

54:4-1.13

LEGISLATIVE HISTORY CHECKLIST  
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("Business Retention Act")

NJSA: 54:4-1.13

LAWS OF: 1992 CHAPTER: 24

BILL NO: S332

SPONSOR(S): DiFrancesco

DATE INTRODUCED: June 1, 1992

COMMITTEE: ASSEMBLY: ---  
SENATE: Budget & Appropriations

AMENDED DURING PASSAGE: Yes Amendments during passage denoted  
by asterisks

DATE OF PASSAGE: ASSEMBLY: April 13, 1992 Re-enacted June 18, 1992  
SENATE: April 2, 1992 Re-enacted June 11, 1992

DATE OF APPROVAL: June 26, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No  
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: Yes

MESSAGE ON SIGNING: ~~No~~ Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

[FIRST REPRINT]

SENATE, No. 332

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 10, 1992

By Senators DiFRANCESCO, Adler, Inverso, Sinagra,  
Kyrillos, Girgenti, Assemblymen Kamin and Pascrell

1 AN ACT concerning the taxation of certain business property,  
2 amending R.S.54:4-1 and P.L.1986, c.117, and supplementing  
3 chapter 4 of Title 54 of the Revised Statutes.

4

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

7 1. (New section) This act shall be known and may be cited as  
8 the "Business Retention Act."

9 2. (New section) The Legislature finds and declares that since  
10 1979 New Jersey has lost a major share of its manufacturing jobs  
11 and manufacturing plants and this trend has persisted throughout  
12 periods of economic recovery and periods of recession. The  
13 Legislature also finds that New Jersey's manufacturing sector,  
14 notwithstanding the recent losses, continues to be an important  
15 source of relatively high-paying employment for a large portion  
16 of the workforce and an essential foundation for the rest of the  
17 economy, serving as a larger multiplier of jobs in the economy  
18 than any other sector. The Legislature further finds that in order  
19 to retain manufacturing jobs it is in the interest of the business  
20 community, municipalities and the State of New Jersey to  
21 maintain a policy regarding the taxation of business personal  
22 property which is historically consistent, equitable and  
23 competitive with neighboring states and which creates and  
24 maintains reasonable incentives for manufacturing interests to  
25 exist and thrive in New Jersey. The Legislature, therefore,  
26 declares that it is the policy of the State, through this act, to  
27 refine the definitions of real property and personal property in  
28 order to reaffirm the broad exclusion from local property taxes  
29 of business personal property used or held for use in business.

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

31 54:4-1. All property real and personal within the jurisdiction  
32 of this State not expressly exempted from taxation or expressly  
33 excluded from the operation of this chapter shall be subject to  
34 taxation annually under this chapter. Such property shall be  
35 valued and assessed at the taxable value prescribed by law. Land  
36 in agricultural or horticultural use which is being taxed under the  
37 Farmland Assessment Act of 1964, [chapter 48, laws of 1964]  
38 P.L.1964, c.48 (C.54:4-24.1 et seq.), shall be valued and assessed  
39 as provided by [said] that act. An executory contract for the sale  
40 of land, under which the vendee is entitled to or does take  
41 possession thereof, shall be deemed, for the purpose of this act, a  
42 mortgage of said land for the unpaid balance of purchase price.

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 amendments adopted in accordance with Governor's  
recommendations June 4, 1992.

