



# Litter Control Fee Guidelines

**TB-77 – Issued May 18, 2015**  
**Tax: Litter Control Fee**

The Clean Communities Programs Act at N.J.S.A. 13:1E-213 through 13:1E-223 imposes a Litter Control Fee on manufacturers, wholesalers, distributors, and retailers on their sales of litter-generating products within or into New Jersey.

## **SUBJECTIVITY**

Every person or entity engaged in business in the State as a manufacturer, wholesaler, distributor, or retailer that sells litter-generating products for use or consumption within or into New Jersey is subject to the Litter Control Fee. N.J.S.A. 13:1E-216a. "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. N.J.A.C. 18:38-1.3.

"Sold within the State" or sales within the State" means all sales of retailers engaged in business within the State and, in the case of manufacturers, wholesalers, and distributors, all sales of products for use and consumption within the State. It shall be presumed that all sales of manufacturers, wholesalers, and distributors sold within the State are for use and consumption within the State unless it is determined by the director that the products are shipped out of State for out-of-State use. N.J.S.A. 13:1E-215k. "Sales within or into New Jersey" includes sales of litter-generating products destined for New Jersey from an out-of-State source. Out-of-State sellers are not subject to the Litter Control Fee if their only contact with New Jersey is limited to the delivery of products into New Jersey by commercial common carrier, parcel post, or the United States Postal Service.

Retailers. Any retailer with less than \$500,000 in annual gross receipts from retail sales of litter-generating products is not required to file and pay the fee for any year in which such amount is not met.

When annual gross receipts from retail sales of litter-generating products are \$500,000 or more, a retailer is subject to the fee on the total annual gross receipts from all retail sales of litter-generating products including the initial \$500,000 of sales of such products.

Restaurant owners/operators. Any owner or operator of a restaurant with less than 10% in annual retail sales of meals or food prepared for off-premises consumption, or any owner or operator of a restaurant in which the principal activity consists of preparing within the restaurant, a meal or food for consumption on the premises is not required to file and pay the fee for any year in which such conditions are met.

## **IMPOSING THE FEE**

Wholesale sales. New Jersey imposes the Litter Control Fee at the rate of 3/100 of 1% (.0003) on the gross receipts from wholesale sales of litter-generating products sold within or into New

Jersey by each person or entity engaged in business in the State as a manufacturer, wholesaler, distributor, or retailer of litter-generating products.

## **RETAIL SALES**

New Jersey imposes the Litter Control Fee at the rate of 2.25/100 of 1% (.000225) on the gross receipts from retail sales of litter-generating products sold within or into New Jersey by each person or entity engaged in business in the State as a manufacturer, wholesaler, distributor, or retailer of litter-generating products.

## **DEFINITIONS**

“Distributor” means a wholesaler. The distributor designation is limited to persons or entities that primarily make wholesale sales. Primarily means that more than 50% of gross receipts from all sales are from wholesale sales.

“Engaged in business in the State” means the participation in any commercial activities in New Jersey that provide a gain, benefit, or advantage to the fee payer or another person or class, directly or indirectly.

“Gross receipts” means all receipts of any kind and in any form, derived from sales of litter-generating products, without any deduction for item cost, expense, or loss. Taxpayers report gross receipts on an accrual basis, not when they make collections. Gross receipts do not include New Jersey Sales and Use Tax collections.

“Manufacturer” means any person or entity engaged in making, fabricating, or processing any litter-generating product regardless of whether the activity occurs within or outside of New Jersey. Farmers, ranchers, fishermen, and those engaged in similar occupations that exclusively involve growing, harvesting, and producing raw unprocessed food products for human or animal consumption are not considered manufacturers.

“Retailer” means any person or entity engaged in selling or exchanging goods for cash or barter or any consideration to a purchaser who acquires such goods for ultimate consumption or use. The retailer designation is limited to persons or entities that primarily make retail sales. Primarily means that more than 50% of gross receipts from all sales are from retail sales.

Retailer does not include:

- (1) the owner or operator of a restaurant with less than 10% in annual retail sales of meals or food prepared for off-premises consumption; or
- (2) the owner or operator of a restaurant in which the principal activity of the restaurant consists of preparing meals or food for on-premises consumption.

