

CHAPTER 12

GENERAL

Authority

N.J.S.A. 54:1-1-35 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 Subchapter 4 was repealed and new rules adopted as R.1983 d.221, effective June 20, 1983.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;

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.