1 Personal property taxable under this chapter shall include,  
2 however, only the machinery, apparatus or equipment of a  
3 petroleum refinery that is directly used to manufacture  
4 petroleum products from crude oil in any of the series of  
5 petroleum refining processes commencing with the introduction  
6 of crude oil and ending with refined petroleum products, but shall  
7 exclude items of machinery, apparatus or equipment which are  
8 located on the grounds of a petroleum refinery but which are not  
9 directly used to refine crude oil into petroleum products and the  
10 tangible goods and chattels, exclusive of inventories, used in  
11 business of local exchange telephone, telegraph and messenger  
12 systems, companies, corporations or associations subject to tax  
13 under [chapter 4, laws of 1940] P.L.1940, c.4 (C.54:30A-16  
14 et seq.), as amended, and shall not include any intangible personal  
15 property whatsoever whether or not such personalty is evidenced  
16 by a tangible or intangible chose in action except as otherwise  
17 provided by [section] R.S.54:4-20 [hereof]. As used in this  
18 section, "local exchange telephone company" means a  
19 telecommunications carrier providing dial tone and access to  
20 substantially all of a local telephone exchange. Property omitted  
21 from any assessment may be assessed by the county board of  
22 taxation, or otherwise, within such time and in such manner as  
23 shall be provided by law. Real property taxable under this  
24 chapter means all land and improvements thereon and includes  
25 personal property affixed to the real property or an appurtenance  
26 thereto, unless:

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

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

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

33 b. The personal property so affixed is machinery, apparatus, or  
34 equipment [which is neither functionally essential to a structure  
35 the personal property is within or to which the personal property  
36 is affixed nor constitutes a structure itself] used or held for use  
37 in business and is neither a structure nor machinery, apparatus or  
38 equipment the primary purpose of which is to enable a structure  
39 to support, shelter, contain, enclose or house persons or  
40 property. <sup>1</sup>For purposes of this subsection, real property shall  
41 include pipe racks, and piping and electrical wiring up to the  
42 point of connections with the machinery, apparatus, or equipment  
43 of a production process as defined in this section.<sup>1</sup>

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

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

1 implement and administer the provisions of this act.

2 (cf: P.L.1989, c.2, s.4)

3 4. (New section) As used in R.S.54:4-1 and section 3 of  
4 P.L.1986, c.117 (C.54:4-1.12):

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

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

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

16 <sup>1</sup>["Tank used or held for use directly and primarily in the  
17 manufacture, assembly, refining or processing of property" means  
18 a tank necessary to, and used more than fifty percent of the time  
19 in, a production process. A tank primarily used to store raw  
20 materials for use in a production process or to store finished  
21 product at the completion of a production process is not a tank  
22 used or held for use directly and primarily in the manufacture,  
23 assembly, refining or processing of property.]<sup>1</sup>

24 "Used or held for use in business" means any item of  
25 machinery, apparatus or equipment used or held for use in a  
26 business transaction, activity, or occupation conducted for profit  
27 in New Jersey.

28 5. Section 3 of P.L.1986, c.117 (C.54:4-1.12) is amended to  
29 read as follows:

30 3. For the purpose of chapter 4 of Title 54 of the Revised  
31 Statutes and notwithstanding the provisions of R.S.54:4-1, a  
32 storage<sup>1</sup> tank having a capacity of more than 30,000 gallons is  
33 deemed to be real property <sup>1</sup>[unless it is used or held for use  
34 directly and primarily in the manufacture, assembly, refining or  
35 processing of property]. The fact that products are mixed,  
36 blended, heated or subjected to a similar non-production process  
37 within a storage tank shall not in itself render that tank personal  
38 property.<sup>1</sup>

39 (cf: P.L.1986, c.117, s.3)

40 <sup>1</sup>6. (New section) If a determination shall be made, either by  
41 an assessor or in a judicial proceeding, that a taxpayer is entitled  
42 to a reduction in assessment on the grounds that a municipality,  
43 on the date of this enactment, was taxing as real property items  
44 of machinery, apparatus, and equipment excluded from taxation  
45 by this enactment, the municipality shall be entitled to assess  
46 that property as personal property and to tax that property in  
47 decreasing amounts over a period of five years, at the  
48 municipality's general tax rate, in accordance with all laws and  
49 procedures established for taxing real property, and in  
50 accordance with the following schedule:

51 First year of reduction: 20% of the total reduction that the  
52 taxpayer would otherwise be entitled to;

53 Second year of reduction: 40% of the total reduction that the  
54 taxpayer would otherwise be entitled to;

1 Third year of reduction: 60% of the total reduction that the  
2 taxpayer would otherwise be entitled to;

3 Fourth year of reduction: 80% of the total reduction that the  
4 taxpayer would otherwise be entitled to;

5 Fifth year of reduction and all years thereafter: 100% of the  
6 total reduction;

7 Provided, however, that the taxpayer may challenge an  
8 assessor's determination under this subsection in a judicial  
9 proceeding, and that in such a proceeding the municipality shall  
10 bear the burden of proving a preponderance of the evidence (a)  
11 that the item or items had previously been assessed and (b) the  
12 assessed value of the item or items.<sup>1</sup>

13 <sup>1</sup>[6.] <sup>1</sup>7.<sup>1</sup> This act shall take effect immediately and <sup>1</sup>[apply to  
14 all property assessments made after December 31, 1991, and  
15 apply to any proceeding pending in any court or county tax board  
16 on its date of enactment] shall only apply to property assessments  
17 made after the date of enactment and to all tax appeals pending  
18 at the time of enactment regardless of the tax year in question<sup>1</sup>.

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Excludes certain business property from local property taxation.

SENATE, No. 332

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INTRODUCED FEBRUARY 10, 1992

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10 business of local exchange telephone, telegraph and messenger  
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25 3. For the purpose of chapter 4 of Title 54 of the Revised  
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28 real property unless it is used or held for use directly and  
29 primarily in the manufacture, assembly, refining or processing of  
30 property.

31 (cf: P.L.1986, c.117, s.3)

32 6. This act shall take effect immediately and apply to all  
33 property assessments made after December 31, 1991, and apply  
34 to any proceeding pending in any court or county tax board on its  
35 date of enactment.

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#### STATEMENT

39

40 This bill provides refinements in the definitions of real and  
41 personal property and is intended to reaffirm the exclusion of  
42 business personal property from local property taxes.

43 The need for clear definitions to differentiate real property  
44 from personal property has been apparent since the  
45 implementation of P.L.1966, c.136 and c.138 by which the State  
46 preempted the taxation of business personal property as "tangible  
47 goods and chattels used or held for use in any business,  
48 transaction, activity or occupation conducted for profit," but  
49 defined as real property "goods and chattels so affixed to real  
50 property as to become part thereof and not to be severable or  
51 removable without material injury thereto." In applying those  
52 definitions, the Supreme Court of New Jersey correctly discerned  
53 a legislative intent "to create in New Jersey a fiscal climate that  
54 will contribute to the attraction of industry. A



1 significant step in the implementation of this legislative endeavor  
2 was the removal of the burden of local property taxation from  
3 machinery and equipment use in business." *City of Bayonne v.*  
4 *Port Jersey Corporation* 79 N.J. 367, at 380 (1979).

5 In 1986, the Legislature recognized the need to further  
6 differentiate between real and personal property to redress a  
7 perceived erosion of the municipal real property tax base  
8 resulting from Tax Court decisions which held that large  
9 petroleum storage tanks and equipment necessary to the use of a  
10 building were personal property. P.L.1986, c.117, attempted to  
11 refine the definition of real property both to preserve the  
12 municipal real property tax base and to reaffirm the broad  
13 exclusion of business personal property from local taxation.  
14 Excluded from the definition of real property (R.S.54:4-1.b.) was  
15 "machinery, apparatus or equipment which is neither functionally  
16 essential to a structure the personal property is within or to  
17 which the personal property is affixed nor constitutes a structure  
18 itself." The terms "structure" and "functionally essential to a  
19 structure," were not defined. Recent New Jersey Tax Court  
20 decisions interpreting those terms have created discriminatory  
21 classifications, based on whether machinery, apparatus or  
22 equipment is affixed to a general purpose property or a special  
23 purpose property.