“Principal activity” means more than 50% of a restaurant’s food and beverage sales.

“Retail sales” means sales for ultimate consumption or any purpose other than resale.

“Sale” means the transfer of title or possession or both, including by exchange or barter of tangible personal property, conditional or otherwise, in any manner or by any means for consideration. A sale also includes any agreement for such transfers of title or possession. For purposes of the Litter Control Fee, a sale does not include a rental or lease transaction.

“Sales within the State” means all sales of litter-generating products, retail or wholesale, for use and consumption within New Jersey by taxpayers engaged in business within New Jersey. All sales of litter-generating products sold within the State are presumed to be for use and consumption within the State, unless taxpayers show that they ship products out of New Jersey for out-of-State use. Sales within the State or sold within New Jersey also means sales of litter-generating products destined for New Jersey from points outside the State by manufacturers, wholesalers, distributors, and retailers engaged in business in New Jersey regardless of the state in which title passes or where delivery takes place.

“Wholesaler” means any person who sells litter-generating products for resale to another wholesaler or a retailer or both, but does not include manufacturers. The wholesaler designation is limited to persons whose sales are primarily wholesale sales. Primarily means that more than 50% of gross receipts from all sales are wholesale sales.

“Wholesale sales” are sales for resale.

## **LITTER-GENERATING PRODUCTS**

Litter-generating products are goods that fall within the 15 specific categories listed below, which meet any of the following conditions:

- They are produced, distributed, or purchased in disposable containers, packages or wrappings;
- They are not usually sold in packages, containers, or wrappings but are commonly discarded in public places; or
- 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 which that person does not own.

“Commonly discarded” is defined broadly to mean disposed of with sufficient frequency. If the below named products or their containers, packaging, or wrapping, when considered as a class, regardless of the specific marketing or disposal methods of an individual fee payer, are disposed of with sufficient frequency in public places by the business community or the general public, they qualify as litter generating products.

It is presumed that each of the goods in the categories below satisfy at least one of the conditions referenced above and qualify as a litter-generating product.

### **1. Beer and other malt beverages:**

- Ale Stout

- Beer Port
- Lager beer
- Other fermented malt beverages  
(alcohol content of ½ of 1% or more, by volume)

## 2. **Cigarettes and tobacco products:**

Cigarette - any roll for smoking made wholly or in part, of tobacco, or any substance or substances other than tobacco, irrespective of size, shape, or flavoring having a wrapping or cover made of paper or other substance or material, except tobacco.

Tobacco products - all products containing tobacco except cigarettes, including:

- Chewing Tobacco
- Cigars Pipe tobacco
- Cigarillos
- Smoking tobacco
- Little cigars
- Snuff

## 3. **Cleaning agents and toiletries:**

Cleaning agents - substances used for cleaning buildings, places, persons, animals, and things, including, but not limited to:

- Detergents
- Soaps
- Solvents
- Other cleaning solutions

Toiletries - substances used in connection with personal grooming, including, but not limited to:

- Cologne Powder
- Cosmetics Soap
- Perfume Toothpaste

4. **Distilled spirits** - any beverage that contains alcohol obtained by distillation.

## 5. **Food for human or pet consumption:**

Food for human consumption - any substance primarily used for human nourishment including all food sold by food manufacturers, food distributors, food wholesalers, and retailers.\*

*\*Certain restaurants as described in N.J.A.C. 18:38-5.1(b) are not considered food retailers. (See definition of retailer on page 2 of this publication.)*

Food for pet consumption - any substance primarily used for pet nourishment.

