs generation assignment for other lineal descendants. For example, if property is transferred to an individual who is a descendant of a parent of the transferor, and that individual's parent (who is a lineal descendant of the parent of the transferor) is deceased at the time the transfer is subject to gift or estate tax, then for purposes of generation assignment, the individual is treated as if they are a member of the generation that is one generation below the lower of:

- The transferor's generation or
- The generation assignment of the youngest living ancestor of the individual, who is also a descendant of the parent of the transferor.

The same rules apply to the generation assignment of any descendant of the individual.

548 This rule does not apply to a transfer to an individual who is not a lineal descendant of the transferor if the transferor has any living lineal descendants.

If any transfer of property to a trust would have been a direct skip except for this generation assignment rule, then the rule also applies to transfers from the trust attributable to such property.

***Ninety-day rule.*** For purposes of determining if an individual's parent is deceased at the time of a testamentary transfer, an individual's parent who dies no later than 90 days after a transfer occurring by reason of the death of the transferor is treated as having predeceased the transferor. The 90-day rule applies to transfers occurring on or after July 18, 2005. See Regulations section 26.2651-1 for more information.

**Multiple skips.** If after a generation-skipping transfer the property transferred is held in trust, then for the purpose of determining the taxability of subsequent distributions from the trust involving that property, the settlor of the property is assigned to the first generation above the highest generation of any person who has an interest in the trust immediately after the initial transfer.

## Signature

The trustee or an authorized representative of the trustee must sign Form 706-GS(D-1).

If someone prepares your return and does not charge you, that person should not sign the return. Generally, anyone who is paid to prepare your return must sign it in the space indicated.

# Specific Instructions

## Part I—General Information

### Line 1b. Skip Person Distributee's Taxpayer Identification Number

Enter the social security number of an individual distributee. (If the number is unknown or the individual has no number, indicate "unknown" or "none.") If the distributee is a trust, enter the trust's taxpayer identification number (TIN).

### Line 2b. Trust's Taxpayer Identification Number

Enter the TIN of the trust from which the distribution was made.

A nonexplicit trust, as described under *Who Must File*, must have a TIN that is separate from any other entity's TIN and that will be used only by the nonexplicit trust.

A trust or nonexplicit trust that does not have a TIN should apply for one. For additional information, go to *IRS.gov/TIN*.

Send the appropriate TIN form to the address listed under *Where To File*. If the TIN has not been received by the filing time for the GST form, write "Applied for" on line 2b.

## Part II—Distributions

Report all taxable distributions made during the year from the trust listed on line 2 to the skip person distributee listed on line 1. Report a distribution even if its inclusion ratio is zero.

### Column (a). Item Number.

Assign consecutive numbers to each distribution made during the year. Different items of property having different inclusion ratios must be listed separately in Part II. Include under a single item number any properties having the same inclusion ratio even if they were distributed at different times. An exception to this is distributions from "separate trusts" as that term was defined earlier. You must report distributions from such separate trusts under different item numbers even if they have the same inclusion ratio.

### Column (b). Description of Property

**Real estate.** Describe the real estate in enough detail so that the IRS can easily locate it for inspection and valuation. For each parcel of real estate, report the location and, if the parcel is improved, describe the improvements. For city or town property, report the street number, ward, subdivision, block and lot, etc. For rural property, report the township, range, landmarks, etc.

**Stocks and bonds.** For stocks, give:

- Number of shares;
- Whether common or preferred;
- Issue;
- Par value where needed for valuation;
- Price per share;
- Exact name of corporation;
- Principal exchange upon which sold, if listed on an exchange; and
- CUSIP number.

For bonds, give:

- Quantity and denomination;
- Name of obligor;
- Date of maturity;
- Interest rate;
- Interest due date;
- Principal exchange, if listed on an exchange; and
- CUSIP number.

If the stock or bond is unlisted, show the company's principal business office.

The CUSIP (Committee on Uniform Security Identification Procedure) number is a nine-digit number that is assigned to all stocks and bonds traded on major exchanges and many unlisted securities. Usually the CUSIP number is printed on the face of the stock certificate. If the CUSIP number is not printed on the certificate, it may be obtained through the company's transfer agent.

**Other personal property.** Any personal property distributed must be described in enough detail that the IRS can value it.

### Column (d). Inclusion Ratio

**Note:** The trustee must provide the inclusion ratio for every distribution.

All distributions, or any part of a single distribution, that have different inclusion ratios must be listed as separate items in column (a).

The *inclusion ratio* is the excess of 1 over the applicable fraction determined for the trust from which the distribution was made.

**Applicable fraction.** The applicable fraction is a fraction, the numerator of which is the amount of the GST exemption allocated to the trust. The denominator of the fraction is:

1. The value of the property transferred to the trust, minus
2. The sum of:

a. Any federal estate tax or state death tax actually recovered from the trust attributable to the property and

b. Any charitable deduction allowed under section 2055 or 2522 with respect to the property.

Round the applicable fraction to at least the nearest one-thousandth (for example, "0.001").

**Numerator (GST exemption).** Every individual settlor is allowed a lifetime GST exemption to be allocated against property that the individual has transferred. For generation-skipping transfers made through 1998, the exemption was $1 million. The GST exemption amounts thereafter are as follows:

| Year | Amount |
|---|---|
| 1999 | $1,010,000 |
| 2000 | $1,030,000 |
| 2001 | $1,060,000 |
| 2002 | $1,100,000 |
| 2003 | $1,120,000 |
| 2004 and 2005 | $1,500,000 |
| 2006–2008 | $2,000,000 |
| 2009 | $3,500,000 |
| 2010 and 2011 | $5,000,000 |
| 2012 | $5,120,000 |
| 2013 | $5,250,000 |
| 2014 | $5,340,000 |
| 2015 | $5,430,000 |
| 2016 | $5,450,000 |
| 2017 | $5,490,000 |
| 2018 | $11,180,000 |
| 2019 | $11,400,000 |
| 2020 | $11,580,000 |
| 2021 | $11,700,000 |
| 2022 | $12,060,000 |
| 2023 | $12,920,000 |
| 2024 | $13,610,000 |
| 2025 | $13,990,000 |

The GST exemption amount is subject to an annual inflation adjustment for calendar years after 2025. See Rev. Proc. 2024-40, 2024-45 I.R.B. 1100, for information about calendar year 2025. Changes to the annual inflation adjusted amounts in later years will be included in a future revenue procedure.

**Caution:** A valid Deceased Spousal Unused Exclusion Amount ("DSUE" or portability) election by an executor of a deceased spouse's estate does not apply to or impact GST tax exemption.

For existing trusts, transferors may allocate the additional GST exemption amount attributable to section 2631(c) increases if they otherwise qualify under the existing rules for late allocations. For more information, see section 2632 and *Multiple transfers into a trust*, later.

Once made, allocations are irrevocable.

Allocation of the GST exemption is made by the settlor on Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, and/or Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, by the executor of the settlor's estate. Therefore, you should obtain information regarding the allocation of the exemption to this trust from the settlor or the executor of the settlor's estate, as applicable.

If the settlor's entire GST exemption is not allocated by the due date (including extensions) of the settlor's estate tax return, the exemption is automatically allocated under the rules of section 2632.

**Transfers subject to an estate tax inclusion period.** If a transferor made an inter vivos transfer, and the property transferred would have been includible in the transferor's estate if they had died immediately after the transfer (other than by reason of the transferor dying within 3 years of making the gift), for purposes of determining the inclusion ratio, an allocation of GST exemption will only become effective at the close of the estate tax inclusion period (ETIP).

The value of the property for the purpose of figuring the inclusion ratio is the estate tax value if the property is included in the transferor's gross estate, or its value at the close of the ETIP.

The ETIP closes at the earliest of:

1. The time the transferred property would no longer be includible in the settlor's estate,
2. The date of a generation-skipping transfer of the property, or
3. The date of death of the settlor.

**Denominator (valuation of trust assets).** In general, the value to be used in the applicable fraction is the gift tax value for an inter vivos transfer as long as the allocation of the GST exemption was made on a timely filed gift tax return. The value of a testamentary transfer is generally the estate tax value.

If the allocation of the exemption to an inter vivos transfer, made before January 1, 2001, is not made on a timely filed gift tax return, the value for purposes of the applicable fraction is the value of the property transferred at the time the allocation is filed with the IRS.

***Qualified terminable interest property.*** For qualified terminable interest property (QTIP) that is included in the estate of the surviving spouse of the settlor because of section 2044, unless a special QTIP election has been made under section 2652(a)(3), the surviving spouse is considered the transferor under section 2652(a) for GST purposes, and the value is the estate tax value in the estate of the surviving spouse.

A special QTIP election allows property for which a QTIP election was made for estate or gift tax purposes to be treated for GST tax purposes as if this QTIP election had not been made. If the special QTIP election has been made, the predeceased settlor spouse is the transferor and the value is that spouse's estate or gift tax value under the rules described above. Either the settlor spouse or the executor of the settlor spouse's estate must make the special QTIP election.

***ETIP.*** If an individual could not make a timely allocation of exemption because of an ETIP, the value of the property for the purpose of computing the inclusion ratio is the estate tax value if the property is includible in the transferor's gross estate. If the property is not includible in the transferor's gross estate, the property is valued at the close of the ETIP, provided that the GST exemption is allocated on a timely filed gift tax return for the calendar year in which the ETIP closes.

**Multiple transfers into a trust.** When a transfer is made to a pre-existing trust, the applicable fraction must be recomputed. The numerator of the new fraction is the sum of:

1. The exemption allocated to the current transfer and
2. The nontax portion of the trust immediately before the current transfer (the product of the applicable fraction

550 and the value of all of the property in the trust immediately before the current transfer).

The denominator of the new fraction is the sum of:

1. The value of the current transfer (minus any federal estate tax or state death tax actually paid by the trust attributable to such property) and any charitable deduction allowed with respect to such property and
2. The value of all property in the trust immediately before the current transfer.

**Charitable lead annuity trusts.** For distributions from a charitable lead annuity trust, the numerator of the applicable fraction is the adjusted GST exemption, as defined below. The denominator is the value of the trust immediately after termination of the charitable lead annuity.

The *adjusted GST exemption* is the sum of:

1. The exemption allocated to the trust and
2. Interest on the exemption determined at the interest rate used to figure the estate or gift deduction for the charitable lead annuity and for the actual period of the charitable lead annuity.

In the case of a late allocation, the amount of interest accrued prior to the date of allocation is zero.

### Column (e). Value

Enter the value of the property distributed from the trust at the time of distribution.

## Part III—Trust Information

### Line 4

An arrangement that has substantially the same effect as a trust will be treated as a trust even though it is not an explicit trust. Examples of such arrangements are insurance and annuity contracts, arrangements involving life estates and remainders, and estates for years. Nonexplicit trusts do not include decedent's estates.

In the case of a nonexplicit trust, the trustee is the person in actual or constructive possession of the property involved.

### Line 5

Whenever property is transferred into a pre-existing trust, the inclusion ratio must be refigured. See *Multiple transfers into a trust* for the rule on how to refigure the inclusion ratio.

Form **706-GS(D-1)**

(Rev. December 2025)

Department of the Treasury
Internal Revenue Service

# Notification of Distribution From a Generation-Skipping Trust

Complete for each skip person distributee.

For calendar year _____ .

Go to *www.irs.gov/Form706GSD1* for instructions and the latest information.

OMB No. 1545-0015

**Copy A: Send to IRS**

## Part I General Information (see instructions)

| | | |
|---|---|---|
| **1a** Name of skip person distributee | **1b** Skip person distributee's TIN (see instructions) | |
| **1c** Skip person distributee's address (number and street) | | **1d** Apt. or suite no. |
| **1e** City, town, or post office. For foreign addresses, also complete 1h, 1i, and 1j. | **1f** State | **1g** ZIP code |
| **1h** Foreign country name | **1i** Foreign province/state/county | **1j** Foreign postal code |
| **2a** Name of trust | **2b** TIN of trust | |
| **2c** Trust address (number and street) | | **2d** Apt. or suite no. |
| **2e** City, town, or post office. For foreign addresses, also complete 2h, 2i, and 2j. | **2f** State | **2g** ZIP code |
| **2h** Foreign country name | **2i** Foreign province/state/county | **2j** Foreign postal code |

## Part II Distributions (see instructions)

**3** Describe each distribution below.

| (a) Item number | (b) Description of property | (c) Date of distribution | (d) Inclusion ratio | (e) Value | (f) Tentative transfer (multiply col. (e) by col. (d)) |
|---|---|---|---|---|---|
| 1 | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

*(continued on next page)*

## Part III Trust Information (see instructions)

**4** If this is not an explicit trust, check here and attach a statement describing the arrangement that makes its effect substantially similar to an explicit trust . . . . . ☐

| | | Yes | No |
|---|---|---|---|
| **5** | Has any property been contributed to this trust since the last Form 706-GS(T) or 706-GS(D-1) was filed? If "Yes," attach a schedule showing the trust's inclusion ratio has been refigured . . . . . | | |
| **6** | Have any contributions been made to this trust since the last Form 706-GS(T) or 706-GS(D-1) was filed that were not included in calculating the trust's inclusion ratio? If "Yes," attach a statement explaining why the contributions were not included . . . . . | | |
| **7** | Has any exemption been allocated to this trust by reason of the deemed allocation rules? . . . . . | | |

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer other than trustee is based on all information of which preparer has any knowledge.

**Signature of trustee** _____ **Date** _____

**Signature of preparer other than trustee** _____ **Date** _____

**Address**

**Part II** **Distributions** *(continued)*

If additional entries are needed, duplicate and use this page.

| (a) Item number | (b) Description of property | (c) Date of distribution | (d) Inclusion ratio | (e) Value | (f) Tentative transfer (multiply col. (e) by col. (d)) |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
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Form **706-GS(D-1)**
(Rev. December 2025)
Department of the Treasury
Internal Revenue Service

# Notification of Distribution From a Generation-Skipping Trust

Complete for each skip person distributee.
For calendar year _____.
Go to *www.irs.gov/Form706GSD1* for instructions and the latest information.

OMB No. 1545-0015

**Copy B: For Distributee**

## Part I General Information (see instructions)

| | | |
|---|---|---|
| **1a** Name of skip person distributee | **1b** Skip person distributee's TIN (see instructions) | |
| **1c** Skip person distributee's address (number and street) | | **1d** Apt. or suite no. |
| **1e** City, town, or post office. For foreign addresses, also complete 1h, 1i, and 1j. | **1f** State | **1g** ZIP code |
| **1h** Foreign country name | **1i** Foreign province/state/county | **1j** Foreign postal code |
| **2a** Name of trust | **2b** TIN of trust | |
| **2c** Trust address (number and street) | | **2d** Apt. or suite no. |
| **2e** City, town, or post office. For foreign addresses, also complete 2h, 2i, and 2j. | **2f** State | **2g** ZIP code |
| **2h** Foreign country name | **2i** Foreign province/state/county | **2j** Foreign postal code |

## Part II Distributions (see instructions)

**3** Describe each distribution below.

| (a) Item number | (b) Description of property | (c) Date of distribution | (d) Inclusion ratio | (e) Value | (f) Tentative transfer (multiply col. (e) by col. (d)) |
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**Skip person distributee.** To report this distribution, you must file Form 706-GS(D), Generation-Skipping Transfer Tax Return for Distributions, at the following address: Internal Revenue Service, Attn: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915.

**Part II** **Distributions** *(continued)*

If additional entries are needed, duplicate and use this page.

| (a) Item number | (b) Description of property | (c) Date of distribution | (d) Inclusion ratio | (e) Value | (f) Tentative transfer (multiply col. (e) by col. (d)) |
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# Instructions for Skip Person Distributee

## General Instructions

### Purpose of Form

Form 706-GS(D-1) is used by a trustee to report to the distributee and to the IRS distributions from a trust that are subject to the generation-skipping transfer tax. The skip person distributee uses the information on Form 706-GS(D-1) to complete Form 706-GS(D), Generation-Skipping Transfer Tax Return for Distributions.

Attach a copy of each Form 706-GS(D-1) you received during the year to your Form 706-GS(D). You should also keep a copy for your records.

### Errors

If you believe the trustee has made an error on your Form 706-GS(D-1), notify the trustee and ask for a corrected Form 706-GS(D-1). Do not change any items on your copy. Be sure to ask the trustee to send a copy of the corrected Form 706-GS(D-1) to the IRS.

## Specific Instructions

### Part I

**Line 2b.** Enter the trust's taxpayer identification number from Part I of this form on Form 706-GS(D), Part III, line 11, column (a).

### Part II

Duplicate and use pages 2 and 4 if additional entries are needed.

**Column (a).** Use the same item number used here for the corresponding entry on Form 706-GS(D), Part III, line 11, column (b).

**Column (c).** The date of distribution is the date the title to the property distributed passed from the trustee to the distributee. This is the date used to determine the value of the distribution.

**Column (f).** Enter the tentative transfer amount on Form 706-GS(D), Part III, line 11, column (c).

**This page intentionally left blank**

# Instructions for Form 706-GS(D)

(Rev. December 2025)

**Generation-Skipping Transfer Tax Return for Distributions**

Section references are to the Internal Revenue Code unless otherwise noted.

## Future Developments

For the latest information about developments related to Form 706-GS(D) and its instructions, such as legislation enacted after they were published, go to *IRS.gov/Form706GSD*.

## What's New

**Part I, General information.** Entry lines in this section were reorganized and the address includes foreign address entries.

**Part II, Tax computation.** Part III was moved to Part II, and the overpayment line now includes option for direct deposit.

**Part III, Distributions.** Part II was moved to Part III on the second page of Form 706-GS(D) to allow more entry lines.

**Electronic payments.** If you have access to U.S. banking services or electronic payment systems, you should use direct deposit for any refunds and pay electronically for any payments, whenever possible.

***Making a payment.*** If there is a balance due on Part II, line 9, go to *IRS.gov/Payments* for information on how to make a payment. See the instructions for Part II, line 9, later, for more details.

***Direct deposit.*** We have added direct deposit fields on lines 10b, 10c, and 10d. If there is an overpayment on Part II, line 10a, enter your direct deposit information on Part II, lines 10b, 10c, and 10d. See the instructions for Part II, line 10, later, for more details.

# General Instructions

## Purpose of Form

Form 706-GS(D) is used by a skip person distributee to calculate and report the tax due on distributions from a trust that are subject to the generation-skipping transfer (GST) tax.

## Who Must File

In general, any skip person who receives a taxable distribution from a trust must file Form 706-GS(D). Trustees are required to report taxable distributions to skip person distributees on Form 706-GS(D-1), Notification of Distribution From a Generation-Skipping Trust.

If you receive a Form 706-GS(D-1) and the inclusion ratio found on Part II, line 3, column(d), is zero for all distributions, you do not need to file Form 706-GS(D). If you are required to file Form 706-GS(D), you do not have to include any distributions that have an inclusion ratio of zero.

## When To File

The GST tax on distributions is figured and reported on a calendar year basis, regardless of your income tax accounting period. Generally, you must file Form 706-GS(D) on or after January 1 but not later than April 15 of the year following the calendar year when the distributions were made.

If you are not able to file the return by the due date, you may request an automatic 6-month extension of time to file by filing Form 7004, Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns. The extension is automatic, so you do not have to sign the form or provide a reason for your request. You must file Form 7004 on or before the regular due date of Form 706-GS(D). See Form 7004 for more information.

### Private delivery services (PDSs).

Filers can use certain PDSs designated by the IRS to meet the "timely mailing as timely filing" rule for tax returns. Go to *IRS.gov/PDS* for the current list of designated services.

The PDS can tell you how to get written proof of the mailing date.

For the IRS mailing address to use if you're using a PDS, go to *IRS.gov/PDSStreetAddresses*.

**Caution:** PDSs can't deliver items to P.O. boxes. You must use the U.S. Postal Service to mail any item to an IRS P.O. box address.

## Where To File

File Form 706-GS(D) at the following address.

Department of the Treasury
Internal Revenue Service Center
Kansas City, MO 64999

If using a PDS, use this address.

Internal Revenue Submission Processing Center
333 W. Pershing
Kansas City, MO 64108

## Supplementing Form 706-GS(D)

If you find that you must change something on a return that has already been filed, you should:

- File another Form 706-GS(D);
- Enter "Supplemental Information" across the top of page 1 of the form;

558 • Include a statement of what has changed, along with the supporting information; and
• Attach a copy of the original Form 706-GS(D) that has already been filed.

For the mailing address for supplemental Form 706-GS(D), see *Filing Estate and Gift Tax Returns*.

File the supplemental Form 706-GS(D) at the following address.

Internal Revenue Service Center
Stop 824G
7940 Kentucky Drive
Florence, KY 41042-2915

If you're using a PDS, file at this address.

Internal Revenue Service Center
Stop 824G
7940 Kentucky Drive
Florence, KY 41042-2915

If you have already been notified that the return has been selected for examination, you should provide the additional information directly to the office conducting the examination.

## Penalties and Interest

Section 6651 provides penalties for both late filing and late payment unless there is reasonable cause for the delay. The law also provides penalties for willful attempts to evade payment of tax.

A return is late when it is filed after the due date, including extensions. The late filing penalty will not be imposed if the taxpayer can show that the failure to file a timely return is due to reasonable cause.

Section 6662 provides a 20% penalty for underpayments of estate or GST taxes due to negligence, intentional disregard of rules and regulations, or a substantial or gross valuation understatement. A substantial valuation understatement occurs when the reported value of property is 65% or less of the actual value of the property. A gross valuation understatement occurs when the reported value of the property listed is 40% or less of the actual value of the property. No penalty will be assessed if the underpayment of estate tax, attributable to substantial or gross valuation understatement, does not exceed $5,000.

Interest will be charged on taxes not paid by their due date, even if an extension of time to file is granted. Interest is also charged on additions to tax for failure to file imposed by section 6651(a)(1) and on the section 6662 penalty from the due date of the return (including any extensions) until the addition to tax or penalty is paid.

**Reasonable cause determinations.** If you receive a notice about penalties and interest after you file Form 706-GS(D), send us an explanation and we will determine if you meet reasonable cause criteria. Do not attach an explanation when you file Form 706-GS(D). Explanations attached to the return at the time of filing will not be considered.

**Return preparer.** Return preparers who prepare any return or claim for refund that reflects an understatement of tax liability due to an unreasonable position are subject to a penalty equal to the greater of $1,000 or 50% of the income derived (or to be derived) for the preparation of each such return. Return preparers who prepare a return or claim for refund that reflects an understatement of tax liability due to willful or reckless conduct are subject to a penalty of $5,000 or 75% of the income derived (or to be derived), whichever is greater, for the preparation of each such return. See sections 6694(a) and 6694(b), the related regulations, and Announcement 2009-15, 2009-11 I.R.B. 687 (available at *IRS.gov/pub/irs-irbs/irb09-11.pdf*), for more information.

## Signature

Either the distributee or an authorized representative must sign Form 706-GS(D).

If you fill in your own return, leave the *Paid Preparer Use Only* space blank. If someone prepares your return and does not charge you, that person should not sign the return.

## Paid Preparer Use Only

Generally, anyone who is paid to prepare the return must sign the return in the space provided and fill in the *Paid Preparer Use Only* area. See section 7701(a)(36)(B) for exceptions.

In addition to signing and completing the required information, the paid preparer must give a copy of the completed return to the distributee.

**Note:** A paid preparer may sign original or supplemental returns by rubber stamp, mechanical device, or computer software program.

# Specific Instructions

## Part I—General Information

### Line 1a

If the skip person distributee is a trust, enter the name of the trust here.

### Line 1b

For skip person distributees who are individuals, enter the distributee's social security number (SSN) here and leave line 1c blank. If the skip person distributee is a trust, see the instructions for line 1c. Do not enter a number on both line 1b and line 1c.

### Line 1c

If the skip person distributee is a trust, enter the trust's taxpayer identification number (TIN) and leave line 1b blank. Do not enter a number on both line 1b and line 1c.

### Line 2a

If the skip person distributee is a trust, enter the trustee's name here. If the skip person distributee is a minor or is under some disability that precludes the individual from filing the return, enter the name of the person who is legally responsible for conducting the affairs of the

distributee, such as a parent or guardian. Also, include the title or relationship to the distributee.

### Lines 2b–2i

Enter the address at which you wish to receive correspondence from the IRS regarding this return. If there is an entry on line 2a, the address entered here will normally be that of the person listed on line 2a, rather than the individual or trust listed on line 1a.

## Part II—Tax Computation

**Note:** Complete Part III before completing Part II.

### Line 3

Add all amounts of transfer entered in Part III, line 11, column (c), and, if needed, from additional sheets.

### Line 4

You may deduct any adjusted allowable expenses incurred in connection with the preparation of this Form 706-GS(D) or any other expenses incurred in connection with the determination, collection, or refund of the GST tax reported or which should have been reported on this return from the amount of the distribution you received.

*Adjusted allowable expenses* are equal to the total allowable expenses multiplied by the inclusion ratio. If you have more than one inclusion ratio in Part II, column (d), of Form 706-GS(D-1), prorate the total expense among the inclusion ratios based on the relative value of each distribution made at the various inclusion ratios.

You may deduct an expense even though it has not been paid at the time the return is filed as long as the amount of the expense is clearly ascertainable at that time. If an additional allowable expense is incurred after the return is filed, file Form 843, Claim for Refund and Request for Abatement, to claim a refund.

***Example.*** The following example illustrates the rules above.

You listed three distributions in Part III of Form 706-GS(D). The value of the first distribution is $10,000 and has an inclusion ratio of 0.25. The value of the second distribution is $20,000 and has an inclusion ratio of 0.33. The value of the third distribution is $30,000 and has an inclusion ratio of 0.50. You received the completed return from the preparer along with the bill for the preparer's fee on April 14 and filed the return on April 15. You paid the preparer's $200 fee on April 20. The adjusted allowable expense you should report on line 4 of Part II is $80, calculated as follows.

$\frac{\$10,000}{\$60,000} \times 200 = 33.33 \times 0.25 = 8$ (rounded)

$\frac{\$20,000}{\$60,000} \times 200 = 66.67 \times 0.33 = 22$ (rounded)

$\frac{\$30,000}{\$60,000} \times 200 = 100 \times 0.50 = 50$

Adjusted allowable expense = 80

### Line 6

Enter, using the table below, the applicable rate in effect at the time the generation-skipping distribution occurred.

**Table of Maximum Tax Rates**

| If the generation-skipping transfer occurred: | The maximum tax rate is: |
|---|---|
| After December 31, 2002, but before January 1, 2004 | 49% |
| After December 31, 2003, but before January 1, 2005 | 48% |
| After December 31, 2004, but before January 1, 2006 | 47% |
| After December 31, 2005, but before January 1, 2007 | 46% |
| After December 31, 2006, but before January 1, 2010 | 45% |
| After December 31, 2009, but before January 1, 2011 | 0% |
| After December 31, 2010, but before January 1, 2013 | 35% |
| After December 31, 2012 | 40% |

### Line 9—Tax Due

If the amount on line 7 is more than the amount of line 8, subtract line 8 from line 7. This is the amount you owe.

### Making a Payment

The IRS recommends paying electronically whenever possible. Options to pay electronically include any of the payment options below. Also, go to *IRS.gov/Payments* and *Frequently asked questions on estate taxes* for more detailed information.

**EFTPS.** Payment of the tax due may be submitted electronically through the Electronic Federal Tax Payment System (EFTPS). EFTPS is a free service of the Department of the Treasury. See *IRS.gov/EFTPS* and *EFTPS.gov* for more information.

**Same-day wire.** Payment of the tax due may be submitted electronically through same-day wire from your financial institution. Contact your financial institution for availability, cost, and time frames. See *IRS.gov/SameDayWire* and *How do I make an electronic payment* under *Frequently asked questions on estate taxes* on *IRS.gov* for the worksheet and more information.

**Paying by check.** Make the check payable to "United States Treasury." Write the SSN of individual distributee, or TIN of trust distributee, and "Form 706-GS(D)" on the check to assist us in posting it to the proper account. See *IRS.gov/PayByMail* for more information.

**Paying by cash.** You may be able to pay your balance due with cash at participating retail stores. See *IRS.gov/PayCash*.

### Line 10—Overpayment

If you have access to U.S. banking services, you should use direct deposit for any refunds, whenever possible. See *IRS.gov/DirectDeposit* for more information.

560 Direct deposit is available for this form. If there is an overpayment when filing your return, complete Part II, lines 10b, 10c, and 10d to input your direct deposit information.

### Line 10a

If line 10a is under $1, we will send a refund only on written request.

### Line 10b

The routing number must be nine digits. The first two digits must be 01 through 12 or 21 through 32. Ask your financial institution for the correct routing number to enter on line 10b if:

- The routing number on a deposit slip is different from the routing number on your checks,
- Your deposit is to a savings account that doesn't allow you to write checks, or
- Your checks state they are payable through a financial institution different from the one at which you have your checking account.

### Line 10c

Check the appropriate box for the type of account. Don't check more than one box. You must check the correct box to ensure your deposit is accepted.

### Line 10d

The account number can be up to 17 characters (both numbers and letters). Include hyphens but omit spaces and special symbols. Enter the number from left to right and leave any unused boxes blank. Don't include the check number.

## Part III—Distributions

Report all the taxable distributions with inclusion ratios greater than zero that you received during the year. The trustee will report these distributions to you on Form 706-GS(D-1). Attach a copy of each Form 706-GS(D-1) you received during the year to this return. You should also keep a copy for your records.

If you need more space than is provided in Part III, duplicate and use if additional entries are needed. Make sure that the total tentative transfers from the continuation sheet are included on line 3 of Part II.

### Column (b)

In column (b), use the same item number that was used for the corresponding distribution on Form 706-GS(D-1). If you receive distributions from more than one trust, you may need to repeat item numbers.

### Column (c)

There may be instances when the trustee has either not completed columns (e) (value) and (f) (tentative transfer) of Form 706-GS(D-1) or when you disagree with the amounts the trustee entered. If this occurs, attach a statement to this return showing what you think are the correct amounts and how you figured them.

To figure the tentative transfer (column (c) of this form), multiply the applicable inclusion ratio from Form 706-GS(D-1), Part II, column (d), by the value of the distribution. Use the following guidelines to determine the value of the distribution.

The value of a distribution is its fair market value on the date of distribution. *Fair market value* (FMV) is the price at which the property would change hands between a willing buyer and a willing seller when neither is forced to buy or to sell, and both have reasonable knowledge of all the relevant facts. FMV may not be determined by a forced sale price nor by the sale price of the item in a market other than that in which the item is most commonly sold to the public. The location of the item must be taken into account whenever appropriate.

Determine the value of the property distributed as of the date of the distribution. The date of distribution is listed in Form 706-GS(D-1), Part II, column (c).

Reduce the value of any property being reported in Part III by the amount of any consideration provided by the distributee.

Value the stock of close corporations or inactive stock on the basis of net worth, earnings, earning and dividend capacity, and other relevant factors. For such stock, attach balance sheets, particularly the one nearest the date of the distribution, and statements of net earnings or operating results and dividends paid for each of the 5 preceding years.

Reduce the reported value of real estate by the amount of any outstanding lien against the property on the date of distribution. Attach copies of any such liens. Explain how the reported values were determined and attach copies of any appraisals.

For more information, see the Instructions for Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

Go to *IRS.gov/OrderForms* to order current forms, instructions, and publications; call 800-829-3676 to order prior-year forms and instructions. Go to *IRS.gov/Forms* to view, download, or print all the forms, instructions, and publications you may need.

Form **706-GS(D)**

# Generation-Skipping Transfer Tax Return for Distributions

(Rev. December 2025)

Department of the Treasury
Internal Revenue Service

**Use for distributions made after December 31, 2024.**

**For calendar year** _____ .

**Go to *www.irs.gov/Form706GSD* for instructions and the latest information.**

OMB No. 1545-0015

*Attach a copy of all Forms 706-GS(D-1) to this return.*

## Part I General Information (see instructions)

| | | |
|---|---|---|
| **1a** Name of skip person distributee | **1b** SSN of individual distributee | **1c** TIN of trust distributee |
| **2a** Name and title of person filing return (if different from line 1a) | | |
| **2b** Address of distributee or person filing return (number and street) | | **2c** Apt. or suite no. |
| **2d** City, town, or post office. For foreign addresses, also complete lines 2g, 2h, and 2i. | **2e** State | **2f** ZIP code |
| **2g** Foreign country name | **2h** Foreign province/state/county | **2i** Foreign postal code |

## Part II Tax Computation. Complete Part III before completing Part II (see instructions).

| | | | |
|---|---|---|---|
| **3** | Total amounts of transfers. Add together all the amounts entered in Part III, line 11, column (c) | **3** | |
| **4** | Adjusted allowable expenses (see instructions) | **4** | |
| **5** | Taxable amount. Subtract line 4 from line 3 | **5** | |
| **6** | Maximum federal estate tax rate (see instructions) | **6** | % |
| **7** | Generation-skipping transfer tax. Multiply line 5 by line 6 | **7** | |
| **8** | Payment, if any, made with Form 7004 | **8** | |
| **9** | **Tax due.** If the amount on line 7 is more than the amount on line 8, subtract line 8 from line 7. For details on how to pay, go to *www.irs.gov/Payments* or see the instructions | **9** | |
| **10a** | **Overpayment.** If the amount on line 8 is more than the amount on line 7, subtract line 7 from line 8 and complete lines 10b, 10c, and 10d | **10a** | |
| **b** | Routing number | **c** Type: ☐ Checking ☐ Savings | |
| **d** | Account number | | |

Under penalties of perjury, I declare that I have examined this return, along with accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than trustee or designated filer) is based on all information of which preparer has any knowledge.

| | | |
|---|---|---|
| **Sign Here** | Signature | Date |
| **Paid Preparer Use Only** | Preparer's name / Preparer's signature / Date / Check ☐ if self-employed / PTIN | |
| | Firm's name | Firm's EIN |
| | Firm's address | Phone no. |

## Part III Distributions

If additional entries are needed, duplicate and use this page.

**11** Enter the distributions as indicated below.

| (a) Trust TIN (from Form 706-GS(D-1), line 2b) | (b) Item no. (from Form 706-GS(D-1), line 3, column (a)) | (c) Amount of transfer (from Form 706-GS(D-1), line 3, column (f)) (Tentative transfer) |
|---|---|---|
| | | |
| | | |
| | | |

# Instructions for Form 706-GS(T)

(Rev. December 2025)

**Generation-Skipping Transfer Tax Return for Terminations**

Section references are to the Internal Revenue Code unless otherwise noted.

## Future Developments

For the latest information about developments related to Form 706-GS(T) and its instructions, such as legislation enacted after they were published, go to *IRS.gov/Form706GST*.

## What's New

**Part I—General Information.** Entry lines in this section were reorganized. Line 1b was modified to include TIN as trust's identification number.

**Part II—Trust Information.** Questions 3, 6, and 7 were moved to Schedule A.

**Part III—Tax Computation.** Overpayment line now includes direction for direct deposit.

**Part IV—Supplemental Trust Information.** New part with lines 11, 12, and 13 to provide additional information as requested on Part II questions.

**Schedule A.** Schedule was reorganized to include previous Schedule A, Schedule B(1), and Schedule B(2) into one Schedule A with Parts I–V.

**Electronic payments.** If you have access to U.S. banking services or electronic payment systems, you should use direct deposit for any refunds and pay electronically for any payments, whenever possible.

***Making a payment.*** If there is a balance due on Part III, line 9, go to *IRS.gov/Payments* for information on how to make a payment. See the instructions for Part III, line 9, later, for more details.

***Direct deposit.*** We have added direct deposit fields on lines 10b, 10c, and 10d. If there is an overpayment on Part III, line 10a, enter your direct deposit information on Part III, lines 10b, 10c, and 10d. See the instructions for Part III, line 10, later, for more details.

## Reminder

**GST exemption increase.** The generation-skipping transfer (GST) tax exemption amount may increase yearly. See *Numerator*, later.

**Additional information about estate taxes.** Go to *Frequently asked questions on estate taxes* on IRS.gov.

# General Instructions

## Purpose of Form

Form 706-GS(T) is used by a trustee to figure and report the tax due from certain trust terminations that are subject to the generation-skipping transfer (GST) tax.

## Who Must File

In general, the trustee of any trust that has a taxable termination (defined below) must file Form 706-GS(T) for the tax year in which the termination occurred.

## When To File

Generally, the trustee must file Form 706-GS(T) by April 15 of the year following the calendar year in which the termination occurs. If the due date falls on a Saturday, Sunday, or legal holiday, file on the next business day.

If you are not able to file the return by the due date, you may request an extension of time to file by filing Form 7004, Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns. The extension is automatic, so you do not have to sign the form or provide a reason for your request. You must file Form 7004 on or before the regular due date of Form 706-GS(T). See Form 7004 for more information.

### Private Delivery Services (PDSs)

Filers can use certain PDSs designated by the IRS to meet the "timely mailing as timely filing" rule for tax returns. Go to *IRS.gov/PDS* for the current list of designated services.

The PDS can tell you how to get written proof of the mailing date.

For the IRS mailing address to use if you're using a PDS, go to *IRS.gov/PDSStreetAddresses*.

**Caution:** PDSs can't deliver items to P.O. boxes. You must use the U.S. Postal Service to mail any item to an IRS P.O. box address.

## Where To File

File Form 706-GS(T) at the following address.

Department of the Treasury
Internal Revenue Service Center
Kansas City, MO 64999

If using a PDS, file at the following address.

