

830 CMR 94.00: ABANDONED DEPOSIT AMOUNTS

Section

94.323.1: Collection of Amounts Deemed to Constitute Abandoned Deposit Amounts

94.323.1: Collection of Amounts Deemed to Constitute Abandoned Deposit Amounts

(1) Statement of Purpose; Application; Outline.

(a) Purpose. The purpose of 830 CMR 94.323.1 is to describe the rules for the establishment and maintenance of Deposit Transaction Funds by bottlers and distributors, and for the collection of abandoned deposit amounts from such Deposit Transaction Funds, as required by M.G.L. c. 94, §§ 321 through 327, inclusive, and the Supreme Judicial Court's decision in *Massachusetts Wholesalers of Malt Beverages, Inc., v. Commonwealth*, 414 Mass. 411 (1993), and the Appellate Tax Board's decision in *Adirondack Beverages Corporation v. Commissioner of Revenue*, Docket Nos. C267064 and C275091 (June 1, 2007).

(b) Application. 830 CMR 94.323.1, applies to bottlers and distributors who are subject to the provisions of M.G.L. c. 94, § 323(c), (d) or (e) with respect to the refund values received by such bottlers and distributors for non-reusable beverage containers sold on or after January 1, 1990.

(c) Outline. 830 CMR 94.323.1, is organized as follows:

1. Statement of Purpose; Application; Outline.
2. Definitions.
3. Deposit Transaction Fund.
4. Monthly Reporting to the Commissioner.
5. Abandoned Deposit Amounts.
6. Reimbursements.
7. Borrowing From Deposit Transaction Fund.
8. Enforcement Provisions.
9. Examples.

(2) Definitions. For the purposes of 830 CMR 94.323.1, the following terms shall have the following meanings, unless the context requires otherwise:

Abandoned Deposit Amounts, amounts deemed to constitute abandoned deposit amounts under M.G.L. c. 94, § 323C, and calculated in accordance with 830 CMR 94.323.1(5).

Beverage, soda water or similar carbonated soft drinks, and beer and other malt beverages, but does not include alcoholic beverages other than beer and malt beverages, as defined in M.G.L. c. 138, natural fruit juices or wine.

Beverage Container, any sealable bottle, can, jar, or carton that is composed primarily of glass, metal, plastic, or any combination of those materials, which is produced for the purpose of containing a beverage, but not including containers made of biodegradable material.

Bottler, any person filling beverage containers for sale to distributors, dealers, or consumers, including any dealer who bottles or sells its own brand of beverage.

Commissioner, the Commissioner of Revenue or the Commissioner's designee duly authorized to perform the duties of the Commissioner.

Consumer, any person who purchases a beverage in a beverage container for use or consumption with no intent to resell such beverage.

Dealer, any person, including any operator of a vending machine, who engages in the sale of beverages in beverage containers to consumers.

Department, the Department of Revenue.

Deposit, an amount equal to the refund value paid by a consumer, dealer, or distributor in connection with the purchase of a non-reusable beverage container.

94.323.1: continued

Deposit receivables, an amount equal to the refund values of non-reusable beverage containers sold by a bottler or distributor for which such bottler or distributor has not allocated receipt of payment under 830 CMR 94.323.1(5)(b)1.

Distributor, any person who engages in the sale of beverage containers to dealers, including any bottler or dealer who engages in such sales.

Fund balance, an amount, determined in accordance with 830 CMR 94.323.1(3)(a) and (b), that corresponds to the amount that would be in the Deposit Transaction Fund on the last day of each month if the Deposit Transaction Fund were to be fully funded.

Month, calendar month, or, where applicable, a fraction thereof.

Non-reusable beverage container, any beverage container so constructed and designed that it is structurally incapable of being refilled and resold by a bottler or distributor at least ten times after its initial use.

Refund value, an amount of not less than five cents that is charged for each non-reusable beverage container sold by bottler or distributor.

Sales invoice, a written account, or other itemized statement of merchandise shipped or sold by a bottler or distributor evidencing the quantity, value, prices, and charges relating to the merchandise shipped or sold.

Sold, includes any transfer of title or possession, or both, exchange, barter, lease, rental, conditional or otherwise, of non-reusable beverage containers for a consideration, in any manner or by any means whatsoever.

(3) Deposit Transaction Fund.

(a) General rule. Every bottler and distributor subject to the provisions of M.G.L. c. 94, § 323(c), (d) or (e) must establish and maintain an account known as the Deposit Transaction Fund. The Deposit Transaction Fund is a fund determined by reference to the refund values received by a bottler or distributor for non-reusable beverage containers.

