

“Manufacturer” means and includes any person wherever resident or located, who manufactures or produces, or causes to be manufactured or produced cigarettes, and sells, uses, stores or distributes the same regardless of whether they are intended for sale, use or distribution within or without the State of New Jersey.

“Manufacturer’s representative” means and includes any person, employed by a manufacturer, who, for promotional purposes, sells, stores, handles or distributes cigarettes, within the State of New Jersey, limited exclusively to cigarettes manufactured by the employing manufacturer.

“Package” means the smallest individual receptacle immediately surrounding the cigarettes in or from which cigarette sales are normally made or intended to be made at retail and not the carton, box, case or other covering in which such packages are contained, placed or transported.

“Person” means any individual, firm, corporation, copartnership, joint venture, association, receiver, trustee, guardian, executor, administrator, or any other person acting in a fiduciary capacity, or any estate, trust or group or combination acting as a unit, the State Government of New Jersey and any political subdivision thereof, and the plural as well as the singular, and the feminine and neuter as well as the masculine, unless the intention to give a more limited meaning is disclosed by the context.

“Place of business” means any place where cigarettes are sold or where cigarettes are brought or kept for the purpose of sale or consumption, including so far as applicable any vessel, vehicle, airplane, train, or cigarette vending machine.

“Regulation” means those made and promulgated by the Director in the administration of the Act.

“Retail dealer” means any person who is engaged in the State of New Jersey in the business of selling cigarettes at retail. Any person placing a cigarette vending machine at, on or in, any premises is deemed to be a retail dealer for each vending machine.

“Sale” means any sale, transfer, exchange, theft, barter, gift, or offer for sale and distribution, in any manner or by any means whatsoever.

“Stamp” means any impression, device, stamp, label or print manufactured, printed or made as prescribed by the Director and includes both decalomania tax stamps and meter impression tax stamps.

“Taxpayer” means any person required to report or to pay any taxes, interest, or penalties or license fee, imposed pursuant to the provisions of the Act, as amended and supplemented.

“Treasurer” means the State Treasurer, State of New Jersey.

“Use” means the exercise of any right or power incidental to the ownership of cigarettes.

“Vending machine” means any coin-in-the-slot operated mechanical device or contrivance used for the automatic sale, dispensation or merchandising of cigarettes in their original package.

Amended by R.1979 d.92, effective March 8, 1979.
See: 11 N.J.R. 98(a), 11 N.J.R. 211(b).

Statutory References

As to definitions, see N.J.S.A. 54:40A-2.

Case Notes

Statutory provision for tax on sales of alcoholic beverages and including within the sales definition the theft of such beverages held not to deny due process or equal protection; cigarette tax rules cited for common scheme support. *Hoffman Import & Distributing Co. v. Director, Division of Taxation*, 146 N.J.Super. 132, 369 A.2d 29 (App. Div.1977), certification denied 75 N.J. 8, 370 A.2d 239 (1977).

SUBCHAPTER 2. IMPOSITION OF TAX

18:5-2.1 Cigarettes subject to tax; taxable status

(a) The Act imposes a tax on the sale, possession for sale, use, or consumption or storage for use of all cigarettes within the State of New Jersey.

(b) All cigarettes acquiring a taxable status in New Jersey immediately become subject to the tax. All cigarettes, not expressly exempted, are deemed to have (or to have acquired) a taxable status pursuant to the provisions of the Act, and the tax is required to be paid thereunder if they fall within any of the following categories:

1. Sold in New Jersey;
2. Possessed for sale in New Jersey;
3. Stored for sale in New Jersey;
4. Used in New Jersey;
5. Stored for use in New Jersey;
6. Consumed in New Jersey;
7. Lost, stolen or unaccounted for, in transit, storage or otherwise, in New Jersey except transit in interstate commerce.

Amended by R.1979 d.92, effective March 8, 1979.
See: 11 N.J.R. 98(a), 11 N.J.R. 211(b).

Statutory References

As to taxes imposed, see N.J.S.A. 54:40A-8.

Case Notes

Statutory provision for tax on sales of alcoholic beverages and including within the sales definition the theft of such beverages held not to deny due process or equal protection; cigarette tax rules cited for common scheme support. *Hoffman Import & Distributing Co. v. Director, Division of Taxation*, 146 N.J. Super. 132, 369 A.2d 29 (App. Div. 1977), certification denied 75 N.J. 8, 379 A.2d 239 (1977).

Rules consistent with statutory scheme regarding tax stamp requirements and refund allowances. *Supermarkets General Corp. v. Taxation Div. Director*, 4 N.J. Tax 431 (Tax Ct. 1982), affirmed per curiam 6 N.J. Tax 252 (App. Div. 1983).

18:5-2.2 Method of paying tax

(a) The tax is paid by the purchase of revenue tax stamps from the Director of the Division of Taxation. Stamps of the appropriate denomination are required to be affixed to each individual package of cigarettes by licensed distributors.

(b) The Director may, in his discretion, if more practical, collect the taxes due pursuant to the provisions of the Act otherwise than by means of tax stamps (or meter impressions), provided any other method used will adequately protect the revenue due the State of New Jersey.

Amended by R. 1979 d. 92, effective March 8, 1979.
See: 11 N.J.R. 98(a), 11 N.J.R. 211(b).

Statutory References

As to the method of paying taxes with stamps, see N.J.S.A. 54:40A-11.

18:5-2.3 Computation of tax

The provisions of this Act impose a tax computed at the rate of \$0.1025 for each cigarette.

Amended by R. 1973 d. 54, effective February 21, 1973.
See: 5 N.J.R. 21(a), 5 N.J.R. 96(a).

Amended by R. 1993 d. 167, effective April 19, 1993.
See: 24 N.J.R. 2415(a), 25 N.J.R. 1776(b).

Revised (a); deleted (b).
Amended by R. 1999 d. 11, effective January 4, 1999.
See: 30 N.J.R. 3609(a), 31 N.J.R. 55(b).

Changed the cigarette tax rate from \$0.02 to \$0.04.
Amended by R. 2004 d. 146, effective April 19, 2004.
See: 35 N.J.R. 5367(a), 36 N.J.R. 1954(a).

Changed the cigarette tax rate from \$0.04 to \$0.1025.

Statutory References

As to the tax rate imposed, see N.J.S.A. 54:40A-8.

18:5-2.4 Cigarettes exempt from taxation

(a) Cigarettes exempt from taxation imposed by the provisions of the Act include:

1. Cigarettes or the sale of cigarettes which the State of New Jersey is prohibited from taxing under the Constitution or the statutes of the United States.¹

2. Cigarettes stored, warehoused, or transported under United States Internal Revenue Bond or United States Customs Control.

3. Cigarettes purchased by an authorized agent of the United States Veterans Administration from donations for free distribution to, and for consumption by, hospitalized veterans housed in State Institutions.

4. Cigarettes in possession of licensed manufacturers prior to delivery or sale to duly licensed distributors.

¹ United States Constitution, Article I, Section VIII, paragraph 3.

Statutory References

As to the taxability of sales to the licensed distributors, see N.J.S.A. 54:40A-9.1; as to the exempt sales, see N.J.S.A. 54:40A-10.

18:5-2.5 Cigarettes ceasing to be subject to tax

Unstamped cigarettes possessed subject to tax may cease to be subject to such tax provided the cigarettes are:

(a) Sold to the United States Government or Agencies thereof.

Sales of unstamped cigarettes may be made by licensed distributors only to such agencies as are duly authorized by the Director to receive the same.

1. Unstamped cigarettes sold to authorized agencies must be physically delivered by the distributors' conveyance or by an authorized common carrier directly to the situs where the installation of the governmental agency is located;

2. A duly receipted invoice or a copy thereof must be obtained from the governmental agent designated to accept delivery, which duly receipted invoice must be appended to Cigarette Tax Form CR-5, Schedule D, of the distributors monthly report upon which every sale must be reported in complete detail. (Historical Note: Formerly Reg. CT-9, Filed on May 31, 1967.)

(b) Sold to out-of-State jobbers or dealers. Such sales of unstamped cigarettes may be made by licensed distributors within the State of New Jersey only to such out-of-State persons who can properly identify themselves as registered or licensed cigarette jobbers or dealers in the state into which the cigarettes are to be transported.

1. The true identity of the purchaser of the unstamped cigarettes must be ascertained by the licensed distributor before the sale is consummated;

2. The out-of-State jobber or dealer must make a declaration of the ultimate destination of the unstamped cigarettes, and a duly receipted invoice or a copy thereof must be obtained by the licensed distributor from the out-of-State jobber or dealer, which invoice must also indicate the ultimate destination of the cigarettes;

3. All cigarettes so sold must be reported on the licensed distributor's monthly report in the complete detail required by Cigarette Tax Form CR-4, Schedule C;