Internal Revenue Service
333 W. Pershing Road
Kansas City, MO 64108

## Supplementing Form 706-GS(T)

If you find that you must change something on a return that has already been filed, you should:

- File another Form 706-GS(T);
- Enter "Supplemental Information" across the top of page 1 of the form;
- Include a statement of what has changed, along with the supporting information; and

564 • Attach a copy of the original Form 706-GS(T) that has already been filed.

For the mailing address for supplemental Form 706-GS(T), see *Filing Estate and Gift Tax Returns*.

File the supplemental Form 706-GS(T) at the following address.

Internal Revenue Service Center
Stop 824G
7940 Kentucky Drive
Florence, KY 41042-2915

If you're using a PDS, file at this address.

Internal Revenue Service Center
Stop 824G
7940 Kentucky Drive
Florence, KY 41042-2915

If you have already been notified that the return has been selected for examination, you should provide the additional information directly to the office conducting the examination.

# Trusts

**Nonexplicit trusts.** An arrangement that has substantially the same effect as a trust will be treated as a trust even though it is not an explicit trust. Examples of such arrangements are insurance and annuity contracts, arrangements involving life estates and remainders, and estates for years.

In general, a transfer of property in which the identity of the transferee is conditioned on the occurrence of an event is a transfer in trust. This rule does not apply to a testamentary trust, however, if the event is to occur within 6 months of the transferor's date of death.

Nonexplicit trusts do not include decedents' estates.

In the case of a nonexplicit trust, the person in actual or constructive possession of the property involved is considered the trustee and is liable for filing Form 706-GS(T).

If you are filing this return for a nonexplicit trust, see the instructions for line 1b.

**Separate trusts.** You must treat as separate trusts:

- Portions of a trust that are attributable to transfers from different transferors, and
- Substantially separate and independent shares of different beneficiaries in a trust.

If you are the trustee for separate trusts as described above, you must file a single Form 706-GS(T) but provide a Schedule A for each separate trust, as that term is used here.

# Terminations Subject to GST Tax

A termination may occur by reason of death, lapse of time, release of a power, or any other means. In general, all taxable terminations are subject to the GST tax.

**Taxable termination.** A taxable termination is the conclusion of an interest in property held in trust unless:

- Immediately after the termination, a non-skip person has an interest in the property, or
- At no time after the termination may a distribution be made from the trust to a skip person.

## Exceptions

**Irrevocable trusts.** Except as described under *Additions to irrevocable trusts* below, the GST tax does not apply to any termination of an interest in a trust that was irrevocable on September 25, 1985. Any trust in existence on September 25, 1985, will be considered irrevocable unless:

1. On September 25, 1985, the settlor held a power with respect to such trust that would have caused the value of the trust to be included in the settlor's gross estate for federal estate tax purposes by reason of section 2038 (regarding revocable transfers) if the settlor had died on September 25, 1985; or
2. Regarding a policy of life insurance that is treated as a trust under section 2652(b), the insured possessed an incident of ownership on September 25, 1985, that would have caused the insurance proceeds to be included in the insured's gross estate for federal estate tax purposes if the insured had died on September 25, 1985.

For more information, see Regulations section 26.2601-1(b)(i) and (ii).

**Trusts containing qualified terminable interest property.** Irrevocable trusts in existence on September 25, 1985, that hold qualified terminable interest property (QTIP) (as defined in section 2056(b)(7)) as a result of an election under section 2056(b)(7) or 2523(f), are treated for purposes of the GST tax as if the QTIP election had not been made. Thus, transfers from such a trust will not be subject to the GST tax.

**Additions to irrevocable trusts.** If an addition has been made after September 25, 1985, to an irrevocable trust, the termination of any interest in the trust may be subject in part to the GST tax. Additions include constructive additions described in Regulations section 26.2601-1(b)(1)(v).

**Medical and educational exclusion.** If all of the property to which the termination applied has been distributed and used for medical or educational expenses of the transferee such that if the transfer had been made inter vivos by an individual, it would not have been subject to gift tax by reason of the medical and educational exclusion, then the termination is not a generation-skipping transfer, and you do not have to file this form to report the termination.

## Transition Rule for Revocable Trusts

The GST tax will not apply to any termination of an interest in a revocable trust, provided:

- The trust was executed before October 22, 1986;
- The trust as it existed on October 21, 1986, was not amended after October 21, 1986, in any way that created or increased the amount of a generation-skipping transfer;
- Except as provided in *Exceptions to Additions Rule*, later, no additions were made to the trust; and
- The settlor died before January 1, 1987.

A revocable trust is any trust that on October 22, 1986, was not an irrevocable trust, as defined previously, and would not have been an irrevocable trust had it been created before September 25, 1985.

The instructions under *Trusts containing qualified terminable interest property*, previously, apply also to revocable trusts covered by these transition rules.

**Amendments to revocable trusts.** An amendment to a revocable trust in existence on October 21, 1986, will not be

considered to result in the creation of, or an increase in the amount of, a generation-skipping transfer where:

- The amendment is administrative or clarifying in nature, and it only incidentally increases the amount transferred to a skip person (defined below); or
- It is designed to perfect a marital or charitable deduction for an existing transfer, and it only incidentally increases the amount transferred to a skip person (defined later).

See Regulations section 26.2601-1(b)(2)(vii) for examples demonstrating these rules.

**Additions to revocable trusts.** If an addition (including a constructive addition) to a revocable trust is made after October 21, 1986, and before the death of the settlor, all subsequent terminations of interests in the trust will be subject to the GST tax if the other requirements of taxability are met. For settlors dying before January 1, 1987, any addition made to a revocable trust after the death of the settlor will be treated as made to an irrevocable trust.

### Transition Rule in Case of Mental Disability

If the settlor was under a mental disability on October 22, 1986, the GST tax may not apply. See Regulations section 26.2601-1(b)(3) for a definition of the term "mental disability" and additional details.

### Exceptions to Additions Rule

Do not treat as an addition to a trust any addition that is made pursuant to an instrument or arrangement that is covered by the transition rules discussed above under *Transition Rule for Revocable Trusts* and *Transition Rule in Case of Mental Disability.* This also applies to inter vivos transfers if the same property would have been added to the trust by such an instrument. For examples illustrating this rule, see Regulations section 26.2601-1(b)(5)(ii).

## Definitions

### Skip Persons

For termination purposes, skip person means a trust beneficiary who is either:

1. A natural person assigned to a generation that is two or more generations below the settlor's generation; or
2. A trust that meets either of the following conditions.
   a. All interests in the trust are held by skip persons; or
   b. No person holds an interest in the trust, and at no time after the transfer to the trust may a distribution be made to a non-skip person.

### Interest

A person holds an interest in the trust if, at the time the determination is made, the person:

1. Has a current right to receive income or corpus from the trust;
2. Is a permissible current recipient of income or corpus from the trust (other than charitable entities); or
3. Is a charitable or other entity described in section 2055(a) and the trust is a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund.

Any interest that is created primarily to postpone or avoid the GST tax is disregarded.

### Non-Skip Person

A non-skip person is any person who is not a skip person.

### Generation Assignment

A generation is determined along family lines as follows.

1. Where the beneficiary is a lineal descendant of a grandparent of the transferor (for example, the donor's cousin, niece, nephew, etc.), the number of generations between the transferor and the descendant is determined by subtracting the number of generations between the grandparent and the transferor from the number of generations between the grandparent and the descendant.
2. Where the beneficiary is the lineal descendant of a grandparent of a spouse (or former spouse) of the transferor, the number of generations between the transferor and the descendant is determined by subtracting the number of generations between the grandparent and the spouse (or former spouse) from the number of generations between the grandparent and the descendant.
3. For this purpose, a relationship by adoption is considered a blood relationship. A relationship by half-blood is considered a relationship by whole blood.
4. The spouse or former spouse of a transferor or lineal descendant is considered to belong to the same generation as the transferor or lineal descendant, as the case may be.

A person who is not assigned to a generation according to the rules above is assigned to a generation based on his or her birth date as follows.

1. A person who was born not more than 12½ years after the transferor is in the transferor's generation.
2. A person born more than 12½ years, but not more than 37½ years, after the transferor is in the first generation younger than the transferor.
3. Similar rules apply for a new generation every 25 years.

If more than one of the rules for assigning generations applies to a beneficiary, the beneficiary is generally assigned to the youngest of the generations that apply.

If an entity such as a partnership, corporation, trust, or estate has an interest in property, each individual who has a beneficial interest in the entity (for example, partners, shareholders, and beneficiaries) is treated as having an interest in the property. The individual is then assigned to a generation using the rules described above.

Government entities and certain charitable organizations are assigned to the transferor's generation. Terminations in their favor will never be generation-skipping transfers.

### Generation Assignment Where Intervening Parent Is Deceased

If you made a gift or bequest to your grandchild and at the time you made the gift or bequest, the grandchild's parent (who is your or your spouse's or your former spouse's child) is deceased, then for purposes of generation assignment, your grandchild will be considered to be your child rather than your grandchild. Your grandchild's children will be treated as your grandchildren rather than your great-grandchildren.

566 This rule governs generation assignment of lineal descendants below the level of grandchild. For example, if your grandchild is deceased, your great-grandchildren who are lineal descendants of the deceased grandchild are considered your grandchildren for purposes of the GST tax.

This rule also applies to other lineal descendants. For example, if property is transferred to an individual who is a descendant of a parent of the transferor, and that individual's parent (who is a lineal descendant of the parent of the transferor) is deceased at the time the transfer is subject to gift or estate tax, then for purposes of generation assignment, the individual is treated as if he or she is a member of the generation that is one generation below the lower of:

- The transferor's generation; or
- The generation assignment of the youngest living ancestor of the individual, who is also a descendant of the parent of the transferor.

The same rules apply to the generation assignment of any descendant of the individual.

This rule does not apply to a transfer to an individual who is not a lineal descendant of the transferor if the transferor has any living lineal descendants.

If any transfer of property to a trust would have been a direct skip except for this generation assignment rule, then the rule also applies to transfers from the trust attributable to such property.

**Ninety-day rule.** For purposes of determining if an individual's parent is deceased at the time of a testamentary transfer, an individual's parent who dies no later than 90 days after a transfer occurring by reason of the death of the transferor is treated as having predeceased the transferor. The 90-day rule applies to transfers occurring on or after July 18, 2005. See Regulations section 26.2651-1(a)(2)(iii).

### Multiple Skips

If after a generation-skipping transfer, the property transferred is held in trust, then for the purpose of determining the taxability of subsequent transfers from the trust involving that property, the transferor of the property is assigned to the first generation above the highest generation of any person who has an interest in the trust immediately after the initial transfer.

## Penalties and Interest

Section 6651 provides for penalties for both late filing and for late payment unless there is reasonable cause for the delay. The law also provides penalties for willful attempts to evade payment of tax.

Section 6662 provides a 20% penalty for underpayments of estate or GST taxes due to negligence, intentional disregard of rules and regulations, or a substantial or gross valuation understatement. A substantial valuation understatement occurs when the reported value of property on Form 706-GS(T) is 65% or less of the actual value of the property. A gross valuation understatement occurs when the reported value of the property listed on Form 706-GS(T) is 40% or less of the actual value of the property. No penalty will be assessed if the underpayment of estate tax, attributable to substantial or gross valuation understatement, does not exceed $5,000.

Interest will be charged on taxes not paid by their due date, even if an extension of time to file is granted. Interest is also charged on any additions to tax imposed by section 6651 from the due date of the return (including any extensions) until the addition to tax is paid.

**Return preparer.** The Small Business and Work Opportunity Act of 2007 extended return preparer penalties to all return preparers. Return preparers who prepare any return or claim for refund that reflects an understatement of tax liability due to an unreasonable position are subject to a penalty equal to the greater of $1,000 or 50% of the income derived (or to be derived) for the preparation of each such return. Return preparers who prepare a return or claim for refund that reflects an understatement of tax liability due to willful or reckless conduct are subject to a penalty of $5,000 or 75% of the income derived (or income to be derived), whichever is greater, for the preparation of each such return. See sections 6694(a) and 6694(b), the related regulations, and Ann. 2009-15, 2009-11 I.R.B. 687 (available at IRS.gov/pub/irs-irbs/irb09-11.pdf) for more information.

# Specific Instructions

Complete Form 706-GS(T) in the following order: Parts I and II, Schedule A, and Parts III and IV.

## Part I—General Information

### Line 1b. Trust's Taxpayer Identification Number

All trusts filing Form 706-GS(T) must have a taxpayer identification number (TIN). A nonexplicit trust, defined above, must have a TIN that is separate from any other entity's TIN and that will be used only by the entity in its capacity as the nonexplicit trust.

A trust or nonexplicit trust that does not have a TIN should apply for one. For additional information, go to IRS.gov/TIN.

Send the appropriate TIN form to the address listed under *Where To File*. If you do not receive the TIN by the due date for Form 706-GS(T), write "Applied for" on line 1b.

## Part II—Trust Information

### Line 3

Whenever property is transferred into a pre-existing trust, the inclusion ratio must be refigured. If you answered "Yes," complete Part IV, line 11, stating how the inclusion ratio was calculated. See *Multiple transfers*, later, for the rule on how to refigure the inclusion ratio.

## Part III—Tax Computation

### Line 6b

If you have more than six Schedules A attached to this form, enter the total GST tax from all Schedules A in excess of six.

### Line 9—Tax Due

If the amount on line 7 is more than the amount on line 8, subtract line 8 from line 7. This is the amount you owe.

### Making a Payment

The IRS recommends paying electronically whenever possible. Options to pay electronically include any of the payment options below. Also, go to IRS.gov/Payments and *Frequently asked questions on estate taxes* for more detailed information.

**EFTPS.** Payment of the tax due may be submitted electronically through the Electronic Federal Tax Payment System (EFTPS). EFTPS is a free service of the Department of the Treasury. See *IRS.gov/EFTPS* and *EFTPS.gov* for more information.

**Same-day wire.** Payment of the tax due may be submitted electronically through same-day wire from your financial institution. Contact your financial institution for availability, cost, and time frames. See *IRS.gov/SameDayWire* and *How do I make an electronic payment* under *Frequently asked questions on estate taxes* on IRS.gov for the worksheet and more information.

**Paying by check.** Make the check payable to "United States Treasury." Write the trust's TIN and "Form 706-GS(T)" to assist us in posting it to the proper account. See *IRS.gov/PayByMail* for more information.

**Paying by cash.** You may be able to pay your balance due with cash at participating retail stores. See *IRS.gov/PayCash*.

### Line 10—Overpayment

If you have access to U.S. banking services, you should use direct deposit for any refunds, whenever possible. See *IRS.gov/DirectDeposit* for more information.

Direct deposit is available for this form. If there is an overpayment when filing your return, complete Part III, lines 10b, 10c, and 10d to input your direct deposit information.

### Line 10a

If line 10a is under $1, we will send a refund only on written request.

### Line 10b

The routing number must be nine digits. The first two digits must be 01 through 12 or 21 through 32. Ask your financial institution for the correct routing number to enter on line 10b if:

- The routing number on a deposit slip is different from the routing number on your checks,
- Your deposit is to a savings account that doesn't allow you to write checks, or
- Your checks state they are payable through a financial institution different from the one at which you have your checking account.

### Line 10c

Check the appropriate box for the type of account. Don't check more than one box. You must check the correct box to ensure your deposit is accepted.

### Line 10d

The account number can be up to 17 characters (both numbers and letters). Include hyphens but omit spaces and special symbols. Enter the number from left to right and leave any unused boxes blank. Don't include the check number.

### Signature

Form 706-GS(T) must be signed by the trustee or by an authorized representative. The trustee, or an authorized representative, must verify and sign the declaration under penalties of perjury.

### Paid Preparer Use Only

Generally, anyone who is paid to prepare the return must sign the return in the space provided and fill in the *Paid Preparer Use Only* area. See section 7701(a)(36)(B) for exceptions.

In addition to signing and completing the required information, the paid preparer must give a copy of the completed return to the trustee.

**Note:** A paid preparer may sign original or supplemental returns by rubber stamp, mechanical device, or computer software program.

## Part IV—Supplemental Trust Information

### Line 11

Whenever property is transferred into a pre-existing trust, the inclusion ratio must be refigured. If you answered "Yes" on Part II, line 3, show how the inclusion ratio was calculated.

### Line 12

Describe terminations that occurred and are not reported on this return because of the exceptions in section 2611(b)(1) or (2) relating to medical and educational exclusions and prior payment of generation-skipping transfer (GST) tax. Complete if you answered "Yes" on Part II, line 4.

### Line 13

Describe the trust arrangement that makes its effect substantially similar to an explicit trust. Complete if answered "Yes" on Part II, line 5.

## Schedule A

**Note:** If you need more than one Schedule A, make copies before completing it. If you need more space than is provided for Parts I, II, and III, duplicate and use if additional entries are needed. Make sure that the total amounts from the additional Schedule(s) A are included on the corresponding line for each part.

Combine on a single Schedule A all terminations from a single trust that have the same inclusion ratio (as discussed later). However, you must complete a separate Schedule A for each terminating interest that has a different inclusion ratio. Number each Schedule A consecutively in the space provided at the top.

### Part I—Taxable Termination

### Line 3

If a qualified terminable interest property deduction was taken by the settlor as donor spouse or by the executor of a deceased settlor's estate for the transfer of any property into this trust, the donor spouse or the executor, as the case may be, may have made an election at that time to treat such transfer for the purpose of the GST tax as if it was not qualified terminable interest property. In this case, you must refer to the gift tax return (Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return) of the donor spouse or the deceased settlor's estate tax return (Form 706, United States Estate (and Generation-Skipping Transfer) Tax

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Return) for the information needed to figure the inclusion ratio.

## Line 5

For the purposes of line 5, *termination* means the conclusion (for example, by death, lapse of time, or release of power, etc.) of an interest in property held in trust unless:

- Immediately after the termination, a non-skip person has an interest in such property; or
- At no time after the termination is it possible for a distribution (including distributions on termination) to be made from the trust to a skip person.

Also, if you are reporting separate trusts, defined above, on this Form 706-GS(T), explain why you are treating parts of the trust as separate trusts.

## Line 6

You may elect alternate valuation under section 2032 for all terminations in the same trust that occurred at the same time as, and as a result of, the death of an individual. If you elect alternate valuation, you must use it to value all property included in those terminations.

You may not elect alternate valuation unless the election will decrease both the total value of the property interests that were subject to the termination and the total net GST tax due after the allowable credit.

Check the box on line 6 of all the applicable Schedules A if you elect alternate valuation. Once made, the election cannot be revoked. You may make the election on a late filed Form 706-GS(T), provided it is not filed later than 1 year after the due date (including extensions).

If you elect alternate valuation, value the property interest that has been terminated as follows.

1. Any property distributed or otherwise disposed of or separated from the trust within 6 months after the termination is valued on the date of distribution or other disposition. Value the property on the date it ceases to form a part of the trust; that is, on the date the title passes as a result of its distribution or other disposition.
2. Any property not distributed or otherwise disposed of within 6 months following the termination is valued on the date 6 months after the termination.
3. Any property or interest that is affected by mere lapse of time is valued as of the time of termination. However, you may change this date of termination value to the value as of the date of distribution or other disposition to account for any change that is not due to mere lapse of time.

If the alternate valuation date falls after the initial due date of the return, you must request an extension to file on Form 7004. The extension is automatic, so you do not have to sign the form or provide a reason for your request. See Form 7004 for more information.

## Line 7

**Terminations of interests in trusts to which additions have been made.** Provide the information requested for each property subject to termination. If a post September 25, 1985, addition has been made to a trust that was irrevocable on that date, as described earlier, only the portion of the trust resulting from the addition is subject to the GST tax. For terminations, this portion is the product of the allocation fraction and the value of the property subject to the termination (including accumulated income and appreciation on that property).

The allocation fraction is a fraction, the numerator of which is the value of the addition as of the date it was made (regardless of whether it was subject to gift or estate tax). The denominator of the fraction is the fair market value of the entire trust immediately after the addition, less any amount of expenses, indebtedness, or taxes that would be allowable as a deduction under section 2053.

When there is more than one addition, the allocation fraction must be revised after each addition. The numerator of the revised fraction is the sum of:

- The value of the portion of the trust subject to the GST tax immediately before the last addition, and
- The amount of the latest addition.

The denominator of the revised fraction is the total value of the entire trust immediately after the latest addition.

If the addition results from a generation-skipping transfer, reduce both the numerator and denominator by the amount of any GST tax imposed on the transfer and recovered from the trust.

Round off the allocation fraction to five decimal places (for example, “0.00123”).

**Column (a). Item number.** Identify by separate item number all property in which an interest has terminated during the tax year. You may combine under the same item number all property that has the same termination date, valuation date, and unit value, such as stocks or bonds. Otherwise, assign a separate item number to each article of property.

**Column (b). Description of property.** Describe each article of property assigned an item number as follows.

***Real estate.*** Describe the real estate in enough detail so that the IRS can easily locate it for inspection and valuation. For each parcel of real estate, report the area and, if the parcel is improved, describe the improvements. For city or town property, report the street number, ward, subdivision, block, lot, etc. For rural property, report the township, range, landmarks, etc.

***Stocks and bonds.*** For stocks, give:

- Number of shares;
- Whether common or preferred;
- Issue;
- Par value where needed for valuation;
- Price per share;
- Exact name of corporation;
- Principal exchange upon which sold, if listed on an exchange; and
- CUSIP number.

For bonds, give:

- Quantity and denomination;
- Name of obligor;
- Date of maturity;
- Principal exchange, if listed on an exchange;
- Interest rate;
- Interest due date; and
- CUSIP number.

If the stock or bond is unlisted, show the company’s principal business office.

The CUSIP (Committee on Uniform Security Identification Procedure) number is a nine-digit number assigned to all stocks and bonds traded on major exchanges and many unlisted securities. Usually, the CUSIP number is printed on

the face of the stock certificate. If the CUSIP number is not printed on the certificate, it may be obtained through the company's transfer agent.

***Other personal property.*** Any interest in personal property involved in a termination must be described in enough detail so that the IRS can value it.

**Column (d). Valuation date.** Unless you elected alternate valuation by checking the box on line 6 of Schedule A, the valuation date should be the same as the termination date.

**Column (e). Value.** Reduce the value of any property being reported on Schedule A by the amount of any consideration provided by the skip person.

Explain how the values reported in column (e) were figured and attach copies of any appraisals.

## Part II—General Trust Debts, Expenses, and Taxes (Section 2622(b))

To figure the taxable amount for a taxable termination, you may deduct expenses similar to those deductible under section 2053 from the value of the property subject to the termination.

Report here only those expenses related to the entire trust. Examples of such expenses are trustee's fees, administrative expenses, financial advisor's fees, and accounting fees.

**Column (a). Item number.** Assign an item number to each separate expense. These will not necessarily correspond with the item numbers on Schedule A.

**Column (b). Description.** List the names and addresses of persons to whom the expenses are payable and describe the nature of the expenses.

**Column (c). Amount.** Enter here the entire amount of the expense for the tax year for which the return is being filed.

### Line 15

Figure the percentage of expense to allocate to the property involved in the termination as follows.

1. Divide the value of the interest that has been terminated by the total value of the trust at the time of the termination; and
2. Multiply the result by a fraction, the numerator of which is the number of days in the year through the date of the termination, and the denominator of which is the total number of days in the year (or, if the entire trust was terminated during the year, the total number of days the trust was in existence during the year).

If there is more than one termination during the year, you must reduce the total expense used in the allocation by the expense allocated to the prior terminations. For example, assume that the total administrative expense for the year was $1,000 and $300 was allocated to the first termination. The expense allocated to the second termination would be a percentage of $700, not of the entire $1,000.

## Part III—Specific Termination-Related Debts, Expenses, and Taxes (Section 2622(b))

To figure the taxable amount for a taxable termination, you may deduct expenses similar to those deductible under section 2053 from the value of the property subject to the termination.

Report here only those expenses related solely to the interest that has terminated. Examples of these expenses are property tax on real estate, the cost of selling property, or attorney's fees for defending the title to property.

**Column (a). Item number.** Assign an item number to each separate expense. This will not necessarily correspond with the item numbers on Schedule A.

**Column (b). Description.** List the names and addresses of persons to whom the expenses are payable and describe the nature of the expense. List the item number(s) from Schedule A to which the expense relates.

**Column (c). Amount.** If the expense relates to more property than that involved in the termination but less than the entire trust, enter in column (c) only the amount attributable to the property involved in the termination. Determine this amount by multiplying the total expense times a fraction. The numerator of the fraction is the value of the property involved in the termination and to which the expense relates. The denominator is the total value of the property to which the expense relates.

## Part IV—Schedule A GST Tax Calculation

### Line 25. Inclusion Ratio

The trustee must figure the inclusion ratio for every termination. All terminations, or any parts of a single termination, that have different inclusion ratios must be shown on separate Schedules A. Identify the separate trusts by Schedule A number when showing your inclusion ratio calculation.

The inclusion ratio is the excess of 1 over the applicable fraction determined for the trust in which the termination occurred.

**Applicable fraction.** The applicable fraction is a fraction, the numerator of which is the amount of the GST exemption. The denominator of the fraction is:

1. The value of the property transferred to the trust, minus
2. The sum of:
   a. Any federal estate tax or state death tax actually recovered from the trust attributable to the property, and
   b. Any charitable deduction allowed under section 2055 or 2522 with respect to the property.

Round the applicable fraction to at least the nearest one-thousandth (for example, "0.001").

**Numerator. GST exemption.** Every individual settlor is allowed a lifetime GST exemption against property that the individual has transferred. For generation-skipping transfers made through 1998, the amount of the exemption was $1 million. The GST exemption amounts thereafter are as follows.

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| Year of Transfer | GST Exemption |
|---|---|
| 1999 | $1,010,000 |
| 2000 | $1,030,000 |
| 2001 | $1,060,000 |
| 2002 | $1,100,000 |
| 2003 | $1,120,000 |
| 2004 and 2005 | $1,500,000 |
| 2006, 2007, and 2008 | $2,000,000 |
| 2009 | $3,500,000 |
| 2010 and 2011 | $5,000,000 |
| 2012 | $5,120,000 |
| 2013 | $5,250,000 |
| 2014 | $5,340,000 |
| 2015 | $5,430,000 |
| 2016 | $5,450,000 |
| 2017 | $5,490,000 |
| 2018 | $11,180,000 |
| 2019 | $11,400,000 |
| 2020 | $11,580,000 |
| 2021 | $11,700,000 |
| 2022 | $12,060,000 |
| 2023 | $12,920,000 |
| 2024 | $13,610,000 |
| 2025 | $13,990,000 |

See Rev. Proc. 2024-40, 2024-45 I.R.B. 1100, available at *Rev. Proc. 2024-40*, as modified and supplemented by subsequent revenue procedures, for the GST exemption amount on subsequent years.

**Caution:** A valid Deceased Spousal Unused Exclusion Amount ("DSUE" or portability) election by an executor of a deceased spouse's estate does not apply to or impact GST tax exemption.

For existing trusts, transferors may allocate the additional GST exemption amount attributable to indexing adjustments if they otherwise qualify under the existing rules for late allocations. For more information, see section 2632 and *Multiple transfers*, later.

Once made, allocations are irrevocable.

Allocation of the GST exemption is made by the settlor on Form 709 or on Form 706 by the executor of the settlor's estate. Therefore, you should obtain information regarding the allocation of the exemption to this trust from the settlor or the executor of the settlor's estate, as applicable.

If the settlor's entire GST exemption is not allocated by the due date (including extensions) of the settlor's estate tax return, the exemption is automatically allocated to the settlor's generation-skipping transfers under the rules of section 2632.

**Denominator. Valuation of trust assets.** In general, for an inter vivos transfer, you should use the gift tax value in the denominator of the applicable fraction as long as the allocation of the GST exemption was made on a timely filed gift tax return or was deemed made under section 2632(b)(1).

If the allocation of the exemption to an inter vivos transfer is not made on a timely filed gift tax return and is not deemed made under section 2632(b)(1), the value for purposes of the applicable fraction is the value of the property transferred at the time the allocation under section 2632(a) is filed with the IRS.

The value of a testamentary transfer is generally the estate tax value.

For qualified terminable interest property (QTIP) that is included in the estate of the surviving spouse of the settlor because of section 2044, if the surviving spouse is considered the transferor under section 2652(a) for GST purposes, the value is the estate tax value in the estate of the surviving spouse.

A special QTIP election allows property for which a QTIP election was made for estate or gift tax purposes to be treated for GST tax purposes as if the QTIP election had not been made. If the special QTIP election has been made, the predeceased settlor spouse is the transferor and the value is that spouse's estate or gift tax value under the rules described above. The settlor spouse or the executor of the predeceased settlor spouse's estate must have made the special QTIP election.

**Transfers subject to an estate tax inclusion period.** If a transferor made an inter vivos transfer, and the property transferred would have been includible in the transferor's estate if he or she had died immediately after the transfer (other than by reason of the transferor dying within 3 years of making the gift), for purposes of determining the inclusion ratio, an allocation of GST exemption will only become effective at the close of the estate tax inclusion period (ETIP).

The value of the property for the purpose of figuring the inclusion ratio is the estate tax value if the property is includible in the transferor's gross estate. Otherwise, the property is valued at the close of the ETIP, provided that the GST exemption is allocated on a timely filed gift tax return for the calendar year in which the ETIP closes.

The ETIP closes at the earliest of:

- The time the transferred property would no longer be includible in the settlor's estate,
- The date of a generation-skipping transfer of the property, or
- The date of death of the settlor.

If the allocation is not made on a timely filed gift tax return, the property is valued at the time of the late allocation.

**Multiple transfers.** When a transfer is made to a pre-existing trust, the applicable fraction must be refigured. The numerator of the new fraction is the sum of:

1. The exemption allocated to the current transfer, and
2. The nontax portion of the trust immediately before the current transfer (the product of the applicable fraction and the value of all the property in the trust immediately before the current transfer).

The denominator of the new fraction is the sum of:

1. The value of the current transfer (minus any federal estate tax or state death tax actually paid by the trust attributable to such property and any charitable deduction allowed for such property), and
2. The value (determined under the rules described above) of all property in the trust immediately before the current transfer.

To figure the inclusion ratio, use only the value of the total additions made to the trust after October 22, 1986.

**Charitable lead annuity trusts.** For termination of an interest in a charitable lead annuity trust, the numerator of the applicable fraction is the adjusted GST exemption as defined

below. The denominator is the value of the trust immediately after the termination of the charitable lead annuity interest.

The adjusted GST exemption is the sum of:

1. The exemption allocated to the trust, and
2. Interest on the exemption determined at the interest rate used to figure the estate or gift deduction for the charitable lead annuity and for the actual period of the charitable lead annuity.

In the case of a late allocation, the amount of interest accrued prior to the date of allocation is zero.

### Line 26

Enter, from the table below, the applicable tax rate at the time the generation-skipping transfer occurred.

**Table of Maximum Tax Rates**

| If the generation-skipping transfer occurred | The maximum tax rate is |
|---|---|
| After December 31, 2002, but before January 1, 2004 | 49% |
| After December 31, 2003, but before January 1, 2005 | 48% |
| After December 31, 2004, but before January 1, 2006 | 47% |
| After December 31, 2005, but before January 1, 2007 | 46% |
| After December 31, 2006, but before January 1, 2010 | 45% |
| After December 31, 2009, but before January 1, 2011 | 0% |
| After December 31, 2010, but before January 1, 2013 | 35% |
| After December 31, 2012 | 40% |

## Part V—Supplemental Information

### Line 29

For all circumstances, describe how the trust's inclusion ratio was determined in accordance with the allocation rules of section 2632.

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Form **706-GS(T)** **Generation-Skipping Transfer Tax Return for Terminations**

(Rev. December 2025)

Department of the Treasury
Internal Revenue Service

**Use for terminations made after December 31, 2024.**

**For calendar year** _____ .

**Go to *www.irs.gov/Form706GST* for instructions and the latest information.**

OMB No. 1545-0015

## Part I General Information (see instructions)

| | |
|---|---|
| **1a** Name of trust | **1b** TIN of trust |
| **2a** Name of trustee | |
| **2b** Trustee's address (number and street) | **2c** Apt. or suite no. |
| **2d** City, town, or post office. For foreign addresses, also complete lines 2g, 2h, and 2i. | **2e** State / **2f** ZIP code |
| **2g** Foreign country name | **2h** Foreign province/state/county / **2i** Foreign postal code |

## Part II Trust Information (see instructions)

| | | Yes | No |
|---|---|---|---|
| **3** | Has property been contributed to this trust since the last Form 706-GS(T) or 706-GS(D-1) was filed? If "Yes," complete Part IV, line 11, stating how the inclusion ratio was calculated | | |
| **4** | Have any terminations occurred that are not reported on this return because of the exceptions in section 2611(b)(1) or (2) relating to medical and educational exclusions and prior payment of Generation-Skipping Transfer (GST) tax? If "Yes," complete Part IV, line 12, describing the termination | | |
| **5** | If this is not an explicit trust (see the instructions under *Who Must File*), check here and complete Part IV, line 13, describing the trust arrangement that makes its effect substantially similar to an explicit trust | ☐ | |

## Part III Tax Computation

**6a** Summary of attached Schedules A (see instructions for line 6b)

| Schedule A No. | | GST tax (From Sch. A, Part IV, line 28) |
|---|---|---|
| 1 | **6a**1 | |
| 2 | **6a**2 | |
| 3 | **6a**3 | |
| 4 | **6a**4 | |
| 5 | **6a**5 | |
| 6 | **6a**6 | |
| **6b** | Total from all additional Schedules A, in excess of six, attached to this form | **6b** |
| **7** | **Total** GST tax (add lines 6a1 through 6b) | **7** |
| **8** | Payment, if any, made with Form 7004 | **8** |
| **9** | **Tax due.** If the amount on line 7 is more than the amount on line 8, subtract line 8 from line 7. For details on how to pay, go to *www.irs.gov/Payments* or see the instructions | **9** |
| **10a** | **Overpayment.** If the amount on line 8 is more than the amount on line 7, subtract line 7 from line 8 and complete lines 10b, 10c, and 10d | **10a** |
| **b** | Routing number _____ **c** Type: ☐ Checking ☐ Savings | |
| **d** | Account number _____ | |

Under penalties of perjury, I declare that I have examined this return, along with accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than trustee or designated filer) is based on all information of which preparer has any knowledge.

**Sign Here**

Signature / Date

**Paid Preparer Use Only**

| Preparer's name | Preparer's signature | Date | Check ☐ if self-employed | PTIN |
|---|---|---|---|---|
| Firm's name | | | Firm's EIN | |
| Firm's address | | | Phone no. | |

**Part IV Supplemental Trust Information**

**11** Show how inclusion ratio was calculated when property has been contributed to this trust. (Complete if answered "Yes" on Part II, line 3.)

**12** Describe terminations that occurred during the calendar year that are not reported on this return. (Complete if answered "Yes" on Part II, line 4.)

**13** Describe what makes the effect of this arrangement substantially similar to an explicit trust. (Complete if answered "Yes" on Part II, line 5.)

## Schedule A

If additional entries are needed, duplicate and use this page.

| A Name of trust | B Schedule A No. | |
|---|---|---|
| | C TIN of trust | |

**Part I—Taxable Termination** (see instructions)

| | | Yes | No |
|---|---|---|---|
| 1 | Has any exemption been allocated to this trust by reason of the deemed allocation rules of section 2632? If "Yes," enter the inclusion ratio in Part IV, line 25, of this Schedule A, and describe how the inclusion ratio was calculated in Part V, line 29, of this Schedule A | | |
| 2 | Have any contributions been made to this trust that were not included in calculating the trust's inclusion ratio? If "Yes," complete Part V, line 30, of this Schedule A, explaining why the contribution was not included | | |
| 3 | Has the special QTIP election in section 2652(a)(3) been made for this trust? | | |

4 Enter information regarding skip persons.

| (a) Name of skip persons | (b) SSN or EIN of skip person | (c) Item no. from line 7 below in which interest held |
|---|---|---|
| | | |
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| | | |

5 Describe the terminating power or interest.

6 If you elect alternate valuation, check here ☐

7 Describe each property subject to the taxable termination.

| (a) Item no. | (b) Description of property subject to termination | (c) Date of termination | (d) Valuation date | (e) Value |
|---|---|---|---|---|
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|---|---|---|---|
| 8 | Add all amounts in column (e) | 8 | |
| 9 | Total from column (e) from additional Schedule(s) A, Parts I, attached to this schedule | 9 | |
| 10 | **Total value.** Add lines 8 and 9. Enter here and on Schedule A, Part IV, line 22 | 10 | |

## Schedule A

If additional entries are needed, duplicate and use this page.

| A Name of trust | B Schedule A No. | |
|---|---|---|
| | C TIN of trust | |

**Part II—General Trust Debts, Expenses, and Taxes (Section 2622(b))** (see instructions)

**11** Enter only items related to the entire trust.

| (a) Item no. | (b) Description | (c) Amount |
|---|---|---|
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|---|---|---|---|
| **12** | Add all amounts in column (c) | **12** | |
| **13** | Total from column (c) from additional Schedule(s) A, Parts II, attached to this schedule | **13** | |
| **14** | Total Schedule A, Part II, amount. Add lines 12 and 13 | **14** | |
| **15** | Percentage allocated to the termination in Part I, line 5, on this Schedule A | **15** | % |
| **16** | Net deduction. Multiply line 14 by line 15 | **16** | |

## Schedule A

If additional entries are needed, duplicate and use this page.

| A Name of trust | B Schedule A No. | |
|---|---|---|
| | C TIN of trust | |

**Part III—Specific Termination-Related Debts, Expenses, and Taxes (Section 2622(b))** (see instructions)

**17** Enter only items related solely to terminations appearing on corresponding Schedule A.

| (a) Item no. | (b) Description | (c) Amount |
|---|---|---|
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|---|---|---|---|
| **18** | Add all amounts in column (c) from this Schedule A, Part III | **18** | |
| **19** | Total from column (c) from additional Schedule(s) A, Parts III, attached to this schedule | **19** | |
| **20** | Total Schedule A, Part III, amount. Add lines 18 and 19 | **20** | |
| **21** | **Total.** Add line 16 from Part II and line 20 from Part III. Enter here and on Schedule A, Part IV, line 23 | **21** | |

## Schedule A

| A Name of trust | B Schedule A No. | |
|---|---|---|
| | C TIN of trust | |

**Part IV—Schedule A GST Tax Calculation**

| | | | |
|---|---|---|---|
| 22 | Total from Schedule A, Part I, line 10 | 22 | |
| 23 | Total from Schedule A, Part III, line 21 | 23 | |
| 24 | Taxable amount. Subtract line 23 from line 22 | 24 | |
| 25 | Inclusion ratio. Complete Part V, line 29, describing computation | 25 | |
| 26 | Maximum federal estate tax rate. See instructions for rate to enter | 26 | % |
| 27 | Applicable rate. Multiply line 25 by line 26 | 27 | |
| 28 | GST tax. Multiply line 24 by line 27. Enter here and on Part III, Tax Computation, line 6 | 28 | |

**Part V—Supplemental Information**

29 Describe how inclusion ratio was calculated in accordance with the allocation rules of section 2632.

30 Explain why the contribution was not included in the inclusion ratio. (Complete if answered "Yes" on Schedule A, Part I, line 2.)

