

ASSEMBLY, No. 5450

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 23, 2019

Sponsored by:

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District 36 (Bergen and Passaic)
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Assemblywoman Reynolds-Jackson, Assemblymen Milam, Land, Mazzeo, Armato, Auth, DeAngelo, Assemblywoman Lampitt, Assemblymen Rooney and Verrelli

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/14/2019)

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” in
22 R.S.54:4-1 to require that such a company would be subject to
23 business personal property tax if it were subject to the gross receipts
24 and franchise tax under P.L.1940, c.4 (C.54:30A-16 et seq.), as of
25 April 1, 1997, and provided dial tone and access to 51 percent of a
26 local telephone exchange as of April 1, 1997. The intended effect
27 of this requirement was to enshrine, in perpetuity, the business
28 personal property of telecommunications companies into the
29 property tax base of the municipalities wherein this business
30 personal property was located, in order to stabilize the municipal
31 property tax base for those municipalities and provide certainty for
32 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.

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

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

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

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

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

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

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

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

14 (cf: P.L.2004, c.42, s.13)

15

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

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STATEMENT

21

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

1 This bill will restore the local property tax status quo intended to
2 be determined in 1997 by revising the definition of "local exchange
3 telephone company" to mean a telecommunications carrier which
4 held the regional monopoly on landline service before the market
5 was opened to competitive local exchange carriers by the federal
6 Telecommunications Act of 1996, or the corporate successors of
7 such a local exchange telephone company. This will accomplish
8 two important purposes: first, it will require that the dominant
9 telecommunications carrier in each region pay the business personal
10 property tax on its business personal property regardless of the
11 percentage of a local telephone exchange that it serves, and will
12 permanently enshrine that business personal property into the tax
13 base of the municipalities in which it is located.

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