

R.S. 54:34-1(c)

LEGISLATIVE HISTORY OF R.S. 54:34-1(c)
(Inheritance tax - transfer of property in contemplation of death)

COPY NO. 2

L. 1909, Chapter 223, § 1 - S153
Introduced February 17, 1909 by Mr. Frelinghuysen.
No statement.
Bill passed as introduced.

The original ^{act} was amended by:

L. 1914, Chapter 151 - A772

We have no copy of the original bill in our files.

Changes made by this law are indicated below:

When the transfer is of property made by a resident, ~~or by a non-resident, when such non-resident's property is within this state~~ or is of real property within this State, or of goods, wares and merchandises within this State, or of shares of stock of corporations of this State or of national banking associations located in this State, made by nonresident, by deed, grant bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment, at or after such death.

The second sentence was added in 1922:

L. 1922, Chapter 174 - A300
Introduced February 7, 1922 by Mr. Evans.
This section not altered during passage.

Bill had statement (photostat of original bill with statement enclosed)

In 1926, a bill introduced (A565) would have changed the wording as follows:

... or of tangible personal property ~~goods, wares and merchandise~~ within this State, ~~or of shares of stock of corporations of this State or of national banking associations located in this State~~ made by a nonresident, by deed, grant

(Photostat of statement on this original bill enclosed).

Committee Substitute became law:

L. 1926, Chapter 294 - A565 (Committee Substitute)
Introduced March 18, 1926 by Mr. Siracusa.

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Revision of 1937.

Wording changed slightly.

L. 1951, Chapter 250 - A624

Introduced March 14, 1951 by Mr. Saiber.

Not amended during passage.

Bill had statement. (photostat of original bill with statement enclosed)

Changes period of transfer from 2 to 3 years.

No hearings or reports on any of these bills were located.

COPY

ASSEMBLY, NO. 300

(P. L. 1909, page 325; as amended by P. L. 1914, page 91; P. L. 1914, page 267;

P. L. 1915, page 604; P. L. 1918, page 1074; P. L. 1920, page 473.)

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 7, 1922.

By Mr. EVANS.

Referred to Committee on Judiciary.

AN ACT to amend an act entitled "An act to tax the transfer of property of resident and nonresident decedents by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale in certain cases," approved April twentieth, one thousand nine hundred and nine.

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

1 I. Section one of the act to which this act is an amendment is hereby amended
2 to read as follows:

3 I. A tax shall be and is hereby imposed upon the transfer of any property, real
4 or personal, of the value of five hundred dollars or over, or of any interest therein,
5 or income therefrom, in trust or otherwise, to persons or corporations, except as
6 hereinafter provided, in the following cases:

7 First. When the transfer is by will or by the intestate laws of this State from
8 any person dying seized or possessed of the property while a resident of the State.

9 Second. When the transfer is by will or intestate law of real property within
10 this State, or of goods, wares and merchandise within this State, or of shares of
11 stock of corporations of this State [.] or of national banking associations located in
12 this State, and the decedent was a nonresident of the State at the time of his death.

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Trenton, N. J.

13 Third. When the transfer is of property made by a resident, or is of real prop-
14 erty within this State, or of goods, wares and merchandise within this State, or of
15 shares of stock of corporations of this State or of national banking associations
16 located in this State, made by a nonresident, by deed, grant, bargain, sale or gift
17 made in contemplation of the death of the grantor, vendor or donor, or intended to
18 take effect in possession or enjoyment at or after such death. Every transfer by
19 deed, grant, bargain, sale or gift, made within two years prior to the death of the
20 grantor, vendor or donor, of a material part of his estate, or in the nature of a
21 final disposition or distribution thereof, and without an adequate valuable considera-
22 tion, shall, in the absence of proof to the contrary, be deemed to have been made in
23 contemplation of death within the meaning of this section.

24 Fourth. When any person or corporation comes into the possession or enjoy-
25 ment, by a transfer from a resident or from a nonresident decedent, when such nonresi-
26 dent decedent's property consists of real property within this State or of shares of stock
27 of corporations of this State or of national banking associations located in this State,
28 of an estate in expectancy of any kind or character which is contingent or defeasible,
29 transferred by an instrument taking effect after the passage of this act, or of any
30 property transferred pursuant to a power of appointment contained in any instru-
31 ment taking effect after the passage of this act.

32 Fifth. Whenever property, real or personal, is held in the joint names of two
33 or more persons, or is deposited in banks or other institutions or depositaries in the
34 joint names of two or more persons and payable to either or the survivor, upon the
35 death of one of such persons, the right of the surviving joint tenant or joint tenants,
36 person or persons, to the immediate ownership or possession and enjoyment of such
37 property shall be deemed a transfer taxable under the provisions of this act in the
38 same manner as though the whole property to which such transfer relates belonged
39 absolutely to the deceased joint tenant or joint depositor and had been devised or
40 bequeathed to the surviving joint tenant or joint tenants, person or persons, by such
41 deceased joint tenant or joint depositor by will, excepting therefrom such part there-
42 of as may be proved to the satisfaction of the Comptroller of the Treasury by the

43 surviving joint tenant or joint tenants, person or persons, to have originally belonged
44 to him or them and never to have belonged to the decedent.

45 All taxes imposed by this act shall be at the rate of **[five]** eight per centum
46 upon the clear market value of such property, except as hereinafter provided, to
47 be paid to the Treasurer of the State of New Jersey, for the use of said State, and
48 all administrators, executors, trustees, grantees, donees or vendees, shall be person-
49 ally liable for any and all such taxes until the same shall have been paid as herein-
50 after directed, for which an action of debt shall lie in the name of the State of New
51 Jersey. In ascertaining the clear market value of such property the only deductions
52 to be allowed shall be the debts of the decedent and the expenses of the administra-
53 tion of the estate, and no deductions whatsoever shall be allowed for or on account
54 of any estate tax, inheritance tax, transfer tax, or any tax in the nature thereof paid
55 on said estate to the United States or to any State or territory or to any foreign
56 jurisdiction. In the case of a resident decedent no deduction whatsoever shall be al-
57 lowed for taxes or other incumbrances chargeable against real property belonging to
58 said resident decedent and located outside the State of New Jersey.

59 **[**Property passing to churches, hospitals and orphan asylums, public libraries,
60 Bible and tract societies, religious, benevolent and charitable institutions and organ-
61 izations, organized under the laws of this State, or operating solely within this State,
62 shall be exempt from taxation under this act and also property to the amount of
63 five thousand dollars passing to a father, mother, husband, wife, child or lineal
64 descendant born in lawful wedlock, brother or sister, or the wife or widow of a son,
65 or the husband of a daughter, shall be exempt from taxation under this act, but
66 no other exemption of any kind or character shall be allowed. Property transferred
67 to a father, mother, brother or sister, or the wife or widow of a son, or the hus-
68 band of a daughter, shall be taxed at the rate of two per centum on any amount in
69 excess of five thousand dollars, up to fifty thousand dollars; two and one-half per
70 centum on any amount in excess of fifty thousand dollars up to one hundred and
71 fifty thousand dollars; three per centum on any amount in excess of one hundred
72 and fifty thousand dollars, up to two hundred and fifty thousand dollars; and four

73 per centum on all amounts in excess of two hundred and fifty thousand dollars.
74 Property transferred to any child or children, husband or wife, of a decedent, or to
75 the issue of any child or children of a decedent, shall be taxed at the rate of one
76 per centum on any amount in excess of five thousand dollars, up to fifty thousand
77 dollars; one and one-half per centum on any amount in excess of fifty thousand dol-
78 lars, up to one hundred and fifty thousand dollars; two per centum on any amount
79 in excess of one hundred and fifty thousand dollars, up to two hundred and fifty
80 thousand dollars; and three per centum on any amount in excess of two hundred
81 and fifty thousand dollars. Property passing to a child or children of any decedent,
82 adopted in conformity with the laws of this State, or any of the United States, or
83 of any foreign kingdom or nation, or to the issue of any such child or children,
84 shall be taxed at the same rate with the same exemption up to five thousand dol-
85 lars allowed as a child or children born in lawful wedlock, or the issue of any such
86 child or children, and the same amount of tax shall be imposed upon and the same
87 exemption up to five thousand dollars allowed to any child to whom such decedent
88 for not less than ten years prior to such transfer stood in the mutually acknowl-
89 edged relation of a parent; *provided, however,* such relationship began at or before
90 the child's fifteenth birthday and was continuous for at least ten years thereafter;
91 *provided, further,* that nothing in this act contained shall be construed to repeal or
92 in anywise impair the provisions of an act entitled "An act to provide for the pay-
93 ment to counties of five per centum of transfer taxes collected," approved April
94 twenty-first, one thousand nine hundred and nine, but the said act shall remain in
95 full force and effect as though this act had not been passed.]

96 Property passing to or for the use of the State of New Jersey, or to or for the
97 use of a municipal corporation within the State of New Jersey, or other political sub-
98 division thereof, for exclusively public purposes shall be exempt from taxation under
99 this act. Property passing to churches, hospitals and orphan asylums, public
100 libraries, Bible and tract societies, religious, benevolent and charitable institutions
101 and organizations, organized under the laws of this State and operating solely
102 within this State or not organized under the laws of this State, but operating solely

103 within this State, a father, mother, brother or sister of a decedent, wife or widow of
 104 a son of a decedent, or the husband of a daughter of a decedent, shall be taxed at the
 105 rate of five per centum. Property passing to a husband, wife, child or children or
 106 to the issue of any child or children of a decedent, shall be taxed at the rate of one
 107 per centum on any amount in excess of five thousand dollars, up to fifty thousand dol-
 108 lars; one and one-half per centum on any amount in excess of fifty thousand dol-
 109 lars, up to one hundred and fifty thousand dollars; two per centum on any amount in
 110 excess of one hundred and fifty thousand dollars, up to two hundred and fifty thou-
 111 sand dollars; and three per centum on any amount in excess of two hundred and
 112 fifty thousand dollars. Property passing to a child or children of any decedent,
 113 adopted in conformity with the laws of this State, or of any of the United States,
 114 or of any foreign kingdom or nation, or to the issue of any such child or children,
 115 shall be taxed at the same rate and with the same exemption up to five thousand dol-
 116 lars allowed to a child or children born in lawful wedlock, or to the issue of any
 117 such child or children; provided, however, that nothing in this act contained shall
 118 be construed to repeal or in anywise impair the provisions of an act entitled "An act
 119 to provide for the payment to counties of five per centum of transfer taxes col-
 120 lected," approved April twenty-first, one thousand nine hundred and nine, but the
 121 said act shall remain in full force and effect as though this act had not been passed.

1 2. Section five of the act to which this act is an amendment is hereby amended
 2 to read as follows:

3 5. All taxes imposed by this act shall be due and payable at the death of the
 4 testator, intestate, grantor, donor or vendor, unless in this act otherwise provided,
 5 and [if the same are paid within six months from the date of the death of the tes-
 6 tator, intestate, grantor, donor or vendor, a discount of five per centum shall be ai-
 7 lowed and deducted from such taxes;] if not paid within one year from the date of
 8 the death of the testator, intestate, grantor, donor or vendor, such tax shall bear in-
 9 terest at the rate of ten per centum per annum, to be computed from the expiration of
 10 one year from the date of the death of such testator, intestate, grantor, donor or ven-
 11 dor, or until the same is paid, and in all cases where the executors, administrators,

12 grantees, donees, vendees or trustees do not pay such tax within one year from the
13 death of the decedent, they shall be required to give a bond to the State of New Jersey
14 in double the amount of the tax, conditioned to pay said tax, and any interest which
15 may fall due thereon, said bond to be approved as to the form and sufficiency there-
16 of by the Comptroller of the Treasury of this State.

17 All taxes levied and assessed under this act [on the transfer of any real prop-
18 erty] shall be and remain a lien on [said real property,] all property owned by the
19 decedent as of the date of death until paid or secured by bond, as provided for in
20 the several provisions of this act.

1 3. Section nine of the act to which this act is an amendment is hereby
2 amended to read as follows:

3 9. Any sum of money retained by any executor, administrator or trustee, or paid
4 into his hands for any tax due under this act, shall be paid by him, within thirty days
5 thereafter, to the Treasurer of this State, and the person so paying shall be entitled
6 to receive a receipt signed by the Treasurer of this State and countersigned by the
7 Comptroller thereof, for such payment, which receipt shall be a proper voucher in
8 the settlement of the account of any such executor, administrator or trustee. [such
9 person so paying, in addition to the foregoing receipt, shall, if the tax paid be in
10 part or in whole upon real property, be entitled to receive an additional receipt,
11 signed by the Treasurer of this State and countersigned by the Comptroller thereof,
12 in which shall be designated upon what real property, if any, said tax has been paid,
13 and by whom paid, and whether or not it is in full of said tax on said real property,
14 and said receipt may be recorded in the clerk's office of the county in which said
15 real property is situated, in a book properly indexed, which shall be kept by said
16 clerk for such purpose and labeled "collateral inheritance tax," for which record-
17 ing and indexing the said clerk shall receive a fee of two dollars.]

18 Whenever the tax and interest chargeable has been paid in full or secured by
19 bond, as is provided for in the several provisions of this act, or whenever any estate
20 is determined by the Comptroller of the Treasury to be exempt from the payment
21 of any inheritance tax to the State of New Jersey, there shall be issued to the execu-

22 tor, administrator or other proper representative of the estate, a statement of the
23 fact in such form as may be adopted by the Comptroller of the Treasury, which
24 statement shall include a concise but definite description of the real property dis-
25 closed in the proceeding and shall be signed by the Comptroller. Such statement
26 may also be recorded in the clerk's office of the county in which said real property
27 is situated, in the book which shall be kept by said clerk for such purpose, labeled
28 "Inheritance Tax," for which recording and indexing the said clerk shall receive a
29 fee at the same rates as those charged for recording deeds, mortgages, bills of sale,
30 chattel mortgages and all other documents.

1 4. Section twenty-three of the act to which this act is an amendment is hereby
2 amended to read as follows:

3 23. The Comptroller of the Treasury of this State shall keep a record in his
4 department of all returns made by appraisers, cash value of annuities, life estates
5 and term of years, and the amount of all taxes assessed by him; in addition to the
6 foregoing the said Comptroller may enter in said books all other information and
7 data which he may deem desirable or proper. All returns made by appraisers and
8 all data otherwise gathered by the Comptroller of the Treasury, shall be considered
9 as privileged communications and the same shall not be exhibited for inspection to
10 any person or persons other than the executor or the administrator or a beneficiary
11 entitled under the terms of the last will and testament or the intestate laws to share
12 in the estate, or the duly authorized attorney of said executor, administrator or
13 beneficiary. Nothing in this section shall be construed as prohibiting the use of such
14 returns made by appraisers and all data otherwise gathered by the Comptroller in
15 legal proceedings involving the assessment, collection or abatement of taxes pro-
16 vided for by the various inheritance tax statutes prevailing in this State.

1 5. This act shall take effect immediately.

STATEMENT.

The purpose of this bill is to provide for the following:

1. Certain exemptions are eliminated and the rates of taxation increased. This elimination of exemptions and change in the rates do not apply to husband, wife, child or lineal descendant.
2. A provision shifting the burden of proof from the State to the transferee in certain cases.
3. A provision relating to the taxation of the interest of the decedent in property held jointly with one or more persons.
4. A provision relating to the method of fixing the market value of property and directing that estate taxes, inheritance taxes and taxes of like description assessed in other jurisdictions shall not be allowed as deductions.
5. A provision eliminating the item of discount. No beneficial results accrue to the State by reason of the statutory discount and it is deemed advisable to eliminate the same.
6. A provision relating to the issuance of a certificate or statement releasing property from the lien of the tax. This provision is an amendment to the statute as presently constituted and is intended to simplify the administrative features.
7. A provision directing that the records relating to inheritance taxation shall be considered as privileged communications.

A565 of 1926

9

66 of debt in the name of the State of New Jersey, said penalty, when recovered, to
67 be paid into the treasury of the State of New Jersey.

68 Nothing in this section contained shall apply to the assignment or transfer of
69 any stock of corporations of this State or of national banking associations located in
70 this State standing in the name of or belonging to a nonresident decedent who dies
71 on or after the date on which this amendment shall take effect, or standing in the
72 joint names of such a nonresident decedent and one or more persons, or in trust
73 for such a nonresident decedent, and nothing in this section contained shall require
74 notice of any such intended transfer of any such stock to be served upon the
75 Comptroller of the Treasury of this State or shall require the consent in writing
76 of said Comptroller thereto.

77 A tax shall be assessed on the transfer of property made subject to tax as
78 aforesaid in this State of a nonresident decedent if all or any part of the estate
79 of such decedent, wherever situated, shall pass to persons or corporations taxable
80 under this act, which tax shall bear the same ratio to the entire tax which the said
81 estate would have been subject to under this act if such nonresident decedent had
82 been a resident of this State, and all his property, real and personal, had been
83 located within this State, as such taxable property within this State bears to the
84 entire estate, wherever situated: *provided*, that nothing in this clause contained
85 shall apply to any specific bequest or devise of any property in this State.

1 3. This act shall take effect July first, one thousand nine hundred and twenty-
2 six.

STATEMENT.

This amendment to the Inheritance Tax Act eliminates by amendment the tax upon nonresident estates as far as intangible personal property is concerned. It eliminates the exemption now allowed for taxes paid to the Federal Government. This is because of the exemption or offset up to eight percent of the tax now allowed by the Federal Government for such taxes as paid to the State.

It revises these schedules particularly in the higher brackets so as to absorb as much as possible of the exemption or offset allowed by the Federal Government for taxes paid to the State.

In the 1926 Federal Revenue Act the eighty percent offset was an equivalent to an invitation to the States to absorb such revenues for State purposes. This made it necessary to continue our brackets at increasing rates up into the high figures to absorb such allowances. In this way a substantial portion of the loss in revenues by New Jersey in abandoning the nonresident transfer inheritance schedule will be replaced.

ASSEMBLY, No. 624

STATE OF NEW JERSEY

INTRODUCED MARCH 14, 1951

By Mr. SAIBER

Referred to Committee on Taxation

AN ACT concerning transfer inheritance taxes, and amending section 54:34-1 of the Revised Statutes.

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

1 1. Section 54:34-1 of the Revised Statutes is amended to read as fol-
2 lows:

3 54:34-1. Except as provided in section 54:34-4 of this Title, a tax shall
4 be and is hereby imposed at the rates set forth in section 54:34-2 of this
5 Title upon the transfer of property, real or personal, of the value of five
6 hundred dollars (\$500.00) or over, or of any interest therein or income there-
7 from, in trust or otherwise, to or for the use of any transferee, distributee
8 or beneficiary in the following cases:

9 a. Where real or tangible personal property situated in this State or
10 intangible personal property wherever situated is transferred by will or by
11 the intestate laws of this State from a resident of this State dying seized
12 or possessed thereof.

13 b. Where real or tangible personal property within this State of a de-
14 cedent not a resident of this State at the time of his death is transferred by
15 by will or intestate law.

16 c. Where real or tangible personal property within this State of a resi-
17 dent of this State or intangible personal property wherever situate of a
18 resident of this State or real or tangible personal property within this State
19 of a nonresident, is transferred by deed, grant, bargain, sale or gift made
20 in contemplation of the death of the grantor, vendor or donor, or intended to
21 take effect in possession or enjoyment at or after such death.

22 A transfer by deed, grant, bargain, sale or gift made without adequate
23 valuable consideration and within **[two]** three years prior to the death of
24 the grantor, vendor or donor of a material part of his estate or in the nature
25 of a final disposition or distribution thereof, shall, in the absence of proof to
26 the contrary, be deemed to have been made in contemplation of death
27 within the meaning of paragraph "c" of this section; but no such transfer
28 made prior to such three-year period shall be deemed or held to have been
29 made in contemplation of death.

30 d. Where by transfer of a resident decedent of real or tangible personal
31 property within this State or intangible property wherever situate, or by
32 transfer of a nonresident decedent of real or tangible personal property
33 within this State, a transferee, distributee or beneficiary comes into the pos-
34 session or enjoyment therein of:

35 (1) An estate in expectancy of any kind or character which is con-
36 tingent or defeasible, transferred by an instrument taking effect on or
37 after July fourth, one thousand nine hundred and nine; or

38 (2) Property transferred pursuant to a power of appointment con-
39 tained in an instrument taking effect on or after July fourth, one thou-
40 sand nine hundred and nine.

41 e. When a decedent appoints or names one or more executors or trust-
42 tees and bequeaths or devises property to him or them in lieu of commis-
43 sions or allowances, the transfer of which property would otherwise be tax-
44 able, or appoints him or them his residuary legatee or legatees, and the
45 bequest, devise or residuary legacy exceeds what would be reasonable com-

46 pension for his or their services, such excess shall be deemed a transfer
47 liable to tax. The ordinary or orphans' court, having jurisdiction in the
48 case, shall determine what is a reasonable compensation.

49 f. The right of the surviving joint tenant or joint tenants, person or
50 persons, to the immediate ownership or possession and enjoyment of real or
51 personal property held in the joint names of two or more persons, or de-
52 posited in banks or other institutions or depositories in the joint names of
53 two or more persons and payable to either or the survivor, shall upon the
54 death of one of such persons, be deemed a transfer taxable in the same
55 manner as though such property had belonged absolutely to the deceased
56 joint tenant or joint depositor and had been devised or bequeathed by his
57 will to the surviving joint tenant or joint tenants, person or persons, ex-
58 cepting therefrom such part of the property as such survivor or survivors
59 may prove to the satisfaction of the State Tax Commissioner to have
60 originally belonged to him or them and never to have belonged to the de-
61 cedent.

62 In the case of a nonresident decedent, paragraph "f" of this section
63 shall apply only to real or tangible personal property within this State.

1 2. This act shall take effect January first, one thousand nine hundred
2 and fifty-two.

STATEMENT

The purpose of the proposed amendment to Revised Statutes, section
54:34-1, is to conform the New Jersey Transfer Inheritance Tax Law to the Fed-
eral Estate Tax Law, with respect to transfers made more than three years
prior to death.

The proposed amendment would lengthen the period within which transfers
made prior to death are presumed to have been made in contemplation of death.

On the other hand, it would remove from the scope of the contemplation of death clause all transfers made more than three years prior to the date of the decedent's death. Thus a donor would know that any gifts which he made more than three years prior to his death would not, subsequently, be challenged as having been made in contemplation of death.

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 624

STATE OF NEW JERSEY

INTRODUCED MARCH 14, 1951

By Mr. SAIBER

Referred to Committee on Taxation

AN ACT concerning transfer inheritance taxes, and amending section 54:34-1 of
the Revised Statutes.

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

1 1. Section 54:34-1 of the Revised Statutes is amended to read as fol-
2 lows:

3 54:34-1. Except as provided in section 54:34-4 of this Title, a tax shall
4 be and is hereby imposed at the rates set forth in section 54:34-2 of this
5 Title upon the transfer of property, real or personal, of the value of five
6 hundred dollars (\$500.00) or over, or of any interest therein or income there-
7 from, in trust or otherwise, to or for the use of any transferee, distributee
8 or beneficiary in the following cases:

9 a. Where real or tangible personal property situated in this State or
10 intangible personal property wherever situated is transferred by will or by
11 the intestate laws of this State from a resident of this State dying seized
12 or possessed thereof.

13 b. Where real or tangible personal property within this State of a de-
14 cedent not a resident of this State at the time of his death is transferred by
15 by will or intestate law.

16 c. Where real or tangible personal property within this State of a resi-
17 dent of this State or intangible personal property wherever situate of a
18 resident of this State or real or tangible personal property within this State
19 of a nonresident, is transferred by deed, grant, bargain, sale or gift made
20 in contemplation of the death of the grantor, vendor or donor, or intended to
21 take effect in possession or enjoyment at or after such death.

22 A transfer by deed, grant, bargain, sale or gift made without adequate
23 valuable consideration and within three years prior to the death of the
24 grantor, vendor or donor of a material part of his estate or in the nature
25 of a final disposition or distribution thereof, shall, in the absence of proof to
26 the contrary, be deemed to have been made in contemplation of death
27 within the meaning of paragraph "c" of this section; but no such transfer
28 made prior to such three-year period shall be deemed or held to have been
29 made in contemplation of death.

