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P.L. 2002, CHAPTER 31, *approved July 1, 2002*
Assembly Committee Substitute for
Assembly, No. 2302

1 **AN ACT** concerning the estate tax imposed under chapter 38 of Title
2 54 of the Revised Statutes, amending R.S.54:38-1, R.S.54:38-6 and
3 R.S.54:38-7, and repealing R.S.54:38-8 and R.S.54:38-9.

4

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

7

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

9 54:38-1. a. In addition to the inheritance, succession or legacy
10 taxes imposed by this state under authority of chapters 33 to 36 of this
11 title ([s.] R.S.54:33-1 et seq.), or hereafter imposed under authority
12 of any subsequent enactment, there is hereby imposed an estate or
13 transfer tax [upon]:

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

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

36 (i) the maximum credit that would have been allowable under the
37 provisions of that federal Internal Revenue Code in effect on that date
38 against the federal estate tax that would have been payable under the
39 provisions of that federal Internal Revenue Code in effect on that date

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 on account of taxes paid to any state or territory of the United States
2 or the District of Columbia, or

3 (ii) determined pursuant to the simplified tax system as may be
4 prescribed by the Director of the Division of Taxation in the
5 Department of the Treasury to produce a liability similar to the liability
6 determined pursuant to clause (i) of this paragraph
7 reduced pursuant to paragraph (b) of this subsection.

8 (b) The amount of tax liability determined pursuant to
9 subparagraph (a) of this paragraph shall be reduced by the aggregate
10 amount of all estate, inheritance, succession or legacy taxes actually
11 paid to any state or territory of the United States or the District of
12 Columbia, including inheritance, succession or legacy taxes actually
13 paid this State, in respect to any property owned by such decedent or
14 subject to such taxes as a part of or in connection with the estate;
15 provided however, that the amount of the reduction shall not exceed
16 the proportion of the tax otherwise due under this subsection that the
17 amount of the estates's property subject to tax by other jurisdictions
18 bears to the entire estate taxable under this chapter.

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

31 (2) In the case of the estate of a decedent dying after December 31,
32 2001 where no inheritance, succession or legacy tax is due this State
33 under the provisions of chapters 33 to 36 of this title or under
34 authority of any subsequent enactment imposing taxes of a similar
35 nature, the tax imposed by this chapter shall be determined pursuant
36 to paragraph (2) of subsection a. of this section.

37 c. For the purposes of this section, a "simplified tax system" to
38 produce a liability similar to the liability determined pursuant to clause
39 (i) of subparagraph (a) of paragraph (2) of subsection a. of this section
40 is tax system that is based upon the \$675,000 unified estate and gift
41 tax applicable exclusion amount in effect under the provisions of the
42 federal Internal Revenue Code of 1986, 26 U.S.C. s.1 et seq., in effect
43 on December 31, 2001, and results in general in the determination of
44 a similar amount of tax but which will enable the person or corporation
45 liable for the payment of the tax to calculate an amount of tax
46 notwithstanding the lack or paucity of information for compliance due

1 to such factors as the absence of a estate valuation made for federal
2 estate tax purposes, the absence of a measure of the impact of gifts
3 made during the lifetime of the decedent in the absence of federal gift
4 tax information, and any other information compliance problems as the
5 director determines are the result of the phased repeal of the federal
6 estate tax.

7 (cf: R.S.54:38-1)

8

9 2. R.S.54:38-6 is amended to read as follows:

10 54:38-6. The [state tax commissioner] Director of the Division of
11 Taxation in the Department of the Treasury shall assess and collect all
12 taxes imposed by this chapter. Such taxes when and as collected by
13 [him] the director shall be paid forthwith into the State Treasury for
14 the exclusive use of the State, and all administrators, executors,
15 trustees, grantees, donees and vendees, shall be personally liable for
16 any and all such taxes until paid, for which an action at law shall lie
17 in the name of the State[, but no lien shall attach to any property of an
18 estate on account of the tax imposed hereunder]. Notwithstanding the
19 provisions of any other law to the contrary, taxes imposed under this
20 chapter shall remain a lien on all property of the decedent as of the
21 date of the decedent's death until paid. No property owned by the
22 decedent as of the date of the decedent's death may be transferred
23 without the written consent of the director, or pursuant to such rules
24 as the director may prescribe.