**About the Panelists…**

**Benjamin E. Akselrad** is a Principal in Bressler, Amery & Ross, P.C. in the firm's Florham Park, New Jersey, and New York City offices. A member of the Private Wealth Management Practice Group, he advises individuals with estate planning, estate administration, asset protection and philanthropic matters; and businesses with formation issues, raising capital, reorganizations, succession planning, mergers, acquisitions and sales.

Mr. Akselrad is admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey. He volunteers on the Emerging Leaders Committee for the Calvary Hospital and annually updates *New Jersey Estate Planning, Will Drafting and Estate Administration Forms* (Matthew Bender & Company).

Mr. Akselrad received his B.S.B. from the Kelley School of Business, Indiana University; his J.D. from Rutgers Law School; and his LL.M. in Taxation from New York University School of Law.

**Robert I. Aufseeser, LL.M.** is a solo practitioner in East Brunswick, New Jersey. His practice includes estate and trust planning, closely-held businesses, probate and related litigation.

Mr. Aufseeser is admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey and the United States Tax Court. He has been a member of the New Jersey State and New York State Bar Associations, as well as an Adjunct Professor of Business Law at Union County College. He has written and lectured extensively on aspects of trust and estate administration including probate proceedings, formal and informal fiduciary accountings, the inheritance rights of children, insolvent estates and creditor disputes; and his article "New Jersey Child Support Liens: Who is Liable for Distributions to Beneficiaries" appeared in the *New Jersey Law Journal*.

Mr. Aufseeser received his B.A. from Rutgers University, his J.D. from Syracuse University College of Law and his LL.M. in Taxation from New York Law School.

**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, the NJSBA, the National Business Institute 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.

**Gerard G. Brew** is a Partner in McCarter & English, LLP in Newark, New Jersey. He concentrates his practice in the representation of clients in disputed matters involving estates, trusts, fiduciaries, family issues and small businesses (partnerships and closely-held corporations). Handling numerous litigated and non-litigated family disputes, he has been appointed by courts to mediate disputes related to these issues, represents clients in litigation and handles estate planning and administration matters.

Admitted to practice in New Jersey and New York, Mr. Brew is a Fellow, Past New Jersey State Chair and Mid-Atlantic Regional Chair of the American College of Trust and Estate Counsel (ACTEC) and a member of ACTEC's Planning Committee. He is also a member of the American Bar Association's Section on Real Property & Trust and Estate Law, where he has served on its governing Council and as Group Chair and Vice Chair of the Estate Litigation and the Ethics and Malpractice Group and its committees.

Mr. Brew is the author of the *New Jersey Probate Procedures Manual* (ICLE 2008) and a contributing editor to the *New Jersey Estate Litigation Manual* (ICLE 2006, authored by Steven K. Mignogna, Esq.) and the *New Jersey Estate Planning Manual* (ICLE 2007, authored by Glenn A. Henkel, Esq.). He has also been an Adjunct Professor of Law at New York Law School, where he has taught New Jersey estate administration. In 2014 he received the New Jersey State Bar Association *Pro Bono* Award.

Mr. Brew received his B.A. from Rutgers College and his J.D. from Rutgers University School of Law, where he was Managing Research Editor for the *Rutgers Computer & Technology Law Journal*. He served as Law Clerk to the Honorable Nicholas Scalera, Superior Court of New Jersey, Appellate Division.

**Eric Carosia** is a Partner in Berkowitz, Lichtstein, Kuritsky, Giasullo & Gross LLC in the firm's Roseland, New Jersey, office. He concentrates his practice in trust and estate litigation, counseling and dispute resolution.

Admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey, Mr. Carosia is a panelist on and Co-Chair of the Essex County Early Settlement Panel, Superior Court, Chancery Division, Probate Part. He has served on the District VC Ethics Committee and has lectured on trust and estate topics for CLE seminars.

Mr. Carosia received his B.S., *cum laude*, from Ithaca College and his J.D. from Rutgers University School of Law-Newark. He was Judicial Law Clerk to the Honorable Walter Koprowski, Jr., Superior Court of New Jersey, Chancery Division, Probate and General Equity Parts, Essex Vicinage.

**Crystal West Edwards,** Certified as an Elder Law Attorney by the ABA-accredited National Elder Law Foundation, is a Principal of Porzio, Bromberg & Newman, P.C. in the firm's Parsippany, New Jersey, office. She primarily focuses her practice in elder law, special needs planning and advocacy, estate planning and estate administration. She assists seniors, individuals with special needs and their families with complex estate and tax planning, asset preservation, eligibility for means-tested government benefits, fiduciary appointments, and representation and advocacy.

Ms. Edwards is 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 Court of Appeals for Veterans' Claims. A Fellow of the American College of Trust and Estate Counsel (ACTEC), she is a member of the New Jersey State Bar Association Elder and Disability Law Section, a former member of the Board of Directors of the National Academy of Elder Law Attorneys (NAELA) and Co-Chair of the Academy's Diversity, Equity and Inclusion Committee, and a Director and Past President of the Garden State Bar Association. She is Past President of the New Jersey Chapter of NAELA and has served on the Young Lawyers and Associates Committee of the NJSBA Elder and Disability Law Section.

A former adjunct faculty member at Kean University, Ms. Edwards was honored by the State of New Jersey with a Senate Resolution for "her meritorious history of professional leadership and exemplary dedication." She has lectured statewide on elder law topics and was the recipient of ICLE's Distinguished Service Award and the 2014 Young Lawyer Award from the Garden State Bar Association for her "exceptional commitment to the GSBA, the Community & the Elder and Disability Law Bar."

Ms. Edwards received her B.S., *cum laude*, from the University of North Carolina at Charlotte and her J.D. from Pennsylvania State University's Dickinson School of Law.

**Andrew C. Egan** is a Principal in Bressler, Amery & Ross, P.C. in Florham Park, New Jersey. One of New Jersey's premier fiduciary litigators, he navigates emotionally-charged, high stakes probate, trust and guardianship litigation; and represents individual and charitable beneficiaries, and fiduciaries including executors, trustees, guardians and persons acting under powers of attorney.

Admitted to practice in New Jersey, New York and Pennsylvania, and before the United States District Court for the District of New Jersey and the Southern District of New York, Mr. Egan is Co-Chair of the Essex County Bar Association Chancery Committee and a member of the New Jersey State Bar Association Select Committee on Chancery Practice. He is also a member of Trial Attorneys of New Jersey and a Board Member and Recording Secretary of the Estate Planning Council of Northern New Jersey. He has lectured for ICLE and other organizations and is the recipient of several honors.

Mr. Egan received his B.A. from Rutgers University, his J.D. from the University of Pennsylvania and is a graduate of the American Board of Trial Advocates' National Trial Lawyer's College at Harvard Law School. He was a law clerk to the Honorable Walter Koprowski, Jr., P.J.Ch., Essex County.

**Timothy F. Ferges** is a Partner in McCarter & English, LLP in the firm's Newark, New Jersey, and New York City offices, where he concentrates his practice in trust and estate law, including trust and estate litigation, estate planning, and trust and estate administration. Chair of the Tax, Employee Benefits, Trusts, Estates & Private Clients Practice Group, Mr. Ferges brings and defends breach of fiduciary duty claims and handles contested accounting proceedings, Will and trust construction matters, and other fiduciary disputes; and represents beneficiaries, individual fiduciaries, and large institutional trust companies as well as charitable and non-profit organizations in those disputes. He also counsels high-net-worth individuals and families in estate planning goals while integrating asset protection and minimizing exposure to income and transfer taxes.

Admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey, Mr. Ferges is a member of the American Academy of Attorney—CPAs and the American Bar Association Section of Real Property, Trust and Estate Law, where he has served as Chair of the Probate and Fiduciary Litigation Committee. He is a member of the Mid-Atlantic Fellows Institute of the American College of Trust & Estate Counsel (ACTEC) and the New Jersey State Bar Association Real Property, Trust and Estate Law Section and the New York State Bar Association's Trusts and Estates Law Section, where he has served as Vice Chair of the Estate Litigation Committee. In addition to being an attorney, he is also a Certified Public Accountant and a member of the Board of Trustees of the Springpoint Senior Living Foundation.

Mr. Ferges has lectured for ICLE, the National Business Institute and other organizations, and his articles have appeared in the *New Jersey Law Journal* and other publications. He is the recipient of several honors.

Mr. Ferges received his B.S. from Rutgers University; his M.B.A. from Rutgers Business School; his J.D. from Seton Hall University School of Law, where he served as Director of the Appellate Advocacy Moot Court Board and as a member of the Interscholastic Moot Court Board; and his LL.M. in Taxation from New York University School of Law. He was Law Clerk to the Honorable Walter Koprowski, Jr. and the Honorable Renee Jones Weeks, Probate Part, Chancery Division, Superior Court of New Jersey.

**Abbey M. Horwitz** is Special Counsel in the Tax, Employee Benefits & Private Clients Group at McCarter & English, LLP in Newark, New Jersey, where she devotes her practice to estate planning, including planning for family members with disabilities, trust and estate administration, and guardianship matters. She drafts estate planning instruments; counsels individuals and families on estate, gift and generation-skipping transfer tax issues; develops simple and complex estate plans; and advises clients on business succession issues.

Admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey, Ms. Horwitz is a Fellow of the American College of Trust and Estate Counsel (ACTEC), a member of the Board of Consultors of the New Jersey State Bar Association Real Property, Trust and Estate Law Section and a member of the New York State Bar Association Trusts & 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.

**Laura A. Kelly** is a Partner in McCarter & English, LLP in the firm's Newark, New Jersey, office, where she concentrates her practice in trust and estate matters. She drafts Wills and trusts, administers trusts and estates, and advises high-net-worth clients regarding sophisticated estate planning, with an emphasis on estate, gift, generation-skipping transfer and income tax planning. She also assists clients with the planning and implementation of lifetime transfers of property, including the management of transfers of real estate, life insurance and business interests.

Admitted to practice in New Jersey, New York and Massachusetts, Ms. Kelly is a Fellow of the American College of Trust and Estate Counsel (ACTEC) and a member of the American, New Jersey State and Boston Bar Associations. She was a member of the inaugural class of Bergen LEADS, a class of 30 acknowledged leaders of Bergen County, and has served on its Steering and Selection Committees. She was appointed to the Board of Consultors of the New Jersey State Bar Association Real Property, Trust and Estates Section and is a past President and Sustaining Member of the Junior League of Bergen County.

Ms. Kelly has lectured on a variety of estate planning topics and previously taught the estate planning course for ICLE's *Skills and Methods* Series. She has also been a guest lecturer at New York Law School's LL.M. program on the topic of estate taxes. She is a contributing author to *Understanding and Using Trusts* and *Breaking the Code of Wealth Management*, and has been published in *Garden State Woman Magazine*.

Ms. Kelly received her B.A., *magna cum laude*, from Wellesley College, where she was elected to *Phi Beta Kappa*, and her J.D. from the University of Virginia School of Law.

**Angela Titus McEwan** is a Partner in Day Pitney LLP in Parsippany, New Jersey, where she assists high-net-worth individuals and families with trust and estate planning, administration and litigation, including business planning, lifetime giving, charitable giving and taxation. Using her extensive experience with estate planning techniques, she prepares Wills, trusts, powers of attorney and advance directives as well as more complex trust planning, charitable planning, lifetime giving techniques and business succession planning.

Admitted to practice in New Jersey and Pennsylvania, Ms. McEwan is a Fellow of the American College of Trust and Estate Counsel (ACTEC) and a member of the New Jersey State, Pennsylvania and Camden County Bar Associations; the Estate and Financial Planning Council of Southern New Jersey; and the Society of Financial Service Providers. She has served on the boards of community organizations and is the recipient of several honors. She regularly lectures on estate planning topics to other professionals and clients.

Ms. McEwan received her B.S., *summa cum laude*, from Trenton State College and her J.D. from Villanova University School of Law.

**Anita J. Siegel** is a Principal of Bressler, Amery & Ross, P.C. in the firm's Florham Park, New Jersey, office. A founding Member of Siegel & Bergman, LLC, she has more than 46 years of experience in estate planning, estate administration, charitable planning and tax matters.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey and the United States Tax Court, Ms. Siegel is a member of the Real Property, Probate and Trust Law Section (where she served on the Board of Consultors from 1990-96) and Tax Section of the New Jersey State Bar Association. She is a Fellow of the American College of Trust and Estate Counsel (ACTEC), where she is a former State Chair and Regent of the College, a member of the National Membership Selection Committee and has served on several other ACTEC Committees, including those on Charitable Planning and Estate and Gift Tax. A former member of the Board of Trustees of ICLE, Ms. Siegel is also a member of the Estate Planning Council of Northern New Jersey and a former member and Past Chair of the Morris County Chamber of Commerce Tax Committee. She has served on the boards and advisory boards of several charitable organizations, including the Children's Specialized Hospital Foundation, The South Street Theater Company, the Foundation for Morristown Medical Center and the Jewish Community Foundation of Greater Metrowest.

Ms. Siegel is a frequent lecturer and author on estate planning, estate administration and tax issues for ICLE and other professional, charitable and civic organizations. She is the recipient of the 2001 Alfred C. Clapp Award bestowed by ICLE for outstanding contributions to continuing legal education in New Jersey and the 2023 Dorothy G. Black Distinguished Service Award from the NJSBA Real Property, Trust and Estate Law Section for extraordinary contributions to the development of New Jersey trust and estate law. Her articles have appeared in *New Jersey Lawyer, the Magazine*, and the *NJSBA Real Property, Probate and Trust Newsletter*.

Ms. Siegel received her B.A. from Franklin & Marshall College, her M.A. in Mathematics from Montclair State University, and her law degree and LL.M. in Taxation from New York University School of Law.

**Tara S. Sinha** is a Partner in Witman Stadtmauer, P.A. in Florham Park, New Jersey, and concentrates her practice in estate planning and administration, estate and probate litigation, and federal and state taxation.

Admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey and the United States Tax Court, Ms. Sinha is a Fellow of the American College of Trust and Estate Counsel (ACTEC) and serves on the Board of Consultors of the New Jersey State Bar Association Real Property, Trust and Estate Law Section. She is also a member of the Morris County Bar Association, the Estate Planning Council of Northern New Jersey and the Asian Pacific American Lawyers Association of New Jersey.

Ms. Sinha has been a member of the Worrall F. Mountain American Inn of Court and her articles have appeared in the *New Jersey Law Journal*. She has lectured for ICLE, the New York City Bar Association, the Practising Law Institute and other organizations.

Ms. Sinha received her B.S. from Rutgers College and her J.D. from Rutgers School of Law-Newark, where she was Senior Articles Editor of the *Women's Rights Law Reporter* and a Teaching Assistant for the Legal Research and Writing program. She received her LL.M. in Taxation from Villanova University and was Law Clerk to the Honorable Walter R. Barisonek, Superior Court of New Jersey, Union County.

**Laura N. Wilensky** is a Shareholder in Orloff, Lowenbach, Stifelman & Siegel, P.A. in Morristown, New Jersey, where she concentrates her practice in trusts and estates law,

including estate and tax planning and trust and estate administration. She drafts complex Wills and revocable and irrevocable trusts, including life insurance trusts, dynasty trusts, grantor retained annuity trusts (GRATs) and split interest trusts; as well as preparing federal gift tax returns, federal and state estate tax returns, and state inheritance tax returns.

Admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey, Ms. Wilensky is a member of the American and New Jersey State Bar Associations. She is a graduate of the Mid-Atlantic Fellows Institute of the American College of Trust & Estate Counsel (ACTEC) and has lectured for ICLE.

Ms. Wilensky received her B.A., with high distinction, from the University of Virginia; her J.D., with honors, from Emory University School of Law; and her LL.M. in Taxation from New York University School of Law.

**Leonard J. Witman** is the Senior Tax Partner in Witman Stadtmauer, P.A. in Florham Park, New Jersey, and a nationally-noted lecturer and author in the tax, estate and elder law planning and deferred compensation fields.

Admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey and the Southern and Eastern Districts of New York, the Second Circuit Court of Appeals, the United States Tax Court and the United States Supreme Court, Mr. Witman is a Fellow of and former New Jersey State Chair of the American College of Trust and Estate Counsel (ACTEC) and a Fellow of the American College of Employee Benefit Counsel. He is Past Chair of the New Jersey State Bar Association Taxation Section and Employee Benefits Committee, and a former tax law specialist, instructor and lecturer with the Internal Revenue Service in the Employee Plans and Exempt Organizations Division.

An adjunct professor of law at Seton Hall Law School and Rutgers University Graduate Business School, Mr. Witman is a frequent lecturer and author whose articles have appeared in the *Journal of Taxation*, *CLU Journal* and *Medical Economics*. He is the author of *A Retirement Planning Technique Book* (10th Edition) and *Roth IRAs*, and has been a member of the editorial board of the *Practical Accountant*. He has been quoted in financial columns in *The New York Times* and *The Wall Street Journal*, and on CNBC and CBS News, and is the recipient of the Dorothy G. Black Distinguished Service Award bestowed by the NJSBA Real Property, Trust & Estate Law Section for his contributions to trust and estate law in New Jersey as well as several other honors.

Mr. Witman is a graduate of Rutgers College and New York Law School.

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# Initial Probate and

# Confronting Challenges in Probate

Presenter: Andrew C. Egan – Fiduciary Litigation

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# Today's Discussion

Wills: Formalities, Copies, and Caveats

Litigation: Standing, Timing, and Common Complaints

Administration: GALs, Court Appointments, and Foreign Fiduciaries

Beneficiaries: Missing Heirs

# Formalities

The Normal/Formal Way (N.J.S.A. 3B:3-2)

- In writing
- signed by the testator or by another at the testator's direction, and
- signed by two witnesses within a reasonable time after witnessing testator's signature or testator's acknowledgement of that signature
- The “Blood Case” – *In re Estate of Bradway* (App. Div. June 2018)

The “Other” Way (N.J.S.A. 3B:3-3)

Non-conforming document accepted if clear and convincing evidence shows:

- Decedent intended document or writing to constitute his will, partial/complete revocation, addition or alteration to will (codicil) or partial/complete revival
- *Macool* – Decedent had to actually review document in question, and give assent to it

# *Faulty Formalities:*

## Signature issues

- Two witnesses + notary, notary is not a witness
- Must witness testator's signature
- Signature at testator's "conscious direction"

## Handwritten notes

- Typed Will with notes or interlineations added in ink (in re Estate of Hoch, App. Div. 2012)
- Codicils must observe same formalities as a will

## Self-proving affidavit

- Notarized document confirming proper witnessing
- Without it, witnesses may be required to testify or certify for Will to be admitted

# *Copies of Wills*

When the original will cannot be found, there is a rebuttable presumption that it was destroyed by the testator;

Proponent must show by clear and convincing evidence that "the instrument reflect[s] the testator's final testamentary intent“. *Estate of Erlich*.

Clear and convincing evidence is “somewhere between the traditional standards of ‘preponderance of the evidence’ and ‘beyond a reasonable doubt.’” It is “evidence that produces in your minds a firm belief or conviction that the allegations sought to be proved by the evidence are true.” Model Jury Charge 1.19.

# Litigation

**Standing**: One may qualify as a "party in interest" and be afforded standing to challenge a will if "the person [is] injured by the probate of the will he [or she] contests.“ R. 4:26-1, cmt. 3.

**Complaint and OTSC**: Required for “faulty formalities”, caveats, undue influence challenges, and any other issue outside the Surrogate’s narrow authority under R. 4:80.

**Timeline**:

- Caveats must be filed before death or before Will admitted – no probate within 10 days of death;
- Will challenges must be filed within 4 months of death (NJ Residents) or 6 months (non-NJ resident);
- Litigation resolved within 1 year, per AOC

# Common Complaints

## Undue influence

- Vulnerable testator
- Confidential relationship
- Destruction of free agency
- Burden shifting

## Elective share

- No Will provisions for spouse
- Entitled to 1/3 of augmented estate
- No elective share if (1) not living together as couple AND (2) division of property tantamount to equitable distribution
- Consider premarital agreements, undue influence

# What is a Caveat?

A Form Filed with the Surrogate to Halt “Over the Counter” Probate

## How to Lift a Caveat

Executor/Proponent of Will Must File OTSC/Verified Complaint

## If Will is Already Admitted to Probate. . .

*Challenger* Must File OTSC/Verified Complaint

# Administration Issues

Vulnerable, Incapacitated, or Untrustworthy Persons

- GALs, court appointments, recievers

Missing Heirs

- Heir searches, virtual representation

Foreign Fiduciaries

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# Court Appointments

**Guardians ad litem**:
- Means “guardian for the litigation”
- Appointed to investigate and advocate for vulnerable people’s best interests – may conflict with what those people say they want
- Used in guardianships and cases with minor/unborn/incapacitated/absentee beneficiaries

**Administrators**:
- Appointed to administer the estate
- May be used if fiduciary is removed, or if fiduciary cannot be appointed
- Example: a Will with “faulty formalities” is presented, naming Person X; Person Y challenges the Will and argues for intestacy; court may appoint administrator to begin collecting assets and paying debts while litigation plays out

**Receivers**:
- Appointed to manage real properties, collect rents, deal with maintenance;
- May be used if fiduciary is removed, or on a temporary basis if a valid challenge is presented to fiduciary’s competence or impartiality

# Heir Partition Act

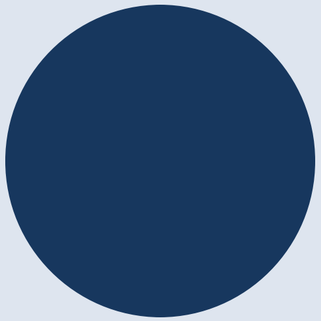
- New Jersey's Uniform Partition of Heirs Property Act (N.J.S.A. 2A:56-45 et seq.) protects family members from losing inherited real estate. It provides an orderly process featuring: an independent appraisal, a family buy-out right of first refusal, and a preference for physical division over a forced sale.

- Applies to “Heirs Property” –
  - 20% or more held by cotenants who are relatives;
  - 20% or more held by an individual who acquired it from a relative; OR
  - 20% or more of the cotenants are relatives

- Court appointed special adjudicator, obtains an appraisal

- Effective Aug. 7, 2025

# Missing Heirs



Genealogy searches



Private investigations



Unclaimed Property Administrator

# Contact Information

Andrew C. Egan
BRESSLER AMERY & ROSS, P.C.
325 Columbia Turnpike | Florham Park, NJ 07932

aegan@bressler.com

973.937.6792(Office Direct)
973.809.6593 (Mobile)

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# NEW JERSEY INSTITUTE FOR CONTINUING LEGAL EDUCATION

**Creditor Claims in the Administration of Estates**

by

© Timothy M. Ferges
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102
Telephone: (973) 639-2022
E-mail: tferges@mccarter.com

## Creditor Claims Against Estates

The claims of one's creditors do not typically expire solely as a result of his or her death. A personal representative must be mindful of those claims and take them into account when making decisions regarding the distribution of assets. On the other hand, the creditor is also governed by New Jersey statutory law imposing certain procedures on the creditor that must be fulfilled. The following is an outline of those procedures and other applicable law.

**I. Current New Jersey Law Governing Notice by Creditors of Their Claims Against the Estate** – New Jersey currently has a "self-executing" statutory scheme that runs from the date of the decedent's death governing creditor claims. In other words, a personal representative does not have to notify the creditor of the debtor's death. The law instead places the onus on the creditor to serve notice of his or her claim. If the claim is presented within the statutory period (nine months of death), the creditor's claim will be preserved and the personal representative may be held personally liable if assets are distributed from the estate without satisfaction of the claim. The following statutory provisions govern that procedure:

a. **Nine Month Limitation** – a creditor of a decedent must present the creditor's claim (via a "proof of claim") to the personal representative within nine months of the date of the decedent's death. *N.J.S.A.* 3B:22-4.

   1. **Untimely Proofs of Claim** – If a proof of claim is not timely presented within the nine month deadline, the personal representative is not liable to the creditor with respect to any assets the personal representative delivered or paid to satisfy any lawful claims, devises or distributive shares before the presentation of the claim. *N.J.S.A.* 3B:22-4.

b. **Required Format of Proof of Claim:**

   1. **In Writing** – the proof of claim must be presented in writing. *N.J.S.A.* 3B:22-4.

   2. **Verified –** the proof of claim presented must be signed by the creditor under oath. *N.J.S.A.* 3B:22-4.

a. **Payment of *Unverified* Claims if Estate is Solvent** – Nonetheless, if a personal representative pays a claim that is not verified on or before final accounting, that payment will be allowed if: (i) he or she made the payment in good faith, (ii) the claim is proven to be valid, and (iii) the estate was sufficient to pay the debt. *N.J.S.A.* 3B:22-6.
    - **Note:** This law suggests that if a personal representative pays an unverified claim and it ends up that the unverified claim was not valid, the personal representative could potentially be held liable for his or her payment of same.

b. **Payment of *Unverified* Claim if Estate is Insolvent** - If a personal representative pays a claim that is not verified and the estate is not sufficient to pay the debt, the payment will still be allowed in the pro rata amount the creditor would have been entitled to receive if the claim had been presented verified as required so long as (i) he or she made the payment in good faith and (ii) the claim is proven valid. *N.J.S.A.* 3B:22-6.
    - **Note:** This means that the personal representative could be held liable for a portion of the payment. (Payment of verified claims with respect to insolvent estates is covered in more detail below.)

c. **Claims Payable in the Future Treated the Same** – if a claim payable in the future is a liquidated claim (i.e., the claim is ascertainable in amount), it may be presented to the personal representative and is subject to the same protections as claims that are currently payable. A creditor of a liquidated claim payable in the future is also entitled to "a reasonable rebate of interest." *N.J.S.A.* 3B:22-5.

d. **Treatment of Timely Presented Proof of Claim:**
    1. **Personal Representative's Three Month Deadline to Dispute** – If the Proof of Claim is timely presented, the personal representative "shall" give the creditor notice within 3 months of the presentation of the claim that the claim is allowed, disputed, or allowed and disputed in part. *N.J.S.A.* 3B:22-7.
        a. **Personal Representative's Failure to Respond is Not a Rejection or Allowance of the Claim:** However, it appears that a claim is not deemed allowed simply because a personal representative does not respond within three months. *Gordon v. Robinson*, 103 N.J. Super. 5, 7 (App. Div. 1968) (the three month deadline "is directory, not mandatory. We hold that the failure of an executor or administrator to dispute a claim within three months after it is filed does not, standing alone, bar him or the estate from challenging it. Such failure may subject the executor or administrator to criticism or such other punitive action by the court as the circumstances may warrant, but it does not Per se insulate the claim against contest") (citing N.J.S.A. 3A:24-6, the predecessor of N.J.S.A. 3B:22-7); *Kenny v. Trowbridge*, 124 N.J. Eq. 504, 506 (Ch. 1938) ("there is no statutory duty upon [a personal representative] to dispute a claim presented to him" and "a failure to

dispute does not carry with it an implied admission that the claim is allowed or accepted").

b. **Note:** "The purpose of [N.J.S.A. 3B:22-7] and the related sections of chapter [22] of Title 3[B] is to speed up the settlement of estate. The pressure exerted by this chapter is principally upon claimants. Whatever penalties and disadvantages are set forth in the article are all visited upon dilatory claimants. Nowhere in said chapter [22] is it expressly stated that estates or their representatives are to be penalized for the late rejection of claims." *Gordon v. Robinson*, 103 N.J. Super. 5, 7-8 (App. Div. 1968)

2. **If Claim is Disputed** –
   a. **Creditor's Three Month Deadline to File an Action That Precludes Distributions -** Within 3 months of receiving notice that the claim is disputed, the creditor must commence an action to recover on the disputed claim. *N.J.S.A.* 3B:22-8.

   b. **If No Action Within Three Month Deadline -** If the creditor does not commence that action within 3 months, the personal representative is not liable with respect to any assets he or she has delivered or paid in satisfaction of any lawful claims, devises or distributive shares before the commencement of the action. *N.J.S.A.* 3B:22-8.

e. **Exempt From Proof of Claim Procedure –**
   1. **IRS Appears to be Exempt From This Procedure –** *US v. Summerlin*, 310 U.S. 414, 418 (1940) (US Supreme Court holding "that the [Florida] statute in this instance requiring claims to be filed within eight months[1] cannot deprive the United States of its right to enforce its claim; that the United States still has its right of action against the administrator, even though the probate court is to be regarded as having no jurisdiction to receive a claim after the expiration of the specified period"); *accord Matter of Estate of Moc*k, 2012 WL 8415852, *4 (Del. Ch. Feb. 27, 2012) (Delaware Court of Chancery ruling that Delaware's eight-month statutory period to present a proof of claim did not apply against the IRS as the "United States [was] asserting a right created by a federal statute [IRC 6321[2]] and proceeding in its sovereign capacity by requesting that its tax lien be satisfied first . . . [Delaware's] eight-month statutory period for filing claims [therefore] does not bar the United

[1] This Florida statute imposed an absolute bar if claims are not presented within eight months (unlike the current governing New Jersey statute).

[2] Under I.R.C. § 6321, "(i)f any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person."

States from enforcing its claim"). Note also that N.J.S.A 3B:22-4 describes the presentation of creditors' "claims", but N.J.S.A 3B:1-1 defines "claims" as excluding "estate or inheritance taxes".

2. **New Jersey Division of Taxation May be Exempt From This Procedure** – *N.J.S.A.* 54:49-1 (Taxes owed by a taxpayer to the State of New Jersey "shall be a lien on all the property of the debtor except as against an innocent purchaser for value in the usual course of business and without notice thereof, and except as may be provided to the contrary in any other law, and shall have preference in any distribution of the assets of the taxpayer, whether in bankruptcy, insolvency or otherwise.") (emphasis added); *N.J.S.A.* 54:35-5 (New Jersey estate and inheritance taxes "shall be and remain a lien on all property owned by the decedent as of the date of his death for a period of 15 years after the date of such death, and no longer, unless sooner paid or secured by bond as provided by . . . chapters 33 to 36 [of title 54 of the New Jersey statutes]") (emphasis added). Note also that N.J.S.A 3B:22-4 describes the presentation of creditors' "claims", but N.J.S.A 3B:1-1 defines "claims" as excluding "estate or inheritance taxes".

3. **Holders of Municipal Tax Liens Recorded on Real Estate Appear to be Exempt From This Procedure** – *In the Matter of Pryo*r, 366 N.J. Super. 545 (App .Div. 2004), cert. denied, 181 N.J. 545 (2004) (municipal tax liens that attach to property, including those incorporated in tax sale certificates, have first lien status and are to be paid prior to any other claims against an insolvent estate, including, for example, Medicaid and Public Guardian liens. *Id* at 553-54 (citing N.J.S.A. 54:5-9); *N.J.S.A.* 54:5-9 ("Every municipal lien shall be a first lien on such land and paramount to all prior or subsequent alienations and descents of such lands or encumbrances thereon, except subsequent municipal liens").

4. **Mortgagees Appear to be Exempt From This Procedure -** The failure of a mortgagee or its assignee to present a claim for the mortgage debt will in no way prejudice it when it comes to foreclose the mortgage. *Slack v. Emery*, 30 N.J.Eq. 458, 462 (Ch.1879).

5. **Division of Medical Assistance and Health Services? (Perhaps)** – *N.J.S.A.* 30:4D-7.2 ("A lien may be filed against and recovery sought from the estate of a deceased recipient for assistance correctly paid or to be paid on his behalf for all services received when he was 65 years of age or older . . ."; *Estate of Dizon by Finamore v. Dep't of Hum. Servs., Div. of Med. Assistance & Health Servs.*, 481 N.J. Super. 451 (App. Div. 2025) (when Division of Medical Assistance and Health Services sent personal representative a letter advising of its Medicaid lien against the assets of the estate and its claim against the estate's assets pursuant to 42 U.S.C. § 1396p and N.J.S.A. 30:4D-7.2, finding

the Division had satisfied sufficient notice of its claim via its letter (as opposed to requiring a formal proof of claim[3])).

f. **Obligation to Set-Off Claims –** Personal representatives are obligated to ensure that a debt that the decedent owes to a creditor is set off against any debt that the creditor may owe to the decedent. *Terhune v. Oldis*, 44 N.J.Eq. 146, 153, 14 A. 638, 641, 642 (Prerog.1888).

g. **Personal Representative Has Authority to Compromise a Claim –** Rather than pay a claim in full or reject a claim in full, there is a third option. Unless his or her authority is limited under a Will or if his or unless his or her authority is limited by court order, a personal representative has authority to compromise a claim against the estate. *N.J.S.A.* 3B:23-14(m).
    1. **Fiduciary Duties –** In compromising a claim, the personal representative must, of course, act in good faith and with due care.

    2. **Instructions -** If concerned regarding the possibility that a beneficiary could later dispute the compromise, the personal representative can always bring an application for instructions from the court regarding the proposed compromise. *Rule* 4:95-2; *N.J.S.A.* 2A:16-55

h. **Personal Representative Right of Subrogation if He or She Personally Pays Claim –** A personal representative who advances funds to pay a creditor claim has a right of subrogation and the right to be reimbursed by the estate. *Suydam v. Voorhees*, 58 N.J.Eq. 157, 43 A. 4 (Ch.1899).
    1. **Exception –** If the estate was insolvent, the personal representative may only be reimbursed to the extent of the pro rata amount that the creditor otherwise would have been paid from the estate. *First National Bank v. Thompson*, 61 N.J.Eq. 188 (Ch.1901).

[3] However, note that this case does not describe, address, or even mention the proof of claim procedure under N.J.S.A. 3B:22-4.

**II. Old Repealed Law (Repealed Notice Procedures That Previously Governed Estates of Decedents Who Died Prior to February 27, 2005)** – New Jersey did not always have a self-executing statute. New Jersey law previously put the onus on the personal representative to notify creditors of the decedent's death and the right to bring a claim. That prior New Jersey law governed decedents who died *prior to February 27, 2005*.

a. Specifically, under the prior version of N.J.S.A. 3B:22-4, which governed the estates of decedents who died prior to February 27, 2005, "at any time after granting letters testamentary or of administration, the Superior Court, or surrogate, as the case may be, may, whether the estate be solvent or not, order the personal representative to give public notice to creditors to present to [the personal representative] their claims".

   i. "If an order [was] entered under N.J.S.A. 3B:22-4, a notice stating the entry, the date thereof, on whose application, and what directions are thereby given,:

      1. [was required to] be mailed by the [personal representative] to each creditor of the estate of which the [personal representative] knows or which can be ascertained by reasonable inquiry, by ordinary mail directed to the creditor's last known address, and

      2. [was to] be published once in such one or more newspapers of this State as may be directed in the order, the publication to be made within 20 days after the date of the order. Such further notice shall be given as the court directs." *Rule* 4:80-8 (repealed).

   ii. The creditor then had to present the creditor's claim to the personal representative "in writing and under oath, specifying the amount claimed, and the particulars of the claim, within 6 months from the date of the order." *N.J.S.A.* 3B:22-4.

   iii. If the creditor did not present such claim within that six month period, the personal representative would not be liable with respect to any assets he may have delivered or paid in satisfaction of any lawful claims, devises or distributive shares, before the presentation of the claim. *N.J.S.A.* 3B:22-9 (repealed).

b. With respect to that prior law (and in jurisdictions that still apply notice procedures like this), there are due process considerations. *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 485 (1988). In *Tulsa*, the United States Supreme Court considered an Oklahoma "notice claim" statute. The Court found the Fourteenth Amendment's procedural due process protections require that a "reasonably ascertainable" creditor receive actual notice and that notice by publication is only sufficient for creditors that are not reasonably ascertainable. *Id*. at 491. But creditors with mere "conjectural" claims – claims that can be discovered only after investigation of the personal representative -- are not entitled to actual notice. *Id* (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 317 (1950)). The Court held personal representatives need only make "reasonably diligent efforts" to discern a creditor's identity. *Id*.

c. Some states have held *Pope* inapplicable "to self-executing statutes of limitation on creditor's claims that begin running at the time of decedent's death." *See, e.g., State ex rel. Houska v. Dickhaner*, 323 S.W. 3d 29, 33 (Mo. 2010); *In re Estate of Ongaro*, 998 P.2d 1097, 1105-06 (Colo. 2000); *Estate of Decker v. Farm Credit Services*, 684 N.E. 2d 1137, 1139 (Ind. 1997) (holding that because the governing statute "is self-executing, the federal Due Process Clause is not implicated").

