

CHAPTER 38
LITTER CONTROL TAX

Authority

N.J.S.A. 13:1E-99.1.

Source and Effective Date

R.1998 d.204, effective April 20, 1998.
See: 30 N.J.R. 296(b), 30 N.J.R. 1431(a).

Executive Order No. 66(1978) Expiration Date

Chapter 38, Litter Control Tax, expires on April 20, 2003.

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: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

18:38-1.1 Effective date

The litter control tax is imposed pursuant to N.J.S.A. 13:1E-99.1 (P.L. 1985, c.533), cited as the Clean Communities and Recycling Act. The Act was signed into law January 21, 1986 and became effective April 21, 1986.

18:38-1.2 Nature of tax

The litter control tax is an excise tax 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.

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 taxpayer 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" also includes all restaurants that sell any meal or food prepared and ready to be eaten for consumption off the premises of the restaurant. "Retailer" does not include 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.

"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 retailer 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.

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. TAX IMPOSITION AND TAX RATES

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

A litter control tax at the rate of $\frac{3}{100}$ 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.

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

A litter control tax at the rate of $2\frac{25}{100}$ 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.

18:38-2.3 Suspension of tax

The litter control tax shall not be due and payable if, and as long as, any State of New Jersey or Federal law, or any rule or regulation adopted pursuant thereto, requiring a deposit on, or establishing a refund value for, any litter-generating products shall be in effect.

18:38-2.4 Expiration of tax

The litter control tax shall expire on December 31, 2000. Such expiration shall not affect any obligation, lien or duty to pay taxes which may be due with respect to the imposition of any levy, or interest or penalties which may accrue by virtue of any assessment, which may be made with respect to taxes levied for any taxable year or part of a taxable year, prior to January 1, 2001, nor shall this expiration affect the legal authority to assess and collect the taxes imposed pursuant to N.J.S.A. 13:1E-99.1, or penalties and interest as would accrue thereon, nor shall such expiration invalidate any assessment or affect any proceeding for the enforcement thereof.

SUBCHAPTER 3. MEASURE OF TAX

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