



# ASSEMBLY, No. 3731

## STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED JUNE 25, 2001

**Sponsored by:**

**Assemblyman JACK COLLINS**

**District 3 (Salem, Cumberland and Gloucester)**

**Assemblyman JOSEPH V. DORIA, JR.**

**District 31 (Hudson)**

**SYNOPSIS**

Alters cap on tax due pursuant to Spill Compensation and Control Act.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning hazardous substances, and amending P.L.1976,  
2 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 one  
10 or more major facilities a tax to insure compensation for cleanup costs  
11 and damages associated with any discharge of hazardous substances  
12 to be paid by the transferee; provided, however, that in the case of a  
13 major facility which operates as a public storage terminal for  
14 hazardous substances owned by others, the owner of the hazardous  
15 substance transferred to such major facility or his authorized agent  
16 shall be considered to be the transferee or transferor, as the case may  
17 be, for the purposes of this section and shall be deemed to be a  
18 taxpayer for purposes of this act. Where such person has failed to file  
19 a return or pay the tax imposed by this act within 60 days after the due  
20 date thereof, the director shall forthwith take appropriate steps to  
21 collect same from the owner of the hazardous substance. In the event  
22 the director is not successful in collecting said tax, then on notice to  
23 the owner or operator of the public storage terminal of said fact said  
24 owner or operator shall not release any hazardous substance owned by  
25 the taxpayer. The director may forthwith proceed to satisfy any tax  
26 liability of the taxpayer by seizing, selling or otherwise disposing of  
27 said hazardous substance to satisfy the taxpayer's tax liability and to  
28 take any further steps permitted by law for its collection. For the  
29 purposes of this act, public storage terminal shall mean a public or  
30 privately owned major facility operated for public use which is used  
31 for the storage or transfer of hazardous substances. The tax shall be  
32 measured by the number of barrels or the fair market value, as the case  
33 may be, of hazardous substances transferred to the major facility;  
34 provided, however, that the same barrel, including any products  
35 derived therefrom, subject to multiple transfers from or between major  
36 facilities shall be taxed only once at the point of the first transfer.

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

41 b. (1) The tax shall be \$0.0150 per barrel transferred and in the  
42 case of the transfer of hazardous substances other than petroleum or  
43 petroleum products, the tax shall be the greater of \$0.0150 per barrel

**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 or 1.0% of the fair market value of the product plus \$0.0025 per  
2 barrel; provided, however, that with respect to transfers of hazardous  
3 substances other than petroleum or petroleum products which are or  
4 contain any precious metals to be recycled, refined, or rerefined in this  
5 State, which are transferred into this State subsequent to being  
6 recycled, refined or rerefined, or which are or contain elemental  
7 phosphorus, the tax shall be \$0.0150 per barrel of the hazardous  
8 substance; and provided further, however, that the total aggregate tax  
9 due for any individual taxpayer facility which has paid the tax in the  
10 1986 tax year shall not exceed 125% of the tax due and payable by  
11 that taxpayer facility during the 1986 tax year plus an additional  
12 \$0.0025 per barrel; except that for a hazardous substance which is  
13 directly converted to, and comprises more than 90% by weight of, a  
14 non-hazardous final product, the taxpayer facility shall pay no more  
15 than 100% of the tax due and payable in the 1986 tax year plus an  
16 additional \$0.0025 per barrel. For major facilities established by the  
17 subdivision of a major facility which existed in 1986, including  
18 subsequent owners and operators of the subdivided major facilities, the  
19 total aggregated tax due shall not exceed 100% of the tax paid in  
20 1999. For the purposes of applying the 125% of tax due limitation, a  
21 successor in interest pursuant to a sale or a reorganization, as defined  
22 pursuant to [section 368(a)(1)(D) of] the Internal Revenue Code of  
23 1986, [26 U.S.C. s.368,] on or before [October 1, 1997] June 1,  
24 2001 shall be entitled to the predecessor taxpayer's limitation. In  
25 computing 125% of the tax due and payable by the taxpayer during the  
26 1986 tax year, for taxes due after January 1, 1996 from an owner or  
27 operator including the successor in interest pursuant to a sale or a  
28 reorganization as defined in this paragraph of one or more major  
29 facilities who has continuously since 1986 filed a combined tax return  
30 for more than one major facility but who prior to January 1, 1996 has  
31 entirely closed and decommissioned one or more of those major  
32 facilities, a taxpayer shall include 1986 taxes arising from major  
33 facilities which (1) caused the taxpayer to incur a tax liability in 1986,  
34 and (2) continue to cause the taxpayer to incur a tax liability during  
35 the current tax year. For transfers which are or contain elemental  
36 phosphorus, in computing the 125% of the taxes due and payable by  
37 the taxpayer during the 1986 tax year, a taxpayer, which shall include  
38 any subsequent owner or operator of a major facility which transfers  
39 elemental phosphorus, shall calculate the tax at \$0.015 per barrel. For  
40 the purposes of this section, "precious metals" means gold, silver,  
41 osmium, platinum, palladium, iridium, rhodium, ruthenium and copper.  
42 In the event of a major discharge or series of discharges of petroleum  
43 or petroleum products resulting in reasonable claims against the fund  
44 exceeding the existing balance of the fund, the tax shall be levied at the  
45 rate of \$0.04 per barrel of petroleum or petroleum products  
46 transferred, until the revenue produced by such increased rate equals

1 150% of the total dollar amount of all pending reasonable claims  
2 resulting from the discharge of petroleum or petroleum products;  
3 provided, however, that such rate may be set at less than \$0.04 per  
4 barrel transferred if the administrator determines that the revenue  
5 produced by such lower rate will be sufficient to pay outstanding  
6 reasonable claims against the fund within one year of such levy. For  
7 the purposes of determining the existing balance of the fund, the  
8 administrator shall not include any amount in the fund collected from  
9 the \$0.0025 per barrel increase in the tax imposed pursuant to  
10 P.L.1990, c.78 and dedicated for hazardous substance discharge  
11 prevention in accordance with paragraph (2) of this subsection.

12 Interest received on moneys in the fund shall be credited to the  
13 fund.

14 (2) An amount of \$0.0025 per barrel collected from the proceeds  
15 of the tax imposed pursuant to this subsection shall be deposited into  
16 the New Jersey Spill Compensation Fund and dedicated for the  
17 purposes of P.L.1990, c.78 and for other authorized purposes  
18 designed to prevent the discharge of a hazardous substance.

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

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

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

36 d. If a return required by this act is not filed, or if a return when  
37 filed is incorrect or insufficient in the opinion of the director, the  
38 amount of tax due shall be determined by the director from such  
39 information as may be available. Notice of such determination shall be  
40 given to the taxpayer liable for the payment of the tax. Such  
41 determination shall finally and irrevocably fix the tax unless the person  
42 against whom it is assessed, within 30 days after receiving notice of  
43 such determination, shall apply to the director for a hearing, or unless  
44 the director on his own motion shall redetermine the same. After such  
45 hearing the director shall give notice of his determination to the person  
46 to whom the tax is assessed.

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

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

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

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

13 (1) To delegate to any officer or employee of his division such of  
14 his powers and duties as he may deem necessary to carry out  
15 efficiently the provisions of this section, and the person or persons to  
16 whom such power has been delegated shall possess and may exercise  
17 all of said powers and perform all of the duties delegated by the  
18 director;

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

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

25 i. (Deleted by amendment, P.L.1986, c.143.)

26 (cf: P.L.1999, c.342, s.1)

27  
28 2. This act shall take effect immediately.  
29  
30

31 STATEMENT  
32

33 This bill concerns the "cap" limitations on the tax due pursuant to  
34 the "Spill Compensation and Control Act." The spill compensation  
35 and control tax is imposed on owners or operators of any "major  
36 facility:" a refinery, storage or transfer terminal, pipeline, deep-water  
37 port, drilling platform used to refine, produce, store, handle, transfer,  
38 process or transport hazardous substances. The tax is assessed at  
39 various rates, depending on the volume and nature of the hazardous  
40 substance being handled, for deposit to the Spill Compensation Fund  
41 to assure compensation for cleanup costs and damages associated with  
42 any discharge of hazardous substances. The tax for an individual  
43 taxpayer that paid the tax in 1986 is capped at 125% of that taxpayer's  
44 1986 liability. The bill concerns the application and calculation of that  
45 capped liability. The bill provides that for major facilities established  
46 by the subdivision of a major facility which existed in 1986, including

**A3731 COLLINS, DORIA**

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1 subsequent owners and operators of the subdivided major facilities, the  
2 total aggregated tax due shall not exceed 100% of the tax paid in  
3 1999.

4 The bill also provides for continuation of the capped liability to a  
5 successor in certain corporate sales. The bill makes a corporation's  
6 successor in interest pursuant to a sale, as defined pursuant to the  
7 Internal Revenue Code of 1986, on or before June 1, 2001 eligible for  
8 the same capped liability amount on the tax due for which the  
9 predecessor corporation would have otherwise been eligible.

10 Finally, the bill provides that those hazardous substances not  
11 subject to regulation by the Department of Environmental Protection  
12 shall not be subject to taxation pursuant to the Spill Act.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 3731**

with Assembly committee amendments

# **STATE OF NEW JERSEY**

DATED: NOVEMBER 19, 2001

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3731 with committee amendments.

Assembly Bill No. 3731, as amended, concerns the "cap" limitations on the tax due pursuant to the "Spill Compensation and Control Act." The spill compensation and control tax is imposed on owners or operators of any "major facility:" a refinery, storage or transfer terminal, pipeline, deep-water port, drilling platform used to refine, produce, store, handle, transfer, process or transport hazardous substances. The tax is assessed at various rates, depending on the volume and nature of the hazardous substance being handled, for deposit to the Spill Compensation Fund to assure compensation for cleanup costs and damages associated with any discharge of hazardous substances. The tax for an individual taxpayer that paid the tax in 1986 is capped at 125% of that taxpayer's 1986 liability. The bill concerns the application and calculation of that capped liability. The bill provides that for major facilities established by the subdivision of a major facility which existed in 1986, including subsequent owners and operators of the subdivided major facilities, the total aggregated tax due shall not exceed 100% of the tax paid in 1999.

The bill also provides for continuation of the capped liability to a successor in certain corporate sales. The bill makes a corporation's successor in interest pursuant to a sale, as defined pursuant to the Internal Revenue Code of 1986, on or before June 1, 2001 eligible for the same capped liability amount on the tax due for which the predecessor corporation would have otherwise been eligible.

