

New Jersey's precedent has consistently held that under the New Jersey Estate Tax statute, N.J.S.A. 54:38-1 to -16, the amount includible in, and taxed to, a decedent's estate is the "value" of an asset as of the decedent's date of death. This standard is the same under the New Jersey Transfer Inheritance Tax statute, N.J.S.A. 54:34-1 to 37-8 which unlike the estate tax, imposes the tax on the beneficiaries. Per plaintiff, therefore, the amount includible for estate tax purposes is the date of death value of the decedent's interest in her survival claim action, which, as opined by a third-party appraiser, is \$2,690,600. Per defendant, the amount includible is \$6,709,231.08, the net proceeds received by the decedent's estate from settlement of the survival claim action, because the plain language of N.J.A.C. 18:26-5.3(a), a Transfer Inheritance Tax regulation, requires that "any sum recovered under the New Jersey Death Act representing damages sustained by a decedent between the date of injury and date of decedent's death" must be "included in the decedent's estate."

The court finds that the Estate Tax and Transfer Inheritance Tax statutes can and should be read in *pari materia* because both laws address the same subject: the corpus or the taxable estate of a decedent, and because assets includible in the estate for estate tax purposes are those which are transferred to a beneficiary for inheritance tax purposes. The Legislature has, under the Transfer Inheritance Tax statute, determined that the taxable date-of-death value of a survival claim action is the amount actually recovered for such claim. Consequently, the amounts includible in the decedent's gross estate is the amount recovered by the estate (here, through settlement) for the survival claim action pursuant to N.J.A.C. 18:26-5.3. Therefore, the court grants defendant's cross-motion for summary judgment and denies plaintiff's motion for summary judgment.

FACTS AND PROCEDURAL HISTORY

Decedent, a New Jersey resident, died testate on March 4, 2014 from a natural gas explosion which occurred when a utility company struck a gas line while performing underground electrical work in front of her home.

Sometime in 2015, plaintiff filed a wrongful death claim action and a survival claim action lawsuit in the New Jersey Superior Court, as executor of decedent's estate. See N.J.S.A. 2A:31-4; 2A:15-3. These are two separate causes of action arising from the same triggering event, the death of the decedent, however the beneficiaries of the wrongful death claim action are the decedent's survivors whereas the beneficiaries of the survival claim action are the estate and creditors of the decedent. See Soden v. Trenton & Mercer County Traction Corp., 101 N.J.L. 393, 398 (E & A 1925) (in a wrongful death action, the "recovery goes, not to the estate of the deceased person, but to certain designated persons or next of kin" and the recovery amount "is not liable to the debts of the deceased, nor is it subject to disposition by will"); Alfone v. Sarno, 87 N.J. 99, 107-08 (1981) ("[u]nlike an action for wrongful death, the survival action inheres in the estate and is therefore subject to devise and the claims of creditors"); Smith v. Whitaker, 160 N.J. 221, 231 (1999).¹

¹ In 1848, our Legislature enacted "the Wrongful Death Act, now codified as N.J.S.A. 2A:31-1 to -6" and in 1855 enacted "the Survivor's Act, now codified as N.J.S.A. 2A:15-3." Smith, 160 N.J. at 231 (citations omitted). While "both types of actions arise from" the death of the plaintiff "they serve different purposes and are designed to provide a remedy to different parties." Ibid. The Wrongful Death Act is to "compensate survivors for the pecuniary losses they suffer" due to another's "tortious conduct." Ibid. The Survivor's Act permits "a decedent's representatives the right to bring an action for trespass to person or property in the same manner as if the decedent had been living." Id. at 233 (citations omitted). See also Alfone, 89 N.J. at 108, n.4 ("The survival action . . . seeks to compensate the estate for the pain and suffering of the deceased and the loss of earnings by him prior to his death" and permits claim "for "funeral and burial expenses," while "[h]ospital, medical and funeral expenses may alternatively be sought in a death action" under N.J.S.A. 2A:31-5).

The lawsuit eventually settled on November 30, 2017 for \$20,000,000. The Superior Court entered an Order Directing Disbursement of Funds whereby the settlement proceeds be first offset by counsel fees and expenses, and the balance \$13,418,462.15 be distributed 50% towards the wrongful death claim action (\$6,709,231.08 payable to Michael Morley) and 50% towards the survival claim action (\$6,709,231.08 payable 50% to Michael Morley and 25% each to his two sons in a settlement trust, but after deduction for all estate taxes and expenses). The estate received \$6,709,231.08 on December 5, 2017.

In August 2015, the estate filed a New Jersey estate tax return which did not reference the value of the survival claim action.² After the settlement proceeds were received, plaintiff filed an amended estate tax return on January 25, 2018 to include receipt of the survival claim action proceeds in the decedent's gross estate. Plaintiff also paid the consequent estate tax of \$720,933.

On August 7, 2019, plaintiff filed a second amended estate tax return to change the includible amount of the survival claim action to \$2,690,600 as being its "value" as of the decedent's date of death. The valuation was based on the conclusion of a third-party appraiser, Management Planning, Inc., which produced a report in this regard. The report outlined the methodology, assumptions, and data used to support the appraiser's value conclusion. Based on this valuation, plaintiff requested an estate tax refund of \$484,504.

By letter of September 6, 2019, defendant (Taxation) denied the refund claim. It rejected the proffered valuation report because it determined that "tax is on the sum actually received." The valuation report "reflect[ed] a potential reward" which, per Taxation, "does not apply."

Plaintiff timely protested this denial to Taxation's Conference and Appeals branch contending that under N.J.A.C. 18:26-8.8 (titled "Valuation"), "the operative valuation date" for

² Counsel for plaintiff in this matter was not involved in the preparation and filing of this return.

New Jersey's estate tax was the decedent's date of death, therefore, valuation of any estate asset must only be as of this date. This was, plaintiff contended, in conformance with the federal estate tax law (citing Treas. Reg. §20.2031-1(b) which provides that the value of property includible in the estate is its fair market value at the time of decedent's death).

By final determination letter dated February 28, 2020, Taxation upheld its refund denial relying upon N.J.A.C. 18:26-5.3(a). It noted that "a survival action claim is includible but, any sum recovered under the New Jersey Death Act as compensation for wrongful death of a decedent is not includible in the decedent's estate." Such inclusion, it further noted, is in conformance with the federal estate tax law that "wrongful death proceeds are not includible in the decedent's gross estate . . . because the wrongful death action cannot exist until the decedent has died," however, "to the extent that any recoverable damages are for the pain and suffering of the decedent, the value thereof is includible in the gross estate." (citing Rev. Rul. 75-127, 1975-1 C.B. 297). Taxation concluded "to the extent that any recoverable damages are for the pain and suffering of the decedent, the value thereof is includible in the gross estate."

ANALYSIS

(1) Appropriateness of Summary Judgment

Summary judgment will be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). Here, the parties agree that the survival claim action is an asset of the estate and must be included in the gross estate for New Jersey's estate tax purposes. The sole issue is the amount

to be included, the resolution of which entails pure statutory interpretation. Therefore, summary judgment is an appropriate method to dispose the matter.

(2) Assets Includible in Gross Estate for New Jersey Estate Tax Purposes

In Rev. Rul. 75-127, 1975-1 C.B. 297, the Internal Revenue Service (IRS) explained whether and what is includible in an estate vis-à-vis a wrongful death action as follows:

At common law, no recovery was available for damages resulting from a wrongful act after the death of the injured party. Any cause of action for personal injury abated at the death of the injured party. To abrogate this rule, the various states have enacted what are commonly called “wrongful death acts.” Generally, these acts take one of two forms: “death acts” or “survival acts.” “Death acts” include the type discussed in Rev. Rul. 54-19, 1954-1 C.B. 179, (involving New Jersey law) where the statute creates a new cause of action, after the death of the injured party, for the benefit of certain beneficiaries. Under a “survival act,” the cause of action for personal injury resulting in death survives the victim’s death and passes to his personal representative to be pursued as an asset of the probate estate.

The IRS concluded that it

will no longer take the position under . . . the law of any State having a wrongful death statute . . . that the value of wrongful death proceeds is includible in the decedent’s gross estate. However, where it can be established that such proceeds represent damages to which the decedent had become entitled during his lifetime (such as for pain and suffering and medical expenses) rather than damages for his premature death, the value of these amounts will be includible in the decedent’s gross estate.

[Ibid.]

The cross-referenced revenue ruling addressing New Jersey law stated that the “[a]mounts receivable in settlement of claims under the New Jersey ‘Death by Wrongful Act’ statute . . . are not includible in the decedent’s gross estate for Federal estate tax purposes” because the statute created the cause of action and determined “distribution of the proceeds of the recovery.” Rev. Rul. 54-19, 1954-1 C.B. 179 (emphasis added). This means that “the decedent had no right of

action or interest in the proceeds at the time of his death,” therefore, “nothing ‘passed’ from the decedent to the beneficiaries.” Ibid. Cf. Alfone, 87 N.J. at 108 (“The survival action merely perpetuat[es] the right of action which the deceased himself would have had, to redress his own injuries, but for his death.”) (citation and internal quotation marks omitted).

Here, the parties agree that the wrongful death claim action is not includible in the decedent’s gross estate. They also agree that the survival claim action is an asset of the estate and is includible in the decedent’ gross estate for New Jersey estate tax purposes.

(3) Amounts Includible for New Jersey Estate Tax Purposes

The Estate Tax statute, N.J.S.A. 54:38-1 to 38-16, imposes an “estate or transfer tax” upon the “transfer of” the estate of any New Jersey resident which would have been subject to the federal estate tax in effect on December 31, 2001. N.J.S.A. 54:38-1(a)(2)(i). This means that if the estate was subject to federal estate tax as of December 31, 2001, then it would be taxed by New Jersey also. The tax is imposed upon and paid by the estate of the decedent. See N.J.S.A. 54:38-11 (estate tax “shall be paid out of the same funds as those from which federal estate taxes are payable”). The tax is “due at the date of death of the decedent.” N.J.S.A. 54:38-5.³

There are no specific provisions in the estate tax statute explicating the computation or methodology as to the amount of the assets includible in an estate. Nor is there any specific statutory provision addressing a survival claim action. Plaintiff is correct that precedent requires inclusion of an asset’s fair market value as of the date of death in a decedent’s gross estate. See Estate of Warshaw v. Dir., Div. of Taxation, 27 N.J. Tax 287, 292 (App. Div. 2013) (value of gross estate is the value of “all property in the estate at the time of death,” and such value is determined under a willing buyer-willing seller test) (citing Internal Revenue Code (I.R.C.) §2036; Treas. Reg.

³ There is no New Jersey estate tax for estates of decedents dying on or after January 1, 2018.

§20.2031-1(b)⁴). In Estate of Warshaw, the court agreed with Taxation that the reported value of the asset (an Individual Retirement Account or IRA) at the time of the decedent's death cannot be changed even if it was later found to be worthless being part of Madoff's Ponzi scheme because "events subsequent to death are not considered in fixing fair market value of a decedent's gross estate." 27 N.J. Tax at 292 (citation omitted). Rather, "[b]ecause property is valued as of the date of death, the only relevant facts are those that this hypothetical buyer and seller could reasonably have been expected to know at that time." Ibid. (citation omitted).

In contrast, the State's Transfer Inheritance Tax statutes, N.J.S.A. 54:34-1 to 37-8, address these issues. See N.J.S.A. 54:34-1(a) (tax is imposed upon the "transfer of property, real or personal, of the value of \$500.00 or over, or of any interest therein or income therefrom, in trust or otherwise, to or for the use of any transferee, distributee or beneficiary"); N.J.S.A. 54:34-5 (transfer inheritance tax "shall be computed upon the clear market value of the property transferred"). This tax is in addition to the estate tax but is imposed upon certain classes of beneficiaries or transferees of the decedent. See N.J.S.A. 54:38-1(a); N.J.A.C. 18:26-3.1(a).⁵

As to damages received from wrongful death actions, the Transfer Inheritance Tax statute provides that the tax is normally "due and payable at the death" of the decedent, "but with respect to any sum recovered as compensation for death of a person caused by a wrongful act, neglect or

⁴ I.R.C. §2031(a) provides that "[t]he value of the gross estate of the decedent shall be determined by including. . . the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated." Treas. Reg. §20.2031-1(b) provides that "every item of property includible in a decedent's gross estate" is valued at "its fair market value at the time of the decedent's death" unless the estate selects an alternate valuation. The fair market value is "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts." Ibid.

