

May 28, 1963

LEGISLATIVE NOTES ON R. S. 3A:25-30 et seq.

(Apportionment of Federal and New Jersey Estate Taxes)

(1950 amendment)

No similar bill in 1949.

Laws 1950, Chapter 327 - S-268 - Introduced March 8, 1950 by Mr. Clapp.

No statement on the bill. Amended by the Senate.

July 8th - Conditionally vetoed by Governor

July 17th - Passed both houses with Governor's amendments

See:

Saiber, S. S. & Widmark, C. N.

Estate taxes and the New Jersey apportionment act.

73 NJLJ 319+ (September 21, 1950)

RS/jmk

SENATE, No. 268

STATE OF NEW JERSEY

INTRODUCED MARCH 8, 1950

By Mr. CLAPP

Referred to Committee on Taxation

AN ACT providing for the apportionment of Federal and New Jersey estate taxes on the estates of decedents in certain cases, and supplementing subtitle three of Title 3 of the Revised Statutes.

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

1 1. For the purposes of this act:

2 a. "The tax" means all taxes finally determined to be due and payable  
3 by the fiduciary, as hereinafter defined, under the laws now or hereafter  
4 enacted of the United States and under the laws now or hereafter enacted  
5 of this State imposing an estate tax.

6 b. "Gross tax estate" means all property of every description required  
7 to be included in computing the tax.

8 c. "Fiduciary" means a person acting as an executor, administrator,  
9 temporary administrator, testamentary trustee or other person acting in a  
10 fiduciary capacity who is required to pay the tax.

11 d. "Transferee" means any person, corporation or association to whom  
12 the gross tax estate or any part thereof is, or may be, transferred and to  
13 whom any benefit therein accrues other than that part of the gross tax es-  
14 tate which passes under the will of decedent, or, if there be no will comes  
15 into the possession of fiduciary for administration as a part of the gross  
16 tax estate of decedent. The trustee of any inter vivos trust and the exec-

17 utor of, trustee or other fiduciary under, the will of any other decedent hold-  
18 ing property included as a part of the gross estate shall be deemed to be a  
19 transferee.

1       2. Whenever a fiduciary has paid or may be required to pay an estate  
2 tax under any law of the State of New Jersey or of the United States upon  
3 or with respect to any property required to be included in the gross tax  
4 estate of a decedent under the provisions of any such law, hereinafter  
5 called "the tax," the amount of the tax, except in a case where a testator  
6 otherwise directs in his will, and except in a case where by any instrument  
7 other than a will, hereinafter called a "nontestamentary instrument," a  
8 direction is given for apportionment within the fund of taxes assessed upon  
9 the specific fund dealt with in such nontestamentary instrument, shall be  
10 equitably apportioned among the fiduciary and the transferees interested in  
11 the gross tax estate whether residents or nonresidents of the State, in ac-  
12 cordance with the rules of apportionment herein stated, and the trans-  
13 ferees shall contribute to the tax the amounts apportioned against them.  
14 Nothing in this act shall be taken to require an apportionment of an es-  
15 tate tax among the legatees, devisees and beneficiaries under a will inter  
16 sese.

1       3. Where a trust is created, or other provision made in any instrument  
2 whereby any person is given an interest in income, or an estate for years,  
3 or for life, or other temporary interest in any property or fund, the tax  
4 apportionable against both such temporary interest and the remainder  
5 thereafter shall, in the absence of directions to the contrary in the instru-  
6 ment, be charged against and paid out of the corpus of such property or  
7 fund without apportionment between remainders and temporary estates.  
8 The provisions of section two hereof shall apply notwithstanding that the  
9 holder of the temporary interest is given rights to the corpus, but shall not  
10 apply to an annuity.

1       4. In the absence of directions to the contrary, (i) apportionment of  
2 the tax shall be made among the fiduciary and the transferees in the pro-

3 portion that the value of the property or interest received by such fidu-  
4 ciary and transferees bears to the total value of the property and in-  
5 terest received by all transferees and the fiduciary, the values as finally  
6 determined in the respective tax proceedings being the values to be used  
7 as the basis for apportionment of the respective taxes; (ii) any exemption  
8 or deduction allowed under the law imposing the tax by reason of the  
8a relationship of any person to the decedent or by reason of the  
9 charitable purposes of the gift shall inure to the benefit of the fiduciary or  
10 transferee, as the case may be; (iii) any deduction for property previ-  
11 ously taxed and any credit for gift taxes paid by the decedent shall inure  
12 to the benefit of all transferees and the fiduciary and the tax to be appor-  
13 tioned shall be the tax after allowance of such deduction and credit; and  
14 (iv) any interest resulting from late payment of the tax shall be appor-  
15 tioned in the same manner as the tax and shall be charged wholly against  
16 income and/or corpus, in accordance with law.

1 5. Any direction as to apportionment or nonapportionment of the tax,  
2 whether contained in a will or in a nontestamentary instrument, shall be  
3 limited in its operation to the property passing thereunder unless such will  
4 or instrument otherwise directs.

1 6. In all cases in which any property required to be included in the  
2 gross tax estate does not come into the possession of the fiduciary, he shall  
3 be entitled, and it shall be his duty, to recover from the transferees or  
4 from whoever is in possession of such property, the proportionate amounts  
5 of the tax and any interest which is or may be payable by the transferees.  
6 The Superior Court or County Court in a summary action may direct the  
7 payment thereof to the fiduciary and may charge such payments against  
8 the shares or interests of the transferees in any assets in the hands of  
9 the fiduciary or person in possession of such property. If the fiduciary  
10 cannot recover the amount of the tax and interest apportioned against a  
11 transferee, the amount not recoverable shall be charged in such manner  
12 as the court may determine. Nothing in this paragraph shall require a

13 person in possession of property to defer distribution of such property un-  
14 less and until directed by the court.

1 7. No fiduciary shall be required to transfer, pay over or distribute  
2 to any person other than the fiduciary charged with the duty to collect  
3 and pay the tax any fund or property with respect to which the tax is or  
4 may be imposed until the amount of the tax apportioned or which may be  
5 apportioned against such fund or property and any interest due from the  
6 persons entitled to such fund or property is paid, or, if the tax has not  
7 been determined or apportionment made, until adequate security for such  
8 payment is furnished to the person making such transfer, payment or distri-  
9 bution.

1 8. The Superior Court or County Court in a summary action may  
2 apportion the tax and any interest, directing the fiduciary to collect the ap-  
3 portioned amounts from the property or interests in his possession of any  
4 transferees against whom such apportionment has been made and directing  
5 all other transferees against whom the tax and any interest have been or  
6 may be apportioned or from whom any part of the tax and any interest  
7 may be recovered to make payment of such apportioned amounts to such  
8 fiduciary. If it shall be ascertained in such an action that the property in the  
9 hands of the fiduciary, which belongs to a transferee liable for any part  
10 of the tax and interest, is insufficient to discharge the liability of such trans-  
11 feree, the court may direct that the balance of the apportioned amount due  
12 shall be paid to the fiduciary by such transferee; and if it shall be ascer-  
13 tained that more than the proportionate amount of the tax and interest  
14 due from any transferee has been paid by him or on his behalf, the court  
15 may direct reimbursement of the overpayment.

1 9. This act shall take effect on July first, one thousand nine hundred  
2 and fifty, and shall apply to the estates of all persons dying on or after  
3 such date.

[OFFICIAL COPY REPRINT]

SENATE, No. 268

# STATE OF NEW JERSEY

INTRODUCED MARCH 8, 1950

By Mr. CLAPP

Referred to Committee on Taxation

AN ACT providing for the apportionment of Federal and New Jersey estate taxes on the estates of decedents in certain cases, and supplementing subtitle three of Title 3 of the Revised Statutes.

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7 to be included in computing the tax.

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9 temporary administrator, testamentary trustee or other person acting in a  
10 fiduciary capacity who is required to pay the tax.

11 d. "Transferee" means any person, corporation or association to whom  
12 the gross tax estate or any part thereof is, or may be, transferred and to  
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14 tate which passes under the will of decedent, or, if there be no will comes  
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17 utor of, trustee or other fiduciary under, the will of any other decedent hold-  
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6 otherwise directs in his will, and except in a case where by any instrument  
7 other than a will, hereinafter called a "nontestamentary instrument," a  
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15 may direct reimbursement of the overpayment.

1     9. This act shall take effect on July first, one thousand nine hundred  
2 and fifty, and shall apply to the estates of all persons dying on or after  
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5 called "the tax," the amount of the tax, except in a case where a testator  
6 otherwise directs in his will, and except in a case where by any instrument  
7 other than a will, hereinafter called a "nontestamentary instrument," a  
8 direction is given for apportionment within the fund of taxes assessed upon  
9 the specific fund dealt with in such nontestamentary instrument, shall be  
10 apportioned among the fiduciary and the transferees interested in the gross  
11 tax estate whether residents or nonresidents of the State, in accordance with  
12 the rules of apportionment herein stated, and the transferees shall contribute  
13 to the tax the amounts apportioned against them. Nothing in this act shall  
14 be taken to require an apportionment of an estate tax inter sese among the  
15 legatees, devisees and beneficiaries under a will or among those who take as  
16 the next of kin and heirs at law of a person dying intestate.

