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## **ESTATE TAXES & PLANNING**

Decedents' estates in New Jersey may be subject to federal and New Jersey estate taxes. In addition, beneficiaries inheriting from those estates may be subject to a New Jersey inheritance tax. A properly drafted Last Will & Testament with included trusts may help reduce tax liabilities. Tax laws are complex and ever changing; therefore, I recommend your Last Will & Testament, trusts, and estate plans be prepared by experienced counsel.

### **Potential Tax Liability**

There are three distinct tax liabilities to which New Jersey decedents' estates and beneficiaries may be subject. The federal estate, New Jersey estate and New Jersey inheritance tax are the three taxes mentioned. Both the federal estate and New Jersey estate tax are imposed upon the value of a decedent's estate. The New Jersey inheritance tax is assessed against and based upon the blood relationship, if any, of the decedent to who inherits or if it is an entity inheriting under the estate. It must be noted, tax laws are complex and fluid; therefore, I recommend the use of estate attorneys and accountants in the preparation of a Last Will & Testament, trusts, estate tax returns and estate planning.

### **Federal Estate Tax**

With the December 31, 2012 expiration of the 2010 Tax Relief Act, the American Taxpayer Relief Act of 2012 (i.e., 2012 Taxpayer Relief Act) was signed into law on January 2, 2013. Without this law, federal estate taxes were set to revert to pre-2001 levels (such as a total applicable exclusion of \$1,000,000 and a maximum tax rate of 55%). An outcome of the 2012 Tax Relief Act, as it affects federal estate taxes, makes permanent certain features, previously temporary, and extends others that former legislation had caused difficulty for long term estate tax planning.

One feature scheduled to sunset that the new law makes permanent is the concept of portability of the deceased spousal unused exclusion (DSUE) amount. This is a feature available between spouses only. Portability of the DSUE is an election made by the estate of a decedent who is survived by a spouse that gives the surviving spouse the authority to

apply the decedent's unused exclusion amount to their own transfers during their life and at the death of the surviving spouse.

Additionally, the 2012 Taxpayer Relief Act continues the deduction for state estate, inheritance, legacy or succession taxes. It also retains many of the Generation-Skipping Transfer (GST) tax-related requirements, otherwise set to expire. Conversely, the act repeals the five percent (5%) surtax on estates larger than ten million dollars.

Passage of the 2012 Taxpayer Relief Act kept the estate and gift tax rates and exemption amounts unified. The result was to reset the federal estate tax exemption amount to \$5,000,000 and to raise the maximum tax rate to 40%. In addition, the exemption amount is to be adjusted for inflation annually beginning in 2014 based upon the standard formula of Internal Revenue Code section 1(f). Regarding the GST the act also provides for a top tax rate of 40% and an exemption amount of \$5,000,000.

Federal and New Jersey estate taxes are each due nine (9) months after the decedent's death. Those taxes are collected and due from estates with a net value (the estate's value after taking all allowable deductions) at the time of a decedent's death that exceeds the applicable exemption. The law is actually much more complex than these statements indicate. For example, if you gave away your house while alive, but retained the right to live there, known as a "life estate," the value of your house will be included in your estate. There are a host of other rights which most people would not consider to be assets, which the tax laws may consider part of your estate and subject to estate tax.

Applicable exemption and top tax rate refer to those amounts in effect in the year of the decedent's death. Since these numbers change in accordance with the law people with substantial estates, I suggest exceeding \$1 million, should consult with an attorney and/or accountant who specializes in estate taxes. In a similar manner, executors of estates which appear to be below the applicable exemption are cautioned to at least consult with an estate attorney or tax accountant to determine if the estate they are administering is in fact subject to federal estate tax.

Because of this federal tax, as well as the legal and personal complexity which accompany most larger estates, every individual with (or couple with combined) net assets that might possibly exceed \$1 million (including the net value of your house, life insurance, pension and all other assets) should consult with a New Jersey attorney or accountant who specializes in estate tax planning. A proper estate tax plan can range in cost from \$1,000 to \$3,000 and up, depending on the complexity and the size of the estate. However, this fee can be very cost effective in offsetting estate tax. Individuals in this asset category can face large estate tax liability which can be reduced by having a properly drawn Last Will & Testament, durable power of attorney with gift provisions, and other planning steps.

Recognizing the uncertainty of the law as it now stands, every executor should consider at least having a consultation with a tax professional to ascertain the status of the law at the time of any decedent's death.

