DON'T DIE IN NEW JERSEY: A PUSH FOR EFFECTIVE DEATH TAX REFORM LEGISLATION

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"In this world nothing can be said to be certain, except death and taxes."
- Benjamin Franklin, Founding Father of the United States

"It's extraordinarily expensive to die in this state."
- Chris Christie, 55th Governor of New Jersey

INTRODUCTION

Benjamin Franklin's assertion on taxes and death continues to ring true throughout the United States. There are only two certainties in life: you must pay taxes and you will eventually die. However, if you happen to be a resident of New Jersey, Governor Chris Christie (R) will tell you that there is one more certainty nestled into Franklin's equation. In New Jersey, you will be taxed, you will die, and then there will be more taxes after your death.

New Jersey is not only consistently ranked the least competitive state in the nation based on its business tax climate[1]

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and one of the worst states in which to retire,[2] but it is also the worst place in which to die.[3] New Jersey suffers from some of the highest tax burdens in the United States, including the highest property tax, one of the worst structured systems of individual income taxes, taxes on unearned income, and is one of just two states to levy both an inheritance and an estate tax (hereinafter collectively referred to as "death taxes") on its residents.[4] These factors have led to the state's expensive tax climate and are the main reasons why middle- and upper-income residents are not hesitating to flee to economically friendlier states as they reach their golden years.[5] In fact, a

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[1] The Tax Foundation, a non-partisan Washington D.C. group, ranked New Jersey fiftieth on its annual index of state business taxation. TAX FOUNDATION, FACTS & FIGURES 2015: HOW DOES YOUR STATE COMPARE? (2015), http://taxfoundation.org/sites/taxfoundation.org/files/docs/Fact%26Figures_15_web.pdf.

[2] The negatives of retiring in New Jersey include: highest property taxes in the nation, taxes on pensions, lowest exemption level for estate taxes in the nation, one of the highest marginal tax rates at 8.97% on incomes more than $500,000, and one of the highest costs of living. *See* John Brady, *10 Worst States for Retirement*, USA TODAY (Apr. 19, 2014), http://www.usatoday.com/story/money/personalfinance/2014/04/19/retirement-states-taxes/7788891/.

3 New Jersey and Maryland are the only two states to impose estate and inheritance taxes on their residents. Ashlea Ebeling, WHERE NOT TO DIE IN 2015, Forbes (Sept. 11, 2014), http://www.forbes.com/sites/ashleaebeling/2014/09/11/where-not-to-die-in-2015/. New Jersey has the lowest estate tax exemption threshold at $675,000. *Id.*

[4] *See NJ Income Tax—Retirement Income,* N.J. DIV. OF TAXATION, http://www.state.nj.us/treasury/taxation/njit6.shtml (last visited Aug. 8, 2016); *see generally* ERIC FUREY ET AL., REGENT ATLANTIC, EXODUS ON THE PARKWAY: ARE TAXES DRIVING WEALTHY RESIDENTS OUT OF NEW JERSEY?—THE IMPACT THAT INCENTIVES AND TAXES HAVE ON CHOICE OF DOMICILE (Jan. 2014), http://www.regentatlantic.com/File%20Library/Tax%20paper/Exodus-on-the-Parkway-2-25-14-FINAL-VERSION.pdf.

[5] The top ten outbound migration states for 2014 were (from most residents lost to least residents lost): New Jersey, New York, Illinois, North Dakota, West Virginia, Ohio, Kansas, New Mexico, Pennsylvania, and Connecticut. *See 2014 National Movers Study*, UNITED VAN LINES (Jan. 2, 2015), http://www.unitedvanlines.com/about-united/news/movers-study-2014.

recent study showed that over the last three years, New Jersey saw more outbound migration than any other state.[6] This migration has resulted in the state losing out on billions of dollars in revenue.[7]

The major focus for the New Jersey Legislature has been and should continue to be finding an effective reform solution to the state's tax system.[8] An effective tax reform will make New Jersey a more desirable place to live, thus retaining the state's current middle- and upper-income residents and their families and businesses, attracting new middle- and upper-income residents and their families and businesses, and ultimately increasing the state's revenue in the long-term. Numerous members of the New Jersey Legislature believe that reforming New Jersey's death taxes is the state's most pressing concern and, accordingly, have introduced a variety of bills aimed at reforming or eliminating the state's death taxes.[9]

Another comprehensive study, done by Jon Bakija of the Department of Economics at Williams College and Joel Slemrod of the University of Michigan Business School, concluded "that the number of federal estate tax return filers reported as residing in each state is negatively influenced by the level of taxes imposed on high-income and high-wealth people in that state." Jon Bakija & Joel Slemrod, *Do the Rich Flee from High State Taxes? Evidence from Federal Estate Tax Returns* (July 2004), http://web.williams.edu/Economics/wp/bakijaDoTheRichFleeJuly7th2004.pdf. As the study clarifies, the most compelling results are for estate and inheritance taxes and sales taxes. *Id.*

[6] The Garden State registered 64.9% of its total moves as outbound, compared to just 35.1% inbound. UNITED VAN LINES, *supra* note 5, at 5.

[7] From 2004 through 2008, New Jersey saw a net outflow of $70 billion. JOHN HAVENS, CTR. ON WEALTH AND PHILANTHROPY, MIGRATION OF WEALTH IN NEW JERSEY AND THE IMPACT ON WEALTH AND PHILANTHROPY (Jan. 22, 2010), http://www.bc.edu/content/dam/files/research_sites/cwp/pdf/njreport.pdf.

[8] John Reitmeyer, *A Push to Reform How N.J. Taxes Heirs*, NORTHJERSEY.COM (Aug. 24, 2014), http://www.northjersey.com/news/a-push-to-reform-how-n-j-taxes-heirs-1.1072688.

[9] *See, e.g.*, Assemb. B. 3496, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/A3500/3496_I1.PDF; Assemb. B. 3885, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/A4000/3885_I1.PDF; Assemb. B. 329, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/A0500/329_I1.PDF; S.B. 1311, 216th Leg., Reg. Sess. (N.J. 2014),

But is death tax reform the right solution for New Jersey's outbound migration issue? If so, what type of death tax reform is right? If the death taxes were reformed or eliminated, where will that loss in state revenue come from at a time when New Jersey is already struggling with its budget?[10] These are important questions the New Jersey Legislature must consider with death tax reform. This note will answer these questions by providing an understanding of New Jersey's current death tax structure, analyzing the positives and negatives of each tax, and ultimately, establishing tax reform recommendations for the New Jersey Legislature that will most effectively benefit the state's economy.

Part I of this note will analyze the recent outbound migration trend of New Jersey residents. To gain an understanding of the state's death taxes, Part II will provide an in-depth overview of the inheritance and estate taxes in New Jersey and weigh the positives and negatives of each of these taxes. Part III will compare New Jersey's death taxes with the death taxes in other states, including Maryland, the only other state to impose both an inheritance tax and an estate tax on its residents. Part IV will examine other possible reasons for the outbound migration of the state's residents, including the cost of living, income tax, property tax, and tax on unearned income. Part V will take a look at some of the recent death tax reform legislation in New Jersey. Finally, Part VI will provide findings and detailed tax reform recommendations for the New Jersey Legislature based on the information, data, and opinions gathered throughout this note.

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http://www.njleg.state.nj.us/2014/Bills/S1500/1311_I1.PDF; S.B. 702, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/S1000/702_I1.PDF; S.B. 2219, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/S2500/2219_I1.PDF.

[10] A state judge found that Governor Christie "unlawfully cut more than $1.5 billion from a state pension payment for government workers in order to make up for a budget shortfall." *See* Ben Kamisar, *Judge Rules Christie Broke Law to Balance New Jersey Budget*, THE HILL (Feb. 24, 2015), http://thehill.com/blogs/ballot-box/233592-judge-christie-broke-law-to-balance-budget.

I. OUTBOUND MIGRATION OF AFFLUENT NEW JERSEY RESIDENTS

New Jersey has a high cost of living and maintains one of the least-favorable tax climates in the nation.[11] Although New Jersey's neighboring states also have relatively high costs of living and relatively high taxes, New Jersey is the only state with high taxes in all of the major tax categories, including income, property, and death taxes.[12] Despite the supposed revenue New Jersey derives from these high taxes, the state struggles with its budget due to insufficient revenue each year.[13] The most significant reason for the state's continuous insufficient revenue is that since 2004 many middle- and upper-income New Jersey residents have been leaving the state and taking their families, businesses, and all of their taxable wealth with them.[14] With New Jersey's onerous taxes, many middle and upper-income residents have found the decision to leave New Jersey for a tax-friendlier state an easy one.[15] In fact, New Jersey had the

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[11] ERIC FUREY ET AL., *supra* note 4, at 14 ("New Jersey's income tax, property tax, estate tax, and charitable gift statutes are much more onerous than other states."); *see also* Karin Price Mueller, *The High Cost of New Jersey: Why We Leave*, NJ.COM (Mar. 4, 2015), http://www.nj.com/inside-jersey/index.ssf/2015/03/the_high_cost_of_jersey_why_we_go.html; *see generally* TAX FOUNDATION, *supra* note 1.

[12] For example, in 2013, Pennsylvania not only had lower property taxes than New Jersey, but with its flat income tax, the state was rated 12th from the top in income taxes, while New Jersey was rated 48th in income taxes and 49th in property taxes. Richard Miner, *An Inside Look at the 2015 Budget Battle of New Jersey*, WATCHDOG WIRE (July 2, 2014), http://watchdogwire.com/new-jersey/2014/07/02/an-inside-look-at-the-battle-of-njs-fiscal-2015-budget/; *see* generally FUREY ET AL., *supra* note 4. Only California and New York were worse than New Jersey in the income tax category, but both were rated better in property taxes. *Id.*

[13] *See* Kamisar, *supra* note 10; *see also* Samantha Marcus, *Christie 2016 Budget Lowers Expectations for N.J. Revenues*, NJ.COM (Mar. 1, 2015), http://www.nj.com/politics/index.ssf/2015/03/christie_2016_budget_lowers_expectations_for_nj_re.html.

