

Title 316 - NEBRASKA DEPARTMENT OF REVENUE

Chapter 28 - LITTER FEE

REG-28-001 NATURE OF THE LITTER FEE

001.01 The Nebraska Litter Reduction and Recycling Act authorizes the collection of a litter fee to be administered by the Nebraska Department of Revenue. The litter fee is imposed at a rate of one hundred seventy-five dollars per one million dollars of gross proceeds from the manufacture and sale or sale at either wholesale or retail in this state of the products, including by-products, listed below.

001.02 In the case of manufacturers and wholesalers, the litter fee is imposed on the gross proceeds from the manufacture and sale or sale at wholesale in this state of the products, including by-products, falling into any of the following categories.

001.02A Food for human or pet consumption;

001.02B Cigarettes and other tobacco products;

001.02C Soft drinks and carbonated waters;

001.02D Liquor, wine, beer, and other malt beverages;

001.02E Household paper and household paper products;

001.02F Glass containers;

001.02G Metal containers;

001.02H Plastic or fiber containers made of synthetic material;

001.02I Cleaning agents and toiletries; and

001.02J Kitchen supplies.

001.03 In the case of retailers, the litter fee is imposed upon the gross proceeds from the sale at retail in this state of products which fall into the following categories.

001.03A Food for human consumption, beverages, soft drinks, carbonated waters, liquor, wine, beer, and other malt beverages, except those sold by retailers which are solely for consumption indoors on the retailer's premises;

001.03A(1) Food or beverages sold through a vending machine are presumed not to be solely for consumption on the retailer's premises, and are therefore subject to the fee.

001.03B Food for pet consumption;

001.03C Cigarettes and other tobacco products;

001.03D Household paper and household paper products;

001.03E Cleaning agents; and

001.03F Kitchen supplies.

001.04 The litter fee shall apply each time such products or by-products are manufactured and sold, or sold at either wholesale or at retail in this state. The fee shall not apply to any person whose annual gross proceeds from the sale of products subject to the fee are less than one hundred thousand dollars. Any person engaged in business as both a retailer and either a manufacturer or a wholesaler shall pay the fee either on the gross proceeds derived from retailing operations or on the gross proceeds derived from the manufacturing and wholesaling operations, whichever are greater. The litter fee is calculated by multiplying the annual gross proceeds from the sale of the above listed products, including by-products, for the period either from retailing operations or from manufacturing and wholesaling operations by .000175.

001.05 The litter fee does not apply to the gross proceeds of:

001.05A Products of farmers, ranchers, and fishermen;

001.05B Products stored in grain elevators which do not undergo milling or other processing;

001.05C Food and food products for human or pet consumption sold in bulk form and of a size not suitable for sale to consumers purchasing in the ordinary course of retail marketing. Bulk form does not include large quantities of any food or food products that are packaged or subpackaged in containers or that are suitable for sale to consumers in the ordinary course of retail marketing. For example, a pallet containing 4,800 six ounce cans of peas, individual tomatoes, apples, potatoes, or other similar items is not bulk form;

001.05D Fertilizer, seeds, annual plants, and any form of animal life, and animal feed sold for resale or use in the agricultural food industry;

001.05E Any animal, bird, or insect, or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom, if the person performs only the growing or raising function of such animal, bird, or insect; or,

001.05F Any product not listed in Reg-28-001.02 and Reg-28-001.03 above.

001.06 Questions as to whether or not the litter fee applies to a specific product or person are to be directed to the Nebraska Department of Revenue in the format set out in Practice and Procedure Regulation 33-007.

(Sections 81-1534, 81-1536, 81-1541, 81-1542, 81-1543, 81-1545, 81-1548.01, 81-1548.02, 81-1548.03, 81-1548.04, 81-1559, 81-1560, 81-1560.01, 81-1560.02, and 81-1560.03, R.R.S. 1999, and section 81-1566, R.S.Supp., 2005. March 7, 2006.)