## **New Jersey Estate Tax**

**IMPORTANT NOTE:** According to the New Jersey Division of Taxation, "... the New Jersey Estate Tax exemption will increase from \$675,000 to \$2 million for the estates of resident decedents dying on or after January 1, 2017, but before January 1, 2018." Further, "New Jersey Estate Tax is not imposed on transfers of estates of resident decedents dying on or after January 1, 2018."

## **New Jersey Inheritance Tax**

In addition to the aforementioned New Jersey estate tax, New Jersey also has an inheritance tax. An inheritance tax means that when a New Jersey resident dies his or her assets will be taxed on the basis of who inherits those assets.

## **No Tax on Most Inheritances**

For most estates, there will be no tax. If a decedent's estate goes to a spouse, child, grandchild, parent, grandparent or stepchild, no tax is due. These beneficiaries are called "Class A" beneficiaries. If a decedent leaves money to a charity, an educational institution, a church, a hospital, a library or the State of New Jersey or its political subdivisions, no tax is due. In addition, transfers of decedent's property less than \$500 are exempt from inheritance tax.

## **Recipients That Pay Tax**

If property is given to other family members, such as the decedent's brother, sister, son-in-law or daughter-in-law the first \$25,000 is not taxed (an exemption applies). The balance of the inheritance is presently taxed at 11% for the next \$1,075,000 and thereafter at rates that range from 13% to 16%.

All other beneficiaries (persons not included in the above definitions of family) are presently taxed at 15% for the first \$700,000 and at 16% on amounts over that figure.

## **Approvals Required to Transfer Certain Assets – Forms**

Some assets (real estate, stocks and bank accounts) require the written consent of the director of the New Jersey Division of Taxation before they can be transferred. This consent is commonly known as a "tax waiver." Tax waivers (or waiver) are not generally required to transfer cars, personal property such as household goods and jewelry and most employee benefits.

In most cases for decedents dying after December 31, 2001 leaving estates valued at less than the current New Jersey Estate tax exemption or if the assets are not subject to NJ Inheritance tax to "Class A" beneficiaries (spouse, child, parent, grandchild, grandparent or stepchild) a beneficiary may transfer bank accounts, stocks and bonds by

utilizing a “Self-Executing Tax Waiver,” form L-8. The self-executing waiver filed with the bank, financial institution or broker where the asset is located.

### **Real Estate**

An L-9 Form is used for “Real Property Tax Waiver and must be filed with the Individual Tax Audit Branch, Inheritance and Estate Tax office in Trenton. If a husband and wife own real estate as tenants by the entirety, the surviving spouse need not file a form L-9; the property may be transferred at any time.

### **Inheritance Tax**

If a decedent does not leave all assets to a “Class A” beneficiary, a formal inheritance tax return will have to be filed. All of the necessary forms for filing the inheritance tax return can be obtained from the NJ Division of Taxation – Inheritance and Estate Taxes at their [website](#).

In addition, their address is:

Individual Tax Audit Branch  
Inheritance and Estate Tax  
P.O. Box 249  
Trenton, New Jersey 08695-0249

They can be reached by telephone at (609) 292-5033.

If a formal inheritance tax return is required, it is important to remember that you will need to attach a copy of the decedent’s Last Will & Testament and any amendments (codicils), a copy of the decedent’s last full year’s federal income tax return (Form 1040), and a certified check for any tax due. Formal inheritance tax returns are due *eight (8) months* after the decedent’s death. If the inheritance tax is not paid within eight months, interest will accrue and no tax waivers will be issued until payment is received. Caution: this is one month earlier than the federal and New Jersey estate tax returns are due.

### **Who Should Pay the Taxes**

A Last Will & Testament can also allow the testator to decide whether any taxes owed should be paid from the assets of the estate before distribution to the beneficiaries or whether the tax should be paid proportionally from each beneficiary’s share. This is particularly important for those individuals who are leaving property to brothers and sisters and/or nieces and nephews.

### **Tangible Personal Property**

A Last Will & Testament may make separate provisions for tangible personal property. Tangible personal property is comprised of assets like jewelry, furniture and art. Stocks and bonds are **not** considered tangible personal property. Pursuant to New Jersey

law, the Last Will & Testament may state that you will leave a list of instructions as to how tangible personal property, that is not required to be registered, should be distributed. Registered tangible personal property such as an automobile cannot be disposed of on such a list. This list, which should be kept with your Last Will & Testament, may be changed as often as you like without an attorney or witnesses. To avoid confusion, discuss with an attorney how the list should be handled to assure that the most current list is the one used.