**III. Untimely Claims Against the Estate** – While under current New Jersey law, creditors are no longer provided notice of their right to bring claims upon a decedent's death, a creditor's claim against the estate may not be absolutely barred despite that the creditor does not serve a proof of claim within the above-described nine month period under the current version of N.J.S.A. 3B:22-4. In other words, presenting an untimely proof of claim against an estate is of no great consequence unless the estate turns out to be insolvent (more on that below). 7 *NJPRAC* § 1327.

Absent insolvency, the creditor can recover against the balance of the estate assets remaining after the creditors who have duly presented claims are paid. *Id*. If the personal representative has already distributed the estate assets, the creditor may sue the beneficiaries for recovery of the estates assets that they received. *Id*. (That procedure is also discussed further below.)

a. **Creditor May be Able to Present an Untimely Proof of Claim to the Personal Representative** – If a creditor does not present a written claim that is verified within the requisite nine month period under N.J.S.A. 3B:22-4, the creditor may still be able to present a verified claim at any time before the remaining estate assets have been distributed or paid subject to the below condition. *N.J.S.A.* 3B:22-10.
    i. **Condition –** However, this procedure is not permitted unless the assets of the estate exceed the amount needed to pay the claims that were timely presented within nine months pursuant to N.J.S.A. 3B:22-4, *N.J.S.A.* 3B:22-10. In other words, the estate must be solvent and able to pay all timely presented claims in full. If there is anything then remaining, then the creditor's untimely claim against the estate can be protected and will be governed by the following procedure.

    ii. **Exception –** If an estate is adjudged insolvent, a creditor who fails to present his claim to the personal representative within nine months from the date of decedent's death (as provided in N.J.S.A. 3B:22-4) "shall be forever barred from prosecuting or recovering thereon" unless sufficient assets remain after all timely presented claims are satisfied. *N.J.S.A.* 3B:22-33.

b. **Acceptance of Untimely Claim** – Assuming the above condition is met, a personal representative is to pay the untimely claim if satisfied it is correct to the extent there are assets available to pay it. *N.J.S.A.* 3B:22-11.
    i. **Timing of Payment of Untimely Claim** – A personal representative does not need to pay a claim brought under N.J.S.A. 3B:22-10 until (a) the personal representative's account has been settled and the court has authorized him or her to make payment or (b) the court otherwise directs that it be paid. *N.J.S.A.* 3B:22-14.

    ii. **Action in Any Court to Recover if Not Rejected** – If a claim brought under N.J.S.A. 3B:22-10 is not rejected, but the personal representative fails to pay it, the creditor may also bring an action against the personal representative to recover on his claim in any court of competent jurisdiction. *N.J.S.A.* 3B:22-12.

c. **Rejection of Untimely Claim** – If the personal representative is not satisfied the claim is correct, the personal representative is to notify the creditor that the creditor is to establish the disputed claim by judgment. *N.J.S.A.* 3B:22-11. Note that this statute does not seem to impose a time limitation by when the personal representative must reject the untimely claim. (Compare that to the deadline above under which a personal representative must reject a timely presented claim within three months of its presentation.)

   i. **Required Retention of Assets Upon Rejection -** The personal representative is to retain assets sufficient to pay the claim together with interests and costs until the claimant has the opportunity to establish the claim by judgment. *N.J.S.A.* 3B:22-11.

   ii. **One Month to Bring Action Upon Rejection** – If the creditor fails to bring an action within one month after being notified to establish the claim by judgment, the creditor is forever barred from any action against the personal representative to recover on the claim. *N.J.S.A.* 3B:22-13.

d. **Rebuttable Presumption That Devise Remains Unpaid** – In an action by a creditor for payment of the creditor's ratable proportion of the creditor's debt, it is presumed that a distribution to a devisee or heir has not been made if no refunding bond has been filed. However, that presumption may be rebutted by proof that the devise or distributive share was actually paid over to the devisee or heir. N.J.S.A. 3B:22-15.

**IV. <u>Untimely Claims Against Devisees or Heirs</u>** – With respect to untimely claims, rather than bring a claim against the estate (or if bringing a claim against the estate will prove fruitless due to the estate's insolvency or because the estate assets have been distributed already), a creditor may bring a claim directly against a devisee or heir to recover under a refunding bond.

a. **Refunding Bond Requirement** – Upon distributing estate assets, the personal representative is to take a refunding bond from the devisee/distributee. That refunding bond is to then be filed in the Surrogate's Court. *N.J.S.A.* 3B:23-4.

b. **Action Against a Devisee or Heir on a Refunding Bond** – A claimant against an estate who has failed to present his or her claim in due form within the time required, may bring an action in his own name without leave of court <u>on a refunding bond</u> given by a devisee or heir and recover the proportion of his claim which ought to be paid out of the devise or distributive share for which the bond was given. N.J.S.A. 3B:22-16.

c. **Limited to Amount Received by Devisee or Heir** - Recovery on a refunding bond shall in no case exceed the amount actually received by the devisee or heir furnishing the bond. *N.J.S.A.* 3B:22-16.

d. **Intermediate Fiduciaries**:
    i. **Defense of an Intermediary Fiduciary Who Has Received a Devise or Distributive Share from the Personal Representative** – A fiduciary (e.g. a trustee) who has given a refunding bond in connection with a devise or distributive share that fiduciary received from the personal representative may bar the action by establishing that (a) the fiduciary has in turn distributed the assets "to the person entitled thereto" (e.g. the beneficiary of the trust) and (b) the fiduciary has also taken a refunding bond in connection with that distribution. *N.J.S.A.* 3B:22-17.
        1. **Defense if Only Part Distributed** – if that intermediary fiduciary has distributed only part of the devise or distributive share, but a refunding bond has been taken in connection with that partial distribution, the fiduciary may assert the same defense with respect to the portion distributed. N.J.S.A. 3B:22-17.

    ii. **Creditor Can Pursue the Ultimate Devisee or Heir** – notwithstanding the intermediary fiduciary's defense, the creditor can pursue an action on a refunding bond taken by that fiduciary against the ultimate devisee or heir as if the personal representative had made the distribution directly and had taken the bond himself. N.J.S.A. 3B:22-18.

**V. <u>Statute of Limitations Governing Creditor Claims</u>** – A creditor may be subject to a statute of limitations governing the creditor's claim. For example, under New Jersey law, contractual claims are generally governed by a six year limitations period running from the date upon which the action accrued. *N.J.S.A.* 2A:14-1. (But note that an unexpired limitations period will be extended by the period of six months where the debtor/decedent dies. *N.J.S.A.* 2A:14-23.)

a. The mere service of a proof of claim does not suspend the running of a statute of limitations, at least with respect to a solvent estate. *Smith v. Dowden*, 92 N.J.L. 317 (Sup.1919); cf. *Smith v. Crate*r, 43 N.J.Eq. 636 (E. & A.1888) ("The presentation of a claim to an administrator after he has initiated proceedings to declare the estate insolvent suspends the running of the statute of limitations").

b. **Waiver of Statute of Limitations** – Subject to the below requirements, a personal representative may waive any defense of limitations available to the estate. *N.J.S.A.* 3B:22-1.

    a. **Requirements:**

        i. The estate must be solvent; and

        ii. The personal representative must first obtain the consent of all "successors" (i.e., heirs or devisees). *N.J.S.A.* 3B:22-1.

c. **The Statute of Limitations Otherwise Prevents Time-Barred Claims** - If the defense is not waived (or cannot be waived as set forth above), no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. *N.J.S.A.* 3B:22-1.

d. **Six Month Tolling Upon Death –** Unexpired statutes of limitations with respect to claims against a decedent are tolled for a period of six months after death. *N.J.S.A.* 2A:14-23.

    a. Moreover, no action can in fact be brought against a personal representative within six months after letters are issued except for (a) funeral expenses or (b) by special leave of the court. *N.J.S.A.* 3B:14-40.

**VI. Order of Priority of Claims –** Where an estate is insolvent (i.e., its liabilities are in excess of its assets), the personal representative may have to consider which claims are to be prioritized as there may be insufficient assets to pay all creditor claims.

a. **Priority of Payments –** Under *N.J.S.A.* 3B:22-2, if the assets of the estate are insufficient to pay all claims in full, the personal representative is to pay claims in this order:

**i. Reasonable Funeral Expenses;**

1. **"Reasonable" Requirement** – If the estate is insolvent, the personal representative cannot expend all of the estate assets on the funeral, to the detriment of the other creditors, if the cost of the funeral is "unreasonable." The cost of the funeral "should correspond with the circumstances and social conditions [of the decedent], including his station in life and the value of his estate." *Quinn v. Koeck*, 95 N.J.Super. 467, 470, 231 A.2d 822–824 (App.Div.1967).

**ii. Administration Costs/Expenses;**

1. **Includes Allowed Expenses:** commissions of the personal representative, legal fees (including to himself or herself if he/she is an attorney), accounting fees, travel expenses, premium on a surety bond, and other reasonable expenses that a court would allow in a formal accounting matter.
    a. RPC 1.5 governs reasonableness of counsel fees.

2. **Does Not Include Disallowed Expenses:** *personal* expenses of the personal representative (for example, the personal representative's meals). *In re Linn*, 124 N.J.Eq. 65, 199 A. 396 (E. & A.1938) ("Executor was not entitled to an allowance for lunches and like personal expense, but was entitled to reimbursement for reasonable traveling expenses incurred in traveling between his home and office from which estate's business was administered").

**iii. Debts Owed to Office of the Public Guardian for Elderly Adults;**

**iv. Debts and taxes that have preference under federal law or the laws of New Jersey;**

**1. Federal Tax Debt (Including Federal Estate Tax) Has Priority Over New Jersey Tax Debt (Including New Jersey Inheritance Tax) -** where estate assets insufficient to satisfy both liens. *Matter of Kurth's Estate*, 185 N.J. Super. 443 (App. Div. 1982) (citing 31 *U.S.C.A.* §§ 191 and 192, which were the predecessors of 31 *U.S.C.A.* § 3713); 26 *U.S.C.A.* § 6324; *N.J.S.A.* 54:35–5.

a. **Personal Liability of Personal Representative to the IRS -** Under federal law, a personal representative is personally liable to the federal government if he or she pays a debt subordinate to a debt owed to the federal government

where the estate is insolvent. The personal representative is liable to the extent of the amount paid. 31 *U.S.C.A.* § 3713(b); *IRC* § 6901(a) (fiduciary personally liable under 31 *U.S.C.A.* § 3713(b) for income, estate, and gift taxes); Treas. Reg. § 301.6901-1(a) (providing for assessment and collection of the fiduciary's personal liability with respect to an income tax); *United States v. Estate of Kelley, et. al.*, 2020 WL 6194040, *4 (D.N.J. October 22, 2020) (a personal representative of an estate can be held liable to the IRS "to the extent of [a] distribution, if the government establishes three elements: (1) the fiduciary distributed assets of the estate; (2) the distribution rendered the estate insolvent; and (3) the distribution took place after the fiduciary had actual or constructive knowledge of the liability for unpaid taxes."); *accord United States v. Tyler*, 528 Fed. Appx. 193 (3rd Cir. 2013); *United States v. Coppola, et. al.*, 85 F.3d 1015 (2nd Cir. 1996).

2. **New Jersey Tax Debt Has Priority Over Municipal Tax Debt** - *Bowes v. United States*, 127 N.J.Eq. 132 (Ch.1940) ("Executor, in paying claims against deceased's estate, was required to pay claims for administration expenses first, then claims for estate taxes due the United States, then claims for inheritance taxes due the state, then claims for municipal taxes, and finally claims of general creditors.").
    a. But note that a recorded property tax lien may be satisfied from real estate specifically (as opposed to other assets of estate). See below.

    b. **Personal Liability of Personal Representative to New Jersey Division of Taxation –** "Executors, administrators, trustees, grantees, donees or vendees shall be personally liable for any and all [New Jersey estate and inheritance] taxes until paid as hereinafter directed, for which an action at law shall lie in the name of the state of New Jersey." *N.J.S.A.* 54:35-2; *N.J.S.A.* 54:36-7 ("No executor or trustee shall turn over any property of an estate mentioned in sections 54:36-3 to 54:36-6 of this title until the tax due thereon, and interest, if any, shall have been paid to the state tax commissioner. Any executor or trustee who shall turn over any such property prior to the payment of the tax due thereon, together with interest, shall be personally liable for such tax and interest, which liability may be enforced in an action at law in the name of the state."); *N.J.S.A.* 54:38-6 ("all administrators, executors, trustees, grantees, donees and vendees, shall be personally liable for

any and all [New Jersey estate and inheritance] taxes until paid").

**v. Reasonable medical and hospital expenses of the <u>last</u> illness of the decedent, including compensation of persons attending him;**

1. **"Last Illness" –** Refers to "the period to be preferred is the interval commencing when a patient is permanently stricken and does not recover from the ravages of a long-standing condition, and not the treatment over a long period covering months or years." *In re Estate of Carpentiero*, 102 N.J.Super. 395, 404 (Cty.Ct.1968). "Any other construction would lead to extremely large medical claims prejudicial to other worthy claims, and would favor dilatory practices on the part of medical claimants." *Id* (holding hospital bill was incurred during decedent's "last illness" despite that death occurred three months after his discharge from the hospital as the proximate cause of death was the condition for which decedent was treated at hospital and the three month period was "not so inordinate as to require denial of a preference).

**vi. Judgments entered against the <u>decedent</u> according to the priorities of their entries respectively; and**

1. **Judgments Only Granted Priority if Against *Decedent* (Not Against Estate)** – *Ward v. Kaycoff*, 9 N.J.Misc. 498 (Sup.1931) ("judgments to be preferred must be actually entered of record during the lifetime of defendant"); *Matter of Estate of Forgett*, 2019 WL 4165062 (App. Div. 2019) ("a judgment against an executor or administrator . . . unlike a judgment against a decedent in his lifetime, is not entitled to a preference over other claims payable out of the assets of the decedent's estate") (citing 7 N.J. Practice, Wills and Administration § 1283).
    a. **Judgments Against Personal Representative Not Entitled to Preference –** On the other hand, a judgment, after death, entered against the personal representative (or against an heir, devisee, or legatee) is not entitled to preference over other claims payable out of the estate. *Ryan v. Van Arx*, 46 N.J.L. 531, 531 (E. & A.1884) (judgment entered against personal representative "will not be entitled to be paid in preference to other creditors").

2. **Liens Under Judgments Entered Against Decedent Create Secured Claims –** If, under a judgment against a *decedent*, a lien has been acquired, then:
    a. to the extent of the lien, the judgment creditor's claim is a secured claim (*Wright v. Wright*, 70 N.J.Eq. 407 (Ch.1905)); and

    b. for the balance, it is just a preferred claim.

vii. **All other claims.**

1. **Secured Claims Are Superior to Preferred Creditors –** 7 N.J. Prac., Wills And Administration § 1280.

b. **Above Order of Priority Does Not Govern Real Estate Encumbered by Tax Liens and Mortgages –** Above order of priority will not trump a lien that attaches to real estate to the extent it is not the personal liability of the decedent who is the owner of the real estate:

i. **Property Tax Liens Recorded on Real Estate, Including Tax Sale Certificates, Are Not Subject to N.J.S.A. 3B:22-2 –** In *In the Matter of Pryo*r, 366 N.J. Super. 545 (App .Div. 2004), cert. denied, 181 N.J. 545 (2004), the Appellate Division considered property tax liens that attach to land and are not assessed against a property owner (i.e., property owners have no personal liability for property taxes). *Id* at 552. The *Pryor* Court determined that those municipal tax liens, including those incorporated in tax sale certificates, have first lien status and are to be paid prior to any other claims against an insolvent estate, including, for example, Medicaid and Public Guardian liens. *Id* at 553-54 (citing N.J.S.A. 54:5-9); *N.J.S.A.* 54:5-9 ("Every municipal lien shall be a first lien on such land and paramount to all prior or subsequent alienations and descents of such lands or encumbrances thereon, except subsequent municipal liens").

ii. **Mortgages Recorded on Real Estate Are Not Subject to N.J.S.A. 3B:22-2 –** "[W]hether an estate is insolvent or not, payment of the mortgage debt on real property is to be satisfied primarily from the property itself, not from the assets of the estate." *Investors Savings Bank, Inc. v. Sitzman*, 2010 WL 2471122, *3 (App. Div. 2010). Thus a personal representative "cannot invoke the provisions of N.J.S.A. 3B:22-2 to defeat [a mortgagee's] foreclosure action." *Id*. Moreover, the failure of a mortgagee or its assignee to present a claim for the mortgage debt will in no way prejudice it when it comes to foreclose the mortgage. *Slack v. Emery*, 30 N.J.Eq. 458, 462 (Ch.1879).

c. **No Preference to Any Claim of the Same Class of Another Claim -** No preference shall be given in the payment of any claim over any other claim of the same class. *N.J.S.A.* 3B:22-2.

d. **Claims Due and Payable Not Given Priority -** A claim due and payable shall not be entitled to a preference over claims not due. *N.J.S.A.* 3B:22-2.

e. **Commencement of an Action Does Not Give a Creditor Priority -** The mere commencement of an action against the personal representative in which the creditor seeks (a) recovery of a debt or claim or (b) entry of a judgment thereon against the personal representative shall not entitle such debt or claim to preference over others of the same class. *N.J.S.A.* 3B:22-2.

**VII. Abatement** – What if the assets of the estate residue are insufficient to pay debts? It may be the case that specifically devised assets are then necessary to satisfy a claim. But, in that case, how does the personal representative determine which assets should be used to satisfy the claim? The law below provides guidance.

a. **Abatement of Estate Assets to Pay Creditor Claims** - Estate assets abate in accordance with N.J.S.A. 3B:23-12 in order to satisfy debts or claims. *N.J.S.A.* 3B:22-3.

b. **Order of Abatement** – Distributive shares generally abate (regardless of whether they consist of real or personal property) in the following order:

   i. Property passing by intestacy;

   ii. Residuary devises;

   iii. General devises (i.e., a bequest of "$20,000 to my daughter"); and

   iv. Specific devises (i.e., a bequest of "my diamond ring to my daughter"). *N.J.S.A.* 3B:23-12.

c. **Proportional Reductions in Each Classification -** Abatement within each above classification is in proportion to the amount of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will. *N.J.S.A.* 3B:23-12

d. **Exceptions Where Abatement Statute (3B:23-12) Doesn't Apply:**

   i. **Share of Spouse Who Elects to Take Elective Share** – The share of a surviving spouse who elects to take an elective share is not affected by abatement. *N.J.S.A.* 23-12.

   ii. **Terms of Will Override the Above Order** - If the will expresses an order of abatement, the shares abate in accordance with the Will. *N.J.S.A*. 3B:23-14.

   iii. **If Purpose of Devise Would be Defeated by Abatement Statute -** if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in N.J.S.A 3B:23-12, shares of the distributees abate as may be found necessary to give effect to the intention of the testator. *N.J.S.A*. 3B:23-14.

**VIII. Creditor's Rights in Multi-State Administrations** – It may be the case that the decedent died domiciled in another jurisdiction, but left New Jersey assets (in which case there could be ancillary probate or administration in New Jersey). The New Jersey statutory law governing creditor claims considers this scenario:

a. **New Jersey Estate Assets are Subject to Claims Against Personal Representatives Even if Not Appointed in New Jersey** – If estate assets are administered in New Jersey, they are subject to all claims against a personal representative even if the personal representative was not appointed in New Jersey. *N.J.S.A.* 3B:22-19.

b. **Payment of Claims Allowed in Outside Jurisdictions Where Estate Insolvent** – If the estate (within New Jersey or as a whole) is insufficient to cover all claims, each creditor (whether the creditor's claim has been allowed in New Jersey or in an estate administration in another state of which the personal representative is aware) is entitled to receive payment of an equal proportion of his or her claim. *N.J.S.A.* 3B:22-20.
    i. **Preference or Security in Another State** – If a preference or security in regard to a claim is allowed in another jurisdiction but not in New Jersey, the creditor so benefited is to receive dividends from New Jersey assets only upon the balance of the creditor's claim after deducting the amount of the benefit (i.e., after deducting the amount of the foreign preference or security). *N.J.S.A.* 3B:22-20.

c. **Estate of Decedent Not Domiciled in New Jersey, Who Died With New Jersey Assets** (N.J.S.A. 3B:22-21) - If (a) the claims against the entire estate exceed the total value of all estate assets (including both the estate assets administered in New Jersey and the assets administered outside New Jersey) and (b) the decedent was not domiciled in New Jersey upon his or her death:
    i. **If Possible, New Jersey Assets Used to Make Proportionate Payment -** A proportionate payment of the claims allowed in New Jersey shall be made if the New Jersey assets are sufficient for this purpose; and
        1. **Remaining New Jersey Assets -** The balance of the New Jersey assets shall be transferred to the personal representative appointed in New Jersey.

    ii. **If New Jersey Assets Insufficient -** If New Jersey assets are insufficient to pay all claims allowed in New Jersey, New Jersey assets are to be marshaled so that each claim allowed in New Jersey is paid its proportion as far as possible, after taking into account all dividends on claims allowed in New Jersey from assets in other jurisdictions.

## IX. Real Property

a. A personal representative must take possession of a decedent's real property and manage it for the benefit of creditors and other interested parties. *N.J.S.A.* 3B:10-29 and 3B:10-30. The personal representative will also have the power to sell the property if such power is conferred by will or by N.J.S.A. 3B:14-23.

b. **Personal Representative's Action for Permission to Sell Real Estate -** Personal representative can file an action before the Probate Part for permission to sell real estate where he or she believes that the remaining assets of the estate are insufficient to pay creditor claims. *Rule* 4:90-1.

   i. **Unnecessary if Personal Representative Has Authority -** If, however, the personal representative has authority to sell real estate (either under the Will or under N.J.S.A. 3B:14-23), such an action may be unnecessary.

   ii. **Specifically Devised Real Estate -** Under N.J.S.A. 3B:14-23(e), a personal representative can sell real estate owned by an estate at public or private sale *"except where the property or an interest therein is specifically disposed of*." Thus if a personal representative determines he or she must sell specifically devised real estate, it seems he or she may need to bring a court application for permission to do the same.

c. **Creditor's Action to Compel Sale of Real Estate –** After securing a judgment against the personal representative, a creditor can bring an action before the Probate Part to compel the sale of real estate to satisfy its judgment debt.

   i. **Requirements** – Creditor's verified complaint must confirm:

      1. **Judgment -** "the creditor has reduced his claim against the executor or administrator to judgment" [*Rule* 4:90-2(a)];

      2. **Unsatisfied -** "the judgment remains partly or wholly unsatisfied for want of personal assets" [*Rule* 4:90-2(b)];

      3. **Real Estate -** "there is real estate, specifying its description, location, character, condition and value, as near as may be" [*Rule* 4:90-2(c)]; and

      4. **No Action by Personal Representative for Permission to Sell -** "the executor or administrator, notwithstanding that demand has been made upon him more than one month previously, has failed to commence an action for the sale of the real estate." [*Rule* 4:90-2(d)].

d. **Bond of Heir or Devisee to Prevent Sale of Real Estate** – Heirs or devisees can prevent a sale by furnishing a bond with sureties binding themselves to pay all unpaid debts and administration expenses. *Rule* 4:90-6. If the heir or devisee then fails to pay such debt or expense, upon the personal representative's application, the Probate

Part can then direct that either the surety bond be enforced or that the personal representative be permitted to proceed with selling the real estate. *Id*.

e. **Mortgages and Other Recorded Liens** - As addressed further above, real property cannot be sold free of a mortgage or other lien that encumbers the property. *See*, *e.g.*, *Investors Savings Bank, Inc. v. Sitzman*, 2010 WL 2471122, *3 (App. Div. 2010) ("whether an estate is insolvent or not, payment of the mortgage debt on real property is to be satisfied primarily from the property itself, not from the assets of the estate"); *In the Matter of Pryo*r, 366 N.J. Super. 545, 552 (App .Div. 2004), cert. denied, 181 N.J. 545 (2004) (holding that property owners have no personal liability for property taxes and thus the property tax lien is paid from the proceeds of the real property).

## X. Sale of Property Subject to Escheat to Pay Debts

a. **Court Order to Sell Property Subject to Escheat to New Jersey –** If property of the estate is to escheat to the State of New Jersey, but it is necessary to sell that property in order to pay the decedent's debts, the court "shall" direct the personal representative to sell that property sufficient for that purpose. *N.J.S.A.* 3B:22-26.

b. **All of Property Sold Vests in Purchaser** – When the personal representative, pursuant to court order (as provided in N.J.S.A. 3B:22-26), sells property that was to escheat to New Jersey, title to that property vests entirely in the purchaser of that property. *N.J.S.A.* 3B:22-27.

c. **Court Order Confirming Sale** – The judgment or order directing the sale is "conclusive evidence in all courts of the validity of the proceedings for sale and of the fulfillment of statutory requirements." *N.J.S.A.* 3B:22-28.
    i. **Setting Aside the Order** – The judgment or order can be set aside or reversed in an appropriate proceeding, but such a proceeding does not affect a bona fide purchaser, who (along with his heirs and assigns) holds the property despite that a court may set aside the Order confirming the sale and notwithstanding any defect in the proceedings for sale. *N.J.S.A.* 3B:22-28.

d. **Surplus Payable to State Treasurer** – After debts and administration expenses paid, if there are no heirs, the court shall order the surplus be paid to the State Treasurer and the personal representative shall have no further obligation regarding the surplus. *N.J.S.A.* 3B:22-29.

## XI. Insolvent Estates

a. **Preferred Expenses and Debts Satisfied First From Insolvent Estate** – In the case of an insolvent estate, the estate is first applied to the preferred expenses and debts in accordance with N.J.S.A. 3B:22-2 (see above). *N.J.S.A.* 3B:22-32.

b. **Once Preferred Expenses and Debts are Satisfied, Pro Rata Distribution of Balance to Creditors** – Once preferred expenses and debts are satisfied in accordance with N.J.S.A. 3B:22-2, the balance of the assets of the insolvent estate are to be distributed among the decedent's creditors in proportion to the sum due to each. *N.J.S.A.* 3B:22-32.

c. **In Case of Adjudged Insolvent Estate, Untimely Claim is "Forever Barred"** – If an estate is adjudged insolvent, a creditor who fails to present his claim to the personal representative within nine months from the date of decedent's death (as provided in N.J.S.A. 3B:22-4) "shall be forever barred from prosecuting or recovering thereon." *N.J.S.A.* 3B:22-33.

   i. **Exception –** If all exhibited and allowed claims are fully satisfied and assets remain in the estate, or the creditors find some other unaccounted for asset, the creditor shall receive his ratable proportion therefrom. *N.J.S.A.* 3B:22-33.

   ii. **Extension of Time Limitation** – Before distribution is made, upon application of any creditor, the court may extend the time under which creditors may present claims. *N.J.S.A.* 3B:22-33.

d. **Action to Have an Estate Adjudged Insolvent** – In an action to have an estate adjudged insolvent, the court may adjudicate upon and determine the amount and value of the estate and the liability of the estate on claims made against it. *N.J.S.A.* 3B:22-34; *Rule* 4:91-1 et seq. (describing procedure for bringing such action by Order to Show Cause and Verified Complaint).

   i. **Accounting** – "The executor or administrator shall also file with the complaint an account in the form required by R. 4:87-3." *Rule* 4:91-1(b).

   ii. **Creditor's Exceptions to Accounting** - "A creditor . . . may take exceptions to the account of the executor or administrator . . ." *Rule* 4:91-3.

   iii. **Exceptions of Personal Representative or Other Interested Person to Creditor's Claim** – "The executor or administrator, or any other interested person, may take exceptions to any creditor's claim or part thereof." *Rule* 4:91-3. However, "a claim not excepted to shall be deemed justly due." *Id*; *accord Estate of Kolker*, 212 N.J.Super. 427, 430 (Law Div., Probate Part, 1986) (in accounting action, creditor "claims were . . . deemed allowed if not excepted").

   iv. **Judgment of Insolvency** – the court may enter a judgment adjudging an estate insolvent if it appears the estate is insufficient to pay debts and direct the personal representative to proceed as if the estate were insolvent, and to

make sale of the whole or any part of the estate of his decedent, from time to time, as may appear expedient. *N.J.S.A.* 3B:22-35; *Rule* 4:91-1(c).

e. **Distribution of Proceeds of Insolvent Estate** - Proceeds of the insolvent estate which come to the hands of the personal representative shall be distributed under direction of the court, from time to time, as may be found convenient and just. *N.J.S.A.* 3B:22-36.

f. **Residue After Payment of All Debts and Claims** – If any residue remains after full payment of all debts and claims, it is to be divided among the heirs or devisees as provided by law or by will, respectively. *N.J.S.A.* 3B:22-37.

g. **Actions Against a Personal Representative of an Insolvent Estate Allowed** - Nothing precludes an action against the personal representative of an insolvent estate for waste or misapplication of the estate of his decedent. *N.J.S.A.* 3B:22-38.

## XII. Liability of Heirs and Devisees

a. **Heirs and devisees liable for debt of decedent** – Every creditor may maintain an action against the heirs and devisees of his deceased debtor. The heirs or devisees are liable to pay the debt by reason of the descent or devise of the real or personal property to them. In all actions creditors shall be preferred as in actions against personal representatives. *N.J.S.A.* 3B:22-40; *N.J.S.A.* 3B:23-24 (refunding bond requirement).

b. **Joinder of Parties** – The creditor's action against heirs or devisees is to be brought against all of the heirs and devisees of the deceased debtor who can be "found within [New Jersey]."[4] *N.J.S.A.* 3B:22-41.

c. **General Judgment** – Generally, a judgment against an heir or devisee is "general" such that it will be entered against the heir or devisee *personally* for the full amount due and collectible from any assets of the heir or devisee (as if it was the heir or devisee's own personal debt). *N.J.S.A.* 3B:22-42.

    i. The judgment against the heir or devisee will be "general" if the "judgment goes against the heir or devisee by default or after a trial on an answer which does not admit the inheritance or devise of the property or if the answer has been struck out entirely." 7 *NJPRAC* § 1312.

    ii. **Exception: Special Judgment** – If, however, the heir or devisee admits in the action the descent or devise to him or her, specifically describing it, then judgment is then instead "special" and is limited to only the specific property that the heir or devisee received such that only that specific asset (or assets) received can be pursued. *N.J.S.A.* 3B:22-42.

d. **Descended or Devised Property Thereafter Sold** – In the event an asset was distributed to an heir or devisee and was thereafter sold or transferred in a bona fide transaction prior to the commencement of the creditor's action against the heir or devisee, the property that was sold or transferred is not liable for the debt (even if the judgment would have otherwise been "special" under N.J.S.A. 3B:22-42). *N.J.S.A.* 3B:22-43.

    i. **General Judgment Against Heir or Devisee for Total Amount Received in Sale** - In the event of such a sale or transfer, the judgment against the heir or devisee is instead a "general" judgment and the heir or devisee is personally liable for "the full amount thereof." *N.J.S.A.* 3B:22-43.

        1. This general rule will apply "(i)f the heir or devisee files no answer or does not admit in his answer the devise or descent, or if his

[4] N.J.S.A. 3B:22-41 does not explain its use of the phrase "found within the State" and there do not appear to be reported decisions in New Jersey explaining this language.

answer is struck out entirely, a general judgment will be entered for the amount of the debt." 7 *NJPRAC* § 1314.

2. **Exception: Limited General Judgment** – If, however, the heir or devisee admits in the action the descent or devise to him, specifically describing it, the judgment remains "general"[5], but that general judgment will then be limited to the value of the asset that was descended or devised. *N.J.S.A.* 3B:22-43. That limited general judgment will not include the value of any improvements made on the descended or devised property that was sold or transferred. 7 *NJPRAC* § 1314 (if the heir or devisee "pleads the alienation (or sale), admits the descent or devise of the land (or personal property) and specifically describes the land (or other property), he is liable at law to the creditor to the extent of the value of the land (or other property) in the condition in which it stood at the decedent's death, but not for improvements made by him").

e. **Contribution** – an heir or devisee may pursue a claim for contribution from the other heirs and devisees who are also liable for the debt. *N.J.S.A.* 3B:22-44.

[5] It remains "general" because the specific descended/devised property no longer is in the hands of the heir/devisee such that the execution of the judgment "is collectible out of the property of the heir or devisee generally." 7 NJPRAC § 1314.

McCarter & English

# Creditor Claims in the Administration of Estates

Timothy M. Ferges

McCarter & English, LLP
www.mccarter.com

## Creditor's Proof of Claim

- Creditor must serve a "proof of claim" on personal representative to put him or her on notice and reserve rights
- Can serve proof of claim whether debt is payable:
  a) currently; or
  b) in the future if it is liquidated (i.e., if ascertainable in amount)

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# Exempt from Proof of Claim Procedure

- **IRS** – IRS is apparently not subject to this proof of claim procedure. *US v. Summerlin*, 310 U.S. 414, 418 (1940) (Florida statute "requiring claims to be filed within eight months cannot deprive the United States of its right to enforce its claim"); *accord Matter of Estate of Mock*, 2012 WL 8415852, *4 (Del. Ch. Feb. 27, 2012).

- **New Jersey Division of Taxation –** the New Jersey Division of Taxation also may not be subject to this proof of claim procedure in light of the New Jersey tax liens that encumber all property of the debtor/estate. *N.J.S.A.* 54:49-1; 54:35-5.

- **Municipalities With Recorded Tax Liens –** the interests in encumbered real estate of municipalities holding recorded tax liens may not be subject to this proof of claim procedure. *N.J.S.A.* 54:5-9 ("Every municipal lien shall be a first lien on such land and paramount to all prior or subsequent alienations and descents of such lands or encumbrances thereon, except subsequent municipal liens").

- **Mortgagees** – mortgagees may also not be subject to this proof of claim procedure. *Slack v. Emery*, 30 N.J.Eq. 458, 462 (Ch.1879) (failure of a mortgagee or its assignee to present a claim for mortgage debt will in no way prejudice it when it comes to foreclose the mortgage).

## Format of Proof of Claim
**(*N.J.S.A.* 3B:22-4)**

1. **Writing**

2. **Verified** – i.e., must be signed under oath by creditor

## What if *Unverified* Claim is Paid?
**(*N.J.S.A.* 3B:22-6)**

1. **Solvent Estate** – personal representative's payment of *unverified* claim still allowed in full if:
    a) payment made in good faith; and
    b) claim proven valid.

2. **Insolvent Estate** - personal representative's payment of *unverified* claim allowed in pro rata amount creditor would have been entitled to receive if was verified so long as:
    a) payment made in good faith; and
    b) claim proven valid.

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## Nine Month Deadline for Presentation of Proof of Claim

- **Nine Month Deadline –** Creditor must present proof of claim to personal representative within nine months of date of decedent's death. *N.J.S.A.* 3B:22-4.

- **Untimely Proofs of Claim** – if untimely, personal representative not liable to creditor regarding any assets delivered or paid to satisfy any lawful claims, devises or distributive shares before presentation of the claim. *N.J.S.A.* 3B:22-4.

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## Treatment of *Timely* Presented Proof of Claim

- **Three Months to Dispute –** If timely presented, personal representative "shall" give creditor notice within 3 months of presentation of proof of claim that claim is allowed, disputed, or allowed and disputed in part. *N.J.S.A.* 3B:22-7.

- **However, Personal Representative's Failure to Respond is Not Deemed a Rejection or Allowance of the Claim -** *Gordon v. Robinson*, 103 N.J. Super. 5, 7 (App. Div. 1968) (the three-month deadline "is directory, not mandatory" so failure to dispute claim within three months alone does not "bar [the] personal representative or the estate from challenging it") (citing N.J.S.A. 3A:24-6, the predecessor of N.J.S.A. 3B:22-7).

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## If *Timely* Presented Claim is Disputed

- **Creditor's Three-Month Deadline to File Action -** Within 3 months of receiving notice claim disputed, creditor must commence action to recover on disputed claim. *N.J.S.A.* 3B:22-8.

- **If No Action Within Three Months -** If creditor does not commence action within 3 months, personal representative not liable regarding any assets delivered or paid in satisfaction of any lawful claims, devises or distributive shares before commencement of action. *N.J.S.A.* 3B:22-8.

## Untimely Claims Against Either Estate or Heirs/Devisees

- Creditor may not be absolutely barred from recovery despite not having served verified proof of claim within nine months.

- **Creditor may potentially pursue claim against estate or heirs/devisees:**
  1. **Estate:** Absent (a) insolvency or (b) the estate assets having already been distributed, creditor can recover from balance of estate assets.
  2. **Heirs/Devisees:** However, if estate assets were already distributed, creditor can file action against beneficiaries to recover distributed assets.