24 This legislation is intended to replace the classifications  
25 established by *Texas Eastern Transmission Corp. v. Div. of*  
26 *Taxation* 11 N.J. Tax 198 (1990), *Badische Corp. v. Kearny*, 11  
27 N.J. Tax 385 (1990), and other recent Tax Court decisions which  
28 have greatly narrowed the class of business personal property  
29 excluded from local taxation. Under R.S.54:4-1.b., as amended  
30 by this Act, items of machinery, apparatus or equipment used in  
31 the conduct of a business are defined as personal property  
32 regardless of the class or type of real property to which such  
33 items may be affixed. Such items are defined as real property  
34 only if they constitute a structure, as defined in this Act, or are  
35 primarily used to enable a structure to support, shelter, contain,  
36 enclose or house persons or property. Examples of machinery,  
37 apparatus or equipment which become part of real property would  
38 include a central heating or air conditioning system, elevators,  
39 escalators, tacked wall to wall carpeting, suspended ceilings,  
40 fixed or moveable partitions, plumbing and plumbing fixtures  
41 connected to a plumbing system, overhead lighting, a sprinkler  
42 system, piping and electric wiring up to the point of connection  
43 with a manufacturing process or other business conducted within  
44 the structure, a central hot water system, or a boiler primarily  
45 used to supply a central hot water system or central heating  
46 system.

47 Machinery, apparatus and equipment used in cogeneration and  
48 independent power production falls within the definition of  
49 personal property. New Jersey has maintained a clear and  
50 consistent policy towards alternative power generation.  
51 Legislative findings and determinations set forth in P.L.1987,  
52 C.365, the Department of Commerce and Economic Development  
53 Act, state that "a secure, stable and adequate supply of energy at

1 reasonable prices" is essential to achievement of the goals of  
2 maximizing economic growth, promoting employment and  
3 ensuring general prosperity in the State. The Legislative  
4 determined that a principal method of achieving those goals was  
5 "the widespread use of alternative energy sources, including  
6 electric cogeneration of energy, with independent power  
7 producers selling excess power to utilities," and that the  
8 Legislature should "promote and assist the development and  
9 utilization of cogeneration of energy."

10 P.L.1966, c.138, created an exception to the State preemption  
11 of business personal property taxation for "tangible goods and  
12 chattels, exclusive of inventories, used in business of local  
13 exchange telephone, telegraph and messenger systems." This Act  
14 creates a further exception applicable to the machinery,  
15 apparatus and equipment of a petroleum refinery. Whatever the  
16 Legislature's intent in 1966, machinery, apparatus and equipment  
17 used in petroleum refineries continued to be taxed by  
18 municipalities, without interruption. To fail to provide  
19 municipalities the power to tax this class of personal property  
20 would cause a significant loss of tax base in host municipalities,  
21 increasing property tax rates and placing an additional burden on  
22 residential property owners. To protect against these injurious  
23 consequences, this Act provides that petroleum refinery property,  
24 both real and personal, is subject to local property taxes.  
25 "Petroleum refinery" is defined to include real and personal  
26 property used directly in petroleum refining. The definition is  
27 intended to include all property of petroleum refineries  
28 historically subject to local property taxes; however, it is not  
29 intended that items of machinery, apparatus or equipment used  
30 for such purposes as cogeneration or for chemical or  
31 petrochemical manufacturing be taxable as real property even if  
32 they are located on the grounds of a petroleum refinery.

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35

36

37 Excludes certain business property from local property taxation.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 332

STATE OF NEW JERSEY

DATED: FEBRUARY 24, 1992

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 332.

Senate Bill No. 332, "The Business Retention Act", amends the description of locally taxable property to reaffirm the Legislature's regularly stated position of excluding machinery, apparatus and equipment used or held for use in business from local taxation.

