

CHAPTER 38

LITTER CONTROL TAX

Authority

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

Source and Effective Date

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).

Executive Order No. 66(1978) Expiration Date

Chapter 38, Litter Control Tax, expires on February 1, 1998.

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 was readopted as R.1993 d.102. 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 by taxpayers engaged in business within New Jersey without regard to the in-state or out-of-state destination of the litter-generating products sold, 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 wholesale 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 sale 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, 1991. 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, 1992, 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

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 cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, fine-cut and other chewing tobaccos, shorts, scraps, and cuttings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

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 meals, beverages or other prepared food by restaurants, taverns, snack bars, mobile vending operators, vending machines and other similar establishments for consumption off the premises where sold. Food and beverages (excepting beverages specifically enumerated within this subchapter as litter-generating products) sold by such establishments for consumption on the premises are deemed not to be sold in a taxable manner unless served on or with

disposable plates, cups, utensils or other paper or plastic products.

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.

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 tax 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.

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.

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. TAX COMPUTATION

18:38-4.1 Tax computation methods

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

1. The general method of tax computation follows:

i. The tax is computed using the general method by applying the tax 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 tax 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 taxpayer to separately account for his sales of each of the 15 categories of litter-generating products to properly substantiate his gross receipts subject to tax.

2. The total sales method of tax computation follows:

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

Example: The XYZ Liquor Store is a retail establishment in New Jersey with total retail sales of \$1,000,000 for all products sold in New Jersey from April 21, 1986 through December 31, 1986. The owner of the XYZ Store having reviewed the list of litter-generating products is aware that most, if not all, of his sales involve litter-generating products and, therefore, elects to pay the tax using the Total Sales Method of computation. His total tax due for the calendar year 1986 would be: $\$1,000,000 \times .000225 = \225.00 tax due. The low amount of his tax liability, \$225.00 supports his use of this method rather than separately accounting for sales of litter-generating products and using the general method of computation.

ii. Use of the total sales method requires the taxpayer to account for total sales of all products in New Jersey but does not require separate accounting for sales of litter-generating products.

3. The percentage of sales method of tax computation follows:

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

Example: The ABC Auto Supply Store is a retail establishment in New Jersey with total retail sales of \$2,000,000 for all products sold in New Jersey from April 21, 1986 through December 31, 1986. ABC's owner, upon review of the list of litter-generating products, is aware that while his store does sell many litter-generating products, such as motor vehicle tires, cleaning agents, paper products, etc., he also sells many products not listed. He may, therefore, elect to compute his tax due using the Percentage of Sales Method and relieve him of much of the expense of record-keeping needed for the General Method of computation. He can substantiate that the proper proportionate amount of his total sales that can be attributed to sales of litter-generating products is \$500,000. His total tax due for the calendar year 1986 would be $\$500,000 \times .000225 = \112.50 tax due.

ii. The percentages of sales must reflect the portion of total retail sales and total wholesale sales represented by sales of litter-generating products in those sales categories. The percentages must be determined from actual sales data from a sample period of at least one month within the return period which is representative of the taxpayer's sales activity during the entire period covered by the return. This percentage is computed by dividing the gross receipts from sales of litter-generat-

ing products by the gross receipts from total sales for the sample period.

Example: This sampling procedure should be applied to both retail sales and wholesale sales:

(1) Select a sample period of one month that is indicative of sales of litter-generating products for the entire calendar year.

(2) Review all sales invoices for that sample period.

(3) Distinguish between litter-generating product sales and nonlitter-generating product sales for the sample period.

(4) Total all litter-generating product sales and divide litter-generating product sales by total sales for the sample period. This will result in the proper proportionate amount of total sales that can be attributed to litter-generating product sales expressed as a percentage.

(5) Multiply the total gross sales of all products for the entire calendar year by this percentage to get the proper proportionate amount of total sales attributed to sales of litter-generating products.

(6) Multiply the product obtained in step 5 by the proper tax rate to determine the tax due for the calendar year.

iii. A taxpayer electing to determine his litter control tax liability by using the percentage of sales method would not be required to separately account for his total sales of litter-generating products. However, he would be required to maintain such records to substantiate the proportionate amounts used.

18:38-4.2 Optional tax rate use

The litter control tax may be computed by using the wholesale tax rate for all sales subject to the tax rather than separately accounting for retail sales and wholesale sales and using the applicable tax rate.

SUBCHAPTER 5. EXCLUSIONS AND DEDUCTIONS

18:38-5.1 Exclusions

Any retailer with less than \$250,000 in annual gross receipts from all sales, both retail sales and wholesale sales, of litter-generating products is excluded from registration and filing and payment of the tax. When annual gross receipts from all sales of litter-generating products are \$250,000 or more, a retailer is subject to the tax on total annual gross receipts from all sales of litter-generating products including the initial \$250,000 of sales of such

products. For purposes of this section, the "retailer" designation is limited to those persons including manufacturers 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.

18:38-5.2 Deductions

(a) The following sales of litter-generating products shall be considered as deductions:

1. A sale of a litter-generating product by a wholesaler or distributor to another wholesaler or distributor. For purposes of this section, 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. The designation "wholesaler or distributor" does not include a manufacturer.
2. A sale of a litter-generating product by a company to another company owned wholly by the same individuals or companies.
3. A sale of a litter-generating product by a wholesaler or distributor owned cooperatively by retailers to those retailers.

SUBCHAPTER 6. REGISTRATION

18:38-6.1 Registration requirements

(a) Every person subject to the litter control tax is required to register with the Division on Form CIS-1, Application for Registration, on or before October 1, 1986.

(b) Any person commencing or opening a new place of business subsequent to October 1, 1986 is required to register with the Division on Form CIS-1, Application for Registration, within 30 days after the commencement or opening of such business.

(c) Any person who is registered under any law administered by the Division or who is subject to and files returns under any of these laws is not required to register as required by (a) and (b) above.

SUBCHAPTER 7. RETURN FILING, TAX PAYMENT, AND RECORD RETENTION

18:38-7.1 Initial filing and tax payment

Every person subject to the litter control tax for the 1986 taxable year, or any part thereof, is required to file, under oath, a litter control tax return, and pay the full amount of the tax due thereon, on or before March 15, 1987. The 1986 taxable year extends from April 21, 1986 through December 31, 1986.

18:38-7.2 Annual filing and tax payment

Every person subject to the litter control tax is required to file, under oath, a litter control tax return, and pay the full amount of tax due thereon, on or before March 15 of each year for the preceding calendar year's tax liability.

18:38-7.3 Litter control tax return

A litter control tax return, Form LT-5, must be filed, as required by N.J.A.C. 18:38-7.1 and 18:38-7.2, with the Division, indicating the dollar value of sales within the State of litter-generating products.

18:38-7.4 Record retention

All records and other supporting documentation used in completing the LT-5 Litter Control Tax return, must be retained and made available for examination on request by the Division of Taxation or its authorized representatives for at least three years following the filing of a return.

SUBCHAPTER 8. DISPOSITION OF REVENUES

18:38-8.1 Revenues deposited in Clean Communities Account

Litter control tax revenues, and penalties and interest derived from the imposition of the litter control tax, will be deposited in the Clean Communities Account, a nonlapsing, revolving fund in the Department of Treasury administered by the Department of Environmental Protection.