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## Untimely Claims Against Estate –
### Presentation of Untimely Claim to Personal Representative

- **Presentation of Untimely Claim:** If creditor does not present written verified claim within nine month period, creditor may still be able to present a verified claim at any time before the remaining estate assets distributed or paid subject to below condition. *N.J.S.A.* 3B:22-10.

  - **Condition –** Estate assets must be sufficient to pay verified claims that were timely presented within nine months (i.e., estate must be **solvent**).
  - If estate adjudged insolvent, creditor who fails to present his claim to personal representative within nine months period "shall be forever barred from prosecuting or recovering thereon" unless sufficient assets remain after all timely presented claims are satisfied. *N.J.S.A.* 3B:22-33.

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## Untimely Claims Against Estate –
### Personal Representative's Acceptance of Untimely Claim

- **Acceptance of Untimely Claim** –Personal representative is to pay untimely claim if satisfied it is correct to extent assets available to pay it. *N.J.S.A.* 3B:22-11.

- **Timing of Payment** – Personal representative need not pay until (a) account settled and court has authorized payment or (b) court otherwise directs that it be paid. *N.J.S.A.* 3B:22-14.

- **Creditor's Action to Recover if Not Rejected** – If not rejected, but personal representative fails to pay, creditor may bring action against personal representative to recover on claim in any court of competent jurisdiction. *N.J.S.A.* 3B:22-12.

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# Untimely Claims Against Estate –
## Personal Representative's Rejection of Untimely Claim

- **Rejection of Untimely Claim** – If personal representative not satisfied claim is correct, is to notify creditor that must establish disputed claim by judgment. *N.J.S.A.* 3B:22-11.

- **Apparently No Time Limitation to Reject**: Statutes do not seem to impose a time limitation by when personal representative must reject an *untimely* claim.

- **Required Retention of Assets Upon Rejection -** Personal representative to retain assets sufficient to pay claim together with interests and costs until claimant has opportunity to establish claim by judgment. *N.J.S.A.* 3B:22-11.

- **One Month for Creditor to Bring Action Upon Rejection** – If creditor fails to bring action within one month after notified to establish claim by judgment, creditor forever barred from any action against personal representative to recover on claim. *N.J.S.A.* 3B:22-13.

# Untimely Claims Against Heirs/Devisees – Action on a Refunding Bond

- **Refunding Bond Requirement** – Upon distributing estate assets, personal representative is to take refunding bond from devisee/distributee. Refunding bond to then be filed in Surrogate's Court. *N.J.S.A.* 3B:23-4.

- **Action Against a Devisee or Heir on a Refunding Bond** – Claimant against estate who has failed to present verified claim within time required, may bring action in his/her own name without leave of court on a refunding bond given by devisee/heir. N.J.S.A. 3B:22-16.
  - **Limited to Amount Received by Devisee or Heir** - Recovery on a refunding bond from devise/distributive share cannot exceed amount actually received by devisee/heir. *N.J.S.A.* 3B:22-16.

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# Untimely Claims Against Heirs/Devisees – Action on Intermediary Fiduciary's Refunding Bond

- It may be the case that a distribution was made from the estate to another fiduciary —- a so-called intermediary fiduciary (e.g. from the estate to the trustee of a trust).

- **Defense of Intermediary Fiduciary Who Has Received Distribution** – A fiduciary (e.g. a trustee) may bar action by creditor if fiduciary establishes:
  a) fiduciary has in turn distributed assets "to the person entitled thereto" (e.g. beneficiary of trust); and
  b) fiduciary has also taken a refunding bond in connection with that second distribution. *N.J.S.A.* 3B:22-17.

- **Creditor Can Pursue the Ultimate Devisee or Heir** – Notwithstanding intermediary fiduciary's defense, creditor can pursue action on a refunding bond taken by that fiduciary against ultimate devisee/heir as if personal representative had made the distribution directly and had taken bond himself/herself. *N.J.S.A.* 3B:22-18.

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# Creditor's Court Action Against Heirs/Devisees

- Every creditor may maintain an action against the heirs and devisees of deceased debtor who are liable to pay debt by reason of descent/devise to them. *N.J.S.A.* 3B:22-40; *N.J.S.A.* 3B:23-24 (refunding bond requirement).

- **Joinder of Parties** – Creditor's action against heirs or devisees is to be brought against all heirs and devisees who can be found within New Jersey. *N.J.S.A.* 3B:22-41.

- **General Judgment** – Generally, judgment against heir/devisee is "general" such that it will be entered against the heir/devisee *personally* for the amount due and collectible from any assets of heir/devisee (as if it was heir/devisee's own debt). *N.J.S.A.* 3B:22-42.

- **Special Judgment** – If, however, the heir/devisee admits in the action the descent/devise to him/her, specifically describing it, judgment is instead "special" and is limited to the specific property that the heir/devisee received such that only that asset can be pursued. *N.J.S.A.* 3B:22-42.

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# Creditor's Court Action Against Heirs/Devisees (continued)

- **Descended/Devised Property Thereafter Sold** – In the event, however, an asset distributed to an heir/devisee was thereafter sold/transferred in a *bona fide* transaction prior to commencement of creditor's action against heir/devisee, the property sold/transferred is not liable for the debt (even if the judgment would have been "special"). *N.J.S.A.* 3B:22-43.
  - **General Judgment Against Heir/Devisee for Amount Received in Sale** - In that event, judgment against heir/devisee is instead a "general" judgment and heir/devisee is personally liable for "the full amount thereof." *N.J.S.A.* 3B:22-43.
  - **Exception Where Capped at Value of Property Descended/Devised** – If heir/devisee admits in the action the descent/devise to him, specifically describing it, general judgment is limited to the value of the asset that was descended/devised. *N.J.S.A.* 3B:22-43. (So, for example, will not include value of improvements made on real estate sold, etc.)
- **Contribution** – an heir or devisee may pursue a claim for contribution from other heirs and devisees who are also liable for debt. *N.J.S.A.* 3B:22-44.

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# Statutes of Limitations Governing Creditor Claims

- A creditor may be subject to a statute of limitations governing its claim.
- For example, contractual claims are generally governed by six year limitations period running from the date upon which action accrued. *N.J.S.A.* 2A:14-1.
- **Six Month Tolling Upon Death** - Unexpired limitations period will be extended by period of six months when debtor/decedent dies. *N.J.S.A.* 2A:14-23.
  - **No Action for Six Months** - No action can be brought against personal representative within six months after letters issued except for (a) funeral expenses or (b) by special leave of the court. *N.J.S.A.* 3B:14-40.
- **Service of Proof of Claim Does Not Toll Limitations Period -** Mere service of proof of claim does not suspend running of limitations period, at least with respect to a solvent estate. *Smith v. Dowden*, 92 N.J.L. 317 (Sup.1919); cf. *Smith v. Crate*r, 43 N.J.Eq. 636 (E. & A.1888) ("The presentation of a claim to an administrator after he has initiated proceedings to declare the estate insolvent suspends the running of the statute of limitations").

# Statutes of Limitations Governing Creditor Claims (continued)

- **Waiver of Statute of Limitations** – Personal representative may waive any defense of limitations available to the estate subject to the following requirements:
  1. estate must be solvent; and
  2. personal representative must first obtain consent of all "successors" (i.e., heirs or devisees). *N.J.S.A.* 3B:22-1.
- **Statutes of Limitations Otherwise Prevent Time-Barred Claims** - If defense is not waived (or cannot be waived as set forth above), no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. *N.J.S.A.* 3B:22-1.

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# Priority of Claims

- Under *N.J.S.A.* 3B:22-2, if assets of estate are insufficient to pay all claims in full, personal representative is to pay claims in this order:
    1. Reasonable Funeral Expenses;
    2. Administration Costs/Expenses;
    3. Debts Owed to Office of the Public Guardian for Elderly Adults;
    4. Debts and taxes that have preference under federal law or the laws of New Jersey;
    5. Reasonable medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;
    6. Judgments entered against the decedent according to the priorities of their entries respectively; and
    7. All other claims.

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## Priority of Claims (continued)

- **No Preference to Any Claim of Same Class of Another Claim -** No preference shall be given in payment of any claim over any other claim of the same class. *N.J.S.A.* 3B:22-2.
- **Claims Due and Payable Not Given Priority -** A claim due and payable shall not be entitled to a preference over claims not yet due. *N.J.S.A.* 3B:22-2.
- **Commencement of Action Does Not Give Creditor Priority -** Mere commencement of an action against personal representative in which the creditor seeks (a) recovery of debt or claim or (b) entry of judgment thereon against personal representative shall not entitle such debt/claim to preference over others of same class. *N.J.S.A.* 3B:22-2.

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# Priority of Claims (continued)

- Order of priority under N.J.S.A. 3B:22-2 will not trump a lien that attaches to real estate to the extent it is not the personal liability of decedent who is owner of real estate.
- **Mortgages –** "[W]hether an estate is insolvent or not, payment of the mortgage debt on real property is to be satisfied primarily from the property itself, not from the assets of the estate." *Investors Savings Bank, Inc. v. Sitzman*, 2010 WL 2471122, *3 (App. Div. 2010). Thus personal representative "cannot invoke the provisions of N.J.S.A. 3B:22-2 to defeat [a mortgagee's] foreclosure action." *Id*. Moreover, failure of mortgagee or its assignee to present a claim for the mortgage debt will in no way prejudice it when it comes to foreclose the mortgage. *Slack v. Emery*, 30 N.J.Eq. 458, 462 (Ch.1879).
- **Property Tax Liens –** Municipal tax liens, including those incorporated in tax sale certificates, have first lien status and are to be paid prior to any other claims against an insolvent estate, including, for example, Medicaid and Public Guardian liens. *In the Matter of Pryo*r, 366 N.J. Super. 545, 553-54 (App .Div. 2004), cert. denied, 181 N.J. 545 (2004 at 553-54 (citing N.J.S.A. 54:5-9).

# Abatement

- What if estate is solvent, but estate residue insufficient to pay a creditor claim? Estate assets abate in accordance with N.J.S.A. 3B:23-12 in order to satisfy debts or claims. *N.J.S.A.* 3B:22-3.
- **Order of Abatement** – Distributive shares generally abate (regardless of whether consist of real or personal property) in following order (N.J.S.A. 3B:23-12):
    1. Property passing by intestacy;
    2. Residuary devises;
    3. General devises (i.e., a bequest of "$20,000 to my daughter"); and
    4. Specific devises (i.e., a bequest of "my diamond ring to my daughter").
- **Proportional Reductions in Each Classification -** Abatement within each of above four classifications is in proportion to amount of property each of beneficiaries would have received if full distribution of property had been made in accordance with terms of will. *N.J.S.A.* 3B:23-12

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## Abatement (continued) –
### Exceptions Where 3B:23-12 Does Not Apply

- **Share of Spouse Who Elects to Take Elective Share** – Share of surviving spouse who elects to take elective share is not affected by abatement.

- **Terms of Will Can Override Statutory Order of Abatement** - If will expresses an order of abatement, shares abate in accordance with the Will. *N.J.S.A*. 3B:23-14.

- **If Purpose of Devise Would be Defeated by Abatement Statute -** if testamentary plan or express or implied purpose of devise would be defeated by order of abatement stated in N.J.S.A 3B:23-12, shares of distributees abate as may be found necessary to give effect to intention of testator. *N.J.S.A*. 3B:23-14.

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# Insolvent Estates

- **Preferred Expenses/Debts Satisfied First From Insolvent Estate** – In the case of an insolvent estate, estate is first applied to preferred expenses and debts in accordance with N.J.S.A. 3B:22-2. *N.J.S.A.* 3B:22-32.

- **Once Preferred Expenses/Debts Satisfied, Pro Rata Distribution of Balance to Creditors** – Once preferred expenses/debts are satisfied in accordance with N.J.S.A. 3B:22-2, balance of assets of insolvent estate to be distributed among creditors in proportion to sum due to each. *N.J.S.A.* 3B:22-32.

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# Insolvent Estate (continued) –
## Court Action for Judgment of Insolvency

- **Action to Have Estate Adjudged Insolvent** – In action to have estate adjudged insolvent, court may adjudicate upon and determine amount and value of estate and liability of the estate on claims made against it. *N.J.S.A.* 3B:22-34.
- **Judgment of Insolvency** – Court may enter judgment (a) adjudging estate insolvent if it appears estate insufficient to pay debts, (b) directing personal representative to proceed as if estate were insolvent, and (c) directing personal representative to make sale of the whole, or any part of, estate from time to time as may appear expedient. *N.J.S.A.* 3B:22-35.

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# Insolvent Estates (continued) –
## Judgment Bars Untimely Creditors

- **In Adjudged Insolvent Estate, Untimely Claim "Forever Barred"** – If estate adjudged insolvent, a creditor who fails to present his/her claim to personal representative within nine months from date of decedent's death (per N.J.S.A. 3B:22-4) "shall be forever barred from prosecuting or recovering thereon." *N.J.S.A.* 3B:22-33.
  - **Exception 1 (Extension of Time Limitation)** – Before distribution of estate assets via this court procedure, upon application of any creditor, court may extend the time under which creditors may present claims. *N.J.S.A.* 3B:22-33.
  - **Exception 2 (if Sufficient Assets) –** If all exhibited and allowed claims fully satisfied and assets remain in estate, or creditors find some other unaccounted for asset, creditor shall receive his/her ratable proportion therefrom. *N.J.S.A.* 3B:22-33.

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## Insolvent Estates (continued)

- **Distribution of Proceeds of Insolvent Estate** - Proceeds of insolvent estate shall be distributed under direction of court, from time to time, as may be found convenient and just. *N.J.S.A.* 3B:22-36.
- **Residue After Payment of All Debts and Claims** – If any residue remains after full payment of all debts and claims, it is to be divided among heirs/devisees as provided by law or by will, respectively. *N.J.S.A.* 3B:22-37.
- **Actions Against Personal Representative of an Insolvent Estate Allowed** - Nothing precludes an action against personal representative of an insolvent estate for waste or misapplication of estate. *N.J.S.A.* 3B:22-38.

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# Multi-State Administrations

- **New Jersey Assets Subject to Claims Against Personal Representative Even if Not Appointed in New Jersey** – If estate assets administered in NJ, they are subject to all claims against a personal representative even if personal representative not appointed in New Jersey. *N.J.S.A.* 3B:22-19.
- **Payment of Claims Allowed in Outside Jurisdictions Where Estate Insolvent** – If estate (within New Jersey or as a whole) insufficient to cover all claims, each creditor (whether creditor's claim allowed in New Jersey or in another state) is entitled to receive payment of an equal proportion of his or her claim. *N.J.S.A.* 3B:22-20.
- **Preference or Security in Another State** – If preference or security in regard to a claim is allowed in another jurisdiction but not in New Jersey, creditor so benefited is to receive dividends from New Jersey assets only upon balance of creditor's claim after deducting amount of benefit (i.e., after deducting the amount of the foreign preference or security). *N.J.S.A.* 3B:22-20.

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# Multi-State Administrations (continued)

- **Estate of Decedent Not Domiciled in New Jersey, Who Died With NJ Assets** (N.J.S.A. 3B:22-21) - If (a) claims against entire estate exceed total value of all estate assets (including estate assets administered in, and outside of, New Jersey) and (b) decedent was not domiciled in New Jersey upon his/her death:
  - **If Possible, NJ Assets Used to Make Proportionate Payment -** A proportionate payment of claims allowed in NJ shall be made if NJ assets are sufficient for this purpose; and
  - **Remaining NJ Assets -** The balance of NJ assets shall be transferred to a personal representative appointed in NJ.
- **If NJ Assets Insufficient -** If NJ assets insufficient to pay all claims allowed in NJ, NJ assets are to be marshaled so each claim allowed in NJ is paid its proportion as far as possible, after taking into account all dividends on claims allowed in NJ from assets in other jurisdictions.

# Real Estate

- A personal representative must take possession of decedent's real property and manage it for benefit of creditors and other interested parties. *N.J.S.A.* 3B:10-29 and 3B:10-30.
- Personal representative will also have the power to sell real property if such power is conferred by will or by N.J.S.A. 3B:14-23.
- **Personal Representative's Action for Permission to Sell Real Estate -** Personal representative can file action before Probate Part for permission to sell real estate where he/she believes remaining assets of the estate are insufficient to pay creditor claims. *Rule* 4:90-1.
  - **Unnecessary if Personal Representative Has Authority -** If, however, personal representative has authority to sell real estate (either under the Will or under N.J.S.A. 3B:14-23), such an action may be unnecessary.
  - **Specifically Devised Real Estate -** Under N.J.S.A. 3B:14-23(e), a personal representative can sell real estate owned by an estate at public or private sale *"except where the property or an interest therein is specifically disposed of*." Thus if a personal representative determines he or she must sell specifically devised real estate and no authority to sell under Will, it seems he/she may need to bring a court application for permission to do the same.

# Real Estate (continued)

- **Creditor's Action to Compel Sale of Real Estate –** After securing a judgment against personal representative with respect to its claim, a creditor can bring an action before Probate Part to compel the sale of real estate to satisfy its judgment debt. Creditor's verified complaint must confirm:
  - **Judgment -** "the creditor has reduced his claim against the executor or administrator to judgment" [*Rule* 4:90-2(a)];
  - **Unsatisfied -** "the judgment remains partly or wholly unsatisfied for want of personal assets" [*Rule* 4:90-2(b)];
  - **Real Estate -** "there is real estate, specifying its description, location, character, condition and value, as near as may be" [*Rule* 4:90-2(c)]; and
  - **No Action by Personal Representative for Permission to Sell -** "the executor or administrator, notwithstanding that demand has been made upon him more than one month previously, has failed to commence an action for the sale of the real estate." [*Rule* 4:90-2(d)].

# Real Estate (continued)

- **Bond of Heir/Devisee to Prevent Sale of Real Estate** – Heirs/devisees can prevent sale by furnishing a bond with sureties binding themselves to pay all unpaid debts and administration expenses. *Rule* 4:90-6. If heir/devisee then fails to pay such debt or expense, upon personal representative's application, Probate Part can then direct that either the surety bond be enforced or that the personal representative be permitted to proceed with selling the real estate. *Id*.
- **Mortgages and Other Recorded Liens** - Again, real property cannot be sold free of a mortgage or other lien that encumbers the property. *See*, *e.g.*, *Investors Savings Bank, Inc. v. Sitzman*, 2010 WL 2471122, *3 (App. Div. 2010) *In the Matter of Pryo*r, 366 N.J. Super. 545, 552 (App .Div. 2004), cert. denied, 181 N.J. 545 (2004).

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# Sale of Property Subject to Escheat to Pay Debts

- **Court Order to Sell Property Subject to Escheat to New Jersey –** If property of estate is to escheat to State of NJ, but it is necessary to sell that property in order to pay decedent's debts, court "shall" direct personal representative to sell that property sufficient for that purpose. *N.J.S.A.* 3B:22-26.
- **All of Property Sold Vests in Purchaser** – When personal representative, pursuant to court order (as provided in N.J.S.A. 3B:22-26), sells property that was to escheat to NJ, title to that property vests entirely in the purchaser of that property. *N.J.S.A.* 3B:22-27.
- **Court Order Confirming Sale** – The judgment/order directing sale is "conclusive evidence in all courts of the validity of the proceedings for sale and of the fulfillment of statutory requirements." *N.J.S.A.* 3B:22-28.
- **Setting Aside the Order** – The judgment/order can be reversed in an appropriate proceeding, but does not affect a bona fide purchaser, who (along with his heirs and assigns) holds the property despite that a court may set aside the Order confirming the sale and notwithstanding any defect in the proceedings for sale. *N.J.S.A.* 3B:22-28.
- **Surplus Payable to State Treasurer** – After debts and administration expenses paid, if there are no heirs, the court shall order the surplus paid to the State Treasurer and the personal representative shall have no further obligation regarding the surplus. *N.J.S.A.* 3B:22-29.

# Thank You

Timothy M. Ferges
McCarter & English, LLP

Four Gateway Center
100 Mulberry Street
Newark, NJ 07102


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New York Official Reports

Unreported Disposition
**87 Misc.3d 1201(A), 239 N.Y.S.3d 917 (Table), 2025 WL 2640123 (N.Y.Sup.), 2025 N.Y. Slip Op. 51426(U)**

**This opinion is uncorrected and will not be published in the printed Official Reports.**

***1** C.S., Plaintiff,

v.

R.H., Defendant.

Supreme Court, New York County
Index No. xxxxxx/2018
Decided on September 8, 2025

CITE TITLE AS: C.S. v R.H.

## ABSTRACT

Husband and Wife and Other Domestic Relationships
Equitable Distribution
Irrevocable Trust Assets

*C.S. v R.H.*, 2025 NY Slip Op 51426(U). Husband and Wife and Other Domestic Relationships—Equitable Distribution —Irrevocable Trust Assets. (Sup Ct, NY County, Sept. 8, 2025, Waterman-Marshall, J.)

## APPEARANCES OF COUNSEL

The Plaintiff-Wife is represented by The Law Firm of Laurence P. Greenberg, Laurence P. Greenberg, Esq. [laurence@lpgdivorce.com] and Seth Ginsberg, Esq. [srginsberg@mac.com], 299 Broadway, Suite 1405, New York, New York 10007, (212) 608-9000.

The Defendant-Husband is represented by Law Offices of James. J. Sexton, P.C., James J. Sexton, Esq. [sexton@rocklanddivorce.com], 31 Hudson Yards, 11th Floor, New York, New York 10001, (212) 627-5095.

## OPINION OF THE COURT

Kathleen Waterman-Marshall, J.

## BRIEF BACKGROUND

C.S. ("Wife") and R.H. ("Husband") had a nearly twenty-four-year marriage, much of which, at least on the surface, had tones of a fairy-tale. They started out comfortably, with Husband earning $2 million a year as an equity partner in the investment firm Spear Leeds & Kellogg ("SL&K") and Wife earning $52,000 a year as a financial reporter. The marriage resulted in four daughters [xxx], all of whom are in good health and successful in their own right.

Early in the marriage, the parties' wealth went from comfortable to extravagant when Goldman Sachs purchased SL&K for $6.5 billion, and the family's net worth rocketed to approximately $120 million overnight. Their lifestyle went from Manhattan rich -- Manhattan apartment, country home, and Hampton summer home rentals -- to uber-rich -- living in Europe for several years, several Manhattan apartments, a Hamptons estate with 7.5-acres of waterfront property, real estate investments worth $22 million, and the creation of an investment firm, E.T.C. ("ETC") that trades $5.5 billion in assets, among other assets.

Husband and Wife placed their vast wealth into irrevocable trusts in March 2001: the R.H. 2001 Family Trust ("the Family Trust"), for the benefit of their daughters who would ***2** receive their share of the assets when they reached age 30, and a generation skipping trust, named the R.H. 2001 GST Trust ("the GST"), for the benefit of their grandchildren and which skips their daughters, who are not beneficiaries (collectively and intermittently referred to as "the Trusts"). They intended that the Trusts shelter from estate taxes the majority of their assets accrued during the marriage -- valued at over $181 million at the time of trial -- while directly benefiting from their use on a daily basis to support the family lifestyle. Indeed, the parties resided in each of the homes owned by the Trusts throughout the marriage, and family expenses were and continue to be paid from the assets held by the Trusts. Husband is the Grantor of the Trusts, with power to remove and replace the Trustee, as well as the Investment Advisor for each of the LLCs owned by the Trusts and which hold the marital assets. As such, and since the outset, he has and continues to actively manage and control the trust assets.

Something went wrong in the marriage; extreme wealth could not fix it. The precise causes and conditions are beyond this Court's purview and no one can really know exactly when and how a marriage comes to an end. Wife filed for divorce in May 2018.

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The parties resolved their custody and parental access issues in somewhat short order by Custody Stipulation, dated December 18, 2018, as modified by So-Ordered Modification Agreement dated January 11, 2022 ("the Custody Agreements"). The parties have joint legal custody with an equal parental access schedule (for the two youngest daughters).

The divorce proceedings did not need to be acrimonious and the financial issues could and should have been resolved -- there is wealth enough for everyone. A settlement acknowledging each parties' contributions to marital assets, the homes and caretaking of the children, as well as honoring their economic decisions during the marriage, would have been possible, indeed, preferable. It is undisputed that the vast majority of the martial assets are contained in the Trusts and continue to grow in value. However, after Wife commenced this lawsuit, Husband took unilateral actions to systematically cut her out of any involvement in the Trusts and destroy her interest in their assets, and evicted her from the marital homes owned by the Trusts. She has not enjoyed the use or benefit of any trust assets since 2020. In 2023, mid-trial, and without Court approval or notice to and consent of Wife, Husband decanted the Trusts into two new trusts formed under Delaware law.

The question presented on this financial trial is whether, in fashioning an equitable distribution award, the Court can consider the *value* of martial assets placed into the Trusts, without distributing such assets or dissolving the Trusts (which, even if possible, would have catastrophic results). Although there is no case directly on all fours with this case, a synthesis of the controlling principles compels the Court to answer the question in the affirmative.

*TRIAL*

The financial trial took place over eight days from October 2022 through April 2024, specifically, October 13, 2022, December 2, 2022, February 23, 2023, February 24, 2023, March 2, 2023, June 14, 2023, April 15 and 16, 2024.[1] The parties submitted their post-trial briefs on September 12, 2024.

In support of her case, Wife offered her testimony and that of real estate appraisers Jeffrey Robinson and Elise Prado. Husband offered his own testimony and that of Dave McCabe, Esq., the parties' trusts and estate attorney, who represented them up to the time of this divorce ***3** action. The Court admitted into evidence 197 exhibits offered by Wife, and 16 exhibits offered by Husband, many on consent. The exhibits included, *inter alia,* the pleadings; court Orders; the Custody Agreements; the various Trust documents, including the GST and Family Trust, the LLC Operating Agreements, and related notices, appointment letters, removal letters, leases, and correspondence; the 2023 Delaware Property Trust and Investment Trust; appraisals of the parties' various residences; a valuation of ETC; account statements for the parties' various financial and investment accounts; the parties' joint and trust tax returns; and photographs.[2]

*FINDINGS OF FACT*

*Credibility*

Wife presented as sincere, intelligent, and warm. She testified in a clear, consistent, and straightforward manner on all matters throughout the trial; the Court finds her to be highly credible. Wife maintained a respectful tone and demeanor and was not argumentative or evasive even when challenged or presented with emotionally charged questions on cross-examination.

Wife's testimony about each party's career, the family's finances, and family life early in the marriage, and their finances and lifestyle after the Goldman Sachs buy-out, was clear, specific, and corroborated by the other credible proof in the record, including documents and photographs. She testified in detail about raising the children, her dedication to Husband, and attempts to balance family with her own career -- memories which evoked both joy and sadness. She smiled often when speaking about her daughters and the happy times with Husband, and emoted sincere relief for Husband's recovery from serious injuries in 2004 and from cancer in 2016. Her testimony about the work she put into raising the children -- their medical and educational needs, extracurriculars, etc. -- and the work she put into the various family homes, was also credible and corroborated. Wife impressed as a committed woman who acquiesced to Husband on all things, including his request that she give up her career, which she loved. She was genuinely thankful for the wealth they achieved during the marriage, and visibly devasted by the end of the marriage and Husband's conduct following commencement of this divorce.

As to finances, Wife testified clearly and convincingly that Husband assured her that the Trusts were "tax shelters," that she had a role in the Trusts and their assets, and that the parties

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would use and enjoy the Trust assets to their benefit. She was equally credible as to how and when she learned about the Trusts and the LLCs, what she knew about the Trusts and LLCs, and what she did not know about them. Her testimony that she took care of the four children and various homes and completely trusted Husband with the family finances, was straightforward, consistent and unrefuted. Similarly, Wife's testimony that she did not have separate legal counsel in the formation of the Trusts and LLCs and was not advised that she needed separate legal counsel therefor, was highly credible and unassailed.

Husband presented as intelligent, accomplished, and confident, with an edge of arrogance and without any of the humility demonstrated by Wife. When questioned by Wife's attorney, Husband appeared frustrated, angry and defensive; he gave the impression that he need not account to anyone for any of his conduct as it relates to his wealth, his financial decisions, and his family. He did not testify at any length or with any great detail about the family life throughout the marriage, or his relationship with Wife. He did not refute Wife's testimony about ***4** her contributions to the marriage, that she was the primary caregiver of the four daughters, or any specifics of their home life and lifestyle.

Husband lacked credibility on the core financial issues, specifically as to the critical matter of his control over the Trusts. The documentary proof on this issue flatly contradicted much of his testimony, which was also internally inconsistent. For instance, Husband admitted that he alone decided who to appoint and remove as Trustee and Managing Director of the LLCs and which assets went into the Trusts and when, and that he alone set the below-market rents for the Trust properties in which the family lived. Yet, when asked whether he controlled Trusts and the Trustee, he became evasive and argumentative, denied any such control and testified that he acted on counsel's advice and that the Trustee made the decisions. However, Husband did not offer the Trustee, his close personal friend T.S., as a witness to corroborate and support Husband's trial testimony.

Similarly, Husband's adamant denial that the Trusts do not fund the family expenses was contradicted by the legion of proof in the record that the Trusts funded, and continue to fund, the family expenses and lifestyle. Husband admitted that he has not worked outside the home since 2002 and does not draw a salary from ETC, his company that trades $5.5 billion in assets.

Husband did not adequately explain why he did not seek court approval for his post-commencement conduct with respect to Trust assets, including, *inter alia*, removing Wife from the LLCs and evicting her from the Trust homes; paying "distributions"; and, ultimately, decanting the Trusts into two new Trusts formed under Delaware law. He could not explain why, although the parties have joint decision making for their daughters, he alone signed trust documents on behalf of the younger daughters without notice to, or the consent of, Wife.

The Court finds that Mr. Robinson, Ms. Prado, and Mr. McCabe each testified in a clear and credible manner, and credits their testimony.

*The Marriage: 1994 - 2000*

The parties met in 1992, Wife was 24 and Husband was 32, and both were college educated and gainfully employed. Wife, a graduate of Cornell, worked as a financial reporter with earnings of approximately $52,000 per year. Husband, a graduate of Villanova, was an equity partner and financial professional at SLK and earned approximately $2 million per year. They moved in together in 1993 and were married on September 18, 1994.

At the time of the marriage, Husband owned the 200-acre property at 2075 Route 22A, Hampton, New York, bordering Vermont, which he purchased in 1986 with a friend (who he subsequently bought out) ("the [Upstate] Home"). In 1994, the property had a modest three-bedroom, A-frame house built thereon. During the marriage, the parties expanded the house to a luxurious 5,000 square foot home, built a 1,500 square foot caretaker's cottage, and a 7,000 square foot barn with a heated horse stable.

Soon after their wedding, the parties' relocated to London for about one year for Husband's work. Although Wife loved and was thriving at her job in New York, she gave it up to follow him ("I wanted to be with R." [10/2/22 Tr. 10]) -- Wife's acquiescence to Husband's wants and needs was a theme throughout the marriage. She was able to secure employment when in London and again when they returned to New York, but at a cost.

The parties lived quite comfortably during the first six-years of the marriage. After a brief stint living in a high-end hotel, they moved to a high-end rental apartment. In 1998, after the birth of [], their first daughter, they purchased Apartment #8 at 353 Central Park West in Manhattan, a 2,700 square foot,

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four-bedroom apartment for which they paid $1.7 million cash. ***5** They also hired a live-in nanny. They took luxury vacations, rented homes in the Hamptons for the summers, began renovations on the [Upstate] Home, and owned cars and a sailboat.

Wife continued to work and take care of the family homes and [child], including scheduling and attending medical and educational appointments. Husband continued to work at SL&K, where he was an equity partner. The parties had a joint bank account from which Husband would pay the family expenses. Wife had her own account but also had access to the joint account. They also had several investment accounts, some held in Husband's name and some in joint names, and college savings plans for their nieces and nephews. Husband managed all of the family investments.

*The Initial Trusts and Estate Planning*

Dave McCabe, Esq., an experienced trusts and estates attorney with Wilkie Farr & Gallagher, LLP, handled the estate matters for many of the SL&K partners, including Husband. In 1995, Mr. McCabe prepared Wills and Health Care Proxies for the parties, created revocable trusts for each party, and set up a private foundation, The R.H. and C.S. Foundation ("the Foundation"). He also prepared trusts for each of the parties' daughters when they were born.

*The Goldman Sachs Buy-Out*

In September 2000, Goldman Sachs purchased SL&K for $6.5 Billion. Overnight, the parties' wealth skyrocketed to in excess of $120 million, consisting of cash and Goldman Sachs stock. Husband conceded at trial that these funds were marital property.

Husband did not offer any proof that the Goldman Sachs buy-out was occasioned by any of his specific work or efforts, or that he had a hand in the negotiation resulting in a $6.5 billion sales price. Rather, both parties realized an unanticipated financial windfall to their marital assets as a result of the buy-out.

As part of the Goldman Sachs transaction, Husband was required to work for Goldman Sachs for a period of two-years. When he completed this employment in 2002, he "retired" at the age of 42.

*The Trusts and Related GRATs and LLCs*

Husband, a self-described "hands-on-guy" (2/24/23 Tr. 17) actively manages the family wealth and set up a highly sophisticated estate plan with the assistance of Mr. McCabe. The plan involved the placement of a substantial majority of the marital assets into the GST and the Family Trust, which were created simultaneously in March 2001 (Exhibits 45, 46). The overwhelming proof at trial established that the Trusts were formed to enable the parties to avoid estate taxes upon their demise while allowing them to continue to utilize and benefit from trust assets during their lifetimes, which they did (10/13/22 Tr. 50: trust assets "would be used to maintain our lifestyle and it was just a tax haven basically. That's what I understood"). The parties lived in the real estate owned by the Trusts, rent free for many years. Notwithstanding Husband's denials, the proof established that the family expenses and lifestyle was funded (and continues to be funded) by the Trusts (more on that below).

Mr. McCabe met with both parties twice about the GST. However, Husband was Mr. McCabe's "main point of contact, so, a lot of calls, and correspondence happened to [be with Husband], but . . . I met with both of them, whenever there was a significant activity to take place" (4/15/24 Tr. 16, 154-55). Husband would "toss ideas around" with Mr. McCabe in person or on the phone, then discuss the idea with Wife, before getting together with Mr. McCabe to "settle [] on a concept" (2/24/23 Tr. 45; *see also* 10/13/22 Tr. 67). According to Wife, Husband would talk to her about his ideas for the Trust assets and investments on the ski lift and at dinner ***6** (10/13/22 Tr. 67: "He would share with me his ideas when we were on the ski lift. The exact investments, he would talk same [sic] names, mention names, but I couldn't tell you what exactly he was investing in"; 80: "In all fairness, R. would talk to me about it usually over dinner or on a ski lift and I did not pay attention. Q: And why is that? A: I trusted him, and I had a full plate with the girls and it didn't interest me. I just trusted him and our lifestyle was pretty nice.").

Although Husband claimed that documents would be circulated among him and Wife before they were signed (2/24/23 Tr. 45), Wife testified credibly that she first saw documents when the parties went into Mr. McCabe's office to sign them; she was not provided any documents prior to the meetings (10/13/22 Tr. 46, 49).

Wife received no independent legal or financial advice about the creation of the Trusts and was not advised to obtain independent counsel; she was not informed as to what would

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happen to the marital assets held in trust in the event of divorce (10/13/22 Tr. 48). Wife testified, credibly and consistently, that she trusted her husband and his assurances that the Trusts were meant to protect their vast marital assets while permitting them to enjoy their use and benefit, that he would manage the assets, and that she had a "role" in the Trusts (10/13/22 Tr. 44, 50: "Honestly, I left all of this to R. As long as I had a role, I felt like I was represented," 79). Husband did not refute Wife's testimony in this regard.

Husband is the Grantor under the Trusts, with the exclusive power to remove and replace the Trustee and Successor Trustee at any time and for any reason (Exhibits 45, 46). He initially appointed Wife as Trustee, and her brother-in-law, a successful financial professional, as Successor Trustee (*id.*). As Grantor, Husband also retained the right to substitute non-trust assets for trust assets, making it an "intentionally defective grantor trust" (2/24/23 Tr. 49; 4/15/24 Tr. 32-33). In addition, as Grantor, he is the "owner" of the GST assets under federal tax law. Thus, the marital assets transferred into the Trusts were treated as gifts from the parties, and they each used their lifetime gift exemptions -- a non-renewable asset -- to reduce and defray the taxes on the gift transfers. The GST issued promissory notes to the parties in exchange for the gifts and the parties did not pay taxes on the GTS's interest payments on the notes. However, they did pay taxes on the income generated by the GST throughout the marriage, which reduced the value of the other marital assets and increased the value of the GST (4/15/24 Tr. 14-15, 27-29, 32-37).

As noted, the Trusts were funded with marital assets -- the cash and Goldman Sachs stock from the buy-out. Husband initially funded the GST with approximately $1,275,000. In addition, he created the R.H. Family LLC (the "Family LLC"), which he funded with cash in the amount of $1,194,738 and 208,667 shares of Goldman stock worth approximately $18,621,443 million, for a combined total of just under $20 Million (Exhibit 50). He then sold 99% of the Family LLC to the GST in exchange for a promissory note in the sum of $11,633,041, representing a 41.5% discount of the market value of the stock due to restrictions thereon at the time of the transfer (Exhibit 50). Though advantageous from an estate tax planning standpoint, the discounted sales price resulted in the parties taking a promissory note worth substantially less than the assets they transferred to the GST. In addition, Husband forgave portions of the promissory note at various times throughout the marriage (2/24/23 Tr. 40-41).

By 2001, Husband had transferred $20 million into the GST.