(b) Fund balance. Except as provided in 830 CMR 94.323.1(3)(c), on the last day of each month, every bottler and distributor must determine its Deposit Transaction Fund fund balance for such month as follows:

1. the fund balance on the last day of the previous month, less interest income earned in that previous month, less abandoned deposit amounts paid to the Commissioner for that previous month, as determined by 830 CMR 94.323.1(5), plus any reimbursements due from the Commissioner for that previous month, as determined by 830 CMR 94.323.1(6);
2. plus the refund values received during the month for non-reusable beverage containers;
3. plus interest income earned during the month on the Deposit Transaction Fund;
4. minus the refund values paid during the month for non-reusable beverage containers returned, not including any handling charges.

(c) Initial Fund Balance.

1. Bottlers and distributors beginning business before January 1, 1990. Bottlers and distributors in business and subject to the provisions of M.G.L. c. 94, § 323(c), (d) or (e), before January 1, 1990, must begin payment of abandoned deposit for the month of April, 1990, with the first payment of abandoned deposit amounts payable to the Commissioner on or before May 10, 1990. For purposes of calculating abandoned deposit amounts payable to the Commissioner on or before May 10, 1990, the initial "fund balance on the last day of the previous month," (that is, the fund balance on March 31, 1990) is a number equal to the refund values received by such bottlers and distributors for non-reusable beverage containers during the months of January, February and March, 1990. However, the actual amount of money required to be placed into the Deposit Transaction Fund on March 31, 1990, must equal abandoned deposit amounts paid to the Commissioner in January, February and March, 1990, under St. 1989, c. 653, including the retroactive funding provisions of St. 1989, c. 653, § 237.

94.323.1: continued

2. Bottlers and distributors beginning business on or after January 1, 1990. Bottlers and distributors who begin business and become subject to the provisions of M.G.L. c. 94, § 323(c), (d) or (e), on or after January 1, 1990, must start making payment of abandoned deposit amounts beginning with the fourth month, or fraction thereof, of business operations, with the payment therefor being due the Commissioner by the tenth day of the fifth month, or fraction thereof, after beginning business operations. For all such bottlers and distributors their initial "fund balance on the last day of the previous month," (that is, their fund balance on the last day of the third month, or fraction thereof, beginning with the calendar month during which business operations start), is a number equal to the refund values received by such bottlers and distributors during the first three months, or fraction thereof, of their business operations. However, the actual amount of money required to be placed into the Deposit Transaction Fund on the last day of such three month period must equal the refund values received less refund values paid out for returns of non-reusable beverage containers during the first three months, or fraction thereof, of their business operations.
- (d) Monthly funding of Deposit Transaction Fund. Every bottler and distributor subject to the provisions of M.G.L. c. 94, § 323(c), (d), or (e), must place into the Deposit Transaction Fund on the last day of each month an amount equal to the difference between the refund values received by the bottler or distributor during the month for non-reusable beverage containers and the refund values paid out by the bottler or distributor during the month for returns of non-reusable beverage containers.
- (e) Maintenance of Deposit Transaction Fund. Bottlers and distributors must maintain their Deposit Transaction Fund accounts separate and apart from their other revenues and accounts. The Deposit Transaction Fund accounts must be interest bearing or non-interest bearing trust accounts, including, but not limited to, savings accounts, checking accounts, NOW accounts, or money market accounts, established and maintained in any bank, savings and loan institution, or credit union located and authorized to do business in Massachusetts. Upon approval of the Commissioner, a bottler or distributor may place its Deposit Transaction Fund accounts in a bank, savings and loan institution, or credit union not located in Massachusetts on the condition that the bottler or distributor posts a bond or other security acceptable to the Commissioner. Funds in these accounts must be subject to withdrawal upon request and without delay. The account must be titled, "Deposit Transaction Fund for the benefit of consumers and the Commonwealth of Massachusetts," with the bottler or distributor maintaining the account as trustee.
- (f) Use of Deposit Transaction Fund. Other than interest income, money in a Deposit Transaction Fund is not income to bottlers and distributors, and may not be appropriated for their own use or to pay handling fees under M.G.L. c. 94, § 323(c), (d), and (e). Bottlers and distributors may expend money from the Deposit Transaction Fund only for the following purposes:
1. to pay dealers, distributors, and redemption centers the refund values of non-reusable beverage containers returned to the bottler or distributor, as required by M.G.L. c. 94, c. 323(c), (d), and (e);
  2. to pay over to the Commissioner abandoned deposit amounts, as determined by 830 CMR 94.323.1(5);
  3. to withdraw for their own use interest income earned on money in the Deposit Transaction Fund, as allowed by M.G.L. c. 94, § 323C; and,
  4. to withdraw amounts for the stated purposes upon which an application to borrow pursuant to 830 CMR 94.323.1(7) was approved.
- (4) Monthly Reporting to the Commissioner.
- (a) General rule. On or before the tenth day of each month, every bottler or distributor maintaining, or required to maintain, a Deposit Transaction Fund, as required by M.G.L. c. 94, § 323(h), and 830 CMR 94.323.1, must file with the Commissioner a report on DOR Form AD-1 of all transactions affecting the Deposit Transaction Fund for the preceding month, or fraction thereof, and pay over to the Commissioner any abandoned deposit amounts, as determined by 830 CMR 94.323.1(5).
- (b) Content. Each monthly report must include the following information:
1. The number of non-reusable beverage containers for which refund values have been received during the month in question, and, the number of non-reusable beverage containers returned for which refund values have been paid during the month in question;

