

# ASSEMBLY, No. 2991

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 20, 2020

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**  
**District 3 (Cumberland, Gloucester and Salem)**  
**Assemblyman VINCENT MAZZEO**  
**District 2 (Atlantic)**  
**Assemblyman JOHN ARMATO**  
**District 2 (Atlantic)**

**Co-Sponsored by:**

**Assemblymen Thomson, Moriarty and Assemblywoman DiMaso**

**SYNOPSIS**

Concerns local taxation of business personal property of local exchange telephone companies.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 10/22/2020)**

A2991 BURZICHELLI, MAZZEO

2

1 AN ACT concerning the taxation of certain business personal  
2 property, supplementing chapter 4 of Title 54 of the Revised  
3 Statutes, and amending R.S.54:4-1.

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

7  
8 1. (New section) The Legislature finds and declares:  
9 a. In 1997, through the enactment of P.L.1997, c.162  
10 (C.54:10A-3 et al.), the Legislature approved an amendment to  
11 R.S.54:4-1 concerning the taxation of business personal property,  
12 including the property of local exchange telephone companies.  
13 Prior to the amendment of that statute, local exchange telephone  
14 companies were obligated to pay business personal property taxes  
15 on the tangible goods and chattels, exclusive of inventories, used in  
16 the business of local exchange telephone, telegraph, and messenger  
17 systems, companies, corporations, and associations if they were  
18 subject to the gross receipts and franchise tax under P.L.1940, c.4  
19 (C.54:30A-16 et seq.) and provided access to “substantially all” of a  
20 local telephone exchange. P.L.1997, c.162 (C.54:10A-3 et al.)  
21 amended the definition of “local exchange telephone **[companies]**  
22 **company**” in R.S.54:4-1 to require that such a company would be  
23 subject to business personal property tax if it were subject to the  
24 gross receipts and franchise tax under P.L.1940, c.4 (C.54:30A-16  
25 et seq.), as of April 1, 1997, and provided dial tone and access to 51  
26 percent of a local telephone exchange **[as of April 1, 1997]**. The  
27 intended effect of this requirement was to enshrine, in perpetuity,  
28 the business personal property of telecommunications companies  
29 into the property tax base of the municipalities wherein this  
30 business personal property was located, in order to stabilize the  
31 municipal property tax base for those municipalities and provide  
32 certainty for local budgeting purposes.

33 b. The Tax Court in Verizon New Jersey Inc. v. Borough of  
34 Hopewell, 26 N.J. Tax 400 (Tax Ct. 2012), incorrectly construed  
35 the statutory changes made in P.L.1997, c.162 (C.54:10A-3 et al.)  
36 to mean that the language of R.S.54:4-1 required that a  
37 telecommunications company has to meet the 51 percent test every  
38 year as of the assessment date in order for the business personal  
39 property tax to be assessed and levied by the municipality in which  
40 the business personal property was located. Subsequent to that  
41 decision, a trial was held in the Tax Court to establish whether  
42 Verizon met the 51 percent test for tax year 2009. On January 28,  
43 2019, the Tax Court found in favor of Hopewell Borough that  
44 Verizon did in fact meet that threshold for tax year 2009, and owed  
45 Hopewell Borough the tax. However, Hopewell Borough is now

**EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 faced with the cost of litigating Verizon's tax appeals filed for  
2 every tax year subsequent to 2009 up to, and including, the current  
3 tax year, and the possibility of litigating annual tax appeals that  
4 may be filed by the company in each tax year. Also, all of the other  
5 municipalities in the State in which the business personal property  
6 of telecommunications companies is located will face the same  
7 costs, and uncertainty, of litigating tax appeals as well. The  
8 taxpayers of these municipalities will bear the burden of paying  
9 legal fees to defend the assessment of business personal property  
10 taxes, and will have to endure increased property tax burdens if this  
11 business personal property tax cannot be imposed. This taxpayer  
12 burden is not what the Legislature intended.