*The GRATs*

Husband formed two Grantor Retained Annuity Trusts ("GRATs") to facilitate transfer of marital assets into the GST over the course of time. On March 15, 2001, he created the 2001 GRAT, named himself trustee, and funded it with 86,228 shares of Goldman stock worth ***7** $6,167,255 (Exhibit 50). On June 11, 2002, he created the 2002 GRAT, named himself trustee, and funded it with 45,157 shares of Goldman stock worth $3,255,820 (Exhibit 50). The GRATs each had two-year terms and, upon their expirations in 2003 and 2004, respectively, the assets were transferred to the Family Trust (Exhibit 50).

Thus, by 2004, Husband had transferred at least approximately $30 million into the GST: the initial $20 million in 2001, and additional $10 million from the GRATs.

Wife testified credibly that she does not know what a GRAT is (10/13/22 Tr. 51) and the record is devoid of proof that she was involved in their formation.

*The LLCs*

Husband also formed a series of limited liability companies to hold marital assets and permit him to conduct business and financial transactions. As interests in LLCs can be transferred for an amount less than the value of the assets held by the LLC, Husband utilized the LLC structure as a means to place the parties' marital assets into the GST for a discount (4/15/24 Tr. 29-30).

During the period from 2004 through 2016, Husband created five LLCs, as set forth in more detail below: M.B. Holdings LLC ("M.B."); A.D., LLC ("A.D."); C. [] Holdings LLC ("C.H."); P.A. LLC ("P.A."); and H.H. LLC ("H.H."). Husband named Wife as the Managing Director for each LLC, except C.H., but retained for himself, in the operating agreements, the authority to remove the Managing Director in his sole discretion (Exhibits 87, 88, 89, 90). Wife did not receive a salary for her purported work as Managing Director. Husband also had Wife appoint him as the Investment Advisor for each of the LLCs (12/2/22 Tr. 41). In this capacity, Husband has the ability to buy, sell, and invest the assets as he chooses and has consistently done so (Exhibits 87, 88, 89, 90). He does not receive a salary for his work as Investment Advisor.

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However, because Wife could not act as the Trustee of the Trusts and, at the same time, the Managing Director of the LLCs owned by the Trusts, Husband removed her as Trustee before appointing her as Managing Director (Exhibits 63, 83-86). Wife was not consulted or involved in the creation of any of the LLCs, did not know what her duties and responsibilities as Managing Director were, and was not advised to seek independent counsel with respect to her removal as Trustee and appointment as Managing Director (10/13/22 Tr. 79; 12/2/22 Tr. 41, answering questions as to how Wife signed the LLC operating agreements: "R. asked me to sign it, and I signed it"). She testified, credibly and consistently, that she trusted Husband's representations that, notwithstanding these changes, her interest in the marital assets were protected.

In Wife's place, Husband appointed her sister, M.S., as Trustee (Exhibit 49). Husband acknowledged that he appointed M.S, who had experience in the financial sector, to provide Wife with a sense of security.

*M.B. Holdings, LLC* On May 6, 2004, Husband, with the assistance of his attorney, formed M.B. (Exhibits 50, 83) and appointed Wife as Managing Director, who appointed him Investment Advisor (Exhibits 50, 87).

Husband initially funded M.B. with marital assets totaling $52,764,747 in cash, money market funds, marketable securities, and other investments (Exhibit 50). Over time, he funded M.B. with additional marital assets, including the parties' interests in the other LLCs. As of trial (and as more fully detailed below), M.B. functions as the parent company to: (a) A.D., which owns the parties' grand 7.5 waterfront estate on Shelter Island in the Hamptons, known as Shorewood Court; (b) P.A., which owns the parties' investment real estate on Shelter Island ***8** worth $22 million; (c) C.H., which owns ETC; and (d) H.H., which owns the [Upstate] Home.

As of December 31, 2004, the GST owned 83% of M.B., Husband owned 10%, the Family Trust owned 1.4%, and Wife owned 5% (2/24/23 Tr. 76).

Over time, Husband transferred the parties' ownership interest in M.B. into the GST, which, by 2012, owned 97.6% of M.B. with the Family Trust owning 1.4% and Husband owning 1% -- Husband had transferred all of Wife's 5% interest to the GST (2/24/23 Tr. 76). By the time of trial, the GST owned 100% of M.B. (Exhibit 50). Each party included assets held by M.B. on their personal sworn statements of net worth (Exhibits 9; 10A).

In April 2018, Husband valued M.B. at $109,395,848.00 (Exhibit 65).

*A.D., LLC* On June 28, 2006, Husband formed A.D., which, two years later, purchased Shorewood Court for $8 million. As with M.B., Wife was appointed Managing Director and Husband named Investment Advisor (Exhibits 84, 88; 12/2/22 Tr. 41).

According to Wife, Husband admired Shorewood Court since he was a "young boy" (10/13/22 Tr. 94). The parties were living in Geneva at the time the property came up for sale and Wife signed the purchase documents on the table at the family's home in Geneva; she did not know where the purchase money came from and presumed each party had a 50/50 interest in the property (10/13/22 Tr. 94-95). The parties extensively renovated the property: they moved the dilapidated 1800s home from one side of the property to the other (which became the guest house) and built a new 7,000 square foot home around a pre-existing tower (the main home). The main home is "spectacular"; there is an infrared sauna, telescoping windows, a three-car garage with a gym, two bedrooms, two bathrooms, and a laundry on the second floor (10/13/22 Tr. 98-99). There is a boat house and tennis court, and a pavilion on the property (Exhibits 20, 24). In 2010, Husband and the parties' daughters built an 8x10 vegetable garden on the property as a gift to Wife, who spent time cultivating and tending the garden with her daughters (10/13/22 Tr. 107). It became the family summer home (10/13/22 Tr. at 95: "I mean, that was our Hamptons home that we were going to invest in for our family forever."; Exhibit 65: Husband describing Shorewood Court as "[o]ur Shelter Island home").

In 2019, Shorewood Court appraised at $13 Million (Exhibit 20). It is currently owned 100% by M.B. (Exhibit 50).

*Below Market Lease for Shorewood Court* From 2008 -- 2016, and consistent with the parties' unfettered use of marital assets in the Trusts, the family lived in and utilized Shorewood Court during the summer and on weekends and holidays during the year rent-free, without a lease or other written agreement (Exhibit 50). In 2016, for estate planning purposes only, Husband caused the parties to enter into a formal lease to rent the entire property from A.D. for $12,000 per month (Exhibit 33).

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Husband alone -- and not Wife as Managing Director or M.S. as Trustee -- created the lease and set the rent. He calculated the monthly rent based upon a letter from a broker opining that Shorewood Court would have yearly rent of $375,000 and summer rent of $275,000 (Exhibit 115). Notwithstanding the family's exclusive use and occupancy of Shorewood Court year-round, Husband calculated rent at $12,000 per month based upon the summer rate, with a five percent increase for use during the remainder of the year, and then applied a 50% discount because the children, who are the beneficiaries of the Trust that owns the property, use the and enjoy the property (Exhibit 115). The lease requires the landlord, A.D., to pay utilities (Exhibit 33), and the GST pays the cost of the caretaker and ground maintenance, all of which amounts to about $57,000 per year or $4,750 per month.

At trial, Elise Prado, one of Wife's real estate experts, testified credibly that Husband's methodology did not result in a fair market value rent for Shorewood Court. The Court credits Ms. Prado's testimony that because the lease is a "non-arms-length transaction . . . he can make any number he wants because he is signing his own lease" (6/14/23 Tr. 24). As reflected in Ms. Prado's rent studies (Exhibits 40, 41) -- which were unrefuted by Husband -- the combined rent for the two residences -- the main home and the guest house -- at Shorewood Court should be $54,166 per month (*id.*).

Mr. McCabe testified credibly that he advises his clients to set the rent of trust property at the middle-to-high end of a fair market value assessment provided by a real estate professional (4/15/204 Tr. 217). Husband did not follow the advice of his attorney in setting Shorewood Court rent, which, based on Mr. Prado's opinion, would be $27,000 per month or more (at least half of $54,000), not $12,000.

*C.H. LLC* In or about 2011, Husband acquired an interest in Faith Shares, an Oklahoma financial services firm, and after a series of transactions and buy-outs, the entity known as ETC remains as the business. C.H. is the "vehicle of ownership for a majority interest in [ETC]" (Exhibit 65; 2/24/23 Tr. 98, 122, 131). Ownership of C.H. is as follows: as to preferred shares, the GST owns 99% and Husband's Revocable Trust owns 1%; as to common shares, the GST and Husband's Revocable Trust combined own 80% and an unrelated individual owns the remaining 20%. In addition, Husband is C.H.'s Managing Director (2/24/23 Tr. 128).

ETC issues, manages, and markets electronically traded funds ("ETFs"), a lucrative field with which Husband had experience at SLK. ETC has in excess of 24 employees and offices in Oklahoma and midtown Manhattan, where it pays monthly rent in excess of $22,000. In addition, ETC pays the expenses of Husband's office maintained in one the marital apartments (Apartment 2) at Central Park West in Manhattan. In 2018, ETC's CEO received a salary of $230,000 plus a bonus of $75,000 (6/24/23 Tr. 108-109).

Husband, however, does not, by his own choice, draw a salary from ETC (4/16/204 Tr. 263). Yet, he remains actively engaged in its management and operations. He sits on the Executive Committee that manages ETC, is on the Board of Trustees -- comprised of people he proudly recruited and hired, having worked with them at SLK and Goldman Sachs (Exhibit 65) -- and serves as the liaison between the Committee and the Board. He was present to ring the bell in the New York Stock Exchange when it began trading. In addition, as Investment Advisor of C.H., which owns at least two thirds of ETC, Husband is able to exert considerable control over it. Indeed, at trial, Husband proudly testified that "I was one of three founders of [ETC]. I am an equity owner in it" (4/16/24 Tr. 260).

As of 2018, ETC's platform was trading $5.5 Billion in assets and had net profits of $704,000 on revenue of $3.3 million, which represented a 57% year-over-year gain (Exhibit 65). Husband believed in the tremendous financial potential of ETC:

> We are making strides toward what I perceive as the holy grail of business building, establishing recurring fee based revenue. Notably, our largest client, ROBO Global, with $2.3 billion in assets, recently signed a 10 year agreement with ETC as compared to the typical 3 year term. (*id.*)

As of April 2018, the appraised value of C.H.'s interest in ETC was $3,000,000 (Exhibit 19).

*P.A. LLC* On October 27, 2014, Husband formed P.A. for the purpose of acquiring 26 acres ***9** of waterfront property on Shelter Island located at 64 Burns Road (Exhibit 50). With a $15 million purchase price, he intended to divide the property into subplots for development and sale, with two lots for "family and friends" (Exhibit 65). As of June 30, 2019, P.A. consisted of seven vacant plots valued at $21,230,000 (Exhibit 21). As with M.B. and A.D., Wife was Managing Director and Husband Investment Advisor (Exhibits 86, 90).

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M.B. owned 100% of P.A. at all times since its formation. However, Husband did not seek input from Wife, the Managing Director of M.B., before directing Mr. McCabe to create P.A..

Husband "was very involved" in obtaining required approvals for the plot division, including those needed for demolition, and controlled the development process. He made decisions about the property based upon his own personal interest in conservation and not based on purely financial considerations. Husband decided to divide the property into five parcels instead of the allowable 21 parcels, which, he testified "had the effect of reducing the development that would take place on a crucial watershed . . . So, it was really another way to articulate conservation values without actually using the mechanism of a conservation easement" (4/16/24 Tr. 287-88).

During the marriage, the parties used the P.A. property as their own: they stored vehicles and boats, entertained at the community center, and used the dock (10/13/22 Tr. 139). Indeed, both parties included P.A. as a personal asset in their respective Net Worth Statements (Exhibits 9, 10A).

As of the time of trial, Husband sold three of five of the P.A. lots for $3.3 Million, $3.775 Million, and $1.995 million, respectively, without notice to, or consent of, Wife or court approval (2/24/23 Tr. 23).

*H.H. LLC* On March 16, 2016, Husband formed H.H., which took title to the [Upstate] Home (Exhibit 85), and then transferred H.H. into the GST in exchange for $935,000 (Exhibit 50). Consistent with the LLC structure, Husband appointed Wife as the Managing Director of H.H., and he became the Investment Advisor (Exhibits 85, 89).

In 2019, the property was appraised at $1,830,000 (Exhibit 42), two times the value of its transfer price to the GST.

*Below Market Lease for the [Upstate] Home* Notwithstanding the family's use of the [Upstate] Home throughout the marriage, rent-free and without a lease, in 2016, Husband -- not the Trustee or Wife as Managing Director -- drafted a formal lease pursuant to which the parties rented the home from H.H. for $3,000 per month (Exhibit 34). According to Husband, the lease was for estate planning only and did not impact, in any way, the parties' continued use and enjoyment of the property. Indeed, both parties included the property on their net worth statements and Husband identified it as a personal residence (Exhibits 9, 10A).

Like the Shorewood Court lease, the [Upstate] Home lease contained an under-market rent calculated by Husband and required the LLC landlord to pay utilities (Exhibit 34). Husband based the rent upon listings that he found on VRBO and Air B&B, which set rates at $200 per night, albeit for smaller homes (Exhibit 116). He then multiplied $1,000 by 36 days per year, the amount of time the family averaged at the home, and set the rent at $36,000 per year or $3,000 per month (Exhibit 34).

Jeffrey Robinson, Wife's other real estate expert, issued a report opining that the fair market monthly rent for the [Upstate] Home is $11,400 (Exhibit 42). He testified credibly about his methodology, corrected an error in his report and revised his finding that the fair market rent ***10** is $10,657 per month. Mr. Robinson described the property in detail, noting that he had "never seen anything like it. It is very nice" (3/2/23 Tr. 22). The [Upstate] Home is 200-acres with a 4,914-square-foot five-bedroom home that underwent substantial renovations and upgrades during the marriage. The home has a spa, wet bar, hot tub, four-car detached garage, 1500-square-foot caretaker's residence, and a 6,765-square-foot two-story barn. According to Mr. Robinson, "[i]t appeared to me that no expense had been spared in constructing the structure. It is quite nice" (3/2/23 Tr. 22).

In Mr. Robinson's opinion -- which Husband failed to refute -- monthly rent of $3,000 is "far from realistic" for a "property of this magnitude" (3/2/23 Tr. 28, 29-31). In addition, a market lease would require the tenant, not the landlord, to pay heating, electricity, plowing the driveway, and cutting the lawn. Consequently, Husband appears again not to have followed the advice of Mr. McCabe to set rent of this trust property at the mid to high end of $10,657 -- i.e., at least $5,300 or more.

*The Marital GST Lifestyle: 2001 - 2018*

As would be expected, the parties' standard of living, post buy-out, became much more luxurious; the family neither needed nor wanted for anything. As noted in detail above, they purchased additional real estate, collectively valued at over $40 million. They hired a bespoke travel agent and traveled extensively by first class across the world: Morocco, Turkey, Greece, Rome, Sicily, South Africa. They hosted family during these vacations, some of which cost upwards of

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$200,000. They lived abroad for several years. They acquired various pieces of art (10/13/22 Tr. 188-119). During this time, three of their daughters were born [].

Notably, when describing the parties' lifestyle of extreme wealth, Wife did so humbly and acknowledged, several times, that they were fortunate ("we were lucky" [10/2/22 Tr. 57]). Husband presented as proud and precious over the family wealth and evasive and annoyed when questioned about his control over it.

In addition to the various Trust properties, in 2001, the parties purchased a one-bedroom apartment on the second floor of 353 Central Park West for $495,000 in cash, which appraised at $1.6 million in August of 2019 (Exhibit 18). Wife's mother resided in that apartment until 2004, after which the parties used it on their return trips from Europe. This apartment is not owned by the Trust, but its expenses are paid by it.

According to Wife, after Husband retired from Goldman Sachs in 2002, he did not want to be a stay-at-home dad and was hesitant to stay in New York because of the non-compete agreement he entered into with Goldman Sachs at the end of his tenure. Husband's plan was for the family to live in Chamonix for the fall/winters, then Paris for the springtime, then south to Saint Tropez (10/13/22 Tr. 60). The family actually did live in Europe for several years between 2002 and 2008 -- first in Barcelona, Spain then in Chamonix, France, and finally in Geneva, Switzerland -- freely traveling back and forth to New York for the summers and holidays and as needed. Wife arranged for many of these moves, finding suitable homes and ensuring they were properly furnished and appointed. When they returned to New York from Europe, the parties would use the second-floor apartment on Central Park West or stay in a summer rental home in South Hampton, or in the [Upstate] Home (10/13/22 Tr. *passim*).

The parties also engaged in several luxury and high-end activities, such as helicopter skiing, and became avid rock climbers. On one such heli-skiing adventure in February 2004, Husband had a terrible accident and sustained several serious injuries, including an unattached knee, broken hand and clavicle, requiring surgeries in France and New York. Wife took Husband ***11** to his doctor and therapists' appointments, nursed him back together, and walked with him on his long journey of recovery (10/13/22 Tr. 70-72).

All the while, Wife was a full-time mother, arranging for the children's various schools in the various countries, caring for each of their unique needs, including education and medical, and scheduling and attending their various activities. She learned French and tried to build a community in Chamonix. Although she had help, she took care of the homes in which the parties frequently hosted family and friends and cooked every night. According to Wife, there was a "full calendar" of guests coming to visit the family (10/13/22 Tr. 71). In addition, as the family grew and through 2004, Wife continued to work outside of the home but took a job in the non-profit sector (for a reduced salary of $26,000 per year) which gave her flexibility to be primary caretaker of the children. She was hesitant to move to Europe as it would make work difficult if not impossible. However, Wife acquiesced to Husband's request that she give up her career in 2004 ("I wanted to go back to work, I loved what I did" [10/2/22 Tr. 72]). She has not been gainfully employed outside of the home since that time.

The parties returned to New York in 2008 and moved back into the four-bedroom apartment on Central Park West. They soon outgrew the apartment -- with the birth of [their youngest daughter] in 2009, the home housed four children, two adults, and their live-in help. In 2010, the parties purchased Apartment 14A at 1175 Park Avenue in Manhattan ("the Park Avenue Home") for $8 million. The home is 4,000 square feet, four-bedroom, large kitchen, laundry room, maid's room, generous living room and library, with an elevator that opens into the apartment. The apartment underwent renovations and improvements before the family moved in, sometime in 2011/2012 (10/13/22 Tr. 124-126). The appraised value of the Park Avenue Home at trial was $11,600,000 (Exhibit 16). However, in or about April 2025, the parties entered into a contract of sale for the Park Avenue Home, with a sales price of $9,850,000, and the Court So-Ordered the parties' stipulation for such sale. At the time of this writing, the closing has not taken place and the anticipated net sales proceeds are $9.4 million. The Park Avenue Home is not owned by the GST.

From 2002 through the time of trial, Husband paid all of the family expenses and managed all of the parties' assets and investments in his role as Investment Advisor of the various LLCs. He had an office with ETC on Madison Avenue and maintained offices at Apartment 2 in Central Park West and at Shorewood Court. Wife was not familiar with the various accounts and types of investments owned by the parties, did not know how much everything cost or from which source the money came to buy assets (10/13/22 Tr. 20, 44, 85-86, 136, 138). She was busy raising the parties' four daughters

and taking care of their various homes and trusted Husband's representations that her interests were protected. Husband told Wife that the family was living off the Goldman Sachs buy-out money and he would tell her about his ideas for investments, including acquiring real estate. He told her that Mr. McCabe was helping and advising him on the Trusts, but she did not see the Trust or LLC documents until she was asked to sign them. For instance, Wife first heard of M.B. in the spring of 2004 when Husband asked her opinion about the name (10/13/22 Tr. 74). When the family was in New York that summer, she and Husband went to Mr. McCabe's office to sign some more estate planning documents; she was assured that her interests in the marital assets were protected, but was not provided with the documents before she was asked to sign them and she did not have independent legal counsel prior to or at the transaction. She recalled receiving quarterly and annual reports for the LLCs from Husband (12/2/22 Tr. 42). Notably, however, the record is ***12** devoid of meeting minutes of other corporate documents showing Wife's active, affirmative involvement in the LLCs, as Managing Director or otherwise. As to the parties' tax returns, Husband would have the "documents laid out on the kitchen table with tags as to where to sign. He would flip the pages as I would sign, and then I would leave and go to pick up. That was, kind of, the routine" (12/2/22 Tr. 39).

As outlined in detail above, at times between 2001 and 2018, Husband gifted marital assets directly to the GST. He also created LLCs that used marital assets to purchase real property and other assets; these LLCs are held by M.B., which is in turn owned 100% by the GST. By end of 2004, Husband transferred approximately $83 million of marital assets into the GST. Over the following years, he formed the LLCs through which he used other marital funds to purchase and improve additional assets, including, *inter alia,* Shorewood Court, the Shelter Island real estate investment property and ETC.

The parties filed joint tax returns for each year from 1994 through 2018 and used their lifetime gift exemptions -- a non-renewable asset -- for every transfer of martial assets into the GST. They also paid income taxes on the GST income, depleting their marital assets in favor of the GST assets.

By his own admission, as of April 2018, M.B. was valued in excess of $109,000,000 (Exhibit 65). Husband, as Investment Advisor, actively managed and controlled assets owned by M.B. and the other LLCs (Exhibit 87; 2/24/23 Tr. 102-103). He acknowledged as much at trial in April 2024, when he testified that he has "been looking to step back from the financial markets, and my activities. I'm working toward retirement. . . and think[ing] about a succession plan for the management of these assets" (4/16/24 Tr. 257).

Throughout the marriage, the parties had a joint bank account into which Husband would deposit money for Wife to pay certain small, ancillary family expenses. Husband paid the larger expenses for the parties' homes and other investments. The undisputed proof at trial established that the family expenses were (and continue to be) funded by the marital assets in the Trusts, either directly or indirectly by way of loans taken by Husband, which were approved by the Trustee, his close friend T.S.

Indeed, after his retirement in 2002, the Trust assets must have paid the family expenses because Husband was not working and, thus, earning no outside income. The family resided, rent free, in Sherwood Court and the [Upstate] Home for years and then enjoyed (and Husband continues to enjoy) a substantially below market rent, with the Trust paying the expenses for the properties. The GST also pays the expenses of Apartment 2 at Central Park West, which Husband uses as an office, as well as for the family cars, auto-insurance, garage, and related expenses; family health and dental insurance; and cellphones. At the trial, Wife testified that the maintenance and carrying costs for the Park Avenue Home were paid, but she did not know how they were being paid (10/13/22 Tr. 55).

All was not perfect, of course; it never is and money is not a guaranty of a successful or sustainable marriage. The parties intermittently had difficulties around parenting issues for their younger daughters -- [the youngest daughter], specifically, who had medical and emotional issues. In 2001, Husband accused Wife of adultery. He was somewhat correct: Wife, admittedly, had an emotional (not physical) affair with another man at the time. Wife also suffers from alcohol abuse disorder for which she has and continues to receive treatment. Husband, admittedly, started seeing another woman. By the end of the marriage, each lost trust in the other. Wife wanted to work it out and her hope in that regard was restored after she helped nurse ***13** Husband back from his cancer fight in 2015-2016. Husband, however, apparently did not want to work on the marriage and moved out of the marital home on Park Avenue in February 2018, removing substantial marital assets such as artwork in the doing (10/13/22 Tr. 148-150).

Wife commenced this action on May 16, 2018.

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The parties resolved their custody and parental access issues by the Custody Agreements, pursuant to which they have joint legal custody with equal shared parental access schedule and substance abuse monitoring for Wife (Exhibits 4, 5). As noted above, [the oldest two daughters] are emancipated, [the youngest two daughters] are not. [The third daughter] attends boarding school in Sun Valley, Idaho, where Husband relocated in 2024. At the time of the trial, [the youngest daughter] attended school in Manhattan and spent 50% of her time with Wife. Husband, over Wife's vigorous objection, sought to enroll [the youngest daughter] in school in Sun Valley, which would effectively destroy Wife's 50% parenting time.[3]

Post Commencement: The Removal of Wife from the Trusts

*The Decanting of the Family Trust and GST, and Creation of New Trusts*

When the parties' initially split, Wife continued to reside in the Park Avenue Home. She also used the guest house at Shorewood Court, and the parties each separately used the [Upstate] Home in order to co-parent.

Everything changed in Wife's life about a year after she filed for divorce. In June 2019, Husband commenced a systematic effort to totally remove her from the Trusts, cut her off from the marital assets and out of the family wealth, and evict her from her homes without court approval or any notice. Among other things, he cut her out of decisions about the parties' Foundation (12/2/22 Tr. at 31). At trial, Wife was visibly devasted by Husband's conduct following commencement of this divorce (10/13/22 Tr.: “Because I trusted R. and it never in a million years did I ever imagine that I would be here today in this position”).

*Removal of Wife from the Trusts*

On June 6, 2019, Husband removed M.S. as Trustee of the Trusts and replaced her with his close friend, T.S. (Exhibit 63). Simultaneously, he removed Wife as Managing Director of each of the LLCs, to wit: M.B., A.D., P.A., and H.H., and replaced her with his friend, B.H., and then his own sister N.O. (Exhibits 51A-53, 62). According to Husband, the removal was required because Wife and M.S. refused to direct distributions from the LLC to pay the GST's taxes (2/24/23 Tr. 151). According to Wife, she no longer trusted Husband and she was not willing to rubberstamp his actions as she had done throughout the marriage (10/13/22 Tr. 140).

The Court rejects, as incredible, Husband's purported excuse for removing Wife and M.S. from their roles. Husband admitted that the GST itself could sell assets to pay its taxes and had actually done so in the previous three years, and that, other than a financial penalty, the GST would not have suffered any negative consequences for delay in payment of the taxes (4/16/24 Tr. 383-384).

Husband's actions in this regard belie his claim that he has no control over the Trusts or their assets. The very structure of the Trusts and the LLCs provide him with the sole power to remove the Trustees and the Managing Directors, and his authority as LLC Investment Advisor permits him to sell, transfer, and trade the assets. He has consistently exercised these powers.

Therefore, the Court finds as a fact that Husband's explanation for his removal of M.S. and Wife is pretext for his true motive, which was to replace Wife and M.S. with people who would follow his mandate, maintain his control over the Trust assets, cut Wife out of the family's wealth and strip her of any influence over the marital assets in the Trusts while he continued -- and continues -- to fully utilize and enjoy the benefits of those assets.

*The Decanting of the Family Trust into the GST*

On November 25, 2019, T.S. decanted the assets in the Family Trust into the GST (Exhibit 56). Husband admitted that he asked T.S. to consider taking this action but angrily denied that he directed him to do so. The Family Trust required the Trustee to distribute to each of the four daughters their fair share of the Trust when they reach age 30 (Exhibit 46). However, the parties' daughters do not share in the assets of the GST, which remain in trust for their own beneficiaries (Exhibit 45). Thus, by decanting assets from the Family Trust into the GST, Husband has potentially secured financial influence and power over the children indefinitely.

Wife had no notice of, and did not consent to, the decanting of the Family Trust into the GST. The Court did not approve the decanting, which Husband conveniently did not seek.

Husband did not have the power to consent to the decanting on behalf of his minor daughters [] ---- given the clear mandate of the Custody Agreements that require the parties to confer about major parenting decisions (Exhibits 4, 5), but he did anyway (Exhibit 59). He also did not inform, or seek the

consent of, Tara Diamond, Esq., the attorney appointed by the Court for the youngest daughters (Exhibit 105), prior to consenting to the transaction on their behalf. As noted, by decanting the Family Trust, the daughters lost their right to receive assets in the Family Trust when they turned 30. [The oldest daughter], then 22 years old, consented based on Husband's input alone without any consultation with counsel or Wife (Exhibit 61).

Similarly, Husband did not have the authority to consent to the decanting of the Family Trust assets into the GST on behalf of the parties' charitable foundation, a marital asset, without notice to and the consent of Wife (Exhibit 64). As of November 2019, the Foundation held $2,264,626.10 in its bank account, which, since this action commenced, Husband has dominated and controlled (Exhibit 82).

*The Renunciation of Grantor Status for the GST*

On that same November 25, 2019 day, and again without notice to or consent from Wife, and without leave of Court, Husband executed a Renunciation of Power of Substitution Under Section 675(4) of the Internal Revenue Code (the "Renunciation of Grantor Status") for the GST (Exhibit 57). By executing the Renunciation of Grantor Status, Husband ceased to be the owner of the assets held in the GST for the purpose of applicable income tax law, and the GST then became a separate and self-contained taxable entity with assets worth in excess of $109 million, which is required to pay taxes on the income generated by the assets. The parties were no longer required to pay taxes on the GST income, although Husband continued (and continues) to maintain control over and enjoy the benefit of the GST assets (4/16/24 Tr. 361).

The GST 2020 tax return shows reported income of $2.3 Million, and its 2021 return shows reported income of $4,941,806 (Exhibits 165, 166).

*The Mid-Trial Transfer of the GST to 2 New Delaware GSTs*

In November 2023, right in the middle of the financial trial, and without any notice to Wife or the Court, Husband caused the GST to be decanted into two new GSTs formed in Delaware: (a) the R.H. 2023 GST Property Trust (the "Property Trust"), which holds all assets that have a nexus to New York, including M.B. and the LLCs it owns for which Husband ***14** remains the Investment Advisor; and (b) the R.H. 2023 GST Investment Trust (the "Investment Trust"), which holds marketable securities and cash but for which Husband is not the Investment Advisor (Exhibit 164).

When asked by the Court during trial why he did not give any notice to Wife or the Court of this major transaction, Husband blithely answered that he "had no obligation" to do so (4/16/24 Tr. 303-04).

The Court does not credit Husband's testimony that T.S., as Trustee of the GST, "made the independent decision to transfer [the GST] assets into the new Trusts" (4/16/24 Tr. 258). First, Husband testified that *he* made the change for tax purposes because he moved from New York to Idaho and that *he* created the new trusts (4/16/24 Tr. 336, in answer to the Court's question "I created the trusts") -- two statements which undermine any finding that T.S. made this monumental financial decision independently and without any influence by Husband. Second, T.S. did not testify at trial to corroborate or support Husband's testimony about any of the decisions he purportedly made of his own volition and any actions he took in his capacity as Trustee. T.S.'s absence from the trial was particularly notable given Husband's testimony that he would "probably love" to testify (3/2/23 Tr. 88- 89, 154).

According to Husband, the Property Trust and Investment Trust contain the same assets and same beneficiaries as the GST, and did not change anything for the beneficiaries. However, Husband's testimony on this point was flatly contradicted by Mr. McCabe, who testified that "[t]here is no rule against perpetuities, in Delaware, so, when you create a GST Trust, in Delaware, they go on forever" (4/15/24 Tr. 2). In other words, the assets may not necessarily be fully distributed to the beneficiaries, which Husband testified was his actual intent: "I would like to see the assets accumulate for the benefit of these children, and, their children, and, their children, you know" (4/16/24 Tr. 283).

The Property Trust provides Husband with more power than he had under the GST. He is an Investment Advisor for the Property Trust, and as such he has "broad, uncontrolled discretion that is not subject to review except for willful neglect, willful misconduct or bad faith" and the "Trustees and the Administrative Trustee shall not have any duty or liability for monitoring the performance of an investment directed by the Investment Advisor" (Exhibit 164 at 2 ¶ A, 47 ¶ C(1)). In addition, he can also direct the Trustees with respect to assets within the trusts:

> Each Investment Advisor shall have the authority to direct the Trustees with respect to all powers relating

> to the acquisition, disposition, retention, exchange, change in character, lending, borrowing, pledging, mortgaging, managing, voting, leasing, granting of options with respect to, insuring, abandoning, or in any other way relating to the investment or management of the trust estate.

(Exhibit 164 at 2 ¶ A, 47 ¶ C(20). He also has the ability to remove and replace the Trustee of the new trusts.

Husband is not the Investment Advisor of the Investment Trust, the assets of which are far less substantial than the Property Trust. A financial institution is the Investment Advisor for the Investment Trust, and his emancipated daughters are developing their own relationships with the representatives of that institution.

*Post-Commencement: Other Unauthorized Transfers and Bad Faith Conduct*

*Transfer of All of M.B. to GST*

As of May 2018, the parties owned a share of M.B. in their own names, outside of the GST. In November 2019, without Court approval or Wife's knowledge and consent, Husband ***15** unilaterally transferred the entirety of M.B. into the GST.

*Unauthorized Post-Commencement Distributions*

Intermittently throughout this litigation, Husband made distributions of marital assets to himself and Wife, without leave of court and, indeed, despite court order denying his request to divide marital assets *pendente lite* (Exhibits 6, 7, 66). Wife objected to many of the distributions, to no end; Husband made them anyway.

As of October 17, 2022, he distributed $21,800,000 in marital assets -- $10,950,000 to himself and $10,850,000 to Wife (Exhibit 66) -- without any accounting as to the non-trust assets or investments that funded those distributions. Husband also did not demonstrate how the distributions were required to fund legitimate household or living expenses for either party. As far as the record shows, the post-commencement family expenses were funded by the GST. Husband's testimony that he made the distributions of non-trust marital assets in order to avoid claims that he mishandled investments belonging Wife, is not credible -- indeed, it flies in the face of his financial expertise underpinning his status as "Investment Advisor" for the LLCs with assets of over $109 million and an "Equity Partner" of ETC, which manages $5.5 billion in trades. More pretext.

*Unauthorized Use of Marital Assets*

In 2024, without court approval or consent of Wife, Husband closed on the purchase of a home in Sun Valley, Idaho (the "Sun Valley Home") for $4,150,000 and has formally relocated there (Exhibits 117, 169, 170). He did not demonstrate that he used separate property to purchase the Sun Valley Home, or his own post-commencement earnings from employment.

Also without court approval, Husband purchased a boat for $185,000 in 2022 (the "2022 Boat") with funds from his revocable trust account, a marital asset (Exhibit 154).

*Wife's Wrongful Eviction from Shorewood Court and the Upstate Home*

Right at the beginning of the pandemic, on March 9, 2020, T.S., as Trustee, notified the parties that their joint lease for Shorewood Court would be terminated effective June 12, 2020 (Exhibit 35). At that time, the parties and their children were living on the property fulltime: Husband principally occupying the main house and Wife primarily residing in the guest house.

Husband admitted that he knew about the lease termination in advance but denied directing T.S. to effectuate the termination. His testimony that "[i]t wasn't very natural for the two of us to be together on the same property" and that being on the same property "would be very uncomfortable" (3/2/23 Tr. 160), coupled with his other attempts to lock Wife out of the homes (more on that below) (Exhibits 6, 7), reveal that his denial is not credible.

T.S. immediately issued a new lease for Shorewood Court in Husband's name alone at a rent of $15,000 (Exhibit 37), which he then renewed in June 2021 for three years at the same rent (Exhibit 119). Husband did not refute Ms. Prado's rent study and testimony that the market rental rate for Shorewood Court is $54,166 per month (Exhibits 40, 41). The Trustee did not offer Wife a similar lease, in her own name, for any part of the Shorewood Court, although he could have -- there are two homes on the 7.5-acre property. In order to enjoy her parenting time, Wife had to rent a three-bedroom, two-bathroom home in the Hamptons for $30,000 per month plus

utilities while Husband enjoyed the 7-bedroom, main home on Shorewood Court (12/2/22 Tr. 127).

Also on March 9, 2020, T.S. terminated the parties' joint lease on the [Upstate] Home effective June 12, 2020 and, on June 13, 2020, entered into a new lease solely in Husband's name as tenant (Exhibit 36). Husband drafted the lease for himself, which sets rent of $3,000 per month, with the landlord covering utilities, and which the Trustee renewed for another three ***16** years commencing on June 13, 2021. Again, the Trustee did not offer Wife a similar lease, in her own name, for any of the remaining 329 days that Husband is not at the [Upstate] Home (as he is only there for 36 days out of the year).

On the other hand, Husband's use and enjoyment of the vast luxury accommodations at Shorewood Court and the [Upstate] Home, with their numerous amenities -- including artworks, boats and other watercraft, tennis court, pool, saunas, and the like (Exhibits 22, 24-26) -- has continued unabated and uninterrupted. He also continues to reap ongoing substantial monetary benefit by way of below market rent for each property and the Trust's payment of expenses for the properties and other family expenses.

*Other Bad Faith Conduct*

Husband did not just use the Trustee to evict Wife from the homes she helped bring to life. He also engaged in a campaign to erase her imprint and influence at the family homes and to hurt her. On several occasions at the [Upstate] Home and Shorewood -- at least one of which occurred in front of [their youngest daughter] -- without provocation, Husband angrily demanded that Wife "get of my house!" At the [Upstate] Home, he emptied Wife's closet of all of her clothing and left a picture of his new girlfriend in plain view (Exhibit 94). This incident led Wife to relapse for which she entered a rehabilitation facility from December 2021 -- January 2022 (12/2/22 Tr. 125).

Husband removed Wife's name from Shorewood Court. He took down the "S/H" sign from the front of the property (Exhibit 38) and replaced it with a "H" sign (Exhibit 39), even though the children's last name is "S H." In February 2020, he changed the alarm code and took the keys out of their usual location, causing her break into her own home and then explain to the police that she was not an intruder (12/2/22 Tr. 78-83; 3/2/23 Tr. 129). He changed the locks on the guesthouse (Exhibit 43), and, in October 2021, he bulldozed and removed the vegetable garden that she and her daughters cultivated and loved (Exhibits 27, 28; 10/13/22 Tr. 108, 110-11; 3/2/23 Tr. 147).

