

SUBCHAPTER 1. GENERAL PROVISIONS

18:25-1.2 Definitions

The following words and terms when used in this chapter, shall have the following meanings unless context clearly indicates otherwise[.]:

“Apartment” means a complete housekeeping unit of real property, either constructed or modified for such use, which has as part of its permanent physical design, kitchen and bath facilities located within such unit.

...
“Luxury tax” means the Retail Sales Tax in Fourth Class Cities, N.J.S.A. 40:48-8.15[,] et seq. (P.L. 1947, [c.71] c. 71).

...
“Retail sale” or “sale at retail” means and includes:

1. Any sale in the ordinary course of business for consumption of whiskey, beer, or other alcoholic beverages by the drink in restaurants, cafes, bars, hotels, and other similar establishments;

2. Any cover charge, minimum charge, entertainment, or other similar charge made to any patron of any restaurant, cafe, bar, hotel, or other similar establishment;

3. (No change.)

4. The hiring of any rolling chair, beach chair, or cabana; and

5. The granting or sale of any ticket, license, or permit for admission to any theatre, moving picture exhibition or show, pier, exhibition, or place of amusement, except charges for admission to boxing, wrestling, kick boxing or combative sports events, matches, or exhibitions, which charges are taxed pursuant to section 20 of P.L. 1985, [c.83] c. 83 (N.J.S.A. 5:2A-20).

...
“Vendor” or “seller” means any person selling or hiring property or services to another person upon the receipts from which a tax is imposed.

18:25-1.3 [Luxury tax forms and instructions enumerated] (Reserved)

(a) ST-250, Combined Atlantic City luxury tax; State sales tax monthly return.

(b) ST-250A, Instructions for filing ST-250.]

18:25-1.5 Tax rates

(a) (No change.)

(b) [The] **From July 15, 2006 through December 31, 2016, the combined rate for sales subject to both the Atlantic City luxury tax and New Jersey sales and use tax is 13 percent (luxury tax at nine percent and sales and use tax at four percent). From January 1, 2017 through December 31, 2017, the combined rate for sales subject to both the Atlantic City luxury tax and New Jersey sales and use tax is 12.875 percent (luxury tax at nine percent and sales and use tax at 3.875 percent). Beginning January 1, 2018, the combined rate for sales subject to both the Atlantic City luxury tax and New Jersey sales and use tax is 12.625 percent (luxury tax at nine percent and sales and use tax at 3.625 percent).**

(c) Sales subject only to New Jersey sales and use tax are taxable at [a rate of seven percent] **the applicable rate as set forth in the Sales and Use Tax Act.**

(d) [Sales] **From July 15, 2006 through December 31, 2016, sales of alcoholic beverages by the drink in Atlantic City are taxable at the combined rate of 10 percent (luxury tax at three percent and sales and use tax at seven percent). From January 1, 2017 through December 31, 2017, the combined rate is 9.875 percent (luxury tax at three percent and sales and use tax at 6.875 percent). Beginning January 1, 2018, the combined rate is 9.625 percent (luxury tax at three percent and sales and use tax at 6.625 percent).** Sales of package goods are subject only to New Jersey sales and use tax at the [rate of seven percent] **applicable rate as set forth in the Sales and Use Tax Act.**

SUBCHAPTER 2. ROOM AND APARTMENT RENTALS

18:25-2.2 Luxury tax on room and apartment rentals

[(a)] The rental of a room or rooms, with or without service, in hotels, motels, rooming houses, inns, boarding houses, **apartments**, or private

homes is subject to luxury tax.

[(b)] The rental of apartments is subject to luxury tax. For the purposes of this subchapter, an apartment is defined to be a complete housekeeping unit of real property, either constructed or modified for such use, which has as part of its permanent physical design, kitchen and bath facilities located within such unit.]

18:25-2.4 Exemption from luxury tax on room and apartment rentals

(a) The following room and apartment rentals are exempt from luxury tax.

1. The rental of a room or rooms by a person who resides [therein] **in it** as a permanent resident of Atlantic City. A permanent resident is any person who:

i.-ii. (No change.)

2. The rental of a room or rooms or an apartment by any person where the rent is paid directly by an agency of New Jersey State, county, or municipal government, or by any agency of the United States of America. Where the rent is not paid directly by the governmental agency, it is subject to the luxury tax.

i. For example: A State government employee is in Atlantic City on government business. [He] **The employee** pays for the occupancy of a room in a motel[,] **and** the expense [to] **will** be reimbursed by an agency of State government. The rental is subject to luxury tax.

3. The room rents received by [a church or bona fide charitable association not conducted for profit] **an exempt organization**. This exemption is limited to rentals [which] **that** are directly related to the purpose for which the [church or association] **exempt organization** was organized. (See **N.J.A.C. 18:24-9.1**)

4. The isolated rental of a room, apartment, or single family dwelling by a person not engaged in a course of repeated and successive **similar** transactions [of like character].

5. That portion of a room rental attributable to the provision of food service to the occupant or boarder[; for example, American Plan].

6. (No change.)

(b) Every rental of a room or rooms [and] **or** apartment[s] is subject to luxury tax unless exempt from tax as provided in (a) above. There is no exemption from luxury tax by reason of an exemption from sales tax in this State.

[1.] For example[: An], **an organization** [holding a valid] **that has applied for and received a** New Jersey Exempt Organization Certificate (Form ST-5) arranges for the occupancy of rooms in a hotel for members attending a convention. The rental charge is invoiced to and directly paid by the organization. The room rentals are subject to luxury tax [inasmuch as said tax] **because the law** does not provide an exemption for such organizations. However, the room rentals are not subject to [the State] sales tax provided the vendor is given a copy of the organization's [Exempt Organization Certificate (]Form ST-5)] by the organization] **and payment is made from the organization's funds.** (See **N.J.A.C. 18:24-9.12**)[.]

(a)

DIVISION OF TAXATION

Spill Compensation and Control Tax

Proposed Readoption with Amendments: N.J.A.C. 18:37

Authorized By: John J. Ficara, Acting Director, Division of Taxation.

Authority: N.J.S.A. 58:10-23.11t.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2018-054.

Submit written comments by August 17, 2018, to:

Elizabeth J. Lipari
 Administrative Practice Officer
 Division of Taxation
 50 Barrack Street

PO Box 269
Trenton, NJ 08695-0269
E-mail: Tax.RuleMakingComments@treas.nj.gov.

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, N.J.A.C. 18:37 was scheduled to expire on May 13, 2018. As the Division of Taxation (Division) filed this notice of proposal with the Office of Administrative Law prior to that date, the expiration date of the chapter is extended 180 days to November 9, 2018, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Division has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Division proposes to readopt all subchapters as there were no recent changes to the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.). Only minor, non-substantive amendments are being proposed.

The rules proposed for readoption with amendments are intended to provide guidance to taxpayers under the provisions imposing the spill compensation and control tax as set out in the Spill Compensation and Control Act.

The Spill Compensation and Control Act became effective April 1, 1977. Tax liability is incurred when hazardous substances are transferred to a major facility or vessel within the jurisdiction of the State of New Jersey from another major facility located either within or outside of New Jersey. The tax burden falls upon the operator or owner of the receiving major facility or vessel, irrespective of the ownership of the hazardous substance transferred, except for transfers to certain major facilities designated as public storage terminals. Spill compensation and control tax liability is limited to the first transfer of a hazardous substance into New Jersey. A subsequent transfer of a hazardous substance or any product derived from it is exempt from tax liability when the transferee receives a valid secondary transfer certificate from the transferor.

P.L. 2004, c. 50 provided for an increase in the applicable tax rates for the transfers of petroleum products, non-petroleum products, hazardous substances containing precious metals, elemental phosphorous, and elemental antimony and antimony trioxide for fire retardants. However, no change to the tax rates has been enacted since the last readoption of this chapter.