1     3. Where a trust is created, or other provision made in any instrument  
2 whereby any person is given an interest in income, or an estate for years,  
3 or for life, or other temporary interest in any property or fund, the tax  
4 apportionable against both such temporary interest and the remainder  
5 thereafter shall, in the absence of directions to the contrary in the instru-  
6 ment, be charged against and paid out of the corpus of such property or  
7 fund without apportionment between remainders and temporary estates.  
8 The provisions of section three hereof shall apply notwithstanding that the  
9 holder of the temporary interest is given rights to the corpus.

1     4. In the absence of directions to the contrary, (i) such part of the tax  
2 shall be apportioned to the transferees as bears the same ratio to the total  
3 tax as the ratio which the transferees' property included in the gross tax

4 estate bears to the total property entering into the net estate for tax before  
5 the specific exemption, and the balance of the tax shall be apportioned to the  
6 fiduciary, the values as finally determined in the respective tax proceedings  
7 being the values to be used as the basis for apportionment of the respective  
8 taxes; (ii) any deduction allowed under the law imposing the tax by reason  
8A of the relationship of any person to the decedent or by reason of the  
9 charitable purposes of the gift shall inure to the benefit of the fiduciary or  
10 transferee, as the case may be; (iii) any deduction for property previ-  
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1 5. Any direction as to apportionment or nonapportionment of the tax,  
2 whether contained in a will or in a nontestamentary instrument, shall be  
3 limited in its operation to the property passing thereunder unless such will  
4 or instrument otherwise directs.

1 6. In all cases in which any property required to be included in the  
2 gross tax estate does not come into the possession of the fiduciary, he shall  
3 be entitled, and it shall be his duty, to recover from the transferees or from  
4 whoever is in possession of such property, the proportionate amounts of the  
5 tax and any interest thereon which is or may be payable by the transferees.  
6 The Superior Court or County Court in a summary action may direct the  
7 payment thereof to the fiduciary and may charge such payments against  
8 the shares or interests of the transferees in any assets in the hands of  
9 the fiduciary or person in possession of such property. If the fiduciary can-  
10 not recover the amount of the tax and interest thereon apportioned against a  
11 transferee, the amount not recoverable shall be dealt with in such manner  
12 as the court may determine. Nothing in this act shall require a person in  
13 possession of property to defer distribution of such property unless and until

14 directed by the court. A life insurance company issuing a policy of life or  
15 endowment insurance or annuity contract on the life of or insuring the  
16 decedent shall not be deemed a transferee or person in possession of property,  
17 under the provisions of this act.

1       7. No person or corporation acting in a fiduciary capacity shall be re-  
2 quired to transfer, pay over or distribute to any person other than the  
3 fiduciary charged with the duty to collect and pay the tax any fund or  
4 property with respect to which the tax is or may be imposed until the amount  
5 of the tax and any interest thereon apportioned or which may be apportioned  
6 against such fund or property and which may be due from the persons entitled  
7 to such fund or property is paid, or, if the tax has not been determined or  
8 apportionment made, until adequate security for such payment is furnished  
9 to the person making such transfer, payment or distribution. No fiduciary  
10 shall be under any duty to institute any action under this act or to make an  
11 apportionment thereunder until after the expiration of three months follow-  
12 ing the final determination of the tax; and no fiduciary shall be subject to  
13 liability or surcharge if the amount of the tax or any part thereof appor-  
14 tioned or to be apportioned against any transferee shall be collectible at any  
15 time following the death of the decedent but shall thereafter be or become  
16 uncollectible, unless there has been a breach of trust.

1       8. The Superior Court or County Court in a summary action or any  
2 other action, including any action for the settlement of any account of the  
3 fiduciary, may apportion the tax and any interest, directing the fiduciary to  
4 collect the apportioned amounts from the property or interests in his pos-  
5 session of any transferees against whom such apportionment has been made  
6 and directing all other transferees against whom the tax and any interest  
7 thereon have been or may be apportioned or from whom any part of the tax  
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9 tioned amounts to such fiduciary. If it shall be ascertained in such an action  
10 that the property in the hands of the fiduciary, which belongs to a transferee  
11 liable for any part of the tax and interest thereon, is insufficient to discharge

12 the liability of such transferee, the court may direct that the balance of the  
13 apportioned amount due shall be paid to the fiduciary by such transferee;  
14 and if it shall be ascertained that more than the proportionate amount of the  
15 tax and interest thereon due from any transferee has been paid by him or on  
16 his behalf, the court may direct reimbursement of the overpayment.

