

New York State Department of Taxation and Finance  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-M-92 (3) M  
Beverage Container Tax  
June 15, 1992

Beverage Container Tax

Article 18-A of the New York State Tax Law (effective September 1, 1990) imposes a tax at the rate of 2 cents per container on each sale in New York State by a container sale initiator of any filled, nonrefillable beverage container.

Definitions

- A refillable beverage container is any beverage container which is so constructed and designed that it is structurally capable of being refilled and resold by a beverage manufacturer and which the beverage manufacturer requires to be returned for the purpose of refilling and resale.
- A nonrefillable beverage container is a container which is not intended for reuse or which is not required to be returned to the beverage manufacturer.
- The term "beverage" means carbonated soft drinks, mineral water or soda water.
- Beverage container means the individual, separate, sealed glass, metal, aluminum, steel or plastic bottle, can or jar used for containing one gallon or 3.8 liters or less.
- A container sale initiator is defined as:
  - The beverage manufacturer if the manufacturer:
    - maintains a place of business in this state; or
    - transports or causes to be transported, other than by common carrier, filled nonrefillable containers of carbonated soft drinks, mineral water or soda water into the state; or
    - solicits business either by employees, independent contractors, agents or other representatives in this state; or
    - performs any other activities that create a nexus under the constitution of the United States and applicable decisional law interpreting the same for purposes of the imposition of tax under Article 18-A; or
  - A distributor of filled nonrefillable containers of carbonated soft drink, mineral water or soda water if the distributor's purchase of these containers was not, directly or indirectly, from a registered container sale initiator and the distributor:
    - maintains a place of business in this state; or
    - transports or causes to be transported, other than by common carrier, filled nonrefillable containers of carbonated soft drink, mineral water or soda water into the state; or

- solicits business either by employees, independent contractors, agents or other representatives in this state; or
  - performs any other activities that create a nexus under the constitution of the United States and applicable decisional law interpreting the same, for purposes of the imposition of tax under Article 18-A; or
- A dealer with respect to filled nonrefillable containers who sells these containers in New York State whose purchase was not, directly or indirectly, from a registered container sale initiator.

The term "beverage manufacturer" means a person who either:

- a. bottles, cans or otherwise packages beverages in nonrefillable beverage containers. (If the packaging is performed for a distributor having the right to bottle, can or otherwise package the same brand of beverage, then the distributor is considered to be the beverage manufacturer); or
- b. imports filled nonrefillable beverage containers into New York State.

Example 1 - ABC Company, located in New York State, bottles its own brand of soda and makes sales of its product to distributors. ABC Company is the container sale initiator for its sales to distributors in New York State.

Example 2 - The ABC Company, owner of ABC brand soda, is located in Bangor, Maine and has no nexus with New York State. ABC has designated Dependable Inc. as the sole licensed distributor for its soda in New York State and Dependable Inc. has arranged to have this soda packaged by Perfect Packers, a New York manufacturer. Perfect Packers has volunteered to assume responsibility as the container sale initiator for ABC soda. Because the law provides that where a product is packaged by a manufacturer for a distributor who has the right to bottle, can, or otherwise package the same brand of beverage, the distributor, not the packager, is considered the beverage manufacturer of that product. Therefore, Dependable Inc., the licensed distributor, is the container sale initiator for ABC soda. There is no provision in the statute for transfer, whether or not voluntary, of that responsibility.

Example 3 - Bob's Beverage Center is a distributor of several brand name beverages. Invoices it receives from each of its suppliers indicate that the suppliers are the container sale initiators for the products purchased, with two exceptions. Bob's Beverage Center purchases Blue Moose mineral water from a bottler located in Canada and Maple Leaf soda from a bottler located in Vermont, both of whom have no nexus with New York State. Bob's Beverage Center is the importer of the mineral water and the soda into New York State and is considered a "beverage manufacturer" required to register as a container sale initiator and pay tax on its sales of Blue Moose mineral water and Maple Leaf soda.

Exemptions/Exclusions - Sales of carbonated soft drink, mineral water or soda water in nonrefillable containers in New York State by a beverage manufacturer, distributor or dealer are subject to the Beverage Container Tax except in the following circumstances:

- Refillable Containers - The sale of refillable beverage containers is not subject to the beverage container tax where the manufacturer, distributor or dealer purchasing the containers accepts in good faith within 90 days of delivery Form MT-37, Statement of Sale of Refillable Beverage Containers, from the seller substantiating the sale of beverages in refillable containers. In lieu of issuing Form MT-37, a seller may include a statement on its invoice indicating that the product specified represents the sale of refillable containers and indicate its container sale initiator identification number.
- Certificate of Tax Paid - Purchasers (beverage manufacturers, distributors or dealers) of beverages packaged in nonrefillable beverage containers are not required to pay the beverage container tax on their sales of these containers if they receive within 90 days of the delivery date Form MT-36, Certification of Payment of Tax on Nonrefillable Beverage Containers, from their supplier indicating that the container tax has been paid. As an alternative to issuing Form MT-36, a seller may include on its invoice, language identifying itself as the container sale initiator or a statement that the product specified was acquired directly or indirectly from a container sale initiator and the seller's identification number.
- Export - Container sale initiators are not required to pay the beverage container tax on their sales of beverages packaged in nonrefillable beverage containers delivered within New York State if they receive within 90 days of the delivery date Form MT-35, Statement of Exportation of Beverage Containers by Purchaser, from their customer certifying that within the same 90 day period, the containers were or will be exported from New York State.

Example 4: Sales of beverages packaged in nonrefillable containers to an airline, delivered to a New York warehouse, for consumption during interstate flights, are eligible for exemption from the tax. If the beverages purchased will be consumed on both interstate and intrastate flights, the airline must compute the percentage of the purchase to be consumed during the interstate flights, based on their flight records, to determine the number of containers eligible for exemption. The airline should present either at the time of purchase or within 90 days of the date of delivery, a properly completed form MT-B5 to their supplier to substantiate the exempt portion of the sale.

- Delivery Outside New York State - Sales of beverages packaged in nonrefillable beverage containers delivered to locations outside New York State are exempt from the Beverage Container Tax. The seller must maintain adequate records of the out of state delivery for a period of at least 3 years.

Registration - Beverage manufacturers, distributors or dealers who qualify as container sale initiators must register with the Department of Taxation and Finance. Container sale initiators are prohibited from selling beverages packaged in nonrefillable beverage containers in New York State without being registered. Once the application for registration as a Beverage Container Sale Initiator has been received and approved, an Acknowledgement of Registration, Form MT-102.1, will be sent to the container sale initiator with its New York State Container Sale Initiator identification number and the effective date of registration.

The Department has the authority to suspend, revoke or refuse to issue such registration under certain circumstances. However, such action may be challenged through a hearing process if the petitioner files a petition with the Division of Tax Appeals within 90 days of the date of the notice of suspension, revocation or refusal to register.

Filing Requirements - Container sale initiators are required to file Form MT-225, Beverage Container Tax Return, quarterly for the periods ending on the last day of February, May, August and November of each year. Such returns must be filed on or before the twentieth day of the month following the end of the quarterly period. A return must be filed even if there is no tax due for the period.

Penalty -

- Failure to register - Any person required to register as a container sale initiator who fails to do so and makes taxable sales of containers shall be subject to a penalty of not more than \$500 for the first day on which such sales are made and not more than \$200 a day for each additional day on which such sales are made. The maximum penalty which can be imposed is \$10,000.00.
- Failure to file or pay - Failure to file Form MT-225, Beverage Container Tax Return, or to pay any tax due will result in a penalty of 10% of the tax due for the first month or part of a month, plus 1% of the tax due for each subsequent month or part of a month in which the tax remains unpaid, up to a maximum of 30%. If the return is not filed within 60 days of the due date, this penalty will not be less than the lesser of \$100 or 100% of the tax due. If it can be established that the failure or delay to file or pay was due to reasonable cause and not due to willful neglect, all such penalty will be waived.

Interest - Interest is computed at the rate set by the Commissioner of Taxation and Finance, and is compounded daily. It is computed from the date the tax was due to the date the tax is paid. Interest is a charge for the use of state funds and may not be waived.

Failure to file a return and pay any tax due may also result in the imposition of criminal penalties under Article 37 of the Tax Law.

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If you need help:

For forms and publications,  
call toll free (from within New York State only) 1 800 462-8100.  
From areas outside New York State, call (518) 438-1073.

Telephone assistance and information is available from 8:30 a.m. to 4:25 p.m., Monday through Friday, by calling toll free (from New York State only) 1 800 CALL TAX (1 800 225-5829). From areas outside New York State, call (518) 438-8581.

If you need to write, address your letter to:

NYS Tax Department  
Taxpayer Assistance Bureau  
W.A. Harriman Campus  
Albany, New York 12227