

SUBCHAPTER 8. NEW JERSEY SAVER

Authority

N.J.S.A. 54:4-8.66d (P.L. 1999, c.63, § 18).

Source and Effective Date

R.2000 d.82, effective February 7, 2000.
See: 31 N.J.R. 2711(a), 32 N.J.R. 814(b).

Subchapter Historical Note

Subchapter 8, New Jersey Saver, was adopted as R.1999 d.316, effective August 20, 1999. See: 31 N.J.R. 2644(a). Pursuant to P.L. 1999, c.63, § 18, Subchapter 8 expired on February 16, 2000.

Subchapter 8, New Jersey Saver, was adopted as new rules by R.2000 d.82, effective February 7, 2000. See: Source and Effective Date.

18:12-8.1 Coordination of NJ SAVER Rebate and Homestead Rebate

(a) In the case of a homeowner who is eligible for, and applies for, both the NJ SAVER and Homestead Rebates for the same year, the Director shall determine, based on the information provided by the applicant or any other information available to the Director, the amount of the NJ SAVER and Homestead Rebate for which the applicant is eligible.

(b) Pursuant to N.J.S.A. 54:4-8.58a, the total amount which the Director shall pay the applicant shall be the greater of the NJ SAVER Rebate amount or the Homestead Rebate amount for which the applicant is eligible.

(c) The Director shall distribute the NJ SAVER and Homestead Rebates in accordance with N.J.S.A. 54:4-8.62 and 8.63.

1. In the event that the rebate which is first distributed to the applicant is the lesser of the two, the amount of the second rebate to be distributed to the applicant shall be the difference between the greater rebate and the amount already distributed.

2. If the rebate which is first distributed to the applicant is the lesser of the two rebate amounts, and the difference between the two rebate amounts is less than \$10.00, the Director shall credit the difference forward to the applicant's NJ SAVER Rebate account for the following year.

i. The Director shall notify each applicant that the difference between the greater and lesser rebate amounts is less than \$10.00 and that the difference has been credited forward to the applicant's account for the following year.

SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. REAL PROPERTY DEFINED

18:12-10.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context indicates otherwise.

“Affixed” means fastened or attached physically.

“Appurtenance” includes any tangible personal property affixed to land or improvements thereon.

“Functionally essential” refers to machinery, apparatus or equipment necessary for the habitability of the structure, including, but not limited to, such items as air conditioning and heating equipment or apparatus, lighting and bathroom fixtures, elevators, escalators, electrical wiring, plumbing, etc.

“Machinery, apparatus or equipment” means any machine, device, mechanism, instrument, tool, tank or item of tangible personal property used or held for use in business. The term includes, but is not limited to, that machinery, apparatus or equipment described in N.J.A.C. 18:24-4.2. The term also includes machinery, apparatus or equipment directly used in the production of sale of gas, water, steam, electricity or telecommunication services and such items directly used in the production of property on farms as defined in N.J.S.A. 54:32B-8.16.

“Material injury” in the case of real property means serious physical damage to the real property. Some of the factors which can be considered in determining whether “serious physical damage” has occurred are any appreciable change in the market value of the real property as a result of removal; the amount of time and the cost required to repair the condition caused by removal; and the hazard or dislocation caused by the removal.

“Material injury” in the case of property severed or removed from the real property means physical damage to the personal property sufficient to destroy its utility.

“Not ordinarily intended to be affixed permanently to real property” means that, in the custom and usage of the trade, like personal property is not intended to be permanently affixed. Indicators that personal property of a like kind is not ordinarily intended to be affixed permanently to real property include the following:

1. In the event of sale of the realty, the personal property would not ordinarily pass with title to the realty;

2. In the case of a business, the personal property ordinarily would be removed from the real property in the event of the relocation of the business;

3. Similar items of personal property are frequently resold separate from the real property.

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

“Structure” means any assemblage of building or construction materials fixed in place for the primary purpose of supporting, sheltering, containing, or enclosing persons or property. The term “structure” does not include machinery, apparatus or equipment which the structure is designed to hold in place, shelter, contain or enclose.

“Used or held for use in business” means any item of machinery, apparatus or equipment used or held for use in a business transaction, activity or occupation conducted for profit in New Jersey.

Amended by R.1993 d.504, effective October 18, 1993.
See: 25 N.J.R. 61(a), 25 N.J.R. 4792(a).

Case Notes

Municipality not precluded from attempting to show substantial prejudice precluding retroactive application of Business Retention Act's definition of affixed personal property. *General Motors Corp. v. City of Linden*, 293 N.J.Super. 99, 679 A.2d 718 (A.D.1996).

Billboard company's wooden billboards located on land under lease for two years were not intended to be permanently affixed to land and were exempted from taxation as real property. *R.C. Maxwell Co. v. Galloway Tp.*, 145 N.J. 547, 679 A.2d 141 (1996).