30 d. Where by transfer of a resident decedent of real or tangible personal
31 property within this State or intangible property wherever situate, or by
32 transfer of a nonresident decedent of real or tangible personal property
33 within this State, a transferee, distributee or beneficiary comes into the pos-
34 session or enjoyment therein of:

35 (1) An estate in expectancy of any kind or character which is con-
36 tingent or defeasible, transferred by an instrument taking effect on or
37 after July fourth, one thousand nine hundred and nine; or

38 (2) Property transferred pursuant to a power of appointment con-
39 tained in an instrument taking effect on or after July fourth, one thou-
40 sand nine hundred and nine.

41 e. When a decedent appoints or names one or more executors or trus-
42 tees and bequeaths or devises property to him or them in lieu of commis-
43 sions or allowances, the transfer of which property would otherwise be tax-
44 able, or appoints him or them his residuary legatee or legatees, and the
45 bequest, devise or residuary legacy exceeds what would be reasonable com-

46 pension for his or their services, such excess shall be deemed a transfer
47 liable to tax. The ordinary or orphans' court, having jurisdiction in the
48 case, shall determine what is a reasonable compensation.

49 f. The right of the surviving joint tenant or joint tenants, person or
50 persons, to the immediate ownership or possession and enjoyment of real or
51 personal property held in the joint names of two or more persons, or de-
52 posited in banks or other institutions or depositories in the joint names of
53 two or more persons and payable to either or the survivor, shall upon the
54 death of one of such persons, be deemed a transfer taxable in the same
55 manner as though such property had belonged absolutely to the deceased
56 joint tenant or joint depositor and had been devised or bequeathed by his
57 will to the surviving joint tenant or joint tenants, person or persons, ex-
58 cepting therefrom such part of the property as such survivor or survivors
59 may prove to the satisfaction of the State Tax Commissioner to have
60 originally belonged to him or them and never to have belonged to the de-
61 cedent.

62 In the case of a nonresident decedent, paragraph "f" of this section
63 shall apply only to real or tangible personal property within this State.

1 2. This act shall take effect January first, one thousand nine hundred
2 and fifty-two.

LEGISLATIVE HISTORY OF R.S. 54:34-1
(Transfer Inheritance Tax)

COPY NO. **6**

for material see copy 2

The first inheritance tax law in New Jersey was passed in 1892, *c. 122*. This act was copied from New York laws of 1885, Chapter 483 (Randolph, New Jersey Inheritance and Transfer Tax Laws, 1913, p. 102). *Assembly no. 394*

This Act of 1892 was amended several times. For a brief history of these amendments, see Rogers, New Jersey Transfer Inheritance Tax, 1940, pp. 2-11.

Senate Bill No. 153 of 1909 had no statement of purpose, and passed the Legislature without amendment to become Chapter 228 of Laws of 1909.

Chapter 250 of Laws of 1951 had statement on bill (A624); ~~_____~~

See also the following treatises, particularly the first two items:

NJ
TB84
I6
R183

Randolph, Joseph F.
New Jersey inheritance and transfer tax laws. Newark, Soney & Sage, 1913.

NJ
TB84
I6
R727

Rogers, Leo M.
New Jersey transfer inheritance tax. New York, Baker, Voorhis, 1940.

TB82
I6
D722

Dos Passos, Benjamin F.
The law of collateral inheritance, legacy and succession taxes. New York, Strouse, 1890.

TB82
I6
R825

Ross, Peter V.
Inheritance taxation. San Francisco, Bancroft-Whitney, 1912.

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*N.J. Commission on State Tax Policy
Twelfth report. 1968
"History of the New Jersey Transfer
Inheritance Tax." p. 56 ff.*

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ASSEMBLY, No. 394.

STATE OF NEW JERSEY.

INTRODUCED FEBRUARY 29, 1892.

By Mr. HEANEY.

Referred to Committee on Revision of the Laws.

AN ACT to tax gifts, legacies and collateral inheritance in certain cases.

1 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey.*
2 That after the passage of this act all property which shall pass by will or
3 by the intestate laws of this state from any person who may die seized or
4 possessed of the same while being a resident of the state, or which property
5 shall be within this state, or any part of such property, or any interest
6 therein or income therefrom, transferred by deed, grant, sale or gift made
7 or intended to take effect in possession or enjoyment after the death of the
8 grantor or bargainor, to any person or persons, or to a body politic or cor-
9 porate, in trust or otherwise, or by reason whereof any person or body
10 politic or corporate shall become beneficially entitled, in possession or ex-
11 pectancy, to any property, or to the income thereof, other than to or for the
12 use of father, mother, husband, wife, children, brother and sister and lineal
13 descendants born in lawful wedlock, and the wife or widow of a son and the
14 husband of a daughter, shall be and is subject to a tax of five dollars on
15 every hundred dollars of the clear market value of such property, and at and
16 after the same rate for any less amount, to be paid to the treasurer of the state
17 of New Jersey, for the use of the state, and all administrators, executors
18 and trustees shall be liable for any and all such taxes until the same shall

19 have been paid, as hereafter directed; *provided*, that an estate which may
20 be valued at a less sum than five hundred dollars shall not be subject to
21 said duty or tax.

1 2. *And be it enacted*, That when any person shall bequeath or devise
2 any property, or interest therein, or income therefrom, to a father, mother,
3 husband, wife, children, brother and sister, the widow of a son, or a lineal
4 descendant, during life or for a term of years, and the remainder to a col-
5 lateral heir of the decedent, or to a stranger in blood, or to a body politic or
6 corporate, at their decease, or on the expiration of such term, the property
7 so passing shall be appraised immediately after the death of the decedent
8 at what was the fair market value thereof at the time of the death of the
9 decedent, in the manner hereinafter provided; and after deducting there-
10 from the value of said life estate, or term of years, the tax prescribed by
11 this act on the remainder shall be immediately due and payable to the
12 treasurer of the state of New Jersey, and together with the interest
13 thereon, shall be and remain a lien on said property until the same is paid;
14 *provided*, that the person or persons, or body politic or corporate beneficially
15 interested in the property chargeable with said tax, may elect not to pay
16 the same until they shall come into the actual possession or enjoyment of
17 such property, or, and in that case, such person or persons, or body politic
18 or corporate, shall give a bond to the state of New Jersey in a penalty three
19 times the amount of the tax arising upon personal estate, with such
20 sureties as the chancellor or a justice of the supreme court may approve,
21 conditioned for the payment of said tax and interest thereon, at such time
22 or period as they or their representatives may come into the actual pos-
23 session or enjoyment of such property, which bond shall be filed in the
24 office of the clerk in chancery; *provided, further*, that such person shall
25 make a full, verified return of such property to the chancellor of the state
26 and file the same in the office of the clerk in chancery within one year

27 from the death of the decedent, and within that period enter into such
28 security and renew the same every five years.

