To: **New Jersey Law Revision Commission**
From: **Susan G. Thatch & Chelsea A. Purdue**
Re: **Tax Exemption - The Definition of "Marine Terminal Facilities"**
Date: **September 8, 2014**

MEMORANDUM

Staff seeks approval from the Commission to undertake a project addressing the definition of "marine terminal facility" within *N.J.S.* 54:32B-8.12 in response to the Tax Court of New Jersey's 2013 decision, *Ironbound Intermodal Industries v. Director*.[1] The New Jersey Sales and Use Tax Act provides several exemptions from taxation to multiple entities, notably "marine terminal facilities" engaged in repairing, altering or converting commercial ships or containers:

> Receipts from sales or charges for repairs, alterations or conversion of commercial ships or any component thereof including cargo containers of any type whatsoever . . . primarily engaged in interstate or foreign commerce, machinery, apparatus and equipment for use at a marine terminal facility in loading, unloading and handling cargo carried by those commercial ships . . . are exempt from the tax imposed under the Sales and Use Tax Act.[2]

Though four New Jersey statutes define "marine terminal," the phrase is not defined within the Sales Use and Tax Act, triggering litigation over the issue.

In *Ironbound Intermodal Industries*, a business that stored maritime shipping containers before they were placed on eighteen-wheelers for ground transport, Ironbound Intermodal Industries ("Ironbound"), filed a claim challenging two audit periods of the Division of Taxation.[3] The business also provided a repair service for chassis used to load and handle cargo at piers, wharves, and docks.[4] Though Ironbound claimed an exemption for receipts related to its business, the Director of the Division of Taxation ruled the business was not a "marine terminal facility" under the Sales and Use Tax Act and was therefore not permitted a tax exemption.[5] The Director reasoned the business did not qualify as a marine terminal facility for two reasons: first, Ironbound conducted no stevedoring operations,[6] and, second, the three facilities were located beyond the scope of Port Newark property.[7] Ironbound appealed the decision to the Tax Court of New Jersey, and the Court held in favor of the business in 2013, reasoning the legislature

[1] *Ironbound Intermodal Indus. v. Dir., Div. of Taxation*, 27 N.J. Tax 347 (2013).
[2] Sales and Use Tax Act, N.J.S.A. 54:32B-8.12 (1999).
[3] *Ironbound Intermodal Indus.*, 27 N.J. at 353.
[4] *Ibid*.
[5] *Ibid*.
[6] Stevedoring is the process of loading and unloading ships. THE FREE DICTIONARY, *Stevedoring*, http://www.thefreedictionary.com/stevedoring.
[7] *Ironbound Intermodal Indus.*, 27 N.J. at 355.

intended the phrase "marine terminal facility" to encompass the type of work performed by Ironbound.[8]

On one hand, the Tax Court assessed the claim with a presumption of validity as to the Director's decision and notes that Sales Use and Tax Act exemptions were to be narrowly construed.[9] On the other hand, the Court determined the term "marine terminal facility" within the Sales Use and Tax Act was not "facially clear and unambiguous," thus inviting investigation into legislative intent.[10] The Court found that the exemption was introduced in 1980, and the Governor stated that the motivation behind the exemption stemmed from the desire to compete with New York, since New York and several coastal states had already implemented the tax exemption.[11] Additionally, amendments in 1988 expanded the statute's tax exemption to include "'machinery, apparatus and equipment for use at a marine terminal facility in loading, unloading and handling cargo . . . at a marine terminal facility' and 'machinery, apparatus and equipment.'"[12]

Though the Sales Use and Tax Act does not define "marine terminal facility" in any provision, four different statutes that predate the Act have done so.[13] In the context of municipal waterfront improvements in 1931, *N.J.S.* 40:68-18 defined "marine terminal":

> [A] development consisting of one or more piers, wharves, docks, bulkheads, slips, basins, vehicular roadways, railroad connections, side tracks, sidings and other buildings, structures, facilities or improvements, *necessary or convenient* to the accommodation of steamships or other vessels and their cargoes and passengers.

