

54:4-1.12

LEGISLATIVE HISTORY CHECKLIST

NJSA: 54:4-1.12 (Fuel storage tanks--
certain--tax as real
property)

LAWS OF: 1986

CHAPTER 117

BILL NO: S1858

Sponsor(s): Zane and Lesniak

Date Introduced: March 3, 1986

Committee: Assembly: Appropriations

Senate: County and Municipal Government

Amended during passage: Yes
according to Governor's recommendations

Amendments denoted by asterisks.

Date of Passage: Assembly: June 26, 1986 Re-enacted 9-29-86
Senate: April 21, 1986 Re-enacted 9-18-86

Date of Approval: Oct. 8, 1986

Following statements are attached if available:

Sponsor statement: Yes Attached: Assembly amend-
ments, adopted 6-23-86 (with
statement)

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: Yes

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

See newspaper clipping--attached.

"Swift Kean signing expected on tank-farm tax bill," 9-30-86 Elizabeth Daily Journal.

117
10/8/86
86
[FOURTH OFFICIAL COPY REPRINT]

SENATE, No. 1858

STATE OF NEW JERSEY

INTRODUCED MARCH 3, 1986

By Senators ZANE and LESNIAK

Referred to Committee on County and Municipal Government

AN ACT concerning the ****[real property]**** taxation of certain
***[storage tanks and supplementing chapter 4 of Title 54 of the
Revised Statutes.]*** **personal property used in business
[and]* ***,** amending R. S. 54:4-1 and P. L. 1966, c. 136**
***and supplementing chapter 4 of Title 54 of the Revised
Statutes**.*

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

1 ***[1. Notwithstanding the provisions of any law, rule or regula-**
2 **tion to the contrary, any fuel storage tank with a capacity of at**
3 **least 10,000 gallons, whether underground or aboveground, used or**
4 **held for use in any business, transaction, activity or occupation**
5 **conducted for profit shall be considered real property for the**
6 **purposes of valuation and assessment of property for taxation.]***

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

2 54:4-1. All property real and personal within the jurisdiction
3 of this State not expressly exempted from taxation or expressly
4 excluded from the operation of this chapter shall be subject to
5 taxation annually under this chapter. Such property shall be
6 valued and assessed at the taxable value prescribed by law. Land
7 in agricultural or horticultural use which is being taxed under
8 the Farmland Assessment Act of 1964, chapter 48, laws of 1964,
9 shall be valued and assessed as provided by said act. An executory
10 contract for the sale of land, under which the vendee is entitled
11 to or does take possession thereof, shall be deemed, for the pur-
12 pose of this act, a mortgage of said land for the unpaid balance

**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 printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate committee amendments adopted April 7, 1986.**

****—Assembly committee amendments adopted May 22, 1986.**

*****—Assembly amendments adopted June 23, 1986.**

******—Senate amendment adopted in accordance with Governor's recommenda-
tion September 8, 1986.**

13 of purchase price. Personal property taxable under this chapter
 14 shall include, however, only tangible goods and chattels, exclusive
 15 of inventories, used in business of telephone, telegraph and mes-
 16 senger systems, companies, corporations or associations subject
 17 to tax under chapter 4, laws of 1940, as amended, and shall not
 18 include any intangible personal property whatsoever whether or
 19 not such personalty is evidenced by a tangible or intangible chose
 20 in action, except as otherwise provided by section 54:4-20 hereof.
 21 Property omitted from any assessment may be assessed by the
 22 county board of taxation, or otherwise, within such time and in
 23 such manner as shall be provided by law. *Real property taxable*
 24 *under this chapter* ****[shall mean]**** ****means**** all land and im-
 25 *provements thereon and* ****[shall include]**** ****includes**** personal
 26 *property* ****[which is: (1) annexed]**** ****affixed**** to the real prop-
 27 *erty or an appurtenance thereto*****[; (2) appropriated to the use**
 28 *or purpose of that part of the real property to which the personal*
 29 *property is annexed; and (3) intended by the party making*
 29A *the annexation to be a permanent accession to the freehold.*
 30 *Real property, as defined herein, shall not be construed to affect*
 31 *any transactions or security interest provided for under the pro-*
 32 *visions of chapter 9 of Title 12A of the New Jersey Statutes*
 33 *(N. J. S. 12A:9-101 et seq.). The provisions of this section shall*
 34 *not be construed to repeal or in any way alter any exemption from,*
 35 *or any exception to, real property taxation or any definition of*
 36 *personal property otherwise provided by statutory law***** ****,
 37 unless:

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

40 ***** [b.] ***** ***** (2) ***** *The personal property so affixed can be re-*
 41 *moved or severed without material injury to the personal property*
 42 *itself; and*

43 ***** [c.] ***** ***** (3) ***** *The personal property so affixed is not ordi-*
 44 *narily intended to be affixed* ***** [either: (1)] ***** *permanently to*
 45 *real property; or* ***** [(2) until the useful life of the personal prop-**
 46 *erty is exhausted**.] ****

47 ***** b.** *The personal property so affixed is machinery, apparatus,*
 48 *or equipment which is neither functionally essential to a structure*
 49 *the personal property is within or to which the personal property*
 50 *is affixed nor constitutes a structure itself.*

51 *Real property, as defined herein, shall not be construed to affect*
 52 *any transaction or security interest provided for under the pro-*
 53 *visions of chapter 9 of Title 12A of the New Jersey Statutes (N. J. S.*
 54 *12A:9-101 et seq.). The provisions of this section shall not be con-*

55 *strued to repeal or in any way alter any exemption from, or any*
 56 *exception to, real property taxation or any definition of personal*
 57 *property otherwise provided by statutory law.*

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

1 2. Section 2 of P. L. 1966, c. 136 (C. 54:11A-2) is amended to
 2 read as follows:

3 2. For the purposes of this act, unless the context otherwise
 4 requires:

5 (a) "Director" shall mean the Director of the Division of
 6 Taxation in the Department of the Treasury.

7 (b) "Personal property used in business" shall mean tangible
 8 goods and chattels used or held for use in any business, trans-
 9 action, activity or occupation conducted for profit, but shall not
 10 include:

11 (1) goods and chattels held as inventory, including raw ma-
 12 terials, finished and partially finished products of manufac-
 13 turers and processors, supplies and materials used or con-
 14 sumed in production, small tools, and goods and chattels held
 15 for sale, resale, leasing or to be furnished under contracts
 16 of service;

17 (2) goods and chattels [so affixed] *which are***[(1) *an-*
 18 *nexed to real property [as to become part thereof and not to be*
 19 *severable or removable without material injury thereto]*
 20 *or an appurtenance thereto; (2) appropriated to the use or*
 21 *purpose of that part of the real property to which the per-*
 22 *sonal property is annexed; and (3) intended by the party*
 23 *making the annexation to be a permanent accession to the*
 24 *freehold]** **taxable as real property pursuant to R. S.*
 24A *54:4-1**;*

25 (3) motor vehicles registered in this State pursuant to
 26 Title 39 of the Revised Statutes;

27 (4) vessels for which tax exemption certificates are or have
 28 been issued pursuant to the New Jersey Boat Act of 1962
 29 (P. L. 1962, c. 73), as amended and supplemented;

30 (5) goods and chattels used or held for use in business by
 31 any person, partnership, association or corporation subject
 32 to taxation under chapter 4 of the laws of 1940, as amended;

33 (6) goods and chattels used or held for use in the business
 34 of farming; and

35 (7) goods and chattels used or held for use in business by
 36 any life insurance company, domestic or foreign, which is
 37 subject to a tax on life insurance premiums collected under
 38 the provisions of chapter 132, laws of 1945, as amended.

39 (c) "Original cost" with respect to any item of personal prop-
 40 erty shall mean:

41 (1) In the case of acquisition by purchase, the actual cost
 42 to the purchaser of acquiring the property;

43 (2) In the case of acquisition by an exchange of property,
 44 the fair market value of the property given in exchange or,
 45 if such property has no market value, the original cost of
 46 the property given in exchange;

47 (3) In the case of property acquired from a decedent's
 48 estate, the fair market value of the property at the time
 49 of the decedent's death;

50 (4) In the case of property acquired as a gift for no con-
 51 sideration, the original cost to the last owner of the property
 52 who acquired it for a consideration.

53 The original cost of any item of personal property also shall
 54 include the actual cost to the person acquiring such property of
 55 any capital expenditures with respect thereto by way of additions
 56 or improvements;

57 (d) "Taxpayer" shall mean any person subject to taxation
 58 under this act.

59 (e) "Person" shall mean and include an individual, trust,
 60 estate, partnership, association, company, joint stock company
 61 or corporation.*

1 ***3. (New section) ***[Oil refineries, tank farms and other sim-*
 2 *ilar facilities are deemed to be improvements to real property for*
 3 *the purposes of this chapter.]*** ** *** For the purposes of chapter*
 4 *4 of Title 54 of the Revised Statutes and notwithstanding the pro-*
 5 *visions of R. S. 54:4-1, a tank ****[used to store hazardous sub-*
 6 *stances as defined in subsection k. of section 3 of P. L. 1976, c. 141*
 7 *(C. 58:10-23.11b) and]**** having a capacity of more than 30,000*
 8 *gallons is deemed to be real property.****

1 **[2.]* **[*3.]*** **4.** This act shall take effect immediately**,
 2 *be applicable to real property assessments and taxes for tax year*
 3 *1986 and thereafter, and further shall be applicable to any proceed-*
 4 *ing pending in any court or county tax board on the date of enact-*
 5 *ment**.**

TAXATION — PROPERTY

Provides for real property taxation of certain personal property.

SENATE, No. 1858

STATE OF NEW JERSEY

INTRODUCED MARCH 3, 1986

By Senators ZANE and LESNIAK

Referred to Committee on County and Municipal Government

AN ACT concerning the real property taxation of certain storage tanks and supplementing chapter 4 of Title 54 of the Revised Statutes.

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

1 1. Notwithstanding the provisions of any law, rule or regulation
2 to the contrary, any fuel storage tank with a capacity of at least
3 10,000 gallons, whether underground or aboveground, used or
4 held for use in any business, transaction, activity or occupation
5 conducted for profit shall be considered real property for the
6 purposes of valuation and assessment of property for taxation.

1 2. This act shall take effect immediately.

STATEMENT

This bill clarifies that any fuel storage tank with a capacity of at least 10,000 gallons used for business purposes shall be considered real property for the purposes of property taxation.

TAXATION—PROPERTY

Provides that certain fuel storage tanks shall be taxed as real property.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1858

[OFFICIAL COPY REPRINT]

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 22, 1986

The Assembly Appropriations Committee favorably reports this bill, as amended.

Senate Bill No. 1858 OCR, as amended, adopts a version of the "material injury" test as a means of determining whether or not personal property shall be taxed as real property.

Specifically, personal property affixed to real property would be taxed as real property unless the property met the following tests:

- a. The personal property can be removed or severed without material injury to the real property;
- b. The personal property can be removed or severed without material injury to itself; and
- c. The personal property is not ordinarily intended to be affixed either: (1) permanently to the real property, or (2) until the useful life of the personal property is exhausted.

The bill, as amended, also provides that oil refineries, tank farms and other similar facilities shall be deemed improvements for the purposes of property taxation.

Finally, the amended bill provides that goods and chattels (personal property) taxable as real property shall not be taxable under the "Business Personal Property Tax Act," P. L. 1966, c. 136 (C. 54:11A-1 et seq.).

Amendments:

The amendments alter the "test" by which personal property shall be found taxable as real property.

Currently, Senate Bill No. 1858 OCR provides that the "fixtures" test shall be applied to determine whether or not personal property is so taxable and the amendments provide that a version of the "material injury" test shall be applied.

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO

SENATE, No. 1858

with Senate committee amendments

STATE OF NEW JERSEY

DATED: APRIL 7, 1986

The Senate County and Municipal Government Committee reports favorably and with committee amendments Senate Bill No. 1858.

Senate Bill No. 1858 Sca amends R. S. 54:4-1 to provide that real property shall include land and improvements thereon and personal property which is: a. annexed to real property or an appurtenance thereto, b. appropriated to the use or purpose of the real property to which the personal property is annexed, and c. intended to be a permanent accession to the freehold. In addition, the bill amends paragraph (b) of section 2 of P. L. 1966, c. 136 (C. 54:11A-2.1b) to exclude from the definition of business personal property those goods and chattels which are considered personal property as defined in R. S. 54:4-1, as amended.

Currently, R. S. 54:4-1 et seq. provides for the local taxation of real property and certain personal property. The "Business Personal Property Tax Act," P. L. 1966, c. 136 (C. 54:11A-1 et seq.) establishes a State tax on business personal property. Section 2 of that act (C. 54:11A-2) defines business personal property and excludes from that definition " . . . goods and chattels so affixed to real property as to become part thereof and not to be severable or removable without material injury thereto . . ." Senate Bill No. 1858 Sca amends these two laws to clarify that personal property (i.e., goods and chattels) which is annexed to real property or an appurtenance thereto, appropriated to the use or purpose of the real property to which the personal property is annexed, and intended to be a permanent accession to a freehold, shall be taxed as real property.

Specifically, the bill adopts the "fixtures test" as discussed in the Superior Court cases, *Fahmie v. Nyman*, 70 N. J. Super 313, 1961 and *National Lead Co., v. Borough of Sayreville*, 132 N. J. Super 30, 1975.

The "fixtures test" as outlined in those cases is as follows: " . . . a movable chattel loses its character as personalty and becomes a fixture

passing with the realty when it is (1) actually affixed to the realty, or something appurtenant thereto, (2) appropriated to the use or purpose of that part of the realty with which it is annexed, and (3) the party making the annexation intends a permanent accession to the freehold. . . .” (*Fahmie*, at 317).

The use of this test for the purposes of real property taxation has been replaced as a result of recent court decisions. For instance, in *City of Bayonne v. Port Jersey Corporation*, 79 N. J. 367, 1979, the Supreme Court formulated a new test known as the “material injury” test. The Supreme Court stated that the test to determine whether a particular piece of property was real estate or personal property was the test of whether or not the removal or severance of the particular good or chattel will result in material injury to the real property. The court decided that this phrase meant that the chattels (personal property) become fixtures (real estate) only if their removal would do irreparable or serious physical injury or damage to the freehold (structure and land).

This material injury test was applied in other recent court decisions (e.g., *Stem Bros., Inc., v. Alexandra Twp.*, 6 N. J. Tax 537, 1984, with regard to fuel storage tanks; *Lawrence Associates v. Lawrence Township*, 5 N. J. Tax 481, 1984, with regard to bathroom and light fixtures) which held that certain property previously subject to real property taxation is business personal property and, therefore, not subject to real property taxation. In general, the courts have found that the removal of fuel storage tanks and bathroom and light fixtures causes no material injury to the real property, and so, the tanks and the fixtures do not fit the exclusion contained in section 2 of P. L. 1966, c. 136. The amended bill would provide for the use of the fixtures test for taxation purposes.

The amended bill also clarifies that the definition of real property shall not be construed to affect the provisions of the “Uniform Commercial Code,” N. J. S. 12A:9-101 et seq. In addition, the amendments clarify that the provisions added to R. S. 54:4-1 shall not be construed to repeal or alter any exemption from, or exception to, real property taxation or any definition of personal property otherwise provided by statutory law. Finally, in deleting the language concerning fuel storage tanks, the Committee recognizes that the large petroleum storage tanks used by refineries are improvements to real property and therefore included in the definition of real property.

The committee notes that municipalities are facing an immediate revenue problem concerning the loss of tax ratables that are being redefined as business personal property. The immediacy of the

problem requires a response that may not completely address the problem. Enacting the fixtures test allows for a "known" test to be used until the Legislature devises a new test. The committee has formed a task force to consider the definition of real and personal property for the purposes of local assessment in order to provide a definitive response to the problem.

Assembly Amendments
(Sponsored by Assemblyman
Stultrager)

to

Senate Bill No. 1858

Assembly
Reprint

(Sponsored by Senator Zane)

Sec.	Line
------	------

		the Department of the Treasury may adopt rules and regulations pursuant to the provisions of the "Administrative Procedures 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."
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3	1-3	
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		After "section" Omit "Oil refineries, tank farms and other similar" on line 1
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		Omit lines 2-3 in their entirety; insert "For the purposes of this chapter ^{4 of Title 54 of the Revised Statutes} and notwithstanding the provisions of R.S. 54:4-1, a tank used to store hazardous substances as defined in subsection k. of section 3 of P.L. 1976, c.141 (C.58:10-23.11b) and having a capacity of more than 30,000 gallons is deemed to be real property."
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STATEMENT

These amendments adopt the following definition of real and personal property for local assessment purposes:

"Real property taxable under this chapter shall mean all land and improvements thereon and shall include personal property affixed to the real property or an appurtenance thereto, unless:

- a. (1) the personal property so affixed

Assembly Amendments
(Sponsored by Assemblyman
Stultrager)

to

Senate Bill No. 1858 Reprint
(Sponsored by Senator Zane)

Amend:

Page Sec. Line

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 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 which is neither functionally essential to a structure the property is within or to which the property is affixed nor constitutes a structure itself."

This definition of real and personal property is intended to preserve the local property tax base by establishing a statutory test for determining whether or not to tax personal property as real property. Some recent court decisions have applied the "material injury" test in deciding whether or not to tax certain personal property as real property and that test has unduly narrowed the definition of real property. These amendments establish a new test which broadens that court definition. The statutory test will clarify that personal property, once affixed to real property, becomes taxable as real property if the personal property is of a type or class which or-

Assembly Amendments
(Sponsored by Assemblyman
Stults) (Trager)

Senate Bill No. 1858 Assembly Reprint

(Sponsored by Senator Zane)

Amend:

Page	Sec.	Line
		<p>dinarily remains with the real property for the period of its useful life. Thus, items such as toilets, sinks, water fountains, and built-in lighting fixtures will be taxed as real property.</p> <p>However, machinery, apparatus and equipment used in business, even if affixed to real property, will not be subject to local property taxation under the definition because that property is not functionally essential to a structure or is not a type or class of property which is ordinarily intended to be affixed permanently to real property. Basically, such property is ordinarily moved when a business relocates, is frequently bought and sold separate from the real property and would not ordinarily be included in a deed of sale for the real property. The test excludes such property from real property taxation.</p> <p>The definition of real property clarifies that land and improvements thereon are taxable as real property. Based on the definition, oil refineries are deemed to be structures and improvements to real property and, therefore, taxable as such. In addition, the amendments provide that notwithstanding</p>

Assembly Amendments

(Sponsored by Assemblyman
to Stuttrager)

Senate Bill No. 1858

Assembly
Reprint

(Sponsored by Senator Zane

Sec. Line

the definitions of real and personal property, a tank used to store hazardous substances and having capacity of more than 30,000 gallons is deemed to be real property.

The amendments also permit the Director of the Division of Taxation in the Department of Treasury to adopt rules and regulations to implement and administer the provisions of the act. It is the intent of the Legislature that the director exercise this authority as quickly as is feasible in order to minimize confusion by all concerned parties.

Finally, the amendments clarify that the definition of real property shall not be construed to affect the provisions of the "Uniform Commercial Code," N.J.S. 12A:9-101 et seq. and that the provisions added to R.S. 54:4-1 shall not be construed to repeal or alter any exemption from, or exception to, real property taxation or any definition of personal property otherwise provided by statutory law.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

September 5, 1986

SENATE BILL NO. 1858 (3rd OCR)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I herewith return Senate Bill No. 1858 (3rd OCR) with my objections and recommendations for amendment.

This bill concerns the taxation of certain personal property used in business. It would define real property for the purposes of Chapter 4 of Title 54 of the Revised Statutes to include not only all land and improvements thereon but also personal property if it is affixed to the real property or an appurtenance thereto unless the personal property so affixed can be removed or severed without material injury to the real property, can be removed or severed without material injury to the personal property itself, and is not ordinarily intended to be affixed permanently to the real property. Alternatively, personal property affixed to real property or an appurtenance thereto shall be taxed as real property unless it is machinery, apparatus, or equipment which is neither functionally essential to a structure the personal property is within or to which the personal property is affixed nor constitutes a structure itself.

This bill goes on to require that a tank used to store hazardous substances as defined in the Spill Compensation and Control Act and having a capacity of more than 30,000 gallons shall be deemed to be real property. The bill's effective date would be immediately upon enactment and applicable to real property assessments and taxes for tax year 1986 and thereafter, and further shall be applicable to any proceeding pending in any court or county tax board on the date of enactment.

This bill is a response to certain recent court decisions that may result in the exemption from local property taxation of certain industrial property that has long been taxed locally. The final form of this bill results from an extensive legislative process involving testimony before various committees and discussions at various meetings between municipal and business groups.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

2

I believe that a good faith effort in defining the situations where personal property used in business should be taxed as real property for the purposes of Chapter 4 of Title 54 was undertaken by all those who were involved, and I do not choose to second-guess the Legislature and various groups with whom it consulted on this matter.

I note that the bill gives the Director of the Division of Taxation in the Department of the Treasury the authority to adopt rules and regulations necessary to implement and administer the provisions of this act. This is an appropriate delegation of authority to the Director. The Director will develop and apply uniform standards to all taxpayers and classify property according to its actual characteristics based on the criteria set forth in the bill.

I am concerned, however, with the provision of the bill which classifies large tanks as realty on the basis of the substances stored within them. This standard can result in different tax treatment for identical storage containers simply because they contain different commodities. This result may violate the constitutional obligation to assess property for taxation under general laws and by uniform rules. I am, therefore, recommending that this provision be amended to delete the element of the classification standard for storage tanks based on the substance stored.

Therefore, I herewith return Senate Bill No. 1858 (3rd OCR) and recommend that it be amended as follows:

Page 4, Section 3, Lines 5-7: Delete "used to store hazardous substances as defined in subsection k. of section 3 of P.L. 1976, c.141 (C.58:10-23.11b) and".

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Michael R. Cole

107-901
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OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

Contact: JOHN SAMERJAN
609-292-8956 OR 292-6000 EXT. 207

TRENTON, N.J. 08625

Release: THURS., OCT. 9, 1986

Governor Thomas H. Kean today signed legislation commonly called the "fuel tank" bill which reformulates the test now applied in determining whether property shall be assessed as real or personal for the purpose of the local property tax.

Governor Kean noted that S-1858, sponsored by Senator Raymond J. Zane, D-Gloucester, arose as a response to recent court decisions that may have resulted in the exemption of certain industrial property from local property taxation that had long been taxed locally. This would have resulted in a tax burden on certain municipalities.

The legislation is effective immediately and is retroactive for the 1986 tax year.

##

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NEW JERSEY STATE LIBRARY

OCT 29 1986

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