1 3. *And be it enacted*, That whenever a decedent appoints or names one
2 or more executors or trustees and makes a bequest or devise of property to
3 them in lieu of their commissions or allowances which otherwise would
4 be liable to said tax, or appoints them his residuary legatees, and said
5 bequest, devises or residuary legacies exceed what would be a reasonable
6 compensation for their services, such excess shall be liable to said tax, and
7 the chancellor or the orphans' court having jurisdiction in the case shall
8 fix such compensation.

1 4. *And be it enacted*, That all taxes imposed by this act, unless other-
2 wise herein provided for, shall be due and payable at the death of the
3 decedent, and if the same are paid within one year, interest at the rate of
4 six per centum per annum shall be charged and collected thereon, but if
5 not so paid, interest at the rate of ten per centum per annum shall be
6 charged and collected from the time said tax accrued; *provided*, that if said
7 tax is paid within six months from the accruing thereof, interest shall not
8 be charged or collected thereon, but a discount of five per centum shall be
9 allowed and deducted from said tax; and in all cases where the executors,
10 administrators or trustees do not pay such tax within one year from the
11 death of the decedent, they shall be required to give a bond, in the form and
12 to the effect prescribed in section two of this act, for the payment of
13 said tax, together with interest.

1 5. *And be it enacted*. That the penalty of ten per centum per annum
2 imposed by section four hereof for the non-payment of said tax shall not
3 be charged where, in cases by reason of claims made upon the estate,
4 necessary litigation or other unavoidable cause of delay, the estate of any
5 decedent, or a part thereof, cannot be settled at the end of a year from the
6 death of the decedent, and in such cases only six per centum per annum

7 shall be charged upon the said tax from the expiration of such year until
8 the cause of such delay is removed.

1 6. *And be it enacted*, That any administrator, executor or trustee having
2 in charge or trust any legacy or property for distribution subject to the
3 said tax, shall deduct the tax therefrom, or, if the legacy or property be not
4 money, he shall collect the tax thereon upon the appraised value thereof
5 from the legatee or person entitled to such property, and he shall not
6 deliver, or be compelled to deliver, any specific legacy or property, subject
7 to tax, to any person until he shall have collected the tax thereon; and
8 whenever any such legacy shall be charged upon or payable out of real
9 estate, the heir or devisee, before paying the same, shall deduct said tax
10 therefrom, and pay the same to the executor, administrator or trustee, and
11 the same shall remain a charge on such real estate until paid, and the pay-
12 ment thereof shall be enforced by the executor, administrator or trustee in
13 the same manner that the payment of such legacy might be enforced; if,
14 however, such legacy be given in money to any person for a limited period,
15 he shall retain the tax upon the whole amount, but if it be not in money,
16 he shall make application to the court having jurisdiction of his accounts,
17 to make an apportionment, if the case require it, of the sum to be paid into
18 his hands by such legatees, and for such further order relative thereto as
19 the case may require.

1 7. *And be it enacted*, That all executors, administrators and trustees
2 shall have full power to sell so much of the property of the decedent as
3 will enable them to pay said tax, in the same manner as they may be
4 enabled by law to do for the payment of debts of their testators and intes-
5 tates, and the amount of said tax shall be paid as hereinafter directed.

1 8. *And be it enacted*, That any sum of money retained by any executor,
2 administrator or trustee, or paid into his hands for any tax on any property,
3 shall be paid by him within thirty days thereafter, to the treasurer of the
4 state of New Jersey; and the said treasurer shall give, and every executor,

5 administrator or trustee shall take duplicate receipts from him of such pay-
6 ment; one of which receipts he shall immediately send to the comptroller
7 of the state, whose duty it shall be to charge the treasurer so receiving the
8 tax with the amount thereof, and countersign the same and return it to the
9 executor, administrator or trustee, whereupon it shall be a proper voucher
10 in the settlement of his accounts; but an executor, administrator or trustee
11 shall not be entitled to credit in his accounts nor be discharged from lia-
12 bility for such tax unless he shall produce a receipt so countersigned by
13 the comptroller, or a copy thereof certified by him.

1 9. *And be it enacted*, That whenever any of the real estate of which
2 any decedent may die seized shall pass to any body politic or corporate, or
3 to any person or persons other than the father, mother, husband, wife,
4 lawful issue, wife or widow of a son, or husband of a daughter, or in trust
5 for them, or some of them, it shall be the duty of the executors, adminis-
6 trators or trustees of such decedent to give information thereof, in writing,
7 to the treasurer of the state within six months after they undertake the
8 execution of their respective duties, or, if the fact be not known to them
9 within that period, then within one month after the same shall have come
10 to their knowledge.

1 10. *And be it enacted*, That whenever any debts shall be proven against
2 the estate of a decedent, after the payment of legacies or distribution of
3 property from which the said tax has been deducted, or upon which it has
4 been paid, and a refund is made by the legatee, devisee, heir or next of kin,
5 a proportion of the tax so paid shall be repaid to him by the executor,
6 administrator or trustee, if the said tax has not been paid to the state
7 treasurer, or by them if it has been so paid.

1 11. *And be it enacted*, That whenever any foreign executor or adminis-
2 trator shall assign or transfer any stocks or loans in this state, standing in
3 the name of a decedent, or in trust for a decedent, which shall be liable to
4 the said tax, such tax shall be paid to the state treasurer on the transfer

5 thereof, otherwise the corporation permitting such transfer shall become
6 liable to pay such tax ; *provided*, that such corporation has knowledge before
7 such transfer that said stocks or loans are liable to said tax.

1 12. *And be it enacted*, That when any amount of said tax shall have
2 paid erroneously to the state treasurer, it shall be lawful for him, on satis-
3 factory proof rendered to him of such erroneous payment, to refund and
4 pay to the executor, administrator, person or persons who have paid any
5 such tax in error, the amount of such tax so paid ; *provided*, that all such
6 applications for the repayment of such tax shall be made within two years
7 from the date of such payment.

