

CHAPTER 12

GENERAL

Authority

N.J.S.A. 54:1-35.1 et seq., 54:4-26, 54:50-1 et seq., and 54:4-1 et seq.

Source and Effective Date

R.1993 d.482, effective October 4, 1993.
See: 25 N.J.R. 2652(a), 25 N.J.R. 4604(a).

Executive Order No. 66(1978) Expiration Date

Chapter 12, General, expires on October 4, 1998.

Chapter Historical Note

Chapter 12, General, was filed and became effective prior to September 1, 1969 with Subchapter 1, Categories of Nonusable Deed Transactions; Subchapter 2, Preparation of Local Property Tax List and Duplicate, and Subchapter 3, Preparation and Filing of Exempt Property Tax List and Duplicate.

Subchapter 4, Revaluation of Real Property by Appraisal Forms, was adopted as R.1972 d.179, effective September 13, 1972. See: 4 N.J.R. 197(b), 4 N.J.R. 249(a). Subchapter 4 was repealed and new rules adopted as R.1983 d.221, effective June 20, 1983. See: 15 N.J.R. 322(a), 15 N.J.R. 1039(a).

Subchapter 5, Property Tax Appeals, was adopted as R.1973 d.144, effective June 1, 1973. See: 5 N.J.R. 167(c), 5 N.J.R. 247(a). Section 5.1 was amended by R.1991 d.511, effective October 21, 1991. See: 23 N.J.R. 2230(a), 23 N.J.R. 3177(a). Pursuant to Executive Order No. 66(1978), Subchapter 5 expired on July 29, 1993.

Section 6.1, Definitions, of Subchapter 6 was adopted as R.1976 d.172, effective June 3, 1976. See: 8 N.J.R. 259(b), 8 N.J.R. 356(b). Subchapter 6, Allowance of Home Improvement Exemptions, was adopted as R.1976 d.185, effective June 10, 1976. See: 7 N.J.R. 522(b), 8 N.J.R. 356(d). Amendments to Subchapter 6 were adopted as R.1978 d.287, effective August 15, 1978. See: 10 N.J.R. 301(a), 10 N.J.R. 407(c). Subchapter 6 was replaced by a new Subchapter 6, One and Two Unit Residences, and Subchapter 6A, Multiple Dwellings, by Emergency Amendment R.1980 d.253, effective June 16, 1980. See: 12 N.J.R. 436(b). Section 6A.6, Construction permit; certificate of occupancy, was adopted as Emergency Rule R.1980 d.335, effective July 28, 1980. See: 12 N.J.R. 554(c). Section 6A.7, Notification of disallowance, was adopted as R.1980 d.553, effective December 22, 1980. See: 12 N.J.R. 614(b), 13 N.J.R. 111(b). Section 6A.8, Supplemental procedural rules for assessors, was adopted as R.1982 d.78, effective March 15, 1982. See: 14 N.J.R. 72(b), 14 N.J.R. 278(b). Section 6A.8 was amended by R.1983 d.256, effective July 5, 1983. See: 15 N.J.R. 613(a), 15 N.J.R. 1105(a). Sections 6A.1 and 6A.2 were amended by R.1984 d.550, effective December 17, 1984. See: 16 N.J.R. 2424(a), 16 N.J.R. 3480(a). Subchapter 6, Home Improvement Exemption: One and Two Unit Residences, and Subchapter 6A, Home Improvement Exemptions: Multiple Dwellings, were repealed by R.1993 d.130, effective March 15, 1993. See: 24 N.J.R. 4335(a), 25 N.J.R. 1228(c).