1     9. This act shall take effect on July first, one thousand nine hundred and  
2 fifty, and shall apply to the estates of all persons dying intestate on or after  
3 such date and to the estates of all persons dying testate on or after such date;  
4 *provided*, the will of such person has been executed or republished on or  
5 after such date.

[THIRD OFFICIAL COPY REPRINT]

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14 be taken to require an apportionment of an estate tax inter sese among the  
15 legatees, devisees and beneficiaries under a will or among those who take as  
16 the next of kin and heirs at law of a person dying intestate, or against the  
17 interest of any surviving spouse in any real property held in tenancy by the  
18 entirety.

1       3. Where a trust is created, or other provision made in any instrument  
2 whereby any person is given an interest in income, or an estate for years,  
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7 being the values to be used as the basis for apportionment of the respective  
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9 charitable purposes of the gift shall inure to the benefit of the fiduciary or  
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2 gross tax estate does not come into the possession of the fiduciary, he shall  
3 be entitled, and it shall be his duty, to recover from the transferees or from  
4 whoever is in possession of such property, the proportionate amounts of the  
5 tax and any interest thereon which is or may be payable by the transferees.  
6 The Superior Court or County Court in a summary action may direct the  
7 payment thereof to the fiduciary and may charge such payments against  
8 the shares or interests of the transferees in any assets in the hands of

9 the fiduciary or person in possession of such property. If the fiduciary can-  
10 not recover the amount of the tax and interest thereon apportioned against a  
11 transferee, the amount not recoverable shall be dealt with in such manner  
12 as the court may determine. Nothing in this act shall require a person in  
13 possession of property to defer distribution of such property unless and until  
14 directed by the court.

1     7. No person or corporation acting in a fiduciary capacity shall be re-  
2 quired to transfer, pay over or distribute to any person other than the  
3 fiduciary charged with the duty to collect and pay the tax any fund or  
4 property with respect to which the tax is or may be imposed until the amount  
5 of the tax and any interest thereon apportioned or which may be apportioned  
6 against such fund or property and which may be due from the persons entitled  
7 to such fund or property is paid, or, if the tax has not been determined or  
8 apportionment made, until adequate security for such payment is furnished  
9 to the person making such transfer, payment or distribution. No fiduciary  
10 shall be under any duty to institute any action under this act or to make an  
11 apportionment thereunder until after the expiration of three months follow-  
12 ing the final determination of the tax; and no fiduciary, who within a  
13 reasonable time after the expiration of three months following the final  
14 determination of the tax shall proceed to carry out the duty imposed on such  
15 fiduciary by this section, shall be subject to liability or surcharge if the  
16 amount of the tax or any part thereof apportioned or to be apportioned  
17 against any transferee or person in possession of property shall be collectible  
18 at any time following the death of the decedent but shall thereafter be or  
19 become uncollectible.

1     8. The Superior Court or County Court in a summary action or any  
2 other action, including any action for the settlement of any account of the  
3 fiduciary, may apportion the tax and any interest, directing the fiduciary to  
4 collect the apportioned amounts from the property or interests in his pos-  
5 session of any transferees against whom such apportionment has been made  
6 and directing all other transferees against whom the tax and any interest

7 thereon have been or may be apportioned or from whom any part of the tax  
8 and any interest thereon may be recovered to make payment of such appor-  
9 tioned amounts to such fiduciary. If it shall be ascertained in such an action  
10 that the property in the hands of the fiduciary, which belongs to a transferee  
11 liable for any part of the tax and interest thereon, is insufficient to discharge  
12 the liability of such transferee, the court may direct that the balance of the  
13 apportioned amount due shall be paid to the fiduciary by such transferee;  
14 and if it shall be ascertained that more than the proportionate amount of the  
15 tax and interest thereon due from any transferee has been paid by him or on  
16 his behalf, the court may direct reimbursement of the overpayment.

1     9. This act shall take effect on January first, one thousand nine hundred  
2 and fifty-one, and shall apply to the estates of all persons dying intestate on  
3 or after such date and to the estates of all persons dying testate on or after  
4 such date; *provided*, the will of such person has been executed or repub-  
5 lished on or after such date.