

54:38-5

LEGISLATIVE HISTORY CHECKLIST
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(Estate--Installment payment--due at
time of Federal estate tax filing)

NJSA: 54:38-5

LAWS OF: 1992 **CHAPTER:** 39

BILL NO: A1516

SPONSOR(S): Sosa

DATE INTRODUCED: May 28, 1992

COMMITTEE: **ASSEMBLY:** Appropriations
SENATE: Budget & Appropriations

AMENDED DURING PASSAGE: Yes Amendments during passage denoted
by asterisks

DATE OF PASSAGE: **ASSEMBLY:** June 18, 1992
SENATE: June 29, 1992

DATE OF APPROVAL: June 30, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: Yes

VETO MESSAGE:

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clippings--attached.
KBG:pp

[FIRST REPRINT]
ASSEMBLY, No. 1516
STATE OF NEW JERSEY

INTRODUCED MAY 28, 1992

By Assemblyman SOSA, Assemblywomen DERMAN
and Crecco

1 AN ACT concerning the payment of estate tax, amending
2 R.S.54:38-5.

3
4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. R.S.54:38-5 is amended to read as follows:
7 54:38-5. ¹[a.]¹ All taxes imposed by [this chapter] R.S.54:38-1
8 and R.S.54:38-2 shall become due at the date of death of the
9 decedent and if not paid before the [expiration of eighteen
10 months from the date of death of the decedent] ¹[60th day
11 following the federal determination of estate tax due] expiration
12 of nine months from the date of the death of the decedent¹ shall
13 bear interest at the rate [of six per cent per annum from the
14 expiration of said eighteen months until paid] ¹[and in the manner
15 as is required pursuant to the State Tax Uniform Procedure Law,
16 R.S.54:48-1 et seq] of ten percent per annum from the expiration
17 of said nine months until paid, unless an extension of time to file
18 the federal estate tax return is granted, in which case the
19 director may reduce the interest rate to six percent per annum
20 until the expiration of the extension; provided however, that if
21 the decedent shall have heretofore died or shall hereafter die
22 while a member of the Armed Forces of the United States, no
23 such tax shall commence to bear such interest until the
24 expiration of nine months after receipt of official notification of
25 the death of the decedent by the husband, wife, father, mother,
26 or next of kin of such decedent¹. The ¹[state tax commissioner]
27 director¹ may, for cause shown, extend the time for payment
28 with ¹[or without]¹ interest ¹at the rate of ten percent per
29 annum¹ for such period as the circumstances, in his discretion,
30 may require ¹[and [the failure of the federal government to
31 finally determine the amount of estate tax due within said period
32 of eighteen months or] the subsequent assessment of an additional
33 or increased estate tax shall always be sufficient grounds for the
34 waiving of interest on any additional or increased estate tax until
35 the 60th day following the day on which the additional or
36 increased estate tax has been definitely determined by the
37 federal government]¹.

38 ¹[b. In addition to the taxes due at the times determined
39 pursuant to subsection a. of this section, a taxpayer shall pay a
40 tax in an amount determined pursuant to R.S.54:38-1, calculated
41 on the basis of the information contained in the federal estate
42 tax return, and due on the due date for the filing of the federal

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted June 11, 1992.

1 estate tax return. A federal extension for the time of filing of
2 the federal estate return shall automatically extend the time of
3 filing and payment of the tax imposed by this subsection to the
4 date of the required federal filing. The taxpayer shall be entitled
5 to a credit in the amount of the tax paid under this subsection as
6 a partial payment of the taxes payable in accordance with
7 subsection a. of this section and shall be entitled to the return of
8 any amount so paid which shall be found in excess of the total
9 amount payable in accordance with subsection a. or this
10 subsection. The tax paid under this subsection shall be
11 administered pursuant to the provisions of the State Tax Uniform
12 Procedure Law, R.S.54:48-1 et seq.]¹

13 (cf: R.S.54:38-5)

14 2. This act shall take effect immediately ¹[but section 1 shall
15 remain inoperative until the first day of the third month
16 following enactment,]¹ and apply to ¹[taxpayers required to file a
17 federal estate tax return] estates of decedents who die¹ on ¹[and]
18 or¹ after the first day of the third month ¹[following] preceeding
19 its¹ enactment.

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24 Provides estate tax installment payment at time of federal estate
25 tax filing.

1 2. This act shall take effect immediately but section 1 shall
2 remain inoperative until the first day of the third month
3 following enactment, and apply to taxpayers required to file a
4 federal estate tax return on and after the first day of the third
5 month following enactment.

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STATEMENT

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10 This bill accelerates the payment of the New Jersey estate
11 tax. The federal government imposes a tax on the value of a
12 decedent's estate. That federal tax allows a credit, calculated
13 as a percentage of the federal liability, for any state estate or
14 inheritance taxes paid. New Jersey uses that federal credit by
15 imposing a New Jersey estate tax equal to any amount of the
16 federal credit that remains after the regular New Jersey transfer
17 inheritance tax (or the death taxes of other states) is imposed.
18 The New Jersey estate tax is a "sponge" tax, one that absorbs
19 any available federal credit; it transfers the tax payments from
20 the federal government to New Jersey without increasing the
21 total amount of taxes due.

22 All of the information needed to calculate the otherwise
23 unused federal credit is available at the time the federal estate
24 tax return is filed, although the federal government may
25 redetermine the amount of federal liability, and hence the
26 amount of available federal credit, calculated in that filing.
27 Under current law, New Jersey estate tax is not due until the
28 federal liability is finally determined by the federal Internal
29 Revenue Service. In some cases that could be several years after
30 the federal return is filed. The bill requires an estimated
31 payment of State estate tax at the time the federal estate tax
32 return is filed, to be credited against the final payment of the
33 State estate tax when the federal estate tax liability is finally
34 determined.

35 This bill accelerates the payment of State estate tax, increases
36 the availability of funds to the State, protects the payor from any
37 tax penalties (assuming that no fraud has taken place), and allows
38 the payor a refund for any overpayment.

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44 Provides estate tax installment payment at time of federal estate
tax filing.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1516

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 11, 1992

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1516, with committee amendments.

Assembly Bill No. 1516, as amended, accelerates the payment of the New Jersey estate tax. The federal government imposes a tax on the value of a decedent's estate, allowing a credit, calculated as a percentage of the federal liability, for any state estate or inheritance taxes paid. New Jersey imposes a tax on the estates of resident decedents in the amount of any available federal credit remaining after state inheritance or estate taxes are paid.

Currently, New Jersey estate tax is not due until the federal liability is finally determined by the federal Internal Revenue Service. In some cases that could be several years after the federal return is filed. However, all of the information needed to calculate the otherwise unused federal credit is available at the time the federal estate tax return is filed. The bill requires payment of State estate tax nine months after the death of the decedent, at the time the federal return must be filed.

FISCAL IMPACT:

The Office of Legislative Services, using information supplied by the Division of Taxation, Department of the Treasury, notes that fiscal year 1991 estate tax revenues were about \$29 million and that fiscal year 1992 estate tax revenues are expected to exceed \$30 million, and has estimated that the bill could increase State revenues by perhaps \$25 million per year for each of the first two calendar years the bill is fully operative. The revenue effects of the bill will begin six months after its enactment.

COMMITTEE AMENDMENTS:

The amendments revise the interest provisions of the bill so that, rather than referencing the variable rates of the State Tax Uniform Procedure Law, the rates used will be identical to those in the transfer inheritance tax. The payment requirement has been amended so that payment is due at the time of the normal filing of the federal estate tax return nine months after the death of the decedent instead of at the time of the expiration of the extension of federal filing 15 months after the death of the decedent, accelerating the collection of tax a further six months. The bill as amended applies to the estates of decedents dying on or after the first day of the third month preceding the enactment of the bill, allowing the executors a minimum of five months to obtain the funds to pay the tax. The amendments also make special provision for deceased members of the Armed Forces of the United States, so that the nine month time limit for the payment of tax does not begin until the official notification of the service person's next of kin.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 1516

STATE OF NEW JERSEY

DATED: JUNE 25, 1992

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 1516 (1R).

Assembly Bill No. 1516 (1R) accelerates the payment of the New Jersey estate tax. The federal government imposes a tax on the value of a decedent's estate, allowing a credit, calculated as a percentage of the federal liability, for any state estate or inheritance taxes paid. New Jersey imposes a tax on the estates of resident decedents in the amount of any available federal credit remaining after state inheritance or estate taxes are paid.