25 (cf: R.S.54:38-6)

26

27 3. R.S.54:38-7 is amended to read as follows:

28 54:38-7. The executor, administrator, trustee or other person or
29 corporation liable for the payment of the tax hereunder shall file with
30 the [state tax commissioner] Director of the Division of Taxation in
31 the Department of the Treasury a copy of the federal estate tax return
32 within thirty days after the filing of the original with the federal
33 government, and a copy of any communication from the federal
34 government making any final change in said return, or confirming,
35 increasing or diminishing the tax thereby shown to be due, which is to
36 be filed within thirty days after receipt thereof[, and]. In the case of
37 any decedent dying after December 31, 2001 the executor,
38 administrator, trustee or other person or corporation liable for the
39 payment of such tax shall prepare and file with the director, in addition
40 to a copy of such return, if any, as shall have been filed with the
41 federal government, a federal estate tax return in the form in which
42 such return would have been required to be filed with the federal
43 government under the provisions of the federal Internal Revenue Code
44 of 1986, 26 U.S.C. s.l et seq., in effect on December 31, 2001, within
45 30 days after the date on which such a filing would have been due
46 under those provisions for a decedent dying on that date; provided

1 however, that a person or corporation liable for the payment of the tax
2 under this chapter that elects to determine tax pursuant to clause (ii)
3 of subparagraph (a) of paragraph (2) of subsection a. of R.S.54:38-1
4 shall file such alternate New Jersey estate tax forms as may be
5 prescribed by the director pursuant to the requirements of that clause.

6 In addition to the copy or copies of the federal estate tax return, or
7 alternate tax forms, the executor, administrator, trustee or other
8 person or corporation shall file any other evidence, information or data
9 that the [state tax commissioner] Director of the Division of Taxation
10 shall in [his] the director's discretion deem necessary. For the
11 purposes of this chapter the [state tax commissioner] Director of the
12 Division of Taxation is hereby authorized and empowered to
13 promulgate such rules and regulations, not inconsistent with the
14 provisions hereof, as [he] the director shall deem necessary.
15 (cf: R.S.54:38-7)

16

17 4. R.S.54:38-8 and R.S.54:38-9 are repealed.

18

19 5. This act shall take effect immediately and shall apply to the
20 estate of any resident decedent dying after December 31, 2001.

21

22

23

24

25 Provides for computation of New Jersey estate tax either in accord
26 with the federal estate tax as of December 31, 2001 or a simplified
27 method prescribed by Director of the Division of Taxation.

ASSEMBLY, No. 2302

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED MAY 9, 2002

Sponsored by:

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblyman REED GUSCIORA

District 15 (Mercer)

SYNOPSIS

Provides for computation of New Jersey estate tax in accordance with terms of federal estate tax in effect on December 31, 2001.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/14/2002)

1 AN ACT concerning the tax imposed under chapter 38 of Title 54 of
2 the Revised Statutes, amending R.S.54:38-1 and R.S.54:38-7 and
3 repealing R.S.54:38-8 and R.S.54:38-9.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. R.S.54:38-1 is amended to read as follows:

9 54:38-1. a. In addition to the inheritance, succession or legacy
10 taxes imposed by this state under authority of chapters 33 to 36 of this
11 title ([s.] R.S.54:33-1 et seq.), or hereafter imposed under authority
12 of any subsequent enactment, there is hereby imposed an estate or
13 transfer tax [upon]:

14 (1) Upon the transfer of the estate of every resident decedent dying
15 before January 1, 2002 and on or after January 1, 2011 which is
16 subject to an estate tax payable to the United States under the
17 provisions of the federal revenue act of one thousand nine hundred and
18 twenty-six and the amendments thereof and supplements thereto or
19 any other federal revenue act in effect as of the date of death of the
20 decedent, the amount of which tax shall be the sum by which the
21 maximum credit allowable against any federal estate tax payable to the
22 United States under any federal revenue act on account of taxes paid
23 to any state or territory of the United States or the District of
24 Columbia, shall exceed the aggregate amount of all estate, inheritance,
25 succession or legacy taxes actually paid to any state or territory of the
26 United States or the District of Columbia, including inheritance,
27 succession or legacy taxes actually paid this state, in respect to any
28 property owned by such decedent or subject to such taxes as a part of
29 or in connection with [his] the estate; and

30 (2) Upon the transfer of the estate of every resident decedent dying
31 after December 31, 2001 and on or before December 31, 2010 which
32 would have been subject to an estate tax payable to the United States
33 under the provisions of the federal Internal Revenue Code of 1986, 26
34 U.S.C. s.1 et seq., in effect on December 31, 2001, the amount of
35 which tax shall be the sum by which the maximum credit, that would
36 have been allowable under the provisions of that federal Internal
37 Revenue Code in effect on that date against the federal estate tax that
38 would have been payable under the provisions of that federal Internal
39 Revenue Code in effect on that date on account of taxes paid to any
40 state or territory of the United States or the District of Columbia, shall
41 exceed the aggregate amount of all estate, inheritance, succession or
42 legacy taxes actually paid to any state or territory of the United States
43 or the District of Columbia, including inheritance, succession or legacy

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 taxes actually paid this state, in respect to any property owned by such
2 decedent or subject to such taxes as a part of or in connection with the
3 estate.

4 b. (1) In [any] the case of the estate of a decedent dying before
5 January 1, 2002 and on or after January 1, 2011 where no inheritance,
6 succession or legacy tax is due this state under the provisions of
7 [said] chapters 33 to 36 of this title or under authority of any
8 subsequent enactment imposing taxes of a similar nature, but an estate
9 tax is due the United States under the provisions of any federal
10 revenue act in effect as of the date of death, wherein provision is
11 made for a credit on account of taxes paid the several states or
12 territories of the United States, or the District of Columbia, the tax
13 imposed by this chapter shall be the maximum amount of such credit
14 less the aggregate amount of such estate, inheritance, succession or
15 legacy taxes actually paid to any state or territory of the United States
16 or the District of Columbia.

