§ 27-0923. Special assessments on hazardous wastes generated.

1. On and after June first, nineteen hundred eighty-five, there is hereby imposed upon every person who is engaged within the state in the generation of hazardous waste identified or listed pursuant to this title a special assessment to be determined as follows:

a. Twenty-seven dollars per ton of hazardous waste generated which is disposed of in a landfill on the site where the waste is generated or which is designated for removal or removed from the site of generation for disposal in a landfill or which is designated for removal or removed from the site of generation for storage prior to disposal in a landfill;

b. Nine dollars per ton of hazardous waste generated which is designated for removal or removed from the site of generation for incineration or for storage prior to incineration;

c. Two dollars per ton of hazardous waste generated which is incinerated on the site where the waste is generated;

d. Sixteen dollars per ton of hazardous waste generated which is designated for removal or removed from the site of generation for treatment or disposal, exclusive of disposal in a landfill or by incineration, or for storage prior to such treatment or disposal;

e. Any residues which are hazardous wastes 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 or incinerated on such site or which are subsequently designated for removal or removed from the site of generation for disposal, incineration or treatment or for storage prior thereto, shall be subject to the special assessments imposed by this subdivision. Provided, however, any residues which are hazardous wastes remaining from the incineration of hazardous wastes in a facility located on the site where the wastes are initially generated and which are subsequently disposed of in a landfill on such site shall not be subject to the special assessments imposed by this subdivision.

f. Notwithstanding any provision of this section to the contrary, no special assessment shall be imposed under this section on the generation of universal wastes. For purposes of this paragraph, "universal wastes" shall mean those defined and listed in regulations promulgated pursuant to this title, provided that such wastes are regulated consistent with rules adopted by the administrator pursuant to RCRA for the management of universal wastes.

2. On or after June first, nineteen hundred eighty-five, there is hereby imposed upon persons holding permits or required to hold permits for the storage, treatment or disposal of hazardous waste pursuant to section 27-0913 of this title a hazardous waste disposal special assessment to be determined as follows:

a. Twenty-seven dollars per ton of hazardous waste which is received for disposal in a landfill or for storage prior to disposal in a landfill;

b. Nine dollars per ton of hazardous waste which is received for incineration or for storage prior to incineration;

c. Sixteen dollars per ton of hazardous waste which is received for treatment or disposal, exclusive of disposal in a landfill or by incineration, or for storage prior to such treatment or disposal;

d. No special assessment shall be imposed under this subdivision upon receipt for treatment or disposal, or storage prior thereto of hazardous waste where such waste was generated by persons subject to the special assessment under subdivision one of this section.

3. a. Notwithstanding any provision of this section to the contrary, no special assessment shall be imposed under this section on the resource recovery of any hazardous waste; provided, however, that any materials remaining from resource recovery which are hazardous wastes and which are subsequently disposed of, treated, or incinerated, shall be subject to the special assessments imposed by this section. For

purposes of this section, resource recovery shall not include the removal of water from a hazardous waste.

b. In the case of a fraction of a ton, the special assessments imposed by this section shall be the same fraction of the amount of such special assessment imposed on a whole ton.

c. For the purpose of this section, generation of hazardous waste shall not include retrieval or creation of hazardous waste which must be disposed of under an order of or agreement with the department pursuant to title thirteen or title fourteen of this article or under a contract with the department pursuant to title five of article fifty-six of this chapter or under an order of or agreement with the United States environmental protection agency or an order of a court of competent jurisdiction, related to a facility addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.) or under a written agreement with a municipality which has entered into a memorandum of agreement with the department related to the remediation of brownfield sites as of August fifth, two thousand ten.

d. No portion of the special assessments collected pursuant to this section shall be used for any purpose if such use, under federal law, would preclude the collection of such special assessment.

e. Notwithstanding any provision of this section to the contrary, the actual method utilized to dispose of or treat any hazardous waste shall govern the determination of the rate per ton applicable under the special assessments imposed by this section, even if such hazardous waste was designated for removal, removed, stored or received for disposal or treatment by a method different than the method actually utilized. Where any such special assessment with respect to any hazardous waste is reported and paid on the basis of a rate per ton which is greater than the rate per ton applicable to the actual method utilized to dispose of or treat such hazardous waste, the difference between the amount reported and paid and the amount due using the rate per ton applicable to the actual method utilized shall be considered an

overpayment of such special assessment. The commissioner of taxation and finance shall credit or refund such overpayment in the manner provided and subject to the conditions contained in article twenty-seven of the tax law, as incorporated by subdivision six of this section.