⁵ Thus, the same event (death) can trigger two separate taxes: an estate tax imposed on the estate and a transfer inheritance tax imposed upon the transferees or beneficiaries (with a credit for inheritance tax paid, see N.J.S.A. 54:38-1(c)).

default, whether by award of damages or settlement of compromise, taxes thereon shall be due and payable on the date of said award or settlement.” See N.J.S.A. 54:35-1 (titled “Date when tax due”). This exception was included by L. 1978, c. 172, which was titled as an Act “providing for the date on which certain property is includible in the estate of a decedent for transfer inheritance tax purposes, and amending sections 54:35-1, 54:35-3 and 54:35-4 of the Revised Statutes.”⁶ The Sponsor’s Statement to Senate No. 348 notes that “[t]his bill redefines the date on which certain property is includible as a decedents estate for transfer inheritance tax purposes.” See also Sen. Rev., Fin. and Approp. Comm. Statement to Senate, No. 348 (Jan 26, 1978) (law amended “with respect to sums recovered under the Death By Wrongful Act Statute” so that “taxes shall become due and payable on the date of the award of damages or settlement of compromise, rather than the date of death of the decedent”).

This same law also enacted N.J.S.A. 54:35-4.1, which provides that as to “any sum recovered as compensation for death of a person caused by a wrongful act, neglect or default, interest shall accrue at the rates and in the manner provided . . . if the [transfer inheritance] tax is not paid within 30 days of the receipt of an award or settlement therefor.” The law was to “remove an inequity” which was that “persons entitled to the amount recovered under the” wrongful death statute had “not only to pay inheritance tax but also pay interest on the tax on a decedent’s estate when that estate was settled after the” time to file an inheritance tax return post-death had expired. Sen. Rev., Fin. and Approp. Comm. Statement to Senate, No. 348.

Taxation promulgated an inheritance tax regulation on inclusion in the decedent’s estate, sums “recovered under the New Jersey Death Act” as follows:

⁶ The enacted law deleted the proposed law’s reference to “N.J.S.A. 2A:31-1 et seq.” and the phrase “wrongful death of a decedent.” See Senate No. 348 (Second Official Reprint).

(a) Moneys recovered under New Jersey Death Act (N.J.S.A. 2A:31-1 et seq.). Any sum recovered under the New Jersey Death Act representing damages sustained by a decedent between the date of injury and date of decedent's death (such as the expenses of care, nursing, medical attendance, hospital, and other charges incident to the injury), including loss of earnings and pain and suffering are to be included in the decedent's estate.

1. Where an action is instituted under the New Jersey Death Act and terminates through settlement by a compromise payment without designating the amount to be paid under each count, the amount so recovered is first applied toward the payment of funeral expenses, the expenses of care, nursing, medical attendance, hospital, and other proper charges incident to the injury and is fully includible in the estate of the decedent.

[N.J.A.C. 18:26-5.3(a).]⁷

Taxation also provided that other than the above, no other amounts recovered are taxable. See N.J.A.C. 18:26-6.6 (“[a]ny sum recovered under sections 1, 2, 3, and 4 of the New Jersey Death Act (N.J.S.A. 2A:31-1 et seq.) as compensation for the wrongful death of a decedent is not subject to” inheritance tax “except as provided in N.J.A.C. 18:26-5.3(a)”).

Plaintiff contends that the law is “well settled” that an estate is to be valued at the death of the decedent, see Estate of Warshaw, therefore, it is the “value” of the survival claim action as of decedent's death that is includible in the estate, which here is \$2,690,600, as per the third-party appraiser's opinion. Plaintiff maintains that Taxation's resort to N.J.A.C. 18:26-5.3(a) to tax the actual amount of the net damages received is arbitrary and capricious since it is contrary to estate tax law, and that the regulation is inapplicable since it pertains to the transfer inheritance tax.

⁷ The authority for this regulation is stated to be N.J.S.A. 54:34-1a, the inheritance tax statute. See Supplement to Title 18 (March 31, 1972). In the 1972 version of the regulation, subsection (a) simply introduced the asset and thus read: “(a) Moneys recovered under New Jersey Death Act (N.J.S.A. 2A:31-1 et seq.).” Subparagraph 1 was what is now contained in subsection (a) except for the word “decedent's” and without the ellipses. Paragraph 2 was what is now contained in paragraph 1.

Taxation agrees that under the estate tax law, what is includible in an estate, and thus subject to estate tax, is the value of an asset as of the date of the decedent's death. However, it claims, Estate of Warshaw is inapplicable because in a survival claim action the decedent has no interest as of the date of death, whereas in the cited case, the decedent had such interest in the IRA. Taxation also argues that the precedent on including an asset's date-of-death value does not apply here since the survival claim action is a "different" type of an asset. This "different" asset is addressed in N.J.A.C. 18:26-5.3(a) which plainly states that the "sum recovered" is includible in the estate, which Taxation contends can only mean that amounts actually received are included and taxed regardless of when received.

The court initially dismisses as illogical Taxation's argument that Estate of Warshaw is inapplicable. In its final determination, Taxation stated that "a survival act claim is includible" in the decedent's estate. This means Taxation agreed that the survival claim action is property of the estate, and that the decedent had an interest in the same as of the date of her death. To now argue to the contrary should then vitiate Taxation's final determination and require a refund of the entire amount of estate tax paid by plaintiff. Instead, Taxation filed a cross-motion for summary judgment seeking affirmance of its refund denial.

As to the substantive contention of when and how much are includible in an estate where the asset is a survival claim action, there are no estate (or transfer inheritance) tax cases on this issue in New Jersey. The IRS' revenue rulings state what is and what is not includible in gross estate. However, they do not analyze or reconcile their conclusions with our transfer inheritance tax regulations or law (which is entirely reasonable because inheritance taxes are a matter of pure state law). Therefore, they are do not assist in resolving the instant inquiry.

It is appropriate to apply the State's Transfer Inheritance Tax statute to determine the inclusion amount of a survival action claim for estate tax purposes. Both the New Jersey Estate tax laws and the New Jersey Transfer Inheritance Tax address the same subject for purposes of imposing the respective taxes: the corpus or estate of a decedent. Both are "transfer" taxes, i.e., the tax is due to, and upon the transfer of an asset of, the decedent's death. See e.g. Jiwungkul v. Dir., Div. of Taxation, 30 N.J. Tax 70, 75 (Tax 2016) (the "[t]ransfer inheritance tax and the estate tax are separate assessments occasioned by a person's death," with the former being a tax upon "succession to property transferred . . . through a will or by intestacy" and the latter being a tax on the "transfer of the estate . . . which would have been subject to" a federal estate tax), aff'd, 450 N.J. Super. 257 (App. Div. 2017). The assets comprising the taxable estate and subject to estate tax, are also those which pass to beneficiaries (designated by a will or intestacy laws) for transfer inheritance tax purposes.

Taxation's regulations recognize the interdependence between the two transfer taxes. The definitional section, Subchapter 1 of Chapter 26 of Title 18, is titled as applying to both estate and inheritance taxes and specifies that the regulatory reference to the "Act" or "Law" or "Tax Act" means "Chapters 33 through 38 of Title 54." See N.J.A.C 18:26-1.1. Thus, for instance, the definition of the term "estate and property" (the "interest of the testator" which passes to a specific person, ibid.), or "gross estate" ("the value as of the date of a decedent's death of all property wherever situated, which is included in the decedent's estate for inheritance tax purposes," ibid.), applies to both taxes. So does the defined term "[m]arket value--date determined" (the "value of property as of the date of death of the transferor, whether or not the transfer was made during the lifetime of the transferor." Ibid.).

The court therefore finds that the Estate Tax statute and the Transfer Inheritance Tax statute can and should be read in pari materia as to what and how much is includible in a decedent's estate. See Milltown Indus. Sites v. Borough of Milltown, 12 N.J. Tax 581, 585 (Tax 1992) (“statutes relating to the same or similar subject matter – statutes in pari materia – are to be construed together”) (citation and internal quotation marks omitted), aff’d, 15 N.J. Tax 144 (App. Div. 1993); Richard’s Auto City, Inc. v. Dir., Div. of Taxation, 140 N.J. 523, 540 (1995) (statutes are in pari materia when they have “the same purpose or object”) (citations omitted). See also Estate of Dieleman v. Dep’t. of Revenue, 222 N.W.2d 459, 461 (Iowa 1974) (holding that estate tax and inheritance tax statute “should be construed in pari materia” in determining whether a claim for wrongful death is an asset of the estate, i.e., whether the decedent had an interest in such claim on his death).

Here, the transfer inheritance tax laws dictate what is included in the estate (“any sum recovered as compensation for death of a person caused by a wrongful act, neglect or default, whether by award of damages or settlement of compromise”), and when (date of recovery of the “award or settlement”). N.J.S.A. 54:35-1; N.J.A.C. 18:26-5.3(a). The regulations also indicate what is not taxable, and therefore, what is not includible in an estate. N.J.A.C. 18:26-5.3; 18:26-6.6.⁸ Therefore, construing the statutes in pari materia, the court finds that the legislative intent

⁸ While N.J.S.A. 18:26-5.3 (a) cites to “N.J.S.A. 2A:31-1 et seq.” as the “New Jersey Death Act,” the includible amounts pertain to damages “sustained between the date of injury and date of decedent’s death . . . including loss of earnings and pain and suffering.” These are damages allowable in a survival action claim. See Smith, 160 N.J. at 234, 236 (“The Survivor’s Act was intended to” provide a remedy “to the estates of those who” suffered “injuries causing death . . . by allowing the decedent’s estate to recover any loss to the decedent that accrued between injury and death,” and the “the primary damages recoverable in a survival action sounding in tort are for the decedent’s pain and suffering between the time of injury and death”) (internal citation and quotation marks omitted). See also Senate No. 348, *supra*, n.6.

was to include in the decedent's estate, the sums recovered pursuant to the survival claim action, whether the recovery resulted from a trial or a settlement.

Thus, the sums actually recovered by the decedent's estate in the survival claim action represents the value of that claim, which here is \$6,709,231.08. Although received or recovered later, this amount is deemed to be the value of the survival action claim as of the decedent's date of death. The legislative changes implemented by L. 1978, c. 172, while noting that it was as to the "date on which certain property is includible in the estate of a decedent for transfer inheritance tax purposes," sought to address the inequity as to timing of the payment of the tax so that "taxes shall become due and payable on the date of the award of damages or settlement of compromise, rather than the date of death of the decedent." Even if some ambiguity exists whether this law addresses the timing of the tax payment or the date on which an asset is to be valued, it is resolved by the unambiguous intent that (1) the "property" to be included in the decedent's estate are the "sums recovered under the Death By Wrongful Act Statute," and (2) the date such "property" is includible in the estate (and therefore subject to tax) is "the date of the award of damages or settlement" and not the date of death. Sen. Rev. Fin. and Approp. Comm. Statement to Senate, No. 348.

It would be counterintuitive to maintain that the same asset (survival claim action) is to be included in the same estate (decedent's) but argue that the tax base, i.e., amount subject to tax, should be different for each type of tax: for the estate tax, it should be an amount based on an appraiser's value conclusion (what is the asset's alleged market value as of the date of death), but for transfer inheritance tax purposes it is the amount recovered under N.J.A.C. 18:26-5.3. Construing the Estate Tax and Transfer Inheritance Tax statutes in pari materia will avoid this absurdity. The court's conclusion does not sidestep the ruling in Estate of Warshaw because there

the asset at issue was not a survival action claim and the case did not involve applicability of the Transfer Inheritance Tax laws.

The court also finds that although the inheritance tax regulations concerning survival claim actions (N.J.A.C. 18:26-5.3; N.J.A.C. 26-6.6) appear to be promulgated prior to the 1978 amendments to N.J.S.A. 54:35-1 and enactment of 35-4.1, they are not arbitrary, capricious, or unreasonable. Rather, the authority for the regulations arose under the Transfer Inheritance Tax statute, and although the nomenclature differs (alluding to sums recovered under the New Jersey Death Act, N.J.S.A. 2A:31-1et seq.,) their substance accord with the existing well-established law on survival claim actions and their includability in a decedent's estate. See Smith, 160 N.J. at 231, 234, 236; Rev. Rul. 54-19, 1954-1 C.B. 179.

In sum, based on the court's *pari materia* analysis, the court finds that amounts to be included for New Jersey's estate tax purposes are the sums actually recovered for a survival claim action, whether by settlement or jury verdict, because this is what the Legislature intended. Such sums are deemed to be the value of the claim as of the decedent's date of death. Therefore, application of N.J.A.C. 18:26-5.3(a) to require inclusion of the amounts actually recovered for this claim in the decedent's gross estate for New Jersey estate tax purposes is reasonable and within the intendment of the Legislature.

CONCLUSION

For the aforementioned reasons, the court denies plaintiff's summary judgment motion and grants Taxation's cross-motion for summary judgment.⁹

⁹ Taxation notes that should this court decide in favor of plaintiff, it does not contest plaintiff's appraiser's "value" conclusion of the survival claim action. This concession does not mean that the court (1) also accepts plaintiff's appraiser's value conclusion, or (2) agrees with plaintiff that survival actions can be credibly subject to valuation under a market-value theory or any other valuation theory.