

SENATE, No. 1525

STATE OF NEW JERSEY

INTRODUCED OCTOBER 3, 1996

By Senator INVERSO

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

3

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
31 for the storage or transfer of hazardous substances. The tax shall be
32 measured by the number of barrels or the fair market value, as the case
33 may be, of hazardous substances transferred to the major facility;
34 provided, however, that the same barrel, including any products

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.

1 derived therefrom, subject to multiple transfers from or between major
2 facilities shall be taxed only once at the point of the first transfer.

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

7 b. (1) The tax shall be \$0.0150 per barrel transferred and in the
8 case of the transfer of hazardous substances other than petroleum or
9 petroleum products, the tax shall be the greater of \$0.0150 per barrel
10 or 1.0% of the fair market value of the product plus \$0.0025 per
11 barrel; provided, however, that with respect to transfers of hazardous
12 substances other than petroleum or petroleum products which are or
13 contain any precious metals to be recycled, refined, or rerefined in this
14 State, [or] which are transferred into this State subsequent to being
15 recycled, refined or rerefined, or which are or contain elemental
16 phosphorus, the tax shall be \$0.0150 per barrel of the hazardous
17 substance; and provided further, however, that the total aggregate tax
18 due for any individual taxpayer which has paid the tax in the 1986 tax
19 year shall not exceed 125% of the tax due and payable by that taxpayer
20 during the 1986 tax year plus an additional \$0.0025 per barrel; except
21 that for a hazardous substance which is directly converted to, and
22 comprises more than 90% by weight of, a non-hazardous final product,
23 the taxpayer shall pay no more than 100% of the tax due and payable
24 in the 1986 tax year plus an additional \$0.0025 per barrel. For taxes
25 due after January 1, 1995, in computing 125% of taxes due and
26 payable by the taxpayer during the 1986 tax year, a taxpayer shall
27 include 1986 taxes arising out of the operations of major facilities
28 which (1) caused the taxpayer to incur a tax liability in 1986, and (2)
29 continue to cause the corporate taxpayer to incur a tax liability during
30 the current tax year. For transfers which are or contain elemental
31 phosphorus, in computing the 125% of the taxes due and payable by
32 the taxpayer during the 1986 tax year, a taxpayer shall calculate the
33 tax at \$0.015 per barrel. For the purposes of this section, "precious
34 metals" means gold, silver, osmium, platinum, palladium, iridium,
35 rhodium, ruthenium and copper. In the event of a major discharge or
36 series of discharges of petroleum or petroleum products resulting in
37 reasonable claims against the fund exceeding the existing balance of
38 the fund, the tax shall be levied at the rate of \$0.04 per barrel of
39 petroleum or petroleum products transferred, until the revenue
40 produced by such increased rate equals 150% of the total dollar
41 amount of all pending reasonable claims resulting from the discharge
42 of petroleum or petroleum products; provided, however, that such rate
43 may be set at less than \$0.04 per barrel transferred if the administrator
44 determines that the revenue produced by such lower rate will be
45 sufficient to pay outstanding reasonable claims against the fund within
46 one year of such levy. For the purposes of determining the existing

1 balance of the fund, the administrator shall not include any amount in
2 the fund collected from the \$0.0025 per barrel increase in the tax
3 imposed pursuant to P.L.1990, c.78 and dedicated for hazardous
4 substance discharge prevention in accordance with paragraph (2) of
5 this subsection.

6 Interest received on moneys in the fund shall be credited to the
7 fund.

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

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

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

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

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

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

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

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

3 (1) To delegate to any officer or employee of his division such of
4 his powers and duties as he may deem necessary to carry out
5 efficiently the provisions of this section, and the person or persons to
6 whom such power has been delegated shall possess and may exercise
7 all of said powers and perform all of the duties delegated by the
8 director;

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

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

15 i. (Deleted by amendment, P.L.1986, c.143.)
16 (cf: P.L.1990, c.78, s.17)

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18 2. This act shall take effect immediately.
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21 STATEMENT

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23 This bill would amend the "Spill Compensation and Control Act" to
24 change the way the tax imposed upon the owner or operator of a
25 major facility is calculated. Currently, for most taxpayers, the
26 aggregate tax due for any taxpayer who has paid the tax in the 1986
27 calender year is capped at 125% of the tax due for the 1986 calender
28 year plus \$0.0025 per barrel of hazardous substance transferred. This
29 bill would change that calculation. For taxes due after January 1,
30 1995, in computing 125% of taxes due and payable by the taxpayer
31 during the 1986 tax year, a taxpayer shall include 1986 taxes arising
32 out of the operations of major facilities which (1) caused the taxpayer
33 to incur a tax liability in 1986, and (2) continue to cause the corporate
34 taxpayer to incur a tax liability during the current tax year. In addition,
35 the bill would change the tax for any transfer of a hazardous substance
36 that is or contains elemental phosphorus to \$0.015 per barrel. In
37 computing 125% of taxes due and payable by the taxpayer during the
38 1986 tax year, the 1986 taxes for any transfer that is or contains
39 elemental phosphorus shall be recalculated at a rate of \$0.015 per
40 barrel.
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45 _____
45 Alters cap on tax due for transfers of hazardous substances.