

ASSEMBLY, No. 1692

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Expands applicability of cap on "Spill Compensation and Control Act" tax liability to all successors in interest of certain taxpayers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning taxes on the transfer of hazardous substances
2 and amending P.L.1976, c.141.

3

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

6

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
10 one or more major facilities a tax to insure compensation for
11 cleanup costs and damages associated with any discharge of
12 hazardous substances to be paid by the transferee; provided,
13 however, that in the case of a major facility which operates as a
14 public storage terminal for hazardous substances owned by others,
15 the owner of the hazardous substance transferred to such major
16 facility or his authorized agent shall be considered to be the
17 transferee or transferor, as the case may be, for the purposes of this
18 section and shall be deemed to be a taxpayer for purposes of this
19 act. Where such person has failed to file a return or pay the tax
20 imposed by this act within 60 days after the due date thereof, the
21 director shall forthwith take appropriate steps to collect same from
22 the owner of the hazardous substance. In the event the director is
23 not successful in collecting said tax, then on notice to the owner or
24 operator of the public storage terminal of said fact said owner or
25 operator shall not release any hazardous substance owned by the
26 taxpayer. The director may forthwith proceed to satisfy any tax
27 liability of the taxpayer by seizing, selling or otherwise disposing of
28 said hazardous substance to satisfy the taxpayer's tax liability and to
29 take any further steps permitted by law for its collection. For the
30 purposes of this act, public storage terminal shall mean a public or
31 privately owned major facility operated for public use which is used
32 for the storage or transfer of hazardous substances. The tax shall be
33 measured by the number of barrels or the fair market value, as the
34 case may be, of hazardous substances transferred to the major
35 facility; provided, however, that the same barrel, including any
36 products derived therefrom, subject to multiple transfers from or
37 between major facilities shall be taxed only once at the point of the
38 first transfer.

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

43 b. (1) (a) The tax shall be \$0.023 per barrel transferred and in
44 the case of the transfer of hazardous substances other than
45 petroleum or petroleum products, the tax shall be 1.53% of the fair
46 market value of the product; provided, however, that with respect to
47 transfers of hazardous substances other than petroleum or petroleum

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 products which are or contain any precious metals to be recycled,
2 refined, or rerefined in this State, which are transferred into this
3 State subsequent to being recycled, refined or rerefined, or which
4 are or contain elemental phosphorus, or which are elemental
5 antimony or antimony trioxide sold for use in the manufacture or
6 for the purpose of fire retardants, the tax shall be \$0.023 per barrel
7 of the hazardous substance; and provided further, however, that the
8 total aggregate tax due for any individual taxpayer facility which
9 has paid the tax in the 1986 tax year shall not exceed 125% of the
10 tax due and payable by that taxpayer facility during the 1986 tax
11 year plus an additional \$0.0025 per barrel; except that for a
12 hazardous substance which is directly converted to, and comprises
13 more than 90% by weight of, a non-hazardous final product, the
14 taxpayer facility shall pay no more than 100% of the tax due and
15 payable in the 1986 tax year plus an additional \$0.0025 per barrel.
16 For major facilities established by the subdivision of a major
17 facility which existed in 1986, including subsequent owners and
18 operators of the subdivided major facilities, the total aggregated tax
19 due shall not exceed 100% of the tax paid in 1999. For the
20 purposes of applying the 125% of tax due limitation, a successor in
21 interest pursuant to a sale or a reorganization, as defined pursuant to
22 the Internal Revenue Code of 1986, **【on or before June 1, 2001】**
23 shall be entitled to the predecessor taxpayer's limitation. In
24 computing 125% of the tax due and payable by the taxpayer during
25 the 1986 tax year, for taxes due after January 1, 1996 from an
26 owner or operator including the successor in interest pursuant to a
27 sale or a reorganization as defined in this paragraph of one or more
28 major facilities who has continuously since 1986 filed a combined
29 tax return for more than one major facility but who prior to January
30 1, 1996 has entirely closed and decommissioned one or more of
31 those major facilities, a taxpayer shall include 1986 taxes arising
32 from major facilities which (1) caused the taxpayer to incur a tax
33 liability in 1986, and (2) continue to cause the taxpayer to incur a
34 tax liability during the current tax year. For transfers which are or
35 contain elemental phosphorus, or which are elemental antimony or
36 antimony trioxide sold for use in the manufacture or for the purpose
37 of fire retardants, in computing the 125% of the taxes due and
38 payable by the taxpayer during the 1986 tax year, a taxpayer, which
39 shall include any subsequent owner or operator of a major facility
40 which transfers elemental phosphorus, shall calculate the tax at
41 \$0.015 per barrel. For the purposes of this section, "precious
42 metals" means gold, silver, osmium, platinum, palladium, iridium,
43 rhodium, ruthenium and copper. In the event of a major discharge
44 or series of discharges of petroleum or petroleum products resulting
45 in reasonable claims against the fund exceeding the existing balance
46 of the fund, the tax shall be levied at the rate of \$0.04 per barrel of
47 petroleum or petroleum products transferred, until the revenue
48 produced by such increased rate equals 150% of the total dollar