1 13. *And be it enacted*, That in order to fix the value of property of per-
2 sons whose estates shall be subject to the payment of said tax, the surro-
3 gate or ordinary, on the application of any interested party, or upon his
4 own motion, shall appoint some competent person as appraiser as often as
5 and whenever occasion may require, whose duty it shall be forthwith to
6 give such notice by mail, and to such persons as the surrogate or ordinary
7 may by order direct, of the time and place he will appraise such property ;
8 and at such time and place to appraise the same at its fair market value,
9 and make a report thereof in writing to said surrogate or ordinary, together
10 with such other facts in relation thereto as said surrogate or ordinary may
11 by order require, to be filed in the office of such surrogate or ordinary, and
12 from this report the said surrogate or ordinary shall forthwith assess and
13 fix the then cash value of all estates, annuities and life estates, or term of
14 years growing out of said estates, and the tax to which the same is liable,
15 and shall immediately give notice thereof by mail to the state treasurer, and
16 to all parties known to be interested therein ; any person or persons dissat-
17 isfied with said appraisement or assessment may appeal therefrom to the
18 ordinary or surrogate of the proper county, within sixty days after the
19 making and filing of such assessment, on paying or giving security,
20 approved by the ordinary or surrogate, to pay all costs, together with what-

21 ever tax shall be fixed by said court; the said appraiser shall be paid by
22 the state treasurer out of any funds he may have in his hands on account
23 of said tax, on the certificate of the ordinary or surrogate, at the rate of
24 three dollars per day for every day actually and necessarily employed in
25 said appraisement, together with his actual and necessary traveling
26 expenses.

1 14. *And be it enacted*, That any appraiser appointed by virtue of this
2 act who shall take any fee or reward from any executor, administrator,
3 trustee, legatee, next of kin or heir of any decedent, or from any other per-
4 son liable to pay said tax or any portion thereof, shall be guilty of a misde-
5 meanor, and upon conviction in any court having jurisdiction of misde-
6 meanors he shall be fined not less than two hundred and fifty dollars nor
7 more than five hundred dollars, and imprisoned not exceeding ninety days;
8 and, in addition thereto, the ordinary or surrogate shall dismiss him from
9 such service.

1 15. *And be it enacted*, That the ordinary or the surrogate in the county
2 in which the real property is situate of a decedent who was not a resident
3 of the state, or in the county of which the decedent was a resident at the
4 time of his death, shall have jurisdiction to hear and determine all questions
5 in relation to the tax arising under the provisions of this act.

1 16. *And be it enacted*, That if it shall appear to the ordinary or surro-
2 gate that any tax accruing under this act has not been paid according to
3 law, such officer shall issue a citation citing the persons interested in the
4 property liable to the tax to appear before the ordinary or surrogate on a
5 day certain, not more than three months after the date of such citation, and
6 show cause why said tax should not be paid; the service of such citation
7 and the time, manner and proof thereof, and fees therefor, and the hearing
8 and determination thereon, and the enforcement of the determination or
9 decree, shall conform to the provisions of the law for the service of cita-
10 tions now issued by the ordinary or surrogate, or issuing out of orphans'

11 courts, and the hearing and determination thereon and its enforcement;
12 and the ordinary or surrogate shall, upon the request of any prosecutor of
13 the pleas or the state treasurer, furnish without fee one or more transcripts
14 of such decree, and the same may be by them docketed and filed by the
15 county clerk of any county in the state without fee, and the same shall
16 have the same effect as a lien by judgment.

1 17. *And be it enacted*, That whenever the state treasurer shall have
2 reason to believe that any tax is due and unpaid under this act, after the
3 refusal or neglect of the persons interested in the property liable to said
4 tax to pay the same, he shall notify the prosecutor of the pleas of the
5 proper county, in writing, of such failure to pay such tax, and the prose-
6 cutor of the pleas so notified, if he have probable cause to believe a tax is
7 due and unpaid, shall prosecute the proceeding before the ordinary or the
8 surrogate in the proper county, as provided in section sixteen of this act,
9 for the enforcement and collection of such tax; all costs awarded by such
10 decree that may be collected after the collection and payment of the tax to
11 the state treasurer may be retained by the prosecutor of the pleas for his
12 own use.

1 18. *And be it enacted*, That the ordinary and the surrogate and county
2 clerk of each county shall, every three months, make a statement in writ-
3 ing to the state treasurer of the property from which or the party from
4 whom he has reason to believe a tax, under this act, is due and unpaid.

1 19. *And be it enacted*, That whenever the surrogate of any county or
2 the ordinary shall certify that there was probable cause for issuing a cita-
3 tion and taking the proceedings specified in section sixteen of this act, the
4 state treasurer shall pay or allow to the proper officials all expenses incurred
5 for services of citation and all other lawful disbursements that have not
6 otherwise been paid.

1 20. *And be it enacted*, That the comptroller of the state shall furnish to
2 the ordinary and to each surrogate a book, in which he shall enter, or cause

3 to be entered, the returns made by appraisers, the cash value of annuities,
4 life estates and term of years, and other property fixed by him, and the tax
5 assessed thereon, and the amounts of any receipts for payments thereon
6 filed with him, which books shall be kept in the office of the ordinary or the
7 surrogate as a public record.

1 21. *And be it enacted*, That the state treasurer shall collect all taxes
2 that may be due and payable under this act, of which collection and pay-
3 ment he shall make a report, under oath, to the comptroller, on the first
4 Monday in March and September of each year, stating for what estate paid,
5 and in such form and containing such particulars as the comptroller may
6 prescribe.

1 22. *And be it enacted*, That any person, or body politic or corporate,
2 shall, upon payment of the sum of fifty cents at any time, be entitled to a
3 receipt from the state treasurer for the payment of any tax paid under this
4 act, which receipt shall designate on what real property, if any, of which
5 any decedent may have died seized, said tax has been paid and by whom
6 paid, and whether or not it is in full of said tax, and said receipt may be
7 recorded in the clerk's office of the county in which said property is situate,
8 in a book to be kept by said clerk for such purpose, which shall be labeled
9 "collateral tax."

1 23. *And be it enacted*, That this act shall take effect immediately

ASSEMBLY, No. 624

STATE OF NEW JERSEY

INTRODUCED MARCH 14, 1951

By Mr. SAIBER

Referred to Committee on Taxation

AN ACT concerning transfer inheritance taxes, and amending section 54:34-1 of the Revised Statutes.

