

# SENATE, No. 239

## STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

**Sponsored by:**

**Senator STEVEN V. OROHO**

**District 24 (Morris, Sussex and Warren)**

**Senator PAUL A. SARLO**

**District 36 (Bergen and Passaic)**

**Co-Sponsored by:**

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**SYNOPSIS**

Phases out estate tax over five-year period.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



**(Sponsorship Updated As Of: 6/29/2012)**

1 AN ACT phasing out the estate tax over a five-year period,  
2 amending R.S.54:38-1 and R.S.54:38-3.

3

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

6

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

8 54:38-1. a. In addition to the inheritance, succession or legacy  
9 taxes imposed by this State under authority of chapters 33 to 36 of  
10 this title (R.S.54:33-1 et seq.), or hereafter imposed under authority  
11 of any subsequent enactment, there is hereby imposed an estate or  
12 transfer tax:

13 (1) Upon the transfer of the estate of every resident decedent  
14 dying before January 1, 2002 which is subject to an estate tax  
15 payable to the United States under the provisions of the federal  
16 revenue act of one thousand nine hundred and twenty-six and the  
17 amendments thereof and supplements thereto or any other federal  
18 revenue act in effect as of the date of death of the decedent, the  
19 amount of which tax shall be the sum by which the maximum credit  
20 allowable against any federal estate tax payable to the United States  
21 under any federal revenue act on account of taxes paid to any state  
22 or territory of the United States or the District of Columbia, shall  
23 exceed the aggregate amount of all estate, inheritance, succession or  
24 legacy taxes actually paid to any state or territory of the United  
25 States or the District of Columbia, including inheritance, succession  
26 or legacy taxes actually paid this State, in respect to any property  
27 owned by such decedent or subject to such taxes as a part of or in  
28 connection with 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  
31 an estate tax payable to the United States under the provisions of  
32 the federal Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in  
33 effect on December 31, 2001, the amount of which tax shall be, at  
34 the election of the person or corporation liable for the payment of  
35 the tax under this chapter, either

36 (i) the maximum credit that would have been allowable under  
37 the provisions of that federal Internal Revenue Code in effect on  
38 that date against the federal estate tax that would have been payable  
39 under the provisions of that federal Internal Revenue Code in effect  
40 on that date on account of taxes paid to any state or territory of the  
41 United States or the District of Columbia, or

42 (ii) determined pursuant to the simplified tax system as may be  
43 prescribed by the Director of the Division of Taxation in the  
44 Department of the Treasury to produce a liability similar to the

**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 liability determined pursuant to clause (i) of this paragraph reduced  
2 pursuant to paragraph (b) of this subsection.

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

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

27 (2) In the case of the estate of a decedent dying after December  
28 31, 2001 where no inheritance, succession or legacy tax is due this  
29 State under the provisions of chapters 33 to 36 of this title or under  
30 authority of any subsequent enactment imposing taxes of a similar  
31 nature, the tax imposed by this chapter shall be determined pursuant  
32 to paragraph (2) of subsection a. of this section.

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

1 other information compliance problems as the director determines  
2 are the result of the phased repeal of the federal estate tax.

3 d. Notwithstanding any provision of law to the contrary, upon  
4 the transfer of the estate of every resident decedent dying after  
5 December 31, 2010 the amount of estate or transfer tax due  
6 pursuant to paragraph 2 of subsection a. of this section shall be  
7 modified in accordance with the following schedule:

8 (1) Upon the transfer of the estate of every resident decedent  
9 dying after December 31, 2010 but before January 1, 2012, the  
10 amount of tax calculated as due pursuant to paragraph 2 of  
11 subsection a. of this section shall be reduced by 20% of that  
12 amount;

13 (2) Upon the transfer of the estate of every resident decedent  
14 dying after December 31, 2011 but before January 1, 2013, the  
15 amount of tax calculated as due pursuant to paragraph 2 of  
16 subsection a. of this section shall be reduced by 40% of that  
17 amount;

18 (3) Upon the transfer of the estate of every resident decedent  
19 dying after December 31, 2012 but before January 1, 2014, the  
20 amount of tax calculated as due pursuant to paragraph 2 of  
21 subsection a. of this section shall be reduced by 60% of that  
22 amount;

23 (4) Upon the transfer of the estate of every resident decedent  
24 dying after December 31, 2013 but before January 1, 2015, the  
25 amount of tax calculated as due pursuant to paragraph 2 of  
26 subsection a. of this section shall be reduced by 80% of that  
27 amount; and

28 (5) Upon the transfer of the estate of every resident decedent  
29 dying after December 31, 2014, no tax shall be calculated as due  
30 pursuant to paragraph 2 of subsection a. of this section.