REG-28-002 DEFINITIONS

002.01 "Cigarettes and other tobacco products" means any roll of tobacco wrapped in paper, leaf tobacco, or in any substance containing tobacco and shall include any pipe tobacco, chewing tobacco, or other sundry tobacco products.

002.02 "Cleaning agents" includes, but is not limited to, all soaps, detergents, solvents, or other cleaning substances used for cleaning buildings, places, animals, or other things.

002.03 "Delivery" is held to have taken place in this state when physical possession of the products, including by-products, is actually transferred to the purchaser within this state, or when the products, including by-products, are placed in the mails or delivered to a common or contract carrier at a point outside this state and directed to the purchaser in this state.

EXAMPLE: A product sold by an Iowa wholesaler to a Nebraska wholesaler is shipped from Iowa to the Nebraska purchaser by common carrier. Delivery is held to have taken place in this state. However, the litter fee would not apply unless the Iowa wholesaler was engaged in business in this state.

002.04 "Engaging in business in this state" means and includes any of the following:

002.04A Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through an agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse, or storage place or other place of business;

002.04B Having any representatives, agents, salesmen, canvassers, or solicitors operating in this state under the authority of the manufacturer, wholesaler, or retailer or a subsidiary of the manufacturer, wholesaler, or retailer for the purpose of producing, selling, delivering, or taking of orders, for any tangible personal property;

002.04C Deriving receipts from the rental or lease of tangible personal property in this state;

002.04D Soliciting retail sales of tangible personal property from residents of this state on a continuous, regular, or systematic basis by means of advertising which is broadcast from or relayed from a transmitter within this state or distributed from a location within this state;

002.04E Soliciting orders from residents of this state for tangible personal property by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the retailer benefits from any banking, financing, debt collection, or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities;

002.04F Being owned or controlled by the same interests which own or control any retailer engaged in business in the same or similar line of business in this state; or

002.04G Maintaining or having a franchisee or licensee operating under the retailers trade name in this state if the franchisee or licensee is required to collect the tax under the Nebraska Revenue Act of 1967.

002.05 "Food" or "food for human or pet consumption" includes, but is not limited to, any substance, except drugs, which is used for human or pet nourishment, including candy, chewing gum, and condiments. Drugs means substances or products which are used as medicine for treating disease, healing, or relieving pain.

002.06 "Glass containers" includes, but is not limited to, articles made wholly or in substantial part of processed silicates which can be, or are, used to hold other things within themselves and are susceptible to being dropped, deposited, discarded, or otherwise disposed of upon any property in this state. The phrase shall not include containers having capacities in excess of ten gallons.

002.07 "Groceries" means all food for human or pet consumption, cigarettes, other tobacco products, soft drinks, carbonated waters, liquor, wine, beer, other malt beverages, household paper, household paper products, cleaning agents, and kitchen supplies.

002.08 "Gross proceeds" means the total amount of consideration valued in money, whether received in money or otherwise, arising or accruing from the manufacture and sale or sale at either wholesale or retail in this state of products, including by-products, falling into any of the categories listed in Reg-28-001, Nature of the Litter Fee, without any deduction for costs or expenses except those incurred for the purchase of any item in this state for the purpose of recycling such item. In addition, gross proceeds shall include all consideration derived from the sale of products, including by-products, by an out-of-state manufacturer, wholesaler, or retailer for delivery in this state.

002.09 "Household paper and household paper products" includes, but is not limited to, materials or substances made into sheets or leaves from organic or synthetic material for home or other use. It also includes products or articles made from such sheets or leaves for home or other use, such as napkins, paper plates, and paper towels.

002.09A Household paper and household paper products do not include magazines, periodicals, newspapers, literary works, or commercial paper, such as catalogs or other advertising.

002.10 "Liquor, wine, beer, and other malt beverages" means all beverages defined as alcoholic liquor, wine, or beer by Section 53-103, of the Nebraska Revised Statutes.

002.11 "Magazines, periodicals, newspapers, and literary works" includes, but is not limited to, all daily or periodical publications and the written products of an author or any copies thereof.

002.12 "Manufacturer" includes any person engaged in business in this state who has annual gross proceeds of at least one hundred thousand dollars from the sale in this state of any of the products, including by-products, falling into the categories listed in Reg-28-001.02, which the person makes, produces, manufactures, processes or fabricates.

002.13 "Metal containers" includes, but is not limited to, articles made wholly or in substantial part of materials such as iron, steel, tin, aluminum, copper, lead, zinc, silver, and any alloys thereof which can be, or are, used to hold other things within themselves and are susceptible to being dropped, deposited, discarded, or otherwise disposed of upon any property in this state. The phrase shall not include containers having capacities in excess of ten gallons.

002.14 "Person" shall mean any natural person, political subdivision, government agency, public or private corporation, partnership, joint venture, association, firm, or individual proprietorship.

002.15 "Plastic or fiber containers made of synthetic material" includes, but is not limited to, articles made wholly or in substantial part of ethylene derivatives, resins, waxes, adhesives, or polymers and which can be, or are, used to hold other things within themselves and are susceptible to being dropped, deposited, discarded, or otherwise disposed of upon any property in this state. The phrase includes all paper containers except those which are made exclusively of organic pulp fiber and without synthesis with adhesives, polymers, waxes, resins, or other materials. Synthetic material means that produced by synthesis which is the process of making or building up by a composition or union of simpler parts or elements as distinguished from the process of extraction or refinement. The phrase shall not include containers with rigid sides having capacities in excess of ten gallons.

002.16 "Retailer" includes any person engaged in business in this state having annual gross proceeds of at least one hundred thousand dollars resulting from sales made at the retail level of any of the products falling into the categories listed in Reg-28-001.03.

002.16A A retailer includes any person operating vending machines selling items subject to the litter fee.

002.17 "Soft drinks and carbonated waters" includes, but is not limited to, pop, soda, cola, tonic, etc., but does not include water, ice, liquor, wine, beer, and other malt beverages.

002.18 "Wholesaler" includes any person engaged in business in this state having annual gross proceeds of at least one hundred thousand dollars resulting from sales made at the wholesale level to retailers, other merchants, or industrial, institutional, and commercial users of any of the products, including by-products, falling into the categories listed in Reg-28-001.02. For purposes of the litter fee, the term wholesaler includes out-of-state manufacturers making sales in Nebraska.

002.19 "Toiletries" includes, but is not limited to, all substances such as soap, powder, deodorant, hairspray, cologne, perfume, cosmetics, toothpaste, etc., used in connection with the dressing or grooming of persons.

002.20 "Kitchen supplies" includes, but is not limited to, any nondurable supply used in conjunction with the preparation, consumption, or cleaning up after meals, including plastic wrap, aluminum foil, or plastic utensils.

(Sections 81-1545, 81-1548.03, 81-1548.04, 81-1560, R.R.S. 1943, and sections 81-1542, 81-1543, 81-1548.01, 81-1548.02, 81-1559, 81-1560.01, 81-1560.02, and 81-1560.03 R.S.Supp, 1993. May 14, 1994.)

REG-28-003 THE LITTER FEE RETURN

003.01 A return is required for each annual period or fraction thereof in which a litter fee license is required. The annual period is from July 1 through June 30.

003.02 Each person shall file only one return. See Reg-28-007 for the procedures to be followed by persons having more than one location.

003.03 Returns shall be signed by the person required to file the return or by his or her duly authorized agent.

003.04 Returns properly signed and accompanied by remittance will be considered timely filed if mailed, postage prepaid, on or before the due date stated on the face of the return. When the due date falls on a Saturday, Sunday, or any approved holiday, the return shall be considered timely filed if mailed postage prepaid on the next succeeding day which is not a Saturday, Sunday, or an approved holiday. A United States Postal Service postmark will be conclusive evidence of the date of mailing for the purpose of timely filing a return. Failure to file the return or to remit the fee due by the due date will subject the person required to file a return to a penalty in the amount of the larger of twenty-five dollars (\$25.00) or ten percent of the fee due. In addition, interest will be assessed on the unpaid fee at the rate specified in Section 45-104.02 from the due date until the date payment is received.

