

ASSEMBLY, No. 1059

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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SYNOPSIS

Phases out estate tax over five-year period.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 12/1/2017)

1 AN ACT phasing out the estate tax over a five-year period,
2 amending R.S.54:38-1 and R.S.54:38-3.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. R.S.54:38-1 is amended to read as follows:

8 54:38-1. a. In addition to the inheritance, succession or legacy
9 taxes imposed by this State under authority of chapters 33 to 36 of
10 this title (R.S.54:33-1 et seq.), or hereafter imposed under authority
11 of any subsequent enactment, there is hereby imposed an estate or
12 transfer tax:

13 (1) Upon the transfer of the estate of every resident decedent
14 dying before January 1, 2002 which is subject to an estate tax
15 payable to the United States under the provisions of the federal
16 revenue act of one thousand nine hundred and twenty-six and the
17 amendments thereof and supplements thereto or any other federal
18 revenue act in effect as of the date of death of the decedent, the
19 amount of which tax shall be the sum by which the maximum credit
20 allowable against any federal estate tax payable to the United States
21 under any federal revenue act on account of taxes paid to any state
22 or territory of the United States or the District of Columbia, shall
23 exceed the aggregate amount of all estate, inheritance, succession or
24 legacy taxes actually paid to any state or territory of the United
25 States or the District of Columbia, including inheritance, succession
26 or legacy taxes actually paid this State, in respect to any property
27 owned by such decedent or subject to such taxes as a part of or in
28 connection with the estate; and

29 (2) (a) Upon the transfer of the estate of every resident decedent
30 dying after December 31, 2001 which would have been subject to
31 an estate tax payable to the United States under the provisions of
32 the federal Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in
33 effect on December 31, 2001, the amount of which tax shall be, at
34 the election of the person or corporation liable for the payment of
35 the tax under this chapter, either

36 (i) the maximum credit that would have been allowable under
37 the provisions of that federal Internal Revenue Code in effect on
38 that date against the federal estate tax that would have been payable
39 under the provisions of that federal Internal Revenue Code in effect
40 on that date on account of taxes paid to any state or territory of the
41 United States or the District of Columbia, or

42 (ii) determined pursuant to the simplified tax system as may be
43 prescribed by the Director of the Division of Taxation in the
44 Department of the Treasury to produce a liability similar to the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 liability determined pursuant to clause (i) of this paragraph reduced
2 pursuant to paragraph (b) of this subsection.

3 (b) The amount of tax liability determined pursuant to
4 subparagraph (a) of this paragraph shall be reduced by the
5 aggregate amount of all estate, inheritance, succession or legacy
6 taxes actually paid to any state or territory of the United States or
7 the District of Columbia, including inheritance, succession or
8 legacy taxes actually paid this State, in respect to any property
9 owned by such decedent or subject to such taxes as a part of or in
10 connection with the estate; provided however, that the amount of
11 the reduction shall not exceed the proportion of the tax otherwise
12 due under this subsection that the amount of the estates's property
13 subject to tax by other jurisdictions bears to the entire estate taxable
14 under this chapter.

15 b. (1) In the case of the estate of a decedent dying before
16 January 1, 2002 where no inheritance, succession or legacy tax is
17 due this State under the provisions of chapters 33 to 36 of this title
18 or under authority of any subsequent enactment imposing taxes of a
19 similar nature, but an estate tax is due the United States under the
20 provisions of any federal revenue act in effect as of the date of
21 death, wherein provision is made for a credit on account of taxes
22 paid the several states or territories of the United States, or the
23 District of Columbia, the tax imposed by this chapter shall be the
24 maximum amount of such credit less the aggregate amount of such
25 estate, inheritance, succession or legacy taxes actually paid to any
26 state or territory of the United States or the District of Columbia.

27 (2) In the case of the estate of a decedent dying after December
28 31, 2001 where no inheritance, succession or legacy tax is due this
29 State under the provisions of chapters 33 to 36 of this title or under
30 authority of any subsequent enactment imposing taxes of a similar
31 nature, the tax imposed by this chapter shall be determined pursuant
32 to paragraph (2) of subsection a. of this section.

33 c. For the purposes of this section, a "simplified tax system" to
34 produce a liability similar to the liability determined pursuant to
35 clause (i) of subparagraph (a) of paragraph (2) of subsection a. of
36 this section is a tax system that is based upon the \$675,000 unified
37 estate and gift tax applicable exclusion amount in effect under the
38 provisions of the federal Internal Revenue Code of 1986 (26 U.S.C.
39 s.1 et seq.) in effect on December 31, 2001, and results in general in
40 the determination of a similar amount of tax but which will enable
41 the person or corporation liable for the payment of the tax to
42 calculate an amount of tax notwithstanding the lack or paucity of
43 information for compliance due to such factors as the absence of an
44 estate valuation made for federal estate tax purposes, the absence of
45 a measure of the impact of gifts made during the lifetime of the
46 decedent in the absence of federal gift tax information, and any
47 other information compliance problems as the director determines
48 are the result of the phased repeal of the federal estate tax.

