

P.L. 1997, CHAPTER 134, *approved June 27, 1997*
Assembly, No. 1668 (*First Reprint*)

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
28 take any further steps permitted by law for its collection. For the
29 purposes of this act, public storage terminal shall mean a public or
30 privately owned major facility operated for public use which is used

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 for the storage or transfer of hazardous substances. The tax shall be
2 measured by the number of barrels or the fair market value, as the case
3 may be, of hazardous substances transferred to the major facility;
4 provided, however, that the same barrel, including any products
5 derived therefrom, subject to multiple transfers from or between major
6 facilities shall be taxed only once at the point of the first transfer.

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

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

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

15 Interest received on moneys in the fund shall be credited to the
16 fund.

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

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

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

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

46 e. Any taxpayer who shall fail to file his return when due or to pay

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

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

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

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

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

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

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

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

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

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27 2. This act shall take effect immediately.

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