## 94.323.1: continued

2. The refund values received for non-reusable beverage containers during the month in question and in the two preceding months, and the amount paid from the Deposit Transaction Fund for returns of non-reusable beverage containers during the month in question;
3. All interest income earned on amounts held in the Deposit Transaction Fund during the month in question and any interest income that remains in the Deposit Transaction Fund from any previous months;
4. The fund balance as determined by 830 CMR 94.323.1(3)(b) and (c), for the Deposit Transaction Fund on the last day of the month in question and on the last day of the preceding month;
5. The abandoned deposit amounts, as determined by 830 CMR 94.323.1(5), paid to the Commissioner for the immediately preceding 24 months;
6. The amount of reimbursements received by the bottler or distributor pursuant to 830 CMR 94.323.1(6), for the immediately preceding 24 months.

(5) Abandoned Deposit Amounts.

(a) General Rule. As of the last day of each month, every bottler or distributor must determine the abandoned deposit amounts in their Deposit Transaction Funds, and must turn over to the Commissioner all abandoned deposit amounts for the month in question.

The abandoned deposit amounts for the month in question that must be turned over to the Commissioner are determined by subtracting from the fund balance the following amounts:

1. interest income earned during the month in question on the Deposit Transaction Fund;
2. the total amount of refund values received by the bottler or distributor during the month in question and the two preceding months for non-reusable beverage containers; and
3. the total amount of refund values received by the bottler or distributor during the month in question and the two preceding months for non-reusable beverage containers delivered to distributors and dealers in the Commonwealth where the container was subsequently shipped outside the Commonwealth for ultimate sale to consumers.

(b) Methods for Determining Monthly Refund Values Received. A bottler or distributor subject to the provisions of M.G.L. c. 94, § 323(c), (d), or (e), must adopt, for the purposes of 830 CMR 94.323.1, either the cash basis method or the accrual basis method for determining monthly refund values received.

1. Cash Basis Method. In computing abandoned deposit amounts, and any other calculations required by 830 CMR 94.323.1, bottlers and distributors using the cash basis method must allocate every payment received on a sales invoice for beverages in non-reusable beverage containers first to the payment for the refund values of the non-reusable beverage containers. Each such payment received must be so allocated until the entire amount of refund values reflected in the invoice is paid in full into the Deposit Transaction Fund. Further, such bottlers or distributors must add to the amounts allocated under 830 CMR 94.323.1(5)(b), as additional refund values received on a sales invoice, the total amount of deposit receivables for the month immediately preceding the three month period used in the calculation of abandoned deposit amounts referred to under 830 CMR 94.323.1(5)(a). Any subsequent payments attributable to the sales invoice that represent refund values received for non-reusable beverage containers that have been paid over to the Commissioner as deposit receivables in accordance with 830 CMR 94.323.1(5)(b)1. become the property of the bottler or distributor. A bottler or distributor adopting the cash basis method must state on its DOR Form AD-1 that all calculations are made in accordance with the cash basis method for determining abandoned deposit amounts. A bottler or distributor may not change from the cash basis method of calculating its abandoned deposit amounts without the express written permission of the Commissioner.