17 (2) In the case of the estate of a decedent dying after December 31,
18 2001 and on or before December 31, 2010 where no inheritance,
19 succession or legacy tax is due this State under the provisions of
20 chapters 33 to 36 of this title or under authority of any subsequent
21 enactment imposing taxes of a similar nature, but an estate tax would
22 have been due the United States under the provisions of the federal
23 Internal Revenue Code of 1986, 26 U.S.C. s.1 et seq., in effect on
24 December 31, 2001, the tax imposed by this chapter shall be the
25 maximum amount of the credit that would have been allowable under
26 the provisions of that federal Internal Revenue Code in effect on that
27 date on account of taxes paid the several states or territories of the
28 United States or the District of Columbia less the aggregate amount
29 of such estate, inheritance, succession or legacy taxes actually paid to
30 any state or territory of the United State or the District of Columbia.
31 (cf: R.S.54:38-1)

32

33 2. R.S.54:38-7 is amended to read as follows:

34 54:38-7. The executor, administrator, trustee or other person or
35 corporation liable for the payment of the tax hereunder shall file with
36 the [state tax commissioner] Director of the Division of Taxation in
37 the Department of the Treasury a copy of the federal estate tax return
38 for the estate of every decedent dying on or before December 31, 2009
39 and after December 31, 2010 within thirty days after the filing of the
40 original with the federal government, and a copy of any
41 communication from the federal government making any final change
42 in said return, or confirming, increasing or diminishing the tax thereby
43 shown to be due, which is to be filed within thirty days after receipt
44 thereof[, and]. In the case of any decedent dying after December 31,
45 2001 and on or before December 31, 2010, the executor,
46 administrator, trustee or other person or corporation liable for the

1 payment of such tax shall prepare and file with the director, in addition
2 to a copy of such return, if any, as shall have been filed with the
3 federal government, a federal estate tax return in the form in which
4 such return would have been required to be filed with the federal
5 government under the provisions of the federal Internal Revenue Code
6 of 1986, 26 U.S.C. s.1 et seq., in effect on December 31, 2001, within
7 30 days after the date on which such a filing would have been due
8 under those provisions for a decedent dying on that date.

9 In addition to the copy or copies of the federal estate tax return, the
10 executor, administrator, trustee or other person or corporation shall
11 file any other evidence, information or data that the [state tax
12 commissioner] Director of the Division of Taxation shall in [his] the
13 director's discretion deem necessary. For the purposes of this chapter
14 the [state tax commissioner] Director of the Division of Taxation is
15 hereby authorized and empowered to promulgate such rules and
16 regulations, not inconsistent with the provisions hereof, as [he] the
17 director shall deem necessary.

18 (cf: R.S.54:38-7)

19
20 3. R.S.54:38-8 and R.S.54:38-9 are repealed.

21
22 4. This act shall take effect immediately and shall apply to the
23 estate of any resident decedent dying after December 31, 2001.

24 25 26 STATEMENT

27
28 This bill provides that the New Jersey estate tax shall be computed
29 in accordance with the terms of federal estate tax in effect on
30 December 31, 2001.

31 New Jersey's estate tax is based on a credit allowed by federal law
32 against the federal estate tax for the payment of inheritance or other
33 legacy taxes imposed by the several states. The State estate tax is
34 designed to absorb the excess (if any) of the maximum amount of this
35 federal credit over the cumulative liability of a decedent's heirs for
36 New Jersey inheritance tax on transfers from the decedent's estate.

37 Under changes in the federal estate tax enacted in 2001, New
38 Jersey's estate tax will be reduced. This reduction will occur primarily
39 through a four-year phase-out of the federal credit. Even before the
40 phase-out is completed, the credit (and thus liability for New Jersey
41 estate tax) will also be reduced for many estates by the extension of
42 full exemption from federal tax to successively larger estates.

43 This bill preserves the New Jersey estate tax as it existed up to the
44 point at which the changes in federal law took effect by providing that
45 the tax would be computed as though the terms of the federal estate
46 tax, including those governing liability for that tax and allowance of

1 the state legacy tax credit, continued to apply to the estates of resident
2 decedents dying after December 31, 2001 as they did to that of a
3 resident decedent dying on that date.

4 The bill would repeal R.S.54:38-8 and R.S.54:38-9, which provide
5 for, respectively, (1) the voiding of New Jersey's estate tax in the
6 event of the repeal of the federal estate tax or the federal credit for
7 state legacy taxes, and (2) the revision of the State estate tax in
8 response to any substantial revision of the federal credit. It is the
9 central intent of this legislation to preclude either such consequence.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2302

STATE OF NEW JERSEY

DATED: JUNE 10, 2002

The Assembly Budget Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2302.

This Assembly Committee Substitute for Assembly Bill No. 2302 provides that the New Jersey estate tax shall be computed in compliance with the terms of federal estate tax in effect on December 31, 2001 or, at the election of the person responsible for filing the estate tax return, pursuant to a simplified system developed by the Director of the Division of Taxation in the Department of the Treasury.

Currently, New Jersey's estate tax is based on a credit allowed by federal law against the federal estate tax for the payment of inheritance or other legacy taxes imposed by the several states. The New Jersey estate tax is designed to absorb the excess (if any) of the maximum amount of this federal credit over the cumulative liability of a decedent's heirs for New Jersey inheritance tax on transfers from the decedent's estate.

Under changes in the federal estate tax enacted in 2001, New Jersey's estate tax will be reduced. This reduction will occur primarily through a four-year phase-out of the federal credit. Even before the phase-out is completed, the credit (and thus liability for New Jersey estate tax) will also be reduced for many estates by the extension of full exemption from federal tax to successively larger estates.

This substitute preserves the New Jersey estate tax as it existed up to the point at which the changes in federal law took effect. The substitute provides that the New Jersey estate tax will be computed as though the terms of the federal estate tax, including those governing liability for that tax and allowance of the state legacy tax credit, continued to apply to the estates of resident decedents dying after December 31, 2001 as they did to that of a resident decedent dying on that date.

There may, however, be some compliance problems for taxpayers under such a new system. As the federal estate tax system phases out, a host of federal provisions that are used to value the federal estate, determine the amount of federal liability, and determine the amount of federal credit available will not be applied to many estates (after 2009,

they will apply to no estates). The federal information that is usually available for computing the New Jersey estate tax liability will no longer exist. This substitute directs the Director of the Division of Taxation to develop a simplified system to accommodate taxpayers in compliance. Under the substitute this simplified system will be available, *at the election of the person responsible for paying the tax*, to make compliance easier. The calculation based on federal law will remain available for those who prefer it or find it advantageous.

In the absence of the federal compliance system, this substitute also eliminates a provision that exempted estate taxes from the "lien of tax." Under the State Uniform Tax Procedure Law, most property of taxpayers is subject to satisfaction of tax liabilities. There has been an exception for State estate taxes (which have been subject to a federal tax lien powers). The substitute makes the property of New Jersey estates subject to the State tax lien powers.

The substitute repeals R.S.54:38-8 and R.S.54:38-9, which provide for, respectively, (1) the voiding of New Jersey's estate tax in the event of the repeal of the federal estate tax or the federal credit for state legacy taxes, and (2) the revision of the State estate tax in response to any substantial revision of the federal credit. It is the central intent of this substitute to preclude either such consequence.

FISCAL IMPACT:

Under the federal "Economic Growth and Tax Relief Reconciliation Act of 2001," the allowable State credit under the federal estate tax for any state death taxes paid is reduced by 25 percent in 2002, 50 percent in 2003, 75 percent in 2004 and is fully repealed from 2005 to 2010. By 2005 State inheritance tax collections, which reflect collections from both the transfer inheritance tax and the New Jersey estate tax, will include only those revenues derived from the State inheritance tax as the estate or "pick-up" tax will be effectively repealed.

Data obtained by the Office of Legislative Services (OLS) from the Division of Revenue, Department of the Treasury, indicate that in FY 2001 estate tax revenues constituted approximately forty-five percent of total annual inheritance tax collections. Accordingly, of the \$500 million in inheritance tax collections anticipated by the Executive (based on its year-end revised estimate) for FY 2002, approximately \$225 million can be attributed to the New Jersey estate tax. Similarly, based on the Executive's revised FY 2003 revenue estimates, which project a total of \$530 million in inheritance tax collections, roughly \$239 million will be due to the estate tax.

Based on this data, and the federal phase-out provision, the OLS estimates that the General Fund will forego approximately \$60 million in FY2003, \$120 million in FY2004; \$180 million in FY2005 and the full \$240 million currently collected by FY 2006 and each year thereafter under current law. (Growth in collections is not assumed in future year estimates, as inheritance tax collections are unpredictable

and somewhat volatile from year to year.) With enactment of this substitute, however, the General Fund would effectively be "held harmless" from results of the changes to the federal tax code.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2302

STATE OF NEW JERSEY

DATED: JUNE 27, 2002

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 2302 (ACS).

This substitute bill provides that the New Jersey estate tax shall be computed in compliance with the terms of federal estate tax in effect on December 31, 2001 or, at the election of the person responsible for filing the estate tax return, pursuant to a simplified system developed by the Director of the Division of Taxation in the Department of the Treasury.

Currently, New Jersey's estate tax is based on a credit allowed by federal law against the federal estate tax for the payment of inheritance or other legacy taxes imposed by the several states. The New Jersey estate tax is designed to absorb the excess (if any) of the maximum amount of this federal credit over the cumulative liability of a decedent's heirs for New Jersey inheritance tax on transfers from the decedent's estate.