Subchapter 7, Homestead Tax Rebate, was adopted as Emergency Rule R.1976 d.333, effective October 21, 1976. See: 8 N.J.R. 582(c). New Subchapter 7 was adopted as R.1978 d.4, effective January 4, 1978. See: 9 N.J.R. 596(a), 10 N.J.R. 81(b). Section 7.1 was amended by R.1977 d.130, effective April 14, 1977. See: 9 N.J.R. 143(a), 9 N.J.R. 245(a); by R.1978 d.411, effective December 5, 1978. See: 10 N.J.R. 518(a), 11 N.J.R. 51(d); by R.1979 d.432, effective October 26, 1979. See: 11 N.J.R. 525(a), 11 N.J.R. 650(a); by R.1989 d.146, effective March 20, 1989. See: 21 N.J.R. 16(b), 21 N.J.R. 778(c). Section 7.2 was amended by R.1977 d.130, effective April 14, 1977. See: 9 N.J.R.

143(a), 9 N.J.R. 245(a); by R.1978 d.411, effective December 5, 1978. See: 10 N.J.R. 518(a), 11 N.J.R. 51(d). Section 7.3 was amended by R.1977 d.130, effective April 14, 1977. See: 9 N.J.R. 143(a), 9 N.J.R. 245(a). Sections 7.4 and 7.10 were amended by R.1978 d.411, effective December 5, 1978. See: 10 N.J.R. 518(a), 11 N.J.R. 51(d); by R.1987 d.477, effective November 16, 1987. See: 19 N.J.R. 1637(a), 19 N.J.R. 2201(a). Section 7.5 was amended by R.1977 d.130, effective April 14, 1977. See: 9 N.J.R. 143(a), 9 N.J.R. 245(a). Sections 7.9, 7.10 and 7.11 were amended by R.1977 d.130, effective April 14, 1977. See: 9 N.J.R. 143(a), 9 N.J.R. 245(a). Section 7.12 was amended by R.1976 d.339, effective October 29, 1976. See: 8 N.J.R. 586(c); by R.1977 d.90, effective March 16, 1977. See: 9 N.J.R. 199(b); by R.1977 d.448, effective November 30, 1977. See: 10 N.J.R. 44(a); by R.1978 d.10, effective January 18, 1978. See: 10 N.J.R. 81(c); by R.1978 d.406, effective November 28, 1978. See: 11 N.J.R. 51(b); by R.1978 d.411, effective December 5, 1978. See: 10 N.J.R. 518(a), 11 N.J.R. 51(d); by R.1979 d.467, effective November 28, 1979. See: 12 N.J.R. 56(b); by R.1980 d.517, effective December 1, 1980. See: 13 N.J.R. 47(a); amended on an emergency basis by R.1981 d.474, effective December 1, 1981. See: 13 N.J.R. 948(b); readopted, R.1982 d.41, effective February 2, 1982. See: 14 N.J.R. 212(a); amended on an emergency basis by R.1982 d.439, effective November 30, 1982 and expired on February 1, 1983. See: 14 N.J.R. 1466(a); amended on an emergency basis by R.1983 d.582, effective December 1, 1983. See: 15 N.J.R. 2177(a); amended on an emergency basis by R.1984 d.15, effective January 17, 1984. See: 16 N.J.R. 252(b); amended on an emergency basis by R.1984 d.584, effective December 4, 1984 and expired February 4, 1985. See: 16 N.J.R. 3498(a), 17 N.J.R. 740(a), 17 N.J.R. 746(b). Correction: Date changed in (h) to March 1, 1984; emergency amendment, R.1985 d.655, effective December 5, 1985 (expired February 3, 1986). See: 18 N.J.R. 107(a); readopted, R.1986 d.64, effective March 17, 1986. See: 18 N.J.R. 107(a), 18 N.J.R. 568(b); emergency amendment, R.1986 d.482, effective December 1, 1986 (expired January 30, 1987). See: 18 N.J.R. 2460(a); readopted, R.1987 d.223, effective May 18, 1987. See: 18 N.J.R. 2460(a), 19 N.J.R. 884(a); emergency amendment, R.1987 d.537, effective December 2, 1987 (expired January 31, 1988). See: 19 N.J.R. 2498(a); emergency amendment, R.1988 d.109, effective March 7, 1988. See: 19 N.J.R. 2498(a), 20 N.J.R. 547(a); amended by R.1989 d.146, effective March 20, 1989. See: 21 N.J.R. 16(b), 21 N.J.R. 778(c). Sections 7.13 and 7.14, new rules, R.1978 d.411, effective December 5, 1978. See: 10 N.J.R. 518(a), 11 N.J.R. 51(d). Section 7.15, emergency new rule, R.1991 d.251, effective April 6, 1991 (expired June 15, 1991). See: 23 N.J.R. 1464. Adoption of concurrent proposal, R.1991 d.527, effective November 4, 1991. See: 23 N.J.R. 1464(a), 23 N.J.R. 3345(a). Pursuant to Executive Order No. 66(1978), Subchapter 7 expired on July 29, 1993.