Further, this bill changes the tax for any transfer of elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of a fire retardant to \$0.015 per barrel. Under current law the tax due on most transfers of hazardous substances other than petroleum is \$.015 per barrel or 1% of the fair market value of the product plus \$.0025 per barrel, whichever is greater. The bill also changes the cap on the tax due for transfers of elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of a fire retardant. Under current law, the cap on taxes due and payable by a taxpayer who has paid taxes in the 1986 tax year is 125%



of the taxes due and payable in the 1986 tax year plus \$.0025 per barrel. This bill provides that in computing 125% of taxes due and payable by the taxpayer during the 1986 tax year, the 1986 taxes for any transfer of elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of a fire retardant shall be recalculated at a rate of \$0.015 per barrel, subject to certain limitations. The reduced rate is only available to a taxpayer that can demonstrate that the taxpayer's sales of the hazardous substance were 75% or more of the taxpayer's total income in the prior calendar year; that no competitor of the taxpayer in another state is subject to similar tax in that other state; that the taxpayer would suffer economic stress unless the reduced tax rate is allowed; that the taxpayer has never filed a successful claim against the New Jersey Spill Compensation Fund; and that the taxpayer has never discharged a hazardous substance that required cleanup and removal in accordance with P.L.1976, c.141 (C.58:10-23.11a et al.).

Finally, the bill provides that those hazardous substances not subject to regulation by the Department of Environmental Protection shall not be subject to taxation pursuant to the Spill Act.

The bill, as amended, is identical to Senate Bill No. 2485 (1R).

FISCAL IMPACT:

Information is not available to calculate the fiscal impact of this bill on corporate taxpayers or on the level of tax revenues collected by the New Jersey Spill Compensation Fund. It is presumed, however, that as the bill results in a lower tax rate and a lower cap value, that therefore less tax revenues will be collected by the "spill fund" which, in turn, will further limit the fund's ability to support various programmatic and claims activities.

COMMITTEE AMENDMENTS:

The amendments add the provisions concerning antimony and make technical changes to the bill

[First Reprint]

**ASSEMBLY, No. 3731**

**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

INTRODUCED JUNE 25, 2001

**Sponsored by:**

**Assemblyman JACK COLLINS**

**District 3 (Salem, Cumberland and Gloucester)**

**Assemblyman JOSEPH V. DORIA, JR.**

**District 31 (Hudson)**

**Co-Sponsored by:**

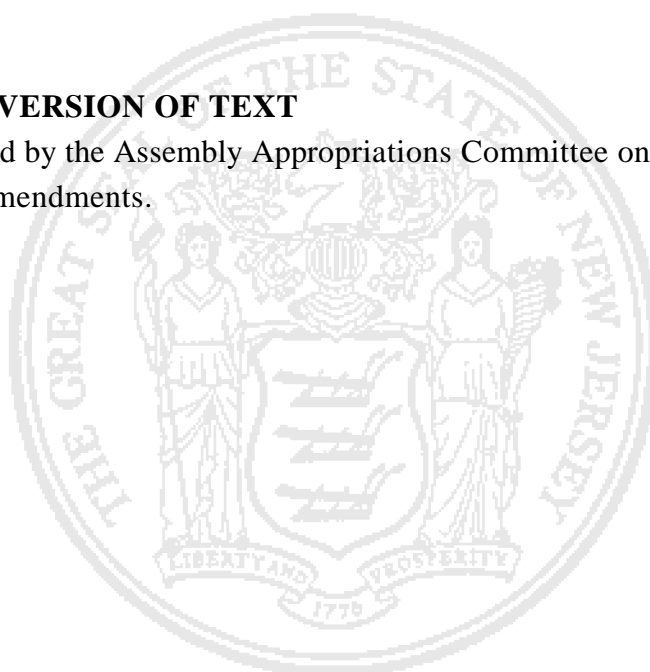
**Senators Bennett and Vitale**

**SYNOPSIS**

Alters certain taxes and cap on tax due pursuant to Spill Compensation and Control Act.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Appropriations Committee on November 19, 2001, with amendments.



**(Sponsorship Updated As Of: 1/8/2002)**

1 AN ACT concerning hazardous substances, and amending P.L.1976,  
2 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 one  
10 or more major facilities a tax to insure compensation for cleanup costs  
11 and damages associated with any discharge of hazardous substances  
12 to be paid by the transferee; provided, however, that in the case of a  
13 major facility which operates as a public storage terminal for  
14 hazardous substances owned by others, the owner of the hazardous  
15 substance transferred to such major facility or his authorized agent  
16 shall be considered to be the transferee or transferor, as the case may  
17 be, for the purposes of this section and shall be deemed to be a  
18 taxpayer for purposes of this act. Where such person has failed to file  
19 a return or pay the tax imposed by this act within 60 days after the due  
20 date thereof, the director shall forthwith take appropriate steps to  
21 collect same from the owner of the hazardous substance. In the event  
22 the director is not successful in collecting said tax, then on notice to  
23 the owner or operator of the public storage terminal of said fact said  
24 owner or operator shall not release any hazardous substance owned by  
25 the taxpayer. The director may forthwith proceed to satisfy any tax  
26 liability of the taxpayer by seizing, selling or otherwise disposing of  
27 said hazardous substance to satisfy the taxpayer's tax liability and to  
28 take any further steps permitted by law for its collection. For the  
29 purposes of this act, public storage terminal shall mean a public or  
30 privately owned major facility operated for public use which is used  
31 for the storage or transfer of hazardous substances. The tax shall be  
32 measured by the number of barrels or the fair market value, as the case  
33 may be, of hazardous substances transferred to the major facility;  
34 provided, however, that the same barrel, including any products  
35 derived therefrom, subject to multiple transfers from or between major  
36 facilities shall be taxed only once at the point of the first transfer.

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

41 b. (1) <sup>1</sup>(a)<sup>1</sup> The tax shall be \$0.0150 per barrel transferred and in  
42 the case of the transfer of hazardous substances other than 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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

**<sup>1</sup> Assembly AAP committee amendments adopted November 19, 2001.**

1 or petroleum products, the tax shall be the greater of \$0.0150 per  
2 barrel or 1.0% of the fair market value of the product plus \$0.0025 per  
3 barrel; provided, however, that with respect to transfers of hazardous  
4 substances other than petroleum or petroleum products which are or  
5 contain any precious metals to be recycled, refined, or rerefined in this  
6 State, which are transferred into this State subsequent to being  
7 recycled, refined or rerefined, or which are or contain elemental  
8 phosphorus, <sup>1</sup>or which are elemental antimony or antimony trioxide  
9 sold for use in the manufacture or for the purpose of fire retardants.<sup>1</sup>  
10 the tax shall be \$0.0150 per barrel of the hazardous substance; and  
11 provided further, however, that the total aggregate tax due for any  
12 individual taxpayer facility which has paid the tax in the 1986 tax year  
13 shall not exceed 125% of the tax due and payable by that taxpayer  
14 facility during the 1986 tax year plus an additional \$0.0025 per barrel;  
15 except that for a hazardous substance which is directly converted to,  
16 and comprises more than 90% by weight of, a non-hazardous final  
17 product, the taxpayer facility shall pay no more than 100% of the tax  
18 due and payable in the 1986 tax year plus an additional \$0.0025 per  
19 barrel. For major facilities established by the subdivision of a major  
20 facility which existed in 1986, including subsequent owners and  
21 operators of the subdivided major facilities, the total aggregated tax  
22 due shall not exceed 100% of the tax paid in 1999. For the purposes  
23 of applying the 125% of tax due limitation, a successor in interest  
24 pursuant to a sale or a reorganization, as defined pursuant to [section  
25 368(a)(1)(D) of] the Internal Revenue Code of 1986, [26 U.S.C.  
26 s.368,] on or before [October 1, 1997] June 1, 2001 shall be entitled  
27 to the predecessor taxpayer's limitation. In computing 125% of the  
28 tax due and payable by the taxpayer during the 1986 tax year, for taxes  
29 due after January 1, 1996 from an owner or operator including the  
30 successor in interest pursuant to a sale or a reorganization as defined  
31 in this paragraph of one or more major facilities who has continuously  
32 since 1986 filed a combined tax return for more than one major facility  
33 but who prior to January 1, 1996 has entirely closed and  
34 decommissioned one or more of those major facilities, a taxpayer shall  
35 include 1986 taxes arising from major facilities which (1) caused the  
36 taxpayer to incur a tax liability in 1986, and (2) continue to cause the  
37 taxpayer to incur a tax liability during the current tax year. For  
38 transfers which are or contain elemental phosphorus, <sup>1</sup>or which are  
39 elemental antimony or antimony trioxide sold for use in the  
40 manufacture or for the purpose of fire retardants.<sup>1</sup> in computing the  
41 125% of the taxes due and payable by the taxpayer during the 1986 tax  
42 year, a taxpayer, which shall include any subsequent owner or operator  
43 of a major facility which transfers elemental phosphorus, shall  
44 calculate the tax at \$0.015 per barrel. For the purposes of this section,  
45 "precious metals" means gold, silver, osmium, platinum, palladium,  
46 iridium, rhodium, ruthenium and copper. In the event of a major

1 discharge or series of discharges of petroleum or petroleum products  
2 resulting in reasonable claims against the fund exceeding the existing  
3 balance of the fund, the tax shall be levied at the rate of \$0.04 per  
4 barrel of petroleum or petroleum products transferred, until the  
5 revenue produced by such increased rate equals 150% of the total  
6 dollar amount of all pending reasonable claims resulting from the  
7 discharge of petroleum or petroleum products; provided, however,  
8 that such rate may be set at less than \$0.04 per barrel transferred if the  
9 administrator determines that the revenue produced by such lower rate  
10 will be sufficient to pay outstanding reasonable claims against the fund  
11 within one year of such levy. For the purposes of determining the  
12 existing balance of the fund, the administrator shall not include any  
13 amount in the fund collected from the \$0.0025 per barrel increase in  
14 the tax imposed pursuant to P.L.1990, c.78 and dedicated for  
15 hazardous substance discharge prevention in accordance with  
16 paragraph (2) of this subsection.

17 <sup>1</sup>(b) Notwithstanding any provision of subparagraph (a) of this  
18 paragraph to the contrary, in order to qualify for the reduced tax rate  
19 for elemental antimony or antimony trioxide sold for use in the  
20 manufacture or for the purpose of fire retardants authorized in that  
21 subparagraph, the taxpayer shall demonstrate, by December 31 of each  
22 year, to the satisfaction of the Department of the Treasury, acting in  
23 cooperation with the Department of Environmental Protection, all of  
24 the following: (i) that the taxpayer's sales of the hazardous substance  
25 constitute, in the calendar year immediately prior to the first calendar  
26 year in which the reduced tax rate shall apply, at least 75% of the  
27 taxpayer's total annual income in that immediately prior calendar year;  
28 (ii) that no other competitor of the taxpayer located in another state  
29 is subject to a tax in that other state, with respect to the hazardous  
30 substance, that is substantially similar to the tax imposed thereon  
31 pursuant to this section; (iii) that the taxpayer otherwise would suffer  
32 economic stress unless the benefit from the reduced tax rate is  
33 allowed; (iv) that the taxpayer has never filed a successful claim  
34 against the New Jersey Spill Compensation Fund; (v) that the taxpayer  
35 has never discharged a hazardous substance that required cleanup and  
36 removal in accordance with P.L.1976, c.141 (C.58:10-23.11 et seq.);  
37 and (vi) that, upon request of the State Treasurer, the taxpayer's  
38 accountant or counsel can provide a certified document detailing, with  
39 respect to the hazardous substance, the amount of tax that would have  
40 been paid each calendar year by the taxpayer had the reduced tax rate  
41 not been in effect and the amount that was actually paid each calendar  
42 year under the reduced tax rate, so that the State Treasurer may  
43 calculate the loss of tax revenue, if any, to the State attributable to the  
44 reduced tax rate. If the taxpayer fails to qualify under the provisions  
45 of this subparagraph for the reduced tax rate, the taxpayer shall pay,  
46 for that calendar year, the tax at the full rate imposed pursuant to

1 subparagraph (a) of this paragraph.