003.05 Remittance must accompany the return and be in the form of a check, draft, or money order made payable to the Nebraska Department of Revenue. Cash or postage stamps should not be sent as payment.

(Sections 81-1559, and 81-1560.01, R.S.Supp., 1993. May 14, 1994.)

REG-28-004 LICENSES

004.01 Every person engaging in business in the State of Nebraska who manufactures and sells or sells at either wholesale or at retail in this state the products, including by-products, listed in Reg-28-001, Nature of the Litter Fee, must obtain a Nebraska litter fee license. A license may be obtained by filing a Nebraska Tax Application, Form 20. A license is not required if the person's annual gross proceeds from sales in this state of products subject to the litter fee at all locations are less than one hundred thousand dollars (\$100,000.00).

004.02 A separate application for a litter fee license must be obtained for each place of business in this state required to hold a license. Each out-of-state manufacturer, wholesaler, or retailer required to obtain a litter fee license must file an application.

004.03 Upon examination and approval of the application, the Nebraska Department of Revenue shall issue to the manufacturer, wholesaler, or retailer a license for the specific place of business for which the application was filed. The license is not assignable, and will be valid only for the manufacturer, wholesaler, or retailer in whose name it is issued and for the transaction of business at the place designated thereon.

004.04 Upon violation of any of the litter fee statutes or regulations, the Nebraska Department of Revenue may revoke or suspend the license or licenses of the violator. The procedures as to revocation hearings are contained in Practice and Procedure Regulation 33-008.

004.05 A person whose license has been previously suspended or revoked shall pay the Nebraska Department of Revenue a fee of twenty-five dollars (\$25.00) for the renewal or issuance of a license in the event of a first revocation, and fifty dollars (\$50.00) for each successive revocation. A new license will not be issued to the same person until the Nebraska Department of Revenue is satisfied that such person will comply with the litter fee statutes and regulations issued thereunder.

004.06 A person who engages in business as a manufacturer, wholesaler, or retailer in this state without a license or licenses or after a license has been suspended or revoked, and each officer of any corporation which so engages in business, shall be guilty of a misdemeanor. Upon conviction thereof, such person and each such officer shall be fined an amount not to exceed five hundred dollars (\$500.00) per each day of operation.

(Sections 81-1559 and 81-1560.01, R.R.S. 1999. March 7, 2006.)

REG-28-005 RECORDS

005.01 Every manufacturer, wholesaler, and retailer subject to the litter fee is required to keep records in order to determine the amount of fee due. These records must include the normal books of account ordinarily maintained by the average prudent business manager engaged in a similar activity together with all documents supporting entries in the books of accounts. Schedules and working papers used in the preparation of litter fee returns must be retained.

005.02 The records created at the time of sale may take the form of sales slips, sales invoices, tally sheets, itemized lists, or other memoranda. A cash register tape may be acceptable if it preserves sufficient information. Items may be described by a symbol if the symbol is representative of a class of products which are subject to the fee. If a manufacturer, wholesaler, or retailer sells products which are not subject to the fee in a "Department P" a description of such products as "Department P" is sufficient; provided, the manufacturer, wholesaler, or retailer uses such symbol consistently to describe the same products.

However, if a manufacturer, wholesaler, or retailer sells several types of products, including those not subject to the litter fee, in a single department, his records must individually identify the types of products which are subject to the litter fee. A manufacturer, wholesaler, or retailer may report and pay the litter fee on the basis of a percentage of gross proceeds where the gross proceeds from sales of products subject to the litter fee do not exceed 20 percent of his or her total gross proceeds. The percentage reported must reasonably reflect the sale of the products subject to the litter fee.

