

[Passed Both Houses]

[First Reprint]

ASSEMBLY, No. 1668

STATE OF NEW JERSEY

INTRODUCED MARCH 4, 1996

**By Assemblymen KAVANAUGH, CORODEMUS,
Assemblywomen Heck, Wright and Senator Inverso**

1 AN ACT concerning taxes on hazardous substances, amending
2 P.L.1976, c.141.

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

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7 1. Section 9 of P.L.1976, c.141 (C.58:10-23.11h) is amended to
8 read as follows:

9 9. a. There is hereby levied upon each owner or operator of one
10 or more major facilities a tax to insure compensation for cleanup costs
11 and damages associated with any discharge of hazardous substances
12 to be paid by the transferee; provided, however, that in the case of a
13 major facility which operates as a public storage terminal for
14 hazardous substances owned by others, the owner of the hazardous
15 substance transferred to such major facility or his authorized agent
16 shall be considered to be the transferee or transferor, as the case may
17 be, for the purposes of this section and shall be deemed to be a
18 taxpayer for purposes of this act. Where such person has failed to file
19 a return or pay the tax imposed by this act within 60 days after the due
20 date thereof, the director shall forthwith take appropriate steps to
21 collect same from the owner of the hazardous substance. In the event
22 the director is not successful in collecting said tax, then on notice to
23 the owner or operator of the public storage terminal of said fact said
24 owner or operator shall not release any hazardous substance owned by
25 the taxpayer. The director may forthwith proceed to satisfy any tax
26 liability of the taxpayer by seizing, selling or otherwise disposing of
27 said hazardous substance to satisfy the taxpayer's tax liability and to

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SEN committee amendments adopted December 16, 1996.

1 take any further steps permitted by law for its collection. For the
2 purposes of this act, public storage terminal shall mean a public or
3 privately owned major facility operated for public use which is used
4 for the storage or transfer of hazardous substances. The tax shall be
5 measured by the number of barrels or the fair market value, as the case
6 may be, of hazardous substances transferred to the major facility;
7 provided, however, that the same barrel, including any products
8 derived therefrom, subject to multiple transfers from or between major
9 facilities shall be taxed only once at the point of the first transfer.

10 When a hazardous substance other than petroleum which has not
11 been previously taxed is transferred from a major in-State facility to a
12 facility which is not a major facility, the transferor shall be liable for
13 tax payment for said transfer.

14 b. (1) The tax shall be \$0.0150 per barrel transferred and in the
15 case of the transfer of hazardous substances other than petroleum or
16 petroleum products, the tax shall be the greater of \$0.0150 per barrel
17 or 1.0% of the fair market value of the product plus \$0.0025 per
18 barrel; provided, however, that with respect to transfers of hazardous
19 substances other than petroleum or petroleum products which are or
20 contain any precious metals to be recycled, refined, or rerefined in this
21 State, ~~[or] which are transferred into this State subsequent to being~~
22 ~~recycled, refined or rerefined, or which are or contain elemental~~
23 ~~phosphorus,~~ the tax shall be \$0.0150 per barrel of the hazardous
24 substance; and provided further, however, that the total aggregate tax
25 due for any individual taxpayer which has paid the tax in the 1986 tax
26 year shall not exceed 125% of the tax due and payable by that taxpayer
27 during the 1986 tax year plus an additional \$0.0025 per barrel; except
28 that for a hazardous substance which is directly converted to, and
29 comprises more than 90% by weight of, a non-hazardous final product,
30 the taxpayer shall pay no more than 100% of the tax due and payable
31 in the 1986 tax year plus an additional \$0.0025 per barrel. ¹~~[For] In~~
32 ~~computing 125% of the tax due and payable by the taxpayer during the~~
33 ~~1986 tax year, for¹ taxes due after January 1, ¹[1995, in computing~~
34 ~~125% of taxes due and payable by the taxpayer during the 1986 tax~~
35 ~~year] 1996 from an owner or operator of one or more major facilities~~
36 ~~who has continuously since 1986 filed a combined tax return for more~~
37 ~~than one major facility but who prior to January 1, 1996 has closed~~
38 ~~one or more of those major facilities¹, a taxpayer shall include 1986~~
39 ~~taxes arising ¹[out of the operations of] from¹ major facilities which~~
40 ~~(1) caused the taxpayer to incur a tax liability in 1986, and (2)~~
41 ~~continue to cause the ¹[corporate]¹ taxpayer to incur a tax liability~~
42 ~~during the current tax year. For transfers which are or contain~~
43 ~~elemental phosphorus, in computing the 125% of the taxes due and~~
44 ~~payable by the taxpayer during the 1986 tax year, a taxpayer shall~~
45 ~~calculate the tax at \$0.015 per barrel. For the purposes of this section,~~
46 "precious metals" means gold, silver, osmium, platinum, palladium,