Under changes in the federal estate tax enacted in 2001, New Jersey's estate tax will be reduced. This reduction will occur primarily through a four-year phase-out of the federal credit. Even before the phase-out is completed, the credit (and thus liability for New Jersey estate tax) will also be reduced for many estates by the extension of full exemption from federal tax to successively larger estates.

This substitute preserves the New Jersey estate tax as it existed up to the point at which the changes in federal law took effect. The substitute provides that the New Jersey estate tax will be computed as though the terms of the federal estate tax, including those governing liability for that tax and allowance of the state legacy tax credit, continued to apply to the estates of resident decedents dying after December 31, 2001 as they did to that of a resident decedent dying on that date.

There may, however, be some compliance problems for taxpayers under such a new system. As the federal estate tax system phases out, a host of federal provisions that are used to value the federal estate, determine the amount of federal liability, and determine the amount of federal credit available will not be applied to many estates (after 2009, they will apply to no estates). The federal information that is usually

available for computing the New Jersey estate tax liability will no longer exist. This substitute directs the Director of the Division of Taxation to develop a simplified system to accommodate taxpayers in compliance. Under the substitute this simplified system will be available, *at the election of the person responsible for paying the tax*, to make compliance easier. The calculation based on federal law will remain available for those who prefer it or find it advantageous.

In the absence of the federal compliance system, this substitute also eliminates a provision that exempted estate taxes from the "lien of tax." Under the State Uniform Tax Procedure Law, most property of taxpayers is subject to satisfaction of tax liabilities. There has been an exception for State estate taxes (which have been subject to a federal tax lien powers). The substitute makes the property of New Jersey estates subject to the State tax lien powers.

The substitute repeals R.S.54:38-8 and R.S.54:38-9, which provide for, respectively, (1) the voiding of New Jersey's estate tax in the event of the repeal of the federal estate tax or the federal credit for state legacy taxes, and (2) the revision of the State estate tax in response to any substantial revision of the federal credit. It is the central intent of this substitute to preclude either such consequence.

The provisions of this bill are identical to those of Senate committee substitute for Senate Bill No. 1378, which the committee also reports this day.

FISCAL IMPACT

Under the federal "Economic Growth and Tax Relief Reconciliation Act of 2001," the allowable State credit under the federal estate tax for any state death taxes paid is reduced by 25 percent in 2002, 50 percent in 2003, 75 percent in 2004 and is fully repealed from 2005 to 2010. By 2005 State inheritance tax collections, which reflect collections from both the transfer inheritance tax and the New Jersey estate tax, will include only those revenues derived from the State inheritance tax as the estate or "pick-up" tax will be effectively repealed.

Data obtained by the Office of Legislative Services (OLS) from the Division of Revenue, Department of the Treasury, indicate that in FY2001 estate tax revenues constituted approximately forty-five percent of total annual inheritance tax collections. Accordingly, of the \$500 million in inheritance tax collections anticipated by the Executive (based on its year-end revised estimate) for FY2002, approximately \$225 million can be attributed to the New Jersey estate tax. Similarly, based on the Executive's revised FY2003 revenue estimates, which project a total of \$530 million in inheritance tax collections, roughly \$239 million will be due to the estate tax.

Based on this data, and the federal phase-out provision, the OLS estimates that the General Fund will forego approximately \$60 million in FY2003, \$120 million in FY2004; \$180 million in FY2005 and the full \$240 million currently collected by FY2006 and each year

thereafter under current law. (Growth in collections is not assumed in future year estimates, as inheritance tax collections are unpredictable and somewhat volatile from year to year.) With enactment of this substitute, however, the General Fund would effectively be "held harmless" from results of the changes to the federal tax code.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2302
STATE OF NEW JERSEY
210th LEGISLATURE

DATED: JULY 16, 2002

SUMMARY

- Synopsis:** Provides for computation of New Jersey estate tax in accordance with terms of federal estate tax in effect on December 31, 2001.
- Type of Impact:** Averts loss of revenue to General Fund attributable to Federal estate tax law revisions.
- Agencies Affected:** Department of the Treasury; Division of Taxation.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>
State Revenue	\$60,000,000	\$120,000,000	\$180,000,000	\$240,000,000

- ! This legislation effectively holds the State "harmless" for recent changes to the federal tax code. Accordingly, the Office of Legislative Services (OLS) estimate reflects the amount of current collections which will be foregone to the General Fund absent the bill.
- ! State inheritance tax revenues currently consist of collections from both the Transfer Inheritance tax and the New Jersey estate tax.
- ! New Jersey Estate tax revenues currently constitute approximately forty-five percent of total State inheritance tax collections, or roughly \$225 million of the \$500 million anticipated from inheritance taxes in the current fiscal year (FY2002).
- ! Under federal tax law changes, the allowable State credit for any State death taxes paid is reduced by 25 percent in 2002, 50 percent in 2003, 75 percent in 2004 and is fully repealed from 2005 to 2010.
- ! Barring this legislation, by 2005 the New Jersey estate tax will be effectively repealed.