13 c. The Legislature is greatly concerned that the Tax Court's  
14 interpretation of R.S.54:4-1 is burdensome to the judiciary and the  
15 affected municipalities; and imposes unnecessary fiscal uncertainty  
16 on the budgets of those municipalities and the property taxpayers in  
17 those municipalities. This burden and uncertainty is not what the  
18 Legislature intended to result from the 1997 amendments to  
19 R.S.54:4-1. Therefore, the Legislature has determined that  
20 corrective legislation clarifying the Legislature's intent in 1997 to  
21 stabilize the taxation of business personal property in perpetuity is  
22 necessary and appropriate, and shall be accomplished by  
23 establishing in R.S.54:4-1 the responsibility of a  
24 telecommunications carrier which held the regional monopoly on  
25 landline service before the market was opened to competitive local  
26 exchange carriers by the federal Telecommunications Act of 1996,  
27 or the corporate successors of such a local exchange telephone  
28 company, to pay business personal property taxes to the  
29 municipalities in which the property is located.

30

31 2. (New section) In any court proceeding involving a local  
32 exchange telephone company and a municipality concerning the  
33 taxation of business personal property pursuant to R.S.54:4-1 where  
34 the municipality is the prevailing party following a court decision,  
35 settlement, or other resolution of that proceeding, the municipality,  
36 and any related amicus entities, shall be awarded attorney's fees as  
37 costs to the local exchange telephone company.

38

39 3. R.S.54:4-1 is amended to read as follows:

40 54:4-1. All property real and personal within the jurisdiction of  
41 this State not expressly exempted from taxation or expressly  
42 excluded from the operation of this chapter shall be subject to  
43 taxation annually under this chapter. Such property shall be valued  
44 and assessed at the taxable value prescribed by law. Land in  
45 agricultural or horticultural use which is being taxed under the  
46 "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-  
47 23.1 et seq.), shall be valued and assessed as provided by that act.  
48 An executory contract for the sale of land, under which the vendee

1 is entitled to or does take possession thereof, shall be deemed, for  
2 the purpose of this act, a mortgage of said land for the unpaid  
3 balance of purchase price. Personal property taxable under this  
4 chapter shall include, however, only the machinery, apparatus or  
5 equipment of a petroleum refinery that is directly used to  
6 manufacture petroleum products from crude oil in any of the series  
7 of petroleum refining processes commencing with the introduction  
8 of crude oil and ending with refined petroleum products, but shall  
9 exclude items of machinery, apparatus or equipment which are  
10 located on the grounds of a petroleum refinery but which are not  
11 directly used to refine crude oil into petroleum products; and the  
12 tangible goods and chattels, exclusive of inventories, used in the  
13 business of local exchange telephone, telegraph and messenger  
14 systems, companies, corporations or associations that were subject  
15 to tax **[as of]** on April 1, 1997 under P.L.1940, c.4 (C.54:30A-  
16 16 et seq.) as amended, and shall not include any intangible  
17 personal property whatsoever whether or not such personalty is  
18 evidenced by a tangible or intangible chose in action except as  
19 otherwise provided by R.S.54:4-20. As used in this section, "local  
20 exchange telephone company" means a telecommunications carrier  
21 **[providing dial tone and access to 51% of a local telephone**  
22 **exchange]** that held the regional monopoly on landline service  
23 before the market was opened to competitive local exchange  
24 carriers by the federal Telecommunications Act of 1996, Pub. L.  
25 No. 104-104, 110 Stat. 56 (47 U.S.C. s.251 et seq.), or the corporate  
26 successors of such a local exchange telephone company. Property  
27 omitted from any assessment may be assessed by the county board  
28 of taxation, or otherwise, within such time and in such manner as  
29 shall be provided by law. Real property taxable under this chapter  
30 means all land and improvements thereon and includes personal  
31 property affixed to the real property or an appurtenance thereto,  
32 unless:

33 a. (1) The personal property so affixed can be removed or  
34 severed without material injury to the real property;

35 (2) The personal property so affixed can be removed or severed  
36 without material injury to the personal property itself; and

37 (3) The personal property so affixed is not ordinarily intended to  
38 be affixed permanently to real property; or

39 b. The personal property so affixed is machinery, apparatus, or  
40 equipment used or held for use in business and is neither a structure  
41 nor machinery, apparatus or equipment the primary purpose of  
42 which is to enable a structure to support, shelter, contain, enclose or  
43 house persons or property. For purposes of this subsection, real  
44 property shall include pipe racks, and piping and electrical wiring  
45 up to the point of connections with the machinery, apparatus, or  
46 equipment of a production process as defined in this section.