1 iridium, rhodium, ruthenium and copper. In the event of a major
2 discharge or series of discharges of petroleum or petroleum products
3 resulting in reasonable claims against the fund exceeding the existing
4 balance of the fund, the tax shall be levied at the rate of \$0.04 per
5 barrel of petroleum or petroleum products transferred, until the
6 revenue produced by such increased rate equals 150% of the total
7 dollar amount of all pending reasonable claims resulting from the
8 discharge of petroleum or petroleum products; provided, however,
9 that such rate may be set at less than \$0.04 per barrel transferred if the
10 administrator determines that the revenue produced by such lower rate
11 will be sufficient to pay outstanding reasonable claims against the fund
12 within one year of such levy. For the purposes of determining the
13 existing balance of the fund, the administrator shall not include any
14 amount in the fund collected from the \$0.0025 per barrel increase in
15 the tax imposed pursuant to P.L.1990, c.78 and dedicated for
16 hazardous substance discharge prevention in accordance with
17 paragraph (2) of this subsection.

18 Interest received on moneys in the fund shall be credited to the
19 fund.

20 (2) An amount of \$0.0025 per barrel collected from the proceeds
21 of the tax imposed pursuant to this subsection shall be deposited into
22 the New Jersey Spill Compensation Fund and dedicated for the
23 purposes of P.L.1990, c.78 and for other authorized purposes
24 designed to prevent the discharge of a hazardous substance.

25 c. (1) Every taxpayer and owner or operator of a public storage
26 terminal for hazardous substances shall on or before the 20th day of
27 the month following the close of each tax period render a return under
28 oath to the director on such forms as may be prescribed by the director
29 indicating the number of barrels of hazardous substances transferred
30 and where appropriate, the fair market value of the hazardous
31 substances transferred to or from the major facility, and at said time
32 the taxpayer shall pay the full amount of the tax due.

33 (2) Every taxpayer or owner or operator of a major facility or
34 vessel which transfers a hazardous substance, as defined in this act,
35 and who is subject to the tax under subsection a. shall within 20 days
36 after the first such transfer in any fiscal year register with the director
37 on such form as shall be prescribed by him.

38 d. If a return required by this act is not filed, or if a return when
39 filed is incorrect or insufficient in the opinion of the director, the
40 amount of tax due shall be determined by the director from such
41 information as may be available. Notice of such determination shall be
42 given to the taxpayer liable for the payment of the tax. Such
43 determination shall finally and irrevocably fix the tax unless the person
44 against whom it is assessed, within 30 days after receiving notice of
45 such determination, shall apply to the director for a hearing, or unless
46 the director on his own motion shall redetermine the same. After such

1 hearing the director shall give notice of his determination to the person
2 to whom the tax is assessed.

3 e. Any taxpayer who shall fail to file his return when due or to pay
4 any tax when the same becomes due, as herein provided, shall be
5 subject to such penalties and interest as provided in the "State Tax
6 Uniform Procedure Law," R.S.54:48-1 et seq. If the Division of
7 Taxation determines that the failure to comply with any provision of
8 this section was excusable under the circumstances, it may remit such
9 part or all of the penalty as shall be appropriate under such
10 circumstances.

11 f. (1) (Deleted by amendment, P.L.1987, c.76.)

12 (2) (Deleted by amendment, P.L.1987, c.76.)

13 g. In addition to the other powers granted to the director in this
14 section, he is hereby authorized and empowered:

15 (1) To delegate to any officer or employee of his division such of
16 his powers and duties as he may deem necessary to carry out
17 efficiently the provisions of this section, and the person or persons to
18 whom such power has been delegated shall possess and may exercise
19 all of said powers and perform all of the duties delegated by the
20 director;

21 (2) To prescribe and distribute all necessary forms for the
22 implementation of this section.

23 h. The tax imposed by this act shall be governed in all respects by
24 the provisions of the "State Tax Uniform Procedure Law,"
25 R.S.54:48-1 et seq., except only to the extent that a specific provision
26 of this act may be in conflict therewith.

27 i. (Deleted by amendment, P.L.1986, c.143.)

28 (cf: P.L.1990, c.78, s.17)

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30 2. This act shall take effect immediately.

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35 Alters cap on tax due for transfers of hazardous substances.