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

12 (b) Notwithstanding any provision of subparagraph (a) of this
13 paragraph to the contrary, in order to qualify for the reduced tax
14 rate for elemental antimony or antimony trioxide sold for use in the
15 manufacture or for the purpose of fire retardants authorized in that
16 subparagraph, the taxpayer shall demonstrate, by December 31 of
17 each year, to the satisfaction of the Department of the Treasury,
18 acting in cooperation with the Department of Environmental
19 Protection, all of the following: (i) that the taxpayer's sales of the
20 hazardous substance constitute, in the calendar year immediately
21 prior to the first calendar year in which the reduced tax rate shall
22 apply, at least 75% of the taxpayer's total annual income in that
23 immediately prior calendar year; (ii) that no other competitor of the
24 taxpayer located in another state is subject to a tax in that other
25 state, with respect to the hazardous substance, that is substantially
26 similar to the tax imposed thereon pursuant to this section; (iii) that
27 the taxpayer otherwise would suffer economic stress unless the
28 benefit from the reduced tax rate is allowed; (iv) that the taxpayer
29 has never filed a successful claim against the New Jersey Spill
30 Compensation Fund; (v) that the taxpayer has never discharged a
31 hazardous substance that required cleanup and removal in
32 accordance with P.L.1976, c.141 (C.58:10-23.11 et seq.); and (vi)
33 that, upon request of the State Treasurer, the taxpayer's accountant
34 or counsel can provide a certified document detailing, with respect
35 to the hazardous substance, the amount of tax that would have been
36 paid each calendar year by the taxpayer had the reduced tax rate not
37 been in effect and the amount that was actually paid each calendar
38 year under the reduced tax rate, so that the State Treasurer may
39 calculate the loss of tax revenue, if any, to the State attributable to
40 the reduced tax rate. If the taxpayer fails to qualify under the
41 provisions of this subparagraph for the reduced tax rate, the
42 taxpayer shall pay, for that calendar year, the tax at the full rate
43 imposed pursuant to subparagraph (a) of this paragraph.

44 (c) Interest received on moneys in the fund shall be credited to
45 the fund.

46 (2) An amount of \$0.0025 per barrel collected from the proceeds
47 of the tax imposed pursuant to this subsection shall be deposited
48 into the New Jersey Spill Compensation Fund and dedicated for the

1 purposes of P.L.1990, c.78 and for other authorized purposes
2 designed to prevent the discharge of a hazardous substance.

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

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

17 (3) Those hazardous substances determined by the Department
18 of Environmental Protection not to be subject to regulation pursuant
19 to P.L.1976, c.141 (C.58:10-23.11 et seq.) or P.L.1990, c.78 shall
20 not be subject to taxation pursuant to this section.

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

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

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

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

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

44 (1) To delegate to any officer or employee of his division such
45 of his powers and duties as he may deem necessary to carry out
46 efficiently the provisions of this section, and the person or persons
47 to whom such power has been delegated shall possess and may

1 exercise all of said powers and perform all of the duties delegated
2 by the director;

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

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

9 i. (Deleted by amendment, P.L.1986, c.143.)
10 (cf: P.L.2004, c.50, s.2)

11

12 2. This act shall take effect immediately.

13

14

15 STATEMENT

16

17 This bill would provide that the cap on tax liability in connection
18 with the transfer of hazardous substances to major facilities – which
19 under existing law applies only to owners and operators whose
20 interest was acquired prior to June 1, 2001 – would also apply to all
21 successors in interest of those owners and operators.

22 Pursuant to the “Spill Compensation and Control Act,” an owner
23 or operator of a major facility is subject to a tax based on the
24 amount of hazardous substances transferred to the facility.
25 However, for certain taxpayers that paid the tax in 1986, existing
26 law provides a cap on the taxpayer’s liability. The cap is set at
27 125% of the tax that was due and payable by that taxpayer in 1986,
28 plus an additional \$0.0025 per barrel. Existing law also provides
29 that a successor in interest is entitled to its predecessor’s 125% cap,
30 provided the successor’s interest was acquired pursuant to a sale or
31 reorganization on or before June 1, 2001. This bill would expand
32 the applicability of the 125% cap to all successors in interest,
33 regardless of when the interest was acquired, including successors
34 in interest pursuant to a sale or reorganization occurring after June
35 1, 2001.