"Pet" - any domesticated animal which is not a productive animal

"Productive animal"- any animal raised for meat, the edible products it produces, fur, wool or skin, breeding or farm work, including, but not limited to:

- Brood mares
- Minks
- Bulls (breeding)
- Plow horses
- Chinchillas
- Poultry
- Cows (breeding)
- Rabbits
- Dairy cows
- Sheep
- Fish
- Stallions
- Game (raised for meat or fur)
- Swine

Food for human or pet consumption includes, but is not limited to:

- Food additives
- Minerals
- Food chemicals
- Seasonings
- Food derivatives
- Spices
- Food extracts
- Vitamins
- Food flavorings
- Any other ingredient intended to be added to food product

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

This category includes all glass containers sold empty and intended to be used for packaging purposes by industry. Examples include **glass bottles, glass jars, glass jugs**, etc. This category **does not** include glass containers sold empty to an ultimate consumer who does not intend to resell the containers as such or use them to transfer property to another in the course of business. Examples include **beverage glasses, glass bowls, glass vases, pottery**, etc. sold at retail.

7. **Groceries** - 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** - articles which can be used to hold other things and sold in an empty state for the purpose of resale or transfer in a filled or partially filled state made wholly or in substantial part of materials such as:

- Aluminum
- Silver
- Copper
- Steel
- Iron
- Tin
- Lead
- Zinc

This category includes articles made from like substances and alloys as well as all metal containers sold empty and intended to be used for packaging purposes by industry. Examples include **metal cans, metal drums, metal boxes**, etc. This category **does not include** metal containers sold empty to an ultimate consumer who does not intend to resell the containers as such or use them to transfer property to another in the course of business. Examples include **metal trash cans, metal bowls, vessels, buckets, pails**, etc. sold at retail.

9. **Motor vehicle tires** - all types of tires regardless of composition, designed for use on any vehicle propelled other than by muscular power including, but not limited to:

- Any type of vehicle drawn by a motor-driven vehicle
- Construction equipment
- Motorcycles
- Motor-driven lawn and garden equipment
- House trailers
- Trailers
- Semi-trailers

10. **Newsprint and magazine paper stock:**

Newsprint - 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 does not include newspapers in published form.

Magazine paper stock - the paper commonly used to manufacture periodicals, but does not include magazines in published form.

11. **Drugstore sundry products** - 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.

“Drugs” - substances or products appearing in the latest listing of United States Pharmacopoeia or National Formulary, primarily used as medicine for treating disease, healing, or relieving pain, but excluding devices, apparatus, instruments, prostheses, or similar items.

“Place of business” (for purposes of this category) - any location, department or division, even if it is part of a larger business, physically or operationally, and in its books and records.

**Example:** A department store that consists of a drug department and a clothing department, each with its own space, and having separate employees, cash registers, and accounting records, is not subject to the Litter Control Fee on sales by its clothing department. The fact that it is located in the same building and under the same ownership as the drug department does not subject it to the fee.

12. Paper products and household paper - all tangible personal property made or substantially derived from paper; including but not limited to paper products for home or other personal use.

This category includes:

- Advertising flyers
- Envelopes
- Brochures
- Greeting cards
- Business forms
- Labels
- Calendars
- Paper office supplies
- Cards
- Posters
- Catalogs
- Programs
- Checks
- Stationery

This category does not include:

- Newspapers
- Magazines
- Books+
- Roll stock produced by paper product manufacturers
- Wood pulp

+Book does not include a pamphlet, brochure, flyer, periodical, or advertising.

13. **Plastic or fiber containers made of synthetic material and sold as such** - articles which can be used to hold other things within themselves and which are made of:

- Synthetically produced ethylene derivatives, resins, waxes, adhesives, or polymers; or

- By synthesis, fiber materials with adhesives, polymers, waxes, resins, or other materials; or
- Paper, pasteboard, or cardboard in which the container material consists of fibrous substances synthesized with other materials.

This category includes all plastic or fiber containers sold empty and intended to be used for packaging purposes by industry. Examples include **plastic cartons, plastic bottles, plastic jugs, fiber sacks or bags, cardboard boxes**, etc. This category *does not include* plastic or fiber containers sold empty to an ultimate consumer who does not intend to resell the containers as such or use them to transfer property to another in the course of business. Examples include **plastic trash receptacles, plastic baskets, pots or bowls**, etc. sold at retail, and does **not** include any container that:

- Is routinely reused,
- Has a useful life of more than one year, and
- Is ordinarily sold empty at retail.