Subchapter 8, Exemptions: Solar Energy Heating and Cooling Systems, was adopted as R.1978 d.225, effective July 7, 1978. See: 10 N.J.R. 264(c), 10 N.J.R. 264(a). Pursuant to Executive Order No. 66(1978), Subchapter 8 was readopted by R.1983 d.355, effective August 12, 1983. See: 15 N.J.R. 1082(a), 15 N.J.R. 1487(b). Pursuant to Executive Order No. 66(1978), Subchapter 8 expired on July 29, 1993.

Subchapter 9, Moratorium on Taxation of Mobile Homes as Real Property, was adopted as R.1980 d.147, effective April 9, 1980. See: 12 N.J.R. 160(a), 12 N.J.R. 293(c). Sections 9.3, 9.5 and 9.6 were amended by R.1981 d.207, effective July 9, 1981. See: 13 N.J.R. 162(b), 13 N.J.R. 462(c). Pursuant to Executive Order No. 66(1978), Subchapter 9 expired on July 29, 1993.

Pursuant to Executive Order No. 66(1978), Chapter 12 was readopted as R.1983 d.355, effective August 12, 1983. See: 15 N.J.R. 1082(a), 15 N.J.R. 1487(b). Pursuant to Executive Order No. 66(1978), Chapter 12 was readopted as R.1988 d.408, effective July 29, 1988. See: 20 N.J.R. 1066(a), 20 N.J.R. 2319(a).

Subchapter 10, Real Property Defined, was adopted as R.1988 d.581, effective December 19, 1988. See: 20 N.J.R. 1787(a), 20 N.J.R. 3142(c).

Pursuant to Executive Order No. 66(1978), Subchapters 1, 2, 3, 4 and 10 were readopted as R.1993 d.482. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

Law Review and Journal Commentaries

The Business Retention Act: An Act Concerning the Taxation of Certain Business Property. Kenneth R. Kosco, 18 Seton Hall Legis.J. 873 (1994).

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SUBCHAPTER 1. CATEGORIES OF NONUSABLE DEED TRANSACTIONS

18:12-1.1 Categories enumerated

(a) The deed transactions of the following categories are not usable in determining assessment-sales ratios pursuant to N.J.S.A. 54:1-35.1 et seq.:

1. Sales between members of the immediate family;
2. Sales in which "love and affection" are stated to be part of the consideration;
3. Sales between a corporation and its stockholder, its subsidiary, its affiliate or another corporation whose stock is in the same ownership;
4. Transfers of convenience; for example, for the sole purpose of correcting defects in title, a transfer by a husband either through a third party or directly to himself and his wife for the purpose of creating a tenancy by the entirety, etc.;
5. Transfers deemed not to have taken place within the sampling period. Sampling period is defined as the period from July 1, to June 30, inclusive, preceding the date of promulgation, except as hereinafter stated. The recording date of the deed within this period is the determining date since it is the date of official record. Where the date of deed or date of formal sales agreement occurred prior to January 1, next preceding the commencement date of the sampling period, the sale shall be nonusable;
6. Sales or property conveying only a portion of the assessed unit, usually referred to as apportionments, split-offs or cut-offs; for example, a parcel sold out of a larger tract where the assessment is for the larger tract;
7. Sales of property substantially improved subsequent to assessment and prior to the sale thereof;
8. Sales of an undivided interest in real property;
9. Tax sales;
10. Sales by guardians, trustees, executors and administrators;
11. Judicial sales such as partition sales;
12. Sheriff's sales;
13. Sales in proceedings in bankruptcy, receivership or assignment for the benefit of creditors and dissolution or liquidation sales;
14. Quit-claim deeds;
15. Sales to or from the United States of America, the State of New Jersey, or any political subdivision of the State of New Jersey; including boards of education and public authorities;

