

CHAPTER 38
LITTER CONTROL FEE

Authority

N.J.S.A. 54:50-1.

Source and Effective Date

R.2008 d.285, effective August 27, 2008.
See: 40 N.J.R. 2224(a), 40 N.J.R. 5845(b).

Chapter Expiration Date

Chapter 38, Litter Control Fee, expires on August 27, 2013.

Chapter Historical Note

Chapter 38, Litter Control Tax, was adopted as R.1988 d.85, effective February 16, 1988. See: 19 N.J.R. 400(b), 20 N.J.R. 408(b).

Pursuant to Executive Order No. 66(1978), Chapter 38, Litter Control Tax, was readopted as R.1993 d.102, effective February 1, 1993. See: 24 N.J.R. 4502(a), 25 N.J.R. 462(a), 25 N.J.R. 1008(a).

Pursuant to Executive Order No. 66(1978), Chapter 38, Litter Control Tax, expired on February 1, 1998.

Chapter 38, Litter Control Tax, was adopted as new rules by R.1998 d.204, effective April 20, 1998. See: 30 N.J.R. 296(b), 30 N.J.R. 1431(a).

Chapter 38, Litter Control Tax, was readopted as R.2003 d.309, effective July 3, 2003. As a part of R.2003 d.309, Chapter 38 was renamed Litter Control Fee, effective August 4, 2003. See: 35 N.J.R. 1652(a), 35 N.J.R. 3562(a).

Chapter 38, Litter Control Fee, was readopted as R.2008 d.285, effective August 27, 2008. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

18:38-1.1 Effective date

The litter control fee is imposed pursuant to N.J.S.A. 13:1E-213 through 13:1E-223 (P.L. 2002, c. 128), cited as the Clean Communities and Recycling Grant Act. The Act was signed into law December 20, 2002 and the fee imposition sections as amended, are retroactive to January 1, 2002.

Amended by R.2003 d.309, effective August 4, 2003.
See: 35 N.J.R. 1652(a), 35 N.J.R. 3562(a).

Rewrote the section.

18:38-1.2 Nature of fee

The litter control fee is an excise fee on the privilege of engaging in business in New Jersey as a manufacturer, wholesaler, distributor or retailer of litter-generating products measured by the gross receipts from sales of such products within or into New Jersey.

Amended by R.2003 d.309, effective August 4, 2003.

See: 35 N.J.R. 1652(a), 35 N.J.R. 3562(a).

Substituted "fee" for "tax" throughout.

18:38-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Distributor" means a wholesaler. The "wholesaler or distributor" designation is limited to those persons primarily engaged in the business of making wholesale sales. "Primarily" means that more than 50 percent of gross receipts from all sales are wholesale sales.

"Engaged in business in the State" means the participation in any commercial activities in New Jersey with the object of gain, benefit or advantage to the feepayer or to another person or class, directly or indirectly.

"Gross receipts" means all receipts, of whatever kind and in whatever form, derived from sales of litter-generating products, without any deduction therefrom on account of any item of cost, expense or loss. Gross receipts are reportable on the accrual basis and not as collections are made. New Jersey

sales and use tax collections are not includible as gross receipts.

“Manufacturer” means any person who engages in the making, fabricating or processing of any litter-generating product regardless of whether the manufacturing activity occurs within or outside New Jersey. Farmers, ranchers, fishermen and those engaged in similar occupations exclusively involved in the growing, harvesting and producing of raw, unprocessed food products for human or animal consumption are not deemed to be manufacturers.

“Retailer” means every person engaged in the business of selling or exchanging goods for cash or barter or any consideration on the assumption that the purchaser of such goods has acquired the same for ultimate consumption or use. The “retailer” designation is limited to those persons primarily engaged in the business of making retail sales. “Primarily” means that more than 50 percent of gross receipts from all sales are retail sales. “Retailer” includes the owner or operator of a take-out or drive-through restaurant, the principal activity of which consists of selling any meal or food prepared and ready to be eaten for consumption off the premises of the restaurant. “Retailer” does not include the owner or operator of a restaurant with less than 10 percent in annual retail sales of meals or food prepared and ready to be eaten for consumption off the premises of the restaurant; or the owner or operator of a restaurant, the principal activity of which consists of preparing for consumption within the restaurant a meal or food to be eaten on the premises; or those persons that make an isolated or occasional sale of a litter-generating product who are not regularly engaged in the business of making sales at retail where such litter-generating product was obtained by the person making the sale, through purchase or otherwise, for his own use. “Principal activity” means more than 50 percent of the restaurant’s food and beverage sales.

“Retail sales” are sales for ultimate consumption or any purpose other than resale.

“Sale” means any transfer of title or possession or both, exchange, or barter of tangible personal property, conditional or otherwise, in any manner or by any means whatsoever for a consideration or any agreement therefor. “Sale” does not include a rental or lease transaction.

“Sales within the state” means all retail sales and all wholesale sales by taxpayers engaged in business within New Jersey of litter-generating products for use and consumption within New Jersey. It shall be presumed that all sales of litter-generating products sold within the state are for use and consumption within the state unless the taxpayer shows that the products are shipped out-of-state for out-of-state use. Additionally, “sales within the state” or “sold within New Jersey” means all sales of litter-generating products from points outside New Jersey having a New Jersey destination made by every manufacturer, wholesaler, distributor and re-

tailer having nexus with New Jersey without regard to the state in which title passes or delivery takes place.

“Wholesaler” means any person who sells litter-generating products for the purpose of resale to another wholesaler or a retailer or both, but does not include manufacturers. The “wholesaler or distributor” designation is limited to those persons primarily engaged in the business of making wholesale sales. “Primarily” means that more than 50 percent of gross receipts from all sales are wholesale sales.

“Wholesale sales” are sales for resale.

Amended by R.2003 d.309, effective August 4, 2003.
See: 35 N.J.R. 1652(a), 35 N.J.R. 3562(a).

In “Engaged in business in the State”, substituted “feepayer” for “taxpayer” preceding “or to another person or class”; rewrote “Retailer”.

Case Notes

Bank’s preprinted personal checks and deposit slips were subject to the litter control tax. *United Jersey Bank v. Director, Div. of Taxation*, 12 N.J.Tax 516 (1992).

Bank qualified as “retailer” under the Clean Communities and Recycling Act. *United Jersey Bank v. Director, Div. of Taxation*, 12 N.J.Tax 516 (1992).

SUBCHAPTER 2. FEE IMPOSITION AND FEE RATES

18:38-2.1 Fee imposed on persons engaged in wholesale sales

A litter control fee at the rate of 3/100 of 1 percent (.0003) is imposed on gross receipts from wholesale sales of litter-generating products sold within or into New Jersey by each person engaged in business in the State as a manufacturer, wholesaler, distributor or retailer of such litter-generating products. “Wholesale sales” are sales for resale.

Amended by R.2003 d.309, effective August 4, 2003.
See: 35 N.J.R. 1652(a), 35 N.J.R. 3562(a).

Substituted “fee” for “tax” following “litter control”.

18:38-2.2 Fee imposed on persons engaged in retail sales

A litter control fee at the rate of 2.25/100 of 1 percent (.000225) is imposed on gross receipts from retail sales of litter-generating products sold within or into New Jersey by each person engaged in business in the State as a manufacturer, wholesaler, distributor or retailer of such litter-generating products. “Retail sales” are sales for ultimate consumption or any purpose other than resale.

Amended by R.2003 d.309, effective August 4, 2003.
See: 35 N.J.R. 1652(a), 35 N.J.R. 3562(a).

Substituted “fee” for “tax” following “litter control”.