14. **Soft drinks and carbonated water** - all beverages, **except alcoholic beverages**, whether carbonated or noncarbonated including, but not limited to:

- Fruit juices
- Milk
- Carbonated water
- All mixtures or dilutions of nonalcoholic beverages
- Noncarbonated water containing natural or artificial sweeteners

15. **Wines of any kind** including, but not limited to:

- Dry wine
- Sweet wine
- Still wine
- Fortified wine
- Any artificial or imitation wine or compound sold as wine
- Any fruit juice containing  $\frac{1}{2}$  of 1% or more alcohol by volume
- Any other beverage containing alcohol produced by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar, containing  $\frac{1}{2}$  of 1% or more alcohol by volume including, but not limited to vermouth and cider.

### **COMPUTING THE FEE**

Any manufacturer, wholesaler, distributor, or retailer subject to the Litter Control Fee may use any one of the following methods to compute its fee liability: general method, total sales method, or percentage of sales method.

## GENERAL METHOD

- Apply the fee rate of .0003 to gross receipts from all wholesale sales of litter-generating products made within New Jersey; and
- Apply the fee rate of .000225 to gross receipts from all retail sales of litter-generating products made within New Jersey during the calendar year.

If using the general method, the fee payer must separately account for sales from each of the 15 categories of litter-generating products.

## TOTAL SALES METHOD

- Apply the fee rate of .0003 to gross receipts from all wholesale sales of all products, both litter-generating and those that are not litter-generating, made within New Jersey; and
- Apply the fee rate of .000225 to gross receipts from all retail sales of all products, both litter-generating and those that are not litter-generating, made within New Jersey during the calendar year.

If using the total sales method, the fee payer must account for total sales of all products in New Jersey but is not required to maintain a separate accounting for wholesale and retail sales of litter-generating products.

**Example:** XYZ Liquor Store ("XYZ") is a retail establishment in New Jersey with total retail sales of \$1,000,000 for all products sold in New Jersey. The owner of XYZ, having reviewed the list of litter-generating products, is aware that all of its sales involve litter-generating products and therefore, elects to pay the fee using the total sales method of computation.

XYZ's total fee due for the calendar year would be  $\$1,000,000 \times .000225$ , or \$225.00. The low fee liability of \$225.00 supports the use of this method rather than separately accounting for sales of wholesale or retail sales of litter-generating products required with the general method of computation.

## PERCENTAGE OF SALES METHOD

- Apply the fee rate of .0003 to that proportionate amount of gross receipts which properly reflects wholesale sales of litter-generating products made within New Jersey; and
- Apply the fee rate of .000225 to that proportionate amount of gross receipts which properly reflects retail sales of litter-generating products made within New Jersey during the calendar year.

The percentage of sales must reflect the portion of total retail sales and total wholesale sales represented by sales of litter-generating products in the specific sales categories. The fee payer must determine the percentages from actual sales data from a sample period of a least one month within the return period which is representative of the fee payer's sales activity during the entire period covered by the return.

This percentage is computed by dividing the gross receipts from sales of litter-generating products by the gross receipts from total sales for the sample period.

**Example:** ABC Auto Supply Store ("ABC") is a retailer in New Jersey with total retail sales of \$2,000,000 for all products sold in New Jersey during the calendar year. The owner of ABC, having reviewed the list of litter-generating products, is aware that the store sells many litter-generating products, such as motor vehicle tires, cleaning agents, paper products, etc., and also sells many products not listed as litter-generating. The owner may elect to compute the fee due using the percentage of sales method; thereby eliminating much of the expense of recordkeeping required for the general method.

ABC's owner is able to substantiate that the proportionate amount of his/her total sales that can be attributed to sales of litter-generating products is \$500,000. ABC's total fee due for the calendar year would be  $\$500,000 \times .000225$ , or \$112.50.

Sampling procedure The following illustrates the sampling procedure that fee payers should apply to both retail sales and wholesale sales.

1. Select a sample period of one month or more 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 non-litter-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. The result will be the proper proportionate amount of total sales 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 for the proper proportionate amount of total sales attributed to litter-generating products.
6. Multiply the amount of product obtained in step 5 by the proper fee rate to determine the fee due for the calendar year.

