

**To: New Jersey Law Revision Commission**

**From: John Cannel**

**Re: Property Taxation**

**Date: January 9, 2017**

## M E M O R A N D U M

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This is a rough draft of the first parts of a potential Commission report revising the statutes of property taxation. This material covers “what is taxable”, that is, what is real property for purposes of taxation. The draft also includes the sections exempting government property from taxation. The sections detailing the kinds of private property that are exempt are not in this draft.

New material is shown in italics.

## LOCAL PROPERTY TAX

### ARTICLE 1. WHAT IS THE TAX

#### Chapter 1 - What is taxable

##### **Tax:1-1. Tax on real property**

Real property 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. The tax is assessed and collected at the municipal level and the proceeds are distributed for use by the taxing district, the school district and the county

Source: 54:4-1

#### Comment

The first sentence of the section is derived from the first sentence of the source statute. The inclusion of personal property in the source has been deleted as not reflective of the law. See, e.g. the opening sentence of section 1-2. The second sentence of the section was added to further define the tax on real property.

##### **Tax:1-2. Real property, definition**

Taxable real property consists of land and improvements on land and includes personal property affixed to the real property or an appurtenance to real property, unless:

a. The personal property affixed:

(1) can be removed without material injury to the real property, and

- (2) can be removed without material injury to the personal property itself, and
- (3) is not ordinarily intended to be affixed permanently to real property, or

b. The personal property 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. As used in this section:

(1) "Machinery, apparatus or equipment" means any machine, device, mechanism, instrument, tool, tank or item of tangible personal property used or held for use in business.

(2) "Production process" means the process commencing with the introduction of raw materials or components into a systematic series of manufacturing, assembling, refining or processing operations and ceasing when the product is in the form in which it will be sold to the ultimate consumer.

(3) "Structure" means any assemblage of building or construction materials fixed in place for the primary purpose of supporting, sheltering, containing, enclosing or housing persons or property.

(4) "Used or held for use in business" means any item of machinery, apparatus or equipment used or held for use in a business transaction, activity, or occupation conducted for profit in New Jersey.

Source: 54:4-1; 54:4-1.15.

#### Comment

This section along with Section 1-3 is derived from the "Business Retention Act." Subsections (a) and (b) are substantially identical to subsections (a) and (b) of 54:4-1. The subsections are lettered and numbered the same as the source to simplify transition. Subsection (c) is substantially identical to 54:4-1.15.

### **Tax:1-3. Property taxable as real property.**

The following are taxable as real property:

a. 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 not including 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.

b. A storage tank having a capacity of more than 30,000 gallons is deemed to be real property. The fact that products are mixed, blended, heated or subjected to a similar non-production process within a storage tank shall not in itself render that tank personal property.

Source: 54:4-1; 54:4-1.12.

Comment

Subsection (a) is substantially identical to language added to the first paragraph of 54:4-1 by the "Business Retention Act," L.1994 c.24, §3. Subsection (b) is substantially identical to 54:4-1.12. The property described in the section is made taxable as real property, but it is not classified as either real or personal property.

**Tax:1-4. General provisions.**

a. Classification of property as real property for purposes of taxation shall not be construed to affect any transaction or security interest provided for under the provisions of chapter 9 of the Uniform Commercial Code, Title 12A of the New Jersey Statutes.

b. The provisions of this section shall not be construed to repeal or in any way alter any exception to, real property taxation or any definition of personal property otherwise provided by statutory law.

c. The Director of the Division of Taxation in the Department of the Treasury *may* adopt regulations pursuant to the provisions of the "Administrative Procedure Act," (C.52:14B-1 et seq.) necessary to implement and administer the provisions of this act. The director shall make and enforce uniform regulations for ascertaining whether property is real or personal and for classifying personal property.

Source: 54:4-1

Comment

This section is derived from the last two paragraphs of 54:4-1. The section makes no substantive change from its source except that subsection (c) gives the Director of the Division of Taxation the explicit power to make regulations distinguishing classes of property.

**Chapter 2 -What is tax exempt**

**Tax:2-1 Exempt public property**

The following public property is exempt from real property taxation:

a. The property of the State of New Jersey *and its agencies and authorities*;

b. The property of the counties, municipalities, taxing districts and school districts

(1) used for public purposes,

(2) used for the preservation or exhibit of historical data, records or property,

(3) leased to a nonprofit organization for use that would make the property exempt from taxation if owned by the organization or ;

(4) leased to a board of education or governmental agency and used for public purposes.

c. The property of the Passaic Valley Sewerage Authority used in connection with a main intercepting or trunk sewer, its branches or appurtenances, constructed for two or more of the municipalities within the Passaic valley sewerage district.

*d. The property of the federal government and of interstate authorities of which New Jersey is a party.*

Source: 54:4-3.3; 54:4-3.4.

#### Comment

Subsections (a) and (b) are based on 54:4-3.3. However, the language of the subsections has been completely reorganized. Subsection (b) has been drafted to include all local public property. In present law separate and apparently differing provisions achieve the same substantive result as to county, municipal and school board property. The provision in 54:4-3.3 exempting property of the Morris Canal and Banking Company has been deleted since that property is now property of the state. Subsection (c) is substantially identical to 54:4-3.4. Subsection (d) is new. It echoes the substance of sections such as 32:1-35.5 relating to Port Authority airports.

### **Tax:2-2. Exceptions to exemption for public property**

a. Real property acquired by the State or by a State agency, or by an authority created by the State, shall not be exempt from taxation during the period following acquisition, as follows:

(1) Property acquired shall become tax exempt on January 1 of the calendar year following the date of acquisition, provided that the tax assessor of the municipality in which such property is located is given written notice of the acquisition by certified mail on or before January 10 of that year. If property is acquired between January 1 and January 10 inclusive and the notice is given on or before January 10, the real property shall become tax exempt as of the date of acquisition.

(2) For the purposes of this subsection, the right of possession as provided by 20:1-3.11 (eminent domain), or vesting of title, whichever occurs first, shall be deemed to be acquisition with respect to the property.

(3) When, at the time of acquisition, the owner has paid the taxes for beyond the date of the acquisition, the owner shall be entitled to reimbursement for the taxes paid for the portion of the calendar year beyond the date of acquisition. If the taxes for the remaining portion of the year have not been paid by the owner, they shall be paid by the State or by the authority acquiring the property.

(4) In the event of a dispute between the owner and the State or authority, in respect to the apportionment and payment of the taxes, the Superior and the Tax Court shall have jurisdiction to determine the matter in a summary manner on the application of either the owner or of the State, or authority, and make any appropriate order to carry out the court's determination.

b. Lands of counties, municipalities, and other municipal and public agencies of this State used for the purpose and for the protection of a public water supply shall be subject to taxation by the taxing district where it is situated, at the taxable value of the land without regard to any buildings or other improvements which shall be exempt from taxation.

*c. If a portion of the property of a county, municipality, taxing district or school district is leased to an organization for use that would make the property taxable if owned by the organization, that portion shall be subject to taxation.*

Source: 54:4-3.3; 54:4-3.3b; 54:4-3.3d; 54:4-3.3e; 54:4-3.6e.

Comment

Subsection (a) is substantially identical to 54:4-3.3b; 54:4-3.3d and 54:4-3.3e. The definition of acquisition, 54:4-3.3c, was deleted as unnecessary; case law has established that if property is taken by eminent domain, title passes when the declaration of taking is filed.

Subsection (b) is substantially identical to a provision in 54:4-3.3. Subsection (c) is a generalization of 54:4-3.6e which, by its terms applies only to school board property. However, as noted in the comment to Section 2-1, property of other local public entities is treated similarly.

**Tax:2-3. Inapplicability of act to taxes or payments in lieu of taxes; priority of conflicting laws**

a. Nothing contained in this chapter shall grant a tax exemption for real property owned by the State, or by a State agency or authority, *or by an interstate authority*, where payment is required by the provisions of any law, nor shall an exemption under this chapter prohibit payment or agreements for payment of fair and reasonable sums in lieu of taxes as provided by law.

b. In the event of any conflict between this chapter and the provisions of an act providing for the acquisition of real property by the State or by a State agency or authority, *or by an interstate authority*, as to the payment of taxes to a municipality or for the prorating of taxes as between the owner and the State or a State agency or authority, the provisions of this chapter shall not supersede the provisions of the other act.

Source: 54:4-3.3f.

Comment

This section is substantially identical to its source except that language has been added including interstate authorities. Statutes on interstate authorities sometimes have similar provisions. See, e.g. 32:1-35.5.

**Tax:2-4. Taxation of leases by state and federal governments.**

a. When real property owned by the state or federal government is leased to another whose property is not exempt from taxation [and the leasing does not make the property taxable] the leasehold estate and appurtenances shall be listed as the real property of the lessee.

b. If the term of the lease in any calendar year is less than the whole year, the tax assessment for the year shall be the same proportion of the full assessment of the leased property as the number of days of the lease is of 365 days. If the lessee presents proof to the governing body of the municipality that the leasehold was terminated before the end of the term, the lessee shall be entitled to proportionate cancellation of the assessment and to the refund of taxes paid on the portion of the assessment canceled.

c. Assessments for leaseholds commencing between January 1 and October 1 of a year shall be entered in the Added Assessment List for that year; assessments for leaseholds commencing after October 1 of a year shall be entered in the Added Assessment List for the subsequent year.

d. Taxes on leaseholds shall be administered in the same way as other taxes on real estate entered on the Added Assessment List.

e. Unpaid taxes on a leasehold shall be a lien on the leasehold and the lessee or assignee shall be personally liable for them.

Source: 54:4-2.3; 54:4-2.4; 54:4-2.5; 54:4-2.6; 54:4-2.7; 54:4-2.8; 54:4-2.9; 54:4-2.10.

Comment

Subsection (a) is derived from 54:4-2.3. While the explicit limitation to State and Federal property is new, as a practical matter, the current provision applies only to that property. Subsection (b) is substantially identical to 54:4-2.4 and 54:4-2.9. Subsection (c) is substantially identical to 54:4-2.5. Subsection (d) is a generalization of 54:4-2.6; 54:4-2.7 and 54:4-2.10. Subsection (e) is substantially identical to 54:4-2.8.