

**New York State Department of Taxation and Finance  
Taxpayer Services Division  
Technical Services Bureau**

TSB-M-86 (1)  
Hazardous Waste  
June 16, 1986

Subject: Special Assessments on Hazardous Waste  
Chapter 38, Laws of 1985

Chapter 38, Laws of 1985, repealed section 27-0923 of the Environmental Conservation Law of the State of New York and added a new section 27-0923 relating to special assessments imposed on generation, treatment or disposal of hazardous waste.

The provisions of Article 27 of the Tax Law relating to Corporate Tax Procedure and Administration are incorporated by reference into section 27-0923 of the Environmental Conservation Law on "special assessments." Article 27 of the Tax Law applies to the special assessments except where the provisions of Article 27 are either inconsistent with Section 27-0923 of the Environmental Conservation Law or are irrelevant.

As a result of this incorporation, Article 27 procedures including but not limited to notices of deficiency and assessments, civil penalties, overpayments and refunds, appeals and hearings, and collections, levies and liens apply to the special assessments. In addition, the State Tax Commission is responsible for the administration and enforcement of the special assessments,

The Commissioner of Environmental Conservation and the State Tax Commission have the power to jointly promulgate rules and regulations.

The Commissioner of Environmental Conservation retains responsibility for regulatory programs controlling the generation, transportation, treatment, storage or disposal of hazardous wastes.

Liability for the Assessment

Persons generating hazardous waste within New York State are responsible for reporting and paying to the Department of Taxation and Finance the special assessments on hazardous waste.

Special assessments are also imposed upon persons holding permits for the storage, treatment or disposal of hazardous wastes.

Definitions

Hazardous waste is a waste that appears on, or satisfies the characteristics of a hazardous waste appearing on, the list promulgated by the Commissioner of Environmental Conservation under Section 27-0903 of the Environmental Conservation Law.

Hazardous waste generation is the act or process that produces hazardous waste (as defined) and first causes the waste to be subject to regulation. For the purposes of the special assessment, generation of hazardous waste shall not include retrieval or creation of hazardous waste which must be disposed of due to remediation of an active hazardous waste disposal site in New York State as defined in section 27-1301 of the Environmental Conservation Law.

Hazardous waste treatment is any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of hazardous waste so as to neutralize the waste, recover energy or material resources from the waste, render the waste non-hazardous, make the waste safer to transport, store or dispose of, render the waste amendable for recovery or storage, or reduce the volume of the waste by a method or process other than incineration.

Hazardous waste incineration is any method, technique or process, including combustion for energy recovery, by which a solid, liquid or gaseous combustible waste is thermally broken down producing residue containing little or no combustible materials.

Hazardous waste disposal is the abandonment, discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such waste or any of its related constituents may enter the environment, be emitted into the air or be discharged to any waters, including ground waters.

#### Special Assessment Rates

A. Effective June 1, 1985, the law imposes the following special assessments upon every person who is engaged in the generation of hazardous waste in New York State:

- \$27 per ton of generated hazardous waste disposed of in a landfill. Any hazardous waste which is remaining from the treatment of hazardous wastes in a facility located on the site where the wastes are generated and which are subsequently disposed of in a landfill, are also subject to this special assessment.
- \$9 per ton of generated hazardous waste incinerated off the site where the waste is generated.
- \$2 per ton of generated hazardous waste incinerated on the site where the waste is generated.
- \$16 per ton of generated hazardous waste treated or disposed of, exclusive of disposal in a landfill or by incineration, in any facility located off the site where the waste is generated.

B. On or after June 1, 1985, the law imposes the following special assessments upon persons holding permits for the storage, treatment or disposal of hazardous waste:

- \$27 per ton of generated hazardous waste disposed of in a landfill.
- \$9 per ton of generated hazardous waste incinerated off the site where the waste is generated.

- \$16 per ton of generated hazardous waste treated or disposed of, exclusive of disposal in a landfill or by incineration in any facility located off the site where the waste is generated.

No special assessment is imposed on persons holding permits for the storage, treatment or disposal of hazardous waste, upon the disposal of waste by such persons, where such waste was generated by persons subject to the special assessment in Section A (above).

In the case of a fraction of a ton, the special assessments imposed shall be the same fraction of the amount of special assessments imposed on a whole ton.

Resource Recovery

No special assessment is imposed on the resource recovery of any hazardous waste. However, any materials remaining from resource recovery which are hazardous wastes and which are subsequently disposed of, treated or incinerated are subject to the special assessment. For the purposes of the special assessment resource recovery does not include the removal of water from a hazardous waste.

Reporting Periods

The reporting periods conform to calendar quarters with the exception of the period June 1, 1985 through September 30, 1985 for which the return was due October 20, 1985.

<u>Reporting Period</u>	<u>Return Due Date</u>
January 1 through March 31	April 20
April 1 through June 30	July 20
July 1 through September 30	October 20
October 1 through December 31	January 20

Every person subject to the special assessments is required to file a return with the Department of Taxation and Finance for each quarter regardless of whether or not there was any activity subject to assessment. Where the assessment due for a reporting period is less than \$50, the payment may be deferred until the payment due date for the next succeeding reporting period for which the combined special assessments equal \$50 or more. However, the payment of the special assessments may not be made later than the due date of the return for the last calendar quarter (January 20 of the succeeding year).

Additions to Special Assessments, Interest and Penalties

Interest - Section 27-0923 of the Environmental Conservation Law provides that interest at the rate of 15% per annum shall be collected as a part of the special assessment if such special assessment or any installment or portion thereof is not paid on or before the date prescribed for its payment.

Additions and Civil Penalties - The following additions and civil penalties pursuant to Section 1085 of Article 27 of the Tax Law apply.

Tax Law Section  
1085

- (a) (1) (A) When a person fails to file a return by the due date, unless it is shown such failure is due to reasonable cause, there shall be added to the special assessment required to be shown on the return an amount of 5% for the first month or part thereof if the failure is for not more than one month, with an additional 5% for each additional month or fraction thereof during which such failure continues, not exceeding 25% in the aggregate.
  - (B) When a person fails to file a return within 60 days of the due date, unless it is shown such failure is due to reasonable cause, the amount of the addition referred to above shall not be less than \$100 or 100% of the special assessment required to be shown on the return, whichever is the lesser amount.
  - (C) The amount of special assessment required to be shown on the return shall be reduced by the amount of any part of the special assessment which is paid on or before the due date for payment and by the amount of any credit against the assessment which may be claimed upon the return.
- (2) When a person fails to pay the special assessment shown on the return on or before the due date, unless it is shown that such failure is due to reasonable cause, there shall be added to the amount of the special assessment shown on the return 1/2% of the amount of such special assessment if the failure is not for more than one month, with an additional 1/2% for each additional month or fraction of a month during which such failure continues, not exceeding 25% in the aggregate. For the purpose of computing the addition for any month the amount of special assessment shown on the return shall be reduced by the amount of any part of the special assessment which is paid on or before the beginning of such month and by the amount of credit that may be claimed upon the return. If the amount of special assessment required to be shown on the return is less than the amount of special assessment shown on the return the lower amount shall be used.
  - (3) In case of failure to pay any amount of any special assessment required to be shown on a return required to be filed which is not so shown within 10 days of the date of a notice and demand, unless it is shown that such failure is due to reasonable cause, there shall be added to the amount of special assessment stated in such notice and demand 1/2% of such special assessment if the failure is not for more than one month, with an additional 1/2% for each additional month or fraction thereof during which such failure continues not exceeding 25% in the aggregate. For the purpose of computing the addition for any month, the amount of special assessment stated in the notice and demand shall be reduced by the amount of any part of the special assessment which is paid before the beginning of such month.

- (4) With respect to any return, the amount of the addition under (1) above (5%) shall be reduced by the amount of the addition under (2) above ( $\frac{1}{2}\%$ ) for any month to which an addition applies under both (1) and (2). At no time will the addition for one month be more than 5%. The maximum aggregate addition is  $47\frac{1}{2}\%$ .
- (b)(1) When any part of a deficiency is due to negligence or intentional disregard of this article or rules or regulations thereunder (but without intent to defraud), there shall be added to the special assessment an amount equal to 5% of the deficiency.
  - (2) There shall be added to the special assessment (in addition to the amount determined under (b)(1) above) an amount equal to 50% of the interest payable under section 27-0923 of the Environmental Conservation Law with respect to the portion of the underpayment described in (b)(1) above which is attributable to the negligence or intentional disregard referred to in (1) above, for the period beginning on the last date prescribed by law for payment of such underpayment and ending on the date of the assessment of the special assessment (or, if earlier, the date of the payment of the assessment).
- (f) (1) If any part of a deficiency is due to fraud, there shall be added to the special assessment an amount equal to 50% of the deficiency.
  - (2) There shall be added to the special assessment (in addition to the amount determined under (f)(1) above) an amount equal to 50% of the interest payable under section 27-0923 of the Environmental Conservation Law with respect to the portion of the underpayment described in (f)(1) which is attributable to fraud, for the period beginning on the last day prescribed by law for payment of such underpayment and ending on the date of the assessment of the special assessment (or, if earlier, the date of the payment of the special assessment).
  - (3) The addition to the special assessment under this subsection shall be in lieu of any other addition to the special assessment imposed by subsection (a) or (b).
- (g) Any person who with fraudulent intent shall fail to pay the special assessment or to make, render, sign or certify any return, or to supply any information within the time required shall be liable to penalty of not more than \$1,000 in addition to any other amounts required under this article, to be imposed, assessed and collected by the Tax Commission. The Tax Commission shall have the power, in its discretion, to waive, reduce or compromise any penalty under this subsection.
- (i) For purposes of subsections (b) and (f) the amount shown as the special assessment by the person subject to the special assessment upon its return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last date prescribed for filing the return.

- (k) If there is a substantial understatement of the special assessment for any calendar quarter, there shall be added to the special assessment an amount equal to 10% of the amount of any underpayment attributable to such understatement. There is a substantial understatement of the special assessment for any calendar quarter if the amount of the understatement for the calendar quarter exceeds the greater of 10% of the special assessment required to be shown on the return for the calendar quarter, or \$5,000. The tax commission may waive all or any part of the addition provided by this section on a showing by the person subject to assessment that there was reasonable cause for the underpayment and that the person subject to special assessment acted in good faith.
- (l) Any person who, with the intent that tax be evaded, shall, for a fee or other compensation or as an incident to the performance of other services for which such person receives compensation, aid or assist in, or procure, council, or advise the preparation or presentation of any return, report, declaration, statement or other document which is fraudulent or false as to any material matter, or supply any false or fraudulent information shall pay a penalty not exceeding \$10,000.

In addition, the following penalty may apply under Paragraph 7 (a) of Section 27-0923 of the Environmental Conservation Law.

If any generator of hazardous waste or person subject to the special assessment fails or refuses to file a return or furnish any information requested in writing by the Department of Taxation and Finance, the Department may, from any information in its possession, make an estimate and issue an assessment against such generator or person and add a penalty of 25 percent of the amount of special assessment so determined. This penalty is in addition to all other applicable penalties.

Criminal Penalties - In addition, criminal penalties pursuant to Article 37 of the Tax Law may apply.