If using the percentage of sales method, the fee payer is not required to separately account for the total sales of litter-generating products. However, the fee payer must maintain records to substantiate the proportionate amounts used.

#### **OPTIONAL FEE RATE USE**

The fee payer may compute the fee using the wholesale fee rate for all sales subject to the fee rather than separately accounting for retail sales and wholesale sales and using the applicable fee rate.

## **DEDUCTIONS**

The following types of transactions are not subject to the Litter Control Fee and may be taken as deductions on the Litter Control Fee return (Form LF-5):

- Sales of litter-generating products by a wholesaler or distributor to another wholesaler or distributor.
- Sales of litter-generating products by a company to another company owned wholly by the same individuals or companies.
- Sales of litter-generating products by a wholesaler or distributor owned cooperatively by retailers to those retailers.

Manufacturers, regardless of types of sales, cannot qualify for this deduction. Sales from wholesaler to retailers also do not qualify.

## **EXAMPLES OF TRANSACTIONS**

1. The gross receipts from the sale of a motor vehicle battery from a manufacturer to a wholesaler are not subject to the fee because a motor vehicle battery is not one of the 15 litter generating project categories.
2. The gross receipts from the sale of a motor vehicle battery in a cardboard box from a retailer to a retail consumer are not subject to the fee because a motor vehicle battery is not a litter-generating product. The packaging is irrelevant if the product sold is not a litter-generating product.
3. The gross receipts from the sale of a motor vehicle tire from a manufacturer to a wholesaler are subject to the fee because a motor vehicle tire is a litter-generating product.
4. The gross receipts from the sale of a motor vehicle tire from a manufacturer to a wholesaler with the manufacturer always properly disposing of all its litter and waste products are subject to the fee because the motor vehicle tire is a litter-generating product. The proper litter and waste disposal methods of the manufacturer are irrelevant to the imposition of the fee.
5. The gross receipts from the sale of a motor vehicle tire from a wholesaler to a wholesaler are not subject to the fee because a motor vehicle tire is a litter-generating product, but wholesaler to wholesaler sales are deductible.
6. The gross receipts from the sale of a motor vehicle tire from a wholesaler to a retailer are subject to the fee because a motor vehicle tire is a litter-generating product. There is no deduction for wholesaler to retailer sales. It is irrelevant that the tax was also paid by the manufacturer on the sale of the tire to the wholesale as there is no deduction for sales of products previously subject to the fee.
7. The gross receipts from the sale of a motor vehicle tire from a retailer to a retail consumer are subject to the fee because a motor vehicle tire is a litter-generating product. The retailer is not

required to file and pay the fee if its annual litter-generating product sales are less than \$500,000.

8. The gross receipts from the sale of a motor vehicle, which includes tires as component parts of the vehicle, from a retailer to a retail consumer, are not subject to the fee because a motor vehicle is not a litter-generating product. In this case, the sale of the motor vehicle tires is incidental to the sale of the vehicle.

9. The gross receipts from the sale of a motor vehicle tire by an out-of-State manufacturer to a New Jersey wholesaler are subject to the fee because a motor vehicle tire is a litter-generating product. The out-of-State manufacturer is engaged in business in the State and is subject the fee.

### **REGISTERING A BUSINESS**

You must file a Business Registration Application (Form NJ-REG) at least 15 days before starting business or opening an additional place of business in New Jersey. New registration or registration changes can be completed through the State's online registration system.

### **FILING AND FEE PAYMENT**

Every person or entity subject to the Litter Control Fee is required to file, under oath, a Litter Control Fee return (Form LF-5), and pay the full amount of the fee due for the preceding year on or before March 15<sup>th</sup> of each calendar year.

### **RECORD RETENTION**

A fee payer must retain all records and other supporting documentation used in completing Form LF-5 return for at least 5 years following the filing of a return. If requested to do so by the Division of Taxation or its authorized representatives, a fee payer must make such records and supporting documentation available for examination.

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**Note:** A Technical Bulletin is an informational document designed to provide guidance on a topic of interest to taxpayers and describe changes to the law, regulations, or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the tax law or its interpretation may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.