

**CHAPTER 5
CIGARETTE TAX ACT**

Authority

N.J.S.A. 54:40A-20.

Source and Effective Date

R.1994 d.184, effective March 14, 1994.
See: 26 N.J.R. 759(a), 26 N.J.R. 1695(b).

Executive Order No. 66(1978) Expiration Date

Chapter 5, Cigarette Tax Act, expires on March 14, 1999.

Chapter Historical Note

Chapter 5, Cigarette Tax Act, was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 5 was readopted as R.1984 d.94, effective March 19, 1984. See: 16 N.J.R. 228(a), 16 N.J.R. 925(a). Pursuant to Executive Order No. 66(1978), Chapter 5 was readopted as R.1989 d.197, effective March 14, 1989. See: 21 N.J.R. 123(a), 21 N.J.R. 1018(b). Pursuant to Executive Order No. 66(1978), Chapter 5 was readopted as R.1994 d.184. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

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SUBCHAPTER 1. DEFINITIONS

18:5-1.1 Words and phrases defined

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

“Carton” means the receptacle in which 10 packages of cigarettes are normally contained.

“Cigarette” means any roll for smoking made wholly or in part of tobacco, or of any other substance or substances other than tobacco, irrespective of size, shape or flavoring, the wrapper or cover of which is made of paper or any other substance or material, excepting tobacco.

“Consumer” means any person except a distributor or a manufacturer who acquires for consumption, storage or use in the State of New Jersey, cigarettes to which New Jersey revenue tax stamps have not been attached.

“Director” means the Director of the Division of Taxation. Wherever in these Rules and Regulations the word “Director” is used, it shall mean and include any employee or employees of the Division of Taxation, deputized or authorized, either generally or specifically, to act on behalf of the Director.

“Distributor”:

1. “Resident distributor” means and includes any person resident or located within the State of New Jersey, who brings or causes to be brought into the State of New Jersey, unstamped cigarettes purchased directly from the manufacturers thereof and stores, sells or otherwise disposes of the same, after they reach the State of New Jersey.

2. “Nonresident distributor” means and includes any person resident or located outside the State of New Jersey who purchases cigarettes directly from the manufacturer thereof and is engaged in the business of selling and shipping cigarettes into the State of New Jersey.

“Licensed consumer” means any consumer, as defined herein, licensed pursuant to the provisions of the Act.

“Licensed distributor” means any distributor, as defined herein, licensed pursuant to the provisions of the Act.

“Licensed manufacturer” means any manufacturer, as defined herein, licensed pursuant to the provisions of the Act.

“Licensed manufacturer’s representative” means any manufacturer’s representative, as defined herein, licensed pursuant to the provisions of the Act.

“Licensed retail dealer” means any retail dealer, as defined herein, licensed pursuant to the provisions of the Act.

“Licensed wholesale dealer” means any wholesale dealer, as defined herein, licensed pursuant to the provisions of the Act.

"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 the Act impose a tax computed at the rate of 0.02 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).

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.

¹United 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;

4. Under no circumstances may a licensed distributor sell unstamped cigarettes at his place of business in New Jersey to a purchaser who identifies himself as a jobber or dealer in a state which does not have a cigarette tax and who declares the immediate destination of the cigarettes to be to a state not having a cigarette tax. (Historical Note: Formerly Reg. CT-12, Filed August 17, 1953.)

(b) The bond is to be executed by such licensed distributor as principal, and by a corporation approved by the director and duly authorized to engage in business as a surety company in the State of New Jersey as surety.

(c) The bond is to run concurrently with the distributor's license and be filed on Cigarette Tax Form CD-3.

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 requirement that bonds be filed by licensed distributors, see N.J.S.A. 54:40A-4.

18:5-6.7 Wholesale dealer's license

(a) Each wholesale dealer is to apply for a wholesale dealer's license on cigarette tax form CWD-1.

(b) For each license issued to a wholesale dealer, and for each continuance thereof, there must be paid to the director a fee of \$250.00.

(c) If a wholesale dealer sells or intends to sell cigarettes at two or more places of business, whether established or temporary, a separate license is required for each place of business.

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

Statutory References

As to fee for wholesale dealer's licenses, see N.J.S.A. 54:40A-4.

18:5-6.8 Wholesale dealer files bond

(a) Each nonresident licensed wholesale dealer is required to file with the director a bond in an amount not less than \$2,000 to guarantee the proper performance of his duties and the discharge of his liabilities pursuant to the provisions of the Cigarette Tax Act and these rules.

(b) The bond is to be executed by such licensed wholesale dealer as principal, and by a corporation approved by the director and duly authorized to engage in business as a surety company in the State of New Jersey as surety.

(c) The bond is to run concurrently with the wholesale dealer's license and be filed on Cigarette Tax Form CWD-3.

Amended by R.1979 d.92, effective March 8, 1979.
See: 11 N.J.R. 98(a), 11 N.J.R. 211(b).
Amended by R.1980 d.194, effective May 6, 1980.
See: 12 N.J.R. 217(a), 12 N.J.R. 354(b).

Statutory References

As to the requirement that bonds be filed by wholesale dealers, see N.J.S.A. 54:40A-4.