The rules proposed for readoption with amendments describe the tax imposed on the transfer of hazardous substances and the rates. Throughout the chapter, amendments are proposed to update terminology, correct grammar and punctuation, and remove dates that have passed.

Specifically, the rules proposed for readoption and the proposed amendments follows:

Subchapter 1 provides the imposition of the tax. Subchapter 1 is proposed for readoption with amendments to delete the term “his” in N.J.A.C. 18:37-1.1(e) and replace it with the gender neutral term “its.”

Subchapter 2 contains the tax rates. Subchapter 2 is proposed for readoption with amendments to remove old tax rate information that refers to out-of-date tax periods.

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments provide guidance to taxpayers on how to comply with spill compensation and control tax obligations imposed by the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.), which was enacted to protect the citizens of New Jersey from the adverse effects of environmental mishaps that can result from spills of petroleum products or other hazardous substances in this State.

Economic Impact

The rules proposed for readoption with amendments are expected to have no economic impact on the class of taxpayers that are subject to the spill compensation and control tax since the last rule readoption in 2011 because the rules primarily state and implement basic requirements of

the statutory provisions. Accordingly, the rules proposed for readoption with amendments are anticipated to have minimal, if any, impact.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments are not subject to any Federal requirements or standards. The rules proposed for readoption with amendments concern a State statute imposing a spill compensation and control tax and are independent and separate from Federal standards or requirements.

Jobs Impact

The rules proposed for readoption with amendments will not result in the creation or loss of jobs in the State. The rules proposed for readoption with amendments continue previously established policies for administration of the spill compensation and control tax.

Agriculture Industry Impact

The rules proposed for readoption with amendments will not have an impact on the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments impose reporting, recordkeeping, and compliance requirements on taxpayers as required by N.J.S.A. 58:10-23.11 et seq. The compliance requirements must apply uniformly. Any action to exempt taxpayers that may be small businesses would not be in compliance with applicable statutes. Therefore, no differential requirements based on business sizes have been established. However, the Spill Compensation and Control Act itself imposes the tax on owners or operators of “major facilities,” which includes petrochemical facilities in this State that store at least 200,000 gallons of hazardous substances including petroleum or petroleum products, or 20,000 gallons of other hazardous substances and does not impose the tax on businesses with lower product thresholds (such as gas stations).

The rules proposed for readoption with amendments will have no impact on capital costs. In addition, the rules would not require professional services since the spill compensation and control tax has been in place in prior years. However, there may be some additional costs or accountants’ fees related to the need to monitor certain accounts and/or file returns with the Division. The reporting requirements for major facilities and owners of hazardous substances involve monthly submissions of a Spill Compensation and Control Tax return (Form SCC-5). Public storage terminals are also required to file informational tax returns (Form SCC-6). There are also recordkeeping requirements that involve retaining the records and supporting documents used to complete Forms SCC-5 and SCC-6. These requirements are necessary to ensure the proper tax has been paid. The statute has a cap on annual payments for certain major facilities that were subject to the spill compensation and control tax in 1986 and made payments in 1986 accordingly.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will not result in a change in the average costs associated with housing or on the affordability of housing. The rules proposed for readoption with amendments have no impact on any aspect of housing, including its affordability, because the rules proposed for readoption with amendments concern reporting and recordkeeping requirements for those taxpayers who are obligated to pay the spill compensation and control tax as required under N.J.S.A. 58:10-23.11 et seq.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will not result in a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The rules proposed for readoption with amendments only address the obligation of certain businesses to pay the spill compensation and control tax.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:37.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. IMPOSITION OF TAX

18:37-1.1 Tax imposed on transfer of hazardous substances

(a) The [Spill Compensation] **spill compensation** and [Control Tax] **control tax** is imposed on the transfer of hazardous substances within the jurisdiction (lands and waters) of New Jersey.

(b) (No change.)