94.323.1: continued

2. Accrual basis method. As an alternative to 830 CMR 94.323.1(5)(b)1., a bottler or distributor may elect to compute its abandoned deposit amounts, and any other calculations required by 830 CMR 94.323.1, by substituting for 830 CMR 94.323.1(5)(a)2., the following: "the total amount of refund values for non-reusable beverage containers sold during the month in question and in the two preceding months for non-reusable beverage containers." A bottler or distributor that determines abandoned deposit amounts in accordance with the accrual basis method described in 830 CMR 94.323.1(5)(b)2., shall not allocate payments to refund values received, as described in 830 CMR 94.323.1(5)(b)1.. Also, such bottler or distributor must state on its DOR Form AD-1 that all calculations are made in accordance with the accrual basis method for determining abandoned deposit amounts. A bottler or distributor may not change from the accrual basis method of calculating its abandoned deposit amounts without the express written permission of the Commissioner.
- (c) Abandoned deposits amounts upon transfer or termination of business operations.
1. General rule for final payment of abandoned deposits. Any bottler or distributor subject to the provisions of M.G.L. c. 94, § 323(c), (d), or (e), who sells, transfers, or otherwise terminates its business operations must transfer to the Commissioner within ten days of the last day of the month in which it terminates its business operations, as abandoned deposit amounts, all amounts required to be in such bottler or distributor's Deposit Transaction Fund.
  2. Deposit receivables as abandoned deposit amounts from cash basis bottlers or distributors. In addition to the rule for final payment of abandoned deposit amounts under 830 CMR 94.323.1(5)(c)1, any bottler or distributor subject to the provisions of M.G.L. c. 94, § 323(c), (d), or (e), who reports to the Commissioner using the cash basis method for determining abandoned deposit amounts in accordance with 830 CMR 94.323.1(5)(b)1, must transfer to the Commissioner within ten days of the last day of the month in which it sells, or otherwise terminates its business operations, as additional abandoned deposit amounts, an amount equal to its deposit receivables.
  3. Abandoned deposit amounts upon sales of business operations. As an alternative to the payment of abandoned deposit amounts as described in 830 CMR 94.323.1(5)(c)1. and 2., the Commissioner may allow a bottler or distributor subject to the provisions of M.G.L. c. 94, § 323(c), (d), or (e), who sells its business operations to another bottler or distributor subject to the provisions of M.G.L. c. 94, § 323(c), (d), or (e), to turn over to the Commissioner within ten days of the last day of the month in which it sells its business operations all abandoned deposit amounts due under 830 CMR 94.323.1(5)(a), and, thereafter, to transfer to the purchaser all amounts that should be in the Deposit Transaction Fund. This alternative may be allowed only where the bottler or distributor purchasing the business operations assumes all responsibilities and obligations under M.G.L. c. 94, § 321 through 327, inclusive, and 830 CMR 94.323.1, of the bottler or distributor selling its business operations.
- (f) Interest on underpayments. Any bottler or distributor failing to make full and timely payments to the Commissioner of abandoned deposit amounts, as required by 830 CMR 94.323.1(5), must pay interest on any unpaid amounts, computed at the rate of 1½% for each month, or part thereof, during which such failure to pay continues, as required by M.G.L. c. 94, § 327.
- (g) Penalties. Any bottler or distributor failing to make full and timely payments to the Commissioner of abandoned deposit amounts, as required by 830 CMR 94.323.1(5), is subject to all penalties, additions to tax, and other similar charges authorized under M.G.L. c. 62C.
- (6) Reimbursements.
- (a) General rule. If in any month in which the provisions of 830 CMR 94.323.1, apply, a bottler or distributor has paid out for returns an amount in excess of the amount of the unclaimed refund values for the most recent three month period, the Commissioner will reimburse the bottler or distributor, without interest, in an amount equal to the excess, if any, of zero over the ending fund balance for such month. However, the amount of reimbursement payable by the Commissioner to a bottler or distributor for such month may not exceed the following amount:

## 94.323.1: continued

1. amounts paid by the bottler or distributor to the Commissioner as abandoned deposit amounts, as determined by 830 CMR 94.323.1(5), during the immediately preceding 24 months; minus,

2. amounts paid by the Commissioner to the bottler or distributor as reimbursements pursuant to 830 CMR 94.323.1(6), during the immediately preceding 24 months.

Where any portion of the reimbursement is disallowed by reason of the foregoing limitations, such portion shall be allowed as an offset to reduce abandoned deposit amounts payable to the Commissioner under 830 CMR 94.323.1(5), in succeeding months. Such offset must be applied in the first succeeding month for which abandoned deposit amounts are payable. Any amount of the offset remaining after such application may be carried forward in the same manner to succeeding months for which abandoned deposit amounts are payable, provided that the amount of the offset carried forward shall be reduced from month to month by the amount of the offset that was applied in each month.

(b) Credits and reimbursements on underfunded Deposit Transaction Funds.

1. If at the end of any month in which the provisions of 830 CMR 94.323.1, apply, a bottler or distributor who has borrowed against the Deposit Transaction Fund under 830 CMR 94.323.1(7), has paid out for returns an amount in excess of the amount of unclaimed refund values placed in the Deposit Transaction Fund for the most recent three month period, but which are not in excess of the fund balance under 830 CMR 94.323.1(3)(a) through (c), excluding interest income, such bottler or distributor is allowed a credit against the amount owed to the Deposit Transaction Fund. The amount of such credit is the amount by which the payments during the month for returns exceed the amount of unclaimed refund values placed in the Deposit Transaction Fund for the most recent three month period, excluding interest income and excluding the bottler's or distributor's payments from the Deposit Transaction Fund during the month for returns, provided that the amount of such credit shall not exceed the amount owed to the Deposit Transaction Fund.

2. If at the end of any month in which the provisions of 830 CMR 94.323.1, apply, a bottler or distributor who has been allowed to borrow from the Deposit Transaction Fund, under 830 CMR 94.323.1(7), has paid out for returns an amount in excess of both the amount of unclaimed refund values placed in the Deposit Transaction Fund for the most recent three month period, and the fund balance under 830 CMR 94.323.1(3)(a) through (c), excluding interest income, the Commissioner will reimburse such bottler or distributor, without interest, in an amount equal to the amount that would be reimbursed under 830 CMR 94.323.1(6)(a). In addition to such reimbursement, the bottler or distributor is allowed a credit against the amount owed to the Deposit Transaction Fund. The amount of such credit is the amount by which the payments during the month for returns exceed the sum of the following:

a. the reimbursement to the bottler or distributor under 830 CMR 94.323.1(6)(b)2.; and

b. an amount equal to the unclaimed refund values for the most recent three month period minus the bottler's or distributor's payments from the Deposit Transaction Fund during the month for returns;

provided, however, that the amount of such credit shall not exceed the amount owed to the Deposit Transaction Fund.

94.323.1: continued

(7) Borrowing From the Deposit Transaction Fund.

(a) General rule. Any bottler or distributor may apply to the Commissioner to borrow, without interest, from its Deposit Transaction Fund. The Commissioner will allow a bottler or distributor to borrow from its Deposit Transaction Fund only for good cause, which, for the purposes of 830 CMR 94.323.1(7), requires proof of immediate business operating expenses that cannot be paid from other funds of the bottler or distributor or with the proceeds of a loan from a bank or other financial lending institution. An application to borrow from the Deposit Transaction Fund will be allowed only under such terms and conditions as the Commissioner, in his sole discretion, deems appropriate. Notwithstanding the approval of an application to borrow from the Deposit Transaction Fund, the Commissioner may withdraw or modify such approval at any time and require a bottler or distributor to repay immediately any or all amounts borrowed from the Deposit Transaction Fund, if the application to borrow from the Deposit Transaction Fund contains any false statements, or if the Commissioner determines that delay in repayment will jeopardize the payment or collection of abandoned deposit amounts or that the amounts borrowed from the Deposit Transaction Fund have been used for purposes other than those stated in the application, as required by 830 CMR 94.323.1(7)(b).

(b) Application procedures. The following are some, but not necessarily all, of the conditions upon which the Commissioner will allow an application to borrow from a Deposit Transaction Fund.

1. The application to borrow must be made in writing to the Commissioner.
2. The application to borrow must include a statement of all relevant facts and circumstances in support of the claim of immediate business operating expenses. The bottler or distributor also must submit an affidavit stating how it will use the amount borrowed.
3. The amount borrowed must be evidenced by a written note or other instrument of indebtedness payable to and enforceable by the Commissioner on behalf of the Commonwealth, and must be repaid within six months, in equal monthly installments, unless the Commissioner expressly requires or allows otherwise.
4. The amount borrowed must be secured in full by the property of the bottler or distributor or by the posting of a bond or similar surety payable or assignable to the Commissioner on behalf of the Commonwealth in the event of a default in repayment by the bottler or distributor.
5. The amount borrowed may not exceed 75% of the cash balance, less interest, contained in the Deposit Transaction Fund at the time of the application.
6. The amount borrowed must be used only for the immediate business operating expenses upon which the application was granted.

