SENATE, No. 1728

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED FEBRUARY 29, 2016

Sponsored by:
Senator PAUL A. SARLO
District 36 (Bergen and Passaic)
Senator STEVEN V. OROHO
District 24 (Morris, Sussex and Warren)
Senator JEFF VAN DREW
District 1 (Atlantic, Cape May and Cumberland)

Co-Sponsored by:
Senators Kyrillos, Pennacchio, Holzapfel and A.R.Bucco

SYNOPSIS

Increases exclusion amount under New Jersey estate tax; phases out estate tax over five years.

CURRENT VERSION OF TEXT

As introduced.
AN ACT increasing the exclusion amount under the New Jersey estate tax and phasing out the estate tax over five years, amending R.S.54:38-1.

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

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

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

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

(2) (a) Upon the transfer of the estate of every resident decedent dying after December 31, 2001, but before January 1, 2017, which would have been subject to an estate tax payable to the United States under the provisions of the federal Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on December 31, 2001, the amount of which tax shall be, at the election of the person or corporation liable for the payment of the tax under this chapter, either

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

(ii) determined pursuant to the simplified tax system as may be prescribed by the Director of the Division of Taxation in 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.
Department of the Treasury to produce a liability similar to the
liability determined pursuant to clause (i) of this paragraph reduced
pursuant to paragraph (b) of this subsection.
(b) The amount of tax liability determined pursuant to
subparagraph (a) of this paragraph shall be reduced by the
aggregate amount of all estate, inheritance, succession or legacy
taxes actually paid to any state or territory of the United States or
the District of Columbia, including inheritance, succession or
legacy taxes actually paid this State, in respect to any property
owned by such decedent or subject to such taxes as a part of or in
connection with the estate; provided however, that the amount of
the reduction shall not exceed the proportion of the tax otherwise
due under this subsection that the amount of the estate's property
subject to tax by other jurisdictions bears to the entire estate taxable
under this chapter.
(3) (a) Upon the transfer of the estate of each resident decedent
dying on or after January 1, 2017, but before January 1, 2021,
whether or not subject to an estate tax payable to the United States
under the provisions of the federal Internal Revenue Code (26
U.S.C. s.1 et seq.), the amount of the taxable estate, determined
pursuant to section 2051 of the federal Internal Revenue Code (26
U.S.C. s.2051), shall be subject to tax pursuant to the following
schedule:

<table>
<thead>
<tr>
<th>on any amount in excess of</th>
<th>tax rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100,000</td>
<td>0.8%</td>
</tr>
<tr>
<td>up to $150,000</td>
<td></td>
</tr>
<tr>
<td>$150,000</td>
<td>$400 plus 1.6% of the excess</td>
</tr>
<tr>
<td>up to $200,000</td>
<td>over $150,000</td>
</tr>
<tr>
<td>$200,000</td>
<td>$1,200 plus 2.4% of the excess</td>
</tr>
<tr>
<td>up to $300,000</td>
<td>over $200,000</td>
</tr>
<tr>
<td>$300,000</td>
<td>$3,600 plus 3.2% of the excess</td>
</tr>
<tr>
<td>up to $500,000</td>
<td>over $300,000</td>
</tr>
<tr>
<td>$500,000</td>
<td>$10,000 plus 4.0% of the excess</td>
</tr>
<tr>
<td>up to $700,000</td>
<td>over $500,000</td>
</tr>
<tr>
<td>$700,000</td>
<td>$18,000 plus 4.8% of the excess</td>
</tr>
<tr>
<td>up to $900,000</td>
<td>over $700,000</td>
</tr>
<tr>
<td>$900,000</td>
<td>$27,600 plus 5.6% of the excess</td>
</tr>
<tr>
<td>up to $1,100,000</td>
<td>over $900,000</td>
</tr>
</tbody>
</table>
On any amount in excess of $1,100,000, up to $1,600,000: $38,800 plus 6.4% of the excess over $1,100,000

On any amount in excess of $1,600,000, up to $2,100,000: $70,800 plus 7.2% of the excess over $1,600,000

On any amount in excess of $2,100,000, up to $2,600,000: $106,800 plus 8.0% of the excess over $2,100,000