2 (c)<sup>1</sup> Interest received on moneys in the fund shall be credited to the  
3 fund.

4 (2) An amount of \$0.0025 per barrel collected from the proceeds  
5 of the tax imposed pursuant to this subsection shall be deposited into  
6 the New Jersey Spill Compensation Fund and dedicated for the  
7 purposes of P.L.1990, c.78 and for other authorized purposes  
8 designed to prevent the discharge of a hazardous substance.

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

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

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

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

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

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

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

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

3 (1) To delegate to any officer or employee of his division such of  
4 his powers and duties as he may deem necessary to carry out  
5 efficiently the provisions of this section, and the person or persons to  
6 whom such power has been delegated shall possess and may exercise  
7 all of said powers and perform all of the duties delegated by the  
8 director;

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

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

15 i. (Deleted by amendment, P.L.1986, c.143.)  
16 (cf: P.L.1999, c.342, s.1)

17

18 2. This act shall take effect immediately <sup>1</sup>and shall apply to tax  
19 periods beginning on or after January 1, 2002<sup>1</sup> .

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## ASSEMBLY, No. 3731

### STATE OF NEW JERSEY

### 209th LEGISLATURE

DATED: JANUARY 10, 2002

#### SUMMARY

**Synopsis:** Alters certain taxes and cap on tax due pursuant to Spill Compensation and Control Act.

**Type of Impact:** Revenue loss from the Spill Compensation Fund.

**Agencies Affected:** None

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Revenue</b>	Indeterminate reduction	Indeterminate reduction	Indeterminate reduction

- ! The bill amends the "Spill Compensation and Control Act" (P.L.1976, c.141) by reducing the tax rate imposed by the act for two specific chemicals used in manufacturing fire retardants; by limiting the capped liability of the tax rate for certain taxpayers; and by exempting the Spill Tax from hazardous substances not regulated by the State.
- ! The Spill Compensation and Control Tax is imposed on owners or operators of major facilities used to refine, store or handle hazardous substances. Revenues are used primarily by the State to finance remediation projects associated with hazardous substance spills.
- ! The reduced tax rate for the two chemicals cited in the bill would make these rates comparable to those imposed for other hazardous substances such as phosphorous, precious metals and petroleum products.
- ! The Office of Legislative Services (OLS) cannot estimate the loss of Spill Tax revenues because pertinent data is not available.

#### BILL DESCRIPTION

Assembly Bill No. 3731 (1R) of 2001 would change, pursuant to certain qualifying criteria, the Spill Compensation Tax rate imposed for any transfer of elemental antimony or antimony



trioxide sold for use in the manufacture of fire retardants to \$0.015 per barrel. Under current law the tax due on most transfers of hazardous substances other than petroleum is \$.015 per barrel or 1 percent of the fair market value of the product plus \$.0025 per barrel, whichever is greater. The bill would also change the cap on the tax due for transfers of elemental antimony or antimony trioxide sold for use in the manufacture of fire retardants. Under current law, the cap on taxes payable by a taxpayer is 125 percent of the taxes payable in the 1986 tax year plus \$.0025 per barrel. The bill would provide that in computing 125 percent of taxes due and payable by the taxpayer during the 1986 tax year, the 1986 taxes for any transfer of elemental antimony or antimony trioxide sold for use in the manufacture of fire retardants would be recalculated at a rate of \$0.015 per barrel.

The bill further amends the 125 percent provision of a taxpayer's 1986 liability by providing that for major facilities established by the subdivision of a major facility which existed in 1986, including subsequent owners and operators of the subdivided major facilities, the total aggregated tax due shall not exceed 100 percent of the tax paid in 1999. In addition, the bill permits the continuation of the capped liability to a successor in certain corporate sales.

Last, the bill provides that those hazardous substances not subject to regulation by the Department of Environmental Protection shall not be subject to the Spill Tax.

## FISCAL ANALYSIS

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services (OLS) cannot calculate the amount of potential revenue loss from the Spill Compensation Fund because pertinent data regarding the chemical breakdown of the hazardous substances subject to the tax is not generally reported on participants' tax returns. Pertinent information regarding the tax liability of affected taxpayers under the bill is also not available.

The OLS notes that the bill would only reduce revenues designated for the Spill Compensation Fund, not the General Fund. The use of monies from the Spill Compensation Fund is statutorily restricted to State regulatory and remediation activities that deal with damages caused by the discharge of hazardous substances.

Section: *Environment, Agriculture, Energy and Natural Resources*

Analyst: *Richard M. Handelman*  
*Senior Fiscal Analyst*

Approved: *Alan R. Kooney*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

[Second Reprint]

**ASSEMBLY, No. 3731**

**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

INTRODUCED JUNE 25, 2001

**Sponsored by:**

**Assemblyman JACK COLLINS**

**District 3 (Salem, Cumberland and Gloucester)**

**Assemblyman JOSEPH V. DORIA, JR.**

**District 31 (Hudson)**

**Co-Sponsored by:**

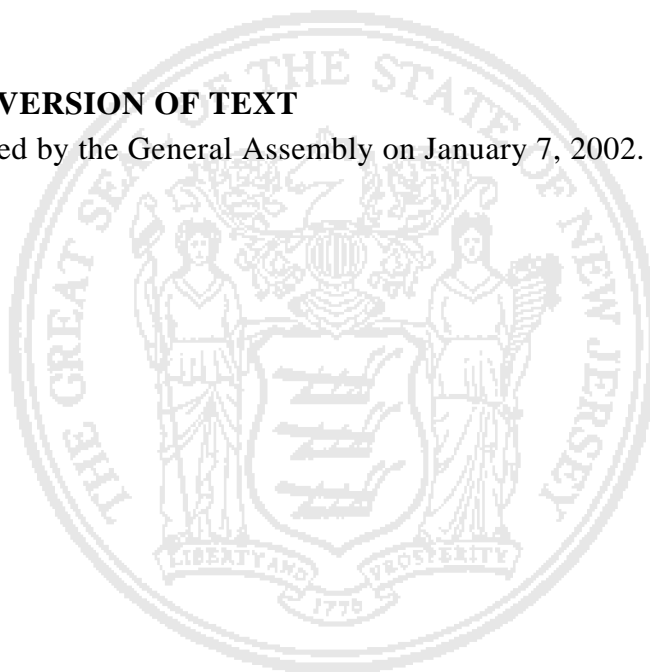
**Senators Bennett and Vitale**

**SYNOPSIS**

Alters certain taxes and cap on tax due pursuant to Spill Compensation and Control Act.

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on January 7, 2002.



**(Sponsorship Updated As Of: 1/8/2002)**

1 AN ACT concerning hazardous substances, and amending P.L.1976,  
2 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 one  
10 or more major facilities a tax to insure compensation for cleanup costs  
11 and damages associated with any discharge of hazardous substances  
12 to be paid by the transferee; provided, however, that in the case of a  
13 major facility which operates as a public storage terminal for  
14 hazardous substances owned by others, the owner of the hazardous  
15 substance transferred to such major facility or his authorized agent  
16 shall be considered to be the transferee or transferor, as the case may  
17 be, for the purposes of this section and shall be deemed to be a  
18 taxpayer for purposes of this act. Where such person has failed to file  
19 a return or pay the tax imposed by this act within 60 days after the due  
20 date thereof, the director shall forthwith take appropriate steps to  
21 collect same from the owner of the hazardous substance. In the event  
22 the director is not successful in collecting said tax, then on notice to  
23 the owner or operator of the public storage terminal of said fact said  
24 owner or operator shall not release any hazardous substance owned by  
25 the taxpayer. The director may forthwith proceed to satisfy any tax  
26 liability of the taxpayer by seizing, selling or otherwise disposing of  
27 said hazardous substance to satisfy the taxpayer's tax liability and to  
28 take any further steps permitted by law for its collection. For the  
29 purposes of this act, public storage terminal shall mean a public or  
30 privately owned major facility operated for public use which is used  
31 for the storage or transfer of hazardous substances. The tax shall be  
32 measured by the number of barrels or the fair market value, as the case  
33 may be, of hazardous substances transferred to the major facility;  
34 provided, however, that the same barrel, including any products  
35 derived therefrom, subject to multiple transfers from or between major  
36 facilities shall be taxed only once at the point of the first transfer.

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

41 b. (1) <sup>1</sup>(a)<sup>1</sup> The tax shall be \$0.0150 per barrel transferred and in

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly AAP committee amendments adopted November 19, 2001.

<sup>2</sup> Assembly floor amendments adopted January 7, 2002.

1 the case of the transfer of hazardous substances other than petroleum  
2 or petroleum products, the tax shall be the greater of \$0.0150 per  
3 barrel or 1.0% of the fair market value of the product plus \$0.0025 per  
4 barrel; provided, however, that with respect to transfers of hazardous  
5 substances other than petroleum or petroleum products which are or  
6 contain any precious metals to be recycled, refined, or rerefined in this  
7 State, which are transferred into this State subsequent to being  
8 recycled, refined or rerefined, or which are or contain elemental  
9 phosphorus, <sup>1</sup>or which are elemental antimony or antimony trioxide  
10 sold for use in the manufacture or for the purpose of fire retardants.<sup>1</sup>  
11 the tax shall be \$0.0150 per barrel of the hazardous substance; and  
12 provided further, however, that the total aggregate tax due for any  
13 individual taxpayer facility which has paid the tax in the 1986 tax year  
14 shall not exceed 125% of the tax due and payable by that taxpayer  
15 facility during the 1986 tax year plus an additional \$0.0025 per barrel;  
16 except that for a hazardous substance which is directly converted to,  
17 and comprises more than 90% by weight of, a non-hazardous final  
18 product, the taxpayer facility shall pay no more than 100% of the tax  
19 due and payable in the 1986 tax year plus an additional \$0.0025 per  
20 barrel. For major facilities established by the subdivision of a major  
21 facility which existed in 1986, including subsequent owners and  
22 operators of the subdivided major facilities, the total aggregated tax  
23 due shall not exceed 100% of the tax paid in 1999. For the purposes  
24 of applying the 125% of tax due limitation, a successor in interest  
25 pursuant to a sale or a reorganization, as defined pursuant to [section  
26 368(a)(1)(D) of] the Internal Revenue Code of 1986, [26 U.S.C.  
27 s.368,] on or before [October 1, 1997] June 1, 2001 shall be entitled  
28 to the predecessor taxpayer's limitation. In computing 125% of the  
29 tax due and payable by the taxpayer during the 1986 tax year, for taxes  
30 due after January 1, 1996 from an owner or operator including the  
31 successor in interest pursuant to a sale or a reorganization as defined  
32 in this paragraph of one or more major facilities who has continuously  
33 since 1986 filed a combined tax return for more than one major facility  
34 but who prior to January 1, 1996 has entirely closed and  
35 decommissioned one or more of those major facilities, a taxpayer shall  
36 include 1986 taxes arising from major facilities which (1) caused the  
37 taxpayer to incur a tax liability in 1986, and (2) continue to cause the  
38 taxpayer to incur a tax liability during the current tax year. For  
39 transfers which are or contain elemental phosphorus, <sup>1</sup>or which are  
40 elemental antimony or antimony trioxide sold for use in the  
41 manufacture or for the purpose of fire retardants.<sup>1</sup> in computing the  
42 125% of the taxes due and payable by the taxpayer during the 1986 tax  
43 year, a taxpayer, which shall include any subsequent owner or operator  
44 of a major facility which transfers elemental phosphorus, shall  
45 calculate the tax at \$0.015 per barrel. For the purposes of this section,  
46 "precious metals" means gold, silver, osmium, platinum, palladium,

1 iridium, rhodium, ruthenium and copper. In the event of a major  
2 discharge or series of discharges of petroleum or petroleum products  
3 resulting in reasonable claims against the fund exceeding the existing  
4 balance of the fund, the tax shall be levied at the rate of \$0.04 per  
5 barrel of petroleum or petroleum products transferred, until the  
6 revenue produced by such increased rate equals 150% of the total  
7 dollar amount of all pending reasonable claims resulting from the  
8 discharge of petroleum or petroleum products; provided, however,  
9 that such rate may be set at less than \$0.04 per barrel transferred if the  
10 administrator determines that the revenue produced by such lower rate  
11 will be sufficient to pay outstanding reasonable claims against the fund  
12 within one year of such levy. For the purposes of determining the  
13 existing balance of the fund, the administrator shall not include any  
14 amount in the fund collected from the \$0.0025 per barrel increase in  
15 the tax imposed pursuant to P.L.1990, c.78 and dedicated for  
16 hazardous substance discharge prevention in accordance with  
17 paragraph (2) of this subsection.

18 <sup>1</sup>(b) Notwithstanding any provision of subparagraph (a) of this  
19 paragraph to the contrary, in order to qualify for the reduced tax rate  
20 for elemental antimony or antimony trioxide sold for use in the  
21 manufacture or for the purpose of fire retardants authorized in that  
22 subparagraph, the taxpayer shall demonstrate, by December 31 of each  
23 year, to the satisfaction of the Department of the Treasury, acting in  
24 cooperation with the Department of Environmental Protection, all of  
25 the following: (i) that the taxpayer's sales of the hazardous substance  
26 constitute, in the calendar year immediately prior to the first calendar  
27 year in which the reduced tax rate shall apply, at least 75% of the  
28 taxpayer's total annual income in that immediately prior calendar year;  
29 (ii) that no other competitor of the taxpayer located in another state  
30 is subject to a tax in that other state, with respect to the hazardous  
31 substance, that is substantially similar to the tax imposed thereon  
32 pursuant to this section; (iii) that the taxpayer otherwise would suffer  
33 economic stress unless the benefit from the reduced tax rate is  
34 allowed; (iv) that the taxpayer has never filed a successful claim  
35 against the New Jersey Spill Compensation Fund; (v) that the taxpayer  
36 has never discharged a hazardous substance that required cleanup and  
37 removal in accordance with P.L.1976, c.141 (C.58:10-23.11 et seq.);  
38 and (vi) that, upon request of the State Treasurer, the taxpayer's  
39 accountant or counsel can provide a certified document detailing, with  
40 respect to the hazardous substance, the amount of tax that would have  
41 been paid each calendar year by the taxpayer had the reduced tax rate  
42 not been in effect and the amount that was actually paid each calendar  
43 year under the reduced tax rate, so that the State Treasurer may  
44 calculate the loss of tax revenue, if any, to the State attributable to the  
45 reduced tax rate. If the taxpayer fails to qualify under the provisions  
46 of this subparagraph for the reduced tax rate, the taxpayer shall pay,

1 for that calendar year, the tax at the full rate imposed pursuant to  
2 subparagraph (a) of this paragraph.

3 (c)<sup>1</sup> Interest received on moneys in the fund shall be credited to the  
4 fund.

5 (2) An amount of \$0.0025 per barrel collected from the proceeds  
6 of the tax imposed pursuant to this subsection shall be deposited into  
7 the New Jersey Spill Compensation Fund and dedicated for the  
8 purposes of P.L.1990, c.78 and for other authorized purposes  
9 designed to prevent the discharge of a hazardous substance.

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

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

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

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

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

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

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

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

4 (1) To delegate to any officer or employee of his division such of  
5 his powers and duties as he may deem necessary to carry out  
6 efficiently the provisions of this section, and the person or persons to  
7 whom such power has been delegated shall possess and may exercise  
8 all of said powers and perform all of the duties delegated by the  
9 director;

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

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

16 i. (Deleted by amendment, P.L.1986, c.143.)

17 (cf: P.L.1999, c.342, s.1)

18

19 2. This act shall take effect <sup>2</sup>[immediately <sup>1</sup>and shall apply to tax  
20 periods beginning on or after January 1, 2002<sup>1</sup>] on the first day of the  
21 third month following enactment<sup>2</sup> .

**SENATE, No. 2485**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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INTRODUCED SEPTEMBER 6, 2001

**Sponsored by:**

**Senator JOHN O. BENNETT**

**District 12 (Monmouth)**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**SYNOPSIS**

Alters certain taxes and cap on tax due pursuant to Spill Compensation and Control Act.

**CURRENT VERSION OF TEXT**

As introduced.





S2485 BENNETT, VITALE

2

1 AN ACT concerning hazardous substances, and amending P.L.1976,  
2 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 one  
10 or more major facilities a tax to insure compensation for cleanup costs  
11 and damages associated with any discharge of hazardous substances  
12 to be paid by the transferee; provided, however, that in the case of a  
13 major facility which operates as a public storage terminal for  
14 hazardous substances owned by others, the owner of the hazardous  
15 substance transferred to such major facility or his authorized agent  
16 shall be considered to be the transferee or transferor, as the case may  
17 be, for the purposes of this section and shall be deemed to be a  
18 taxpayer for purposes of this act. Where such person has failed to file  
19 a return or pay the tax imposed by this act within 60 days after the due  
20 date thereof, the director shall forthwith take appropriate steps to  
21 collect same from the owner of the hazardous substance. In the event  
22 the director is not successful in collecting said tax, then on notice to  
23 the owner or operator of the public storage terminal of said fact said  
24 owner or operator shall not release any hazardous substance owned by  
25 the taxpayer. The director may forthwith proceed to satisfy any tax  
26 liability of the taxpayer by seizing, selling or otherwise disposing of  
27 said hazardous substance to satisfy the taxpayer's tax liability and to  
28 take any further steps permitted by law for its collection. For the  
29 purposes of this act, public storage terminal shall mean a public or  
30 privately owned major facility operated for public use which is used  
31 for the storage or transfer of hazardous substances. The tax shall be  
32 measured by the number of barrels or the fair market value, as the case  
33 may be, of hazardous substances transferred to the major facility;  
34 provided, however, that the same barrel, including any products  
35 derived therefrom, subject to multiple transfers from or between major  
36 facilities shall be taxed only once at the point of the first transfer.

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

41 b. (1) The tax shall be \$0.0150 per barrel transferred and in the  
42 case of the transfer of hazardous substances other than petroleum or  
43 petroleum products, the tax shall be the greater of \$0.0150 per barrel

**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 or 1.0% of the fair market value of the product plus \$0.0025 per  
2 barrel; provided, however, that with respect to transfers of hazardous  
3 substances other than petroleum or petroleum products which are or  
4 contain any precious metals to be recycled, refined, or rerefined in this  
5 State, which are transferred into this State subsequent to being  
6 recycled, refined or rerefined, or which are or contain elemental  
7 phosphorus, or which are elemental antimony or antimony trioxide  
8 sold for use in the manufacture or for the purpose of fire retardants,  
9 the tax shall be \$0.0150 per barrel of the hazardous substance; and  
10 provided further, however, that the total aggregate tax due for any  
11 individual taxpayer facility which has paid the tax in the 1986 tax year  
12 shall not exceed 125% of the tax due and payable by that taxpayer  
13 facility during the 1986 tax year plus an additional \$0.0025 per barrel;  
14 except that for a hazardous substance which is directly converted to,  
15 and comprises more than 90% by weight of, a non-hazardous final  
16 product, the taxpayer facility shall pay no more than 100% of the tax  
17 due and payable in the 1986 tax year plus an additional \$0.0025 per  
18 barrel. For major facilities established by the subdivision of a major  
19 facility which existed in 1986, including subsequent owners and  
20 operators of the subdivided major facilities, the total aggregated tax  
21 due shall not exceed 100% of the tax paid in 1999. For the purposes  
22 of applying the 125% of tax due limitation, a successor in interest  
23 pursuant to a sale or a reorganization, as defined pursuant to [section  
24 368(a)(1)(D) of] the Internal Revenue Code of 1986, [26 U.S.C.  
25 s.368,] on or before [October 1, 1997] June 1, 2001 shall be entitled  
26 to the predecessor taxpayer's limitation. In computing 125% of the  
27 tax due and payable by the taxpayer during the 1986 tax year, for taxes  
28 due after January 1, 1996 from an owner or operator including the  
29 successor in interest pursuant to a sale or a reorganization as defined  
30 in this paragraph of one or more major facilities who has continuously  
31 since 1986 filed a combined tax return for more than one major facility  
32 but who prior to January 1, 1996 has entirely closed and  
33 decommissioned one or more of those major facilities, a taxpayer shall  
34 include 1986 taxes arising from major facilities which (1) caused the  
35 taxpayer to incur a tax liability in 1986, and (2) continue to cause the  
36 taxpayer to incur a tax liability during the current tax year. For  
37 transfers which are or contain elemental phosphorus, or which are  
38 elemental antimony or antimony trioxide sold for use in the  
39 manufacture or for the purpose of fire retardants, in computing the  
40 125% of the taxes due and payable by the taxpayer during the 1986 tax  
41 year, a taxpayer, which shall include any subsequent owner or operator  
42 of a major facility which transfers elemental phosphorus, shall  
43 calculate the tax at \$0.015 per barrel. For the purposes of this section,  
44 "precious metals" means gold, silver, osmium, platinum, palladium,  
45 iridium, rhodium, ruthenium and copper. In the event of a major  
46 discharge or series of discharges of petroleum or petroleum products

1 resulting in reasonable claims against the fund exceeding the existing  
2 balance of the fund, the tax shall be levied at the rate of \$0.04 per  
3 barrel of petroleum or petroleum products transferred, until the  
4 revenue produced by such increased rate equals 150% of the total  
5 dollar amount of all pending reasonable claims resulting from the  
6 discharge of petroleum or petroleum products; provided, however,  
7 that such rate may be set at less than \$0.04 per barrel transferred if the  
8 administrator determines that the revenue produced by such lower rate  
9 will be sufficient to pay outstanding reasonable claims against the fund  
10 within one year of such levy. For the purposes of determining the  
11 existing balance of the fund, the administrator shall not include any  
12 amount in the fund collected from the \$0.0025 per barrel increase in  
13 the tax imposed pursuant to P.L.1990, c.78 and dedicated for  
14 hazardous substance discharge prevention in accordance with  
15 paragraph (2) of this subsection.

16 Interest received on moneys in the fund shall be credited to the  
17 fund.

18 (2) An amount of \$0.0025 per barrel collected from the proceeds  
19 of the tax imposed pursuant to this subsection shall be deposited into  
20 the New Jersey Spill Compensation Fund and dedicated for the  
21 purposes of P.L.1990, c.78 and for other authorized purposes  
22 designed to prevent the discharge of a hazardous substance.

23 c. (1) Every taxpayer and owner or operator of a public storage  
24 terminal for hazardous substances shall on or before the 20th day of  
25 the month following the close of each tax period render a return under  
26 oath to the director on such forms as may be prescribed by the director  
27 indicating the number of barrels of hazardous substances transferred  
28 and where appropriate, the fair market value of the hazardous  
29 substances transferred to or from the major facility, and at said time  
30 the taxpayer shall pay the full amount of the tax due.

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

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

40 d. If a return required by this act is not filed, or if a return when  
41 filed is incorrect or insufficient in the opinion of the director, the  
42 amount of tax due shall be determined by the director from such  
43 information as may be available. Notice of such determination shall be  
44 given to the taxpayer liable for the payment of the tax. Such  
45 determination shall finally and irrevocably fix the tax unless the person  
46 against whom it is assessed, within 30 days after receiving notice of

1 such determination, shall apply to the director for a hearing, or unless  
2 the director on his own motion shall redetermine the same. After such  
3 hearing the director shall give notice of his determination to the person  
4 to whom the tax is assessed.

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

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

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

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

17 (1) To delegate to any officer or employee of his division such of  
18 his powers and duties as he may deem necessary to carry out  
19 efficiently the provisions of this section, and the person or persons to  
20 whom such power has been delegated shall possess and may exercise  
21 all of said powers and perform all of the duties delegated by the  
22 director;

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

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

29 i. (Deleted by amendment, P.L.1986, c.143.)

30 (cf: P.L.1999, c.342, s.1)

31

32 2. This act shall take effect immediately except that the provisions  
33 of paragraph (1) of subsection b. of section 9 of P.L.1976, c.141  
34 (C.58:10-23.11h) regarding the revised cap calculation for antimony  
35 and antimony trioxide shall apply to tax payments due after January 1,  
36 2001.

37

38

39

#### STATEMENT

40

41 This bill concerns the tax imposed and the "cap" limitations on the  
42 tax due pursuant to the "Spill Compensation and Control Act." The  
43 spill compensation and control tax is imposed on owners or operators  
44 of any "major facility:" a refinery, storage or transfer terminal,  
45 pipeline, deep-water port, drilling platform used to refine, produce,  
46 store, handle, transfer, process or transport hazardous substances.

1 The tax is assessed at various rates, depending on the volume and  
2 nature of the hazardous substance being handled, for deposit to the  
3 Spill Compensation Fund to assure compensation for cleanup costs  
4 and damages associated with any discharge of hazardous substances.  
5 The tax for an individual taxpayer that paid the tax in 1986 is capped  
6 at 125% of that taxpayer's 1986 liability. The bill concerns the  
7 application and calculation of that capped liability. The bill provides  
8 that for major facilities established by the subdivision of a major  
9 facility which existed in 1986, including subsequent owners and  
10 operators of the subdivided major facilities, the total aggregated tax  
11 due shall not exceed 100% of the tax paid in 1999.

12 The bill also provides for continuation of the capped liability to a  
13 successor in certain corporate sales. The bill makes a corporation's  
14 successor in interest pursuant to a sale, as defined pursuant to the  
15 Internal Revenue Code of 1986, on or before June 1, 2001 eligible for  
16 the same capped liability amount on the tax due for which the  
17 predecessor corporation would have otherwise been eligible.

18 Further, this bill would change the tax for any transfer of elemental  
19 antimony or antimony trioxide sold for use in the manufacture or for  
20 the purpose of a fire retardant to \$0.015 per barrel. Under current law  
21 the tax due on most transfers of hazardous substances other than  
22 petroleum is \$.015 per barrel or 1% of the fair market value of the  
23 product plus \$.0025 per barrel, whichever is greater. The bill would  
24 also change the cap on the tax due for transfers of elemental antimony  
25 or antimony trioxide sold for use in the manufacture or for the purpose  
26 of a fire retardant. Under current law, the cap on taxes due and  
27 payable by a taxpayer who has paid taxes in the 1986 tax year is 125%  
28 of the taxes due and payable in the 1986 tax year plus \$.0025 per  
29 barrel. This bill would provide that in computing 125% of taxes due  
30 and payable by the taxpayer during the 1986 tax year, the 1986 taxes  
31 for any transfer of elemental antimony or antimony trioxide sold for  
32 use in the manufacture or for the purpose of a fire retardant shall be  
33 recalculated at a rate of \$0.015 per barrel.

34 Finally, the bill provides that those hazardous substances not  
35 subject to regulation by the Department of Environmental Protection  
36 shall not be subject to taxation pursuant to the Spill Act.

# SENATE ENVIRONMENT COMMITTEE

## STATEMENT TO

### **SENATE, No. 2485**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: NOVEMBER 19, 2001

The Senate Environment Committee reports favorably and with committee amendments Senate Bill No. 2485.

This bill concerns the tax imposed and the "cap" limitations on the tax due pursuant to the "Spill Compensation and Control Act." The spill compensation and control tax is imposed on owners or operators of any "major facility": a refinery, storage or transfer terminal, pipeline, deep-water port, drilling platform used to refine, produce, store, handle, transfer, process or transport hazardous substances. The tax is assessed at various rates, depending on the volume and nature of the hazardous substance being handled, for deposit to the Spill Compensation Fund to assure compensation for cleanup costs and damages associated with any discharge of hazardous substances. The tax for an individual taxpayer that paid the tax in 1986 is capped at 125% of that taxpayer's 1986 liability. The bill concerns the application and calculation of that capped liability. The bill provides that for major facilities established by the subdivision of a major facility which existed in 1986, including subsequent owners and operators of the subdivided major facilities, the total aggregated tax due shall not exceed 100% of the tax paid in 1999.

The bill also provides for continuation of the capped liability to a successor in certain corporate sales. The bill makes a corporation's successor in interest pursuant to a sale, as defined pursuant to the Internal Revenue Code of 1986, on or before June 1, 2001 eligible for the same capped liability amount on the tax due for which the predecessor corporation would have otherwise been eligible.

Further, this bill would change the tax for any transfer of elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of a fire retardant to \$0.015 per barrel. Under current law the tax due on most transfers of hazardous substances other than petroleum is \$0.015 per barrel or 1% of the fair market value of the product plus \$0.0025 per barrel, whichever is greater. The bill would also change the cap on the tax due for transfers of elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of a fire retardant. Under current law, the cap on taxes due and

payable by a taxpayer who has paid taxes in the 1986 tax year is 125% of the taxes due and payable in the 1986 tax year plus \$0.0025 per barrel. This bill would provide that in computing 125% of taxes due and payable by the taxpayer during the 1986 tax year, the 1986 taxes for any transfer of elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of a fire retardant shall be recalculated at a rate of \$0.015 per barrel.

Finally, the bill provides that those hazardous substances not subject to regulation by the Department of Environmental Protection shall not be subject to taxation pursuant to the Spill Act.

The committee amendments would provide that in order for elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of a fire retardant to qualify for the reduced tax rate, the taxpayer would have to meet certain qualifying criteria specified in the bill. Finally, the committee amendments would provide that the bill takes effect for tax periods beginning on or after January 1, 2002.

[First Reprint]

**SENATE, No. 2485**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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INTRODUCED SEPTEMBER 6, 2001

**Sponsored by:**

**Senator JOHN O. BENNETT**

**District 12 (Monmouth)**

**Senator JOSEPH F. VITALE**

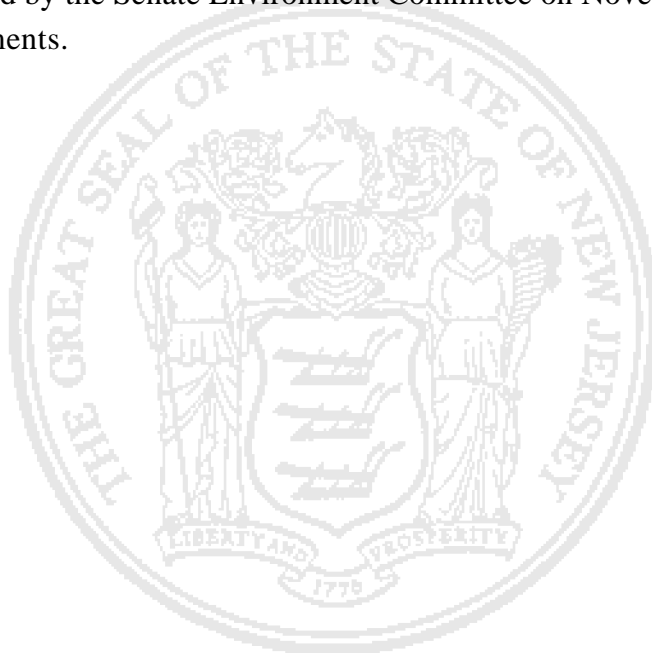
**District 19 (Middlesex)**

**SYNOPSIS**

Alters certain taxes and cap on tax due pursuant to Spill Compensation and Control Act.

**CURRENT VERSION OF TEXT**

As reported by the Senate Environment Committee on November 19, 2001, with amendments.