[14] *See generally* HAVENS, *supra* note 7.

[15] FUREY ET AL., *supra* note 4. According to New Jersey Senator Stephen Oroho (R), "[e]scalating taxes are the reason New Jersey and many other states now find themselves facing this drop-off in revenue. The top earners have the means and resources to easily move their primary residence to avoid paying exorbitant

highest net outbound migration in the nation in 2013 and 2014, and was in the top three for highest net outbound migration from 2008 through 2011.[16]

This loss in population has subsequently resulted in a major loss in state revenue.[17] From 1999 through 2003 there was a net influx of $98 billion in household wealth that came into New Jersey.[18] Most of the inbound migration came from the states of New York and Pennsylvania and from foreign countries.[19] However, from 2004 through 2008 this flow reversed as affluent residents moved out of the state at a faster rate than they were being replaced.[20] In those five years, the inflow of wealth coming into New Jersey dropped from $300 billion to $117 billion—a difference of $183 billion.[21] Over the same period, the outflow of wealth fell from $202 billion to $187 billion—a difference of slightly more than $15 billion.[22] "The result was a shift from a net inflow of $98 billion . . . to a net outflow of $70 billion . . . for a total decline in wealth of $168

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tax rates like New Jersey's." *Oroho Offers Solutions for NJ's Economy*, SENATENJ.COM (May 22, 2014), http://www.senatenj.com/index.php/oroho/oroho-offers-solutions-for-njs-economy/17607. A change in domicile has become a very easy undertaking. *See* COLE SCHOTZ TAX, TRUSTS & ESTATES ATTORNEYS, ON THE ROAD TO FLORIDA: COLE SCHOTZ'S PRACTICAL GUIDE TO CHANGING YOUR RESIDENCE FROM NEW JERSEY OR NEW YORK (Apr. 30, 2013), http://www.coleschotz.com/2B7963/assets/files/documents/Cole%20Schotz%20P.C.%20On%20the%20Road%20to%20Florida%20-%20November%201,%202014.pdf.

[16] These figures come from 2014 and 2015 studies conducted by United Van Lines. *See* UNITED VAN LINES, *supra* note 5. The company, through the nature of its business, is able to track inbound and outbound movement for each state. *Id.* In 2014, New Jersey registered 64.9% of its total moves as outbound, compared with just 35.1% inbound. *Id.*

[17] *See generally* HAVENS, *supra* note 7.

[18] *Id.* at 2. The $98 billion is in 2009 dollars. *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] HAVENS, *supra* note 7, at 2.

billion."[23] This outbound migration of wealth has continued unabated since 2004.[24] An analysis of income tax returns filed in New Jersey shows that taxpayers are continuing to change their domiciles to lower-tax states.[25] "In 2010, there were 87,630 federal tax returns filed in states other than New Jersey by people who filed their 2009 tax returns in New Jersey."[26] "These 87,630 tax returns accounted for a loss of $5.5 billion in taxable income for New Jersey."[27]

Where are these taxpaying residents relocating? Most of the residents that have fled New Jersey are moving to Florida and Pennsylvania, which are both more tax-friendly.[28] With these outbound migrations, two trends have been identified: (1) New Jersey working millionaires are leaving the state to live in Pennsylvania, and (2) wealthy New Jersey residents are heading to Florida to retire.[29] Florida's big draw for retirees is that it is a no income tax state without death taxes.[30] Pennsylvania's

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[23] *Id.*

[24] FUREY ET AL., *supra* note 4, at 11. *See generally SOI Tax Stats—Migration Data—New Jersey*, INTERNAL REVENUE SERVICE, http://www.irs.gov/uac/SOI-Tax-Stats-Migration-Data-New-Jersey (last visited Aug. 8, 2016).

[25] FUREY ET AL., *supra* note 4, at 11.

[26] *Id.*

[27] *Id.*

[28] *Id.* at 11, 13. In 2009 and 2010, New Jersey lost seventy percent of the state's relocating income to Florida and Pennsylvania. *Id.* Forty-one percent of the net adjusted gross income migration out of New Jersey went to Florida and twenty percent went to Pennsylvania. *Id.* at 11.

[29] FUREY ET AL., *supra* note 4, at 14-16.

[30] *Id.* at 16.

> A hypothetical retired couple living in New Jersey with a net worth of $5 million has the option to stay in New Jersey or move to Florida. If this couple dies in New Jersey, they will pay no federal estate tax. However, their New Jersey state estate tax will be nearly $400,000. If the couple moves to Florida before dying, they will owe no federal or Florida estate tax.

Id. That is a savings of $400,000 if the couple moves to Florida before dying. *See id.*

income tax and death tax are also much more favorable than New Jersey's.[31] Additionally, a lesser but still significant trend has shown that many New Jersey residents are also migrating to Delaware due to the state's friendlier taxes and close proximity to New Jersey.[32]

New Jersey was once considered the wealthiest state in the nation.[33] However, since 2004, New Jersey's wealth has diminished as the state continues to lose many of its middle- and upper-income taxpayers.[34] The sudden reversal in 2004 from inflow of middle- and upper-income residents to outflow of these residents was a reaction to a series of changes in New Jersey's tax structure.[35] These changes, including sales and property tax increases, were underscored by a major change to the state's income tax structure.[36] In 2004, "New Jersey raised its income tax by 2.6 percentage points on income above $500,000."[37]

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[31] A hypothetical married couple living in New Jersey has a combined pre-tax income of $650,000 and is contemplating moving to Pennsylvania. If they remain in New Jersey, the couple will reach the top marginal state income bracket of 8.97 percent. If they move to Pennsylvania, they will pay a flat income tax rate of 3.07 percent.

Ebeling, *Where Not to Die in 2015, supra* note 3. This comes out to be about $21,000 per year saved if the couple moves to Pennsylvania. *Id.* Furthermore, Pennsylvania imposes only an inheritance tax and no estate tax on its residents. *Id.*

[32] Jeff Montgomery, *Gray Wave Reshapes State as New Arrivals, Residents Age*, THE NEWS JOURNAL, http://www.delawareonline.com/story/news/local/2015/03/13/delaware-gray-migration/70312762/ (last visited Aug. 8, 2016).

[33] Miner, *supra* note 12.

[34] In 2009-10, "the AGI [net adjusted gross income] of a person leaving New Jersey for Florida was $74,000, while the AGI of a Florida resident moving to New Jersey was only $39,000." FUREY ET AL., *supra* note 4, at 12; *see also* Miner, *supra* note 12.

[35] Miner, *supra* note 12.

[36] *Id.*

[37] The new income tax for New Jersey residents with incomes of $500,000 or greater was set at 8.97%. Cristobal Young & Charles Varner, *Do Millionaires*

Due to these significant 2004 tax changes, New Jersey's death taxes became much more noticeable, as many middle- and upper-income residents became more aware of New Jersey's overall tax structure and the state's uniqueness in having the worst structured death taxes in the nation.[38] As a result, middle- and upper-income residents have increasingly left the state since 2004.[39] While New Jersey's income and property taxes remain the highest in the nation, the state's distinctively burdensome death taxes make New Jersey one of the most expensive states, if not the most expensive state in which to live and die, and ultimately, push New Jersey's residents to move outside the state's border.[40]

II. NEW JERSEY'S DEATH TAXES

The following subsections will closely examine New Jersey's death taxes, including the inheritance tax and the death tax. Furthermore, the subsections will provide a negative-positive analysis of these taxes to show the affects they are having on the state.

Migrate When Tax Rates Are Raised?, PATHWAYS MAGAZINE (Summer 2014), http://web.stanford.edu/group/scspi/_media/pdf/pathways/summer_2014/Pathways_Summer_2014_YoungVarner.pdf. *See generally* N.J. STAT. ANN. § 54A:2-1 (West, Westlaw current through 2016).

[38] Michael Symons, *Lawmakers Hope to Bury 'Death Tax' in New Jersey*, ASBURY PARK PRESS (Feb. 10, 2015), http://www.usatoday.com/story/news/nation/2015/02/10/lawmakers-hope-to-bury-death-tax-in-nj/23194471/.

[39] Young & Varner, *supra* note 37, at 4. Although this particular study focused on the movement of millionaires out of New Jersey, the State's tax structure has led to the migration of many middle-income residents as well (i.e. those with assets totaling under $1 million). *See* Laura Agadoni, *New Jersey Income Tax: The Decline of the Garden State*, HOW MONEY WALKS (Jul. 29, 2015), http://www.howmoneywalks.com/new-jersey-income-tax-the-decline-of-the-garden-state/; Anthony Birritteri, *Gauging New Jersey's Economic Future*, N.J. BUS. MAGAZINE (Mar. 9, 2016), http://njbmagazine.com/monthly_articles/gauging-new-jerseys-economic-future/.

[40] *See generally* Sean Kean, *N.J. Should Repeal Estate, Inheritance Tax*, ASBURY PARK PRESS (June 15, 2014), http://www.app.com/story/opinion/columnists/2014/06/15/kean-nj-repeal-estate-inheritance-tax/10501807/.

