SENATE, No. 421

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
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SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 3/5/2020)

AN ACT concerning the taxation of certain business personal property, supplementing chapter 4 of Title 54 of the Revised Statutes, and amending R.S.54:4-1.

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

1. (New section) The Legislature finds and declares:

a. In 1997, through the enactment of P.L.1997, c.162 (C.54:10A-3 et al.), the Legislature approved an amendment to R.S.54:4-1 concerning the taxation of business personal property, including the property of local exchange telephone companies. Prior to the amendment of that statute, local exchange telephone companies were obligated to pay business personal property taxes on the tangible goods and chattels, exclusive of inventories, used in the business of local exchange telephone, telegraph, and messenger systems, companies, corporations, and associations if they were subject to the gross receipts and franchise tax under P.L.1940, c.4 (C.54:30A-16 et seq.) and provided access to "substantially all" of a local telephone exchange. P.L.1997, c.162 (C.54:10A-3 et al.) amended the definition of "local exchange telephone companies" in R.S.54:4-1 to require that such a company would be subject to business personal property tax if it were subject to the gross receipts and franchise tax under P.L.1940, c.4 (C.54:30A-16 et seq.), as of April 1, 1997, and provided dial tone and access to 51 percent of a local telephone exchange as of April 1, 1997. The intended effect of this requirement was to enshrine, in perpetuity, the business personal property of telecommunications companies into the property tax base of the municipalities wherein this business personal property was located, in order to stabilize the municipal property tax base for those municipalities and provide certainty for local budgeting purposes.

b. The Tax Court in <u>Verizon New Jersey Inc. v. Borough of Hopewell</u>, 26 <u>N.J. Tax</u> 400 (Tax Ct. 2012), incorrectly construed the statutory changes made in P.L.1997, c.162 (C.54:10A-3 et al.) to mean that the language of R.S.54:4-1 required that a telecommunications company has to meet the 51 percent test every year as of the assessment date in order for the business personal property tax to be assessed and levied by the municipality in which the business personal property was located. Subsequent to that decision, a trial was held in the Tax Court to establish whether Verizon met the 51 percent test for tax year 2009. On January 28, 2019, the Tax Court found in favor of Hopewell Borough that Verizon did in fact meet that threshold for tax year 2009, and owed 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 <u>thus</u> is new matter.

faced with the cost of litigating Verizon's tax appeals filed for every tax year subsequent to 2009 up to, and including, the current tax year, and the possibility of litigating annual tax appeals that may be filed by the company in each tax year. Also, all of the other municipalities in the State in which the business personal property of telecommunications companies is located will face the same costs, and uncertainty, of litigating tax appeals as well. The taxpayers of these municipalities will bear the burden of paying legal fees to defend the assessment of business personal property taxes, and will have to endure increased property tax burdens if this business personal property tax cannot be imposed. This taxpayer burden is not what the Legislature intended.

c. The Legislature is greatly concerned that the Tax Court's interpretation of R.S.54:4-1 is burdensome to the judiciary and the affected municipalities; and imposes unnecessary fiscal uncertainty on the budgets of those municipalities and the property taxpayers in those municipalities. This burden and uncertainty is not what the Legislature intended to result from the 1997 amendments to R.S.54:4-1. Therefore, the Legislature has determined that corrective legislation clarifying the Legislature's intent in 1997 to stabilize the taxation of business personal property in perpetuity is necessary and appropriate, and shall be accomplished by establishing in R.S.54:4-1 the responsibility of a telecommunications carrier which held the regional monopoly on landline service before the market was opened to competitive local exchange carriers by the federal Telecommunications Act of 1996, or the corporate successors of such a local exchange telephone company, to pay business personal property taxes to the municipalities in which the property is located.

2. (New section) In any court proceeding involving a local exchange telephone company and a municipality concerning the taxation of business personal property pursuant to R.S.54:4-1 where the municipality is the prevailing party following a court decision, settlement, or other resolution of that proceeding, the municipality, and any related amicus entities, shall be awarded attorney's fees as costs to the local exchange telephone company.

3. R.S.54:4-1 is amended to read as follows:

54:4-1. All property real and personal within the jurisdiction of this State not expressly exempted from taxation or expressly excluded from the operation of this chapter shall be subject to taxation annually under this chapter. Such property shall be valued and assessed at the taxable value prescribed by law. Land in agricultural or horticultural use which is being taxed under the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), shall be valued and assessed as provided by that act. An executory contract for the sale of land, under which the vendee is

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

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

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

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

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

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

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

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

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

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

STATEMENT

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

This bill will restore the local property tax status quo intended to be determined in 1997 by revising the definition of "local exchange telephone company" to mean a telecommunications carrier which

held the regional monopoly on landline service before the market was opened to competitive local exchange carriers by the federal Telecommunications Act of 1996, or the corporate successors of such a local exchange telephone company. This will accomplish two important purposes: first, it will require that the dominant telecommunications carrier in each region pay the business personal property tax on its business personal property regardless of the percentage of a local telephone exchange that it serves, and will permanently enshrine that business personal property into the tax base of the municipalities in which it is located.

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