005.03 The State Tax Commissioner or any person authorized in writing by him may examine the books, papers, records, and equipment of any person to ascertain or verify the accuracy of any return filed, or, if no return is filed by the person, to ascertain and determine the amount required to be paid. Records must be retained for a period not less than three years after the return is filed, unless the Nebraska Department of Revenue, in writing, authorizes their destruction at an earlier date. However, the Department may issue a deficiency determination within five years after any amount of fee is determined due and payable when a return has not been filed.

(Sections 81-1559 and 81-1560.01, R.S.Supp., 1981. May 11, 1982.)

REG-28-006 CONFIDENTIAL INFORMATION

006.01 It shall be a misdemeanor for the State Tax Commissioner, his or her employees, legal representatives, or agents, any employee of the State Treasurer or the Department of Administrative Services, or any person receiving information from them to divulge or to make known in any manner whatever, the business affairs, operations, or information obtained by an investigation of records and equipment of any person visited or examined in the discharge of official duty, or the amount or source of income, profits,

losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person. The preceding shall not be construed:

006.01A To prohibit the delivery to a person required to pay the fee, his duly authorized representative, or his successors, receivers, trustees, executors, administrators, assignees, or grantors, of a certified copy of any return or report.

006.01B To prohibit the publication of statistics.

006.01C To prohibit the inspection by the Attorney General or other legal representative of the State of Nebraska of reports or returns of any person when information on the reports or returns is considered, by the Attorney General, to be relevant to any action or proceeding instituted by the person or against whom an action or proceeding is being considered or has been commenced by any state agency.

006.01D To prohibit the furnishing of information to the Treasury Department of the United States, or to states allowing similar privileges to the State Tax Commissioner and the Nebraska Department of Revenue.

006.02 Information as to whether or not a person has a litter fee license may be released upon request.

(Sections 81-1559 and 81-1560.01, R.R.S. 1999. March 7, 2006.)

REG-28-007 PERSONS WITH MORE THAN ONE LOCATION

007.01 Where any manufacturer, wholesaler, or retailer conducts business operations at more than one location and at the various locations manufactures and sells, or sells at wholesale or at retail any products, including by-products, subject to litter fee, such manufacturer, wholesaler, or retailer must calculate the litter fee on the total gross proceeds from all of the locations. Business operations are conducted at two or more locations by the same manufacturer, wholesaler, or retailer if the same person or persons own eighty percent or more of the businesses at each location.

007.02 The manufacturer, wholesaler, or retailer must submit an application to the Department of Revenue to file a combined litter fee return covering the business operations of two or more locations. Such application shall be made on forms provided by the Department of Revenue and in addition to other information shall set forth the business locations to be included in each combined litter fee return. Business locations may not be added to or deleted from the combined litter fee return without written application for such change and without the prior approval of the Department of Revenue.

007.03 Such combined litter fee returns shall be made for all reporting periods on forms provided by the Department of Revenue setting forth for each location reported on the combined return such information as may be

required. All information requested must be completed as to each business location. Failure to comply will subject the taxpayer to the appropriate penalties provided by law.

(Section 81-1559, R.S.Supp., 1993. May 14, 1994.)

REG-28-008 PERCENTAGE OF SALES METHOD FOR RETAILERS TO DETERMINE SALES SUBJECT TO THE FEE

008.01 The State Tax Commissioner may by regulation authorize particular types of retail businesses to report and pay the Nebraska Litter Fee based on a percentage of sales in lieu of separately accounting for sales subject to the fee.

008.02 Each type of retail business may submit to the State Tax Commissioner information that clearly defines the type of retail business and that shows the use of the percentage method will reasonably approximate the activity subject to the litter fee of that type of retail business.

008.03 The State Tax Commissioner, upon receipt of the information, may prepare a regulation to authorize the use of the percentage method. He or she shall designate a time and place for a hearing in order to give those concerned an opportunity to explain or answer questions concerning the information.

008.04 The State Tax Commissioner may then adopt a regulation for the particular type of retailer as defined in the regulation.

(Section 81-1560.04, R.S.Supp., 1993. May 14, 1994.)