Husband did not refute the ample proof of his post-commencement bad-faith conduct toward Wife.

*Husband's Failure to Respond to Trial Subpoenas and Produce Material Witnesses*

By trial subpoena, Wife sought the production of, *inter alia*, communications between Husband and T.S. and N.O. related to the Trusts, annual reports and financial reports, and other financial documents related to the Trusts and its purchase of property and payment of expenses, which were material to the core issues at trial (Exhibit 162). Husband failed to respond in full to the trial subpoena (Exhibit 163; 4/16/24 Tr. 299-303). Husband also did not offer T.S. as a witness to corroborate or support any part of his testimony as to the Trustee's alleged independent decisions and actions, and Husband's purported lack of control thereof -- a fact worthy of repeated note.

Husband did not rebut Wife's proof at trial showing the appraised values of Shorewood Court and the [Upstate] Home and the reasonable market rent for those properties. He did not offer any proof as to value of ETC, or the value of C.H..

He also did not dispute Wife's proof of her substantial and significant contributions to the home and family life, and her role as primary caretaker of the children. He did not dispute his post-commencement bad faith conduct toward Wife.

*The Trust and Non-Trust Assets*

The competent admissible proof established the following as to the parties' assets, the ***17** total value of which amounts to $181,469,321:

Assets Outside the Trusts: $70,243,473

*Real Estate*:

| | |
|---|---|
| 1175 Park Avenue, Unit 14A New York, New York | $9,400,000 (expected net sales price) |

| | |
|---|---|
| 353 Central Park West, Unit 8 New York, New York | $6,400,000 (Exhibit 17) |
| 353 Central Park West, Unit 2 New York, New York | $1,600,000 (Exhibit 18) |
| 671 2nd Avenue Ketchum Idaho | $4,150,000 (Exhibits 169, 170) |

*Investment Accounts & Miscellaneous Financial Assets*:

| | |
|---|---|
| • Cevian Capital II | $3,176,222 (Exhibit 174) |
| • Drawbridge Funds | $12,993,894 |
| # Drawbridge Special Opportunities | $8,218,436 (Exhibit 173) |
| # 2013 RCA Withheld Distribution | $197,427 (Exhibit 172) |
| # 2109 RCA Withheld Distributions | $4,432,168 (Exhibit 172) |
| # DBSO Escrow Fund | $145,863 (Exhibit 191) |
| • R.H. Revocable Trust | $7,875,416 |
| # Acct. xxxxx: | $5,321,834 (Exhibit 67) |
| # Acct. xxxxx: | $540,129 (Exhibit 68) |
| # Acct. xxxxx: | $320,350 (Exhibit 70) |
| # Acct. xxxxx: | $21,909 (Exhibit 72) |
| # Acct. xxxxx: | $240,641(Exhibit 73) |
| # Acct. xxxxx: | $1,430,553 (Exhibit 199) |
| • R.H. IRA Rollover Account xxxxx | $1,132,917 (Exhibit 198) |
| • Post Commencement Distributions | $21,800,000 (Exhibit 66) |
| # ***18** $10,950,000 to Husband | |
| # $10,850,000 to Wife | |
| • The R.H. and C.S. | |
| Charitable Foundation Account xxxxx | $1,530,024(Exhibit 82) |

*Miscellaneous Personal Property*:

| | |
|---|---|
| • 2022 Boat | $185,000 (Exhibit 154) |
| • Artwork | $Unknown, to be valued |

| | |
|---|---|
| The GST | $111,225,848 |
| • M.B. | $109,395,848 |

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# A.D.

# P.A.

# C.H.

• H.H. LLC $1,830,000

The Court notes that some of the individual assets (real property, investment accounts, etc.) are valued as of date of commencement and some are valued post-commencement and closer to trial. In addition, some of the assets are active and some passive. In this regard, the investment accounts may have increased (or decreased) in value due to market forces. In addition, the value of some of the assets, such as Husband's Revocable Trust and the Foundation, may have been further reduced by his unauthorized use of funds in those accounts. As noted, Husband did not fully respond to the trial subpoena which would have revealed a more complete picture of the value of the Trust and non-trust assets.

*The Parties' Equitable Distribution Requests*

Wife asks the Court to include in its equitable distribution award the *value* of the assets in the Trusts and non-trust marital assets, amounting in all to $181,469,321, and award her 65% of that value, or $117,995,059.

Husband asks the Court to distribute only non-trust marital assets, amounting in all to $70,243,473, and award each party 50% of those non-trust assets.

*The Parties' Earnings*

The parties' earnings are and have always been greatly disparate: Husband earns millions each year and Wife, who was last gainfully employed in 2004 at a $26,000 annual salary, took a ***19** loss of over $30,000 on her yoga business in 2021.

Notwithstanding Husband's claimed "retirement" in 2002, he has recently identified his occupation as "Executive" (Exhibit 168) and earned substantial income each year from 2016 to 2022, as follows:

2016: $2,462,538 (Exhibit 78)

2017: $3,564,209 (Exhibit 78)

2018: $6,718,301 (Exhibit 15)

2019: $2,760,300 (Exhibit 13)

2020: $555,949 (Exhibit 12)

2021: $2,563,404 (Exhibit 109)

2022: $1,552,484 (Exhibit 168)

Importantly, the GST had income of $2.3 million in 2020 and $4,941,806 in 2021 (Exhibits 165, 166). Income presumptively generated by Husband's efforts as "Investor Advisor" of the LLCs and which presumptively funded the family expenses. Husband, however, does not draw a salary for his work as Investment Advisor.

Nor does he draw a salary at ETC, notwithstanding his work in managing its operations -- work ostensibly similar to that for which he earned $2 million per year in 2000 -- and the GST's payment of the expenses of his home office. Notably, the CEO of ETC received a salary of $230,000 plus a bonus of $75,000 in 2018 (6/24/23 Tr. 108-109).

Finally, Husband realized a tremendous financial boon by reason of the "sweetheart" leases for Shorewood Court and the [Upstate] Home. The collective estimated monthly value of the below market leases is $17,300: $15,000 per month for Shorewood Court ($27,000 rent [mid-range of $54,000 market rent] - $12,000 actual rent); and $2,300 per month for the [Upstate] Home ($5,300 rent [mid-range of $10,600 market rent] - $3,000 actual rent). He has enjoyed this

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economic benefit since June 2020 (for 63 months, through September 2025).

On the other hand, Wife reported a loss of $37,923 from teaching yoga and conducting sound meditation on her 2021 tax return (Exhibit 8; 2/24/23 Tr. 27). As far as the record shows, she also expended her lifetime gift exemption for the transfer of martial assets into the GST -- a personal asset which is gone forever once used (2/24/23 Tr. 40-41).

*Maintenance*

Wife did not request, and Husband did not pay, any *pendente lite* maintenance, although her Statement of Net Worth showed $203,000 per month in living expenses. She seeks, however, an award of $2 million per year (or $166,666 per month) for a period of 15 years, retroactive to the May 16, 2018 date of commencement. Her request is based upon imputed income to Husband of $4.5 million and application of the statutory maintenance factors.

Husband denies that Wife has an inhibited earning capacity or ability to maintain ***20** meaningful employment and that her equitable distribution award will more than adequately meet her needs. In the alternative, he asks that the Court credit him with the $10,850,000 interim distributions he made to her toward any maintenance award.

*Child Support*

Wife did not request, and Husband did not pay, any *pendente lite* child support, even though he is the monied spouse and the parties share 50/50 custody. She seeks at trial $10,000 per month in child support, for the two unemancipated daughters -- [] -- retroactive to the commencement date, based upon $4.5 million of imputed income to Husband and the children's needs.

*Attorneys' Fees and Expert Fees*

Both parties seek an award of attorney's fees.

Wife submitted proof showing that she incurred $2,396,852.37 in attorney's fees, and $162,306.50 in expert fees (Exhibits 96-104, 107), and asks the Court to award her this sum from Husband.

Husband argues that Wife should be responsible for her own attorney's fees and asks that he be awarded $575,000 in attorney's fees (credited against her equitable distribution award) due to her changes in counsel, 11 motions, and "meritless claims."

*CONCLUSIONS OF LAW*

*Equitable Distribution*

*The Marital Estate to be Distributed*

The Domestic Relations Law contains a presumption in favor of marital property; indeed, it defines "marital property" as "all property acquired by either or both spouses during the marriage and before. . . the commencement of a matrimonial action, regardless of the form in which title is held" (DRL § 236 B [1] [c]). The term is broadly construed and "includes a 'wide range' of tangible and intangible interests" in order to "keep with the fundamental purpose of the Equitable Distribution Law--the recognition of marriage as an economic partnership" (*Fields v Fields*, 15 NY3d 158, 162 [2010]; *Szypula v Szypula*, 42 BY3d 620, 624 [2024] ["The Domestic Relations Law creates a statutory presumption that 'all property, unless clearly separate, is deemed marital property'"]; *DeJesus v DeJesus*, 90 NY2d 643, 647 [1997] ["The statute is sweeping and 'recognizes that spouses have an equitable claim to *things of value* arising out of the marital relationship'"]). On the other hand, separate property, which is an exception to marital property, is construed narrowly and the party claiming that property is separate has the burden of proof on the issue (*Fields*, 15 NY3d at 163; *DeJesus*, 90 NY2d at 652).

"Although the manner in which marital property is distributed falls within the discretion of the trial court, 'the initial determination of whether a particular asset is marital or separate property is a question of law, subject to plenary review on appeal'" (*Fields* at 161 [citing *DeJesus* at 647]).

Neither Wife nor Husband make any separate property claims. Rather, their sole dispute is whether the Court can, and should, include the *value* of the Trust assets in the marital estate for the purposes of fashioning an equitable distribution award. The issue is brought against a background of precedential authority, albeit scant, which on the surface seems to suggest that the Trusts are outside of the martial estate, the position advanced by Husband. However, the facts here are markedly distinguishable from the cases in which trust assets were excluded from equitable distribution. More importantly, the principles underpinning the Domestic Relations Law compel

the court to answer the question in the affirmative on this record and include the ***21** *value* of the Trust assets in making its distributive award to Wife.

Families may choose to place marital assets into trusts to shelter them from estate taxes and to protect them for future generations (DRL § 236 B [3] [parties can enter into agreements which may include "(1) a contract to make a testamentary provision of any kind" and "(2) provision for ownership, division or distribution of . . .marital property"]). It is no secret that high wealth families utilize trusts as a vehicle to preserve wealth (Iris J. Goodwin, *How The Rich Stay Rich: Using A Family Trust Company to Secure a Family Fortune*, 40 SHLR 467 [2010]).

Notwithstanding this practice, the relevant authorities guiding the court's approach to equitable distribution of trust assets are quite few. A handful of cases reveal that courts will not divide irrevocable trusts that are set up during the marriage and funded with marital assets, provided the trust is created as a legitimate vehicle for gifting marital property to a third party (*Oppenheim v Oppenheim*, 168 AD3d 1085, 1086 [2d Dept 2019] [irrevocable family trust intended to benefit parties' children and their descendants outside of marital estate and not subject to distribution]; *Perdios v Perdios,* 135 AD3d 840, 841 [2d Dept 2016] [building owned by irrevocable family trust created during marriage not property subject to equitable distribution]), and "the parties are not trustees and have relinquished control over the trust assets" (*Hofmann v Hofmann*, 155 AD3d 442, 442 [1st Dept 2017] [wife voluntarily transferred marital home into irrevocable trust and was "fully aware of the specific terms of the trust"]; *Markowitz v Markowitz*, 146 AD3d 872 [2d Dept 2017] [insurance policy held in irrevocable trust, with neither party as trustee with power to transfer control of trust assets, should not have been included in distributive award]; *R.S. v B.L.*, 151 AD3d 609 [1st Dept 2017] [property held by insurance trust, not marital estate, not subject to equitable distribution]).

However, other cases reveal that, consistent with the statute's purpose of honoring the parties' interest in marital property and economic partnership in the marriage (*Mahoney-Buntzman v Buntzman,* 12 NY3d 415 [2009]), the court will indeed exercise its broad discretion to consider the value of, and possibly even distribute, marital assets held in trusts, under certain circumstances. Thus, marital assets in a revocable trust will be distributed where one spouse retains control over the trust (*see Galachiuk v Galachiuk*, 262 AD2d 1026 [4th Dept 1999] [court properly considered trust into which husband deposited funds as he failed to show trust was irrevocable]; *see also Wortman v Wortman*, 11 AD3d 604 [2d Dept 2004] [trial court properly included in husband's distributive award cash surrender value of life insurance policies held in trust because wife, as trustee, could effectuate this aspect of award by transferring control and ownership of trust assets to husband]).

Assets held in trust will also be distributed where the trust is a "sham" and intended to defraud the other spouse or smuggle assets out of the marital estate (*see Surasi v Surasi,* 2001 NY Slip Op 40408(u), 2001 WL 1607927 [Sup Ct, Richmond County 2001] [family trust created by husband in New Jersey during divorce proceedings into which he placed marital assets including marital home "is a sham and a fraud upon this court created expressly with the intent to deny [wife's] claims to said martial property and to thwart the jurisdiction of this court to make a distributive award"]). Indeed, the Appellate Division, First Department recognized the critical need for parties to engage in "broad pretrial disclosures" addressing the spouses' respective "participation and knowledge" of trust terms, and the benefits one spouse may derive from the placements of assets into a trust, "if the court is to properly distribute the marital assets" (*Trafelet v Trafelet*, 150 AD3d 483, 485 [1st Dept 2017]).

Even where the trust is irrevocable and there is no proof of economic fault, the court may ***22** consider the *value* of the marital assets placed in such trust in formulating a distributive award, although it cannot direct distribution of those assets (*Reichers v Reichers*, 178 Misc 2d 170 [Sup Ct, Westchester County 1998] *aff'd* 267 AD2d 445 [2d Dept 1999] [wife, who will no longer be a beneficiary of family trust upon divorce of parties, awarded "*one half the value of the marital assets*" placed by husband in Cook Islands trust]; *see also Torkin v Susac*, 236 AD3d 1082 [2d Dept 2025] [trust containing marital property subject to equitable distribution]). Similarly, the placement of a martial home into a qualified personal residence trust (QPRT), a type of irrevocable trust (Black's Law Dictionary [12th ed 2024], Trust), does not necessarily remove the residence from its inclusion in a distributive award (*Yerushalmi v Yerushalmi*, 136 AD3d 812, 813 [2d Dept 2016] ["The fact that title had been transferred to the QPRT, allegedly for estate planning purposes, while the parties continued to reside at the marital residence, was, under the circumstances here, insufficient to rebut the presumption" that it constituted marital property subject to distribution]).

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The principles apparent and applied in the foregoing cases are (1) marital property is sacrosanct, regardless of its form, title, or how maintained and the court will protect the parties' respective equitable interests therein (DRL § 236 B [1] [c]; *Fields*, 15 NY3d 158; *Szypula*, 42 NY3d 620; *DeJesus*, 90 NY2d 643; *Galachiuk*, 262 AD2d 1026; *Wortman,* 11 AD3d 604; *Torkin*, 236 AD3d 1082; *Yerushalmi*, 136 AD3d 812; *Reichers*, 178 Misc 2d 170 *aff'd* 267 AD2d 445); and (2) in furtherance of its mandate, the court must consider the parties' conduct vis-à-vis marital property held in trusts in determining whether it should be included in the marital estate (*Trafalet*, 150 AD3d 483; *Oppenheim*, 168 AD3d 1085; *Surasi,* 2001 NY Slip Op 40408[u]).

The natural application of these synthesized principles here compels the Court to consider the *value* of the marital assets in the Trusts in fashioning its equitable distribution award because: (1) the majority of the parties' assets are contained in the Trusts, they used those assets to fund and support their lifestyle, and Wife reasonably expected to enjoy the use and benefit of the Trust assets in the future; and (2) Husband never relinquished control over the Trust assets. This approach honors the parties' "economic decisions" to shelter their vast marital assets while using them to fund the marital lifestyle, and "equitably distribute[s] the assets" now that the marriage is at an end (*Mahoney-Buntzman v Buntzman,* 12 NY3d at 421). Indeed, this approach is required by the precedents on this record because "Equity treats that as done which ought to be done" (Benjamin N. Cardozo, The Nature of the Judicial Process 39 [1921]).

The ample, undisputed proof establishes that the majority of the marital assets were placed in the Trusts to protect the family's wealth for future generations while also funding every aspect of the family's present life. Husband's career, and the family homes, expenses and lifestyle were supported by, indeed, embedded in, the Trusts and Trust assets. Almost immediately after receipt of the Goldman Sachs buy-out, Husband transferred into the GST $83 of the $120 million of the cash and stock -- nearly 70% of the parties' marital assets. Over time, he transferred the rest of the marital assets into the Trusts. On top of that, the parties added more of their marital assets. They used their valuable lifetime gift tax exemptions to reduce or defray the taxes on the transfers into the GST -- a nonrenewable asset, lost once used. They received promissory notes at deep discounts to the value of the assets transferred to the GST, and then Husband forgave some of the debt due under the notes. The parties paid taxes on the income generated by the Trusts from their non-trust money. In exchange, the Trusts provided the family with breathtaking homes and an affluent lifestyle.

The Trusts employed -- and continue to employ -- Husband. As of April 2024, Husband ***23** was still actively managing the Trust assets. He is the Investment Advisor for M.B. and each of the LLCs owned by the M.B.. In that capacity, he has bought, sold, transferred, and invested Trust assets in his own discretion and without oversight. The GST owns C.H., which owns the majority of ETC, the company in which Husband is an equity partner and founder. Husband continues to manage ETC without a salary, notwithstanding the fact that in 2018 ETC traded $5.5 billion in assets and paid its CEO $230,000 and a $75,000 bonus. The GST owns P.A., which owns the Shelter Island investment property worth approximately $22 million. Husband is, in effect, the "unpaid" developer of that significant real estate investment, which the parties also used for personal benefit.

The Trusts pay expenses for the Shorewood Court and the [Upstate] Home; Apartment 2 at Central Park West (one of Husband's "offices"); the family cars, auto-insurance, garage, and related expenses; family health and dental insurance; and cellphones.

The Trusts own the parties' $13 million Sherwood Court summer compound and the [Upstate] Home -- properties listed by each party as their residence on their respective Net Worth Statements, and which Husband acknowledged were the family homes. The family lived rent-free in these homes until 2016, and then at a well-below market rent, and the Trusts pay for the expenses of these properties. For this reason alone, the value of Shorewood Court and the [Upstate] Home should be included in the marital estate for distribution (*Torkin*, 236 AD3d 1082; *Yerushalmi*, 136 AD3d 812).

Wife agreed to place virtually all of the family wealth into trusts, and give up other martial assets to benefit the Trusts, because she understood it to be a "tax haven" that would not impede the parties' ability to use and enjoy their assets for their expenses and lifestyle, and the record amply supports this conclusion. The entire family, including Wife, directly benefitted from trust assets and the income generated therefrom on a day-to-day, year-to-year basis. Husband consistently assured Wife that Trusts were the source of the family's income and she blindly trusted him with the payment of bills and management of the assets. Indeed, the Trusts must have been the sole source of income as Husband "retired" in 2002 and has not drawn a salary from outside

employment since then. As noted, he has worked exclusively as the Investment Advisor for M.B. and each of the LLCs in full-time capacity at his offices on Central Park West and at Shorewood Court. He had not yet given up active management of Trust assets in April of 2024 (4/16/24 Tr. 257: "I'm working toward retirement. . . and think[ing] about a succession plan for the management of these assets").

The family lived off the Trusts; the entire family life is structured around them. There is no proof to the contrary in the record. Husband's blanket denials that the Trusts paid family expenses and funded the family lifestyle lacked any credibility as contradicted by documentary proof and his own inconsistent testimony (*see Silvers v Silvers*, 197 AD3d 1195 [2d Dept 2021] [equitable distribution award upheld where husband's testimony on financial matters "was found to lack credibility"]; *Winter v Winter*, 50 AD3d 431 [2d Dept 2008] [same]; *Wortman*, 11 AD3d 606 [trial court found husband's "testimony regarding financial matters to be less than credible"]). Indeed, the Court can and does conclude that the Trusts paid all of the family expenses -- including but not limited to those for the Park Avenue Home, ostensibly paid by Husband from Trust assets -- given Husband's failure to fully respond to Wife's trial subpoena calling for documents on this very issue (*see generally Schorr v Schorr*, 46 AD3d 351 [1st Dept 2007] [husband "properly precluded from offering evidence at trial as to any financial issues because of his failure to timely comply with discovery requests concerning his businesses and to ***24** pay the fees of the expert appointed to value his business interests"]; *Spector v Spector*, 18 AD3d 380 [1st Dept 2005] [preclusion order proper as defendant failed and refused to provide documents properly demanded; "In its preclusion order, the court also properly found that moneys contained in defendant's trust were marital property."]).

On foregoing facts, the rule applied in *Oppenheim* -- namely, that assets placed in an irrevocable trust are not subject to equitable distribution -- does not control the outcome here. Unlike the husband in *Oppenheim*, Husband did not keep Wife informed about the management of the Trusts or LLCs and she did not share "equal footing" with Husband as to them. Rather, the overwhelming credible proof establishes that Husband alone decided when and how to create the LLCs, which marital assets to invest and when, which LLCs would hold which assets, and when the LLCs would be transferred to the Trusts. It further establishes that Husband told Wife about his ideas after the fact, sometimes on the ski lift or at dinner, or not at all. By way of example, Wife was not involved in the creation of the 2001 and 2002 GRATs and does not know what a GRAT is, even though they were used to transfer $10 million of marital assets into the Trusts. Nor did Husband consult with Wife before he created P.A., wholly owned by M.B., one of the LLCs of which she is Managing Director. The record is devoid of any meeting minutes or other corporate documents showing Wife's active involvement in running any aspect of any one of the LLCs. Rather, Wife relied, completely and unwaveringly, on her husband's assurances, went along with his ideas and signed papers where she was told to sign. Although she met with Mr. McCabe twice in 2001 when the Trusts were first formed, and in 2004 to sign documents related to her removal as Trustee and appointment as Managing Director of M.B., she never had her own legal counsel to advise and guide her on the impact of these changes. She was presented with the documents for the first time, each time, in Mr. McCabe's office. Wife did not know the details of any of the financial assets and transactions, real property purchases, or tax matters -- she signed the Shorewood Court purchase documents on the dining room table in Geneva and signed tax returns at Husband's direction on the kitchen table at Central Park West before going to pick up the children. She blindly trusted her husband based upon his assurances that her interests were protected, while she raised the parties' four daughters and managed several households (*compare Oppenheim*, 168 AD3d 1085 [affirming trial court finding that wife failed to prove husband acted inequitably in the creation of family trust where husband "kept [wife] informed during the process of creating the family trust. . .the parties were on equal footing with respect to the financial aspects of the creation of the family trust. . . [wife] was fully informed of the source of funding of the family trust and its anticipated tax implications"]).

The facts in *Perdios* are too cursory to permit thorough analysis and comparison to the facts here. However, it appears from the decision that the subject building, owned 99% by the irrevocable family trust and 1% by the parties, was the only asset held in trust and not the major source of the parties' income as the husband had other business interests, of which the wife was awarded 20%, as well as her equitable share of the 1% interest in the building (*Perdios v Perdios,* 135 AD3d 840). The facts here are markedly different and compel the application of a different rule to a different result.

The record also established that the parties were trustees of the Trusts. Wife served as Trustee from 2001 until 2004, when Husband removed her so that she could take the title of Managing Director of the LLCs. T.S., Husband's close

personal friend who served as Trustee from 2019 until 2023 (and, by the same token, M.S., the Trustee from 2004 - 2019), was nothing more than a straw-man who rubber stamped each of Husband's decisions. The record is replete ***25** with proof that Husband controlled T.S. as to his Trustee duties. Husband effected the eviction of Wife from Sherwood Court and the [Upstate] Home under T.S.'s name. Husband prepared the leases for Shorewood Court and the [Upstate] Home. He planned for and orchestrated the decanting of the Family Trust in the GST without court approval, or notice to and consent of Wife. He decanted the Trusts into the new Delaware Trust without court approval, or notice to and consent of Wife, and cavalierly testified that did not need to obtain such approval or consent.

The record lacks any credible proof of T.S.'s actual, active involvement in any of the financial and business transactions taken by Husband on behalf of trust assets. To the contrary, each decision, each trade, each purchase, each sale, of every trust asset was proudly taken by Husband without oversight, approval by anyone else but himself, and with impunity. Husband did not produce documents to the contrary nor did he offer the testimony of T.S. to support his claims. Husband, and not T.S., was the *de facto* Trustee. Unsurprisingly, under the Property Trust, Husband continues to exert power over the Trustee: he has "broad and uncontrolled discretion that is not subject to review" to direct the Trustee to take actions over trust assets, and has the ability to remove and replace the Trustee (Exhibit 164).

Husband never relinquished control over the trust assets, not even for a moment. As Investment Advisor, he is the primary decision maker for M.B., and each of the LLCs, as to assets purchased, transferred or exchanged, and the development of the real estate investment properties. He admitted that he continued to manage the assets of the Trusts as of April 2024. His power to remove and replace the Trustees and the LLC Managing Directors, coupled with his unfettered authority as Investment Advisor, and his consistent exercise of those powers, resulted in his total control of Trust assets. His own testimony throughout the trial made clear that, in his view, the financial and real property assets are *his* to control and Shorewood Court and the [Upstate] Home are *his* homes. Everyone else is a figurehead that he could remove and replace. Indeed, he cut Wife out of the Foundation they both owned. He moved for permission to distribute assets in this action, the court denied his request, but he did it anyway. He did not seek approval or consent to the decanting of trust assets and creation of new trusts, and proudly testified that he had no obligation to do so. Wife was never on equal footing with Husband; she served as Trustee and Managing Director of the LLCs at his will and was removed as soon as he decided to do so, when she no longer acquiesced in his demands.

In this regard, *Hoffman, Markowitz,* and *R.S.*, are inapposite on their specific facts. First, these cases involved irrevocable trusts that held a single asset -- a home or an insurance policy -- and not, as here, the lion's share of the martial estate. Second, the parties in those cases were not the trustees and they had "relinquished control over the trust assets" (*Hofmann*, 155 AD3d 442; *Markowitz*, 146 AD3d 872; *R.S.*, 151 AD3d 609). Here, to the contrary, Husband was the *de facto* Trustee and never relinquished control over the assets, which continue to be available to him (Exhibit 164).

To be clear, the Trusts are not a "sham" or a fraud upon the Court, created during the divorce proceedings to secret away assets, as in *Surasi* (2001 NY Slip Op 40408[u]). Rather, they were created during the marriage as legitimate vehicle to protect the parties' wealth for future generations. However, that fact alone does not prevent the Court from considering the *value* of trust assets in fashioning an equitable distribution award.

This case is also not entirely on all fours with *Reichers*, in which the wife was a beneficiary of the irrevocable family trust in her capacity as "Spouse of the Settlor," and would lose her interest in the marital assets held in trust upon the divorce ( ***26** *Reichers,* 178 Misc 2d at 172). However, while Wife is not a named or presumptive beneficiary of the Trusts, it cannot be said that she had no beneficial interest in the trust assets worthy of protection upon divorce. To the contrary, the record establishes that Wife has an interest such that the fundamental principles underlying equitable distribution mandate inclusion of the value of the Trusts in fashioning a distributive award.

As outlined *ad nauseum* above, Wife enjoyed and benefited from, in equal measure with Husband, the financial windfall occasioned by the Goldman Sachs buy-out throughout the marriage and reasonably anticipated the ability to enjoy the benefits of the trust assets in her lifetime. She helped create the homes and family life resulting from that windfall and expected to enjoy them into the future. Indeed, she gave up substantial martial assets in exchange for the Trusts' continued support of the family lifestyle. She gave up her lifetime gift tax exemption, she transferred assets to the Trusts for a substantially discounted note, portions of which Husband

forgave, and she paid taxes on the Trust income. Thus, Wife is entitled to her fair share of the *value* of the Trust assets, which is a "thing[]of value that [she] helped to create and expect[ed] to enjoy at a future date" (*Szypula,* 42 NY3d at 624 [citing *DeLuca v. DeLuca,* 97 NY2d 139, 144 [2001]; *DeJesus,* 90 NY2d at 665). It is more than fair to conclude that had Wife known that she was forever giving up her right to marital assets, she would not have blindly signed off on the establishment of the Trusts, or the transfer of virtually all of the marital assets into the Trusts, or the relinquishment of her rights as Trustee, or any of the other actions taken by Husband of which she was informed (10/13/22 Tr.: "Because I trusted R. and it never in a million years did I ever imagine that I would be here today in this position") (*cf. Oppenheim,* 168 AD3d 1085; *Hoffman*, 155 AD3d 442).

The Court recognizes that it is, somewhat, writing into a gap in the law. However, upon careful consideration of the applicable principles, on this record, the inescapable conclusion must be that the *value* of the Trust assets are marital property within the meaning of DRL § 236 B (1) (c). The vast majority of marital assets are held in the Trusts, including the family homes (*Torkin*, 236 AD3d 1082; *Yerushalmi*, 136 AD3d 812). While the Trusts were legitimately set up to protect wealth for future generations, the family lifestyle has been and continues to be supported by and embedded in the Trusts (*cf. Oppenheim,* 168 AD3d 1085; *Perdios,* 135 AD3d 840; *Hoffman,* 155 AD3d 442; *Markowitz,* 146 AD3d 872; *R.S.*, 151 AD3d 609). Husband has had and continues to maintain unrestricted control over and access to Trust assets and enjoys their use and benefit without interruption. On the other hand, Wife never had any control over the Trusts, LLCs, or assets; she was a figure-head who served in name only at Husband's pleasure. She did not have independent legal counsel to advise her on the creation of the Trusts and LLCs, and was not on "equal footing" with respect to their management. At the same time, however, Wife helped build the Trust assets by her contributions to the marriage, enjoyed their use and benefit during the marriage and had a reasonable expectation to share in their value and enjoy them in her lifetime (*Szypula,* 42 NY3d at 624 [citing *DeLuca v DeLuca,* 97 NY2d 139, 144 [2001]; *DeJesus,* 90 NY2d at 665). Thus, equity requires that the *value* of the Trusts be included in the marital estate and equitably distributed.

Given that DRL § 236 B (5) (d) and the applicable authorities addressing equitable distribution of trusts supports the conclusion herein, the Court need not look to the Debtor and Creditor Law, tax laws, or bankruptcy jurisprudence, as argued by Wife, to reach the correct, equitable result.

The ample and undisputed evidence in the record establishes that the martial estate, the ***27** *value* of which is subject to equitable distribution, amounts in all to $181,469,321, consisting of Trust assets worth $111,225,848, and non-trust assets worth $70,243,473. As noted above, these values may have increased or decreased depending upon market forces and whether Husband used any additional marital funds from the Foundation accounts or any accounts held in his name.

*Equitable Distribution of the Marital Estate*

Now that the marital assets and their values are established, and considering all the circumstances and the sixteen DRL § 236 B (5) (d) factors, the court exercises its broad discretion to award Wife 50% of the *value* of the entire $181,469,321 marital estate (*see Mahoney-Buntzman v Buntzman,* 12 NY3d at 420 ["trial court has substantial flexibility in fashioning an appropriate decree based on what it views to be fair and equitable under the circumstances"]). This award -- which amounts in all to the sum of $79,884,660 ($181,469,321 ÷ 2 = $90,734,660 - $10,850,000 distribution already paid), payable by transfer to Wife of all the non-trust assets, except the Sun Valley Home,[4] and a distributive payment of $35,776,187, is equitable, just, and correct

This is a long-term marriage of nearly twenty-four years. Wife is 55, Husband is 64, and they are both in relatively good health (DRL § 236 B [5] [d] [2]). At the time of the marriage in 1994, Wife was earning $52,000 per year as a financial investment reporter and Husband was earning $2 million per year as a financial investment professional. They owned the [Upstate] Home and lived a comfortable Manhattan lifestyle. By the date of commencement, the parties were extremely wealthy as a result of the Goldman Sachs buy-out in 2000. They had Trust assets worth over $110 million, which included their $13 million Shorewood Court estate, their [Upstate] Home, $22 million Shelter Island investment property, and ETC, which traded $5.5 billion in assets. The parties also owned three Manhattan apartments, two on Central Park West, and the Park Avenue Home, together with several financial and investments accounts, all of which were worth approximately $70 million. The family living expenses and lifestyle have been paid by the Trusts since 2002, when Husband retired and stopped taking a salary (DRL § 236 B [5] [d] [1]).

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Wife made positive direct and indirect contributions to the acquisition and development of marital property during the marriage (DRL § 236 B [5] [d] [7]). To be clear, the Goldman Sachs $6.5 billion buy-out of SL&K was a windfall to both parties. There is no proof in the record that, other than being an equity partner of SL&K at the time of the buy-out, Husband had any direct impact on, or participated in the negotiations resulting in, the astronomical buy-out figure. Wife indirectly contributed to the acquisition of marital assets pre-buy-out, and the growth of the marital assets post-buy-out. She dedicated her life to raising the children and taking care of the various family homes in Europe and New York. She arranged for each child's unique and specific educational and emotion needs, regardless of where the family lived. She loved working, she loved her jobs but left the workforce in 2004 at Husband's request. She nursed Husband back to health in 2004 and again in 2015 -- 2016. Husband did not refute Wife's proof of the substantial and significant efforts she took to care for him, the children, and their ***28** homes. Her efforts in this regard allowed Husband to work as the Investment Advisor for M.B. and the Trust LLCs, as well as to become an equity partner and founder of ETC, and his work increased the value of marital assets from $120 to $180 million (*see generally Cahen-Vorburger v Vorburger*, 12 AD3d 275, 276 [1st Dept 2004] [increase in value of defendant business constituted marital property where defendant did not deny plaintiff indirect contributions "by being a homemaker for him and caregiver for the children"]).

Husband's probable future financial circumstances are quite good. Although 64, he still actively manages the Trust assets, worth over $110 million, and is a partner at ETC. Husband could draw a salary from ETC and for his work as Investment Advisor to the LLCs, if he chose to do so. He is in possession of the parties' art and other valuables acquired during the marriage. He has full and unfettered use of all trust assets, Shorewood Court and the [Upstate] Home, and enjoys the benefit of sweetheart leases on Shorewood Court and the [Upstate] Home. On the other hand, Wife, aged 55, has been out of the work force since 2004, has a business that lost over $30,000 in 2021, continues to receive treatment for her alcohol abuse disorder, and has been evicted from the family homes and cut off from the family's wealth (DRL § 236 B [5] [d] [9]).

The Court notes here that it is not bound by Husband's tax-returns to determine his yearly income *(see Lennox v Weberman,* 109 AD3d 703, 704 [1st Dept 2013] [court "may impute income based upon the party's past income or demonstrated earning potential"]; *Warshaw v Warshaw*, 173 AD3d 582, 583 [1st Dept 2019] [court "appropriately looked beyond defendant's most recent tax return to consider his earnings history"]; *Andre v Warren*, 192 AD2d 491, 491 [1st Dept 1993] [support magistrate properly imputed income to mother "in an amount exceeding that reported" in her Federal tax return]), and may impute income based on averaging earnings in prior tax returns (*Bloom v Hilpert*, 222 AD3d 574 [1st Dept 2023] [court can impute income based on averaging seven years of tax returns]; *F.L. v J.M.*, 173 AD3d 428 [1st Dept 2019] [court can impute income by averaging income reported in recent returns]; *see also Branche v Holloway*, 124 AD3d 553 [1st Dept 2015] [imputation of $1 million yearly income "based on the fact that he earned in excess of $1 million annually from 2000 through 2009"]). Husband's last tax return from 2022 shows $1,552,484 in income (Exhibit 168). However, the Court imputes to Husband annual income of $2,830,087, representing his average yearly income from 2018 to 2022. This higher number appropriately considers Husband's earnings history as an investment professional, and accounts for his choice to remain underpaid by foregoing a salary as Investment Advisor to the LLCs and partner at ETC. Indeed, $2.8 million is a conservative figure considering he last earned $2 million per year in 2002 and could command a salary likely double that, if not more, with his nearly 40-year experience in financial markets. This amount also does not include imputed income based on the $17,300 per month financial benefit he realized from the below-market leases on Shorewood Court and the [Upstate] Home (which would amount to $207,600 per year).

It is impossible to evaluate each component part of the marital assets and to distribute them, as the majority of the assets are contained in the Trusts. The Court cannot dissolve the Trusts, and even if it could, dissolution would have catastrophic impact in the form of, *inter alia*, significant tax liabilities, loss of creditor protection and other possible legal ramifications. In this regard, there is an interest in retaining and maintaining the Trusts as is but including the *value* of their assets in the marital estate (DRL § 236 B [5] [d] [10]). Indeed, the equitable distribution award to Wife of all of the non-trust assets and a distributive payment in the sum of $35,776,187, takes into consideration that the majority of the assets are illiquid, as they are held ***29** in the Trusts and cannot be distributed (DRL § 236 B [5] [d] [8]). In order to make the $35,776,187 distributive payment (which will be made over time), if needed, Husband can borrow against trust assets to provide funds for himself under his expanded powers over the

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Property Trust (Exhibit 164). He can pay back any loan from income he earns as Investment Advisor and partner in ETC.

