

**CHAPTER 38**  
**LITTER CONTROL FEE**

**Authority**

N.J.S.A. 13:1E-222 and 54:50-1.

**Source and Effective Date**

R.2003 d.309, effective July 3, 2003.  
See: 35 N.J.R. 1652(a), 35 N.J.R. 3562(a).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 38, Litter Control Fee, expires on December 30, 2008. See: 40 N.J.R. 2224(a).

**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 Fee, was readopted as R.2003 d.309, effective July 3, 2003. 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 oc-

curs 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”.

### SUBCHAPTER 3. PRODUCTS SUBJECT TO THE FEE

#### 18:38-3.1 Sales of litter-generating products

(a) Litter-generating products means the 15 categories of products listed in (b) below which meet any of the following conditions:

1. They are produced, distributed or purchased in disposable containers, packages or wrappings; or
2. They are not usually sold in packages, containers or wrappings but are commonly discarded in public places; or
3. They are of an unsightly or unsanitary nature commonly thrown, dropped, discarded, placed or deposited by a person on public property, or on private property not owned by him.

(b) It is presumed that all products in the categories listed below satisfy at least one of the conditions stated in (a) above and qualify as a litter-generating product.

1. Beer and other malt beverages—means beer, lager beer, ale, stout, porter and all similar fermented malt beverages having an alcoholic content of  $\frac{1}{2}$  of 1 percent or more by volume.
2. Cigarettes and tobacco products:
  - i. Cigarettes means any roll for smoking made wholly or in part of tobacco, or any other substance or substances other than tobacco, irrespective of size, shape or flavoring, the wrapping or cover of which is made of paper or any substance or material, excepting tobacco.
  - ii. Tobacco products means all products containing tobacco except cigarettes, including, but not limited to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking tobacco and other products containing tobacco, including snuff.
3. Cleaning agents and toiletries:
  - i. Cleaning agents means all soaps, detergents, solvents, or other cleaning substances used for cleaning buildings, places, persons, animals, or other things.
  - ii. Toiletries means all substances such as soap, powder, cologne, perfume, cosmetics, toothpaste, etc., used in connection with personal dressing or grooming.
4. Distilled spirits means any beverage which contains alcohol obtained by distillation.
5. Food for human or pet consumption:
  - i. Food for human consumption means any substance, the chief general use of which is for human nourishment. It includes sales of all food by food manufacturers, wholesalers and retailers. Certain res-

taurants described in N.J.A.C. 18:38-5.1(b) are excluded as retailers of food.

ii. Food for pet consumption means any substance the chief general use of which is for pet nourishment.

(1) "Pet" means any domesticated animal which is not a productive animal. "Productive animal" means an animal which is raised for its meat, for the edible products which it produces, for its fur, wool or skin, for breeding purposes or for farm work. The following are examples of productive animals: dairy cows, poultry, swine, sheep, food fish, rabbits, and other game animals raised for meat or fur, chinchillas and minks; also, cows and bulls held for breeding purposes, stallions, brood mares and plow horses.

6. Glass containers sold as such means articles made wholly or in substantial part of processed silicates which can be, or are, used to hold other things within themselves, and sold in an empty state for the purpose of resale or transfer in a filled or partially filled state.

7. Groceries means all nonperishable edible products, except drugs, sold by persons in a place of business engaged in selling food for off premises consumption. Food sold in such establishments and not included in this category would be included in the "food for human or pet consumption" category.

8. Metal containers sold as such means articles made wholly or in substantial part of materials such as iron, steel, tin, aluminum, copper, zinc, lead, silver or like substances and any alloys thereof and which can be, or are, used to hold other things within themselves and sold in an empty state for the purpose of resale or transfer in a filled or partially filled state.

9. Motor vehicle tires means all tires, regardless of composition, designed for use on any vehicle propelled otherwise than by muscular power including motorcycles, motor driven lawn and garden equipment and construction equipment and including trailers, semi-trailers, house-trailers, or any other type of vehicle drawn by a motor-driven vehicle.

