

[First Reprint]

**ASSEMBLY, No. 5450**

**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

INTRODUCED MAY 23, 2019

**Sponsored by:**

**Assemblyman JOHN J. BURZICHELLI**  
**District 3 (Cumberland, Gloucester and Salem)**  
**Assemblyman GARY S. SCHAER**  
**District 36 (Bergen and Passaic)**  
**Assemblyman ROBERT J. KARABINCHAK**  
**District 18 (Middlesex)**

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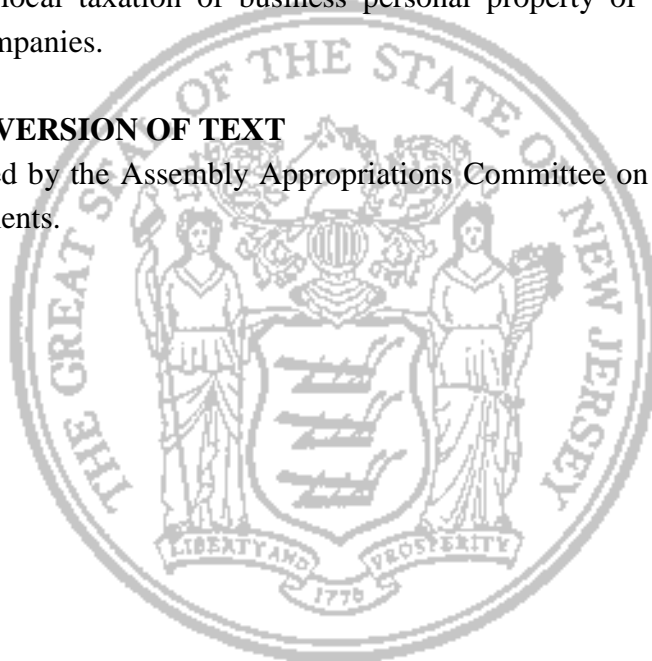
**Assemblywoman Reynolds-Jackson, Assemblymen Milam, Land, Mazzeo, Armato, Auth, DeAngelo, Assemblywoman Lampitt, Assemblymen Rooney, Verrelli, Spearman, Webber and Calabrese**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As reported by the Assembly Appropriations Committee on June 13, 2019, with amendments.



**(Sponsorship Updated As Of: 11/8/2019)**

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 <sup>1</sup>**[companies]**  
22 company<sup>1</sup>” 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 <sup>1</sup>**[as of April 1, 1997]**<sup>1</sup>. 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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AAP committee amendments adopted June 13, 2019.

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] <sup>1</sup>[companies, corporations, or  
22 associations] company<sup>1</sup>" means a telecommunications carrier  
23 [providing dial tone and access to 51% of a local telephone  
24 exchange] that held the regional monopoly on landline service  
25 before the market was opened to competitive local exchange  
26 carriers by the federal Telecommunications Act of 1996, Pub. L.  
27 No. 104-104, 110 Stat. 56 (47 U.S.C. s.251 et seq.), or the corporate  
28 successors of such a local exchange telephone company. Property  
29 omitted from any assessment may be assessed by the county board  
30 of taxation, or otherwise, within such time and in such manner as  
31 shall be provided by law. Real property taxable under this chapter  
32 means all land and improvements thereon and includes personal  
33 property affixed to the real property or an appurtenance thereto,  
34 unless:

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

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

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

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

1 up to the point of connections with the machinery, apparatus, or  
2 equipment of a production process as defined in this section.

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

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

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

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

17

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