In addition, in relation to the South Jersey Port Corporation, "marine terminal" is defined in *N.J.S.* 12:11A-3:

> "Marine terminals" shall mean developments, consisting of one or more piers, wharves, docks, bulkheads, slips, basins, vehicular roadways, railroad connections, side tracks, sidings or other buildings, structures, facilities or improvements, *necessary or convenient* to the accommodation of steamships or other vessels and their cargoes or passengers.

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[8] *Id*. at 360–61.
[9] *Id*. at 355 ("Statutory exemptions from SUT are a matter of legislative grace and are to be narrowly construed.").
[10] *Ibid*. (citing Aponte-Correa v. Allstate Ins. Co., 162 N.J. 318, 323 (2000)) ("If the text . . . is susceptible to different interpretations, the court considers extrinsic factors, such as the statute's purpose, legislative history, and statutory context to ascertain the legislature's intent.").
[11] *Id*. at 357.
[12] *Ibid*.
[13] *Id*. at 358.

Finally, in the context of The Port Authority of New York and New Jersey, *N.J.S.* 32:1-35.30 and *N.J.S.* 32:1-154.18(1) define "marine terminals." *N.J.S.* 32:1-35.30 reads:

> "Marine terminals" shall mean developments, consisting of one or more piers, wharves, docks, bulkheads, slips, basins, vehicular roadways, railroad connections, side tracks, sidings or other buildings, structures, facilities or improvements, necessary or convenient to the accommodation of steamships or other vessels and their cargoes or passengers and shall also mean waterfront development projects. It shall also include such highway projects in the vicinity of a marine terminal providing improved access to such marine terminal as shall be designated in legislation adopted by the two states. Notwithstanding any contrary provision of law, it shall also mean railroad freight projects related or of benefit to a marine terminal or which are necessary, convenient or desirable in the opinion of the port authority for the protection or promotion of the commerce of the port district, consisting of railroad freight transportation facilities or railroad freight terminal facilities, and any equipment, improvement, structure or facility or any land, and any building, structure, facility or other improvement thereon, or any combination thereof, and all real and personal property in connection therewith or incidental thereto, deemed *necessary or desirable* in the opinion of the port authority, whether or not now in existence or under construction, for the undertaking of railroad freight projects.

N.J.S. 32:1-154.18(1) defines "marine terminals" as:

> "Marine terminals" shall mean developments operated by the Port Authority consisting of one or more piers, wharves, docks, bulkheads, slips, basins, vehicular roadways, railroad connections, side tracks, sidings or other buildings, structures, facilities or improvements, *necessary or convenient* to the accommodation of steamships or other vessels and their cargoes or passengers.

The Director argued the definitions provided above, when read together, "require a facility to be capable of stevedoring and/or must be operated by the Port Authority in order to qualify as a marine terminal facility."[14] The Tax Court disagreed.[15] The New Jersey Supreme Court had previously commented on the phrase "marine terminal" in relation to the Port Authority legislation, finding the phrase "was intended by the Legislature to have a broad and expensive definition."[16] Therefore, the Tax Court found that Ironbound's three locations met the legislature's intent behind the use of the phrase "marine terminal facility."[17] The buildings

[14] *Id*. at 359.
[15] *Ibid*.
[16] *Id*. at 360.
[17] *Ibid*.

constitute "structures, facilities and improvements necessary or convenient to the accommodation of steamships or other vessels and their cargoes."[18] Since Ironbound was held to fall within the Legislature's intended definition of "marine terminal facility," the business qualified for the tax exemption of the Sales Use and Tax Act, *N.J.S.* 54:32B-8.12.[19]

Staff seeks Commission authorization to undertake a project addressing the definition of "marine terminal" as used in the Sales Use and Tax Act provision *N.J.S.* 54:32B-8.12. This project would seek to clarify the language of the statute in keeping with the guidance provided by the Tax Court of New Jersey and obtain comments in an effort to effectuate legislative intent.

[18] *Ibid*.
[19] *Id*. at 360–61.