While taxpayer may challenge the inclusion of sales utilized to promulgate Chapter 123 average ratio of assessed to true value of property, the fact that a sale is alleged to have been improperly included in ratio's calculation because it falls into nonusable category does not require exclusion of sale from Table of Equalized Valuations; rather, the taxpayer must demonstrate that the disputed sale fails to reflect fair market value. *Bellemead Development Corp. v. Roseland Borough*, 17 N.J.Tax 155 (Tax Ct.1998)

Radio towers exempt from local property taxation. *Emmis Broadcasting Corp. of N.Y. v. East Rutherford Borough*, 16 N.J.Tax 29 (A.D. 1996), certification denied.

Insulated walls and ceiling panels of refrigerated areas of warehouse did not constitute “machinery,” “apparatus,” or “equipment,” for purposes of real property tax exemption. *Freehold Tp. v. Javin Partnership*, 15 N.J.Tax 88 (1995).

Radio towers did not merely support separate broadcasting antennae and were within real property tax exemption for “machinery, apparatus, or equipment”. *Emmis Broadcasting Corp. of N.Y. v. East Rutherford Borough*, 14 N.J.Tax 524 (1995).

Floating docks and finger piers were not “machinery, apparatus or equipment”. *Taylor v. Lower Tp.*, 13 N.J.Tax 371 (1993).

Floating docks and finger piers were not “used or held for use in business”. *Taylor v. Lower Tp.*, 13 N.J.Tax 371 (1993).

Dam used in creation of hydroelectric power was not “structure” for purposes of real property taxation. *American Hydro Power Partners, L.P. v. Clifton City*, 12 N.J.Tax 264 (A.D.1991).

Machinery and equipment in batch ester plant property were not within real property tax exclusion. *Badische Corp. v. Town of Kearny*, 11 N.J.Tax 385 (1990).

Items such as gauges and electrical control systems were to be taxed as real property when functionally essential to special purpose property. *Texas Eastern Transmission Corp. v. Department of Treasury Div. of Taxation*, 11 N.J.Tax 198 (1990).

Legislature intended to broaden definition of real property to include personal property intended to be affixed permanently to real property. *Texas Eastern Transmission Corp. v. Department of Treasury Div. of Taxation*, 11 N.J.Tax 198 (1990).

Tax regulation's definition of “structure” was limited to general purpose property and did not apply to special purpose property. *Texas Eastern Transmission Corp. v. Department of Treasury Div. of Taxation*, 11 N.J.Tax 198 (1990).

Under tax regulation for special purpose property, “functionally essential” refers to supporting, sheltering or enclosing persons or property which were functionally essential. *Texas Eastern Transmission Corp. v. Department of Treasury Div. of Taxation*, 11 N.J.Tax 198 (1990).

All property permanently affixed to mainline natural gas pipe was real property not subject to business personal property tax. *Texas Eastern Transmission Corp. v. Department of Treasury Div. of Taxation*, 11 N.J.Tax 198 (1990).

18:12-10.2 Real property

(a) Real property means all lands and improvements thereon and includes personal property affixed to real property or an appurtenance thereto, unless personal property so affixed meets all of the conditions in (a)1 through 3 below or in (a)4 below.

1. It can be removed or severed without material injury to the real property;
2. It can be removed or severed without material injury to the personal property itself; and
3. It is not ordinarily intended to be affixed permanently to the real property; or unless
4. The personal property so affixed is machinery, apparatus, or equipment used or held for use in business and is neither a structure nor machinery, apparatus or equipment the primary purpose of which is to enable a structure to support, shelter, contain, enclose or house persons or property. For purposes of this subsection, real property includes pipe racks, and piping and electrical wiring up to the point of connections with the machinery, apparatus, or equipment of a production process.

(b) Personal property includes only the machinery, apparatus or equipment of a petroleum refinery that is directly used to manufacture petroleum products from crude oil in any of the series of petroleum refining processes commencing with the introduction of crude oil and ending with refined petroleum products, excluding items of machinery, apparatus or equipment which are located on the grounds of a petroleum refinery but which are not directly used to refine crude oil into petroleum products.

(c) The provisions of this section shall not be construed to repeal or alter in any way the classification of property as either real or personal where that classification is otherwise provided by statute.

Amended by R.1993 d.504, effective October 18, 1993.
See: 25 N.J.R. 61(a), 25 N.J.R. 4792(a).

Case Notes

Dam was not "structure" for purposes of real property tax. *American Hydro Power Partners, L.P. v. Clifton City*, 12 N.J.Tax 264 (A.D. 1991).

Valuation of real property must result in fair and reasonable distribution of local property tax burden of municipality among its property owners. *Brockway Glass Co. v. Freehold Tp.*, 10 N.J.Tax 356 (1989), affirmed 12 N.J.Tax 263, certification granted and remanded 130 N.J. 3, 611 A.2d 643.

18:12-10.3 Tanks with a capacity in excess of 30,000 gallons

A storage tank having a capacity of more than 30,000 gallons is deemed to be real property. 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.