To reject and reverse the classification of property and narrowing of business property exclusions accomplished by a series of recent New Jersey Tax Court decisions, including Texas Eastern v. Div. of Taxation, 11 N.J.Tax 198 (1990); Am. Hydro Power Partners v. Clifton, 11 N.J.Tax 12 (1990); and Badische Corporation v. Town of Kearny, 11 N.J.Tax 385 (1990), the bill amends subsection b. of R.S.54:4-1 to specify that items of machinery, apparatus or equipment used in the conduct of a business are defined as personal property regardless of the class or type of real property to which such items may be affixed. Such items are defined as locally taxable real property only if they constitute a structure, as defined in the bill, or are primarily used to enable a structure to support, shelter, contain, enclose or house persons or property. Examples of machinery, apparatus or equipment which enable a structure to house persons or property, and which are therefore locally taxable, include central heating or air conditioning systems, elevators, suspended ceilings, affixed partitions, plumbing and plumbing fixtures connected to a plumbing system, overhead lighting, sprinkler systems, piping and electric wiring up to the point of connection with a manufacturing process within the structure, and a central hot water system or the boiler primarily used to supply it.

However, the bill provides that the machinery, apparatus or equipment of a petroleum refinery directly used for refining crude oil into petroleum products is taxable by local taxing districts. Equipment used for such other purposes as chemical or petrochemical manufacturing is not included in the locally taxable property even if it is located on the grounds of a petroleum refinery.

FISCAL IMPACT

There are no compiled data that would permit an estimate of the amount of business property, currently assessed for local taxing purposes, that would become exempt from local taxation under the bill. A number of assessments are currently under appeal; the provisions of the bill apply to cases pending at the time of its enactment as well as to future assessments.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

June 1, 1992

SENATE BILL NO. 332

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I herewith return Senate Bill No. 332 with my objections for consideration.

This bill would clarify the standard set forth in N.J.S.A. 54:4-1 for determining when business machinery and equipment constitutes real property for purposes of local taxation. In particular, the bill would exempt any machinery "used or held for use in business," but would allow municipalities to tax as real property any machinery that "enable[s] a structure to support, shelter, contain, enclose or house persons or property." In addition, the bill categorizes machinery and equipment associated with oil refineries as taxable personal property.

At least since 1966, this State has consistently adhered to a policy of exempting most forms of business machinery and equipment from local taxation. Over that time, however, the State has struggled with the narrower and more technical question of where to draw the line between real and personal property. In 1986, the Legislature attempted to clarify this question by amending N.J.S.A. 54:4-1 to provide that business machinery and equipment may only be taxed as real property if it is "functionally essential" to a structure to which it is attached. In accordance with the Legislature's intent, the Division of Taxation in 1987 promulgated a series of regulations further providing that machinery is "functionally essential" to a structure when it renders that structure "habitable" to persons or property. Between 1986 and 1990, these standards for taxing business machinery and equipment remained stable and unchanged.

In 1990, however, the Tax Court upset this arrangement in Texas Eastern Transmission Corp. v. Division of Taxation, 11 N.J. Tax 198 (1990). In that case, the Tax Court invalidated the Division of

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

Taxation's regulations, holding that machinery and equipment may be taxed so long as it serves a structure's particular manufacturing purpose. This case has been stayed on appeal pending the outcome of this legislation.

This bill is intended to restore clarity to this area of the law by reversing the Texas Eastern case, and by enacting into law the basic concepts contained in current regulations. I agree with the Legislature that by extending the definition of real property to include machinery serving a structure's manufacturing purpose, the Tax Court misinterpreted the 1986 amendments. The Legislature's intent in 1986 was to make the distinction between real and personal property turn upon the concept of "habitability." Thus, the Legislature intended to draw a distinction between machinery that participates in the manufacturing process (and is therefore exempt), and machinery that accommodates that process (and is therefore taxable). I agree with the Legislature that this framework is conceptually sound, judicially workable, and perfectly consistent with the State's long-standing policy of exempting business personal property from the local tax base.

