

54:38-1

**LEGISLATIVE HISTORY CHECKLIST**  
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**NJSA:** 54:38-1 (Estate Tax)

**LAWS OF:** 1934 **CHAPTER:** 243

**Bill No:** A370

**Sponsor(s):** Homan

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**Committee: Assembly:** Taxation

**Senate:** Taxation

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**Senate:** June 19, 1934

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**Following statements are attached if available:**

**Sponsor statement:** Yes

**Committee Statement: Assembly:** No

**Senate:** No

**Fiscal Note:** No

**Veto Message:** No

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**Following were printed:**

**Reports:** No

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# STATE OF NEW JERSEY

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INTRODUCED MARCH 12, 1934

By Mr. HOMAN

Referred to Committee on Taxation

AN ACT to provide for an estate tax in certain cases in addition to any inheritance, succession or legacy taxes imposed by the State of New Jersey under authority of any other act or acts of this State, in order to obtain the benefit of the credit allowed under the federal revenue acts pertaining to federal estate taxes.

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

1 1. In addition to the inheritance, succession or legacy taxes now or here  
2 after imposed by this State under authority of chapter two hundred and  
3 twenty-eight, laws of New Jersey, one thousand nine hundred and nine, being  
4 an act entitled "An act to tax the transfer of property, of resident and non  
5 resident decedents, by devise, bequest, descent, distribution by statute, gift,  
6 deed, grant, bargain and sale, in certain cases," approved April twentieth,  
7 one thousand nine hundred and nine, and the amendments thereof and  
8 supplements thereto, or hereafter imposed under authority of any subsequent  
9 enactment, there is hereby imposed an estate or transfer tax upon the transfer  
10 of the estate of every resident decedent which is subject to an estate tax  
11 payable to the United States under the provisions of the federal revenue act  
12 of one thousand nine hundred and twenty six and the amendments thereof  
13 and supplements thereto or any other federal revenue act in effect as of the  
14 date of death of the decedent, the amount of which tax shall be the sum by  
15 which the maximum credit allowable against any federal estate tax payable

16 to the United States under any federal revenue act on account of taxes paid  
17 to any State or territory of the United States or the District of Columbia,  
18 shall exceed the aggregate amount of all estate, inheritance, succession or  
19 legacy taxes actually paid to any State or territory of the United States or  
20 the District of Columbia, including inheritance, succession or legacy taxes  
21 actually paid this State, in respect to any property owned by such decedent  
22 or subject to such taxes as a part of or in connection with his estate.

23 In an estate where no inheritance, succession or legacy tax is due this  
24 State under the provisions of chapter two hundred and twenty-eight, laws of  
25 one thousand nine hundred and nine, its amendments and supplements, or  
26 under authority of any subsequent enactment imposing taxes of a similar  
27 nature, but an estate tax is due the United States under the provisions of  
28 any federal revenue act in effect as of the date of death, wherein provision is  
29 made for a credit on account of taxes paid the several states or territories  
30 of the United States, or the District of Columbia, then the tax imposed by  
31 this act shall be the maximum amount of such credit less the aggregate  
32 amount of such estate, inheritance, succession or legacy taxes actually paid to  
33 any state or territory of the United States or the District of Columbia.

1 2. If subsequent to the determination of the tax due under this act an  
2 additional or increased estate tax shall become payable to the United States  
3 by reason of any redetermination, or additional or corrected assessment, as  
4 to a portion of which the estate is entitled to a credit on account of estate,  
5 inheritance, succession or legacy taxes paid to any state or territory of the  
6 United States or the District of Columbia, then an additional estate tax shall  
7 be due and payable to this State to be assessed in the same manner as pro-  
8 vided by section one hereof.

1 3. If subsequent to the determination of the tax due under this act the  
2 amount of the federal estate tax shall be decreased and the amount of the  
3 federal credit correspondingly reduced by reason of any corrected assessment  
4 or redetermination, then the tax due hereunder shall be reduced accord-  
5 ingly upon satisfactory proof submitted to the State Tax Commissioner, and  
6 if the tax due hereunder shall have theretofore been paid into the State

7 treasury then the Comptroller of the treasury, on satisfactory proof of such  
8 fact submitted to the State Tax Commissioner, and duly certified by him to  
9 the Comptroller, shall draw his warrant on the State Treasurer in favor of  
10 the executor, administrator, trustee, person or corporation who has paid said  
11 tax, or who may be lawfully entitled to receive the same, for the amount  
12 of such tax excessively paid and said warrant shall be paid by the State  
13 Treasurer out of any appropriation for the refund of transfer inheritance  
14 taxes the same as warrants for the refund of such taxes under the transfer  
15 inheritance tax statutes of this State are paid. The foregoing provisions  
16 respecting refund shall apply with the same force and effect to any other pay-  
17 ments determined by the State Tax Commissioner to have been excessively  
18 made under this act.