On any amount in excess of $2,600,000, up to $3,100,000: $146,800 plus 8.8% of the excess over $2,600,000

On any amount in excess of $3,100,000, up to $3,600,000: $190,800 plus 9.6% of the excess over $3,100,000

On any amount in excess of $3,600,000, up to $4,100,000: $238,800 plus 10.4% of the excess over $3,600,000

On any amount in excess of $4,100,000, up to $5,100,000: $290,800 plus 11.2% of the excess over $4,100,000

On any amount in excess of $5,100,000, up to $6,100,000: $402,800 plus 12.0% of the excess over $5,100,000

On any amount in excess of $6,100,000, up to $7,100,000: $522,800 plus 12.8% of the excess over $6,100,000

On any amount in excess of $7,100,000, up to $8,100,000: $650,800 plus 13.6% of the excess over $7,100,000

On any amount in excess of $8,100,000, up to $9,100,000: $786,800 plus 14.4% of the excess over $8,100,000

On any amount in excess of $9,100,000, up to $10,100,000: $930,800 plus 15.2% of the excess over $9,100,000

On any amount in excess of $10,100,000: $1,082,800 plus 16.0% of the excess over $10,100,000
(b) A credit shall be allowed against the tax imposed pursuant to subparagraph (a) of this paragraph equal to the amount of tax which would be determined by subparagraph (a) of this paragraph if the amount of the taxable estate were equal to the exclusion amount.

For the transfer of the estate of each resident decedent dying on or after January 1, 2017, but before January 1, 2018, the exclusion amount is $1,000,000:

For the transfer of the estate of each resident decedent dying on or after January 1, 2018, but before January 1, 2019, the exclusion amount is $2,500,000:

For the transfer of the estate of each resident decedent dying on or after January 1, 2019, but before January 1, 2020, the exclusion amount is $5,000,000; and

For the transfer of the estate of each resident decedent dying on or after January 1, 2021, there shall be no tax imposed.

c. The amount of tax liability of a resident decedent determined pursuant to subparagraphs (a) and (b) of this paragraph shall be reduced by the aggregate amount of all estate, inheritance, succession or legacy taxes actually paid to any state of the United States, including inheritance taxes actually paid this State, in respect to any property owned by that decedent or subject to those taxes as a part of or in connection with the estate; provided however, that the amount of the reduction shall not exceed the proportion of the tax otherwise due under this subsection that the amount of the estate's property subject to tax by other jurisdictions bears to the entire estate taxable under this chapter.

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

(2) In the case of the estate of a decedent dying after December 31, 2001 where no inheritance, succession or legacy tax is due this State under the provisions of chapters 33 to 36 of this title or under authority of any subsequent enactment imposing taxes of a similar nature, the tax imposed by this chapter shall be determined pursuant to paragraph (2) of subsection a. of this section.
In the case of the estate of a decedent dying on or after January 1, 2017 the tax imposed by this chapter shall be determined pursuant to paragraph (3) of subsection a. of this section.

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

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

2. This act shall take effect immediately.

STATEMENT

This bill phases out the estate tax over five years, first by replacing the current $675,000 threshold with a $1,000,000 exclusion, and then increasing that exclusion amount until the tax is eliminated.

The current New Jersey estate tax is determined by reference to a repealed federal credit against a system of federal estate taxation that no longer exists. The former federal credit was part of a national revenue-sharing policy, no longer in effect, that was originally designed to provide a portion to states of what would otherwise have been a high-rate federal tax. Because the mechanics of the current tax are a remnant of that former federal imposition, the New Jersey estate tax is initially imposed at a rate of 37 percent until all the tax that would have been imposed on the value of the estate below $675,000 is made up. Under the current tax, that highest rate is imposed on even the smallest estates subject to tax.

This bill gets rid of that tax rate “bump” by abandoning the references to the old federal credit and establishing the necessary mechanics under New Jersey law. This allows the bill to replace the former $675,000 tax threshold with a true tax exclusion, initially set at $1,000,000 beginning January 1, 2017. The bill increases the exclusion amount to $2,500,000 for 2018, $3,500,000 for 2019, and $5,000,000 for 2020. For 2021 and thereafter, the bill provides that there will be no tax imposed.