

subject only to New Jersey sales and use tax at the rate of [six] **seven** percent.

(a)

DIVISION OF TAXATION

Spill Compensation and Control Tax

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

Authorized By: Michael Bryan, 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 2011-032.

Submit comments by April 8, 2011 to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 18:37 expires on July 23, 2011. The Division of Taxation has reviewed these rules and has determined them to be necessary, reasonable, adequate, efficient and responsive for the purposes for which they were originally promulgated. The rules proposed for readoption are being advanced with no amendments as there have been no recent changes to the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.).

Tax liability under the Spill Compensation and Control Act (P.L. 1976, c. 141), effective, April 1, 1977, 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 inside or outside 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 transferee of a hazardous substance (or any product derived therefrom) are exempt from tax liability if they are in receipt of 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 phosphorus and the elemental antimony or antimony trioxide for fire retardants. However, no change to the tax rates has been enacted since the last readoption of these rules.

Subchapter 1 deals with the imposition of the tax and Subchapter 2 contains the tax rates.

Because 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 Spill Compensation and Control Act (P.L. 1976, c. 141, as amended) was enacted to protect the citizenry of New Jersey from the adverse effects of environmental mishaps that may result from spills of petroleum products or other hazardous substances in this State. To expedite the clean-up process and provide adequate compensation to victims when spills occur, the Legislature established a special fund within the Department of Environmental Protection, supported by the Spill Compensation and Control Tax. These rules are being readopted without amendment as there has been no recent legislation affecting this area of the law.

Economic Impact

The proceeds from the Spill Compensation and Control Tax constitute a fund, the New Jersey Spill Compensation Fund within the New Jersey Department of Environmental Protection, to insure compensation for cleanup costs and damages associated with the discharge of petroleum products and other hazardous substances in this State. The rules currently reflect the statutory tax rate increase that occurred due to the enactment of P.L. 2004, c. 50 on June 24, 2004. Those new tax rates of \$0.023 per barrel on petroleum, precious metals, phosphorus and qualified antimony transfers and 1.53 percent of the fair market value on transfers of hazardous substances other than the above, resulted in rather high tax rate increases, which may have had a significant economic impact for some petrochemical taxpayers at that time. Those changes were reflected in the rules when they were readopted with amendments five years ago, effective January 24, 2006.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption relate to a State-imposed tax on the transfer of petroleum products, non-petroleum hazardous substances and precious metals. The rules do not involve any Federal standards.

Jobs Impact

The rules proposed for readoption are not anticipated to have any effect on jobs in the State.

Agricultural Industry Impact

The rules proposed for readoption will have no impact on the agricultural industry.

Regulatory Flexibility Analysis

The rules proposed for readoption apply to small businesses in the petrochemical industry, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as well as to businesses employing more than 100 people full-time. The imposition of the tax and other compliance requirements in the Act must apply uniformly; any action to exempt taxpayers who may be small businesses as defined in the Regulatory Flexibility Act would not be in compliance with applicable statutes. Therefore, no differential requirements based on business sizes have been established. Any exemption for small businesses would not appear to be in compliance with the statute. However, the Spill Compensation and Control Act itself imposes the tax on owners or operators of "major facilities," which include petrochemical facilities in this State that store at least 200,000 gallons of petroleum products or 20,000 gallons of hazardous chemicals and does not impose the tax on businesses with lower product thresholds (that is, gas stations). It is not anticipated that any professional services will be required to comply with the rules proposed for readoption.

Smart Growth Impact

The Division of Taxation anticipates that the rules proposed for readoption will have no impact on smart growth in New Jersey or on the implementation of the New Jersey State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption would not result in a change in the average costs associated with housing. The rules would have no impact on any aspect of housing because the rules proposed for readoption deal with the Spill Compensation and Control Tax.

Smart Growth Development Impact

The rules proposed for readoption would not result in a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. This is because the rules have nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey. The rules only involve 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.