BILL DESCRIPTION

Assembly Committee Substitute for Assembly Bill No. 2302 of 2002 provides that the New Jersey estate tax shall be computed in accordance with the terms of the federal estate tax in effect on December 31, 2001.

Under changes in the federal estate tax enacted in 2001, New Jersey's estate tax will be reduced. This reduction will occur primarily through a four-year phase-out of the federal credit allowed for State inheritance or other legacy taxes paid. Even before the phase-out is completed, the credit will also be reduced for many estates by the extension of full exemption from federal tax to successively larger estates.

This substitute preserves the New Jersey estate tax as it existed up to the point at which the changes in federal law took effect.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS notes that under the Economic Growth and Tax Relief Reconciliation Act of 2001 enacted by Congress, the allowable State credit (or "pick-up" provision) under the federal estate tax for any State death taxes paid is reduced by 25 percent in 2002, 50 percent in 2003, 75 percent in 2004 and is fully repealed from 2005 to 2010. Thus, by 2005 State inheritance tax collections, which reflect receipts from both the transfer inheritance tax and the New Jersey estate tax, will include only those revenues derived from the State inheritance tax as the estate or "pick-up" tax will be effectively repealed.

Data obtained from the Division of Revenue indicate that, in FY 2001, estate tax revenues constituted approximately forty-five percent of total annual inheritance tax collections. Accordingly, of the \$500 million in inheritance tax collections anticipated by the Executive (based on its year-end revised estimate) for FY 2002, approximately \$225 million can be attributed to the New Jersey estate tax. Similarly, based on the Executive's revised FY 2003 revenue estimates, which project a total of \$530 million in inheritance tax collections, roughly \$239 million will be due to the estate tax.

Utilizing these estimates, and the federal phase-out provision, the OLS projects that the General Fund will forego approximately \$60 million in FY2003, \$120 million in FY2004; \$180 million in FY2005 and the full \$240 million currently collected by FY 2006 and each year thereafter. However, the precise reduction in collections will be affected by the bill's timing provision and its effective date. Given such factors, the amount foregone in the first year following enactment will likely exceed the 25 percent reduction in the allowable federal credit amount while, all other things being equal, the total amount foregone to the General Fund would remain approximately \$240 million upon full implementation of the federal phase-out provision. (Growth in collections is not assumed in future year estimates, as inheritance tax collections are unpredictable and somewhat volatile from year to year.) With enactment of this legislation, however, the General Fund would effectively be held "harmless" for the changes to the federal tax code.

Section: *Revenue, Finance and Appropriations*

Analyst: *Catherine Z. Brennan*
Senior Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

SENATE, No. 1378

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MARCH 25, 2002

Sponsored by:
Senator SHIRLEY K. TURNER
District 15 (Mercer)

SYNOPSIS

Provides for computation of New Jersey estate tax in accordance with terms of federal estate tax in effect on December 31, 2001.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning the tax imposed under chapter 38 of Title 54 of
2 the Revised Statutes, amending R.S.54:38-1 and R.S.54:38-7 and
3 repealing R.S.54:38-8 and R.S.54:38-9.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. R.S.54:38-1 is amended to read as follows:

9 54:38-1. a. In addition to the inheritance, succession or legacy
10 taxes imposed by this state under authority of chapters 33 to 36 of this
11 title ([s.] R.S.54:33-1 et seq.), or hereafter imposed under authority
12 of any subsequent enactment, there is hereby imposed an estate or
13 transfer tax [upon]:

14 (1) Upon the transfer of the estate of every resident decedent dying
15 before January 1, 2002 and on or after January 1, 2011 which is
16 subject to an estate tax payable to the United States under the
17 provisions of the federal revenue act of one thousand nine hundred and
18 twenty-six and the amendments thereof and supplements thereto or
19 any other federal revenue act in effect as of the date of death of the
20 decedent, the amount of which tax shall be the sum by which the
21 maximum credit allowable against any federal estate tax payable to the
22 United States under any federal revenue act on account of taxes paid
23 to any state or territory of the United States or the District of
24 Columbia, shall exceed the aggregate amount of all estate, inheritance,
25 succession or legacy taxes actually paid to any state or territory of the
26 United States or the District of Columbia, including inheritance,
27 succession or legacy taxes actually paid this state, in respect to any
28 property owned by such decedent or subject to such taxes as a part of
29 or in connection with [his] the estate; and

30 (2) Upon the transfer of the estate of every resident decedent dying
31 after December 31, 2001 and on or before December 31, 2010 which
32 would have been subject to an estate tax payable to the United States
33 under the provisions of the federal Internal Revenue Code of 1986, 26
34 U.S.C.s.1 et seq., in effect on December 31, 2001, the amount of
35 which tax shall be the sum by which the maximum credit, that would
36 have been allowable under the provisions of that federal Internal
37 Revenue Code in effect on that date against the federal estate tax that
38 would have been payable under the provisions of that federal Internal
39 Revenue Code in effect on that date on account of taxes paid to any
40 state or territory of the United States or the District of Columbia, shall
41 exceed the aggregate amount of all estate, inheritance, succession or
42 legacy taxes actually paid to any state or territory of the United States
43 or the District of Columbia, including inheritance, succession or legacy

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 taxes actually paid this state, in respect to any property owned by such
2 decendent or subject to such taxes as a part of or in connection with the
3 estate.