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

1 1. Section 54:34-1 of the Revised Statutes is amended to read as fol-
2 lows:

3 54:34-1. Except as provided in section 54:34-4 of this Title, a tax shall
4 be and is hereby imposed at the rates set forth in section 54:34-2 of this
5 Title upon the transfer of property, real or personal, of the value of five
6 hundred dollars (\$500.00) or over, or of any interest therein or income there-
7 from, in trust or otherwise, to or for the use of any transferee, distributee
8 or beneficiary in the following cases:

9 a. Where real or tangible personal property situated in this State or
10 intangible personal property wherever situated is transferred by will or by
11 the intestate laws of this State from a resident of this State dying seized
12 or possessed thereof.

13 b. Where real or tangible personal property within this State of a de-
14 cedent not a resident of this State at the time of his death is transferred by
15 by will or intestate law.

16 c. Where real or tangible personal property within this State of a resi-
 17 dent of this State or intangible personal property wherever situate of a
 18 resident of this State or real or tangible personal property within this State
 19 of a nonresident, is transferred by deed, grant, bargain, sale or gift made
 20 in contemplation of the death of the grantor, vendor or donor, or intended to
 21 take effect in possession or enjoyment at or after such death.

22 A transfer by deed, grant, bargain, sale or gift made without adequate
 23 valuable consideration and within **[two]** three years prior to the death of
 24 the grantor, vendor or donor of a material part of his estate or in the nature
 25 of a final disposition or distribution thereof, shall, in the absence of proof to
 26 the contrary, be deemed to have been made in contemplation of death
 27 within the meaning of paragraph "c" of this section; but no such transfer
 28 made prior to such three-year period shall be deemed or held to have been
 29 made in contemplation of death.

30 d. Where by transfer of a resident decedent of real or tangible personal
 31 property within this State or intangible property wherever situate, or by
 32 transfer of a nonresident decedent of real or tangible personal property
 33 within this State, a transferee, distributee or beneficiary comes into the pos-
 34 session or enjoyment therein of:

35 (1) An estate in expectancy of any kind or character which is con-
 36 tingent or defeasible, transferred by an instrument taking effect on or
 37 after July fourth, one thousand nine hundred and nine; or

38 (2) Property transferred pursuant to a power of appointment con-
 39 tained in an instrument taking effect on or after July fourth, one thou-
 40 sand nine hundred and nine.

41 e. When a decedent appoints or names one or more executors or trust-
 42 ees and bequeaths or devises property to him or them in lieu of commis-
 43 sions or allowances, the transfer of which property would otherwise be tax-
 44 able, or appoints him or them his residuary legatee or legatees, and the
 45 bequest, devise or residuary legacy exceeds what would be reasonable com-

46 pensionation for his or their services, such excess shall be deemed a transfer
47 liable to tax. The ordinary or orphans' court, having jurisdiction in the
48 case, shall determine what is a reasonable compensation.

49 f. The right of the surviving joint tenant or joint tenants, person or
50 persons, to the immediate ownership or possession and enjoyment of real or
51 personal property held in the joint names of two or more persons, or de-
52 posited in banks or other institutions or depositories in the joint names of
53 two or more persons and payable to either or the survivor, shall upon the
54 death of one of such persons, be deemed a transfer taxable in the same
55 manner as though such property had belonged absolutely to the deceased
56 joint tenant or joint depositor and had been devised or bequeathed by his
57 will to the surviving joint tenant or joint tenants, person or persons, ex-
58 cepting therefrom such part of the property as such survivor or survivors
59 may prove to the satisfaction of the State Tax Commissioner to have
60 originally belonged to him or them and never to have belonged to the de-
61 cedent.

62 In the case of a nonresident decedent, paragraph "f" of this section
63 shall apply only to real or tangible personal property within this State.

1 2. This act shall take effect January first, one thousand nine hundred
2 and fifty-two.

STATEMENT

The purpose of the proposed amendment to Revised Statutes, section
54:34-1, is to conform the New Jersey Transfer Inheritance Tax Law to the Fed-
eral Estate Tax Law, with respect to transfers made more than three years
prior to death.

The proposed amendment would lengthen the period within which transfers
made prior to death are presumed to have been made in contemplation of death.

On the other hand, it would remove from the scope of the contemplation of death clause all transfers made more than three years prior to the date of the decedent's death. Thus a donor would know that any gifts which he made more than three years prior to his death would not, subsequently, be challenged as having been made in contemplation of death.

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ASSEMBLY, No. 624

STATE OF NEW JERSEY

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6 hundred dollars (\$500.00) or over, or of any interest therein or income there-
7 from, in trust or otherwise, to or for the use of any transferee, distributee
8 or beneficiary in the following cases:

9 a. Where real or tangible personal property situated in this State or
10 intangible personal property wherever situated is transferred by will or by
11 the intestate laws of this State from a resident of this State dying seized
12 or possessed thereof.

13 b. Where real or tangible personal property within this State of a de-
14 cedent not a resident of this State at the time of his death is transferred by
15 by will or intestate law.

16 c. Where real or tangible personal property within this State of a resi-
17 dent of this State or intangible personal property wherever situate of a
18 resident of this State or real or tangible personal property within this State
19 of a nonresident, is transferred by deed, grant, bargain, sale or gift made
20 in contemplation of the death of the grantor, vendor or donor, or intended to
21 take effect in possession or enjoyment at or after such death.

22 A transfer by deed, grant, bargain, sale or gift made without adequate
23 valuable consideration and within three years prior to the death of the
24 grantor, vendor or donor of a material part of his estate or in the nature
25 of a final disposition or distribution thereof, shall, in the absence of proof to
26 the contrary, be deemed to have been made in contemplation of death
27 within the meaning of paragraph "c" of this section; but no such transfer
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36 tingent or defeasible, transferred by an instrument taking effect on or
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43 sions or allowances, the transfer of which property would otherwise be tax-
44 able, or appoints him or them his residuary legatee or legatees, and the
45 bequest, devise or residuary legacy exceeds what would be reasonable com-

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48 case, shall determine what is a reasonable compensation.

49 f. The right of the surviving joint tenant or joint tenants, person or
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52 posited in banks or other institutions or depositories in the joint names of
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