(c) Notification by the Commissioner. The Commissioner will mail the bottler or distributor written notification of the decision on the application to borrow from the Deposit Transaction Fund.

(d) Minimum monthly payments to the Deposit Transaction Fund. Every bottler or distributor that receives permission from the Commissioner to borrow from the Deposit Transaction Fund must repay the amount borrowed from its Deposit Transaction Fund on or before any date determined by the Commissioner pursuant to 830 CMR 94.323.1(7). Notwithstanding the filing or approval of an application to borrow, every bottler and distributor must make a minimum monthly payment into the Deposit Transaction Fund for each month after December, 1989, of the following amounts:

1. An amount equal to the refund values received each month by the bottler or distributor for non-reusable beverage containers less the refund values paid out during the month by the bottler or distributor for returns of non-reusable beverage containers,
2. Such additional amount as required by the Commissioner pursuant to 830 CMR 94.323.1(7)(b)3., constituting the monthly repayment of the amount borrowed.

94.323.1: continued

(e) Payment of Abandoned Deposit Amounts. Notwithstanding the filing or approval or denial of an application to borrow from the Deposit Transaction Fund, every bottler or distributor must pay over to the Commissioner each month the full abandoned deposit amount as determined by 830 CMR 94.323.1(5).

(8) Enforcement Provisions.

(a) General rule. The collection of abandoned deposits amounts, as determined by 830 CMR 94.323.1(5), and the payment of amounts to the Deposit Transaction Fund, as determined by 830 CMR 94.323.1(3), is governed by the provisions of M.G.L. c. 62C, to the extent not inconsistent with the provisions of M.G.L. c. 94, § 321 through 327, inclusive. The term "governed by the provisions of M.G.L. c. 62C" means that the Commissioner can apply all of the provisions in M.G.L. c. 62C that are relevant to the administration, payment, and collection of taxes to the extent that such provisions are not inconsistent with the provisions of M.G.L. c. 94, § 321 through 327, inclusive. The application of the provisions of M.G.L. c. 62C includes, but is not limited to, the following.

1. Assessments. The Commissioner will treat the filing of a report, as prescribed by 830 CMR 94.323.1, similar to the filing of a return for the assessment of taxes in determining the amount of abandoned deposit amounts owed the Commonwealth and the amount due the Deposit Transaction Fund. The Commissioner will apply the provisions of M.G.L. c. 62C, and all regulations thereunder, in determining the abandoned deposit amount due the Commonwealth and the amount due the Deposit Transaction Fund. Included in the Commissioner's authority under M.G.L. c. 62C is the authority to make double assessments under M.G.L. c. 62C, § 28; and jeopardy assessments under M.G.L. c. 62C, § 29.

2. Record Retention. Consistent with the provisions of the Record Retention Regulation 830 CMR 62C.25.1(12)(k), any bottler or distributor must preserve and maintain permanent books of account or records sufficiently accurate and complete to establish abandoned deposit amounts including the total amount of refund values in its Deposit Transaction Fund entitled to be subtracted therefrom pursuant to the provisions of 830 CMR 94.323.1(5)(a)3.

3. Liens Upon Property. Any bottler or distributor required to pay abandoned deposit amounts or pay amounts to a Deposit Transaction Fund, or pay interest, penalties, additions to tax, or other similar charges, who fails to pay the same after demand, is subject to a lien in favor of the Commonwealth upon all property or rights to property, whether real or personal, belonging to such bottler or distributor to the extent of all amounts due. The lien arises at the time the bottler or distributor files a report with the Commissioner, as required by 830 CMR 94.323.1(4), or when the Commissioner otherwise determines that an amount is due, and continues until the amount due is satisfied. *See* M.G.L. c. 62C, § 50; and 830 CMR 62C.50.1.

4. Levy Upon Property. If any bottler or distributor required to pay abandoned deposit amounts or pay amounts to a Deposit Transaction Fund, or pay interest, penalties, additions to tax, or other similar charges, fails to pay the same within ten days after demand, the Commissioner may collect the amount due, and any further sums sufficient to cover the expenses of a levy, by levying upon the property and rights to property of the bottler or distributor, or upon property on which there is a lien, in accordance with M.G.L. c. 62C, § 53. Included in the Commissioner's authority to levy is authority to make a notice and demand for immediate payment of amounts due, and, upon failure or refusal to pay, to collect by levy without regard to the ten day period provided by M.G.L. c. 62C, § 53, if the Commissioner finds that the collection of the amounts due is in jeopardy.