1 d. Notwithstanding any provision of law to the contrary, upon
2 the transfer of the estate of every resident decedent dying after
3 December 31, 2010 the amount of estate or transfer tax due
4 pursuant to paragraph 2 of subsection a. of this section shall be
5 modified in accordance with the following schedule:

6 (1) Upon the transfer of the estate of every resident decedent
7 dying after December 31, 2010 but before January 1, 2012, the
8 amount of tax calculated as due pursuant to paragraph 2 of
9 subsection a. of this section shall be reduced by 20% of that
10 amount;

11 (2) Upon the transfer of the estate of every resident decedent
12 dying after December 31, 2011 but before January 1, 2013, the
13 amount of tax calculated as due pursuant to paragraph 2 of
14 subsection a. of this section shall be reduced by 40% of that
15 amount;

16 (3) Upon the transfer of the estate of every resident decedent
17 dying after December 31, 2012 but before January 1, 2014, the
18 amount of tax calculated as due pursuant to paragraph 2 of
19 subsection a. of this section shall be reduced by 60% of that
20 amount;

21 (4) Upon the transfer of the estate of every resident decedent
22 dying after December 31, 2013 but before January 1, 2015, the
23 amount of tax calculated as due pursuant to paragraph 2 of
24 subsection a. of this section shall be reduced by 80% of that
25 amount; and

26 (5) Upon the transfer of the estate of every resident decedent
27 dying after December 31, 2014, no tax shall be calculated as due
28 pursuant to paragraph 2 of subsection a. of this section.

29 (cf: P.L.2002, c.31, s.1)

30
31 2. R.S.54:38-3 is amended to read as follows:

32 54:38-3. If, subsequent to the determination of the tax due
33 under this chapter, the amount of the Federal estate tax shall be
34 decreased and the amount of the Federal credit correspondingly
35 reduced by reason of any corrected assessment or redetermination
36 or the amount due under this chapter is reduced by subsection d. of
37 R.S.54:38-1, the tax due hereunder shall be reduced accordingly
38 upon satisfactory proof submitted to the **【State Tax Commissioner】**
39 Director of the Division of Taxation of the Department of the
40 Treasury, and, if the tax due hereunder shall have theretofore been
41 paid into the State treasury, the **【Comptroller of the Treasury】**
42 Director of the Division of Budget and Accounting in the
43 Department of the Treasury, on satisfactory proof of such fact
44 submitted to the **【State Tax Commissioner】** Director of the
45 Division of Taxation, and duly certified by him to the
46 **【Comptroller】** Director of the Division of Budget and Accounting,
47 shall draw his warrant on the State Treasurer in favor of the
48 executor, administrator, trustee, person or corporation who has paid

1 said tax, or who may be lawfully entitled to receive the same, for
2 the amount of such tax excessively paid and said warrant shall be
3 paid by the State Treasurer out of any appropriation for the refund
4 of transfer inheritance taxes the same as warrants for the refund of
5 such taxes under the transfer inheritance tax statutes of this State
6 are paid. The foregoing provisions respecting refund shall apply
7 with the same force and effect to any other payments determined by
8 the **[State Tax Commissioner]** Director of the Division of Taxation
9 to have been excessively made under this chapter.

10 All applications for the refund of taxes claimed to have been
11 excessively or erroneously paid hereunder must be filed with the
12 **[State Tax Commissioner]** Director of the Division of Taxation
13 within three years from the date of payment or if the refund of taxes
14 claimed is due to the effect of the reduction provided by subsection
15 d. of R.S.54:38-1 upon a prior payment the application must be
16 filed with the Director of the Division of Taxation within three
17 years from the date of enactment of P.L. , c. , (pending before
18 the Legislature as this bill).
19 (cf: P.L.1944, c. 75, s. 1.)

20

21 3. This act shall take effect immediately and apply
22 retroactively to the transfer of the estate of every resident decedent
23 dying after December 31, 2010.

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STATEMENT

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27 This bill phases out New Jersey's estate tax over a five-year
28 period. The estate tax imposes a tax on the estate of a resident
29 decedent based on the amount of the credit allowed under federal
30 estate tax law for state inheritance taxes paid as provided under the
31 Internal Revenue Code as of December 31, 2001.

32 Up until 2002, the State estate tax was designed to absorb the
33 value of federal estate tax credit remaining for state inheritance
34 taxes paid. In 2002, the federal government began phasing that
35 credit out until it no longer existed as of 2005. To avoid the
36 potential revenue loss by the change in federal estate tax treatment,
37 New Jersey tied its estate tax to the amount of such federal credit
38 immediately before the phase out took effect. The resultant State
39 estate tax structure is an imposition which is based upon a federal
40 credit which has not existed for about a decade.

41 This bill phases out New Jersey's estate tax over a five-year
42 period. Beginning with 2011 and continuing up until the tax is no
43 longer collectible in 2015, the amount of estate tax calculated as
44 due under the existing structure will be reduced by 20% each year.
45 In the event the bill takes effect after January 1, 2011, the bill does
46 contain a refund mechanism for the estate of a resident decedent
47 which pays an amount of estate tax due that is subsequently reduced
48 by the enactment of this bill. A request for refund under this

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1 mechanism must be made within three years of the date of
2 enactment of this bill.

3 The purpose of this bill is to simplify New Jersey's taxation of
4 decedent estates, while allowing for an orderly adjustment to the
5 associated revenue loss through the bill's five-year phase out.