A. THE INHERITANCE TAX

An inheritance tax is a tax based on receiving a deceased person's property and the beneficiary's relation to the deceased person.[41] New Jersey's inheritance tax varies, depending on the relationship of the beneficiary to the New Jersey decedent.[42] For New Jersey's inheritance tax, there are five inheritance tax beneficiary classes ranging from "A" to "E."[43] Class A beneficiaries which include the father, mother, grandparents, wife, husband, civil union partner after February 19, 2007, child or children of a decedent, issue of a child or legally adopted child of a decedent, mutually acknowledged child, stepchild (including a grandchild and great-grandchild but not a step-grandchild or a great-step-grandchild), and domestic partner after July 10, 2004 are exempt from inheritance taxes.[44] Class C beneficiaries include the brother or sister of a decedent, wife or civil union partner after February 19, 2007 or widow or surviving civil union partner after February 19, 2007 of a son of a decedent, or husband or civil union partner after February 19, 2007 or widower or surviving civil union partner after February 19, 2007 of a daughter of a decedent.[45] Class C beneficiaries receive an exemption equal to the first $25,000 of an

[41] *What are Inheritance Taxes,* TURBOTAX, https://turbotax.intuit.com/tax-tools/tax-tips/Taxes-101/What-are-Inheritance-Taxes-/INF14800.html.

[42] *General Information—Inheritance and Estate Tax*, N.J. DIV. OF TAXATION, http://www.state.nj.us/treasury/taxation/pdf/other_forms/inheritance/010c.pdf (last visited Aug. 8, 2016).

[43] *Id.*

[44] Class B beneficiaries were eliminated from the New Jersey inheritance tax laws on July 1, 1963. *Id.* The inheritance tax applies to civil union partners after February 19, 2007 because this is the date the Civil Union Act was enacted in New Jersey. *Id.* This Act established civil unions for couples of the same sex. *See* N.J. STAT. ANN. § 37:1-29 (West, Westlaw current through 2016). The inheritance tax applies to domestic partners after July 10, 2004 because this is the date the Domestic Partnership Act was enacted in New Jersey. *See* N.J. STAT. ANN. § 26:8A-4 (West, Westlaw current through 2016). The Act establishes domestic partnerships for those who meet the specified criteria. *Id.*

[45] *General Information—Inheritance and Estate Tax*, N.J. DIV. OF TAXATION, *supra* note 42.

inheritance, and transfers that exceed $25,000 are taxed at eleven percent to sixteen percent, depending on the exact amount of the transfer.[46] **Class D beneficiaries** include all other beneficiaries not otherwise classified in the other classes.[47] Class D beneficiaries receive an exemption equal to only the first $500 of an inheritance and transfers that exceed $500 are taxed at fifteen percent to sixteen percent, depending on the exact amount of the transfer.[48] Class E beneficiaries include transfers to New Jersey or any of its political subdivisions for public or charitable purposes, an educational institution, church, hospital, orphan asylum, public library, and certain other non-profit agencies, etc.[49] Class D beneficiaries are completely exempt from the inheritance tax.[50] In addition to the exemptions above, no inheritance tax is imposed on life insurance proceeds.[51]
To satisfy the state's requirements, a New Jersey inheritance tax return, Form IT-R for residents or Form IT-NR for non-residents, must be filed and the tax must be paid within eight months after the decedent's date of death.[52] Additionally, although Class A beneficiaries are not required to file a New Jersey inheritance tax return, the state requires them to file Form L-8 to secure the release of a New Jersey decedent's bank accounts, stocks, bonds and brokerage accounts.[53] Any New Jersey real estate titled in the name of the decedent, then Form L-9 for a resident, or Form L-9NR for a non-resident

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[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *General Information—Inheritance and Estate Tax*, N.J. DIV. OF TAXATION, *supra* note 42.

[51] *Id.*

[52] *Transfer Inheritance and Estate Tax—IT-R*, N.J. DIV. OF TAXATION, http://www.state.nj.us/treasury/taxation/pdf/other_forms/inheritance/itrbk.pdf (last visited Aug. 8, 2016).

[53] *General Information—Inheritance and Estate Tax*, N.J. DIV. OF TAXATION, *supra* note 42.

decedent, must be filed in order to obtain a release from the state's lien on the real estate.[54]

B. THE ESTATE TAX

In addition to the inheritance tax, the state also imposes a separate estate tax on the estate of certain New Jersey decedents.[55] An estate tax is a tax that is based on the value of the deceased person's estate and not on who the beneficiaries are or what the beneficiaries receive.[56] "In calculating the value of estates for the estate tax, the state counts cash, real estate, retirement accounts, life insurance benefits and other assets."[57] The New Jersey estate tax is an amount equal to the credit allowable for "inheritance, estate, succession or legacy taxes paid to any state or territory of the United States or the District of Columbia under federal estate tax law less that portion of the credit which is attributable to property located outside New Jersey and less any New Jersey inheritance tax."[58] Although the federal threshold for estate taxes is $5.45 million, New Jersey's estate tax has been decoupled from the federal estate tax laws.[59] In New Jersey, the estate tax exemption threshold is only

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[54] *Id.*

[55] *Id.*

[56] TURBOTAX, *supra* note 41. Even estates that are partially or fully exempt from the inheritance tax may be subject to the estate tax. *General Information—Inheritance and Estate Tax*, N.J. DIV. OF TAXATION, *supra* note 42.

[57] Symons, *Lawmakers Hope to Bury 'Death Tax' in New Jersey*, *supra* note 38.

[58] Julie Garber, *Overview of New Jersey Estate Tax Laws*, ABOUT.COM, http://wills.about.com/od/newjersey/qt/newjerseyestatetax.htm (last visited Aug. 8, 2016).

[59] Ashlea Ebeling, *IRS Announces 2016 Estate and Gift Tax Limits: the $10.9 Million Tax Break*, FORBES (Oct. 22, 2015), http://www.forbes.com/sites/ashleaebeling/2015/10/22/irs-announces-2016-estate-and-gift-tax-limits-the-10-9-million-tax-break/#1a0b9eff6a7c. New Jersey's estate tax exemption threshold was likely decoupled from the federal estate tax exemption threshold so that the state could generate more revenue. *See* Frank L. Brunetti, *New Jersey Considers Estate Tax Reform*, SCARINCI HOLLENBECK—TAX TRUST AND ESTATE NEWS (Sept. 5, 2014), http://taxtrustestatenews.com/new-jersey-considers-estate-tax-reform/.

$675,000, which is the lowest estate tax exemption level in the nation.[60] Furthermore, New Jersey's estate tax rate is a progressive rate that maxes out at sixteen percent for an amount above $10,040,000.[61]

New Jersey's estate tax is either the "maximum credit for state inheritance, estate, succession or legacy taxes allowable under the provisions of the Internal Revenue Code in effect on December 31, 2001 (this is called the "Form 706 Method")," or it is an "amount determined pursuant to the Simplified Tax System prescribed by the Director of the Division of Taxation (this is called the "Simplified Form Method")."[62] It is required that the Form 706 Method be used "if the taxpayer is required to file a federal estate tax return, IRS Form 706."[63] If the taxpayer is not required to file IRS Form 706, "then, in addition to the Form 706 Method, the Simplified Form Method may be used provided that it produces a tax liability similar to the Form 706 Method."[64]

"Form IT-Estate must be filed and any tax due must be paid within nine months of the decedent's death, or nine months plus thirty days if the Form 706 Method is used."[65] An extension to file Form IT-Estate may be requested, however, "even if an extension is granted it won't delay the time for payment of any tax due."[66] The Form 706 Method requires that Form IT-Estate "be prepared and filed along with a 2001 IRS Form 706."[67] The Form IT-Estate Form is to be filed "in addition to the IRS Form

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[60] This means that any estate valued over $675,000 at the New Jersey resident's death gets taxes on that full $675,000 plus whatever value the estate goes over that threshold. *General Information—Inheritance and Estate Tax*, N.J. DIV. OF TAXATION, *supra* note 42; *see also* Brunetti, *supra* note 59.

[61] *General Information—Inheritance and Estate Tax,* N.J. DIV. OF TAXATION, *supra* note 42.

[62] Garber, *supra* note 58.

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.*

706 for the year of the decedent's death if one is required to be filed."[68]

Outright transfers to a surviving spouse are not taxable.[69] Furthermore, the federal estate tax laws do not have any provisions "providing a deduction for property passing to a domestic partner."[70] However, if a New Jersey decedent was a partner in a civil union and died on or after February 19, 2007, and was survived by his or her partner, "then a marital deduction equal to that permitted to a surviving spouse under the provisions of the Internal Revenue Code in effect on December 31, 2001, is permitted for New Jersey estate tax purposes."[71] Moreover, "for New Jersey decedents dying after December 31, 2001, the New Jersey estate tax remains as a lien on all property of the decedent as of the date of death until paid."[72] No property may be transferred without approval from the Director of the Division of Taxation.[73]

C. NEGATIVES OF THE DEATH TAXES

As Bill Bichoff of the Wall Street Journal emphasized, "The worst place to die is New Jersey."[74] The general consensus

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[68] Garber, *supra* note 58.

[69] *Id.* For married couples who have used AB Trust planning to reduce their federal estate taxes, the estate tax "may be due on the B Trust after the first spouse's death if there is a gap between the New Jersey estate tax exemption and the federal estate tax exemption at the time the federal estate tax comes back into effect." *Id.* A married decedent's estate is allowed to make an election on Form IT-Estate "to treat property as marital deduction qualified terminable interest property ('QTIP') for New Jersey purposes, but married New Jersey couples cannot defer payment of both New Jersey estate taxes and federal estate taxes until after the death of the surviving spouse using an ABC Trust scheme." *Id.*

[70] *Id.*

[71] *Id.*

[72] Garber, *supra* note 58.

