

**Updated information available regarding the
Returnable Container Act (Bottle Bill)**

Please see [TSB-M-09\(8\)M](#), *Federal Court Modifies Injunction, Authorizing New York State to Implement Major Portions of Amendments to Returnable Container Act (Bottle Bill)*, for updated information regarding the implementation of the Returnable Container Act (Bottle Bill) described in TSB-M-09(2)M.

TSB-M-09(2)M begins on page 2 below.

Registration and Filing Responsibilities for Beverage Container Deposit Initiators

Part SS of Chapter 59 of the Laws of 2009 amended the Environmental Conservation Law (ECL) to expand the types of beverage containers that require deposits to include beverage containers for water (beginning June 1, 2009). In addition, deposit initiators are required to electronically register with the New York State Department of Taxation and Finance (Tax Department), file quarterly returns, and remit 80% of unclaimed beverage container deposits to the state.

This memorandum explains deposit initiators' responsibilities to electronically register and file quarterly reports with the Tax Department. For additional information regarding the types of beverage containers that require deposits, contact the Department of Environmental Conservation (DEC). For contact information, visit the DEC Web site (www.dec.ny.gov).

For a definition of the term *deposit initiator* and to see other definitions that apply under the amendments made by Part SS of Chapter 59 of the Laws of 2009, see *Definitions* beginning on page 4.

When to register and establish a refund value account

You may apply for registration as a deposit initiator on the Tax Department's Web site (www.nystax.gov) beginning in mid-May 2009. Depending on your status, the following due dates apply:

- **Current deposit initiators**

If you currently initiate deposits on beverage containers used for beverages such as carbonated soft drinks, beer, other malt beverages, and wine coolers, you must begin placing these funds in a special refund value account (see page 2) as of **April 15, 2009**, and you must register with the Tax Department as a deposit initiator by **June 1, 2009**.

- **Deposit initiators on beverage containers for water**

Beginning June 1, 2009, deposits must also be collected on beverage containers for water. If you will begin initiating deposits on beverage containers for water on June 1, 2009, you must establish a refund value account and register with the Tax Department by **June 1, 2009**.

- **New deposit initiators after June 1, 2009**

If you will begin initiating deposits on any beverage containers after June 1, 2009, you must establish a refund value account and register with the Tax Department **before** you begin collecting deposits.

Electronic filing and quarterly reports

You must electronically file quarterly reports and remit 80% of the balance required to be in the refund value account at the end of each quarter. You may withdraw the remaining 20% in the refund value account at the end of each quarter and keep that amount.

The first quarterly report for the partial quarter of April 15 through May 31, 2009, should include deposits initiated on beverage containers used for beverages such as carbonated soft drinks, beer, other malt beverages and wine coolers. **You must file this quarterly report electronically by June 22, 2009.**

Beginning with the second quarterly report for the full quarter June 1 through August 31, 2009, you must include deposits initiated on beverage containers for water in addition to deposits for the beverage containers described above. For more information, see *Quarterly reports and payments must be submitted electronically* on page 3.

Registration of deposit initiators

To register as a deposit initiator, you must apply online using the Tax Department's Web site (www.nystax.gov). The Tax Department will electronically issue a registration certificate to you when your application is received, subject to a review that may take up to 25 days. Once the registration certificate is issued, it is valid for at least three years, but may be subject to renewal at the discretion of the Tax Department.

The Tax Department may revoke or refuse to renew your registration if you have violated any of the provisions of the beverage container law. Violations include, but are not limited to, failure to file quarterly reports, failure to make payments, providing false or fraudulent information, or knowingly aiding or abetting another person in violating any of the provisions of the beverage container law. If a violation has occurred, the Tax Department will issue a notice of the proposed revocation or refusal to renew a registration. You may challenge this notice by filing a petition with the Tax Department within 90 days after the notice is issued.

If you are required to be registered as a deposit initiator and you do not register, in addition to other penalties that may apply, the Tax Department may impose a penalty not to exceed \$500 for each day you sell or offer to sell beverage containers in New York State. This penalty may not exceed \$25,000 in the aggregate.

Refund value account

As a deposit initiator, you must establish a refund value account to hold the refund value initiated for each beverage container sold and to reimburse customers on beverage containers redeemed. The refund value account must be an interest-bearing account established in a banking institution located in New York State, whose deposits are insured by an agency of the federal government. The funds in the account are to be held in trust for New York State and must be kept separate and apart from all other funds in your possession. Deposits of the refund

values to the account must be made at least once every five business days. All interest and dividends earned on the account must be paid directly into the account. Service charges on the account may be paid from the account, and reimbursements of the deposits on redeemed beverage containers may be made from the account, but no other payments including the handling fee that must be paid to a dealer or redemption center, may be made from the account.

Accounts and records

Every deposit initiator, bottler, distributor, dealer, or redemption center must maintain accounts, records, or documents related to the sale of beverage containers in New York State for a period of three years, unless the Tax Department consents to their destruction within that period or requires that they be kept longer. The accounts, records, or documents may be kept by photographic, photostatic, microfilm, micro-card, miniature photographic, or another process that actually reproduces the originals. The Tax Department may conduct examinations of these accounts, records, or documents, including facility inspections during regular business hours.

If you are a deposit initiator and you fail to maintain the required accounts or records, in addition to any other penalties that may apply, the Tax Department may impose a penalty of not more than \$1,000 for each quarter that the failure occurred, and an additional penalty of not more than \$1,000 for each quarter the failure continues.

Quarterly reports and payments must be submitted electronically

As a deposit initiator, you must electronically file quarterly reports with the Tax Department and pay 80% of the balance of the refund value account at the end of the period. The report must include the following information:

- balance in the account at the beginning of the quarter;
- beverage container deposits credited to the account;
- interest and dividends credited to the account;
- beverage container deposits redeemed from the account;
- service charges on the account; and
- balance in the account at the end of the quarter.

If you do not follow the provisions related to the refund value account, instead of the actual amounts above, you must report the amount of beverage container deposits credited and redeemed that should have been reported if you had followed the provisions.

The quarterly reports must be electronically filed and payment remitted within 20 days after the end of the following quarterly periods:

Quarter	Due
March 1 - May 31	June 20
June 1 - August 31	September 20
September 1 - November 30	December 20
December 1 - February 28 (29)	March 20

If the due date falls on a Saturday, Sunday or legal holiday, you must file the report and remit payment by the next day that is not a Saturday, Sunday, or legal holiday.

Final report

When you cease to do business as a deposit initiator, you must electronically file a final report and pay 80% of the balance in the refund value account as of the last day of business. You must file the final report no later than the 20th day following the end of the quarter.

Refund value account shortfall

If you pay out more in refund values than you collect in deposits during the course of any quarterly period, you may apply to the Tax Department for a refund of the amount of the excess paid from sources other than the refund value account. You must identify the funds and accounts used to make up the shortfall in the refund value account, and provide any other documentation needed to support the claim for refund. You must make any claim for refund resulting from a refund value account shortfall within 12 months from the due date of the applicable quarterly report. However, no refund related to a refund value account shortfall will be paid prior to March 1, 2010.

How to file a claim for refund

To file a claim for refund, use Form MT-230, *Claim for Refund of Beverage Container Deposits*. This form will be available at the Tax Department's Web site (www.nystax.gov).

Procedural provisions (Article 27 of the Tax Law)

The provisions of Article 27 of the Tax Law relating to Corporate Tax Procedure and Administration apply to the beverage container provisions that are enforced by the Tax Department, including the collection of refund value amounts. However, the provisions of Article 27 will not apply in cases when they are either inconsistent or irrelevant. Accordingly, procedures including, but not limited to, notices of deficiency, assessments, civil penalties, overpayments, refunds, interest, appeals, hearings, collections, levies and liens apply.

In addition to the authority provided in Tax Law, Article 27, if you refuse to file any report or furnish information requested in writing by the Tax Department or DEC, the Tax Department with the assistance of DEC may, from any information it has in its possession, make an estimate of and collect the deficiency.

Definitions

Beverage container means the individual, separate, sealed glass, metal, aluminum, steel or plastic bottle, can, or jar used for containing a beverage of less than one gallon or 3.78 liters at the time of sale, or offer for sale, of a beverage intended for use or consumption in New York

State. Beverage containers sold or offered for sale or distributed aboard aircraft or ships are considered as intended for use or consumption **outside** New York State.

Beverage means carbonated soft drinks, water, beer, other malt beverages and a wine product as defined in § 3(36-a) of the Alcoholic Beverage Control Law. **Malt beverages** means any beverage obtained by the alcoholic fermentation or infusion or decoction of barley, malt, hops, or other wholesome grain or cereal and water including, but not limited to, ale, stout, or malt liquor. **Water** means any beverage identified through the use of letters, words, or symbols on its product label as a type of water, including any flavored water or nutritionally enhanced water. **Water** does not include any beverage identified as a type of water to which a sugar has been added.

A **deposit initiator** for each beverage container with an established refund value means:

- the bottler of the beverage in the beverage container;
- the distributor of the beverage container, if the distributor did not purchase the beverage container, directly or indirectly, from a registered deposit initiator;
- a dealer of a beverage container who sells or offers for sale the beverage container in this state, if the dealer did not purchase the beverage container, directly or indirectly, from a registered deposit initiator; or
- an agent acting on behalf of a registered deposit initiator.

A **bottler** means a person, firm, or corporation who:

- bottles, cans, or otherwise packages a beverage in a beverage container. If the packaging is done for a distributor having the right to bottle, can, or otherwise package the same brand of beverage, the distributor is deemed to be the bottler; or
- imports filled beverage containers into the United States.

A **distributor** is any person, firm, or corporation engaging in the sale or offer for sale of beverages in beverage containers to a dealer.

A **dealer** is every person, firm, or corporation who engages in the sale of a beverage in a beverage container to a consumer for off-premises consumption in this state.

Refund value means the deposit collected on each beverage container sold in New York State by a registered deposit initiator. A **refund value** may not be less than five cents.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.