At the same time, however, we must make certain that our actions do not result in any reductions in the size of the industrial tax base. While it is certainly important for the State to maintain tax policies that foster an attractive environment for business, we must also continue our commitment to the equally essential goal of keeping property taxes down for our homeowners. Industry must of course continue to pay its fair share to local communities, and we cannot therefore tolerate any shift in tax burden to the State's homeowners.

I am therefore pleased that the Legislature has sent me a bill that is narrowly tailored to reverse the Texas Eastern decision, and which will not shift the local tax burden to homeowners. This bill replaces the ambiguous "functionally essential" test with a standard that more clearly expresses the Legislature's intent in 1986, and which closely parallels current regulations. This bill goes no further than to elevate current regulations into law. It is

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intended neither to expand nor narrow the standards contained in those regulations. Since this bill does not change current standards, I am confident that this bill will have little, if any, effect upon taxing practices across this State. Rather, the effect of this bill will be simply to reverse the Texas Eastern case, and to keep the size of the industrial tax base the same as it has been since 1986 -- no larger, no smaller.

Nevertheless, I believe that this bill should be amended in a variety of ways to provide even greater assurances to municipalities. Although it is true that this bill adopts the general standards embodied in the Division of Taxation's regulations, the bill's precise language differs in some respects from those regulations. In that regard, municipalities have expressed a particular concern about the way in which this bill would affect certain items, including piping, pipe racks, electrical wiring, and storage tanks -- items which have traditionally been taxable as real property. I am therefore recommending that the Legislature amend this bill to reassure the municipalities that these items will remain fully taxable.

In addition, I am recommending a measure that will provide an added measure of insurance to our municipalities. Although I am confident that this bill will not affect local taxing practices across this State, I want to provide municipalities with protection in the event that the bill does have some effect in isolated instances. As a result, I am recommending an amendment providing that if this bill causes any reductions in assessments, the municipalities may make those reductions gradually, rather than all at once. In particular, this provision would allow a municipality to make any reductions under this act over a five-year period of time, in equal increments.

Therefore, I herewith return Senate Bill No. 332 and recommend that it be amended as follows:

Page 2, Section 3b, Line 38: After "property." insert "For purposes of this subsection, real property shall include pipe racks, and

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pipng and electrical wiring up to the point of connection with the machinery, apparatus, or equipment of a production process as defined in this section."

Page 3, Section 4, Lines 11-18: Delete in entirety.

Page 3, Section 5, Line 26: Before "tank" insert "storage".

Page 3, Section 5, Lines 28-30: After "property" delete "unless it is used or held for use directly and primarily in the manufacture, assembly, refining or processing of property." insert ". The fact that products are mixed, blended, heated, or subjected to a similar non-production process within a storage tank shall not in itself render that tank personal property."

Page 3, New Section: Insert new Section 6 as follows:

"6. If a determination shall be made, either by an assessor or in a judicial proceeding, that a taxpayer is entitled to a reduction in assessment on the grounds that a municipality, on the date of this enactment, was taxing as real property items of machinery, apparatus, and equipment excluded from taxation by this enactment, the municipality shall be entitled to assess that property as personal property and to tax that property in decreasing amounts over a period of five years, at the municipality's general tax rate, in accordance with all laws and procedures established for taxing real property, and in accordance with the following schedule:

First year of reduction: 20% of the total reduction that the taxpayer would otherwise be entitled to;

Second year of reduction: 40% of the total reduction that the taxpayer would otherwise be entitled to;

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Third year of reduction: 60% of the total reduction that the taxpayer would otherwise be entitled to;

Fourth year of reduction: 80% of the total reduction that the taxpayer would otherwise be entitled to;

Fifth year of reduction and all years thereafter: 100% of the total reduction;

Provided, however, that the taxpayer may challenge an assessor's determination under this subsection in a judicial proceeding, and that in such a proceeding the municipality shall bear the burden of proving by a preponderance of the evidence (a) that the item or items had previously been assessed and (b) the assessed value of the item or items."