(c) The transferee is an owner or operator of a major facility, except as provided in (e) below, which receives a transfer of a hazardous substance. For the purpose of this chapter, a major facility, as defined in the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11[,] et seq., as amended by P.L. 1986, [c.143] **c. 143**, is a facility that has a combined [above ground] **above-ground** or buried storage capacity of:

1.-2. (No change.)

(d) A transferor is liable for the tax[, on and after April 1, 1980,] only when a hazardous substance other than petroleum, which has not been previously taxed, is transferred from a major [in-state] **in-State** facility to a facility [which] **that** is not a major facility, including vessels.

(e) When a hazardous substance is transferred to a major facility [which] **that** qualifies as a public storage terminal [on or after January 18, 1979], the owner of the hazardous substance or [his] **its** authorized agent is a transferee.

1. A “public storage terminal” means a public or privately owned major facility [which] **that** is engaged in the business of providing storage space to the general public and is substantially devoted to the storage of substances owned by others. “Substantially devoted” means at least 95 percent of the hazardous substances stored at each facility at any one time must be owned by interests other than the terminal itself or its individual owners. For purposes of the above calculation there is no need for the facility to include, as hazardous substances owned by such facility, the following:

i. Boiler fuel to be consumed by [such] **the** facility in the creation of heat, hot water, and steam for use on the premises; or

ii. (No change.)

2. The owner of a hazardous substance is any person who holds title to [such] **that** substance upon delivery at the public storage terminal.

(f) [Effective on and after April 1, 1980, for] **For** purposes of (a) above, in the case of the transfer of hazardous substances other than petroleum or petroleum products [which] **that** are or contain any precious metals to be recycled, refined, or rerefined, [such] precious metals shall mean gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium, and copper.

SUBCHAPTER 2. TAX RATES

18:37-2.1 Tax rates on the transfer of petroleum or petroleum products

(a) The tax on transfers of petroleum or petroleum products shall be at the [following] rate[s]: of

[1. On transfers occurring prior to February 1, 1987, \$0.01 per barrel.

2. On transfers occurring on or after February 1, 1987 but prior to July 21, 1990, \$0.0125 per barrel.

3. On transfers occurring on or after July 21, 1990 but prior to January 1, 2004, \$0.0150 per barrel.

4. On transfers occurring on or after January 1, 2004,] \$0.023 per barrel, except as provided in (b) below.

(b) In the event of a major discharge or series of discharges of petroleum or petroleum products resulting in claims against the Spill Compensation Fund [which] **that** exceeded the existing balance of the fund, a tax rate of \$0.04 per barrel on transfers of petroleum or petroleum products shall be levied until the revenue produced by such increased rate equals 150 percent of the total dollar amount of all pending reasonable claims resulting from the discharge of petroleum or petroleum products. The tax rate [as herein set forth] may be less than \$0.04 per barrel transferred if, as provided by the Spill Compensation **and Control** Law, the revenue produced by such lower rate shall be sufficient to pay outstanding claims against the fund within one year of such levy.

18:37-2.2 Tax rates on the transfer of hazardous substances other than petroleum or petroleum products

(a) The tax on transfers of hazardous substances other than petroleum or petroleum products shall be at the rate of]:

1. On transfers occurring prior to April 1, 1980, \$0.01 per barrel; or

2. On transfers occurring on and after April 1, 1980 but prior to November 1, 1980, the greater of \$0.01 per barrel or 0.4 percent of the fair market value of the hazardous substance 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, or which are transferred into this State subsequent to being recycled, refined or rerefined, the tax shall be \$0.01 per barrel of the hazardous substance; or

3. On transfers occurring on or after November 1, 1980, but prior to August 1, 1982, the greater of \$0.04 per barrel or 0.8 percent of the fair market value of the hazardous substance, 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, or which are transferred into this State subsequent to being recycled, refined, or rerefined, the tax shall be \$0.04 per barrel of the hazardous substance. The tax rates specified herein were adopted pursuant to the determination of the Administrator of the Spill Compensation Fund that the condition stated for a tax increase in (c) below existed as of October 17, 1980; or

