

CHAPTER 37

SPILL COMPENSATION AND CONTROL TAX

Authority

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

Source and Effective Date

R.2006 d.78, effective January 24, 2006.
See: 37 N.J.R. 4197(a), 38 N.J.R. 1227(b).

Chapter Expiration Date

Chapter 37, Spill Compensation and Control Tax, expires on January 24, 2011.

Chapter Historical Note

Chapter 37, Spill Compensation and Control Tax, was adopted as R.1980 d.199, effective May 6, 1980. See: 12 N.J.R. 222(a), 12 N.J.R. 355(c). Pursuant to Executive Order No. 66(1978), Chapter 37 expired on May 6, 1985.

Chapter 37, Spill Compensation and Control Tax, was adopted as new rules by R.1985 d.382, effective August 5, 1985. See: 17 N.J.R. 1074(a), 17 N.J.R. 1915(a).

Subchapter 3, Refund or Credit of Tax on Transfer of Hazardous Substances Other Than Petroleum Products, and Subchapter 4, Suspension of Tax: Relevy of Tax, were repealed by R.1988 d.407, effective September 6, 1988. See: 19 N.J.R. 2255(a), 20 N.J.R. 2310(c).

Pursuant to Executive Order No. 66(1978), Chapter 37, Spill Compensation and Control Tax, was readopted as R.1990 d.407, effective July 23, 1990. See: 22 N.J.R. 1908(a), 22 N.J.R. 2531(a). Pursuant to Executive Order No. 66(1978), Chapter 37 expired on July 23, 1995.

Chapter 37, Spill Compensation and Control Tax, was adopted as new rules by R.1995 d.654, effective December 18, 1995. See: 27 N.J.R. 2681(a), 27 N.J.R. 5042(b).

Pursuant to Executive Order No. 66(1978), Chapter 37, Spill Compensation and Control Tax, was readopted as R.2000 d.475, effective November 1, 2000. See: 32 N.J.R. 3387(b), 32 N.J.R. 4275(a).

Chapter 37, Spill Compensation and Control Tax, was readopted by R.2006 d.78, effective January 24, 2006. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTERS 3 THROUGH 4. (RESERVED)

SUBCHAPTER 1. IMPOSITION OF TAX

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

(a) The Spill Compensation and Control Tax is imposed on the transfer of hazardous substances within the jurisdiction (lands and waters) of New Jersey.

(b) The tax is payable by the transferee except as provided in (d) below.

(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, is a facility that has a combined above ground or buried storage capacity of:

1. 20,000 gallons or more for hazardous substances which are other than petroleum or petroleum products; or
2. 200,000 gallons or more for hazardous substances of all kinds.

(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 facility to a facility which is not a major facility, including vessels.

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

1. A public storage terminal means a public or privately owned major facility which 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 facility in the creation of heat, hot water and steam for use on the premises; or
- ii. Hazardous substances, ownership of which has been assumed by the facility due to a contractual default by the facility's customer.

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

(f) Effective on and after April 1, 1980, for purposes of (a) above, in the case of the transfer of hazardous substances other than petroleum or petroleum products which 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.

As amended, R.1980 d.484, eff. November 3, 1980.

See: 12 N.J.R. 728(c).

(f) Substantially amended.

Amended by R.1990 d.407, effective August 20, 1990.
See: 22 N.J.R. 1908(a), 22 N.J.R. 2531(a).

Amendments to Spill Compensation and Control Act updated; thresholds changed from 50,000 to 20,000 and from 400,000 to 200,000 at (c).

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 rates:

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 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 Law, the revenue produced by such lower rate shall be sufficient to pay outstanding claims against the fund within one year of such levy.

As amended, R.1980 d.484, eff. November 3, 1980.
See: 12 N.J.R. 728(c).

(b) "revenue produced" ... "petroleum products." added.
Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

(a) Deleted old text and substituted new.
(b) Added "Under no circumstances ...".

Amended by R.1990 d.407, effective August 20, 1990.
See: 22 N.J.R. 1908(a), 22 N.J.R. 2531(a).

Clarification of one year added in (b).
Amended by R.1995 d.654, effective December 18, 1995.
See: 27 N.J.R. 2681(a), 27 N.J.R. 5042(b).

Amended by R.2006 d.78, effective February 21, 2006.
See: 37 N.J.R. 4197(a), 38 N.J.R. 1227(b).

In (a)3, added "but prior to January 1, 2004," and deleted ", except as provided in (b) below"; added (a)4.

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 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 \$0.023 per barrel of the hazardous substance.

(b) For purposes of (a) above, "fair market value" means the invoice price of the hazardous substances transferred, including transportation charges; but where no price is so fixed, "fair market value" shall mean the market price as of the close of the nearest day to the transfer paid for similar hazardous substances.

(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.

As amended, R.1980 d.484, eff. November 3, 1980.

See: 12 N.J.R. 728(c).

(a)2 substantially amended; (a)3 added;

(c) amended to include language from "revenue produced" to "hazardous substances". (3rd usage);

(d)2 amended to include language from "as the case may be" to "petroleum products". (2nd usage).

New Rule, R.1985 d.455, effective September 3, 1985.

See: 17 N.J.R. 1540(a), 17 N.J.R. 2147(a).

(a)4 and 5 added.

This section was proposed as a new rule because at the time of proposal the rules had expired pursuant to Executive Order 66(1978). The rule was readopted—see subchapter level.

Amended by R.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

Added (a)6; deleted (d).

Amended by R.1995 d.654, effective December 18, 1995.

See: 27 N.J.R. 2681(a), 27 N.J.R. 5042(b).

Amended by R.2000 d.475, effective December 4, 2000.

See: 32 N.J.R. 3387(b), 32 N.J.R. 4275(a).

Inserted (a)8.

Amended by R.2006 d.78, effective February 21, 2006.

See: 37 N.J.R. 4197(a), 38 N.J.R. 1227(b).

Added (a)9 and 10.

SUBCHAPTERS 3 THROUGH 4. (RESERVED)