

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2302

STATE OF NEW JERSEY

DATED: JUNE 27, 2002

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 2302 (ACS).

This substitute bill provides that the New Jersey estate tax shall be computed in compliance with the terms of federal estate tax in effect on December 31, 2001 or, at the election of the person responsible for filing the estate tax return, pursuant to a simplified system developed by the Director of the Division of Taxation in the Department of the Treasury.

Currently, New Jersey's estate tax is based on a credit allowed by federal law against the federal estate tax for the payment of inheritance or other legacy taxes imposed by the several states. The New Jersey estate tax is designed to absorb the excess (if any) of the maximum amount of this federal credit over the cumulative liability of a decedent's heirs for New Jersey inheritance tax on transfers from the decedent's estate.

Under changes in the federal estate tax enacted in 2001, New Jersey's estate tax will be reduced. This reduction will occur primarily through a four-year phase-out of the federal credit. Even before the phase-out is completed, the credit (and thus liability for New Jersey estate tax) will also be reduced for many estates by the extension of full exemption from federal tax to successively larger estates.

This substitute preserves the New Jersey estate tax as it existed up to the point at which the changes in federal law took effect. The substitute provides that the New Jersey estate tax will be computed as though the terms of the federal estate tax, including those governing liability for that tax and allowance of the state legacy tax credit, continued to apply to the estates of resident decedents dying after December 31, 2001 as they did to that of a resident decedent dying on that date.

There may, however, be some compliance problems for taxpayers under such a new system. As the federal estate tax system phases out, a host of federal provisions that are used to value the federal estate, determine the amount of federal liability, and determine the amount of federal credit available will not be applied to many estates (after 2009, they will apply to no estates). The federal information that is usually

available for computing the New Jersey estate tax liability will no longer exist. This substitute directs the Director of the Division of Taxation to develop a simplified system to accommodate taxpayers in compliance. Under the substitute this simplified system will be available, *at the election of the person responsible for paying the tax*, to make compliance easier. The calculation based on federal law will remain available for those who prefer it or find it advantageous.

In the absence of the federal compliance system, this substitute also eliminates a provision that exempted estate taxes from the "lien of tax." Under the State Uniform Tax Procedure Law, most property of taxpayers is subject to satisfaction of tax liabilities. There has been an exception for State estate taxes (which have been subject to a federal tax lien powers). The substitute makes the property of New Jersey estates subject to the State tax lien powers.

The substitute repeals R.S.54:38-8 and R.S.54:38-9, which provide for, respectively, (1) the voiding of New Jersey's estate tax in the event of the repeal of the federal estate tax or the federal credit for state legacy taxes, and (2) the revision of the State estate tax in response to any substantial revision of the federal credit. It is the central intent of this substitute to preclude either such consequence.

The provisions of this bill are identical to those of Senate committee substitute for Senate Bill No. 1378, which the committee also reports this day.

FISCAL IMPACT

Under the federal "Economic Growth and Tax Relief Reconciliation Act of 2001," the allowable State credit under the federal estate tax for any state death taxes paid is reduced by 25 percent in 2002, 50 percent in 2003, 75 percent in 2004 and is fully repealed from 2005 to 2010. By 2005 State inheritance tax collections, which reflect collections from both the transfer inheritance tax and the New Jersey estate tax, will include only those revenues derived from the State inheritance tax as the estate or "pick-up" tax will be effectively repealed.

Data obtained by the Office of Legislative Services (OLS) from the Division of Revenue, Department of the Treasury, indicate that in FY2001 estate tax revenues constituted approximately forty-five percent of total annual inheritance tax collections. Accordingly, of the \$500 million in inheritance tax collections anticipated by the Executive (based on its year-end revised estimate) for FY2002, approximately \$225 million can be attributed to the New Jersey estate tax. Similarly, based on the Executive's revised FY2003 revenue estimates, which project a total of \$530 million in inheritance tax collections, roughly \$239 million will be due to the estate tax.

Based on this data, and the federal phase-out provision, the OLS estimates that the General Fund will forego approximately \$60 million in FY2003, \$120 million in FY2004; \$180 million in FY2005 and the full \$240 million currently collected by FY2006 and each year

thereafter under current law. (Growth in collections is not assumed in future year estimates, as inheritance tax collections are unpredictable and somewhat volatile from year to year.) With enactment of this substitute, however, the General Fund would effectively be "held harmless" from results of the changes to the federal tax code.