10. Newsprint and magazine paper stock:

i. Newsprint means machine-finished paper made from ground wood and chemical pulp or recycled paper in whole or in part as commonly used to manufacture newspapers but shall not mean newspapers in their published form.

ii. Magazine paper stock means the paper commonly used to manufacture periodical publications but does not include magazines in their published form.

11. Drugstore sundry products means all products, goods, or articles, except newspapers, magazines and drugs, whether prescription or nonprescription, sold by persons in a place of business selling drugs at retail.

i. "Drugs" means substances or products appearing in the latest listing of United States Pharmacopoeia or National Formulary the chief general use of which is as medicine for treating disease, healing, or relieving pain, but excluding devices, apparatus, instruments, prostheses and the like.

ii. "Place of business" for purposes of this category means any location, department or division even though it be a part of a larger business physically, operationally, and in its books and records. Thus, a department store which consists of a drug department and a clothing department, each with its own space and having separate employees, cash registers and accounting records would not be subject to the litter control fee on sales of its clothing department merely because it was located in the same building under the same ownership as the drug department.

12. Paper products and household paper means all items of tangible personal property made or substantially derived from paper including all paper products for home or other personal use but does not include newspapers and magazines, and does not include roll stock produced by paper product manufacturers and wood pulp, sold as such.

i. "Newspaper" is a printed publication issued at regular intervals, usually daily or weekly, and which contains news, editorial comment, feature articles and advertisements.

ii. "Magazine" is a printed publication issued periodically, at least four times a year and is usually bound with a paper cover and contains many and miscellaneous articles on a variety of topics.

13. Plastic or fiber containers made of synthetic material and sold as such means articles which can be, or are, used to hold other things within themselves and which are made of synthetically produced ethylene derivatives, resins, waxes, adhesives, or polymers or by synthesis of fiber materials with adhesives, polymers, waxes, resins, or other materials, but not including any container which is routinely reused, has a useful life of more than one year and is ordinarily sold empty at retail. It includes containers made of paper, pasteboard, or cardboard in which the container material consists of fibrous substances synthesized with other materials. Synthetic material means that produced by synthesis which is the process of making or building up by a composition or union of simple parts or elements as distinguished from the process of extraction or refinement.

14. Soft drinks and carbonated waters means all beverages, whether carbonated or noncarbonated, except alcoholic beverages, including fruit juices, milk, carbonated water and all mixtures or dilutions of nonalcoholic beverages, but does not include noncarbonated water.

15. Wine means all wines whether known as dry wines, sweet wines, still wines or fortified wines and any artificial or imitation wine or compound sold as wine, and any fruit juice containing  $\frac{1}{2}$  of 1 percent or more of alcohol by volume, and any other beverage containing alcohol produced by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar, which beverage contains  $\frac{1}{2}$  of 1 percent or more of alcohol by volume, including vermouth and cider.

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

In (b), rewrote 2ii and 5i, substituted "fee" for "tax" in 11ii and inserted ", and does not include roll stock produced by paper product manufacturers and wood pulp, sold as such" following "magazines" in the introductory paragraph of 12.

#### Case Notes

Regulatory definition of "litter generating products" did not so overlap legislature's categories of "litter generating products" as to make statutory language inoperative; taxpayer distributed meats, cheeses, fruits and vegetables in disposable containers, packages or wrappings; meaning of "groceries" included nonfood items. *Royal Food Distributors, Inc. v. Director, Div. of Taxation*, 15 N.J.Tax 60 (1995).

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 4. FEE COMPUTATION

### 18:38-4.1 Fee computation methods

(a) Litter control fee liability may be computed by any manufacturer, wholesaler, distributor or retailer subject to the fee using any one of three fee computation methods: general method, total sales method, or percentage of sales method.

1. The general method of fee computation follows:

i. The fee is computed using the general method by applying the fee rate as stated in N.J.A.C. 18:38-2.1 to gross receipts from all wholesale sales of litter-generating products within New Jersey and applying the fee rate stated in N.J.A.C. 18:38-2.2 to gross receipts from all retail sales of litter-generating products within New Jersey sold during the calendar year.

ii. Use of the general method requires the fee payer to separately account for his sales of each of the 15 categories of litter-generating products to properly substantiate his gross receipts subject to fee.

2. The total sales method of fee computation follows: