

State of Rhode Island - Division of Taxation

Taxation of Beverage Containers, Hard-to-Dispose Material and Litter Control Participation Permittee

Regulation LIT 92-02

Hard-to-Dispose Materials

I. Definitions

"Hard-to-dispose material" means and encompasses the following: Petroleum-based or synthetic lubricating oils, including, but not limited to, lubricants in internal combustion engines, tires (including retreads) used on motorized vehicles and trailers, including cars, trucks, buses and heavy construction equipment, glycol-based antifreeze and organic solvents. A petroleum-based or synthetic lubricating oil which is recycled and/or re-refined is not nor shall it be considered a hard-to-dispose material.

"Recycled oil" means used petroleum-based or synthetic lubricating oil that is used as a substitute for a petroleum product made from new oil; provided, that the use is operationally safe, environmentally sound, and complies with all laws and regulations. Recycled oil that is blended with virgin oil prior to reuse, however, is not considered recycled oil.

"Re-refined oil" means used lubricating oil from which the physical and chemical contaminants acquired through previous use have been removed through the refining process. For purposes of the Hard-to-Dispose Material Law, this term refers to lubricating oils that are one hundred percent (100%) re-refined, exclusive of additives.

"Organic solvents" means any compounds of carbon which are liquids at standard conditions and which are used as dissolvers, viscosity reducers, dilutents, thinners, reagents or cleaning agents (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate) and which are listed as hazardous waste pursuant to the State Hazardous Waste Program pursuant to chapter 19.1, title 23 of the Rhode Island General Laws, 1956, as amended.

"Person" means any natural person, political subdivision, government agency, public or private corporation, partnership, joint venture, association, firm, individual proprietorship, or other entity whatsoever.

"Hard-to-dispose material wholesaler" means any person wherever located who engages in the sale of hard-to-dispose material to customers for sale in this state (including manufacturers, refiners, distributors and retailers), and to other persons as defined above.

"Hard-to-dispose material retailer" means any person who engages in the retail sale of hard-to-dispose material in this state.

"New vehicle" means any mode of transportation for which a certificate of title is required

pursuant to title 31 of Rhode Island General Laws, 1956, as amended, and for which a certificate Fifty cents (\$0.50) per tire.

The hard-to-dispose material wholesaler shall separately state the amount of the tax on the invoice.

B. Certain Sales not Subject to Tax

No tax need be collected by the hard-to-dispose material wholesaler where the hard-to-dispose material is sold:

1. To a retailer for resale or use outside this state and the wholesaler is obligated to deliver such materials to a point outside the state or to deliver them to a common carrier for transportation outside this state, or
2. To a retailer not engaged in the sale of hard-to-dispose material in this state who then transports the material outside the state for the sole purpose of reselling such materials outside this state, or
3. Directly to the United States Government or its agencies, or
4. To another Rhode Island hard-to-dispose material wholesale tax permittee. In such case the seller must obtain a copy of the purchaser's Rhode Island hard-to-dispose material wholesale tax permit.

Under paragraph 2 above, the hard-to-dispose wholesaler must obtain a Rhode Island exemption certificate from the purchaser.

The wholesaler must collect the tax from retailers engaged in the sale of hard-to-dispose materials in this state on all purchases picked up by or delivered to retailers in this state, including purchases of materials earmarked by the retailer for subsequent transportation out of state for resale or use out of state.

If a wholesaler sells hard-to-dispose materials directly to a consumer (i.e., to a manufacturer or other person using lubricating oils in its own machinery and equipment and not for resale) that sale is a retail sale of hard-to-dispose material. The wholesaler therefore becomes a "hard-to-dispose material retailer" and subject to tax for that sale. When making such sale, the wholesaler cannot charge the tax to its customer and/or separately state the tax on its customer's invoice since the law provides for the tax to be separately stated on the invoice only in the case of a sale to a hard-to-dispose material retailer.

C. Application to Collect Tax

Each hard-to-dispose material wholesaler must apply to the tax administrator for authorization to collect the tax upon a form provided by the tax administrator. No application fee is required. Once the application is approved and processed, the wholesaler will be issued a certificate with a number which will authorize it to collect the tax.

D. Returns

On or before the twenty-fifth (25th) day of the month, the hard-to-dispose material wholesaler must file a return along with payment for all taxes imposed under the law for the previous

calendar month. Where the wholesaler has a liability for tax as a hard-to-dispose material retailer under the law, there will be no requirement to file a separate hard-to-dispose material retail tax return. In such case, the direct retail sales are to be added to the sales to retailers and entered as a total quantity on the return.

An extension for filing a return may be granted (up to 30 days) for reasonable cause upon written request to the tax administrator.

III. Responsibility of Hard-to-Dispose Material Retailer

A. Liability for Tax

1. Every hard-to-dispose material retailer selling, using or otherwise consuming hard-to-dispose material in this state is liable for the tax. Liability for the tax arises at the time such hard-to-dispose material is purchased for sale, use or consumption in this state. The tax, if not paid to a hard-to-dispose material wholesaler authorized to collect the tax, must be paid directly to the Division of Taxation based upon the rates set forth in the table under subsection A, section II above.

The hard-to-dispose material tax is a tax imposed on the retailer, accordingly retailers are not permitted to charge a tax to their customers and/or separately state the tax on their customer's invoices.

2. Liability of a hard-to-dispose retailer is not extinguished until the tax has been paid to the state, except that a receipt from a hard-to-dispose material wholesaler engaging in business in this state or authorized by the tax administrator to collect the tax is sufficient to relieve the hard-to-dispose retailer from further liability for the tax to which the receipt refers.

Where a retailer has paid the tax to a hard-to-dispose material wholesaler or directly to the state on materials which are subsequently transported out of state for sale or use solely outside the state the retailer may apply for a credit or refund (see credit and refund provision, Subsection C of Section III). Proper documentation supporting subsequent out-of-state transportation must be established by the retailer.

B. Returns

Whenever the hard-to-dispose material retailer is required to file a return, it must do so on or before the twenty-fifth (25th) day of the month. Payment for all taxes imposed under the law for the previous calendar month must accompany the return.

An extension for filing a return may be granted (up to 30 days) for reasonable cause upon written request to the tax administrator.

C. Credits and Refunds

Every hard-to-dispose material retailer engaging in business in this state who has purchased and paid tax to a hard-to-dispose material wholesaler or directly to the state is entitled to a credit or refund on the hard-to-dispose material subsequently transported out of state for resale or use solely outside the state. The credit may be applied against the tax due on the monthly return, but only to the extent of the amount of tax for which the retailer is liable. Any excess credit may be

carried forward to the next succeeding month. Any retailer not required to forth in section 44-1-7 from the date when the taxes became due until the date of payment.

Penalties - A penalty of ten percent (10%) of the tax due will be added to delinquent payments and deficiency determinations made due the negligence or intentional disregard.

If any part of the deficiency made is due to fraud or an intent to evade the provisions of the law, a penalty of fifty percent (50%) of the tax amount of the determination will be imposed.

R. GARY CLARK
TAX ADMINISTRATOR

EFFECTIVE DATE: JANUARY 1, 1993

THIS REGULATION AMENDS AND SUPERCEDES REGULATION LIT 90-2 FILED MAY 1, 1990 AND DECEMBER 7, 1990.