- 16. Sales of property assessed in more than one taxing district;
- 17. Sales to or from any charitable, religious or benevolent;

- 18. Transfer to banks, insurance companies, savings and loan associations, mortgage companies, or any other lien holder, when the transfer is made in lieu of foreclosure;

19. Sales where purchaser assumes more than two years of accrued taxes;

20. Acquisitions, resale or transfer by railroads, pipeline companies or other public utility corporations for right-of-way purposes;

21. Sales of cemetery lots;

22. Transfers of property in exchange for other real estate, stocks, bonds, or other personal property;

23. Sales of commercial or industrial real property which include machinery, fixtures, equipment, inventories, goodwill when the values of such items are indeterminate;

24. Sales of property, the value of which has been materially influenced by zoning changes where the latter are not reflected in current assessments;

25. Transactions in which the full consideration as defined in the "Realty Transfer Fee Act" is less than \$100.00;

26. Sales which for some reason other than specified in the enumerated categories are not deemed to be a transaction between a willing buyer, not compelled to buy, and a willing seller, not compelled to sell;

27. Sales occurring within the sampling period but prior to a change in assessment practice resulting from the completion of a recognized revaluation or reassessment program; i.e., sales recorded during the period July 1 to December 31 next preceding the tax year in which the result of such revaluation or reassessment program is placed on the tax roll.

(b) Transfers of the foregoing nature should generally be excluded but may be used if after full investigation it clearly appears that the transaction was a sale between a willing buyer, not compelled to buy, and a willing seller, not compelled to sell, and that it meets all other requisites of a usable sale.

Amended by R.1980 d.62, effective February 4, 1980.
See: 12 N.J.R. 56(a), 12 N.J.R. 162(a).

Law Review and Journal Commentaries

Burdens—Municipalities—Taxes. Judith Nallin, 134 N.J.L.J. No. 1, 71 (1993).

Tax assessments. Steven P. Bann, 137 N.J.L.J. No. 3, 76 (1994).

Case Notes

To exclude challenged sales taxpayer must demonstrate that inclusion of challenged sale was improper because sale was not for fair market value. 1530 Owners Corp. v. Borough of Fort Lee, 135 N.J. 394, 640 A.2d 811 (1994).

Taxpayer may correct substantially skewed "chapter 123 ratio". 1530 Owners Corp. v. Borough of Fort Lee, 263 N.J.Super. 382, 622 A.2d 1350 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, judgment modified and remanded 135 N.J. 394, 640 A.2d 811.

Tax court could refuse to apply previous year's discount where circumstances have changed. 1530 Owners Corp. v. Borough of Fort Lee, 263 N.J.Super. 382, 622 A.2d 1350 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, judgment modified and remanded 135 N.J. 394, 640 A.2d 811.

When sale price was used to establish "chapter 123 ratio", the taxpayer has burden of proving that price was less than market value. 1530 Owners Corp. v. Borough of Fort Lee, 263 N.J.Super. 382, 622 A.2d 1350 (A.D.1993), certification granted 134 N.J. 478, 634 A.2d 525, judgment modified and remanded 135 N.J. 394, 640 A.2d 811.