Amended by R.1993 d.504, effective October 18, 1993.
See: 25 N.J.R. 61(a), 25 N.J.R. 4792(a).

18:12-10.4 Security interests

The classification of property as real property under this subchapter shall not affect any transaction or security interest provided for in N.J.S.A. 12A:9-101 et seq.

SUBCHAPTER 11: DISABLED VETERANS' PROPERTY TAX EXEMPTION: RETROACTIVE REIMBURSEMENT

Authority

N.J.S.A. 54:4-6:10 and 54:4-8:19.

Source and Effective Date

R.1998 d.70, effective January 20, 1998.
See: 29 N.J.R. 4411(a), 30 N.J.R. 380(a).

18:12-11.1 Retroactive real property tax refund for permanently and totally disabled veterans' tax exemption

(a) Statutory authority for Disabled Veterans' Real Property Tax Exemption is found in N.J.S.A. 54:4-3.30 and is read "in pari materia" with N.J.S.A. 54:4-8.10, the authorizing statute for Veterans' Property Tax Deductions. To qualify for a retroactive real property tax refund pursuant to this subchapter, all basic eligibility criteria for the Disabled

Veterans' Real Property Tax Exemption must first be met in accordance with the statute herein cited.

(b) The State Budget approved and adopted for Fiscal Year 1998 includes an appropriation not to exceed \$80,000 for Veterans' Property Tax Exemption claims that have not been timely filed or otherwise not perfected.

(c) Where a municipal governing body has not enacted an appropriate resolution to return all taxes collected on real property which would have been exempt had proper application in writing been made in the manner prescribed in N.J.S.A. 54:4-3.30 et seq., an applicant may seek reimbursement for such taxes paid and not refunded. In seeking reimbursement from the \$80,000 amount appropriated for such purposes in the 1998 fiscal year State budget, the applicant shall file a claim on Form D.V.R.R. (Claim for Disabled Veterans' Retroactive Refund) with the assessor of the municipality where the property is located.

(d) All claims seeking reimbursement pursuant to the appropriation in the 1998 fiscal year State budget shall be filed by the applicant no later than March 31, 1998. Claims received by the assessor after this date shall be denied for untimely filing.

(e) Claims for retroactive refund serve only as a supplement or addendum to the applicant's initial application Form D.V.S.S.E., Claim for Property Tax Exemption on Dwelling House of Disabled Veteran or Surviving Spouse of Disabled Veteran or Serviceperson. Such Form D.V.S.S.E. shall be on file with the assessor. Documentary proofs of compliance with exemption prerequisites, such as VA certification of disability or Discharge Form DD214, may also be required to substantiate claims for retroactive refunds.

(f) No claim for retroactive refund shall be paid until all claims are processed and finally disposed of in accordance with N.J.A.C. 18:12-11.3 and 11.4.

18:12-11.2 Apportionment and limitation of retroactive real property tax refunds

(a) As financial resources permit, the retroactive refund shall be limited to that percentage which each qualified disabled veteran claimant's real property tax payments bear to the real property tax payments of all disabled veterans making claim to the appropriate amount as set forth in N.J.A.C. 18:12-11.1(b). Percentage amounts refunded shall take into account any partial Disabled Veterans' Exemption property tax reimbursements which may have already been issued by a municipality and any \$250.00 Real Property Tax Deduction and \$50.00 Veterans' Property Tax Deductions made. No refund shall be paid where the amount due after apportionment is less than \$25.00. Amounts calculated at less than \$25.00 shall be reallocated in the apportionment.

(b) Property taxes paid shall reflect only those taxes attributed to the disabled veteran claimant's dwelling house and the lot or curtilage necessary for its fair enjoyment.

18:12-11.3 Disposition of retroactive refund claims by assessor

Assessors shall determine the validity of retroactive claims for property tax refunds and shall certify to the Director of the Division of Taxation each qualified claimant's name, property location address, total amount of taxes paid which are eligible for refund pursuant to this subchapter, general tax rates and the property's assessed value for each year of retroactivity. Assessors shall also certify the names and addresses of any claimants who are deemed to be ineligible for retroactive reimbursement and the reason for such determination.

18:12-11.4 Appeal of denial of retroactive claim

Any individual deemed by the assessor to be ineligible to receive a retroactive real property tax refund shall be notified of the assessor's determination, and the reason as provided in N.J.A.C. 18:12-11.3, by means of certified mail which shall be prepared and sent by the Director of the Division of Taxation. An appeal of the assessor's decision shall be made to the Director within 30 days of the date of the notice mailed to the claimant by the Director. Appeals of the Director's determination may be made to the New Jersey Tax Court pursuant to N.J.S.A. 54:51A-13.

18:12-11.5 Annual public notice by municipalities

Each municipality shall, in any mailing made to all residential property owners during the tax year, include notification of the existence of the Disabled Veterans' Real Property Tax Exemption program and that an application form and more information may be obtained from the assessor's office.