47 c. (Deleted by amendment, P.L.2004, c.42).

1 Real property, as defined herein, shall not be construed to affect  
2 any transaction or security interest provided for under the  
3 provisions of chapter 9 of Title 12A of the New Jersey Statutes  
4 (N.J.S.12A:9-101 et seq.). The provisions of this section shall not  
5 be construed to repeal or in any way alter any exemption from, or  
6 any exception to, real property taxation or any definition of  
7 personal property otherwise provided by statutory law.

8 The Director of the Division of Taxation in the Department of  
9 the Treasury may adopt rules and regulations pursuant to the  
10 provisions of the "Administrative Procedure Act," P.L.1968, c.410  
11 (C.52:14B-1 et seq.) as may be deemed necessary to implement and  
12 administer the provisions of this act.  
13 (cf: P.L.2004, c.42, s.13)

14  
15 4. This act shall take effect immediately and shall be  
16 retroactive to January 1, 2007.

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19 STATEMENT

20  
21 This bill would clarify the application of the business personal  
22 property tax on local exchange telephone companies that were  
23 subject to the tax as of April 1, 1997. This bill clarifies the changes  
24 made in 1997 to the business personal property tax that defined  
25 local exchange telephone companies that were subject to that tax on  
26 April 1, 1997. The Tax Court, in Verizon New Jersey Inc. v.  
27 Borough of Hopewell, which was decided on June 26, 2012,  
28 incorrectly construed the plain meaning of the language of the  
29 statutory change made in 1997 in a manner inconsistent with  
30 Legislative intent. That statutory change was intended to  
31 *permanently* make part of a municipality's property tax base the  
32 business personal property of all incumbent local exchange  
33 companies that were then subject to that tax *and* were a  
34 telecommunications carrier then meeting the definition of providing  
35 dial tone and access to 51 percent of a local telephone exchange.  
36 Local exchange telephone companies have taken advantage of the  
37 Tax Court's interpretation of the statute and informed  
38 municipalities in which their business personal property is located  
39 that it will no longer pay tax on that business personal property,  
40 such as equipment, utility poles, cables and more in any given  
41 municipality where it claims on an annual basis that it does not  
42 provide 51 percent or more of landline service to its residents. This  
43 unintended erosion of the local property tax base in the affected  
44 municipalities impacts all other local property taxpayers in these  
45 municipalities.

46 This bill will restore the local property tax status quo intended to  
47 be determined in 1997 by revising the definition of "local exchange  
48 telephone company" to mean a telecommunications carrier which

1 held the regional monopoly on landline service before the market  
2 was opened to competitive local exchange carriers by the federal  
3 Telecommunications Act of 1996, or the corporate successors of  
4 such a local exchange telephone company. This will accomplish  
5 two important purposes: first, it will require that the dominant  
6 telecommunications carrier in each region pay the business personal  
7 property tax on its business personal property regardless of the  
8 percentage of a local telephone exchange that it serves, and will  
9 permanently enshrine that business personal property into the tax  
10 base of the municipalities in which it is located.

11 The bill would also require that if a municipality is the prevailing  
12 party in a court proceeding between it and a local exchange  
13 telephone company concerning the taxation of business personal  
14 property pursuant to R.S.54:4-1 following a court decision,  
15 settlement, or other resolution of that proceeding, the municipality,  
16 and any related amicus entities, shall be awarded attorney's fees as  
17 costs to the local exchange telephone company.