[73] *Id.*

[74] Bill Bischoff, *Estate Taxes: The Worst Places to Die*, WALL STREET JOURNAL (Feb. 21, 2011), http://www.marketwatch.com/story/estate-taxes-the-worst-places-to-die-1297801297458. New Jersey has a combined effective estate and

is that New Jersey's burdensome taxes, including the state's death taxes, are the main reason why middle- and upper-income residents are moving elsewhere.[75] The federal estate tax exemption threshold is $5.45 million, which is considerably higher than New Jersey's estate tax exemption threshold of $675,000.[76] While the federal estate tax exemption threshold has stayed in line with inflation, New Jersey's exemption threshold has remained low and has not adjusted to inflation.[77] Consequently, New Jersey's estate tax is not merely burdening the wealthy, but it is hitting the middle-income residents hard as well.[78] Advocates for an estate tax reform argue that many middle-income residents accumulate an estate of $1 million to $2 million in the form of real estate equity, and that the state should not penalize them for accruing this modest level of wealth over a lifetime.[79]

Furthermore, these burdensome taxes have chased many middle- and upper-income families out of New Jersey and into states like Pennsylvania and Florida.[80] Between 2004 and 2008, 302,779 households left New Jersey, only slightly lower than the 323,354 households that moved into the state.[81] "However, the average net worth of the departing households

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inheritance tax rate of 54.1%, which is the highest in the nation. *Id.* Maryland is in second place at 50.9%. *Id.*

[75] FUREY ET AL., *supra* note 4; *see also* Bischoff, *supra* note 74; Kean, *supra* note 40.

[76] Garber, *supra* note 58; Ebeling, *IRS Announces 2016 Estate and Gift Tax Limits: the $10.9 Million Tax Break*, *supra* note 59.

[77] Brunetti, *supra* note 59.

[78] The average adjusted gross income of a person leaving New Jersey for Florida was $74,000. FUREY ET AL., *supra* note 4, at 12. "Estates valued from $675,000 to $1 million paid an average of $21,000 and raised $29.7 million for the state budget." Samantha Marcus, *Will N.J. Trade a Higher Gas Tax for a Lower Death Tax?*, NJ.COM (Feb. 16, 2015), http://www.nj.com/politics/index.ssf/2015/02/should_nj_trade_a_higher_gas_tax_for_a_lower_death.html.

[79] Brunetti, *supra* note 59.

[80] FUREY ET AL., *supra* note 4, at 11.

[81] HAVENS, *supra* note 7.

was about seventy percent higher, at $618,328."[82] "Those who are leaving New Jersey are more likely to be older and more educated, with jobs as entrepreneurs or in the finance and professional industries."[83] On the other hand, those moving into the state tend to hold management or support jobs in the manufacturing industry.[84] In all, $70 billion in wealth left New Jersey between 2004 and 2008 as affluent residents moved elsewhere.[85] These trends continue to hurt New Jersey's economy.[86] In 2010 alone, New Jersey lost taxable income of $5.5 billion because of residents leaving the state.[87] This outbound migration by middle and upper-income residents has dramatically decreased the state's revenue.[88]

Moreover, New Jersey's inheritance tax also unduly burdens certain residents.[89] The state's inheritance tax applies separate rate schedules with tax transfers to non-relatives or distant relatives than to transfers to immediate family members.[90] In doing so, the tax schedule aims to alleviate the burden of the inheritance tax on the relatives that are closest to the deceased.[91] However, under the current structure, Class C beneficiaries, which includes the brother or sister of a decedent, wife or civil union partner after February 19, 2007 or widow or surviving civil union partner after February 19, 2007 of a son of a decedent, or husband or civil union partner after February 19, 2007 or widower or surviving civil union partner after February

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[82] *Id.*

[83] *Id.* at 3, 5, 10, 23.

[84] *Id.* at 3, 5, 11.

[85] *Id.* at 2.

[86] *See generally* ERIC FUREY ET AL., *supra* note 4, at 14.

[87] *Id.* at 11.

[88] *Id.*

[89] *See generally General Information—Inheritance and Estate Tax*, N.J. DIV. OF TAXATION, *supra* note 42.

[90] *Id.*

[91] *Id.*

19, 2007 of a daughter of a decedent, are still burdened from the inheritance tax.[92] Class C beneficiaries receive an exemption equal to the first $25,000 of an inheritance.[93] However, for transfers that exceed $25,000, Class C beneficiaries are taxed at eleven percent to sixteen percent, depending on the exact amount of the transfer.[94] This tax on Class C beneficiaries makes little sense and places an undue burden on certain middle-income residents.

D. POSITIVES OF THE DEATH TAXES

The obvious positive of the death taxes is that they generate a significant amount of revenue for New Jersey.[95] In 2014 alone, the death taxes generated nearly $650 million in state revenue.[96] The New Jersey Department of Treasury found that in 2015 almost $760 million of the total state budget of $32.5 billion will come from the state's death taxes.[97] Those who oppose raising the estate tax exemption to the federal level argue that doing so would result in a loss of tax revenues that would have to be paid for another way.[98] They argue that the estate tax generates essential revenue and only impacts a small minority of households.[99] With New Jersey's budget struggles, the death taxes clearly bring in revenue that the state

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92 *Id.*

93 *Id.*

94 *See generally General Information—Inheritance and Estate Tax*, N.J. DIV. OF TAXATION, *supra* note 42.

95 Marcus, *Will N.J. Trade a Higher Gas Tax for a Lower Death Tax?*, *supra* note 78.

96 *Id.*

97 Brunetti, *supra* note 59; *see also* Reitmeyer, *supra* note 8.

98 Brunetti, *supra* note 59.

99 *See* Chase Brush, *On Capitol Steps, Legislators Join Business Leaders in Blasting New Jersey's Estate Tax*, POLITICKER NJ (Sept. 15, 2014), http://politickernj.com/2014/09/on-capitol-steps-legislators-join-business-leaders-in-blasting-new-jerseys-estate-tax/ ("The state's inheritance and estate taxes are levied on less than ten percent of those who die in New Jersey.").

desperately needs.[100] Additionally, the estate tax only affects the middle- and upper-income residents in New Jersey.[101] It really has no direct affect on New Jersey's lower-income residents, as the state's exemption threshold is $675,000.[102] To some, this is positive.[103]

III. DEATH TAXES IN OTHER STATES

In January 2013, Congress chose to keep the "federal inflation-adjusted estate exemption above $5 million per individual and $10 million per married couple."[104] This resulted in the exclusion of almost every American from the federal levy.[105] Thus, state death taxes loom large, as an individual can be exempt from the high federal estate tax threshold, but still fall under a lower estate tax threshold in the individual's state of domicile.[106]

As of 2011, twenty-eight states had neither an estate tax nor an inheritance tax.[107] Nineteen states and the District of Columbia levied an estate tax on the assets of people who died

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[100] *See* Brunetti, *supra* note 59.

[101] Marcus, *Will N.J. Trade a Higher Gas Tax for a Lower Death Tax?*, *supra* note 78. *See generally General Information—Inheritance and Estate Tax*, N.J. DIV. OF TAXATION, *supra* note 42.

[102] Marcus, *Will N.J. Trade a Higher Gas Tax for a Lower Death Tax?*, *supra* note 78.

[103] The belief is that the wealthy should bear heavy tax burdens, while the poor are alleviated from heavy tax burdens. *See* Jon Whiten, *Tax Increase to Fund Transportation Should Be Combined with Credit to Help Low-Income Families*, NEW JERSEY POLICY PERSPECTIVE (Jan. 21, 2015), http://www.njpp.org/reports/tax-increase-to-fund-transportation-should-be-combined-with-credit-to-help-low-income-families.

[104] Laura Saunders, *States You Shouldn't Be Caught Dead In*, WALL STREET JOURNAL (Oct. 25, 2013), http://online.wsj.com/articles/SB10001424052702304682504579155510034634716.

[105] *Id.*

[106] *Id.*

[107] Bischoff, *supra* note 74.

or an inheritance tax on heirs who received assets.[108] Of these death tax states, sixteen states and the District of Columbia imposed estate taxes on their residents.[109] The state exemption thresholds of these states varied from a low of $338,333 to a high of $5 million.[110] Specifically, three states had exemption thresholds of less than $1 million, including: Ohio at $338,333, Rhode Island at $850,000, and of course, the already mentioned New Jersey at $675,000.[111] Six states had $1 million exemption thresholds: Maine, Maryland, Massachusetts, Minnesota, New York, and Oregon.[112] Furthermore, Illinois, Vermont, and Washington had $2 million exemption thresholds, Connecticut and Delaware had $3.5 million exemption thresholds, and Hawaii and North Carolina had $5 million exemption thresholds.[113] Of these sixteen states and the District of Columbia, the lowest tax rates were seven percent in Ohio and twelve percent in Connecticut.[114] The highest tax rate was nineteen percent in Washington.[115] The remaining thirteen states and the District of Columbia all maintained a rate of sixteen percent.[116]

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[108] Saunders, *supra* note 104. These nineteen states and the District of Columbia are home to more than one-third of the United States population. *Id.* Maryland and New Jersey are the only states that impose both the estate and the inheritance taxes on their residents. Ebeling, *Where Not to Die in 2015, supra* note 3.

[109] Bischoff, *supra* note 74. This data and the proceeding data in this paragraph were gathered in 2011. *Id.* This year was used because it most effectively portrays the trends of death tax reform in recent years.

[110] *Id.*

[111] *Id.*

[112] *Id.* The District of Columbia also fell into this $1 million exemption category. *Id.*

[113] Bischoff, *supra* note 74.