4. On transfers occurring on or after August 1, 1982, but prior to June 1, 1985, the greater of \$0.01 per barrel or 0.4 percent of the fair market value of the hazardous substance, 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, or which are transferred into this State subsequent to being recycled, refined, or rerefined, the tax shall be \$0.01 per barrel of the hazardous substance. The tax rates specified herein were adopted pursuant to the determination of the Administrator of the Spill Compensation Fund that the condition stated for a tax increase in (c) below no longer existed as of June 21, 1982; or

5. On transfers occurring on or after June 1, 1985, but prior to February 1, 1987, the greater of \$0.04 per barrel or 0.8 percent of the fair market value of the hazardous substance, 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, or which are transferred into this State subsequent to being recycled, refined, or rerefined, the tax shall be \$0.04 per barrel of the hazardous substance. The tax rates specified herein were adopted pursuant to the determination of the Administrator of the Spill Compensation Fund that the condition stated for a tax increase in (c) below existed as of May 1, 1985; or

6. On transfers occurring on or after February 1, 1987 but prior to July 21, 1990, the greater of \$0.0125 per barrel or 1.0 percent of the fair market value of the hazardous substance, 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, or which are transferred into this State subsequent to being recycled, refined or rerefined, the tax shall be \$0.0125 per barrel of the hazardous substance.

7. On transfers occurring on or after July 21, 1990, the greater of \$0.0150 per barrel or 1.0 percent of the fair market value of the hazardous substance 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, or which are transferred into this State subsequent to being recycled, refined or rerefined, the tax shall be \$0.0150 per barrel of the hazardous substance.

8. On transfers occurring on or after June 27, 1997, the greater of \$0.0150 per barrel or 1.0 percent of the fair market value of the hazardous substance 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 elemental phosphorous or any precious metals to be recycled, refined or rerefined in this State, or which are transferred into this State subsequent to being recycled,

refined or rerefined, the tax shall be \$0.0150 per barrel of the hazardous substance.

9. On transfers occurring on or after April 1, 2002, the greater of \$0.0150 per barrel or 1.0 percent of the fair market value of the hazardous substance 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 elemental phosphorus or which are qualified elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of fire retardants or which are or contain any precious metals to be recycled, refined or rerefined in this State, or which are transferred into this State subsequent to being recycled, refined or rerefined, the tax shall be \$0.0150 per barrel of the hazardous substance.

10. On transfers occurring on or after January 1, 2004,] 1.53 percent of the fair market value of the product[;], provided, however, that with respect to transfers of hazardous substances other than petroleum or petroleum products [which] **that** are or contain elemental phosphorus or [which] **that** are qualified elemental antimony or antimony trioxide sold for use in the manufacture or for the purpose of fire retardants or [which] **that** are or contain any precious metals to be recycled, refined, or rerefined in this State, or [which] **that** are transferred into this State subsequent to being recycled, refined, or rerefined, the tax shall be \$0.023 per barrel of the hazardous substance.

(b) (No change.)

[(c) In the event of a major discharge or series of discharges of hazardous substances other than petroleum or petroleum products resulting in claims against the Spill Compensation Fund which exceed the existing balance of the fund for taxable periods occurring from April 1980 through January 1987, a tax rate of the greater of \$0.04 per barrel transferred, or 0.8 percent of the fair market value of such hazardous substance shall be levied until the revenue produced by such increased rate equals 150 percent of the total dollar amount of all pending reasonable claims resulting from the discharge of hazardous substances other than petroleum or petroleum products; 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, or which are transferred into this State subsequent to being recycled, refined, or rerefined, the tax shall be \$0.04 per barrel of the hazardous substances. The tax rate as herein set forth may be less than \$0.04 per barrel transferred or 0.8 percent of the fair market value of such hazardous substance if, as provided by the Spill Compensation Law, the revenue produced by such lower rate shall be sufficient to pay outstanding claims against the fund within one year of such levy. This subsection is inapplicable to tax periods occurring on and after February 1, 1987.]