19 All applications for the refund of taxes claimed to have been excessively  
20 or erroneously paid hereunder must be filed with the State Tax Commis-  
21 sioner within two years from the date of payment.

1 4. If after the payment of the tax hereby imposed there shall become due  
2 and payable a tax upon any future interest in any property under an  
3 instrument creating an executory devise or an estate in expectancy of any  
4 kind or character which is contingent or defeasible, under section three, of  
5 chapter two hundred and twenty-eight, laws of one thousand nine hundred  
6 and nine, as amended and supplemented, or if by reason of any additional  
7 or corrected assessment by the State Tax Commissioner an additional  
8 inheritance, succession or legacy tax shall become due and payable under the  
9 aforementioned act, or under any subsequent enactment imposing taxes of a  
10 similar nature, then the tax paid under this act shall be credited against the  
11 tax arising under said section three, or any additional tax as aforesaid; *pro-*  
12 *vided, however,* that the amount so credited shall not in any event exceed the  
13 amount of the tax so accruing; *and, provided, further,* that nothing contained  
14 in this act shall be construed to reduce the amount of inheritance, succession  
15 or legacy taxes due and payable to the State under the provisions of chapter  
16 two hundred and twenty-eight, laws of one thousand nine hundred and nine,  
17 as amended and supplemented or under any subsequent enactment or to

18 entitle the estate of any resident decedent to a refund because the taxes paid  
19 under said act, its amendments and supplements, or any subsequent enact-  
20 ment shall exceed the amount of the credit under any federal revenue act  
21 in effect as of the date of death of said decedent.

1 5. All taxes imposed by this act shall become due at the date of death  
2 of the decedent and if not paid before the expiration of eighteen months from  
3 the date of death of the decedent shall bear interest at the rate of six per  
4 centum (6%) per annum from the expiration of said eighteen months until  
5 the same are paid. The State Tax Commissioner may, however, for cause  
6 shown, extend the time for payment with or without interest for such period  
7 as the circumstances, in his discretion, may require and the failure of the  
8 federal government to finally determine the amount of estate tax due within  
9 said period of eighteen months or the subsequent assessment of an additional  
10 or increased estate tax shall always be sufficient grounds for the waiving of  
11 interest until the tax has been definitely determined by the government.

1 6. The State Tax Commissioner is hereby empowered and it shall be his  
2 duty to assess and collect all taxes imposed by this act. Said taxes when  
3 and as collected by him shall be paid forthwith into the State treasury for  
4 the exclusive use of the State, and all administrators, executors, trustees,  
5 grantees, donees and vendees, shall be personally liable for any and all such  
6 taxes until paid, for which an action at law shall lie in the name of the State  
7 of New Jersey, but no lien shall attach to any property of an estate on  
8 account of the tax imposed hereunder.

1 7. It shall be the duty of the executor, administrator, trustee or other  
2 person or corporation liable for the payment of the tax hereunder to file  
3 with the State Tax Commissioner a copy of the federal estate tax return  
4 within thirty days after filing of the original with the federal government,  
5 a copy of any communication from the federal government making any final  
6 change in said return, or confirming, increasing or diminishing the tax there-  
7 by shown to be due, which is to be filed within thirty days after receipt there-  
8 of, and shall file any other evidence, information or data that the State Tax  
9 Commissioner shall in his discretion deem necessary. For the purposes of

10 this act the State Tax Commissioner is hereby authorized and empowered to  
11 promulgate such rules and regulations, not inconsistent with the provisions  
12 hereof, as he shall deem necessary.

1 8. This act shall become void and of no effect in respect to the estates of  
2 persons who die subsequent to the effective date of the repeal of said federal  
3 estate tax act or of the provision thereof providing for a credit of the tax  
4 paid to the several states and territories of the United States. This act  
5 shall likewise become void and of no effect in respect to the estates of  
6 persons who die subsequent to the effective date of any judgment of the  
7 Supreme Court of the United States declaring said federal estate tax or  
8 said credit unconstitutional and void.

