

SENATE, No. 3209

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED OCTOBER 17, 2022

Sponsored by:

Senator HOLLY T. SCHEPISI

District 39 (Bergen and Passaic)

SYNOPSIS

Concerns the taxation of certain business personal property.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning the taxation of business personal property and
2 amending R.S.54:4-1.

3

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

6

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

8 54:4-1. All property real and personal within the jurisdiction of
9 this State not expressly exempted from taxation or expressly
10 excluded from the operation of this chapter shall be subject to
11 taxation annually under this chapter. Such property shall be valued
12 and assessed at the taxable value prescribed by law. Land in
13 agricultural or horticultural use which is being taxed under the
14 "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et
15 seq.), shall be valued and assessed as provided by that act. An
16 executory contract for the sale of land, under which the vendee is
17 entitled to or does take possession thereof, shall be deemed, for the
18 purpose of this act, a mortgage of said land for the unpaid balance
19 of purchase price. Personal property taxable under this chapter
20 shall include, however, only the machinery, apparatus or equipment
21 of a petroleum refinery that is directly used to manufacture
22 petroleum products from crude oil in any of the series of petroleum
23 refining processes commencing with the introduction of crude oil
24 and ending with refined petroleum products, but shall exclude items
25 of machinery, apparatus or equipment which are located on the
26 grounds of a petroleum refinery but which are not directly used to
27 refine crude oil into petroleum products; and the tangible goods and
28 chattels, exclusive of inventories, used in business of local
29 exchange telephone, telegraph and messenger systems, companies,
30 corporations or associations that were subject to tax as of April 1,
31 1997 under P.L.1940, c.4 (C.54:30A-16 et seq.) as amended, and
32 the tangible goods and chattels, including but not limited to small
33 cell network nodes, of wireless telephone companies, and shall not
34 include any intangible personal property whatsoever whether or not
35 such personalty is evidenced by a tangible or intangible chose in
36 action except as otherwise provided by R.S.54:4-20. As used in this
37 section, "local exchange telephone company" means a
38 telecommunications carrier that as of April 1, 1997 was providing
39 dial tone and access to **[51% of]** a local telephone exchange; and
40 "wireless telephone company" means any person providing
41 commercial mobile radio service as defined in 47 U.S.C.s.332 (d).
42 Property omitted from any assessment may be assessed by the
43 county board of taxation, or otherwise, within such time and in such
44 manner as shall be provided by law. Real property taxable under
45 this chapter means all land and improvements thereon and includes

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.

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1 personal property affixed to the real property or an appurtenance
2 thereto, unless:

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

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

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

9 b. The personal property so affixed is machinery, apparatus, or
10 equipment used or held for use in business and is neither a structure
11 nor machinery, apparatus or equipment the primary purpose of
12 which is to enable a structure to support, shelter, contain, enclose or
13 house persons or property. For purposes of this subsection, real
14 property shall include pipe racks, and piping and electrical wiring
15 up to the point of connections with the machinery, apparatus, or
16 equipment of a production process as defined in this section.

17 c. (Deleted by amendment, P.L.2004, c.42).

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

25 The Director of the Division of Taxation in the Department of
26 the Treasury may adopt rules and regulations pursuant to the
27 provisions of the "Administrative Procedure Act," P.L.1968,
28 c.410 (C.52:14B-1 et seq.) as may be deemed necessary to
29 implement and administer the provisions of this act.

30 As used in this section, "small cell network node" means a low –
31 powered radio access node that generally consist of small radios
32 and antennas that are two or three feet long and placed on existing
33 and new utility poles, street lights, signs, and signal light poles with
34 the purpose of increasing the capacity of wireless network service.

35 (cf: P.L.2004, c.42, s.13)

36

37 2. Section 69 of P.L.1997, c.162 (C.54:30A-124) is amended to
38 read as follows:

39 69. a. No municipal, regional, or county governmental agency
40 may impose any fees, taxes, levies or assessments in the nature of a
41 local franchise, right of way, or gross receipts fee, tax, levy or
42 assessment against energy companies subject to the provisions of
43 P.L.1940, c.5 (C.54:30A-49 et seq.) prior to January 1, 1998 or
44 telecommunication companies. Nothing in this section shall be
45 construed as a bar to reasonable fees for actual services made by
46 any municipal, regional or county governmental agency. Nothing
47 in this section shall be construed to affect the franchising process or
48 the assessment of franchise fees with respect to the provision of

1 cable television service in accordance with the provisions of
2 P.L.1972, c.186 (C.48:5A-1 et seq.).

3 b. Nothing in this section shall be construed to limit municipal
4 taxation of real or personal property pursuant to R.S.54:4-1 of local
5 exchange telephone, telegraph and messenger systems, companies,
6 corporations or associations, and wireless telephone companies, as
7 defined in R.S.54:4-1 [that were subject to tax under P.L.1940,
8 c.4 (C.54:30A-16 et seq.) as of April 1, 1997].
9 (cf: P.L.1997, c.162, s.69)

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11 3. This act shall take effect January 1 next following
12 enactment.

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STATEMENT

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17 This bill clarifies the application of the business personal
18 property tax on local exchange telephone companies that were
19 subject to the tax as of April 1, 1997. This bill clarifies the changes
20 made in 1997 to the business personal property tax that defined
21 local exchange telephone companies that were subject to that tax as
22 of April 1, 1997. The Tax Court in Verizon New Jersey Inc. v.
23 Hopewell Borough, which was decided on June 26, 2012, has
24 incorrectly construed the plain meaning of the language of the
25 statutory change made in 1997. That statutory change was intended
26 to grandfather into the local property tax base the business personal
27 property of all incumbent local exchange companies that were then
28 subject to that tax and were a telecommunications carrier then
29 meeting the one time definition, not an annual redefinition, of
30 providing dial tone and access to 51% of a local telephone
31 exchange. Local exchange telephone companies have taken
32 advantage of the incorrect interpretation of the statute and has
33 informed 65 municipalities that it will no longer pay tax on its
34 business personal property, such as equipment, utility poles, cables
35 and more in any given municipality where it claims on an annual
36 basis that it does not provide 51% or more of landline service to its
37 residents. This unintended erosion of the local property tax base
38 will impact all other local property taxpayers in these and possibly
39 more municipalities. This bill will restore the intended local
40 property tax status quo intended to be determined in 1997.

41 This bill also imposes the business personal property tax on the
42 business personal property of wireless telephone companies. That
43 business personal property would include small cell network nodes,
44 which are low –powered radio access nodes that generally consist of
45 small radios and antennas that are two or three feet long and placed
46 on existing and new utility poles, street lights, signs, and signal
47 light poles with the purpose of increasing the capacity of wireless
48 network service.