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DIVISION OF TAXATION**Litter Control Fee****Proposed Readoption with Amendments: N.J.A.C. 18:38**

Authorized By: Dennis Shilling, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:50-1 and 13:1E-216.f(3) and 13:1E-222.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2015-123.

Submit comments by December 4, 2015, to:

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The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, N.J.A.C. 18:38 was set to expire on August 27, 2015. Since this notice of proposal has been filed with the Office of Administrative Law prior to that date, pursuant to N.J.S.A. 52:14B-5.1.c(2), the expiration date of the chapter is extended 180 days to February 23, 2016. The Division of Taxation (Division) has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Division proposes to readopt all eight subchapters with minor amendments.

The rules proposed for readoption are intended to provide guidance to fee payers under the provisions imposing the litter control fee as set out in the Clean Communities Program Act, N.J.S.A. 13:1E-213 et seq.

The litter control fee is a user fee imposed for the privilege of engaging in business in New Jersey as a manufacturer, wholesaler, distributor, or non-exempt retailer of litter-generating products measured by gross receipts from sales of such products within or into New Jersey.

The rules proposed for readoption describe the scope of the fee, the rate, and procedures that apply to the reporting and remittance of the fee. The proposed amendments are primarily technical, to update the historical content, to correct improper word usage, to make minor grammatical changes, to improve examples, and to update references to Division forms to accurately reflect those that are used for reporting and registration purposes.

Subchapter 1 provides the effective date, scope, and definitions. N.J.A.C. 18:38-1.1 is proposed for amendment to reflect the name change provided by P.L. 2007, c. 311, from "Clean Communities and Recycling Grant Act" to the "Clean Communities Program Act" and to remove reference to retroactive effect language that no longer applies.

Subchapter 2 states the fee rates and the imposition provisions for wholesale and retail sales of litter-generating products. The redundant definitions in N.J.A.C. 18:38-2.1 and 2.2 for "wholesale sales" and "retail sales," respectively, are proposed to be deleted.

Subchapter 3 outlines the 15 categories that define the litter-generating products subject to the fee.

Subchapter 4 provides three alternative fee computation methods and gives examples of their use to aid fee payers in completing their returns. Minor changes in wording are proposed to make the subchapter more readable. The improper term "feepayer" is replaced with "fee payer" in N.J.A.C. 18:38-4.1(a). The capitalization of "percentage of sales method" and "total sales method" is removed so the references to the various fee calculation methods remain consistent.

Subchapter 5 describes the \$500,000 retailer exclusion and the exclusion for certain restaurants. The text explaining retailer exemption was corrected to conform to the statute where the \$500,000 threshold in annual gross receipts applies only to retail sales of litter-generating

products and not the total sales of litter-generating products. In addition, the proposed amendments explain allowable deductions for certain wholesaler, distributor, and wholly owned company sales. A technical change is proposed to add reference to the Litter Control Fee Return (Form LF-5) as the means by which to take the deduction referenced in the subchapter.

Subchapter 6 provides requirements for registration. The date of December 31, 2001, is removed from the subchapter to reflect current registration requirements. This date, which was initially identified to aid fee payers when the fee was newly imposed on January 1, 2002, is no longer necessary. Text within the subchapter is also modified to distinguish the registration procedures for new businesses operating in New Jersey who are subject to the fee from those that subsequently become subject to the fee after such businesses have registered and filed returns for other taxes and fees administered by the Division. The proposed amendment would require already registered businesses to complete and file a Change of Registration Information form. The improper term "feepayer" is also replaced with "fee payer."

Subchapter 7 provides filing dates and administrative requirements for filing returns, fee payment, and retaining records. The proposed amendments replaces "litter control fee return" with the name of the form for clarity.

Subchapter 8 specifies the disposition of litter control fee revenues.

Because the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)(5).

Social Impact

The rules proposed for readoption with amendments are necessary as the rules provide guidance to fee payers on how to comply with litter control fee obligations imposed by the Clean Communities Program Act (N.J.S.A. 13:1E-213 et seq.).

Economic Impact

There is no change in the economic impact of the rules proposed for readoption with amendments the class of fee payers since the last rule readoption in 2008. The rules proposed for readoption with amendments primarily state and implement basic requirements of the statutory provisions. Accordingly, the rules proposed for readoption with amendments are anticipated to have minimal, if any, impact.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments are not subject to any Federal requirements or standards. The rules proposed for readoption with amendments are in regard to a State statute imposed litter control fee and are independent and separate from Federal standards or requirements.

Jobs Impact

The Division does not anticipate that jobs will be generated or lost as a result of the rules proposed for readoption with amendments. The rules proposed for readoption with amendments continue previously established policies for administration of the litter control fee.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments impose reporting, recordkeeping and compliance requirements on fee payers as required by N.J.S.A. 13:1E-213 et seq., with regard to the payment of fees on the gross receipts of wholesale sales and retail sales of litter-generating products. Some of the fee payers may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The compliance requirement to pay a fee on the gross receipts generated from wholesale sales and retail sales of litter-generating products is imposed by N.J.S.A. 13:1E-213 et seq.; the reporting requirements specified in the rules provide a convenience for fee payers to process their statutory obligations. The Division anticipates that the rules proposed for readoption with amendments will have no impact on capital costs. In addition, the Division does not anticipate the rules would require for professional services since the litter control fee has been in

place in prior years. However, there may be some additional costs or accountants' fees related to the need to monitor certain accounts and/or file returns with the Division. The reporting requirements involve annual submission of a Litter Control fee return (Form LF-5) and the recordkeeping requirements involve retaining the records and supporting documents used to complete Form LF-5. These requirements are necessary for the Department to assure the proper tax has been paid. The statute has a \$500,000 exclusion for retailers intended to eliminate small "mom and pop" stores from subjectivity to the fee.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will not result in changes to the average costs associated with housing or on the affordability of housing because the rules involve reporting and recordkeeping requirements for those fee payers who are obligated to pay user fees on the gross receipts of certain wholesale and retail sales of litter-generating products as required under N.J.S.A. 13:1E-213 et seq.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will not result in a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The rules proposed for readoption with amendments have no direct application to housing production, either within Planning Area 1 or 2, within designated centers, or anywhere in the State of New Jersey. The rules proposed for readoption with amendments deal with the obligation of certain businesses to pay the litter control fees on the gross receipts generated from certain wholesale sales and retail sales of litter-generating products.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:38.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

18:38-1.1 Effective date

The litter control fee is imposed pursuant to N.J.S.A. 13:1E-213 through 13:1E-223 [(P.L. 2002, c. 128),] cited as the Clean Communities [and Recycling Grant] **Program Act**. The Act was signed into law December 20, 2002, and the fee imposition sections [as amended, are retroactive to] **have been effective since** January 1, 2002.

18:38-1.2 Nature of fee

The litter control fee is [an excise] **a user** fee 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 [feepayer] **fee payer** 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] **an** accrual basis and not as collections are made. New Jersey sales and use tax collections are not includable 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"] includes the owner or operator of a take-out or drive-through restaurant, the principal activity of which consists of selling any meal or food prepared and ready to be eaten for consumption off the premises of the restaurant. ["Retailer"] does not include the owner or operator of a restaurant with less than 10 percent in annual retail sales of meals or food prepared and ready to be eaten for consumption off the premises of the restaurant; or the owner or operator of a restaurant, the principal activity of which consists of preparing for consumption within the restaurant a meal or food to be eaten on the premises; or 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 **or her** own use. ["Principal activity"] means more than 50 percent of the restaurant's food and beverage sales.

...

"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] **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] **out-of-State** for [out-of-state] **out-of-State** use. Additionally, ["sales within the [state]" **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.

...

SUBCHAPTER 2. FEE IMPOSITION AND FEE RATES

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

A litter control fee at the rate of 3/100 of [1] **one** 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 Fee imposed on persons engaged in retail sales

A litter control fee at the rate of 2.25/100 of [1] **one** 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.]

SUBCHAPTER 3. PRODUCTS SUBJECT TO THE FEE

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. (No change.)

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] **that person**.

(b) [It is presumed that all products] **Products** in the categories listed below [satisfy] **qualify as litter-generating products provided they meet** at least one of the conditions [stated] **listed** 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 [1/2 of 1] **one-half of one** 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, but not limited to, cigars, little cigars, cigarillos, chewing tobacco, pipe tobacco, smoking tobacco, and other products containing tobacco, including snuff.

3.-4. (No change.)

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 all food by food manufacturers, wholesalers, and retailers. Certain restaurants described in N.J.A.C. 18:38-5.1(b) are excluded as retailers of food.

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[”] **A productive animal[”]** means **is** 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] **Examples** of productive animals **include, but are not limited to:** 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. (No change.)

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. 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 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] **does** not mean newspapers in their published form.

ii. (No change.)

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] **is** 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 fee on sales of [its] **the** 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, magazines, books, and roll stock produced by paper product manufacturers, and wood pulp[,] sold as such.

i. [“]Newspaper[”] **A 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[”] **A 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.

iii. [“]Book[”] **A book** is a set of written or printed pages bound on one side and comprising a literary composition, [or] academic, or authoritative work. Examples of a book include soft or hard covered novels, textbooks, reference resources, such as dictionaries or encyclopedias, and nonfiction volumes. The term [“]book[”] does not include pamphlets, brochures, flyers, periodicals, or advertising.

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 [1/2 of 1] **one-half of one** 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 [1/2 of 1] **one-half of one** percent or more of alcohol by volume, including vermouth and cider.