18:5-6.9 Retail dealer's over-the-counter license

(a) Each retail dealer is to apply for an "over-the-counter" retail dealer's license on Cigarette Tax Form CRD-1-A (Initial) or CRD-1 (Renewal), if the applicant is applying for one license.

(b) If the applicant is applying for more than one retail dealer's license, Cigarette Tax Form CRD-3, Chain Store and Multiple Outlets, is to be used.

(c) For each license issued to an "over-the-counter" retail dealer, and for each continuance thereof, there must be paid to the Director a fee of \$5.00.

(d) If an "over-the-counter" retail dealer sells or intends to sell cigarettes at two or more places of business, whether established or temporary, or whether in the same building or not, a separate license is required for each place of business.

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 retail dealer's licenses, see N.J.S.A. 54:40A-4.

18:5-6.10 Retail dealer's vending machine license

(a) Each retail dealer is required to apply for a vending machine retail dealer's license on Cigarette Tax Form CRDV-1A (Initial) or CRDV-1B (Renewal) if the applicant is applying for one license.

(b) If the applicant is applying for more than one vending machine retail dealer's license, Cigarette Tax Form CRDV-1, Multiple Vending Machine Operator, together with Form CRDV-4, Vending Machine Informational Report, are to be used.

(c) For each license issued to a retail dealer operating a vending machine for the sale of cigarettes, and for each continuance thereof, there must be paid to the Director a fee of \$5.00.

(d) Each vending machine, for the sale of cigarettes, is deemed a separate place of business, and must be separately licensed.

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

Statutory References

As to retail dealer's vending machine licenses, see N.J.S.A. 54:40A-4.

18:5-6.11 Consumer's license

(a) Each consumer is required to apply for a consumer's license on Cigarette Tax Bureau Form CC-2.

(b) For each license issued to a consumer and for each continuance thereof, there must be paid to the Director a fee of \$1.00.

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 consumer's licenses, see N.J.S.A. 54:40A-4.

18:5-6.12 Manufacturer's license

(a) Each manufacturer is required to apply for a manufacturer's license on Cigarette Tax Form CM-1, together with Form CM-2, Manufacturer's Informational Report.

(b) For each license issued to a manufacturer, and for each continuance thereof, there must be paid to the Director a fee of \$10.00.

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 manufacturer's licenses, see N.J.S.A. 54:40A-4.

18:5-6.13 Manufacturer's representative license

(a) Each manufacturer's representative is required to apply for a manufacturer's license on Cigarette Tax Form CMR-1A.

(b) For each license issued to a manufacturer's representative and for each continuance thereof, there must be paid to the Director a fee of \$5.00.

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 manufacturer's representative licenses, see N.J.S.A. 54:40A-4.

18:5-6.14 Additional and separate licenses required

(a) Any license required under the Act shall be in addition to any and all other licenses which may be required by any other law. No license may be issued to any person except upon the payment of the full fee therefore, any statute or exemption to the contrary notwithstanding.

(b) Any person licensed only as a distributor, manufacturer, manufacturer's representative, wholesale dealer, or retail dealer, is not permitted to operate in any other capacity except under that for which he is licensed, unless the appropriate additional license or licenses therefore are first secured.

Statutory References

As to additional licenses required, see N.J.S.A. 54:40A-4, -6.

18:5-6.15 Assignment or transfer of license

(a) Any license issued under the Act may be assigned or transferred under the following circumstances:

1. In the case of the death, bankruptcy, receivership, or incompetency of the licensee, or if for any other reason whatsoever the business of the licensee shall devolve upon another by operation of law, the Director, may, in his discretion, extend the said license for a limited time to the executor, administrator, trustee, receiver, or person upon whom the license has devolved.

2. A purchaser or assignee of a licensed wholesale or licensed distributor, or any other person upon whom the business of a licensed wholesale or licensed distributor shall devolve by operation of law, shall, upon application to the Director, be entitled to an assignment or transfer of the wholesale or distributor license for the balance of the existing license period upon payment of a transfer fee of \$5.00 and subject to his qualification to be a licensed wholesaler or licensed distributor under the provisions of the Act.

3. The license issued for each vending machine for the sale of cigarettes may be transferred from machine to machine by the same owner.

Statutory References

As to the method of assigning or transferring licenses, see N.J.S.A. 54:40A-4.

18:5-6.16 Refund of license fee; paid in error

No refund of any license fee, paid pursuant to the Cigarette Tax Act, may be made to any person upon the surrender or revocation of any license, except a license fee paid or collected in error.

Amended by R.1980 d.194, effective May 6, 1980.
See: 12 N.J.R. 217(a), 12 N.J.R. 354(b).

Statutory References

As to refunds, see N.J.S.A. 54:40A-4.

18:5-6.17 Duplicate and amended license

(a) Any person licensed pursuant to the Act upon payment of a \$1.00 fee may obtain:

1. A duplicate license, or certificate thereof, in the event the original is lost, destroyed or defaced;

2. An amended license, or certificate thereof, upon:

i. A change in the location of the place of business of the licensee; or

ii. A change in the trade name of either an individual or partnership; or

iii. The adoption of a new name by a corporation by amendment of a corporate charter; or