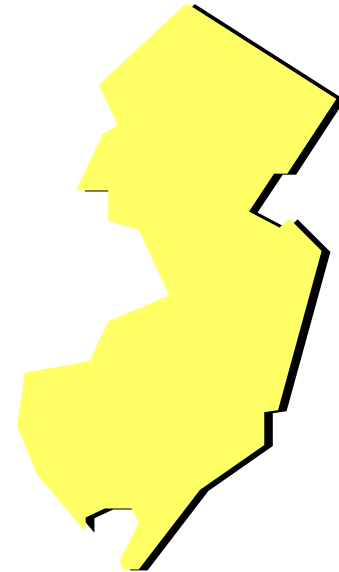


New Jersey Update PBI 2018



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New Jersey Update 2018

NEW GOVERNOR

- Phil Murphy

JUNE 31 BUDGET

- \$1.6 Billion in new taxes

NEW AMNESTY

- Ends 1-15-19

TOP INCOME TAX BRACKET

- 10.75% on income over \$5M
- 2,000 or so taxpayers



New Jersey Update 2018

NEW GAS TAX

- Another 4.3 cents to 41.4 cents

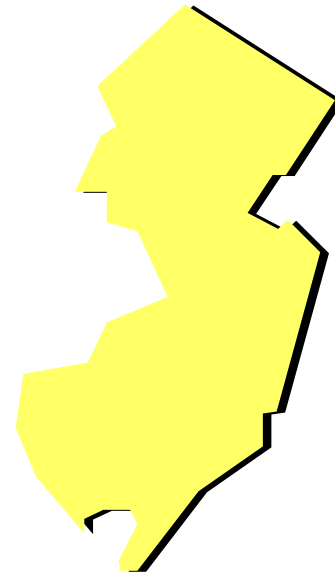
FIGHTING SALT WARS

- IRS Notice 2018-54

NO ESTATE TAX

- Effective 1-1-18 decedents
- Carryover from 2016 gas tax increase
- 2017 decedents \$2,000,000 exemption

BUT STILL AN INHERITANCE TAX



New Jersey Update 2018

INHERITANCE TAX REFRESHER COURSE

Tax based on relationship

Class A 0% Rate

- Spouse, child, grandchild, stepchild
- NOT Step grandchild

Class C 11% over \$25k (higher over \$1.1M)

- Sibling, child-in-law

Class D 15%, 16% over \$700k

- Everyone else



New Jersey Update 2018

INHERITANCE TAX /ESTATE TAX

New regulations effective July 16, 2018

- Old regs lapsed in 2015

Waiver rules

- 50% blanket waiver
- Self executing waiver L-8 intangibles /L-9 real estate
 - Expanded for 2018

Distribution by agreement

- NJAC 18:26-2.10
- By will “admitted to probate”



New Jersey Update 2018

INHERITANCE TAX /ESTATE TAX

New regulations effective July 16, 2018

Application to IRAs

- Waiver needed
- Not a “pension” not a “trust”

Application to estate tax

- Portability and marital deduction
- Discounts



New Jersey Update 2018

INHERITANCE TAX recent case

Van Riper v Director

- *2018 WL 4761357 (App. Div. October 3, 2018)*

Walter and Mary create irrevocable trust in 2007.

Transfer marital home to trust reserving life estates

- Remainder to niece

Walter dies in 2007

Mary dies in 2013



New Jersey Update 2018

INHERITANCE TAX recent case

Van Riper v Director

Home value is \$935,000

Division of taxation taxes the entire value of home

Mary's estate (and amicus) argue that only 50% should be taxed

- NJ State Bar
- NJ Land title association

Only 50% was transferred by Mary

Walters estate had filed a return and was not questioned.



New Jersey Update 2018

INHERITANCE TAX recent case

Van Riper v Director

COURT:

NJSA 54: 34-1(c)

- Tax if transfer intended to take effect at or after death.

Retention of life estate postponed nieces enjoyment

Transfer made was in the “entireties” of property

Affirms tax court, finds the entire value subject to tax



New Jersey Update 2018

INHERITANCE TAX recent case

Van Riper v Director

Decision fails to note that the transfer to the trust negates “entireties”

Suppose, Walter and Mary had first converted to “tenants in common”?

Suppose they had created separate trusts?



New Jersey Update 2018

Will/Trust construction case

In the Matter of Trust of Violet Nelson

- *454 N.J. Super 151 (App. Div. March 28, 2018)*

Violet creates a Trust that is divided “per capita” for her
“grandchildren”

Violet has three children, each of whom has two children

Children are Jack, Robert and Jacoba

Violet follows the Orthodox Jewish religion



New Jersey Update 2018

Will/Trust construction case

In the Matter of Trust of Violet Nelson

Jack, as trustee files a declaratory action that the trust was to include only his and Robert's children not Jacoba's children

In 1970, Jacoba married outside the faith. Violet "mourned her as if she was dead"

In 1986, Violet and Jacoba reconciled, but that was allegedly cut off when she discovered the children were baptized.

Jacoba visited Violet in her last illness



New Jersey Update 2018

Will/Trust construction case

In the Matter of Trust of Violet Nelson

Drafting attorney contends that he knew of the other two “grandchildren” but understood Violet to mean only the four children, Jack and Robert.

Do you need an ambiguity in order to invoke the “Doctrine of Probable intent”?



New Jersey Update 2018

Will/Trust construction case

In the Matter of Trust of Violet Nelson

NJ has a well developed doctrine of probable intent that was codified in NJSA 3B: 3-33.1

Is this a REFORMATION or INTREPRETATION?

Reformation

- Correct mistakes- remake document-unforeseen circumstances

Interpretation

- Find meaning in words of document



New Jersey Update 2018

Will/Trust construction case

In the Matter of Trust of Violet Nelson

Reformation

- Clear and convincing standard

Interpretation

- Preponderance of the evidence standard

UTC 415 (same as N.J.S.A. 3B:31-31 and 20 Pa.C.S.A. 7740.5)

- Allows reformation on clear and convincing evidence
- Even if unambiguous

NJ adds 3B:31-32 for interpreting probable intent, even if unambiguous



New Jersey Update 2018

Will/Trust construction case

In the Matter of Trust of Violet Nelson

When is a grandchild not a grandchild?

Court finds that the term “grandchildren” is ambiguous

- This is an interpretation
- Extrinsic evidence is permitted to effectuate probable intent



New Jersey Update 2018

Will/Trust construction case

In the Matter of Trust of Violet Nelson

Contra cases

- *Gabrellian* 372 N.J. Super 432 (App. Div. 2004)
- *Johnson 1961 Trust* 166 N.J. 340 (2001)

Supporting case

- *Payne* 186 N. J. 335 (2006)

Subsequent case

- *Reese v Speedway investments* 2018 WL 2120521 (D. N.J. (May 8, 2018))



New Jersey Update 2018

Fiduciary case

In the Matter of Trust of Ray D. Post

- *2018 WL 3861756 (App. Div. August 15, 2018)*

Ray dies in 1989 and creates a trust for his wife Enid, remainder to daughters Deborah and Sarah

Corpus includes Baby bell stocks and Exxon and document includes a clause that Trustee could “retain, without liability, for loss... property received from the Grantor”

In 1993, Valley Bank takes over and, in 2000, in house counsel advises that they could retain the stock or diversify

- but if it was to diversify, it should notify beneficiaries.



New Jersey Update 2018

Fiduciary case

In the Matter of Trust of Ray D. Post

Bank diversifies and does not notify beneficiaries

What wins?

- Duty to diversify or
- trust clause

Prudent investor Act creates duty to diversify

- “fiduciary shall diversify ... unless the fiduciary reasonably determines that that, because of special circumstances. The purposes of the trust are better served without diversifying”



New Jersey Update 2018

Fiduciary case

In the Matter of Trust of Ray D. Post

Professor Langbein

- Diversification was routine good trust administration
- Innocuous breach rule – diversified for beneficiary benefit, not for the bank's benefit

Rich Greenberg, Esquire

- PIA allows clause but if you must deviate
- Ask court or get beneficiary consent



New Jersey Update 2018

Fiduciary case

In the Matter of Trust of Ray D. Post

Court finds that ample evidence Bank knew of duty to notify and there was no explanation of why they ignored advice of counsel.

Court finds for beneficiary

Fiduciary beware