SUBCHAPTER 4. FEE COMPUTATION

18:38-4.1 Fee computation methods

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

1. The general method of fee computation **is as** follows:

i. The fee is computed using the general method by applying the fee rate as stated in N.J.A.C. 18:38-2.1, **Fee imposed on persons engaged in wholesale sales**, to gross receipts from all wholesale sales of litter-generating products within New Jersey and applying the fee rate as stated in N.J.A.C. 18:38-2.2, **Fee imposed on persons engaged in retail sales**, to gross receipts from all retail sales of litter-generating products **sold** within New Jersey [sold] during the calendar year.

ii. Use of the general method requires the [feepayer] **fee payer** to separately account for [his] sales of each of the 15 categories of litter-generating products to properly substantiate [his] gross receipts subject to the fee.

Example: The M&M General Store is a retail establishment located in New Jersey with total sales of \$1,000,000 for all products sold within New Jersey. \$650,000 of the sales are retail sales of litter-generating products, and \$225,000 of the sales are wholesale sales of litter-generating products. The owner of M&M General Store chooses to pay the fee using the general method of computation and separately accounts for sales from each of the 15 categories of litter-generating products. The fee due for the calendar year is calculated below.

$$\$650,000 \times 0.000225 = \$146.25$$

$$\$225,000 \times 0.0003 = \$67.50$$

$$\$146.25 + \$67.50 = \$213.75$$

The fee due for the calendar year is \$213.75.

2. The total sales method of fee computation is as follows:

i. The fee is computed using the total sales method by applying the fee rate as stated in N.J.A.C. 18:38-2.1, **Fee imposed on persons engaged in wholesale sales**, to gross receipts from all wholesale sales of all products, both litter-generating and non litter-generating, within New Jersey and applying the fee rate as stated in N.J.A.C. 18:38-2.2, **Fee imposed on persons engaged in retail sales**, to gross receipts from all retail sales of all products, both litter-generating and non litter-generating, sold 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. The owner of 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 fee using the Total Sales Method of Computation. His total fee due for the calendar year would be:

$\$1,000,000 \times .000225 = \225.00 fee due. The low amount of his fee 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 [feepayer] **fee payer** to account for total sales of all products in New Jersey but does not require separate accounting for sales of litter-generating products.

Example: The XYZ Liquor Store is a retail establishment located in New Jersey with total sales of \$1,000,000 for all products, both litter-generating and non litter-generating, sold within New Jersey. \$700,000 of the sales are retail sales, and \$300,000 of the sales are wholesale sales. The owner of XYZ Liquor Store, having reviewed the list of litter-generating products, is aware that most of the sales are litter-generating products and, therefore, elects to pay the fee using the total sales method of computation thus, eliminating the need to separately account for sales from each of the 15 categories of litter-generating products. The fee due for the calendar year is calculated below.

$$\$700,000 \times .000225 = \$157.50$$

$$\$300,000 \times .0003 = \$90.00$$

$$\$157.50 + \$90.00 = \$247.50$$

The fee due for the calendar year is \$247.50.

3. The percentage of sales method of fee computation is as follows:

i. The fee is computed using the percentage of sales method by applying the fee rate as stated in N.J.A.C. 18:38-2.1, **Fee imposed on persons engaged in wholesale sales**, 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 fee rate as stated in N.J.A.C. 18:38-2.2, **Fee imposed on persons engaged in retail sales**, 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 sold 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 for the calendar year. ABC 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 fee due using the Percentage of Sales Method and eliminate much of the expense of recordkeeping 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 fee due for the calendar year would be $\$500,000 \times .000225 = \112.50 fee 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] **the 15** 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 [feepayer's] **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:] iii. [This] **The sampling procedure as provided in (a)3iii(1) through (6) below**, should be applied to both retail sales and wholesale sales:

(1)-(2) (No change.)

(3) Distinguish between litter-generating product sales and [nolitter] **non litter-generating** product sales for the sample period.

(4)-(5) (No change.)

(6) Multiply the product obtained in [step] **(a)3iii(5) above** by the proper fee rate to determine the fee due for the calendar year.

[iii.] iv. A [feepayer] **fee payer** electing to determine [his] **the** litter control fee liability by using the percentage of sales method [would] is not [be] required to separately account for [his] **the** total sales of litter-generating products. However, [he would be] **the fee payer** is required to maintain such records to substantiate the proportionate amounts used.

Example: The ABC Auto Supply Store is a retail establishment located in New Jersey with total sales of \$2,000,000 for all products sold within New Jersey for the calendar year. ABC Auto Supply Store's owner, Frank, is aware that while his store sells many litter-generating products from the 15 categories, such as motor vehicle tires, cleaning agents, paper products, etc., the store also sells many non litter-generating products. Frank, may, therefore, elect to compute the fee using the percentage of sales method and eliminate much of the expense of recordkeeping needed for the general method of computation. The fee due for the calendar year is calculated below.