(9) Examples. The following examples illustrate the principles for calculating fund balance amounts, abandoned deposit amounts, and reimbursements, as provided by 830 CMR 94.323.1.

Example 1. DeSola Distributors is a soft drink bottler and distributor subject to the provisions of M.G.L. c. 94, § 323(c) and (d). On January 1, 1990, and thereafter, DeSola conducted business as a Massachusetts bottler and distributor. DeSola received and deposited into its Deposit Transaction Funds refund values of \$3,200, \$3,300 and \$3,500, for the months of January, February and March 1990, respectively, for non-reusable beverage containers sold in



94.323.1: continued

Massachusetts. During the month of April, 1990, DeSola also deposited into its Deposit Transaction Fund \$3,500, representing the refund values received in April, 1990 for non-reusable beverage containers it sold in Massachusetts. Also in April, it paid out of its Deposit Transaction Fund \$2,600, representing the refund values for non-reusable beverage containers from Massachusetts returned by dealers. Finally, DeSola earned \$100 of interest on its Deposit Transaction Fund in the month of April.

NON-TEXT PAGE

830 CMR: DEPARTMENT OF REVENUE

94.323.1: continued

On or before February 10, 1990, DeSola must file a report on DOR Form AD-1 with the Commissioner of Revenue detailing all the transactions affecting its Deposit Transaction Fund. Also, on or before May 10, 1990, as required by M.G.L. c. 94, § 323D, DeSola must pay to the Commissioner from its Deposit Transaction Fund an amount equal to its abandoned deposit amounts for the month of April, 1990. The following account entries illustrate the calculations necessary for determining the fund balance on April 30, 1990, and the abandoned deposit amount due for April, 1990.

Calculation of Fund Balance on April 30, 1990

Fund balance on last day of previous month\*

January, 1990	\$3,200	
February, 1990	3,300	
March, 1990	<u>3,500</u>	
	10,000	\$10,000

\* Solely for computing the fund balance on April 30, 1990, the previous month's fund balance amount is the aggregate refund values received by the bottler or distributor in January, February, and March of 1990.

Plus refund values received during April for non-reusable containers	3,500
--	-------

Plus interest income earned during April	100
--	-----

Sub total	<u>13,600</u>
-----------	---------------

Less refund values paid during April for returned non-reusable containers	<u>(2,600)</u>
Fund balance on April 30, 1990	\$11,000

Calculation of Abandoned Deposit Amounts for April, 1990

Fund balance on April 30, 1990	\$11,000
--------------------------------	----------

Less interest income earned during April	(100)
--	-------

Less refund values received for non-reusable containers during last three month period

February, 1989	\$3,300	
March, 1989	3,500	
April, 1990	<u>3,500</u>	
	10,300	<u>(10,300)</u>

Abandoned deposit amounts due to Commissioner (never less than -0-)	\$600
---	-------

Example 2. In May, 1990, DeSola received refund values of \$2,900 for non-reusable beverage containers it sold to dealers in Massachusetts. DeSola paid out from its Deposit Transaction Fund \$3,600 for non-reusable beverage containers returned by dealers. Also, in the month of May, DeSola earned \$120 in interest income on its Deposit Transaction Fund.

On or before June 10, 1990, DeSola must file with the Commissioner of Revenue DOR Form AD-1 detailing all the transactions affecting its Deposit Transaction Fund during the month of May, 1990. The following account entries illustrate the calculations necessary for determining the fund balance on May 31, 1990, and the abandoned deposit amount due for the month of May, 1990.

830 CMR: DEPARTMENT OF REVENUE

94.323.1: continued

Calculation of Fund Balance on May 31, 1990.

Fund balance on April 30, 1990	\$11,000
Less interest earned during April (whether or not withdrawn)	(100)
Less abandoned deposit amounts payable to the Commissioner for the month of April	(600)
Plus any reimbursements due from Commissioner for the month of April	-0-
	-----
Subtotal before computing May activities	10,300
Plus refund values received during May for non-reusable containers	2,900
Plus interest income earned during May	120
Less refund values paid during May for returned non-reusable containers	<u>(3,600)</u>
Fund balance on May 31, 1990	\$9,720

Calculation of Abandoned Deposits for May, 1990

Fund balance amount on May 31, 1990	\$9,720
Less interest income earned during May	(120)
Less refund values received for non-reusable containers during last three month period	
February, 1990	\$3,500
March, 1990	3,500
April, 1990	<u>2,900</u>
	9,900
	<u>(9,900)</u>
Abandoned deposit amounts due to Commissioner (never less than -0-)	-0-

Example 3. In June, 1990, DeSola received refund values of \$3,400 for non-reusable beverage containers sold in Massachusetts, but was required to pay \$13,700 in refunds for Massachusetts non-reusable beverage containers. Also, in June, 1990, DeSola earned \$20 of interest on its Deposit Transaction Fund.