4 b. (1) In [any] the case of the estate of a decedent dying before
5 January 1, 2002 and on or after January 1, 2011 where no inheritance,
6 succession or legacy tax is due this state under the provisions of
7 [said] chapters 33 to 36 of this title or under authority of any
8 subsequent enactment imposing taxes of a similar nature, but an estate
9 tax is due the United States under the provisions of any federal
10 revenue act in effect as of the date of death, wherein provision is
11 made for a credit on account of taxes paid the several states or
12 territories of the United States, or the District of Columbia, the tax
13 imposed by this chapter shall be the maximum amount of such credit
14 less the aggregate amount of such estate, inheritance, succession or
15 legacy taxes actually paid to any state or territory of the United States
16 or the District of Columbia.

17 (2) In the case of the estate of a decedent dying after December 31,
18 2001 and on or before December 31, 2010 where no inheritance,
19 succession or legacy tax is due this State under the provisions of
20 chapters 33 to 36 of this title or under authority of any subsequent
21 enactment imposing taxes of a similar nature, but an estate tax would
22 have been due the United States under the provisions of the federal
23 Internal Revenue Code of 1986, 26 U.S.C.s.1 et seq., in effect on
24 December 31, 2001, the tax imposed by this chapter shall be the
25 maximum amount of the credit that would have been allowable under
26 the provisions of that federal Internal Revenue Code in effect on that
27 date on account of taxes paid the several states or territories of the
28 United States or the District of Columbia less the aggregate amount
29 of such estate, inheritance, succession or legacy taxes actually paid to
30 any state or territory of the United State or the District of Columbia.
31 (cf: R.S.54:38-1)

32

33 2. R.S.54:38-7 is amended to read as follows:

34 54:38-7. The executor, administrator, trustee or other person or
35 corporation liable for the payment of the tax hereunder shall file with
36 the [state tax commissioner] Director of the Division of Taxation in
37 the Department of the Treasury a copy of the federal estate tax return
38 for the estate of every decedent dying on or before December 31, 2009
39 and after December 31, 2010 within thirty days after the filing of the
40 original with the federal government, and a copy of any
41 communication from the federal government making any final change
42 in said return, or confirming, increasing or diminishing the tax thereby
43 shown to be due, which is to be filed within thirty days after receipt
44 thereof[, and]. In the case of any decedent dying after December 31,
45 2001 and on or before December 31, 2010, the executor,
46 administrator, trustee or other person or corporation liable for the

1 payment of such tax shall prepare and file with the director, in addition
2 to a copy of such return, if any, as shall have been filed with the
3 federal government, a federal estate tax return in the form in which
4 such return would have been required to be filed with the federal
5 government under the provisions of the federal Internal Revenue Code
6 of 1986, 26 U.S.C. s.1 et seq., in effect on December 31, 2001, within
7 30 days after the date on which such a filing would have been due
8 under those provisions for a decedent dying on that date.

9 In addition to the copy or copies of the federal estate tax return, the
10 executor, administrator, trustee or other person or corporation shall
11 file any other evidence, information or data that the [state tax
12 commissioner] Director of the Division of Taxation shall in [his] the
13 director's discretion deem necessary. For the purposes of this chapter
14 the [state tax commissioner] Director of the Division of Taxation is
15 hereby authorized and empowered to promulgate such rules and
16 regulations, not inconsistent with the provisions hereof, as [he] the
17 director shall deem necessary.

18 (cf: R.S.54:38-7)

19
20 3. R.S.54:38-8 and R.S.54:38-9 are repealed.

21
22 4. This act shall take effect immediately and shall apply to the
23 estate of any resident decedent dying after December 31, 2001.

24
25
26 STATEMENT

27
28 This bill provides that the New Jersey estate tax shall be computed
29 in accordance with the terms of federal estate tax in effect on
30 December 31, 2001.

31 New Jersey's estate tax is based on a credit allowed by federal law
32 against the federal estate tax for the payment of inheritance or other
33 legacy taxes imposed by the several states. The State estate tax is
34 designed to absorb the excess (if any) of the maximum amount of this
35 federal credit over the cumulative liability of a decedent's heirs for
36 New Jersey inheritance tax on transfers from the decedent's estate.

37 Under changes in the federal estate tax enacted in 2001, New
38 Jersey's estate tax will be reduced. This reduction will occur primarily
39 through a four-year phase-out of the federal credit. Even before the
40 phase-out is completed, the credit (and thus liability for New Jersey
41 estate tax) will also be reduced for many estates by the extension of
42 full exemption from federal tax to successively larger estates.

43 This bill preserves the New Jersey estate tax as it existed up to the
44 point at which the changes in federal law took effect by providing that
45 the tax would be computed as though the terms of the federal estate
46 tax, including those governing liability for that tax and allowance of

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1 the state legacy tax credit, continued to apply to the estates of resident
2 decedents dying after December 31, 2001 as they did to that of a
3 resident decedent dying on that date.

4 The bill would repeal R.S.54:38-8 and R.S.54:38-9, which provide
5 for, respectively, (1) the voiding of New Jersey's estate tax in the
6 event of the repeal of the federal estate tax or the federal credit for
7 state legacy taxes, and (2) the revision of the State estate tax in
8 response to any substantial revision of the federal credit. It is the
9 central intent of this legislation to preclude either such consequence.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1378**

STATE OF NEW JERSEY

DATED: JUNE 27, 2002

The Senate Budget and Appropriations Committee reports favorably a committee substitute for Senate Bill No. 1378.

This substitute bill provides that the New Jersey estate tax shall be computed in compliance with the terms of federal estate tax in effect on December 31, 2001 or, at the election of the person responsible for filing the estate tax return, pursuant to a simplified system developed by the Director of the Division of Taxation in the Department of the Treasury.

Currently, New Jersey's estate tax is based on a credit allowed by federal law against the federal estate tax for the payment of inheritance or other legacy taxes imposed by the several states. The New Jersey estate tax is designed to absorb the excess (if any) of the maximum amount of this federal credit over the cumulative liability of a decedent's heirs for New Jersey inheritance tax on transfers from the decedent's estate.

Under changes in the federal estate tax enacted in 2001, New Jersey's estate tax will be reduced. This reduction will occur primarily through a four-year phase-out of the federal credit. Even before the phase-out is completed, the credit (and thus liability for New Jersey estate tax) will also be reduced for many estates by the extension of full exemption from federal tax to successively larger estates.

This substitute preserves the New Jersey estate tax as it existed up to the point at which the changes in federal law took effect. The substitute provides that the New Jersey estate tax will be computed as though the terms of the federal estate tax, including those governing liability for that tax and allowance of the state legacy tax credit, continued to apply to the estates of resident decedents dying after December 31, 2001 as they did to that of a resident decedent dying on that date.

There may, however, be some compliance problems for taxpayers under such a new system. As the federal estate tax system phases out, a host of federal provisions that are used to value the federal estate, determine the amount of federal liability, and determine the amount of federal credit available will not be applied to many estates (after 2009, they will apply to no estates). The federal information that is usually

available for computing the New Jersey estate tax liability will no longer exist. This substitute directs the Director of the Division of Taxation to develop a simplified system to accommodate taxpayers in compliance. Under the substitute this simplified system will be available, *at the election of the person responsible for paying the tax*, to make compliance easier. The calculation based on federal law will remain available for those who prefer it or find it advantageous.

In the absence of the federal compliance system, this substitute also eliminates a provision that exempted estate taxes from the "lien of tax." Under the State Uniform Tax Procedure Law, most property of taxpayers is subject to satisfaction of tax liabilities. There has been an exception for State estate taxes (which have been subject to a federal tax lien powers). The substitute makes the property of New Jersey estates subject to the State tax lien powers.

The substitute repeals R.S.54:38-8 and R.S.54:38-9, which provide for, respectively, (1) the voiding of New Jersey's estate tax in the event of the repeal of the federal estate tax or the federal credit for state legacy taxes, and (2) the revision of the State estate tax in response to any substantial revision of the federal credit. It is the central intent of this substitute to preclude either such consequence.

The provisions of this committee substitute are identical to those of Assembly Bill No. 2302 SCS, which the committee also reports this day.

FISCAL IMPACT

Under the federal "Economic Growth and Tax Relief Reconciliation Act of 2001," the allowable State credit under the federal estate tax for any state death taxes paid is reduced by 25 percent in 2002, 50 percent in 2003, 75 percent in 2004 and is fully repealed from 2005 to 2010. By 2005 State inheritance tax collections, which reflect collections from both the transfer inheritance tax and the New Jersey estate tax, will include only those revenues derived from the State inheritance tax as the estate or "pick-up" tax will be effectively repealed.

Data obtained by the Office of Legislative Services (OLS) from the Division of Revenue, Department of the Treasury, indicate that in FY2001 estate tax revenues constituted approximately forty-five percent of total annual inheritance tax collections. Accordingly, of the \$500 million in inheritance tax collections anticipated by the Executive (based on its year-end revised estimate) for FY2002, approximately \$225 million can be attributed to the New Jersey estate tax. Similarly, based on the Executive's revised FY2003 revenue estimates, which project a total of \$530 million in inheritance tax collections, roughly \$239 million will be due to the estate tax.

Based on this data, and the federal phase-out provision, the OLS estimates that the General Fund will forego approximately \$60 million in FY2003, \$120 million in FY2004; \$180 million in FY2005 and the full \$240 million currently collected by FY2006 and each year

thereafter under current law. (Growth in collections is not assumed in future year estimates, as inheritance tax collections are unpredictable and somewhat volatile from year to year.) With enactment of this substitute, however, the General Fund would effectively be "held harmless" from results of the changes to the federal tax code.