[114] *Id.*

[115] *Id.*

[116] *Id.*

Moreover, as of 2011, six states imposed only inheritance taxes on their residents and no estate taxes.[117] The inheritance tax exemptions of these states were zero or negligible, except in Tennessee, which had a $1 million exemption threshold.[118] The inheritance tax rates were 9.5% in Tennessee, fifteen percent in Iowa and Pennsylvania, sixteen percent in Kentucky, eighteen percent in Nebraska, and twenty percent in Indiana.[119]

The only two states that imposed both an estate and an inheritance tax were Maryland, and of course, New Jersey.[120] In Maryland the inheritance tax exemption threshold was $150 and the tax rate was ten percent, whereas in New Jersey the inheritance tax exemption threshold was zero and the tax rate was sixteen percent.[121] Furthermore, in Maryland the estate tax exemption was $1 million and the tax rate was sixteen percent, whereas in New Jersey the estate tax exemption was $675,000 and the tax rate was sixteen percent.[122]

Since 2011, several states have reformed their estate taxes to make their states more tax friendly and to prevent the outbound migration of their residents.[123] Ohio's estate tax threshold, once the lowest in the nation, was repealed in 2013, effectively making New Jersey's exemption threshold the nation's lowest.[124] Moreover, the New York Legislature recently

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117 *Id.* This data and the proceeding data in this paragraph were gathered in 2011. *Id.* This year was used because it most effectively portrays the trends of death tax reform in recent years.

118 Bischoff, *supra* note 74.

119 *Id.* Indiana's inheritance tax, scheduled to be completely phased out by January 1, 2022, was retroactively repealed on January 1, 2013. Julie Garber, *State Inheritance Tax Chart*, ABOUT.COM (Apr. 26, 2015), http://wills.about.com/od/stateestatetaxes/a/inheritancetaxchart.htm.

120 Bischoff, *supra* note 74.

121 *Id.*

122 *Id.*

123 Saunders, *supra* note 104. States that have recently repealed or suspended their death taxes include Kansas, Oklahoma, Virginia, North Carolina and Indiana. *Id.*

124 Ashlea Ebeling, *Ohio Repeals its Estate Tax; Maine and Oregon Tweak Theirs*, FORBES (June 30, 2011, 12:36 PM),

doubled its estate tax exemption threshold from $1 million for deaths before April 1, 2014 to $2,062,500 for deaths from April 1, 2014 through April 1, 2015.[125] The New York exemption is set to rise gradually through 2019 to eventually match the federal exemption.[126] Additionally, other states where the estate taxes are being reformed include Tennessee, Minnesota and Rhode Island.[127] Tennessee's estate tax is being phased out; the exemption threshold is $5 million for 2015, and the entire tax will be repealed as of January 1, 2016.[128] Minnesota's exemption threshold is climbing steadily; it will be $1.4 million in 2015, increasing to $2 million in 2018.[129] Rhode Island bumped its exemption threshold from $921,655 in 2014 to $1.5 million in 2015.[130]

Furthermore, Maryland, the only state other than New Jersey to impose both death taxes, also went the direction of significantly increasing its estate tax exemption.[131] In 2014, the Maryland Legislature passed a law that gradually increases the amount exempt from the state estate tax from $1 million in 2014, to $1.5 million in 2015, $2 million in 2016, $3 million in 2017, and $4 million in 2018.[132] Finally, in 2019 Maryland's estate tax exemption threshold will match the federal exemption level, which is projected to be $5.9 million.[133]

Arguing for the bill to pass, Maryland Senator David R. Brinkley (R) utilized an analysis of IRS data that concluded that

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http://www.forbes.com/sites/ashleaebeling/2011/06/30/ohio-estate-tax-repeal-maine-oregon-tweak-tax/.

[125] Ebeling, *Where Not to Die in 2015*, *supra* note 3.

[126] *Id.* By April 1, 2017, the New York exemption will be $5,250,000. *Id.*

[127] *Id.*

[128] *Id.*

[129] *Id.*

[130] Ebeling, *Where Not to Die in 2015*, *supra* note 3.

[131] *Id.* *See generally* MD. CODE ANN., TAX-GEN. § 7-309 (West 2015).

[132] Ebeling, *Where Not to Die in* 2015, supra note 3.

[133] *Id.*

"Maryland lost more than $7 billion in taxable income between 1992 and 2010, mostly to Florida."[134] Brinkley, Senator Ronald N. Young (D), and other supporters of the law said that many millionaires in Maryland were moving elsewhere when retirement approached, in part to avoid Maryland's estate tax.[135] "These lawmakers argued that the taxes that would be generated if more of those residents stayed in Maryland would compensate for the expected loss of estate tax revenue."[136]

On the other hand, a very limited number of states have gone the opposite direction in recent years and have decided to lower their estate tax exemption threshold or change their death tax structure to try to create more state revenue.[137] In 2011, Connecticut lowered its estate tax exemption threshold to $2 million from $3.5 million.[138] In 2013, Delaware rescinded the planned repeal of its estate tax, which is already very favorable.[139] In 2014, Washington raised its top rate on the largest estates.[140] Additionally, Minnesota imposed a gift tax beginning in July 2013 to try to prevent people from avoiding its estate tax by making large gifts while they are alive.[141]

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[134] Fredrick Kunkle & John Wagner, *Maryland General Assembly Passes Estate Tax Relief*, WASH. POST (Mar. 20, 2014), https://www.washingtonpost.com/local/md-politics/maryland-general-assembly-passes-estate-tax-relief/2014/03/20/0b467abc-b050-11e3-9627-c65021d6d572_story.html.

[135] *Id.*

[136] *Id.*

[137] *See generally* Saunders, *supra* note 104. It must be noted that even with these recent changes, New Jersey's death taxes are still much more burdensome on the state's residents. *See* Ebeling, *supra* note 3.

[138] Saunders, *supra* note 104.

[139] *Id.*

[140] *Id.*

[141] *Id.* The only other state with a gift tax is Connecticut. *Id.*

IV. OTHER REASONS WHY NEW JERSEY RESIDENTS ARE LEAVING

Other than New Jersey's death taxes, the state's cost of living, property tax, income tax, and the tax on unearned income are among other significant financial factors that have led to residents leaving.[142]

A. COST OF LIVING

In general, New Jersey is one of the most expensive states in which to live.[143] As of 2013, New Jersey's cost of living was the third highest in the nation and fourteen percent higher than the typical state.[144] The average property value in the state was $344,499.66.[145] To put this in perspective, in 2014 home prices in Newark were sixty-three percent higher than the national average.[146] Furthermore, as of 2013, New Jersey was ranked the fifth most expensive state for renters.[147] In 2014, apartments in Newark were $1527 a month on average, which was sixty-seven percent higher than the national average.[148] In New Jersey, a family must earn approximately $51,838 a year to afford an average two-bedroom apartment costing $1296 a month.[149] Other factors leading to New Jersey's high cost of living include the state's high grocery, utilities, transportation, and health costs.[150]

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142 *See generally* ERIC FUREY ET AL., *supra* note 4.

143 Mueller, *supra* note 11.

144 *Id.*

145 *Id.*

146 Christina Lobrutto, *Ready to Retire? Don't Stay in New Jersey: Best, Worst States to Retire*, PHILLYVOICE (Mar. 25, 2015), http://www.phillyvoice.com/ready-retire-dont-stay-new-jersey/.

147 Mueller, *supra* note 11.

148 Lobrutto, *supra* note 146.

149 Mueller, *supra* note 11.

150 Erika Rawes, *7 Most Expensive States to Live in the U.S.*, *Wall St. Cheat Sheet*, USA TODAY (Sept. 13, 2014),

B. PROPERTY TAX

New Jersey also maintains the highest average property taxes in the nation.[151] To make things worse for residents, this average continues to rise.[152] New Jersey's average property tax bill went from $7988 in 2013 to a new record of $8161 in 2014.[153] "In 2010, property taxes in New Jersey totaled over $25 billion, and represented 48% forty-eight percent of all state and local tax revenue."[154] In 2012, New Jersey residents paid $26 billion in property taxes.[155] Additionally, "property taxes account for about ninety-eight percent of all locally collected revenues in New Jersey."[156]

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http://www.usatoday.com/story/money/personalfinance/2014/09/13/cheat-sheet-most-expensive-states/15455129/.

[151] Michael Symons, *New Jersey Property Tax Growth Biggest in Three Years*, ASBURY PARK PRESS (Feb. 2, 2015), http://www.app.com/story/news/politics/new-jersey/2015/02/02/nj-property-tax-increases-growing/22770047/. *See generally General Tax Rates by County and Municipality*, N.J. DIV. OF TAXATION, http://www.state.nj.us/treasury/taxation/lpt/taxrate.shtml (last visited Aug. 8, 2016).

[152] Symons, *New Jersey Property Tax Growth Biggest in Three Years*, *supra* note 151.

[153] George Amick, *Onerous Property Taxes Not New Jersey's Top Priority*, NJ.COM (Feb. 15, 2015), http://www.nj.com/opinion/index.ssf/2015/02/amick_onerous_property_taxes_not_new_jerseys_top_p.html. This works out to be $173 per property owner, a nearly 2.2% increase from the year before. *Id.*

[154] *New Jersey Property Tax Facts*, N.J. STATE LEAGUE OF MUNICIPALITIES, http://www.njslom.org/letters/Property_Tax_Facts111414.html (last visited Aug. 8, 2016). Nationally, property taxes equaled thirty-five percent of state and local tax revenue in 2010. *Id.*

[155] David Rousseau, *Why Significant, Lasting Property Tax Reform is So Difficult: Analyzing the League of Municipalities' Property Tax Cut Plan*, N.J. POLICY PERSPECTIVE (Sept. 5, 2013), http://www.njpp.org/reports/why-significant-lasting-property-tax-reform-is-so-difficult.

[156] N.J. STATE LEAGUE OF MUNICIPALITIES, *supra* note 154. The national average is about seventy-five percent. *Id.*

"The property tax, which funds towns, counties, and schools, is regressive, hitting low- and middle-income homeowners especially hard."[157] "Unlike the income tax and sales tax, which the state collects, the property tax has little relationship to the individual's ability to pay it."[158] Rather, the county government formulates the property tax rates for each county based on that county's distinct features.[159] Residential property taxes make up the majority of property taxes paid.[160] Accordingly, in 2013, the average New Jersey homeowner paid around $8,000 in local property taxes, which comes out to about ten percent of the average household income of around $80,000.[161] "By contrast, the average family pays just 1.5% of its income, about $1,200, in state income taxes (assuming two children)."[162] "For this average family, property taxes are 6.5 times higher than income taxes, a proportion that increases for

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[157] Amick, *supra* note 153. New Jersey's property taxes were cited as a major reason that half the New Jersey residents polled by Monmouth University in September 2014 said they want to move away. *Id.*

[158] *Id.*

[159] *General Property Tax Information*, N.J. DIV. OF TAXATION, http://www.state.nj.us/treasury/taxation/lpt/genlpt.shtml (last visited Aug. 8, 2016).

> County, municipal and school budget costs determine the amount of property tax to be paid. A town's general tax rate is calculated by dividing the total dollar amount it needs to raise to meet local budget expenses by the total assessed value of all its taxable property. An individual's property taxes are then calculated by multiplying that general tax rate by the assessed value of his particular property. Because of New Jersey's strong "home rule" concept of government, the state does not participate in the making of local budgets, nor does it receive any of the property taxes collected.

Id.

[160] Rousseau, *supra* note 155. Residential properties account for almost eighty percent of property taxes. *Id.* Commercial and industrial properties make up most of the remaining balance. *Id.*

[161] *Id.*

[162] *Id.*

families down the income scale."[163] The less one receives, the larger the amount that goes out in property tax payments.[164]

Furthermore, New Jersey's property taxes have "resisted half a century of fixes by state government, including enactment of the income and sales taxes themselves and an assortment of rebates, freezes, exemptions, credits, caps, cost controls, aid programs and other expedients."[165] Legislators and governors alike have been unable address the basic problem, which is that "local taxpayers pay far too great a share of the cost of schools and other government services and state taxpayers pay too little."[166] The "portion extracted from local residents, mostly through property taxes, is forty-five percent, compared to a national average of thirty percent."[167] There does not appear to be any property tax reform in New Jersey's near future.[168]

C. INCOME TAX

New Jersey also taxes the income of its millionaires at one of the highest rates in the nation — higher than forty-four other states.[169] Comparable to those used by the Internal Revenue Service in regards to federal taxes, New Jersey uses multiple tax brackets for the state's income tax.[170] Taking all the tax brackets and their respective tax rates into consideration, "just fifty high-earning individuals in New Jersey pay five

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[163] *Id.*

[164] Rousseau, *supra* note 155.

[165] Amick, *supra* note 153.

[166] *Id.*

[167] *Id.*

[168] Rousseau, *supra* note 155.

[169] Joe Kyrillos, *N.J. Millionaires Tax: Pushing the Wealthy Away (Opinion)*, NJ.COM (June 21, 2014), http://www.nj.com/opinion/index.ssf/2014/06/nj_millionaires_tax_pushing_the_wealthy_away_opinion.html.

[170] *See generally 2014 NJ-1040 Tax Rate Schedules*, N.J. DIV. OF TAXATION, http://www.state.nj.us/treasury/taxation/pdf/current/njtaxratesch.pdf (last visited Aug. 8, 2016).

percent of the entire state income tax bill."[171] Thus, the exit of just a handful of the state's top-earners can cost New Jersey tens of millions of dollars in lost tax revenue.[172]

Under New Jersey's income tax structure, "both single and married taxpayers earning less than $20,000 are subject to a 1.4% tax rate."[173]

> A 1.75% rate applies to single filers earning between $20,000 and $35,000, and to married filers between $20,000 and $50,000. Single filers earning between $35,000 and $40,000 fall within the 3.5% bracket, while those earning more than $40,000 fall within the 5.525 % bracket. Earnings above $75,000 are taxed at 6.37%, while earnings in excess of $500,000 are taxed at 8.97%. Married couples earning more than $50,000 are taxed at 2.45%, while those earning in excess of $70,000 in New Jersey fall within the 3.5% tax bracket. Earnings in excess of $80,000 are taxed at 5.525%, while those exceeding $150,000 are taxed at 6.37%. Couples earning more than $500,000 fall within the same 8.97% tax bracket as single filers with this income level.[174]

In his 2015 State of the State Address, Governor Christie emphatically stated, "I will veto any more income tax increases that come before me."[175] He made it clear that there were no income tax raises on the horizon.[176] Also, there currently does

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[171] Kyrillos, *supra* note 169.

[172] *Id.*

[173] Emily Beach, *New York State Income Tax Compared to New Jersey Income Tax*, ZACKS, http://finance.zacks.com/new-york-state-income-tax-compared-new-jersey-income-tax-6390.html (last visited Aug. 8, 2016).

[174] *Id.*

[175] Governor Chris Christie, 2015 State of the State Address (Jan. 13, 2015) (transcript available at http://www.state.nj.us/governor/news/addresses/2010s/approved/20150113.html).

[176] *Id.*

not appear to be any income tax reform legislation with any real weight.[177]

D. TAX ON UNEARNED INCOME

In New Jersey, once you retire and receive a pension, the money is taxable as income.[178] "New Jersey does not tax Social Security or military pensions, but requires residents to include pension income when they file their income tax returns."[179] The state taxes pension benefits at a rate of 3.6%.[180] However, if a New Jersey resident retires, moves to a state with no income tax, and begins to receive his or her New Jersey pension, this money will no longer be taxable.[181] Consequently, along with the state's stringent death tax structure, this gives New Jersey's residents a great incentive to leave the state upon retirement.[182]

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[177] Real weight, in this context, means that there is no current legislation with more than five sponsors or co-sponsors. This data was collected as of March 2015. *See generally New Jersey Legislature: Bill Search*, N.J. LEG., http://www.njleg.state.nj.us/ (last visited Aug. 8, 2016).

[178] *NJ Income Tax—Retirement Income*, N.J. DIV. OF TAXATION, *supra* note 4.

[179] Ted Ballantine, *New Jersey Lawmaker Wants to Reduce Pension Tax to Keep Retirees From Leaving State*, PENSION360 (Nov. 2014), http://pension360.org/new-jersey-lawmaker-wants-to-reduce-pension-tax-to-keep-retirees-from-leaving-state/. "Residents age sixty-two or older can qualify for a pension tax exclusion of up to $20,000 of their income for couples or $15,000 for individual filers, provided their gross income does not exceed $100,000." *Id.*

[180] *Id.*

[181] Karin Price Mueller, *Your Money: Fleeing NJ to Save on Income Taxes*, NJ.COM (May 19, 2014), http://www.nj.com/business/index.ssf/2014/05/your_money_fleeing_nj_to_save_on_income_taxes.html. For example, if a New Jersey resident moves to Florida and begins receiving distributions from his New Jersey 401(k) plan, the 401(k) distribution would be subject to tax in Florida rather than New Jersey. *Id.* Therefore, since Florida does not have an income tax, this person would not have to pay state income tax on the distribution that he receives. *Id.*

[182] As of 2010, only twelve states imposed no pension taxes and no social security taxes on their residents, including Alabama, Alaska, Florida, Mississippi, Nevada, New Hampshire, Pennsylvania, South Dakota, Tennessee, Texas, Washington, and Wyoming. *See generally* Emily Brandon, *12 States Without Pension or Social Security Taxes*, U.S. NEWS & WORLD REPORT (June 14, 2010, 11:01 AM),

As a way to make remaining in New Jersey post-retirement more appealing to the state's residents, New Jersey Senate President Steve Sweeney (D) has stated that he is interested in changing the way the state taxes pension income.[183] While Senator Sweeney did not rule out death tax reform, he explained that he wants to first "pursue changing the pension tax because it would assist more middle-income retirees."[184] "We're looking at raising the threshold to keep people in New Jersey," Sweeney said.[185]

V. DEATH TAX REFORM LEGISLATION IN NEW JERSEY

Death tax reform is currently a major focus of the New Jersey Legislature.[186] In the 2014 and 2015 legislative sessions, there was mostly Republican support for death tax reform legislation, however, some Democrats also pushed to make the state's death taxes less onerous.[187] Such notable legislation has included: (1) complete elimination of both the estate and inheritance taxes, (2) elimination of only the estate tax, (3) elimination of only the inheritance tax, (4) elimination of Class C Beneficiaries from the inheritance tax, along with estate tax reform, (5) gradual or immediate raise of the threshold of the estate tax to $1 million, $2 million, or to the federal level, and (6) elimination of the estate tax and raise of the gross income tax for higher tax brackets.[188]

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http://money.usnews.com/money/retirement/slideshows/12-states-without-pension-or-social-security-taxes/1.

183 Ballantine, *supra* note 179.

184 *Id.*

185 *Id.*

186 *See generally* N.J. LEG., *supra* note 177.

187 *Id.*

188 *See*, *e.g.*, Assemb. B. 3496, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/A3500/3496_I1.PDF; Assemb. B. 3885, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/A4000/3885_I1.PDF; A.B. 329, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/A0500/329_I1.PDF; S.B. 1311, 216th Leg., Reg. Sess. (N.J. 2014),

A. ASSEMBLY BILL 3496

One such bill is Assembly, No. 3496, which was sponsored by Anthony Bucco (R), John J. Burzichelli (D), Declan J. O'Scanlon, Jr. (R), Nancy F. Munoz (R), and Gordon M. Johnson (D).[189] This bill, introduced on July 11, 2014, seeks to "increase the filing threshold and applicable exclusion amount" for the estate tax to $5 million over a period of five years.[190] The bill "provides for the increase to be phased in over a period of five years commencing with the estate of any resident decedent dying after December 31, 2014, and ending, when the increase is fully phased in, with the estate of any resident decedent dying after December 31, 2018."[191]

As the bill further explains, New Jersey's current "archaically low threshold" for the estate tax "encourages small businesses and their owners to shut down and leave the state."[192] The current estate tax "also deters small and family-owned businesses from relocating their businesses to New Jersey."[193] "By increasing the ceiling on the exemption amount, this bill will encourage small businesses to remain in New Jersey and will increase New Jersey's attractiveness to small businesses considering relocation."[194]

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http://www.njleg.state.nj.us/2014/Bills/S1500/1311_I1.PDF; S.B. 702, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/S1000/702_I1.PDF; S.B. 2219, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/S2500/2219_I1.PDF.

[189] The bill was co-sponsored by Christopher J. Brown (R), Jay Webber (R), Parker Space (R), Alison Littell McHose (R), BettyLou DeCroce (R), Robert D. Clifton (R), Brian E. Rumpf (R), DiAnne C. Gove (R), Samuel L. Fiocchi (R), John DiMaio (R), Patrick Michael Carroll (R), Caroline Casagrande (R), and Amy H. Handlin (R). Assem. 3496, 216th Leg., Reg. Sess. (N.J. 2014).

[190] *Id.*

[191] *Id.*

[192] *Id.*

[193] *Id.*

[194] Assemb. 1236, 217th Leg., Reg. Sess. (N.J. 2016). This bill was pre-filed for introduction in the 2016 Legislative Session as Assembly Bill 1236 and is still pending. *Id.*

B. ASSEMBLY BILL 3885

Another bill is Assembly, No. 3885, which was sponsored by Joseph A Lagana (D), Vincent Mazzeo (D), Daniel R. Benson (D), Valerie Vainieri Huttle (D), Patrick J. Diegnan, Jr. (D), and Anthony M. Bucco (R).[195] This bill, introduced November 13, 2014, aims to "eliminate the transfer inheritance tax on 'Class C beneficiaries' and increase the filing threshold and applicable exclusion amount" for the estate tax to $1,500,000.[196]

Specifically, the bill would "treat transfers to brothers and sisters as well as daughters-in-law and sons-in-law of a decedent on par with exempt transfers to other immediate family members, including the spouse, domestic partner, civil union partner, father, mother, grandparent, or child of the decedent."[197] It would also increase the "applicable exclusion amount for the estate tax calculation from $675,000 to $1,500,000."[198] The bill would apply to residents who have died after December 31, 2014.[199]

C. ASSEMBLY BILL 329

Furthermore, Assembly, No. 329 was introduced on January 16, 2014, and was sponsored by Jon M. Bramnick (R), Alison Littell McHose (R), Holly Schepisi (R), Jay Webber (R), Anthony Bucco (R), and Nancy F. Munoz (R).[200] This bill seeks

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[195] This bill was co-sponsored by Joseph V. Egan (D) and Nancy J. Pinkin (D). Assemb. B. 3885, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/A4000/3885_I1.PDF.

[196] *Id.*

[197] *Id.*

[198] *Id.*

[199] *Id.* This bill was pre-filed for introduction in the 2016 Legislative Session as Assembly Bill 611 and is still pending. Assemb. 611, 217th Leg., Reg. Sess. (N.J. 2016).

[200] This bill was co-sponsored by Parker Space (R), Robert Auth (R), Samuel L. Fiocchi (R), Amy H. Handlin (R), Scott T. Rumana (R), DiAnne C. Gove (R), Brian E. Rumpf (R), Ronald S. Dancer (R), Gregory P. McGuckin (R), David W. Wolfe (R), Sean T. Kean (R), Robert D. Clifton (R), Thomas P. Giblin (D), Mary Pat Angelini (R), Donna M. Simon (R), and David P. Rible (R). A.B. 329, 216th

to phase out the estate tax over a five-year period.[201] Specifically, the bill reduces the "amount of estate tax calculated as due under the existing structure" by twenty percent each year for five years.[202]

As the bill explains, up to 2002,

> [T]he State estate tax was designed to absorb the value of the federal estate tax credit remaining for the state inheritance taxes paid. In 2002, the federal government began phasing that credit out until it no longer existed as of 2005. To avoid the potential revenue loss by the change in federal estate tax treatment, New Jersey tied its estate tax to the amount of such federal credit immediately before the phase out took effect. The resultant State estate tax structure is an imposition of which is based upon a federal credit which has not existed for about a decade. The purpose of this bill is to simplify New Jersey's taxation of decedent estates, while allowing for an orderly adjustment to the associated revenue loss through the bill's five-year phase out.[203]

D. SENATE BILL 1311

Another bill is Senate, No. 1311, which was introduced February 27, 2014.[204] This bill, sponsored by Jeff Van Drew (D)

Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/A0500/329_I1.PDF.

[201] *Id.*

[202] *Id.*

[203] *Id.* This bill was pre-filed for introduction in the 2016 Legislative Session as Assembly Bill 1059 and is still pending. Assemb. 1059, 217th Leg., Reg. Sess. (N.J. 2016).

[204] This bill was co-sponsored by Anthony R. Bucco (R), Christopher Bateman (R), Thomas H. Kean, Jr. (R), Kevin J. O'Toole (R), James W. Holzapfel (R), Robert W. Singer (R), Jennifer Beck (R), Gerald Cardinale (R), Richard J. Codey (D), Sandra B. Cunningham (D), Michael J. Doherty (R), Joseph M. Kyrillos, Jr. (R), Fred H. Madden, Jr. (D), Joseph Pennacchio (R), Ronald L. Rice (D), Bob Smith (D), Brian P. Stack (D), Nellie Pou (D), Nicholas J. Sacco (D), Dawn

and Steven V. Oroho (R), seeks to "eliminate the transfer inheritance tax and increase the filing threshold and applicable exclusion amounts under the estate tax in accordance with provisions of federal tax law."[205] As the bill explains, "New Jersey is one of only 18 states that imposes some form of an estate tax, and one of only seven states imposing an inheritance tax. Only two states, New Jersey and Maryland, currently impose both forms of taxation of inheritance."[206]

Senator Oroho has continued this push for death tax reform in New Jersey in 2016.[207] Arguing for his bill to move forward, he stated, "New Jersey's highest-in-the-nation 'death taxes' continue to take a heavy toll on families, business owners and the state's economy as a whole as retirees are leaving the state and taking their wealth with them in order to be able to pass on an inheritance to their children."[208] Senator Oroho further asserted, "We must join together to take immediate action to curb this outflow of income and capital by eliminating the estate tax, making our state more competitive."[209]

E. SENATE BILL 702

Senate, No. 702 was introduced on January 14, 2014, and was sponsored by Joseph M. Kyrillos, Jr. (R) and Gerald Cardinale (R).[210] The bill was co-sponsored by Kevin J. O'Toole (R), Anthony R. Bucco (R), Joseph Pennacchio (R), Steven V.

Marie Addiego (R), and Teresa M. Ruiz (D). S.B. 1311, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/S1500/1311_I1.PDF.

205 *Id.*

206 *Id.* This bill was pre-filed for introduction in the 2016 Legislative Session as Senate Bill 303 and is still pending. S. 303, 217th Leg., Reg. Sess. (N.J. 2016).

207 Steven Oroho, *Legislature Must Answer Governor's Call for Estate Tax Repeal*, SENATENJ.COM (Jan. 12, 2016), http://www.senatenj.com/index.php/oroho/oroho-legislature-must-answer-governors-call-for-estate-tax-repeal/25257.

208 *Id.*

209 *Id.*

210 S.B. 702, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/S1000/702_I1.PDF.

Orocho (R), Michael J. Doherty (R), Diane B. Allen (R), and Shirley K. Turner (D). This bill aims to increase the filing threshold for the estate tax to $1,000,000.[211] Specifically, the bill immediately raises the estate tax exemption threshold from $675,000 to $1,000,000.[212]

F. SENATE BILL 2219

Senate No. 2219 was introduced on June 16, 2014, and was sponsored by Raymond J. Lesniak (D).[213] This bill aspires to end the estate tax and raise the gross income tax rate on the higher tax brackets.[214] Specifically, the bill raises the gross income tax rate on taxable income exceeding $350,000.[215] "The purpose of this bill is to raise a greater portion of revenue from high-income generating activities rather than high-value assets passed at death."[216]

VI. FINDINGS AND RECCOMENDATIONS FOR THE NEW JERSEY LEGISLATURE

New Jersey's steep tax structure has made it difficult for the state's middle-income residents to remain in New Jersey. As these residents reach their golden years, they have already endured years of the state's brutal income taxes, property taxes, and the general high cost of living in New Jersey. To further exacerbate their economic situation, when these residents retire,

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[211] *Id.*

[212] *Id.* This bill was pre-filed for introduction in the 2016 Legislative Session as Senate Bill 191 and is still pending. S. 191, 217th Leg., Reg. Sess. (N.J. 2016).

[213] As of March 1, 2015 this bill did not have any co-sponsors. S.B. 2219, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/S2500/2219_I1.PDF.

[214] *Id.*

[215] *Id.* The new marginal gross income tax rate schedules would be as follows: eight percent for income over $350,000 but less than $500,000; 10.25% for income over $500,000 but less than $1,000,000; and 10.75% for income over $1,000,000. *Id.*

[216] *Id.* This bill was pre-filed for introduction in the 2016 Legislative Session as Senate Bill 1112 and is still pending. S. 1112, 217th Leg., Reg. Sess. (N.J. 2016).

they realize that New Jersey will now tax their unearned income as part of the state's income tax. Yet, the final nail is driven into the coffin when these residents acknowledge New Jersey's onerous death taxes. At this point, these residents see no other option but to flee New Jersey to a tax-friendlier state like Florida or Pennsylvania.