The parties did not submit any proof as to the tax consequences of the equitable distribution of their assets (DRL § 236B [5] [d] [11]). Where no evidence of tax liability is presented or tax consequences are highly speculative, the Court is not required to consider these potential tax liabilities in making a distributive award (*Greenwald v Greenwald*, 164 AD2d 706 [1st Dept 1991] [court not required to consider "highly speculative" tax liability in marking an equitable distribution of marital property]; *Pickard v Pickard*, 33 AD3d 202 [1st Dept 2006] ["Since plaintiff presented no evidence of the claimed tax implications of awarding defendant a credit against past excess payments, the court's failure to consider them was not error"]). However, the Court presumes that the transfer of the non-trust real properties and some of the investment accounts to Wife may have capital gains implications upon her sale or liquidation of such assets. It also notes that Wife gave up all or substantially all of her lifetime gift tax exemption to transfer marital assets into the Trusts. These facts support the distributive award of 50% of the *value* of the entire marital estate, which includes the value of the trust assets (DRL § 236 B [5] [d] [11]).

The distributive award also takes into consideration two crucial facts: Wife will lose her inheritance rights (DRL § 236 B [5] [d] [4]), and her health insurance benefits (DRL § 236 B [5] [d] [5]). It also accounts for the fact that Wife does not need to continue to reside in the Park Avenue Home. Indeed, the parties contracted to sell that home for $9,850,000 as neither presently primarily reside in New York and Wife is awarded the net sales proceeds thereof (expected to be $9.4 million). In addition, the equitable distribution award compensates her for her loss of use of Shorewood Court and [Upstate] Home (DRL § 236 B [5] [d] [3]). However, given the size of the distributive award, Wife is not awarded maintenance (DRL § 236 B [5] [d] [6]).

Post-commencement, Husband unequivocally, unreservedly and unilaterally cut Wife out of the Trusts, removed her as Managing Director of the LLCs, terminated her access to trust accounts, kicked her out of her homes with all of their attendant luxury accommodations, and cut her off from the family lifestyle. His transfer of the parties' remaining interest in M.B. to the GST, decanting of the Family Trust into the GST and then the GST into the Property and Investment Trusts, unauthorized distributions of marital assets to the tune of $21,800,000, assumption of total control over the Foundation, and purchase of the Sun Valley Home and 2022 Boat with marital assets, violated the Automatic Orders as well as specific orders of the court which denied his request to do so. As Husband failed to fully respond to Wife's trial subpoena, the record may not contain a complete and accurate picture of the marital assets, both within and without the Trusts. These violations and bad-faith post-commencement conduct amount to egregious economic fault and support the finding that the *value* of the marital estate shall be distributed 50% to Wife under the "statutory catchall 'just and proper' factor" of DRL § 236 B (5) (d) (16) (*Owens v Owens,* 107 AD3d 1171, 1175 [3d Dept 2013] [economic fault includes conduct that "unfairly prevents the court from making an equitable distribution of marital property" and "catchall factors provide 'substantial flexibility [to] fashion an appropriate decree based on what is . . . fair and equitable under the circumstances"] [internal citations omitted]; *see* ***30** *generally Mohamed v Abuhamra*, 222 AD3d 1344, 1346-47 [4th Dept 2023] [husband's post-commencement conduct in hiding accounts, transferring funds and scheme to underreport financial status and income constituted egregious economic fault and supported awarding wife 100% of known marital assets]; *see also Branche v Holloway*, 124 AD3d 553 [1st Dept 2015] [egregious economic fault, consisting of "liquidating, dissipating and failing to account" for assets supports unequal distribution of marital property]; *Stewart v Stewart,* 133 AD3d 493 [1st Dept 2015] [same]).

The Court declines to find that Husband wastefully dissipated marital assets. To the contrary, the record shows that the marital estate increased in value by about $60 million -- from $120 million in 2002 to $180 million in 2018 -- under Husband's management and control as Investment Advisor to the LLCs (DRL § 236 B [5] [d] [12]). Similarly, the Court declines to find that Husband transferred assets without fair consideration because the *value* of the assets within the GST will be considered in the martial estate and distributed equitably; in other words, Wife will receive fair consideration for her share of the Trust assets by this award (DRL § 236 B [5] [d] [12]).

Finally, per the 2020 amendment to DRL § 236 B (5) (d) (14), the Court must consider whether a party has committed acts of domestic violence, as that term is defined in the Social Services Law § 459 (a), and the "nature, extent, duration, and impact of such act or acts" in determining equitable distribution of martial assets. The legislative history of this relatively new provision reflects the clear intent to consider domestic violence and abuse within the marriage in making

equitable distribution awards (Sponsor's Mem, Bill Jacket, 2019 NY Senate-Assembly Bill S6050, A1967 ["Domestic violence is a scrouge in our society. . . Abuse within a marriage must be considered in order to properly adjudicate its dissolution and the financial situation established."). The amended statute memorialized what the common-law recognized for years -- distributive awards are meant to ensure that the equities are applied to reflect the contributions of each spouse to the partnership and to reach the right and just result as to marital property, especially where there is conduct within the marriage that shocks the conscience (*Havell v Islam*, 301 AD2d 339, 344 [1st Dept 2002] [where marital fault exists court compelled "to invoke its equitable power to do justice between the parties"]; *Socci v Socci,* 99 AD2d 287, 292 [2d Dept 1984] ["defendant's sustained physical abuse of the plaintiff over the course of their marriage constituted egregious marital fault to be factored into the equitable distribution award in addition to other considerations"]).

The record does not contain any evidence of domestic violence and abuse within the marriage. To the contrary, although Wife spoke of marital strife, and times where the parties were on rocky ground, her testimony generally reflected that she was happy and content. Rather, Husband engaged in emotional abuse after Wife filed for divorce. He evicted her from the family homes that she helped build and in which the children still reside; eliminated her name from Shorewood Court; cavalierly bulldozed her vegetable garden; angrily shouted at her to "get out" of the homes; disposed of her property and left a picture of his new girlfriend in its place -- conduct which utterly disregarded not only her humanity but the years they spent together as a family. Husband's behavior was unwarranted and hateful. However, it did not amount to the type of egregious and uncivilized conduct within the marriage found to "bespeak of a blatant disregard of the marital relationship" (*id.*), or domestic violence within the marriage as contemplated by statute (*compare J.N. v T.N.,* 77 Misc 3d 894 [Sup Ct, NY County 2022] [husband's sustained emotional and mental abuse of wife throughout marriage and into divorce ***31** proceedings warranted distributive award of 85% marital property to wife]; *G.K. v S.T.*, 83 Misc 3d 1238[a] [Sup Ct, NY County 2024] [husband's sustained abuse of wife and children throughout marriage and into divorce proceedings warranted distributive award of 65% marital property to wife]).

*MAINTENANCE*

The amount and duration of maintenance is a matter committed to the sound discretion of the trial court (*Rennock v Rennock*, 203 AD3d 675 [1st Dept 2022]; *Spencer v Spencer,* 230 AD2d 645, 648 [1st Dept 1996]).

Pursuant to DRL § 236 B (6), the Court must determine the guideline amount of post-divorce maintenance based upon the parties' incomes and applying the prescribed formula. Income for maintenance (and child support) is governed by the Child Support Standards Act ("CSSA") (DRL §§ 240 [1-b] [b] [5]; 236 B [6] [b] [3]). Wife has negative income from earnings according to her 2021 tax return. The Court has already imputed annual income of $2,830,087 to Husband. After arriving at the parties' incomes, the Court performs two calculations up to a cap of $228,000 (DRL § 236 B [6] [c]). The lesser amount of the two calculations is the guideline amount of maintenance. Here, the guideline amount of maintenance is $45,600 per year, or $3,800 per month, which the Court could deviate from after consideration of the statutory factors (DRL § 236 B [6] [e]).

However, the Court declines to award any maintenance to Wife given her substantial equitable distribution award of over $79 million. As "the purpose of maintenance is to give the recipient spouse a sufficient period to become self-supporting" (*Naimollah v De Ugarte*, 18 AD3d 268, 271 [1st Dept 2005] [internal citation omitted]), a significant distributive award able to generate cash flow supports denial of post-divorce maintenance (*Stewart*, 133 AD3d at 495 [maintenance denied where less monied spouse received, *inter alia*, millions of dollars of assets in equitable distribution]; *Hofmann v Hofmann*, 173 AD3d 531, 533 [1st Dept 2019] ["The Referee's denial of post-divorce maintenance to defendant is supported by the record, which shows that defendant's distributive award -- now substantially increased -- would generate cash flow sufficient to render her self-supporting"]). Where the equitable division of marital assets is sufficient for the less monied spouse to enjoy the same standard of living post-divorce as enjoyed during the marriage, spousal maintenance is properly denied (*id.*; *Diop v Gueye*, 237 AD3d 1298, 1302 [3d Dept 2025]; *Spencer-Forest v Forrest*, 159 AD3d 762 [2d Dept 2018]).

The equitable distribution award provides Wife with over $79 million in assets, some cash, some investments, some real estate. She will have ample means to purchase a new apartment and a new summer home commensurate with the Park Avenue Home and Shorewood Court estate, with more than enough funds left over to invest and generate a cash flow

sufficient to be self-supporting in the context of the marital standard of living (*id.*; *cf. Owens,* 107 AD3d at 1176-77). The Court notes also that Wife did not request, nor did Husband pay, temporary maintenance during the litigation. Consequently, the Court declines to award Wife maintenance under DRL § 236 B (6).

*CHILD SUPPORT*

The parties share equal parenting time of their two youngest daughters. All of the children's educational and medical expenses have been paid through their own trusts or by Husband; however, he has not paid basic child support to Wife. Husband, the monied spouse, is the noncustodial parent for the purposes of calculating child support (*Conway v Gartmond,* 144 AD3d 795, 797 [2d Dept 2016] ["Since the mother's income exceeds that of the father, she ***32** should be deemed the noncustodial parent for child support purposes" where parties have equal parenting time]).

As noted above, the parties' income for the purpose of calculating child support (DRL § 240 [1-b] [b] [5]) is $2,830,087 ($0 for Wife + $2,830,087 for Husband). Applying the statutory cap of $183,000, and using 25% for two children, results in a basic child support obligation of $45,750 per year or $3,812.50 per month (DRL §§ 240 [1-b] [2]; 240 [1-b] [3] [i]). Husband's share of the support obligation is 100%. The guideline child support amount, however, is unjust and inappropriate given the pre-divorce marital lifestyle and needs of the children.

Therefore, the Court will deviate from the income cap under the guidelines to set child support, and sets a $400,000 income cap to which it will apply the statutory percentages (*Cassano v Cassano*, 85 NY2d 649, 654 [1995] [when exceeding statutory cap, courts have discretion to apply the DRL § 240 [1-b] [f] factors "and/or" apply statutory percentages to income above cap]). A $400,000 income cap is appropriate given the financial resources of the parties and the children's standard of living during the marriage, as amply demonstrated in the trial record. With a $400,000 income cap, under the CSSA guidelines, the monthly basic child support obligation for two children is $8,333.

The first child support payment of $8,333 is due to Wife on October 1, 2025 and on the first day of each month thereafter, until [] is emancipated at which time Husband's monthly child support obligation will be $5,666. His child support obligation will end upon [] emancipation.

The child support award is retroactive to the date of commencement in May 2018, or for a period of 87 months (*see generally Diamond v Diamond*, 11 AD3d 289 [1st Dept 2004] [retroactive child support awarded even where there is an "extended amount of time between" request and award]). Retroactive child support amounts to $724,971 ($8,333 x 87 months; the arrears do not include support for three children, but could), which shall be paid in full within ninety (90) days of the date of this Decision and Order.

*ATTORNEY'S FEES*

DRL § 237 [a] provides counsel fees to a non-monied spouse "to enable that spouse to carry on or defend the action or proceeding, as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties." An award of attorney's fees is a matter within the sound discretion of the trial court (*DeBernardo v De Bernardo*, 180 AD2d 500, 502 [1992] [trial court has "great flexibility in determining counsel fees"]).

In making the award, the court must give due regard for the financial circumstances of the parties and "all the other circumstances of the case, which may include the relative merit of the parties' positions" (*DeCabrera v Cabrera-Rosete*, 70 NY2d 879, 881 [1987]; *Rennock v Rennock*, 203 AD3d 675 [1st Dept 2022] [court properly considered financial need together with both parties' intransigent positions]). Where the monied spouse has taken unreasonable positions, caused unnecessary litigation, or engaged in obstructionist conduct an award of counsel fees to the non-monied spouse is appropriate (*see e.g. Johnson v Chapin*, 12 NY3d 461 [2009] [upholding award of $885,000 in attorney's and expert fees due to unnecessary delay and considering parties' financial positions]; *Azizo v Azizo*, 51 AD3d 438, 440-- 41 [1st Dept 2008] ["In light of the economic disparity between the parties and defendant's conduct during this action, the trial court providently exercised its discretion in awarding plaintiff counsel and expert fees"; attorney's fees of $664,538 and expert fees of $57,142 upheld]; *but see Ansour v Ansour*, 61 AD3d 536 [2009] [only a portion of attorney's fees awarded considering the distributive award and recipient party's conduct which unnecessarily complicated the action]).

The attorney's and expert fees awarded may be significant where parties have allegedly comingled marital and non-marital assets within a trust of significant value and the scope of the marital estate is expansive in both size and

complexity (*Trafelet v Trafelet*, 162 AD3d 518 [1st Dept 2018] [interim attorney's and expert fees of $3.5 million warranted in divorce litigation involving $150 million trust and claims of comingling marital and non-marital assets within trust]).

The attorney's fees in this matter are indeed significant as a result of the complexity of the trust issues and the vast size of the marital estate. Wife submitted proof that she incurred $2,306,241.34 in attorney's fees -- including divorce counsel and trusts and estate counsel -- from the commencement of this proceeding in May 2018 through January 2023. The record contains invoices she received from Dobrish Michaels Gross LLP ($52,632.50 post-commencement); Boies Schiller Flexner LLP ($318,524.69); Chemtob Moss Forman & Beyda LLP ($1,184,734.09); The Law Firm of Laurence P. Greenberg ($368,428.43); Seth Ginsberg, Esq. ($150,790.50); and Katten Muchin Rosenman LLP ($193,202.38) (Exhibits 96-97, 99-101, 103). Wife also provided an email dated October 2022 showing that she incurred $37,928.75 in legal fees from Holland & Knight LLP (Exhibit 102). Crediting Husband with his $70,782.26 payment to Chemtob Moss Forman & Beyda LLP (Exhibit 99) -- which appears to be his only payment of fees on behalf of Wife -- the total attorney's fees incurred by her through January 2023 amount to $2,235,459.08. She also submitted proof that she incurred expert fees in the sum of $162,306.50 (Exhibit 107).

On this record, an award of counsel fees to Wife in the total sum of $1,676,594.25 or 75% of the $2,235,459 she seeks in fees incurred through January 2023, is appropriate as Wife is the non-monied spouse, and considering the lack of merit to Husband's position on equitable distribution of Trust assets, as well as his cavalier and controlling conduct over marital assets, including violations of the Automatic Orders. It also takes into consideration that Wife is not seeking attorney's fees incurred post January 2023, which are likely substantial as they would include time spent on six days of trial (2/23/23, 2/24/23, 3/2/23, 6/14/23, 4/15/24, and 4/16/24) and post-trial work.

Accordingly, Wife is awarded attorney's fees in the amount of $1,676,594.25, and $162,306.50 for expert fees, which shall be paid within thirty (30) days of the date of this Decision and Order.

Accordingly, it is hereby

ORDERED that the value of the marital estate to be equitably distributed includes the value of the Trust assets, in the sum of $111,225,848, and non-trust assets in the sum of $70,243,473, for a total value of $181,469,321; and it is further

ORDERED that Wife is entitled an equitable distribution award of 50% of the marital estate valued at $181,469,321, or $90,734,660, payable as follows:

(1) Credit for Post-Commencement Distributions Already Made: $10,850,000;

(2) Transfer of Financial and Investment Accounts to Wife:

| | |
|---|---|
| # Cevian Capital II | $ 3,176,222 |
| # ***33** Drawbridge Funds | $12,993,894 |
| • Drawbridge Special Opportunities | $8,218,436 |
| • 2013 RCA Withheld Distribution | $197,427 |
| • 2109 RCA Withheld Distributions | $4,432,168 |
| • DBSO Escrow Fund | $145,863 |
| # R.H. Revocable Trust | $7,875,416 |
| • Acct. xxxxx: | $5,321,834 |
| • Acct. xxxxx: | $540,129 |
| • Acct. xxxxx: | $320,350 |

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| | |
|---|---|
| • Acct. xxxxx: | $21,909 |
| • Acct. xxxxx: | $240,641 |
| • Acct. xxxxx: | $1,430,553 |
| # R.H. IRA Rollover Account xxxxx | $1,132,917 |
| # The R.H. and C.S. Charitable Foundation Account xxxxx | $1,530,024 |

(3) Net Proceeds of Sale: 1175 Park Avenue, Unit 14A $ 9,400,000

(4) Transfer of Title to Real Estate:

| | |
|---|---|
| # 353 Central Park West, Unit 8 New York,New York | $6,400,000 |
| # 353 Central Park West, Unit 2 New York,New York | $1,600,000 |

(5) Distributive Payment: $35,776,187 (Payable $3,577,618.70 per year over 10 years)

ORDERED that Husband shall transfer to Wife each of the foregoing financial and investment accounts within thirty (30) days of the date of this Decision and Order; and it is further

ORDERED that Husband shall transfer to Wife title to the two Central Park West ***34** apartments within thirty (30) day of the date of this Decision and Order. Husband shall be solely responsible for all transfer taxes and filing fees attendant to the transfers; and it is further

ORDERED that Husband shall pay to Wife the $35,776,187 equitable distributive payment at the rate of $3,577,618.70 per year for ten (10) years. The first distributive payment is due on November 15, 2025, and each annual payment thereafter is due on November 15th of each year, until November 15, 2034; and it is further

ORDERED that the parties' artwork shall be inventoried and appraised by a licensed art appraiser within one-hundred eighty (180) days of the date of this Decision and Order. The parties are each entitled to 50% of the total value of the artwork, which they may arrive at by dividing the artwork between them or selling it and equally splitting the proceeds; and it is further

ORDERED that Wife is awarded attorney's fees in the sum of $1,676,594.25 and expert fees in the sum of $162,306.50, which shall be paid within thirty (30) days of the date of this Decision and Order; and it is further

ORDERED that Wife is not awarded maintenance; and it is further

ORDERED that Husband shall pay monthly basic child support in the sum of $8,333, and 100% of add-ons, for the parties two youngest daughters. The first child support payment is due on October 1, 2025 and on the first day of each month thereafter, until [] is emancipated at which time Husband's monthly child support obligation will be $5,666. His child support obligation will end upon [] emancipation; and it is further

ORDERED that Husband's child support obligation is retroactive to date of commencement (May 2018), or for a period of 87 months, and his arrears amount to $724,971 ($8,333 x 87 months), which sum shall be paid in full within ninety (90) days of the date of this Decision and Order; and it is further

ORDERED that all other request for either equitable distribution or support are denied; and it is further

ORDERED that Wife shall submit to this Court for signature, upon notice to Husband (22 NYCRR § 202.48), a proposed Judgment of Divorce within thirty (30) days of this Decision and Order.

Dated: September 8, 2025

HON. KATHLEEN WATERMAN-MARSHALL

**FOOTNOTES**

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Footnotes

1 References to the trial transcripts are ([numerical date] Tr. [page]).

2 A chart of the Trial Exhibits is attached hereto as an Addendum [omitted from published decision].

3 As of April 2025, neither party primarily resides in New York City, according to their So-Ordered Stipulation addressing the sale of the Park Avenue Home.

4 Wife is entitled to all accrued interest and any other increases in value to the financial and investment accounts transferred to her, without adjustment to the distributive payment of $35,776,187.

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# Premarital Planning and Planning Issues for Divorcing Couples

Adam M. Grenker
Fox Rothschild LLP
Morristown, NJ

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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?

2

# 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

3

# 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

4

# 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?

5

# 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)

6

# 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

7

# 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

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# ESTATE LITIGATION UPDATE



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# SUMMARY PROCEEDINGS

- **R. 4:83-1**: "Unless otherwise specified, all actions in the Superior Court, Chancery Division, Probate Part, shall be brought in a summary manner ...."
- **N.J.S.A. 3B:2-4**: "[t]he Superior Court, in any proceeding by or against fiduciaries or other persons, may proceed in a summary manner."
- **R. 4:67-5**: "The court shall try the action on the return day, or on such short day as it fixes. If ... the affidavits show palpably that there is no genuine issue as to any material fact, the court may try the action on the pleadings and affidavits, and render final judgment thereon."
- **Rova Farms Resort v. Invs. Ins. Co., 65 N.J. 474, 484 (1974):** On appeal from a summary proceeding, a trial judge's factual findings will be upheld as long as they are "supported by adequate, substantial and credible evidence" in the record.

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# SUMMARY TREATMENT

**Matter of Estate of Clements, A-3235-23, 2026 WL 1296449 (N.J. Super. Ct. App. Div. May 12, 2026) -- Not Approved for Publication**

- **Facts**: George Clements and first wife Anne Marie created a revocable trust in 1987, transferring the Ocean City House into it in 2003. A 2004 amendment made each settlor's share irrevocable upon that settlor's death/incapacity. Anne Marie died in 2006. George remarried (Nancy) and, ~10 days before his 2021 death, executed a new will leaving his residuary estate to Nancy.
- **Issue**: Did George validly revoke the Trust as to his share before his death, so it could pass under his later will to Nancy? Was summary disposition appropriate and should discovery have been permitted?
- **Trial Court**: Under R. 4:67-5 and N.J.S.A. 3B:3-33.1, the revocation mechanism required written notice to the trustee during the settlor's lifetime; a letter merely requesting an appointment to "remove his name from the Trust" did not satisfy it. Title passed under the Trust to the daughters, Snock and Corse.
- **On Appeal**: Affirmed. Settlors' intent as expressed in the Trust's plain language controls; correspondence merely expressing intent to revoke -- without following the specified mechanism -- does not effect a revocation. The Court may resolve the matter on the return date when there is no genuine issue as to any material, and court rules allowed the matter to proceed summarily. A summary action is not the same as a summary judgment motion, and the party opposing the judgment is not entitled to all reasonable inferences.
- **Decision**: Affirmed. The Ocean City House passed under the Trust to Snock and Corse as tenants in common, free of any claim by Nancy.

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# SUMMARY TREATMENT

**Estate of Reinert, New Jersey Superior Court, Appellate Division, Docket No. A-3772-23 (October 9, 2025) -- Not Approved for Publication**

- **Facts**: Decedent's seventh and final will (April 2023) named neighbor Hughes as executor and 30% beneficiary, with 70% to his late second wife's adult children. Decedent's nephew, Harz -- not named in the 2023 will or any of the six prior wills -- filed a caveat alleging lack of capacity and undue influence, and moved for leave to counterclaim/crossclaim. At summary proceeding, the court found no genuine issue of material fact, dismissed the caveat, admitted the will, and later denied Harz's fee application.
- **Issue**: Did the trial court err in resolving the contest summarily, in not requiring notice to beneficiaries under prior wills, in denying leave to counterclaim/crossclaim, and in denying fees?
- **Analysis**: A plenary hearing is required only where conflicting affidavits create a genuine factual dispute; Harz's claims were unsubstantiated speculation. R. 4:80-6 requires caveat notice only to intestate heirs and beneficiaries under the will offered for probate -- not superseded wills. Denial of leave to counterclaim/crossclaim under R. 4:67-4(a) is discretionary. A fee allowance under R. 4:42-9(a)(3) requires both good faith and reasonable cause -- good faith alone did not suffice.
- **Decision**: Affirmed on all points.

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# UNDUE INFLUENCE
# (Confidential Relationship)

**Estate of Kapila, New Jersey Superior Court, Appellate Division, Docket No. A-2757-23 (May 19, 2025) -- Not Approved for Publication**

- **Facts**: Decedent, a physician, divorced plaintiffs' mother in 2008 and remarried in 2009; plaintiffs (his adult children) opposed the remarriage and had little relationship with him thereafter -- mostly hostile emails from one plaintiff. In 2020, decedent used LegalZoom (not an attorney) to draft a new will disinheriting plaintiffs in favor of his wife and grandchildren; his wife typed the information, and two family friends witnessed. After a 7-day trial, the court involuntarily dismissed the undue influence claim and denied plaintiffs' fee application.
- **Issue**: Did the trial court err in dismissing the undue influence claim under R. 4:37-2(b) for failure to show a confidential relationship, and in denying fees for lack of reasonable cause?
- **Analysis**: A presumption of undue influence requires a confidential relationship -- unequal terms from superior knowledge, over-mastering influence, or dependence/trust. The mere existence of family ties, including marriage, does not itself create one. That the wife served as scrivener on LegalZoom at decedent's direction did not establish control. The decade-plus estrangement combined with the hostile tenor of limited contact made the disinheritance unsurprising rather than suspicious. On fees, plaintiffs had only suspicion, not evidence, before filing suit -- no reasonable cause.
- **Decision**: Affirmed. Dismissal of the undue influence claim and denial of fees were both proper.

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# UNDUE INFLUENCE
# (Evidence)

**Estate of Snyder, New Jersey Superior Court, Appellate Division, Docket No. A-1836-23 (July 11, 2025) -- Not Approved for Publication**

- **Facts**: Decedent's daughter Carol, her caregiver and financial manager, was made sole TOD beneficiary of two Schwab brokerage accounts (~$862,000) and joint owner of a PNC account (~$30,000) in 2019 -- departing sharply from the 2018 will's 50/40/10 split with out-of-state siblings Spencer and Linda. Changes occurred during decedent's chemotherapy/confusion, shortly after an inheritance dispute with Spencer. The trial court found undue influence, voided the transfers, and excluded decedent's handwritten journal entries offered by Carol; it also denied the siblings' fee application.
- **Issue**: Were the journal entries properly excluded, was undue influence supported by the record, and did the court err denying fees?
- **Analysis**: The journal entries were properly excluded under N.J.R.E. 804(b)(6) (untrustworthy -- undated, unsigned, unauthenticated) and 803(c)(3) (no nexus to the 2018 planning), and under the completeness rule, N.J.R.E. 106 (incomplete notebooks). On undue influence, Carol's caregiver/financial-manager role established the confidential relationship; her incredible testimony, decedent's declining state, and suspicious timing supported the presumption, which Carol failed to rebut. On fees, the "fund in court" doctrine didn't apply (no benefit to a broader class), and Rule 4:42-9(a)(3) is limited to will contests, not account/TOD disputes.
- **Decision**: Affirmed in full.

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# UNDUE INFLUENCE
# (Witnesses/Will Execution)

**In re Estate of Berryman, MON-P-410-24 (N.J. Super. Ct. Ch. Div. March 9, 2026)**

- **Facts**: Defendants moved for summary judgment declaring the will invalid as improperly witnessed. The will was witnessed by two individuals, including an attorney, with a notary present. Defendants argued one witness didn't understand his role -- he testified he never heard the terms “undue influence” or “undue restraint,” did no investigation into potential influence, and had never read the attestation paragraph.
- **Issue**: Does N.J.S.A. §3B:3-2's two-witness requirement obligate a witness to investigate for undue influence, or use particular language describing that role?
- **Analysis**: The statute requires two witnesses but does not require any particular language expressing the witness's role, nor does it require a witness to conduct an independent investigation into potential undue influence. A witness's role is merely to observe the testator's signature and sign the will. On summary judgment, the court could assume the witness was present, observed the execution, saw nothing of concern, and signed.
- **Decision**: The court rejected the challenge to the will's validity on this ground.

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# Divorce/Equitable Distribution

**Estate of Agnieshka Burke, New Jersey Superior Court, Appellate Division, Docket No. A-1493-25 (June 29, 2026) -- Not Approved for Publication**

- **Facts**: Decedent filed for divorce from Jared five months before her unexpected death; no final judgment was entered. Her will named Jared as spouse, executor, and primary beneficiary, and he was the sole beneficiary of her $500,000 term life insurance policy. Decedent's sister, Kostro (named successor executor), sought to disqualify Jared as executor due to his conflict in the pending divorce and to have the life insurance treated as marital property. The trial court held the estate could pursue equitable distribution under N.J.S.A. 2A:34-23(h)(2), found Jared conflicted, and referred the insurance question to the Family Part -- but did not appoint a substitute executor.
- **Issue**: Does subsection (h)(2) let a decedent's estate (not just a surviving spouse) pursue equitable distribution? Does that disqualify the executor-spouse? Was Family Part referral proper?
- **Analysis**: The statute's "either party" language authorizes the estate to proceed, consistent with Carr v. Carr and Kay v. Kay's constructive-trust holdings. Applying the "toxic conflict of interest" standard from In re Estate of Di Bella, Jared's dual role -- representing the estate's equitable-distribution claim while personally opposing it -- was directly adverse, disqualifying him only as to that issue. But the trial court erred in not appointing a substitute executor (the will named Kostro). Referral of the life insurance question to the Family Part was proper given its expertise; Jared remains the named beneficiary absent a finalized divorce or settlement agreement triggering automatic revocation.
- **Decision**: Affirmed in part, remanded in part -- for appointment of a substitute executor and prompt Family Part resolution of the life insurance proceeds.

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# Standing

**Estate of Foster, New Jersey Superior Court, Chancery Division, Probate Part, Middlesex County (February 27, 2026)**

- **Facts**: Lois Foster died August 11, 2022, leaving a Will signed in June 2022 that favored her granddaughter, Lisa, and disinherited her daughter, Rose, and three other grandchildren. The Will was probated May 26, 2024. Rose died intestate June 27, 2023 -- after the Decedent's death but before probate. Harold Walker, Rose's descendant and next of kin, challenged the Will, alleging lack of capacity and undue influence.
- **Issue**: Lisa, the executor, moved to dismiss Harold's claim for lack of standing, arguing only Rose or Rose's estate was the interested party -- but no Letters of Administration had issued for Rose's estate.
- **Analysis**: Standing to contest a will is governed by Rule 4:85-1, which permits actions by any person aggrieved by the probate of a will -- anyone who would be injured by the will's probate.
- **Decision**: Motion to dismiss denied. Harold would be harmed if the Will stood, even though his benefit was indirect and would pass through Rose's estate. Rose was Lois' only next of kin, and Harold was Rose's next of kin -- a sufficient stake to confer standing. **Successive interest had standing.**

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# Standing

**Dill v. Offray , New Jersey Superior Court, Appellate Division, Docket No. A-1498-24 (March 17, 2026)**

**Not Approved for Publication**

- **Facts**: A revocable trust split, on the settlor's death, into marital and credit shelter trusts for the surviving spouse's lifetime, remainder to the decedent's two children. After the spouse's death, trustees sought court direction on distribution and postponement of funding because one remainder beneficiary (the son) had separate pending litigation that could impact the corpus. That beneficiary counterclaimed for breach of fiduciary duty and Prudent Investor Act (PIA) violations.
- **Issue**: Did the remainder beneficiary have standing to challenge trustee investment conduct occurring during the income beneficiary's lifetime, and did his counterclaims sufficiently plead breach of fiduciary duty and a PIA violation?
- **Analysis**: Reversing the trial court, the Appellate Division held a remainder beneficiary does have standing -- trustees owe duties to all beneficiaries, including future interests. But the pleading was deficient: generalized "inadequate rate of return" allegations without specific investment decisions, deviations, or actual loss -- especially where trust value increased. The Trust also permitted disregarding diversification, and trustees had discretion under the trust and a prior consent order to delay funding.
- **Decision**: Affirmed. Standing existed, but dismissal was proper -- no PIA claim pled and trustees had discretion to delay funding.

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# Arbitration Clauses

**Estate of Hekemian, New Jersey Superior Court, Appellate Division, 484 N.J. Super. 458 (April 21, 2026)**

**Approved for Publication**

- **Facts**: Samuel Hekemian's 2002 will named his son Peter and advisor Imperatore as co-executors/co-trustees, with an arbitration clause covering disputes over the will, trusts, and administration -- identical to the clause in his and wife Sandra's reciprocal 2001 wills. After Samuel died (2018), son Richard sought a formal accounting; this court had already held Richard could not be compelled to arbitrate. Sandra later joined, and both filed exceptions to the executors' first accounting. The executors moved to compel arbitration; the Chancery judge denied it.
- **Issue**: Is an arbitration provision in a will valid and enforceable against interested parties disputing the estate's administration?
- **Analysis**: As a matter of first impression, neither Richard nor Sandra could be compelled to arbitrate. Arbitration requires mutual assent and a clear waiver of the right to sue; a will is a unilateral disposition of property, not a contract, so no interested party is ever given the chance to waive that right. Sandra's execution of an identical 2001 clause did not show informed assent. More broadly, enforcing arbitration clauses in wills is inconsistent with the Probate Code's statutory scheme vesting the Superior Court with authority over wills, trusts, and fiduciary accountings.
- **Decision**: Affirmed. The arbitration provision fails for lack of mutual assent and is unenforceable as contrary to the Probate Code.

***"Enforcement of an arbitration clause in a testamentary instrument is contrary to the court's role underlying the Probate Code and inconsistent with our State's contract principles."***

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## Malpractice/Duties to Beneficiaries/Non-Clients

**Christakos v. Boyadjis, New Jersey Supreme Court, 262 N.J. 447 (January 20, 2026)**

- **Facts**: Brothers Peter and Nick Christakos executed mirror-image 2003 wills leaving everything to each other, naming niece Helen (an attorney) as contingent beneficiary/successor executor. In 2017-18, attorney Boyadjis misread the 2003 wills and drafted new 2018 wills leaving the residue to neighbors, a church, and Helen's mother Alice -- omitting Helen -- while Nick's capacity to sign was later questioned. Helen and Alice sued Boyadjis for malpractice as nonclient beneficiaries.
- **Issue**: What is the standard for when an estate-planning attorney owes a duty of care to a nonclient beneficiary, and did Boyadjis owe one to Helen?
- **Holding**: The Court formally adopted Restatement (Third) of the Law Governing Lawyers § 51(2)-(3), abrogating Stewart v. Sbarro's foreseeability test. A duty arises only where (1) the attorney invites the nonclient's reliance and the nonclient relies, and isn't too remote; or (2) the attorney knows the client intends the representation to primarily benefit the nonclient, without impairing duties to the client.
- **Analysis**: Because Helen's intended benefit didn't appear on the will's face, she needed clear and convincing evidence Peter/Nick told Boyadjis they intended to benefit her. Vague statements ("not as bad as" the others; "may want to give something") didn't meet that bar, especially against contrary evidence. The Court also held an heir cannot base a duty on the theory the attorney negligently let an incompetent client execute a will (Restatement Illus. 4).
- **Decision**: Affirmed. No duty of care to Helen under either subsection -- no reliance, and no clear and convincing evidence of intent to benefit her.

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# GUARDIANSHIPS

**Amendment to the Guardianship Statute -- Effective April 1, 2026**

- **Previously**: The application to appoint a guardian for a minor could not be filed until the Alleged Incapacitated Person (A.I.P.) turned 18.
- **Problem**: This created a gap in which the minor -- now an incapacitated adult -- had no legal advocate or decision-maker.
- **The Amendment**: If the A.I.P. is a minor anticipated to require a guardian upon turning 18, the guardianship complaint may be filed up to 180 days before the minor's 18th birthday. Any resulting judgment takes effect no earlier than the date the minor turns 18.
- **Benefit**: Permits New Jersey parents and others to plan for a smoother transition into adult guardianship.

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# GUARDIANSHIPS

**Matter of F.M.W., an Alleged Incapacitated Person, 483 N.J. Super. 395 (App. Div. 2016)**

- **Facts**: F.M.W. was incapacitated and needed a guardian. She lived with her sister, R.W., her only relative and caretaker. Evidence at the hearing supported that R.W. was not properly caring for her and should not serve as guardian.
- **Issue**: Should F.M.W.'s guardian be her sister (R.W.) or the Public Guardian?
- **Trial Court**: Despite the preference for a family member, the court found it could not conclude R.W. would be an appropriate guardian and appointed the Public Guardian.
- **On Appeal**: The court held the trial judge misapplied discretion under R. 4:86-4 and R. 1:7-4: it failed to make adequate clear-and-convincing findings on incapacity and need for a guardian, and, after finding incapacity, failed to conduct an open hearing with testimony, cross-examination, and detailed findings of fact and conclusions of law before appointing a guardian.

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# ELDER ABUSE

**Daspin v. Daspin, U.S. District Court, D.N.J., Case No. 2:24-cv-11501 (November 21, 2025)**

- **Facts**: An 86-year-old, hearing-impaired pro se plaintiff sued his nephew Matthew and Matthew's girlfriend, alleging elder abuse -- Matthew took ~$120,000 from the sale of Plaintiff's home in exchange for a promise of lifetime care, then removed him from the residence while hospitalized, took his Social Security checks, and took his dog and SUV via a bill of sale Plaintiff calls fraudulent. Matthew initially claimed a POA that he later admitted did not exist. Plaintiff's filings were largely incomprehensible.
- **Issue**: Should the court exercise discretion under 28 U.S.C. § 1915(e)(1) to appoint pro bono counsel for an indigent, unrepresented plaintiff?
- **Analysis**: Finding the claims had "some arguable merit," the court applied the Tabron factors -- all six weighed toward appointment: Plaintiff couldn't present his case; the issues, while not complex, were beyond his capacity; discovery/an accounting would be needed; the case would turn on credibility; expert testimony would likely be needed; and Plaintiff was effectively indigent.
- **Decision**: The court appointed pro bono counsel, administratively terminated Plaintiff's pending pro se motion to amend, and set a status conference.