On or before July 10, 1990, DeSola must file with the Commissioner of Revenue DOR Form AD-1 detailing all of the transactions affecting its Deposit Transaction Fund for June, 1990. The following account entries illustrate the calculations necessary for determining the fund balance on June 30, 1990, the abandoned deposit amount due for the month of June, 1990, and, in this example, the reimbursement due DeSola for the month of June, 1990.

Calculation of Fund Balance on June 30, 1990

Fund balance on May 31, 1990	\$9,720
Less interest earned during May (whether or not withdrawn)	(120)

830 CMR: DEPARTMENT OF REVENUE

94.323.1: continued

Less abandoned deposit amounts payable to the Commissioner for the month of May		-0-
Plus any reimbursements due from Commissioner for the month of May		-0-
		-----
Subtotal before computing June activities		9,600
Plus refund values received during June for non-reusable containers		3,400
Plus interest income earned during June		20
Less refund values paid during June for returned non-reusable containers		<u>(13,700)</u>
Fund balance on June 30, 1990		(\$680)
<u>Calculation of Abandoned Deposits for June, 1990</u>		
Fund balance on June 30, 1990		(\$680)
Less interest income earned during June		(20)
Less refund values received for non-reusable containers during last three month period		
April, 1990	\$3,500	
May, 1990	2,900	
June, 1990	<u>3,400</u>	
	9,800	<u>(9,800)</u>
Abandoned deposit amounts due to Commissioner (never less than -0-)		-0-
<u>Calculation of Reimbursement for June, 1990</u>		
Fund balance on June 30, 1990		(680)
Less interest income earned during June		<u>(20)</u>
Fund balance amount on June 30, 1990 excluding interest income		(700)
Reimbursement due from Commissioner for June, ordinarily the amount needed to bring the balance to zero, but limited to the excess of:		\$600
<p>(a) amounts paid by the bottler or distributor to the Commonwealth as abandoned deposit amounts in the preceding 24 months (here, \$600 for April, 1990), over</p> <p>(b) amounts paid by the Commonwealth to the bottler or distributor as reimbursements during the same 24 month period (here, the unpaid reimbursement (\$100) will be allowed as an offset against future abandoned deposit amounts.)</p>		

Example 4. In July, 1990, DeSola received refund values of \$13,000 for non-reusable beverage containers sold in Massachusetts, and paid out \$1,000 in refunds for Massachusetts non-reusable beverage containers. Also, in July, 1990, DeSola earned \$100 of interest income on the Deposit Transaction Fund.

830 CMR: DEPARTMENT OF REVENUE

94.323.1: continued

On or before August 10, 1990, DeSola must file with the Commissioner of Revenue DOR Form AD-1 detailing all of the transactions affecting its Deposit Transaction Fund for July, 1990. The following account entries illustrate the calculations necessary for determining the fund balance on July 31, 1990, and the abandoned deposit amount due for the month of July, 1990.

Calculation of Fund Balance Amount on July 31, 1990

Fund balance on June 30, 1990	(\$680)
Less interest income earned during June (whether or not withdrawn)	(20)
Plus any reimbursements due from Commissioner for the month of June	600
Subtotal before computing July activities	<u>(100)</u>
Plus refund values received during July for non-reusable containers	13,000
Plus interest earned during July	100
Less refund values paid during July for returned non-reusable containers	(1,000)
Fund balance on July 31, 1990	\$12,000

Calculation of Abandoned Deposit Amounts for July, 1990

Fund balance on July 31, 1990	\$12,000
Less interest income earned during July	(100)
Less refund values received for non-reusable containers during last three month period	
May, 1990	\$2,900
June, 1990	3,400
July, 1990	<u>13,000</u>
	19,300
Abandoned deposit amounts due to Commissioner (never less than -0-)	<u>(19,300)</u> -0-

REGULATORY AUTHORITY

830 CMR 94.323.1: M.G.L. c. 14, § 6(1); c. 62C, § 3.

(PAGES 425 AND 426 ARE RESERVED FOR FUTURE USE.)