Sampling Period (1 month)

Total sales: \$200,000

Total retail sales of litter-generating products in the sampling period: \$7,000

Proportionate amount of total sales attributed to retail sales of litter-generating products in the sampling period:

$$\$50,000/\$200,000 = 0.035$$

Total wholesale sales of litter-generating products in the sampling period: \$13,000

Proportionate amount of total sales attributed to wholesale sales of litter-generating products in the sampling period:

$$\$80,000/200,000 = 0.40$$

Proportionate amount of total sales attributed to retail sales of litter-generating products in the calendar year:

$$\$2,000,000 \times 0.25 = \$500,000$$

Proportionate amount of total sales attributed to wholesale sales of litter-generating products in the calendar year:

$$\$2,000,000 \times 0.40 = \$800,000$$

Fee due for calendar year:

$$\$500,000 \times 0.000225 = \$112.50$$

$$\$800,000 \times 0.0003 = \underline{\$240.00}$$

The fee due for the calendar year is $\$112.50 + \$240.00 = \$352.50$.

SUBCHAPTER 5. EXCLUSIONS AND DEDUCTIONS

18:38-5.1 Exclusions

(a) Any retailer with less than \$500,000 in annual gross receipts from [all sales, both] retail sales [and wholesale sales,] of litter-generating products **within the State** is excluded from filing and payment of the fee

for any year in which such amount is not met. When annual gross receipts from all **retail** sales of litter-generating products are \$500,000 or more, a retailer is subject to the fee on total annual gross receipts from all sales of litter-generating products, including the initial \$500,000 of **retail** sales of such products.

(b) For purposes of this section, the [“]retailer[”] designation [is limited to those persons including manufacturers] **includes a manufacturer** 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.

(b) (c) Any owner or operator of a restaurant with less than 10 percent in annual retail sales of meals or food prepared and ready to be eaten for consumption off the premises of the restaurant or any owner or operator of a restaurant, the principal activity of which[, as defined by N.J.A.C. 18:38-1.3,] consists of preparing for consumption within the restaurant a meal or food to be eaten on the premises, is excluded from filing and payment of the fee for any year in which such conditions are met.

18:38-5.2 Deductions

(a) The following sales of litter-generating products [shall be] **are** considered [as] deductions **on the Litter Control Fee Return (Form LF-5)**:

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.-3. (No change.)

SUBCHAPTER 6. REGISTRATION

18:38-6.1 Registration requirements

(a) Any person subject to the litter control fee [commencing] **at the time the person commences** or [opening] **opens** a new place of business [subsequent to December 31, 2001] is required to register as a litter control [feepayer] **fee payer** [with the Division] on Form NJ-REG, Application for **Business** Registration, at least 15 business days prior to the commencement or opening of such business.

(b) Any person who is **already** 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) above] **administered by the Division, and becomes subject to the litter control fee, must complete and file Form REG-C-L, Change of Registration Information.**

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

18:38-7.1 Annual filing and fee payment

Every person 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 [thereon], on or before March 15 of each year for the preceding calendar year’s fee liability.

18:38-7.2 Litter control fee return

[A litter control fee return,] Form LF-5[,], must be filed[,], as required by N.J.A.C. 18:38-7.1, with the Division, indicating the dollar value of sales [within the State] of litter-generating products **within the State.**

18:38-7.3 Record retention

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

SUBCHAPTER 8. DISPOSITION OF REVENUES

18:38-8.1 Revenues deposited in the Clean Communities Program Fund

Litter control fee revenues, and penalties and interest derived from the imposition of the litter control fee, will be deposited in the Clean Communities Program Fund, a [nonlapsing] **non-lapsing**, revolving fund in the Department of the Treasury administered by the Department of Environmental Protection.

TRANSPORTATION

(a)

CAPITAL PROGRAM MANAGEMENT

Notice of Extension of Public Comment Period Utility Accommodation

Proposed Repeals and New Rules: N.J.A.C. 16:25

Take notice that the Department of Transportation is extending the public comment period on the above notice of proposal, published in the August 3, 2015, New Jersey Register at 47 N.J.R. 1903(a), for 30 days. The comment period now ends on November 2, 2015.

Submit written comments by November 2, 2015, to:

Miriam Weeks, Administrative Practice Officer
New Jersey Department of Transportation
1035 Parkway Avenue
PO Box 600
Trenton, NJ 08625-0600
Fax: (609) 530-4638

Submit electronically at njdotRules@dot.state.nj.us.

This rule may be viewed or downloaded from the Department’s website at <http://www.state.nj.us/transportation/about/rules/proposals.shtm>.