f. No special assessment shall be imposed under this section on hazardous waste generated by or at an elementary or secondary school provided the waste results from services which are provided:

(i) under a contract with the department, or with the department's approval and in compliance with department regulations, or pursuant to an order of the department, the United States environmental protection agency or a court, related to the cleanup or remediation of a hazardous materials or hazardous waste spill, discharge, or surficial cleanup, pursuant to this chapter, other than a removal action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.);

(ii) under a contract with the department for, or with the department's approval and in compliance with department regulations, related to the cleanup and removal of a petroleum spill or discharge, pursuant to subdivision seven of section one hundred seventy-six of the navigation law;

(iii) under the order of a court, the department or the department of health, or the United States environmental protection agency related to an inactive hazardous waste disposal site pursuant to section 27-1313 of this article, section thirteen hundred eighty-nine-b of the public health law, or the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.);

(iv) voluntarily and without expectation of monetary compensation in accordance with subdivision one of section 27-1321 of this article; or

(v) under permit or order requiring corrective action pursuant to this title or the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

4. a. The special assessments imposed by this section shall be reported and paid to the department of taxation and finance on a quarterly basis on or before the twentieth day of the month after the end of each calendar quarter, provided, however, that the special

assessments attributable to the months of June, July, August and September of nineteen hundred eighty-five shall be due on October twentieth, nineteen hundred eighty-five. The payments shall be accompanied by a return in such form as the department of taxation and finance may prescribe upon consultation with the commissioner. Provided, however, that no special assessment imposed by this section shall be required to be reported or paid with respect to any one calendar quarter if the total amount of all special assessments due for such quarter is twenty-seven dollars or less.

b. All moneys collected or received by the department of taxation and finance pursuant to this section shall be deposited daily to the credit of the comptroller with such responsible banks, banking houses or trust companies as may be designated by the comptroller. Such deposits shall be kept separate and apart from all other moneys in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the revenues collected under this section, the comptroller shall retain in his hands such amounts as the commissioner of taxation and finance may determine to be necessary for refunds under this section and the comptroller shall pay any refunds to which those liable for special assessments shall be entitled under the provisions of this section. The comptroller, after reserving the amount to pay such refunds, shall, on or before the tenth day of each month, pay all special assessments, interest and penalties collected under this section and remaining to his credit in such banks, banking houses or trust companies at the close of business on the last day of the preceding month into the hazardous waste remedial fund created pursuant to section ninety-seven-b of the state finance law. Within thirty days after each quarterly reporting date, the comptroller shall certify the amount of special assessments under this section deposited in the hazardous waste remedial fund during the preceding quarter and the cumulative amount collected since the start of the current calendar year, and shall submit such certification to the governor and the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

5. The commissioner and the commissioner of taxation and finance shall

have the power to jointly promulgate rules and regulations necessary and appropriate to carry out the purpose of this section.

6. The provisions of article twenty-seven of the tax law shall apply to the provisions of this section in the same manner and with the same force and effect as if the language of such article had been incorporated in full into this section and had expressly referred to the special assessments under this section except that the term "special assessment" or "special assessments" when used in this section shall mean "tax" or "taxes" for the purpose of the application of article twenty-seven of the tax law as incorporated by this subdivision and except to the extent that any provision of such article is either inconsistent with a provision of this section or is not relevant to this section.

7. a. If any generator or person subject to assessment by this section fails or refuses to file a return or furnish any information requested in writing by the department of taxation and finance, said 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 twenty-five percent of the amount of the assessment so determined. With respect to such failure or refusal to file a return or furnish any information, the provisions of paragraph one of subsection (a) and subsection (g) of section one thousand eighty-five of the tax law shall not apply.

b. If the assessment imposed by this section or any installment or portion of the assessment is not paid on or before the date prescribed for its payment, there shall be collected as a part of the assessment, interest upon the unpaid amount at the rate of fifteen percent per annum from the date prescribed for its payment until payment is actually made to the department of taxation and finance. With respect to interest upon such unpaid amount, the underpayment rate of interest applicable to deficiencies, set by the commissioner of taxation and finance pursuant to subsection (e) of section one thousand ninety-six of the tax law, shall not apply.