

CHAPTER 5
CIGARETTE TAX ACT

Authority

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

Source and Effective Date

R.1999 d.11, effective December 9, 1998.
See: 30 N.J.R. 3609(a), 31 N.J.R. 55(b).

Executive Order No. 66(1978) Expiration Date

Chapter 5, Cigarette Tax Act, expires on December 9, 2003.

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, Cigarette Tax Act, 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, Cigarette Tax Act, 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, Cigarette Tax Act, was readopted as R.1994 d.184, effective March 14, 1994. See: 26 N.J.R. 759(a), 26 N.J.R. 1695(b).

Pursuant to Executive Order No. 66(1978), Chapter 5, Cigarette Tax Act, was readopted as R.1999 d.11, effective December 9, 1998. See: Source and Effective Date. See, also, section annotations.

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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.

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

iv. The addition of a partner to an existing partnership or the formation of a partnership which includes a former licensed individual proprietor; or

v. The dissolution of a partnership, through death or otherwise, in which the remaining single proprietor carries on the business of the former partnership.

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

Historical Note

Formerly Law-Sec. 4.

Statutory References

As to the issuance of duplicate or amended licenses, see N.J.S.A. 54:40A-4.

18:5-6.18 Sale of cigarettes to persons improperly licensed

All persons duly and properly licensed to sell cigarettes in the State of New Jersey pursuant to the Cigarette Tax Act, may not sell, loan or exchange cigarettes to, with or from any person required to be licensed under the New Jersey Cigarette Tax Act, who is not so licensed or is improperly licensed.

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

Historical Note

Formerly Reg. CT-5, Filed April 27, 1950.

18:5-6.19 Suspension or revocation of license

(a) The director may suspend or revoke the license, or all licenses issued to any person under the Cigarette Tax Act or these rules who:

1. Violates any of the provisions of the Cigarette Tax Act; or
2. Violates any of these rules; or
3. Ceases to act in the capacity for which the license was issued; or
4. For other good and sufficient causes; or
5. If it is found that:
 - i. Any applicant has been convicted of a crime as set forth in N.J.A.C. 18:5-6.2(b);
 - ii. Any applicant has made any misrepresentation on the license application.

Amended by emergency adoption, R.1977 d.473, effective December 15, 1977.
See: 10 N.J.R. 44(c).
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 power of the director to suspend or revoke licenses, see N.J.S.A. 54:40A-5.

18:5-6.20 Notice of suspension or revocation of license

(a) The director, before suspending or revoking any license issued pursuant to the provisions of the Act, shall give 10 days' notice to the licensee personally, or by mail addressed to his last known address.

(b) The notice shall recite in detail the reasons and basis for the suspension or revocation, and specify the date, time, and place for the hearing.

18:5-6.21 Hearing of suspension or revocation of license

(a) The director shall afford any person who has received notice of hearing to suspend or revoke any license, the right:

1. To be heard in person or by attorney;
2. To offer evidence pertinent to the subject of the hearing; and
3. To invoke the powers of the director with respect to the compulsory attendance of witnesses and the production of books, accounts, papers, records, and documents by subpoena.

(b) At a hearing, all evidence is taken before a court recorder and the parties are not bound by common law or statutory rules of evidence; all testimony having reasonable probative value is admitted, but immaterial, irrelevant or unduly cumulative testimony may be excluded. Every party has the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full, true disclosure of the facts.

(c) After all parties have been given the opportunity of presenting all the evidence in support of the issues, the director shall take the matter under advisement and reach a determination on the record and facts disclosed. Upon reaching a determination, the director shall notify the licensee or other party in interest or his representative by mail of the determination made.

Statutory References

As to power of the director to conduct hearings, see N.J.S.A. 54:40-3.

18:5-6.22 Basis of order of suspension or revocation of license

After a hearing as provided in section 21 (Hearing of suspension or revocation of license) of this subchapter, the director in issuing any order suspending or revoking the license of any person, licensed pursuant to the provisions of the Act, shall include the findings of fact upon which such order is based.

18:5-6.23 Service of order of suspension or revocation of license

The director shall serve any order suspending or revoking the license of any person licensed pursuant to the provisions of the Act by personal delivery of a copy, or by mailing a copy to the last known address of the licensee.

Statutory References

As to how notice is given, see N.J.S.A. 54:50-6.

18:5-6.24 Appeal of order of suspension or revocation of license

Any person aggrieved by the final order of the director suspending or revoking the license of such person may appeal therefrom within 90 days from the date of the order to the New Jersey tax court in the manner and form, and subject to such terms and conditions as said court shall by rules prescribe.

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

18:5-6.25 Sales during suspension or revocation of license

No person whose license has been suspended or revoked is permitted to sell cigarettes or to allow cigarettes to be sold on the premises occupied by him or others in any manner or form whatever during the period of such suspension or revocation.

Statutory References

As to the conditions of a suspension or revocation, see N.J.S.A. 54:40A-5.

18:5-6.26 Abatement of proceedings

No disciplinary proceedings or action by the director is barred or abated by the expiration, transfer, surrender, renewal, continuance or extension of any license issued pursuant to the provisions of the Cigarette Tax Act or these rules.

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

18:5-6.27 Applicability of these rules

The provisions of P.L. 1979, c.481 took effect on February 28, 1980, and are included in N.J.A.C. 18:5-6.1, et seq., but they shall be applicable only to license periods commencing on or after April 1, 1981.

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

SUBCHAPTER 7. RECORDS**18:5-7.1 Resident distributor records**

(a) Resident licensed distributors must maintain and preserve for a period of three years, and make accessible for inspection at all reasonable times, the following records:

1. The monthly inventory taken at the beginning of business on the first business day of each month, or the close of business on the last business day of each month, of all cigarettes not bearing New Jersey cigarette revenue tax stamps;

2. The invoices and bills of lading covering all purchases of cigarettes whether stamped or unstamped;

3. The receiving record, currently posted, of all cigarettes received, whether stamped or unstamped, indicating invoice number, date, quantity, brand, and from whom received;

4. The invoices, bills of lading and other records covering all sales of cigarettes, whether stamped or unstamped;

5. All other pertinent papers and documents relating to the purchase, sale, storage, or disposition of cigarettes, whether stamped or unstamped;

6. The daily inventory of all New Jersey cigarette revenue tax stamps and meter impressions;

7. The invoices covering all purchases of New Jersey cigarette revenue tax stamps and meter impressions;

8. The daily record of all revenue tax stamps and meter impressions affixed to cigarettes;

9. The record of the names, addresses, and current license numbers of all retail customers.

(b) Each sale of cigarettes at wholesale, including cash and credit transactions, and regardless of whether the sale is made to another licensed distributor, licensed wholesale dealer, licensed retail dealer, or is a transfer to a self-owned outlet or an agency or agent, must be accompanied by a complete invoice indicating among other things:

1. The person to whom the cigarettes were sold;
2. The address of the purchaser;
3. The date of the sale;
4. The quantity sold;
5. The brand name; and
6. The price charged.

(c) If a licensed distributor is also the holder of a retail dealer's license and sells cigarettes directly to consumers, an invoice or a memorandum must be prepared showing the transfer of all cigarettes from the distributor to the retail activity.

Historical Note

Formerly Reg. CT-7, Filed August 2, 1963.