31 (cf: P.L.2002, c.31, s.1)

32

33 2. R.S.54:38-3 is amended to read as follows:

34 54:38-3. If, subsequent to the determination of the tax due under  
35 this chapter, the amount of the Federal estate tax shall be decreased  
36 and the amount of the Federal credit correspondingly reduced by  
37 reason of any corrected assessment or redetermination or the  
38 amount due under this chapter is reduced by subsection d. of  
39 R.S.54:38-1, the tax due hereunder shall be reduced accordingly  
40 upon satisfactory proof submitted to the **【State Tax Commissioner】**  
41 Director of the Division of Taxation of the Department of the  
42 Treasury, and, if the tax due hereunder shall have theretofore been  
43 paid into the State treasury, the **【Comptroller of the Treasury】**  
44 Director of the Division of Budget and Accounting in the  
45 Department of the Treasury, on satisfactory proof of such fact  
46 submitted to the **【State Tax Commissioner】** Director of the  
47 Division of Taxation, and duly certified by him to the

1 **【Comptroller】** Director of the Division of Budget and Accounting,  
2 shall draw his warrant on the State Treasurer in favor of the  
3 executor, administrator, trustee, person or corporation who has paid  
4 said tax, or who may be lawfully entitled to receive the same, for  
5 the amount of such tax excessively paid and said warrant shall be  
6 paid by the State Treasurer out of any appropriation for the refund  
7 of transfer inheritance taxes the same as warrants for the refund of  
8 such taxes under the transfer inheritance tax statutes of this State  
9 are paid. The foregoing provisions respecting refund shall apply  
10 with the same force and effect to any other payments determined by  
11 the **【State Tax Commissioner】** Director of the Division of Taxation  
12 to have been excessively made under this chapter.

13 All applications for the refund of taxes claimed to have been  
14 excessively or erroneously paid hereunder must be filed with the  
15 **【State Tax Commissioner】** Director of the Division of Taxation  
16 within three years from the date of payment or if the refund of taxes  
17 claimed is due to the effect of the reduction provided by subsection  
18 d. of R.S.54:38-1 upon a prior payment the application must be  
19 filed with the Director of the Division of Taxation within three  
20 years from the date of enactment of P.L. , c. , (pending before  
21 the Legislature as this bill).  
22 (cf: P.L.1944, c. 75, s. 1.)  
23

24 3. This act shall take effect immediately and apply  
25 retroactively to the transfer of the estate of every resident decedent  
26 dying after December 31, 2010.  
27

#### 28 STATEMENT 29

30  
31 This bill phases out New Jersey's estate tax over a five-year  
32 period. The estate tax imposes a tax on the estate of a resident  
33 decedent based on the amount of the credit allowed under federal  
34 estate tax law for state inheritance taxes paid as provided under the  
35 Internal Revenue Code as of December 31, 2001.

36 Up until 2002, the State estate tax was designed to absorb the  
37 value of federal estate tax credit remaining for state inheritance  
38 taxes paid. In 2002, the federal government began phasing that  
39 credit out until it no longer existed as of 2005. To avoid the  
40 potential revenue loss by the change in federal estate tax treatment,  
41 New Jersey tied its estate tax to the amount of such federal credit  
42 immediately before the phase out took effect. The resultant State  
43 estate tax structure is an imposition which is based upon a federal  
44 credit which has not existed for about a decade.

45 This bill phases out New Jersey's estate tax over a five-year  
46 period. Beginning with 2011 and continuing up until the tax is no  
47 longer collectible in 2015, the amount of estate tax calculated as

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1 due under the existing structure will be reduced by 20% each year.  
2 In the event the bill takes effect after January 1, 2011, the bill does  
3 contain a refund mechanism for the estate of a resident decedent  
4 which pays an amount of estate tax due that is subsequently reduced  
5 by the enactment of this bill. A request for refund under this  
6 mechanism must be made within three years of the date of  
7 enactment of this bill.  
8 The purpose of this bill is to simplify New Jersey's taxation of  
9 decedent estates, while allowing for an orderly adjustment to the  
10 associated revenue loss through the bill's five-year phase out.