Taxpayer could not substitute unweighted, unclassified ratio of assessment to true value for purpose of determining whether taxable value was subject to revision. Glenpointe Associates v. Township of Teaneck, 241 N.J.Super. 37, 574 A.2d 459 (A.D.1990), certification denied 122 N.J. 391, 585 A.2d 392.

Taxpayer improperly relied on tax year in question to determine if taxpayer could substitute unweighted unclassified ratio for statutory ratio. Glenpointe Associates v. Township of Teaneck, 241 N.J.Super. 37, 574 A.2d 459 (A.D.1990), certification denied 122 N.J. 391, 585 A.2d 392.

Statute providing method for taxpayer's discrimination relief is not a sole remedy; statute establishes rebuttable presumption of common level assessment; taxpayer restricted to use of average ratio in statute to establish common level; to overcome common level presumption, a taxpayer must establish that application of the ratio would be virtually confiscatory. Murnick v. City of Asbury Park, 95 N.J. 452, 471 A.2d 1196 (1984).

Upon demonstration that the sales price on an FHA-financed sale was substantially distorted by extraordinary charges so that it does not reflect the true consideration for the property as between the seller and the buyer, the sale should be discarded and not used in a sales-ratio study for equalization table computation purposes. Trenton v. Mercer Cty. Bd. of Taxation, 66 N.J. 470, 333 A.2d 1 (1975).

Director properly excluded sale of real property from sales ratio study used to develop table of equalized valuations where property was sold as part of private deal, and parties to sale were not knowledgeable as to facts about property. Pennsville Tp. v. Director, Div. of Taxation, 16 N.J.Tax 47 (A.D.1996).

Comparison of properties for real property taxation includes physical characteristics and economic aspects. Ford Motor Co. v. Edison Tp., 10 N.J.Tax 153 (1988), affirmed 12 N.J.Tax 244, affirmed 127 N.J. 290, 604 A.2d 580.

Property value was more accurately presented by taxpayer's expert than municipality's expert. Chevron U.S.A., Inc. v. City of Perth Amboy, 10 N.J.Tax 114 (1988), affirmed 237 N.J.Super. 280, 567 A.2d 597, superseded 11 N.J.Tax 480, certification denied 121 N.J. 628, 583 A.2d 324.

No weight could be attributed to the sale price of the subject property by taxpayer to borough in reviewing assessments; valuation and entitlement to discrimination relief. Linwood Properties, Inc. v. Fort Lee Boro., 7 N.J.Tax 320 (Tax Ct.1985).

Adoption of "master plan" and land development ordinances by township pursuant to Pinelands Comprehensive Management Plan held to have no effect on the sale prices of three properties, sales of which were used by the Director in arriving at assessed value-true value ratio; sales held properly included in a sales study for the establishment of the county equalization table; ratio for residential properties properly applied by the Director to vacant land in the township where no sales of vacant land occurred in the relevant time period. Washington Tp. v. Burlington Cty. Bd. of Taxation, 7 N.J.Tax 1 (Tax Ct.1984).

On appeal by township of 1984 county equalization table, held that, as of the date of the sale in question, the sale price of the parcel could not be related to an identical parcel that had been assessed for the 1982 tax year, and that the sale, therefore, could not be used in arriving at the equalization ratio for the township. Cranbury Tp. v. Middlesex Cty. Bd. of Taxation, 6 N.J.Tax 501 (Tax Ct.1984), affirmed 7 N.J.Tax 667 (App.Div.1985).

Sale of post office property by Federal government held not ipso facto unusable for assessment-sale ratio, without offering of evidence that requisites of usable sale not met; statute providing tax assessment discrimination remedy held not constitutionally repugnant; discrimination relief ordered. *Kearny Leasing Corp. v. Town of Kearny*, 6 N.J.Tax 363 (Tax Ct.1984), affirmed 7 N.J.Tax 665, certification denied 102 N.J. 340, 508 A.2d 215.

Sale price of lot in open, competitive sales market sold and bought by undressed, use-knowledgeable parties was a reliable indicator of market value and usable in a county equalization table calculation of the ratio of assessments to true value; two usable sales were a sufficient basis from which to determine total true value of "vacant land" classification of property. *West Deptford Tp. v. Gloucester Cty. Bd. of Taxation*, 6 N.J.Tax 79 (Tax Ct.1983).

Sale of commercial property used as trucking company depot held a nonusable deed transaction concerning the sale of commercial property including indeterminable items, thus properly excluded from the Division assessment practices study. *Union Twp. v. Director, Division of Taxation*, 1 N.J.Tax 15, 176 N.J.Super. 239, 422 A.2d 803 (Tax Ct.1980).

SUBCHAPTER 2. PREPARATION OF LOCAL PROPERTY TAX LIST AND DUPLICATE

18:12-2.1 Insertion of property classification code on line items

The assessor of each taxing district shall classify each line item appearing in the tax list according to the several categories shown below, and shall designate the same by the applicable property classification code symbol.

PROPERTY CLASSIFICATION CODE

Symbol	Category
1	Vacant Land
2-	Residential (4 Families or less)
3A	Farm (Regular)
3B	Farm (Qualified)
4A	Commercial
4B	Industrial
4C	Apartment
5A	Class I Railroad
5B	Class II Railroad
6A	Telephone
6B	Telegraph
6C	Messenger Service
15A	Exempt Public School
15B	Exempt Other School
15C	Exempt Public
15D	Exempt Charitable
15E	Exempt Cemetery
15F	Exempt Miscellaneous

Case Notes

Development property represented as single lot on tax map but divided into multiple assessment line items as accommodation to taxpayer was treated as having one aggregate assessment for purposes of application of average ratio of assessed valuation to true value. *Hull Junction Holding Corp. v. Princeton Borough*, 16 N.J.Tax 68 (1996).

18:12-2.2 Property classification definitions

(a) Class 1: "Vacant Land" means land itself above and under water in its original, indestructible, immobile state. Vacant land is idle land, not actively used for agricultural or any other purpose; unused acreage; and is land in an approved subdivision actively on the market for sale or being held for sale.

(b) Class 2: "Residential" means property described generally as a dwelling house including the lot or parcel of land on which the dwelling house is situated. The dwelling is functionally designed for use and enjoyment by not more than four families. A dwelling functionally designed for use and enjoyment by more than four families should be designated Class 4C.

(c) Class 3A: "Farm property (Regular)" means land being used for agricultural or horticultural purposes, including its use for the breeding, pasturing, and production of livestock and animal products. Farm property also includes land, together with improvements, where the use of the land and function of the buildings thereon are for agricultural or horticultural purposes, as well as farm houses and the lots or parcels of land on which they are situated.¹

(d) Class 3B: "Farm property (Qualified)" means land which has qualified and is assessed under the Farmland Assessment Act, Chapter 48, Laws of 1964.

(e) Class 4A: "Commercial properties" means any other type of income-producing property other than property in Classes 1, 2, 3A, 3B and those properties included in Classes 4B and 4C below.

(f) Class 4B: "Industrial properties".

(g) Class 4C: "Apartments" designed for the use and enjoyment of five families or more.²

(h) Class 5A: "Railroad Class I" means real property consisting of the length of main stem of a railroad in each taxing district.

(i) Class 5B: "Railroad Class II" means all real property used for railroad purposes which is not Class I or Class III.

(j) Class 6A: "Personal Property Telephone" means tangible goods and chattels exclusive of inventories used in the business of telephone companies.

(k) Class 6B: "Personal Property Telegraph" means tangible goods and chattels exclusive of inventories used in the business of telegraph companies.

(l) Class 6C: "Personal Property Messenger Service" means tangible goods and chattels exclusive of inventories used in the business of messenger services.

SUBCHAPTERS 8 THROUGH 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).

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.