



MAINE REVENUE SERVICES SALES, FUEL AND SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN

INITIATORS OF DEPOSIT

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Professions and Occupations Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1.

The Professions and Occupations Law (MRSA 32 § 1866-E) requires initiators of deposit that have not entered into a qualified commingling agreement to establish a Deposit Transaction Fund and file a monthly report with the State Tax Assessor. The report concerns transactions affecting the Deposit Transaction Fund. Initiators of deposit are required to reconcile amounts in the Fund and pay over any abandoned deposits to the State.

1. EXEMPTIONS. A brewer who produces no more than 50,000 gallons of its product or a bottler of water who sells no more than 250,000 containers each containing no more than one gallon of its product in a calendar year is exempt from these requirements for that year.

2. DEFINITIONS.

a. Qualified commingling agreement. A commingling agreement is qualified if the Department of Agriculture, Food, and Rural Resources determines that 50% or more of the beverage containers of like product group, material and size for which the deposits are being initiated in the State are covered by the commingling agreement.

b. Initial fund balance. The initial fund balance is the sum of the refund values received for nonrefillable beverage containers during the first three months an initiator becomes subject to the provisions of MRSA 32 § 1866-E.

3. DEPOSIT TRANSACTION FUND. The Deposit Transaction Fund account must be held in trust for consumers and the State and maintained separate from other revenues and accounts.

a. Monthly Funding of the Deposit Transaction Fund. On the last day of each month, every initiator must place into the Deposit Transaction Fund, an amount equal to the difference between the refund values received and refund values paid out during the month for nonrefillable beverage containers.

b. Fund Balance. On the last day of each month, every initiator must determine its Deposit Transaction Fund balance for that month as follows:

1. Begin with the fund balance on the last day of the previous month. Subtract interest income earned in the previous month and abandoned deposit amounts paid to the State Tax Assessor for the previous month. Add any reimbursements due from the State Tax Assessor for the previous month. These amounts should be included even if they have not yet been received.

2. Add refund values received during the month for nonrefillable beverage containers sold in this State and interest income earned during the month on the Deposit Transaction Fund. Subtract refund values paid during the month for nonrefillable beverage containers redeemed in this State, excluding any handling charges.

c. Use of Deposit Transaction Fund. Money in the Deposit Transaction Fund, other than interest earned, is not income to the initiator. Payments can only be made from the Fund to:

1. pay refund values of nonrefillable beverage containers returned in this State by dealers, distributors, and redemption centers;

2. pay to the State Tax Assessor abandoned deposit amounts; and

3. withdraw interest income earned on money in the Deposit Transaction Fund.

4. MONTHLY REPORTING TO THE STATE TAX ASSESSOR.

a. General Rule. Every initiator required to maintain a Deposit Transaction Fund must file a report to Maine Revenue Service on or before the 20th day of each month, or fraction thereof, and pay to the State Tax Assessor any deposit amounts determined to be abandoned.

b. Content. Each monthly report must include the following information:

1. The number of nonrefillable beverage containers sold and returned in this State during the applicable month;

2. The amount of deposits received and payments made by the fund in the most recent 3-month period, including the applicable month;

3. Any income earned on amounts in the fund during the applicable month;

4. The balance in the fund at the close of the applicable month;

5. The abandoned deposit amounts paid to the State Tax Assessor or reimbursements due from the State Tax Assessor for the immediately preceding 24-month period.

c. Abandoned Deposit Amounts. As of the last day of each month, every initiator must determine the abandoned deposit amounts in their Deposit Transaction Funds and turn that

amount over to the State Tax Assessor. The abandoned deposit amounts for the month are determined by subtracting from the fund balance the following two amounts:

1. interest income earned during the reporting month on the Fund; and
2. the total amount of refund values received for nonrefillable beverage containers during the most recent 3-month period, including the reporting month.

d. Reimbursements. If in any month, the authorized payments from the Deposit Transaction Fund by an initiator exceed the funds that are or should be available, the State shall reimburse the initiator. The reimbursement will be limited to the amount(s) received as abandoned deposits from the initiator in the preceding 24-month period, less amounts reimbursed to the initiator during the preceding 24-month period.

e. Enforcement Provisions. The Department of Agriculture may remove from sale a beverage that is sold or distributed in the State by an initiator who is not in compliance with reporting and payment requirements and the department is notified by the State Tax Assessor of that noncompliance. The department shall allow the sales of the beverage to resume upon notification by the assessor that all delinquent reports have been submitted and all payments are current. Penalties may apply for a failure to timely file a return or pay an amount due on a return. See the excerpts from Title 36 contained in attachment 1 for the current penalty provisions.

5. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Deposit Transaction Fund faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

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Attachment #1
Excerpts taken from 32 M.R.S.A.

Disclaimer: Language in this section may not be accurate due to recent legislative changes.

§ 1866-E. Unclaimed deposits

The provisions of this section apply only to those beverage containers that are not subject to a commingling agreement pursuant to section 1866-D.

1. Deposit transaction fund. An initiator of deposit shall maintain a separate account to be known as the initiator's deposit transaction fund. The initiator shall keep that fund separate from all other revenues and accounts. The initiator shall place in that fund the refund value for all nonrefillable beverage containers it sells subject to the provisions of this chapter. Except as specified in subsections 3 and 4, amounts in the initiator's deposit transaction fund may be only expended to pay refund values for returned nonrefillable beverage containers. Amounts in the fund may not be used to pay the handling fees required by this chapter. The fund must be maintained by the initiator on behalf of consumers who have purchased products in refundable nonrefillable beverage containers and on behalf of the State; except as specified in subsections 3 and 4, amounts in the fund may not be regarded as income of the initiator.

2. Reports. An initiator of deposit shall report to the State Tax Assessor by the 20th day of each month concerning transactions affecting its deposit transaction fund in the preceding month. The report must be in a form prescribed by the assessor and must include: the number of nonrefillable beverage containers sold and the number of nonrefillable beverage containers returned in the applicable month; the amount of deposits received in and payments made from the fund in the applicable month and the most recent 3-month period; any income earned on amounts in the fund during the applicable month; the balance in the fund at the close of the applicable month; and such other information as the assessor may require. The report required by this subsection must be treated by the assessor as a return, as the term is defined by Title 36, section 111, subsection 4.

3. Determination of abandoned deposit amounts. The initiator's abandoned deposit amount, at the end of each month, is the amount equal to the amount of deposits that are or should be in the fund, less the sum of:

- A. Income earned on amounts in the fund during that month; and
- B. The total amount of refund values received by the initiator for nonrefillable beverage containers during that month and the 2 preceding months;

Income on the fund may be transferred from the fund for use as funds of the initiator.

4. Transfer of abandoned deposit amounts. By the 20th day of each month, an initiator shall turn over to the State Tax Assessor the initiator's abandoned deposit amounts determined pursuant to subsection 3. Those amounts may be paid from the deposit transaction fund. Amounts collected by the assessor pursuant to this subsection must be treated by the assessor as

a tax, as that term is defined by Title 36, section 111, subsection 5 and must be deposited in the General Fund.

5. Reimbursement of initiators of deposit. If in any month the authorized payments from the deposit transaction fund by an initiator pursuant to this section exceed the funds that are or should be in the initiator's deposit transaction fund, the State Tax Assessor shall reimburse the initiator, from amounts received pursuant to subsection 4, for those refunds paid by the initiator for nonrefillable beverage containers for which the funds that are or should be in the initiator's deposit transaction fund are insufficient; except that reimbursements paid by the assessor to an initiator may not exceed amounts paid by the initiator pursuant to subsection 4 in the preceding 24 months less amounts paid to the initiator pursuant to this subsection during that same 24-month period.

5-A. Administration by State Tax Assessor. The uniform tax administration provisions of Title 36, chapter 7 apply to the State Tax Assessor's administration of the reports and payments required by this section.

6. Small bottlers and brewers exempt. A brewer who produces no more than 50,000 gallons of its product or a bottler of water who sells no more than 250,000 containers each containing no more than one gallon of its product in a calendar year is exempt from the requirements of this section for that year.

7. Phase in. Notwithstanding provisions of this section and section 1866 to the contrary, if a commingling agreement for a product group was filed with the department by March 1, 2004, an initiator of deposit, whether or not a party to that agreement, is not required to turn over to the State Tax Assessor the initiator of deposit's abandoned deposit amounts for that product group as required by subsection 4 until July 1, 2004. On July 1, 2004, an initiator of deposit shall turn over to the State Tax Assessor the abandoned deposit amounts that have accrued since March 1, 2004 for all beverage containers that are not covered by a qualified commingling agreement, as described in section 1866, as of July 1, 2004.

8. Removal of beverage. The department may remove from sale a beverage that is sold or distributed in the State by an initiator of deposit who is not in compliance with the reporting and payment requirements established in this section if the department is notified by the State Tax Assessor of that noncompliance. The department shall allow the sale of the beverage to resume upon notification by the State Tax Assessor that all delinquent reports have been submitted and all payments are current.

Excerpts taken from 36 M.R.S.A.

§ 187-B. Penalties

1. Failure to file return. Any person who fails to make and file any return required under this Title at or before the time the return becomes due is liable for one of the following penalties if the person's tax liability shown on such return or otherwise determined to be due is greater than \$25.

A. If the return is filed before or within 30 days after the taxpayer receives from the assessor a formal demand that the return be filed, or if the return is not filed but the tax due is assessed by the assessor before the taxpayer receives from the assessor a formal demand that the return be filed, the penalty is \$25 or 10% of the tax due, whichever is greater.

B. If the return is not filed within 30 days after the taxpayer receives from the assessor a formal demand that the return be filed, the penalty is 100% of the tax due. The 30-day period provided by this paragraph is extended for up to 120 days if the taxpayer requests an extension in writing prior to the expiration of the 30-day period.

C. If the return is not filed and the assessor issues a jeopardy assessment pursuant to section 145, the penalty is 100% of the tax due.

This subsection does not apply to any return required pursuant to chapter 459 and administered pursuant to the International Fuel Tax Agreement.

2. Failure to pay. The following penalties apply.

A. Any person who fails to pay, on or before the due date, any amount shown as tax on any return required under this Title is liable for a penalty of 1% of the unpaid tax for each month or fraction of month during which the failure continues, to a maximum in the aggregate of 25% of the unpaid tax.

A-1. Any person who fails to make and file any return required under this Title at or before the time the return becomes due against whom the assessor has made an assessment of tax pursuant to section 141 and who has not paid the tax on or before the date specified in that assessment is liable for a penalty of 1% of the unpaid tax for each month or fraction of a month during which the tax remains unpaid, calculated retroactively from the original due date of the unfiled return, to a maximum in the aggregate of 25% of the unpaid tax.

B. Any person who fails to pay a tax assessment for which no further administrative or judicial review is available pursuant to section 151 and the Maine Administrative Procedures Act is liable for a penalty in the amount of 25% of the amount of the tax due if the payment of the tax is not made within 10 days of the person's receipt of notice of demand for payment as provided by this Title. This penalty must be explained in the notice of demand and is final when levied.

This subsection does not apply to taxes due pursuant to chapter 459 and administered pursuant to the terms of the International Fuel Tax Agreement.

3-A. Negligence; fraud. A person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to negligence or intentional disregard of this Title or rules issued pursuant to this Title, but is not attributable to fraud with intent to evade the tax, is liable for a penalty in the amount of \$25 or 25% of that portion of the underpayment, whichever is greater. A person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to fraud with intent to evade the tax, is liable for a penalty in the amount of \$75 or 75% of that portion of the underpayment, whichever is greater. For the purposes of this section, the term "negligence" means any failure to make a reasonable attempt to comply with the provisions of this Title.

4-A. Substantial understatement. A person who files a return under this Title that results in an underpayment of tax, any portion of which is attributable to a substantial understatement of tax, without

negligence or intentional disregard of this Title or rules or regulations issued under this Title and without fraud with intent to evade the tax, is liable for a penalty of \$5 or 1% of that portion of the underpayment, whichever is greater, for each month or fraction of a month during which the failure to pay that portion of the underpayment continues, to a maximum in the aggregate of \$25 or 25% of the underpayment, whichever is greater.

There is a substantial understatement of tax if the amount of the understatement on the return or returns for the period covered by the assessment exceeds 10% of the total tax required to be shown on the return or returns for that period or \$1,000, whichever is greater. For purposes of calculating whether an understatement is substantial and the amount of any substantial understatement that is subject to penalty under this subsection, the amount of any understatement is reduced by that portion of the understatement that is attributable to the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment.