

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

TSB-M-91 (1) H
Hazardous Waste

Subject: Special Assessments on Hazardous Waste
Chapter 423, Laws of 1990

Chapter 423, Laws of 1990, enacted July 10, 1990, amended section 27-0923 of the Environmental Conservation Law of the State of New York, as added by Chapter 38, Laws of 1985 (refer to TSB-M-86(1) Hazardous Waste for information on Chapter 38, Laws of 1985). This TSB-M incorporates those amendments to section 27-0923, and is applicable to calendar quarters beginning on or after October 1, 1990, unless otherwise noted.

Who must file returns and pay the special assessments

Generally, any person who generates hazardous waste within New York State or any person holding a permit, or required to hold a permit, for the storage, treatment or disposal of hazardous waste who receives hazardous waste from outside New York State is responsible for reporting and paying to the Department of Taxation and Finance the special assessments on hazardous waste. A separate quarterly return, with an accompanying payment, must be filed for each site, and information identifying the specific site and the activity for that site must appear on the return.

However, no quarterly return or payment is required for a site when there is no activity subject to the special assessments during the quarter, or the total special assessments attributable to the site for the quarter do not exceed \$27 (applicable to calendar quarters beginning on or after January 1, 1991).

Reporting Periods

The reporting periods are calendar quarters

<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

Note: The provision in section 27-0923(4) (a) of the Environmental Conservation Law permitting the deferral of payment when the amount of special assessments due at the end of a quarter is less than \$50, is repealed (applicable to calendar quarters beginning on or after January 1, 1991).

Special Assessment Rates

A. For calendar quarters beginning on or after October 1, 1990, the special assessments are imposed upon every person engaged in the generation of hazardous waste in New York State as follows:

- \$27 per ton of hazardous waste generated, when disposed of in a landfill on the site of generation, or when designated for removal or removed from the site of generation for disposal in a landfill or storage before disposal in a landfill.
- \$9 per ton of hazardous waste generated, when designated for removal or removed from the site of generation for incineration or storage before incineration.
- \$2 per ton of hazardous waste generated, when incinerated on the site of generation.
- \$16 per ton of hazardous waste generated, when designated for removal or removed from the site of generation for treatment or disposal, exclusive of disposal in a landfill or by incineration, or storage before such treatment or disposal.

Any residue that is a hazardous waste remaining from the treatment of hazardous waste on the site of generation is subject to the special assessments when disposed of or incinerated on the site of generation, or designated for removal or removed from the site of generation for disposal, incineration or treatment or for storage before disposal, incineration or treatment. However, any residue that is a hazardous waste remaining from incineration on the site of generation and subsequently disposed of in a landfill on such site, is not subject to the special assessments.

B. For calendar quarters beginning on or after October 1, 1990, the special assessments imposed upon persons holding permits, or required to hold permits, for the storage, treatment or disposal of hazardous waste are imposed as follows:

- \$27 per ton of hazardous waste received for disposal in a landfill or for storage before disposal in a landfill.
- \$9 per ton of hazardous waste received for incineration or for storage before incineration.
- \$16 per ton of hazardous waste received for treatment or disposal, exclusive of disposal in a landfill or by incineration, or for storage before such treatment or disposal.

Special assessments are not imposed on persons holding permits, or required to hold permits, for the storage, treatment or disposal of hazardous waste, upon receipt of hazardous waste for treatment or disposal, or storage before treatment or disposal if the waste was generated by persons subject to the special assessments in the preceding section A.

In the case of a fraction of a ton, the special assessments imposed are determined by rounding off the fraction of a ton to the nearest tenth of a ton and multiplying that amount by the rate imposed on a whole ton.

Actual Method Used to Determine Rate

The actual method used to dispose of or treat any hazardous waste determines the rate per ton applicable under the special assessments imposed, even if such hazardous waste was designated for removal, removed, stored or received for disposal or treatment by a method different from the method actually used.

Refunds

If the actual method used to dispose of or treat any hazardous waste results in an overpayment of the special assessments, the Department of Taxation and Finance will, upon application by the taxpayer, either credit or refund the amount of the overpayment as requested.

Resource Recovery

The special assessments are not imposed on the resource recovery of any hazardous waste. However, any material remaining from resource recovery that is a hazardous waste and is subsequently disposed of, treated or incinerated is subject to the special assessments. For purposes of the special assessments, resource recovery does not include the removal of water from a hazardous waste.

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 purposes of the special assessments, generation of

hazardous waste does not include retrieval or creation of hazardous waste that must be disposed of due to remediation of an inactive hazardous waste disposal site, as defined in section 27-1301 of the Environmental Conservation Law, located in New York State.

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, or as to render the waste non-hazardous, make the waste safer to transport, store or dispose of, render the waste amenable for recovery or storage, or reduce the volume of the waste.

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, as well as the thermal destruction of hazardous waste and the burning of such waste as fuel for the purpose of recovering usable energy.

Designated for removal is the act of completing the manifest, which expresses the generator's intention to remove the hazardous waste from the site of generation for disposal by the method designated on the manifest.

Interest, Additions to Special Assessments and Penalties Interest

Subdivision 7 of section 27-0923 of the Environmental Conservation Law provides that interest at the rate of 15% per annum will be collected as a part of the special assessments if the special assessments, or any installment or portion thereof, are not paid on or before the due date. The underpayment rate of interest applicable to deficiencies set by the Commissioner of Taxation and Finance pursuant to section 1096(e) of the Tax Law does not apply to the special assessments.

Additions and Civil Penalties

Failure or refusal to file a return or furnish information requested in writing

Subdivision 7 of section 27-0923 of the Environmental Conservation Law provides that if a person subject to the special assessments fails or refuses to file a return or to furnish any information requested by the Department of Taxation and Finance in writing, the Department of Taxation and Finance may estimate the amount of special assessments owed from any information in its possession and issue an assessment. A penalty of 25% of that assessment will be added to the amount of special assessments assessed in this manner. This 25% penalty applies in lieu of the following penalties in Article 27 of the Tax Law: the penalty imposed under section 1085(a) (1) for failure to file a return and the penalty imposed under section 1085(g) for a failure by a person, with fraudulent intent, to supply any information within the time required.

The following additions and civil penalties imposed pursuant to section 1085 of Article 27 of the Tax Law apply to the special assessments:

Tax Law Section 1085

- (a) (2) In case of failure to pay the amounts shown as special assessments on any return on or before the prescribed date for payment, unless it is shown the failure is due to reasonable cause and not due to willful neglect, there is to be added to the amount shown as special assessments on such return 1/2% of the amount of such special assessments for each month or fraction of a month the failure continues, not exceeding 25% in the aggregate. For the purpose of computing the addition for any month, the amount of special assessments shown on the return will be reduced by the amount of any part of the special assessments which is paid on or before the beginning of such month and by the amount of any credit against the special assessments which may be claimed on the return. If the amount of special assessments required to be shown on a return is less than the amount shown as special assessments on such return, the lower amount will be substituted.

- (a) (3) In case of failure to pay all the amount, in respect of any special assessments required to be shown but not shown on a return within 10 days of the date of a notice and demand, unless it is shown the failure is due to reasonable cause and not willful neglect, there is to be added to the amount of special assessments stated in the notice and demand 1/2% of the special assessments for each month or fraction of a month the failure continues, not exceeding 25% in the aggregate. For the purpose of computing the addition for any month, the amount of special assessments stated in

the notice and demand will be reduced by the amount of any part of the special assessments paid before the beginning of such month.

- (b) (1) When any part of a deficiency is due to negligence or the intentional disregard of section 27-0923 of the Environmental Conservation Law or rules or regulations thereunder (but without intent to defraud), an amount equal to 5% of the deficiency is to be added to the amount of special assessments due.
- (2) In addition to the amount determined under preceding (b) (1) above, there is to be added to the amount of special assessments due, an amount equal to 50% of the interest payable under subdivision 7 of section 27-0923 of the Environmental Conservation Law, determined on that portion of the deficiency attributable to the negligence or intentional disregard referred to in (b) (1) above, for the period beginning on the last date prescribed by law for payment of the special assessments and ending on the date of assessment of the deficiency (or, if earlier, the date of payment of the special assessments).
- (f) (1) If any part of a deficiency is due to fraud, an amount equal to 50% of the deficiency is to be added to the amount of special assessments due.
- (2) In addition to the amount determined under the preceding (f) (1), there is to be added to the amount of special assessments due an amount equal to 50% of the interest payable under subdivision 7 of 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 assessments (or, if earlier, the date of payment of the special assessments).
- (i) For purposes of subsections (b) and (f) of section 1085 of the Tax Law, the amount shown as special assessments on the return filed by the person subject to the special assessments will be taken into account in determining the amount of the deficiency, but only if the return was timely filed.
- (k) If there is a substantial understatement of the special assessments for any calendar quarter, an amount equal to 10% of any underpayment attributable to the

understatement is to be added to the amount of special assessments. There is a substantial understatement of the special assessments for any calendar quarter if the amount of the understatement for the calendar quarter exceeds the greater of 10% of the special assessments required to be shown on the return for the calendar quarter, or \$5,000. The Commissioner of Taxation and Finance may waive all or any part of the addition provided by subsection (k) if the person subject to the special assessments shows reasonable cause for the underpayment and acted in good faith.

- (1) Any person who, with the intent that the special assessments be evaded, and for a fee or other compensation, or as an incident to the performance of other services for which such person receives compensation, aids or assists in, or procures, counsels, or advises the preparation or presentation of any return, report, declaration, statement or other document that is fraudulent or false as to any material matter, or supplies any false or fraudulent information, is subject to a penalty not exceeding \$10,000.

Criminal Penalties - Criminal penalties pursuant to Article 37 of the Tax Law or the Environmental Conservation Law may also apply.

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 and apply to the special assessments except when 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 (previously described), overpayments and refunds, appeals and hearings, and collections, levies and liens apply to the special assessments. In addition, the Commissioner of Taxation and Finance is responsible for the administration and enforcement of the special assessments.

The Commissioner of Environmental Conservation and the Commissioner of Taxation and Finance have the power to jointly promulgate rules and regulations applicable to the special assessments,

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