Page 3, Section 6, Lines 32-35: Change to Section 7. After "and" delete in entirety and insert "shall only apply to property assessments made after the date of enactment and to all tax appeals pending at the time of enactment regardless of the tax year in

Respectfully

/s/ Jim Florio

GOVERNOR

[seal]

Attest:

/s/ M. Robert DeCotiis

Chief Counsel to the Governor





S417, S332

## OFFICE OF THE GOVERNOR NEWS RELEASE

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Friday,  
May 29, 1992

### GOV. FLORIO OUTLINES CONDITIONS FOR SIGNING PERMIT EXTENSION & BUSINESS RETENTION

Expressing concern over the need to preserve New Jersey's supply of clean, pure drinking water, Governor Jim Florio announced today that he will conditionally veto the Permit Extension bill so that it can strike a better balance that both stimulates the state's construction industry and protects New Jersey's environmental quality of life.

The Governor also announced that he will conditionally veto the Business Retention bill, so it can better achieve its desired goals of enhancing the state's business climate and at the same time making sure no additional property tax burdens are put on the shoulders of homeowners. Conditional veto messages will be sent to the Legislature on Monday.

"I support the concept of both measures," Gov. Florio said. "They are well-intentioned and they reflect the need to do everything possible to help our state's businesses deal with the devastating effects of this national recession."

#### PERMIT EXTENSION

S-417 would extend until Dec. 31, 1994, construction-related permits granted since Jan. 1, 1989, even if the permits would have expired before that date. The measure is aimed at helping the state's construction industry because many projects have been delayed by the "credit crunch" and other economic difficulties. "To force businesses back to square one in the permit process because of problems beyond their control would be unfair," Governor Florio said.

However, to strike the appropriate balance, his signature on the law will be dependent upon one condition: the exemption from automatic permit renewal of projects covered by existing wetlands protection legislation. The Freshwater Wetlands Act of 1987 set up a system for preserving buffer areas around some wetlands. Some projects had been exempted from the 1987 act, but they will be subject to it upon expiration of any approvals if the projects have not yet been started.

"Protecting our freshwater wetlands is crucial to preserving our supply of pure drinking water and maintaining New Jersey's quality of life. At the same time we do everything possible to create jobs and help business through tough times, we have to make sure we do nothing to threaten a precious resource now or in the future."

New Jersey's wetlands have, unfortunately, been greatly reduced during past years. By soaking up falling rain, these wetlands replenish and purify our drinking water supply. They also absorb stormwater runoff in a way that naturally protects

people and property from the dangers of floods.

#### **BUSINESS RETENTION**

S-332 was devised to undo the damaging effects of a 1990 tax court ruling that would have meant such items as business machines could be subject to property taxes as though they were buildings. These items traditionally were not considered real property.

The court ruling was stayed, pending the outcome of S-332. "I agree with the Legislature on the incorrectness of the tax court ruling," Gov. Florio said. "Business machinery and equipment should be exempt from local property taxes. But as we foster an attractive climate for business, New Jersey must keep its commitment to homeowners to keep down property taxes. Legislation that improves the situation for business by shifting tax burdens to homeowners would not be beneficial to our state."

As written, S-332 will have little, if any, impact on tax practices in New Jersey. However, to provide municipalities and homeowners with a greater degree of certainty, Gov. Florio's conditional veto asks that safeguards be included:

\* To address specific concerns of municipalities about how the measure affects such traditionally taxable property as piping, pipe racks, electrical wiring, and storage tanks, the bill should be amended to state that they will remain fully taxable.

\* Since no law can guarantee against some adverse affects in isolated instances, municipalities should be protected by an assurance that if any reduction in the industrial tax base does occur, it will be phased in. Gov. Florio recommends a phase in over five years in cases where a municipality has taxed as real property an item that should have been exempted.

"There are legitimate concerns that can be harmonized so this worthwhile legislation protects businesses and homeowners in a way that makes sure we all move ahead," Gov. Florio said.

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