1 9. If the credit provision of the revenue act of one thousand nine hundred  
2 and twenty six, the amendments thereof, supplements thereto or any  
3 subsequent federal revenue act in place thereof shall be changed by the  
4 action of congress to less or more than eighty per centum (80%), then the  
5 tax imposed hereby shall be so assessed as will be necessary to absorb the  
6 full amount of such changed credit.

1 10. The Ordinary of this State shall have jurisdiction to hear and deter-  
2 mine all questions in relation to any tax imposed under the provisions of this  
3 act. Any executor, administrator, trustee, person or corporation liable for  
4 the payment of any tax imposed by this act may appeal to the Ordinary for  
5 a review thereof within sixty days of the date of notice assessing the tax  
6 complained of, on giving bond, approved by the Ordinary, conditioned to pay  
7 said tax, together with interest and costs, if said tax be affirmed by the  
8 Ordinary.

1 11. The tax imposed by this act shall be paid out of the same funds as  
2 those from which federal estate taxes are payable.

1 12. The State Tax Commissioner shall not issue any certificate or other  
2 evidence of inheritance, succession or legacy tax paid this State in the estate  
3 of a resident decedent for use before the internal revenue bureau in an  
4 estate tax proceeding until all estate taxes imposed by this act have been  
5 paid or payment duly provided for; *provided, however,* that the State Tax

6 Commissioner may, in his discretion, pending final determination of all  
7 inheritance, succession, legacy, transfer or estate taxes due this State, issue  
8 temporary or preliminary certificates, so marked, showing payments on  
9 account of such taxes.

1 13. It is the intent and purpose of this act to obtain for this State the  
2 benefit of the credit allowed under the provisions of section three hundred and  
3 one, subsection (b) of the federal revenue act of one thousand nine hundred  
4 and twenty-six, the amendments thereof and supplements thereto and any  
5 subsequent modifications thereof. The provisions of this act shall be  
6 interpreted and construed liberally in order to accomplish the purpose there-  
7 of and the State Tax Commissioner shall have, in addition to his other powers  
8 and those in this act specified, all additional, implied and incidental powers  
9 which shall be proper and necessary to effect and carry out the expressed  
10 intent and purpose of this act.

1 14. This act shall apply to the estates of all decedents dying hereafter  
2 and to the estates of those who died subsequent to February twenty-sixth, one  
3 thousand nine hundred and twenty-six, which are still in process of settle-  
4 ment and subject to the jurisdiction of the courts of probate of this State:  
5 *provided, however,* that it shall not apply where the inheritance, succession  
6 or legacy tax due the State has been fully paid and the inheritance tax  
7 proceeding considered closed by the State Tax Commissioner, or where the  
8 estate tax due the United States has been fully paid and the time within  
9 which to claim the benefits of the credit provision of the federal revenue act  
10 of one thousand nine hundred and twenty-six, or any modifications thereof  
11 has expired prior to the effective date of this act.

1 15. If for any reason any section or any provision of this act shall be  
2 questioned in any court, and shall be held to be unconstitutional or invalid,  
3 the same shall not be held to affect any other section or provision hereof.  
4 And if for any reason any section, or provision, or the act in its entirety,  
5 shall be held to be unconstitutional or invalid, the same shall not be held to  
6 affect or invalidate, in whole or in part, any inheritance, succession or legacy  
7 tax acts of this State either heretofore or hereafter effective.

1 16. Nothing contained in this act shall be construed to decrease any  
2 inheritance, succession or legacy tax due or to become due the State or to  
3 impair the lien of the State for any such tax.

1 17. This act shall take effect immediately.

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### STATEMENT

Under the federal revenue act of one thousand nine hundred and twenty-six a credit to the extent of eighty per centum (80%) of the federal tax assessed is allowed to all estates for inheritance, legacy, transfer, estate and succession taxes actually paid to the several states and territories of the United States and the District of Columbia. If the taxes so paid are insufficient to absorb the eighty per centum (80%) credit, then the difference between the taxes so paid and the eighty per centum (80%) credit is payable to the federal government. By reason of the fact that New Jersey assesses an inheritance or succession tax and not an estate tax, and because the rates of tax cannot be made such as to exactly absorb the credit in all cases, it is the purpose of this act to impose a tax which shall be the difference between the aggregate of the New Jersey and other taxes and the eighty per centum (80%) federal credit, thereby securing to the State the full benefit of the credit provision without, in any way, increasing the tax liability of the taxpayer, since the same amount of tax is payable in any event, the only difference being that it is paid to New Jersey instead of to the federal government.