Currently, New Jersey estate tax is not due until the federal liability is finally determined by the federal Internal Revenue Service. In some cases that could be several years after the federal return is filed. However, all of the information needed to calculate the otherwise unused federal credit is available at the time the federal estate tax return is filed. The bill requires payment of State estate tax nine months after the death of the decedent, at the time the federal return must be filed.

FISCAL IMPACT:

The Office of Legislative Services, using information supplied by the Division of Taxation, Department of the Treasury, notes that fiscal year 1991 estate tax revenues were about \$29 million and that fiscal year 1992 estate tax revenues are expected to exceed \$30 million, and has estimated that the bill could increase State revenues by perhaps \$25 million per year for each of the first two calendar years the bill is fully operative. The revenue effects of the bill will begin six months after its enactment.

LEGISLATIVE FISCAL ESTIMATE TO
ASSEMBLY, No. 1516
STATE OF NEW JERSEY

DATED: June 24, 1992

Assembly Bill No. 1516 of 1992 accelerates the payment of the New Jersey estate tax. Under current law, New Jersey estate tax is not due until the federal estate tax liability is determined by the federal government. In some cases that could be several years after the federal return is filed. (The federal return must be filed within nine months after the death of the decedent; however, filing extensions are frequently granted. IRS audits of sizable estate inventories often take several years more to complete before final tax liability is determined.) This bill requires an estimated payment of the State estate tax at the time the federal estate tax return is filed, to be credited against final payment due following federal determination of federal estate tax liability.

The Office of Legislative Services (OLS) notes that the New Jersey estate tax is a "sponge" tax that soaks up any unused federal credit allowed under the federal estate tax. Therefore, the actual amount of tax due to New Jersey cannot be determined until final federal liability determination is made. However, an estimate of State estate taxes can be made and paid at the time the federal return is filed, with final settlement (additional payment or refund) postponed until federal liability is established.

Although the Department of the Treasury did not respond to a fiscal note request on this bill, the Division of Taxation has stated that the New Jersey estate tax has become much more important as a revenue source since the phaseout of previously taxable Class A transfers to immediate family members under the transfer inheritance tax, a process begun in 1985 and now completed for transfers made on and after July 1, 1988. According to the division, estate tax revenues averaged about \$2 million per year prior to FY 1990, but totaled \$29 million in FY 1991 and are expected to reach \$30 million in FY 1992. What has basically happened is that the "sponge" of the estate tax has picked up some portion of the available federal credit that is no longer being absorbed by the transfer inheritance tax because of the exemptions granted under P.L.1985, c.57.

The bill provides for an estimated payment requirement at the time of federal tax filing (nine months after death) or, if a six-month federal extension has been granted, after 15 months. Compared to the current delays, this could accelerate part of the estate tax payment to New Jersey by as much as one to two years. OLS emphasizes that this is a temporary cash-flow acceleration, rather than an actual increase in tax liability. The cash-flow effect should occur over several years; thereafter, payment cycles will once again become "normalized" under the new schedule and collections should gradually return to a more normal year to year pattern.

The amount and timing of this acceleration is difficult to predict due to the nature of the estate tax. If the reported revenues for FY 1991 and FY 1992--\$29 million and \$30 million, respectively--represent a continuing trend rather than a short-term aberration in the normal pattern of collections, then a one-year acceleration of the bulk of the tax, i.e., the estimated portion, could increase State revenues by perhaps \$25 million per year for each of the first two years the bill is operative. A faster or slower acceleration would require proportionate adjustments. Since the bill would become operative three months following enactment, and apply to federal returns due after that date, it is conceivable that FY 1993 State revenues would be increased by some portion of the annualized revenue stream, depending on the enactment date. OLS also notes that the bill would make payment of the estimated estate tax subject to the provisions of the State Tax Uniform Procedure Law for purposes of tax administration, including the assessment of penalties, interest charges on late payments and time frames. Since these procedures are more stringent than those currently governing the transfer inheritance and estate taxes, there would be an increased although indeterminate amount received by the State from this change as well.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

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