1 AN ACT concerning hazardous substances, and amending P.L.1976,  
2 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 one  
10 or more major facilities a tax to insure compensation for cleanup costs  
11 and damages associated with any discharge of hazardous substances  
12 to be paid by the transferee; provided, however, that in the case of a  
13 major facility which operates as a public storage terminal for  
14 hazardous substances owned by others, the owner of the hazardous  
15 substance transferred to such major facility or his authorized agent  
16 shall be considered to be the transferee or transferor, as the case may  
17 be, for the purposes of this section and shall be deemed to be a  
18 taxpayer for purposes of this act. Where such person has failed to file  
19 a return or pay the tax imposed by this act within 60 days after the due  
20 date thereof, the director shall forthwith take appropriate steps to  
21 collect same from the owner of the hazardous substance. In the event  
22 the director is not successful in collecting said tax, then on notice to  
23 the owner or operator of the public storage terminal of said fact said  
24 owner or operator shall not release any hazardous substance owned by  
25 the taxpayer. The director may forthwith proceed to satisfy any tax  
26 liability of the taxpayer by seizing, selling or otherwise disposing of  
27 said hazardous substance to satisfy the taxpayer's tax liability and to  
28 take any further steps permitted by law for its collection. For the  
29 purposes of this act, public storage terminal shall mean a public or  
30 privately owned major facility operated for public use which is used  
31 for the storage or transfer of hazardous substances. The tax shall be  
32 measured by the number of barrels or the fair market value, as the case  
33 may be, of hazardous substances transferred to the major facility;  
34 provided, however, that the same barrel, including any products  
35 derived therefrom, subject to multiple transfers from or between major  
36 facilities shall be taxed only once at the point of the first transfer.

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

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

**<sup>1</sup> Senate SEN committee amendments adopted November 19, 2001.**

1       b. (1) <sup>1(a)</sup><sup>1</sup>The tax shall be \$0.0150 per barrel transferred and in  
2 the case of the transfer of hazardous substances other than petroleum  
3 or petroleum products, the tax shall be the greater of \$0.0150 per  
4 barrel or 1.0% of the fair market value of the product plus \$0.0025 per  
5 barrel; provided, however, that with respect to transfers of hazardous  
6 substances other than petroleum or petroleum products which are or  
7 contain any precious metals to be recycled, refined, or rerefined in this  
8 State, which are transferred into this State subsequent to being  
9 recycled, refined or rerefined, or which are or contain elemental  
10 phosphorus, or which are elemental antimony or antimony trioxide  
11 sold for use in the manufacture or for the purpose of fire retardants,  
12 the tax shall be \$0.0150 per barrel of the hazardous substance; and  
13 provided further, however, that the total aggregate tax due for any  
14 individual taxpayer facility which has paid the tax in the 1986 tax year  
15 shall not exceed 125% of the tax due and payable by that taxpayer  
16 facility during the 1986 tax year plus an additional \$0.0025 per barrel;  
17 except that for a hazardous substance which is directly converted to,  
18 and comprises more than 90% by weight of, a non-hazardous final  
19 product, the taxpayer facility shall pay no more than 100% of the tax  
20 due and payable in the 1986 tax year plus an additional \$0.0025 per  
21 barrel. For major facilities established by the subdivision of a major  
22 facility which existed in 1986, including subsequent owners and  
23 operators of the subdivided major facilities, the total aggregated tax  
24 due shall not exceed 100% of the tax paid in 1999. For the purposes  
25 of applying the 125% of tax due limitation, a successor in interest  
26 pursuant to a sale or a reorganization, as defined pursuant to [section  
27 368(a)(1)(D) of] the Internal Revenue Code of 1986, [26 U.S.C.  
28 s.368,] on or before [October 1, 1997] June 1, 2001 shall be entitled  
29 to the predecessor taxpayer's limitation. In computing 125% of the  
30 tax due and payable by the taxpayer during the 1986 tax year, for taxes  
31 due after January 1, 1996 from an owner or operator including the  
32 successor in interest pursuant to a sale or a reorganization as defined  
33 in this paragraph of one or more major facilities who has continuously  
34 since 1986 filed a combined tax return for more than one major facility  
35 but who prior to January 1, 1996 has entirely closed and  
36 decommissioned one or more of those major facilities, a taxpayer shall  
37 include 1986 taxes arising from major facilities which (1) caused the  
38 taxpayer to incur a tax liability in 1986, and (2) continue to cause the  
39 taxpayer to incur a tax liability during the current tax year. For  
40 transfers which are or contain elemental phosphorus, or which are  
41 elemental antimony or antimony trioxide sold for use in the  
42 manufacture or for the purpose of fire retardants, in computing the  
43 125% of the taxes due and payable by the taxpayer during the 1986 tax  
44 year, a taxpayer, which shall include any subsequent owner or operator  
45 of a major facility which transfers elemental phosphorus, shall  
46 calculate the tax at \$0.015 per barrel. For the purposes of this section,

1 "precious metals" means gold, silver, osmium, platinum, palladium,  
2 iridium, rhodium, ruthenium and copper. In the event of a major  
3 discharge or series of discharges of petroleum or petroleum products  
4 resulting in reasonable claims against the fund exceeding the existing  
5 balance of the fund, the tax shall be levied at the rate of \$0.04 per  
6 barrel of petroleum or petroleum products transferred, until the  
7 revenue produced by such increased rate equals 150% of the total  
8 dollar amount of all pending reasonable claims resulting from the  
9 discharge of petroleum or petroleum products; provided, however,  
10 that such rate may be set at less than \$0.04 per barrel transferred if the  
11 administrator determines that the revenue produced by such lower rate  
12 will be sufficient to pay outstanding reasonable claims against the fund  
13 within one year of such levy. For the purposes of determining the  
14 existing balance of the fund, the administrator shall not include any  
15 amount in the fund collected from the \$0.0025 per barrel increase in  
16 the tax imposed pursuant to P.L.1990, c.78 and dedicated for  
17 hazardous substance discharge prevention in accordance with  
18 paragraph (2) of this subsection.

19 <sup>1</sup>(b) Notwithstanding any provision of subparagraph (a) of this  
20 paragraph to the contrary, in order to qualify for the reduced tax rate  
21 for elemental antimony or antimony trioxide sold for use in the  
22 manufacture or for the purpose of fire retardants authorized in that  
23 subparagraph, the taxpayer shall demonstrate, by December 31 of each  
24 year, to the satisfaction of the Department of the Treasury, acting in  
25 cooperation with the Department of Environmental Protection, all of  
26 the following: (i) that the taxpayer's sales of the hazardous substance  
27 constitute, in the calendar year immediately prior to the first calendar  
28 year in which the reduced tax rate shall apply, at least 75% of the  
29 taxpayer's total annual income in that immediately prior calendar year;  
30 (ii) that no other competitor of the taxpayer located in another state  
31 is subject to a tax in that other state, with respect to the hazardous  
32 substance, that is substantially similar to the tax imposed thereon  
33 pursuant to this section; (iii) that the taxpayer otherwise would suffer  
34 economic stress unless the benefit from the reduced tax rate is  
35 allowed; (iv) that the taxpayer has never filed a successful claim  
36 against the New Jersey Spill Compensation Fund; (v) that the taxpayer  
37 has never discharged a hazardous substance that required cleanup and  
38 removal in accordance with P.L.1976, c.141 (C.58:10-23.11 et seq.);  
39 and (vi) that, upon request of the State Treasurer, the taxpayer's  
40 accountant or counsel can provide a certified document detailing, with  
41 respect to the hazardous substance, the amount of tax that would have  
42 been paid each calendar year by the taxpayer had the reduced tax rate  
43 not been in effect and the amount that was actually paid each calendar  
44 year under the reduced tax rate, so that the State Treasurer may  
45 calculate the loss of tax revenue, if any, to the State attributable to the  
46 reduced tax rate. If the taxpayer fails to qualify under the provisions

1 of this subparagraph for the reduced tax rate, the taxpayer shall pay,  
2 for that calendar year, the tax at the full rate imposed pursuant to  
3 subparagraph (a) of this paragraph.

4 (c)<sup>1</sup>Interest received on moneys in the fund shall be credited to the  
5 fund.

6 (2) An amount of \$0.0025 per barrel collected from the proceeds  
7 of the tax imposed pursuant to this subsection shall be deposited into  
8 the New Jersey Spill Compensation Fund and dedicated for the  
9 purposes of P.L.1990, c.78 and for other authorized purposes  
10 designed to prevent the discharge of a hazardous substance.

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

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

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

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

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

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

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

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

5 (1) To delegate to any officer or employee of his division such of  
6 his powers and duties as he may deem necessary to carry out  
7 efficiently the provisions of this section, and the person or persons to  
8 whom such power has been delegated shall possess and may exercise  
9 all of said powers and perform all of the duties delegated by the  
10 director;

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

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

17 i. (Deleted by amendment, P.L.1986, c.143.)

18 (cf: P.L.1999, c.342, s.1)

19

20 2. This act shall take effect immediately <sup>1</sup>[except that the  
21 provisions of paragraph (1) of subsection b. of section 9 of P.L.1976,  
22 c.141 (C.58:10-23.11h) regarding the revised cap calculation for  
23 antimony and antimony trioxide shall apply to tax payments due after  
24 January 1, 2001]and shall apply to tax periods beginning on or after  
25 January 1, 2002<sup>1</sup>.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

**SENATE, No. 2485**

# **STATE OF NEW JERSEY**

DATED: NOVEMBER 29, 2001

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2485 (1R).

This bill concerns the "cap" limitations on the tax due pursuant to the "Spill Compensation and Control Act." The spill compensation and control tax is imposed on owners or operators of any "major facility:" a refinery, storage or transfer terminal, pipeline, deep-water port, drilling platform used to refine, produce, store, handle, transfer, process or transport hazardous substances. The tax is assessed at various rates, depending on the volume and nature of the hazardous substance being handled, for deposit to the Spill Compensation Fund to assure compensation for cleanup costs and damages associated with any discharge of hazardous substances. The tax for an individual taxpayer that paid the tax in 1986 is capped at 125% of that taxpayer's 1986 liability. The bill concerns the application and calculation of that capped liability. The bill provides that for major facilities established by the subdivision of a major facility which existed in 1986, including subsequent owners and operators of the subdivided major facilities, the total aggregated tax due shall not exceed 100% of the tax paid in 1999.

The bill also provides for continuation of the capped liability to a successor in certain corporate sales. The bill makes a corporation's successor in interest pursuant to a sale, as defined pursuant to the Internal Revenue Code of 1986, on or before June 1, 2001 eligible for the same capped liability amount on the tax due for which the predecessor corporation would have otherwise been eligible.

Further, this bill changes the tax for any transfer of elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of a fire retardant to \$0.015 per barrel. Under current law the tax due on most transfers of hazardous substances other than petroleum is \$.015 per barrel or 1% of the fair market value of the product plus \$.0025 per barrel, whichever is greater. The bill also changes the cap on the tax due for transfers of elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of a fire retardant. Under current law, the cap on taxes due and payable by a taxpayer who has paid taxes in the 1986 tax year is 125%

of the taxes due and payable in the 1986 tax year plus \$.0025 per barrel. This bill provides that in computing 125% of taxes due and payable by the taxpayer during the 1986 tax year, the 1986 taxes for any transfer of elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of a fire retardant shall be recalculated at a rate of \$0.015 per barrel, subject to certain limitations. The reduced rate is only available to a taxpayer that can demonstrate that the taxpayer's sales of the hazardous substance were 75% or more of the taxpayer's total income in the prior calendar year; that no competitor of the taxpayer in another state is subject to similar tax in that other state; that the taxpayer would suffer economic stress unless the reduced tax rate is allowed; that the taxpayer has never filed a successful claim against the New Jersey Spill Compensation Fund; and that the taxpayer has never discharged a hazardous substance that required cleanup and removal in accordance with P.L.1976, c.141 (C.58:10-23.11a et al.).

Finally, the bill provides that those hazardous substances not subject to regulation by the Department of Environmental Protection shall not be subject to taxation pursuant to the Spill Act.

The bill is identical to Assembly Bill No. 3741 (1R).

#### FISCAL IMPACT

Information is not available to calculate the fiscal impact of this bill on corporate taxpayers or on the level of tax revenues collected by the New Jersey Spill Compensation Fund. It is presumed, however, that as the bill results in a lower tax rate and a lower cap value, that therefore less tax revenues will be collected by the "spill fund" which, in turn, will limit the fund's ability to support various programmatic and claims activities.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

**SENATE, No. 2485**

**STATE OF NEW JERSEY**

**209th LEGISLATURE**

DATED: JANUARY 10, 2002

## SUMMARY

**Synopsis:** Alters certain taxes and cap on tax due pursuant to Spill Compensation and Control Act.

**Type of Impact:** Revenue loss from the Spill Compensation Fund.

**Agencies Affected:** None

### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Revenue</b>	Indeterminate reduction	Indeterminate reduction	Indeterminate reduction

- ! The bill amends the "Spill Compensation and Control Act" (P.L.1976, c.141) by reducing the tax rate imposed by the act for two specific chemicals used in manufacturing fire retardants; by limiting the capped liability of the tax rate for certain taxpayers; and by exempting the Spill Tax from hazardous substances not regulated by the State.
- ! The Spill Compensation and Control Tax is imposed on owners or operators of major facilities used to refine, store or handle hazardous substances. Revenues are used primarily by the State to finance remediation projects associated with hazardous substance spills.
- ! The reduced tax rate for the two chemicals cited in the bill would make these rates comparable to those imposed for other hazardous substances such as phosphorous, precious metals and petroleum products.
- ! The Office of Legislative Services (OLS) cannot estimate the loss of Spill Tax revenues because pertinent data is not available.

## BILL DESCRIPTION

Senate Bill No. 2485 (1R) of 2001 would change, pursuant to certain qualifying criteria, the Spill Compensation Tax rate imposed for any transfer of elemental antimony or antimony trioxide



sold for use in the manufacture of fire retardants to \$0.015 per barrel. Under current law the tax due on most transfers of hazardous substances other than petroleum is \$.015 per barrel or 1 percent of the fair market value of the product plus \$.0025 per barrel, whichever is greater. The bill would also change the cap on the tax due for transfers of elemental antimony or antimony trioxide sold for use in the manufacture of fire retardants. Under current law, the cap on taxes payable by a taxpayer is 125 percent of the taxes payable in the 1986 tax year plus \$.0025 per barrel. The bill would provide that in computing 125 percent of taxes due and payable by the taxpayer during the 1986 tax year, the 1986 taxes for any transfer of elemental antimony or antimony trioxide sold for use in the manufacture of fire retardants would be recalculated at a rate of \$0.015 per barrel.

The bill further amends the 125 percent provision of a taxpayer's 1986 liability by providing that for major facilities established by the subdivision of a major facility which existed in 1986, including subsequent owners and operators of the subdivided major facilities, the total aggregated tax due shall not exceed 100 percent of the tax paid in 1999. In addition, the bill permits the continuation of the capped liability to a successor in certain corporate sales.

Last, the bill provides that those hazardous substances not subject to regulation by the Department of Environmental Protection shall not be subject to the Spill Tax.

## FISCAL ANALYSIS

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services (OLS) cannot calculate the amount of potential revenue loss from the Spill Compensation Fund because pertinent data regarding the chemical breakdown of the hazardous substances subject to the tax is not generally reported on participants' tax returns. Pertinent information regarding the tax liability of affected taxpayers under the bill is also not available.

The OLS notes that the bill would only reduce revenues designated for the Spill Compensation Fund, not the General Fund. The use of monies from the Spill Compensation Fund is statutorily restricted to State regulatory and remediation activities that deal with damages caused by the discharge of hazardous substances.

Section: *Environment, Agriculture, Energy and Natural Resources*

Analyst: *Richard M. Handelman*  
*Senior Fiscal Analyst*

Approved: *Alan R. Kooney*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

**ASSEMBLY BILL NO. 3731  
(First Reprint)**

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 3731 (First Reprint) with my recommendations for reconsideration.

A. Summary of Bill

This bill concerns the tax imposed and the "cap" limitations on the tax due pursuant to the "Spill Compensation and Control Act." The spill compensation and control tax is imposed on owners or operators of any "major facility:" a refinery, storage or transfer terminal, pipeline, deep-water port, drilling platform used to refine, produce, store, handle, transfer, process or transport hazardous substances. The tax is assessed at various rates, depending on the volume and nature of the hazardous substance being handled, for deposit to the Spill Compensation Fund to assure compensation for cleanup costs and damages associated with any discharge of hazardous substances. The tax for an individual taxpayer that paid the tax in 1986 is capped at 125% of that taxpayer's 1986 liability. The bill concerns the application and calculation of that capped liability. The bill provides that for major facilities established by the subdivision of a major facility which existed in 1986, including subsequent owners and operators of the subdivided major facilities, the total aggregated tax due shall not exceed 100% of the tax paid in 1999.

The bill also provides for continuation of the capped liability to a successor in certain corporate sales. The bill makes a corporation's successor in interest pursuant to a sale, as defined pursuant to the Internal Revenue Code of 1986, on or before June 1, 2001 eligible for the same capped liability amount on the tax due for which the predecessor corporation would have otherwise been eligible.

Further, this bill would change the tax for any transfer of elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of a fire retardant to \$0.015 per barrel. Under current law the tax due on most transfers of hazardous substances other than petroleum is \$.015 per barrel or 1% of the fair market value of the product plus \$.0025 per barrel, whichever is greater. The bill would also change the cap on the tax due for transfers of elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of a fire retardant. Under current law, the cap on taxes due and payable by a taxpayer who has paid taxes in the 1986 tax year is 125% of the taxes due and payable in the 1986 tax year plus \$.0025 per barrel. This bill would provide that

in computing 125% of taxes due and payable by the taxpayer during the 1986 tax year, the 1986 taxes for any transfer of elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of a fire retardant shall be recalculated at a rate of \$0.015 per barrel.

Finally, the bill provides that those hazardous substances not subject to regulation by the Department of Environmental Protection shall not be subject to taxation pursuant to the Spill Act.

B. Recommended Action

The Division of Taxation will need lead time to notify all taxpayers of this change in law and to develop, print and mail revised tax returns and instructions.

Therefore, I herewith return Assembly Bill No. 3731 (First Reprint) and recommend that it be amended as follows:

Page 6, Section 2, Lines 18-19:

Delete "immediately and shall apply to tax periods beginning on and after January 1, 2002" and insert "on the first day of the third month following enactment"

Respectfully,

/s/ Donald T. DiFrancesco

Acting GOVERNOR

[seal]

Attest:

/s/ James A. Harkness

Chief Counsel to the Governor

P.L. 2001, CHAPTER 424, *approved January 8, 2002*  
Assembly, No. 3731 (*Second Reprint*)

1 **AN ACT** concerning hazardous substances, and amending P.L.1976,  
2 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 one  
10 or more major facilities a tax to insure compensation for cleanup costs  
11 and damages associated with any discharge of hazardous substances  
12 to be paid by the transferee; provided, however, that in the case of a  
13 major facility which operates as a public storage terminal for  
14 hazardous substances owned by others, the owner of the hazardous  
15 substance transferred to such major facility or his authorized agent  
16 shall be considered to be the transferee or transferor, as the case may  
17 be, for the purposes of this section and shall be deemed to be a  
18 taxpayer for purposes of this act. Where such person has failed to file  
19 a return or pay the tax imposed by this act within 60 days after the due  
20 date thereof, the director shall forthwith take appropriate steps to  
21 collect same from the owner of the hazardous substance. In the event  
22 the director is not successful in collecting said tax, then on notice to  
23 the owner or operator of the public storage terminal of said fact said  
24 owner or operator shall not release any hazardous substance owned by  
25 the taxpayer. The director may forthwith proceed to satisfy any tax  
26 liability of the taxpayer by seizing, selling or otherwise disposing of  
27 said hazardous substance to satisfy the taxpayer's tax liability and to  
28 take any further steps permitted by law for its collection. For the  
29 purposes of this act, public storage terminal shall mean a public or  
30 privately owned major facility operated for public use which is used  
31 for the storage or transfer of hazardous substances. The tax shall be  
32 measured by the number of barrels or the fair market value, as the case  
33 may be, of hazardous substances transferred to the major facility;  
34 provided, however, that the same barrel, including any products  
35 derived therefrom, subject to multiple transfers from or between major  
36 facilities shall be taxed only once at the point of the first transfer.

37 When a hazardous substance other than petroleum which has not  
38 been previously taxed is transferred from a major in-State facility to a  
39 facility which is not a major facility, the transferor shall be liable for

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly AAP committee amendments adopted November 19, 2001.

<sup>2</sup> Assembly floor amendments adopted January 7, 2002.

1 tax payment for said transfer.

2 b. (1) <sup>1</sup>(a)<sup>1</sup> The tax shall be \$0.0150 per barrel transferred and in  
3 the case of the transfer of hazardous substances other than petroleum  
4 or petroleum products, the tax shall be the greater of \$0.0150 per  
5 barrel or 1.0% of the fair market value of the product plus \$0.0025 per  
6 barrel; provided, however, that with respect to transfers of hazardous  
7 substances other than petroleum or petroleum products which are or  
8 contain any precious metals to be recycled, refined, or rerefined in this  
9 State, which are transferred into this State subsequent to being  
10 recycled, refined or rerefined, or which are or contain elemental  
11 phosphorus, <sup>1</sup>or which are elemental antimony or antimony trioxide  
12 sold for use in the manufacture or for the purpose of fire retardants,<sup>1</sup>  
13 the tax shall be \$0.0150 per barrel of the hazardous substance; and  
14 provided further, however, that the total aggregate tax due for any  
15 individual taxpayer facility which has paid the tax in the 1986 tax year  
16 shall not exceed 125% of the tax due and payable by that taxpayer  
17 facility during the 1986 tax year plus an additional \$0.0025 per barrel;  
18 except that for a hazardous substance which is directly converted to,  
19 and comprises more than 90% by weight of, a non-hazardous final  
20 product, the taxpayer facility shall pay no more than 100% of the tax  
21 due and payable in the 1986 tax year plus an additional \$0.0025 per  
22 barrel. For major facilities established by the subdivision of a major  
23 facility which existed in 1986, including subsequent owners and  
24 operators of the subdivided major facilities, the total aggregated tax  
25 due shall not exceed 100% of the tax paid in 1999. For the purposes  
26 of applying the 125% of tax due limitation, a successor in interest  
27 pursuant to a sale or a reorganization, as defined pursuant to [section  
28 368(a)(1)(D) of] the Internal Revenue Code of 1986, [26 U.S.C.  
29 s.368,] on or before [October 1, 1997] June 1, 2001 shall be entitled  
30 to the predecessor taxpayer's limitation. In computing 125% of the  
31 tax due and payable by the taxpayer during the 1986 tax year, for taxes  
32 due after January 1, 1996 from an owner or operator including the  
33 successor in interest pursuant to a sale or a reorganization as defined  
34 in this paragraph of one or more major facilities who has continuously  
35 since 1986 filed a combined tax return for more than one major facility  
36 but who prior to January 1, 1996 has entirely closed and  
37 decommissioned one or more of those major facilities, a taxpayer shall  
38 include 1986 taxes arising from major facilities which (1) caused the  
39 taxpayer to incur a tax liability in 1986, and (2) continue to cause the  
40 taxpayer to incur a tax liability during the current tax year. For  
41 transfers which are or contain elemental phosphorus, <sup>1</sup>or which are  
42 elemental antimony or antimony trioxide sold for use in the  
43 manufacture or for the purpose of fire retardants,<sup>1</sup> in computing the  
44 125% of the taxes due and payable by the taxpayer during the 1986 tax  
45 year, a taxpayer, which shall include any subsequent owner or operator  
46 of a major facility which transfers elemental phosphorus, shall

1 calculate the tax at \$0.015 per barrel. For the purposes of this section,  
2 "precious metals" means gold, silver, osmium, platinum, palladium,  
3 iridium, rhodium, ruthenium and copper. In the event of a major  
4 discharge or series of discharges of petroleum or petroleum products  
5 resulting in reasonable claims against the fund exceeding the existing  
6 balance of the fund, the tax shall be levied at the rate of \$0.04 per  
7 barrel of petroleum or petroleum products transferred, until the  
8 revenue produced by such increased rate equals 150% of the total  
9 dollar amount of all pending reasonable claims resulting from the  
10 discharge of petroleum or petroleum products; provided, however,  
11 that such rate may be set at less than \$0.04 per barrel transferred if the  
12 administrator determines that the revenue produced by such lower rate  
13 will be sufficient to pay outstanding reasonable claims against the fund  
14 within one year of such levy. For the purposes of determining the  
15 existing balance of the fund, the administrator shall not include any  
16 amount in the fund collected from the \$0.0025 per barrel increase in  
17 the tax imposed pursuant to P.L.1990, c.78 and dedicated for  
18 hazardous substance discharge prevention in accordance with  
19 paragraph (2) of this subsection.

20 <sup>1</sup>(b) Notwithstanding any provision of subparagraph (a) of this  
21 paragraph to the contrary, in order to qualify for the reduced tax rate  
22 for elemental antimony or antimony trioxide sold for use in the  
23 manufacture or for the purpose of fire retardants authorized in that  
24 subparagraph, the taxpayer shall demonstrate, by December 31 of each  
25 year, to the satisfaction of the Department of the Treasury, acting in  
26 cooperation with the Department of Environmental Protection, all of  
27 the following: (i) that the taxpayer's sales of the hazardous substance  
28 constitute, in the calendar year immediately prior to the first calendar  
29 year in which the reduced tax rate shall apply, at least 75% of the  
30 taxpayer's total annual income in that immediately prior calendar year;  
31 (ii) that no other competitor of the taxpayer located in another state  
32 is subject to a tax in that other state, with respect to the hazardous  
33 substance, that is substantially similar to the tax imposed thereon  
34 pursuant to this section; (iii) that the taxpayer otherwise would suffer  
35 economic stress unless the benefit from the reduced tax rate is  
36 allowed; (iv) that the taxpayer has never filed a successful claim  
37 against the New Jersey Spill Compensation Fund; (v) that the taxpayer  
38 has never discharged a hazardous substance that required cleanup and  
39 removal in accordance with P.L.1976, c.141 (C.58:10-23.11 et seq.);  
40 and (vi) that, upon request of the State Treasurer, the taxpayer's  
41 accountant or counsel can provide a certified document detailing, with  
42 respect to the hazardous substance, the amount of tax that would have  
43 been paid each calendar year by the taxpayer had the reduced tax rate  
44 not been in effect and the amount that was actually paid each calendar  
45 year under the reduced tax rate, so that the State Treasurer may  
46 calculate the loss of tax revenue, if any, to the State attributable to the

1 reduced tax rate. If the taxpayer fails to qualify under the provisions  
2 of this subparagraph for the reduced tax rate, the taxpayer shall pay,  
3 for that calendar year, the tax at the full rate imposed pursuant to  
4 subparagraph (a) of this paragraph.

5 (c)<sup>1</sup> Interest received on moneys in the fund shall be credited to the  
6 fund.

7 (2) An amount of \$0.0025 per barrel collected from the proceeds  
8 of the tax imposed pursuant to this subsection shall be deposited into  
9 the New Jersey Spill Compensation Fund and dedicated for the  
10 purposes of P.L.1990, c.78 and for other authorized purposes  
11 designed to prevent the discharge of a hazardous substance.

12 c. (1) Every taxpayer and owner or operator of a public storage  
13 terminal for hazardous substances shall on or before the 20th day of  
14 the month following the close of each tax period render a return under  
15 oath to the director on such forms as may be prescribed by the director  
16 indicating the number of barrels of hazardous substances transferred  
17 and where appropriate, the fair market value of the hazardous  
18 substances transferred to or from the major facility, and at said time  
19 the taxpayer shall pay the full amount of the tax due.

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

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

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

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

1 circumstances.

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

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

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

6 (1) To delegate to any officer or employee of his division such of  
7 his powers and duties as he may deem necessary to carry out  
8 efficiently the provisions of this section, and the person or persons to  
9 whom such power has been delegated shall possess and may exercise  
10 all of said powers and perform all of the duties delegated by the  
11 director;

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

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

18 i. (Deleted by amendment, P.L.1986, c.143.)

19 (cf: P.L.1999, c.342, s.1)

20

21 2. This act shall take effect <sup>2</sup>[immediately <sup>1</sup>and shall apply to tax  
22 periods beginning on or after January 1, 2002<sup>1</sup>] on the first day of the  
23 third month following enactment<sup>2</sup> .

24

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26

27

28 Alters certain taxes and cap on tax due pursuant to Spill Compensation  
29 and Control Act.



## CHAPTER 424

AN ACT concerning hazardous substances, and amending P.L.1976, c.141.

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

1. Section 9 of P.L.1976, c.141 (C.58:10-23.11h) is amended to read as follows:

C.58:10-23.11h Imposition of tax; measurement; amount; return; filing; failure to file; penalty; presumptive evidence; powers of director.

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

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

b. (1) (a) The tax shall be \$0.0150 per barrel transferred and in the case of the transfer of hazardous substances other than petroleum or petroleum products, the tax shall be the greater of \$0.0150 per barrel or 1.0% of the fair market value of the product plus \$0.0025 per barrel; provided, however, that with respect to transfers of hazardous substances other than petroleum or petroleum products which are or contain any precious metals to be recycled, refined, or rerefined in this State, which are transferred into this State subsequent to being recycled, refined or rerefined, or which are or contain elemental phosphorus, or which are elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of fire retardants, the tax shall be \$0.0150 per barrel of the hazardous substance; and provided further, however, that the total aggregate tax due for any individual taxpayer facility which has paid the tax in the 1986 tax year shall not exceed 125% of the tax due and payable by that taxpayer facility during the 1986 tax year plus an additional \$0.0025 per barrel; except that for a hazardous substance which is directly converted to, and comprises more than 90% by weight of, a non-hazardous final product, the taxpayer facility shall pay no more than 100% of the tax due and payable in the 1986 tax year plus an additional \$0.0025 per barrel. For major facilities established by the subdivision of a major facility which existed in 1986, including subsequent owners and operators of the subdivided major facilities, the total aggregated tax due shall not exceed 100% of the tax paid in 1999. For the purposes of applying the 125% of tax due limitation, a successor in interest pursuant to a sale or a reorganization, as defined pursuant to the Internal Revenue Code of 1986, on or before June 1, 2001 shall be entitled to the predecessor taxpayer's limitation. In computing 125% of the tax due and payable by the taxpayer during the 1986 tax year, for taxes due after January 1, 1996 from an owner or operator including the successor in interest pursuant to a sale or a reorganization as defined in this paragraph of one or more major facilities who has continuously since 1986 filed a combined tax return for more than one major facility but who prior to January 1, 1996 has entirely closed and decommissioned one or more of those major

facilities, a taxpayer shall include 1986 taxes arising from major facilities which (1) caused the taxpayer to incur a tax liability in 1986, and (2) continue to cause the taxpayer to incur a tax liability during the current tax year. For transfers which are or contain elemental phosphorus, or which are elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of fire retardants, in computing the 125% of the taxes due and payable by the taxpayer during the 1986 tax year, a taxpayer, which shall include any subsequent owner or operator of a major facility which transfers elemental phosphorus, shall calculate the tax at \$0.015 per barrel. For the purposes of this section, "precious metals" means gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium and copper. In the event of a major discharge or series of discharges of petroleum or petroleum products resulting in reasonable claims against the fund exceeding the existing balance of the fund, the tax shall be levied at the rate of \$0.04 per barrel of petroleum or petroleum products transferred, until the revenue produced by such increased rate equals 150% of the total dollar amount of all pending reasonable claims resulting from the discharge of petroleum or petroleum products; provided, however, that such rate may be set at less than \$0.04 per barrel transferred if the administrator determines that the revenue produced by such lower rate will be sufficient to pay outstanding reasonable claims against the fund within one year of such levy. For the purposes of determining the existing balance of the fund, the administrator shall not include any amount in the fund collected from the \$0.0025 per barrel increase in the tax imposed pursuant to P.L.1990, c.78 and dedicated for hazardous substance discharge prevention in accordance with paragraph (2) of this subsection.

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

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

(2) An amount of \$0.0025 per barrel collected from the proceeds of the tax imposed pursuant to this subsection shall be deposited into the New Jersey Spill Compensation Fund and dedicated for the purposes of P.L.1990, c.78 and for other authorized purposes designed to prevent the discharge of a hazardous substance.

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

(2) Every taxpayer or owner or operator of a major facility or vessel which transfers a

hazardous substance, as defined in this act, and who is subject to the tax under subsection a. shall within 20 days after the first such transfer in any fiscal year register with the director on such form as shall be prescribed by him.

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

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

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

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

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

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

(1) To delegate to any officer or employee of his division such of his powers and duties as he may deem necessary to carry out efficiently the provisions of this section, and the person or persons to whom such power has been delegated shall possess and may exercise all of said powers and perform all of the duties delegated by the director;

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

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

i. (Deleted by amendment, P.L.1986, c.143.)

2. This act shall take effect on the first day of the third month following enactment.

Approved January 8, 2002.