The state's death taxes, intended for and once only a concern for the wealthiest of New Jersey's residents, are now greatly burdening the state's middle-income residents. New Jersey is clearly an outlier state with regards to death taxes. The Garden State is not only one of two states in the entire nation to impose both an estate and inheritance tax, but furthermore, New Jersey's estate tax exemption level is by far the lowest in the nation.[217] These unique and burdensome taxes have hurt New Jersey's economy by driving many middle- and upper-income residents out of the state, along with their businesses and other taxable wealth. While intending to assist with the state's budget struggles by bringing in revenue that the state desperately needs, New Jersey's taxes, especially the death taxes, have done the opposite, forcing residents to leave in unparalleled proportions.

With many other states jumping on the death tax reform bandwagon – including Maryland, the only other state to impose both the estate and inheritance taxes – the New Jersey Legislature must reform the state's outdated death tax structure if New Jersey is going to stay competitive. If effective action is not taken, New Jersey will continue to lose its affluent residents and their families, businesses, and wealth, while failing to attract new residents, as well as their families, businesses, and wealth. The New Jersey Legislature must make the state more tax-friendy for its middle- and upper-income residents, who generate most of the state's income.

An effective reform of the state's death taxes will not only make New Jersey a place to remain for its middle- and upper-income residents, but it may also provide the state with inbound migration of middle- and upper-income residents that could only boost New Jersey's economy. Instead of lowering the state's revenue, as some critics argue, a death tax reform will ultimately lead to greater revenue as New Jersey will be more

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[217] Ebeling, *Where Not to Die in 2015*, *supra* note 3.

able to persuade its residents to remain in the state they grew up in and love, while also having greater ability to attract new taxable wealth. This can happen through: (1) a gradual increase of the estate tax exemption threshold to the federal inflation-adjusted limit of $5.45 million, or whatever the new federal threshold may be after five years, and (2) an elimination of Class C beneficiaries from the inheritance tax.

A. GRADUAL INCREASE OF THE ESTATE TAX EXEMPTION TO THE FEDERAL EXEMPTION THRESHOLD

All assets are considered when determining the estate's value for purposes of the estate tax.[218] This includes the sum of the value of a home, retirement assets, and a life insurance policy.[219] With all these assets adding up, it is easy to see how many middle-income residents are now reaching and exceeding the current $675,000 estate tax exemption threshold and being burdened with this tax.[220] These residents often have the means to flee the state for more tax-friendly states and are clearly doing just that.

With New Jersey's current economic situation, cutting a tax that, along with the inheritance tax, expects to bring in over $700,000 million in revenue in 2015 is not easy to fathom. However, if New Jersey wants to stabilize its economy for the long-term, the state's taxes must become less burdensome on its middle- and upper-income residents. To do so, the estate tax exemption threshold should be gradually increased over a five-year period from its current level of $675,000 to the federal exemption threshold level of $5.45 million, or whatever the new federal threshold may be after five years. This can be executed by increasing the state exemption level to $1 million the first year of implementation, and increasing the exemption by $1 million each year thereafter until the fifth year when it will increase to the federal inflation-adjusted exemption threshold.

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218 *NJ Estate Tax for Estates over $675,000*, KENETH VERCAMMEN & ASSOCIATES, http://www.njlaws.com/NJ-Estate-Tax.html (last visited Aug. 8, 2016).

219 *Id.*

220 For example, in New Jersey, the average house is worth $296,000. Marcus, *Will N.J. Trade a Higher Gas Tax for a Lower Death Tax?*, *supra* note 78.

Increasing the estate tax exemption threshold to the federal exemption level would result in only the state's very upper-income residents (i.e. those with combined assets over $5.45 million) being subject to the estate tax. Thus, New Jersey's middle-income and a portion of the state's upper-income residents would be alleviated from the stringent burdens placed on them with the estate tax and would have a lot more incentive to remain in the state in their later years. This plan would not only result in more middle- and upper-income residents remaining in New Jersey without the thought of high taxes on their estate after death, but would also attract new middle- and upper-income residents as New Jersey would now be more attractive place to live and die. Moreover, along with attracting and retaining new residents, New Jersey will be in a better position to attract and retain their families, businesses, and wealth; thus ultimately bringing in much more revenue to the state.

By increasing the estate tax exemption each year for five years, the burden that immediate loss of revenue may have on New Jersey's economy will be lessened, or even unnoticeable, and the state will be more easily able to transition to the eventual federal exemption level. As the five years of implementation progresses, New Jersey will be able to retain more of its middle- and upper-income residents. Additionally, New Jersey will now not have the death tax shadows hanging over its head, and thus, the state will be more able to attract new middle- and upper-income residents.[221]

B. ELIMINATION OF CLASS C BENEFICIARIES FROM THE INHERITANCE TAX

New Jersey's inheritance tax imposes a tax on "beneficiaries for the receipt of assets from a New Jersey resident decedent, as determined by the value of the assets transferred and the beneficiary's relationship to the decedent."[222] By applying separate rate schedules with tax

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[221] This increase of New Jersey's estate tax exemption threshold is similar to the one introduced in Assem. 3496. *See* Assemb. B. 3496, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/A3500/3496_I1.PDF.

[222] *See* A.B. 1281, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/A1500/1281_I1.HTM.

transfers to non-relatives or collateral relatives more heavily than transfers to immediate family members, the tax schedule seeks to alleviate the burden of taxation on those relatives closest to the deceased. However, under the current inheritance tax structure, Class C beneficiaries, including brothers, sisters, daughters-in-law, and sons-in-law, are still are burdened by the inheritance tax. Class C beneficiaries are presently taxed at a rate of eleven percent to sixteen percent, depending on the amount transferred, with the first $25,000 exempt from taxation.[223] This tax on Class C beneficiaries makes little sense and places undue burdens on many of New Jersey's residents.[224]

New Jersey should eliminate Class C beneficiaries from the state's inheritance tax. This would effectively treat transfers to brothers and sisters as well as daughters-in-law and sons-in-law of a decedent on par with exempt transfers to other immediate family members, including the spouse, domestic partner, civil union partner, father, mother, grandparent, or child of a decedent. The elimination of Class C beneficiaries would not only put brothers and sisters of the decedent in line with the parents, spouse, and children of the decedent, but it will also take New Jersey off the lists for places you should not die in, and therefore, make the state more attractive for residents of other states.

Along with the abovementioned estate tax reform plan, the elimination of Class C beneficiaries from the state's inheritance tax would alleviate great tax burdens on New Jersey's middle-income residents. In the long-term, the elimination of Class C beneficiaries from the state's inheritance tax, together with the increase of the estate tax to the federal level, will make New Jersey a less burdensome state in which to live and die. Thus, New Jersey will be in a better position to retain its middle- and upper-income residents, as well as

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[223] *Inheritance and Estate Taxes Overview,* N.J. DIV. OF TAXATION, http://www.state.nj.us/treasury/taxation/inheritance_over.shtml (last visited Aug. 8, 2016).

[224] It treats transfers to brothers and sisters of the decedent differently than transfers to other immediate family members, including the father, mother, or child of the decedent. *See id.*

attracting new middle- and upper-income residents, and ultimately, increasing state revenue.[225]

CONCLUSION

Many of New Jersey's middle- and upper-income residents are leaving the state and the New Jersey Legislature and Governor continue to struggle with the state's budget. While New Jersey's cost of living, property tax, income tax, and tax on unearned income make the state a very undesirable place to live for the state's middle- and upper-income residents, the state's death taxes are the most egregious and can easily be reformed to keep these residents from leaving as they reach their golden years. When New Jersey residents leave the state, they take all their taxable assets with them. The substantial migration of middle- and upper-income residents has lost New Jersey billions of dollars in state revenue. In fact, the Garden State is losing more money from residents moving away each year than it is gaining from the actual revenue the state receives from its death taxes.[226]

The New Jersey Legislature has recently been concentrating its efforts on reforming New Jersey's death taxes.[227] However, if the wrong tax reform is implemented nothing will change, more wealth will continue to leave the state

[225] This elimination of Class C beneficiaries from New Jersey's inheritance tax is similar to the one proposed in Assemb. 3885. *See* Assemb. B. 3885, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/A4000/3885_I1.PDF.

[226] HAVENS, *supra* note 7.

[227] *See, e.g.*, Assemb. B. 3496, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/A3500/3496_I1.PDF; Assemb. B. 3885, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/A4000/3885_I1.PDF; Assemb. B. 329, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/A0500/329_I1.PDF; S.B. 1311, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/S1500/1311_I1.PDF; S.B. 702, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/S1000/702_I1.PDF; S.B. 2219, 216th Leg., Reg. Sess. (N.J. 2014), http://www.njleg.state.nj.us/2014/Bills/S2500/2219_I1.PDF.

than comes in and New Jersey's economy will continue to spiral downward. An effective death tax reform that will revitalize the state's economy includes: an estate tax exemption increase to the federal level and an elimination of Class C beneficiaries from the inheritance tax. With this death tax reform, New Jersey will become a more desirable place in which to live and die. Speaking on New Jersey's burdensome death taxes and the urgent need for reform, Governor Christie stated, "It is a real problem and it's one of the reasons people leave here and so I continue to advocate for it. Believe me, [if lawmakers] send estate tax reform and inheritance tax reform to my desk, I'll sign it."[228] The New Jersey Legislature has two choices: step up to the plate and reform the state's death taxes, or sit back and watch New Jersey's middle- and upper-income families continue to move to tax-friendlier states.

[228] Reitmeyer, *supra* note 8.