

## **The Fate of Unclaimed or “Abandoned” Deposits**

### **What are “unclaimed deposits”?**

In ten U.S. states,<sup>1</sup> beverage distributors and retailers are required by law to collect small deposits (usually a nickel) on certain packaged beverages—typically carbonated soft drinks and beer, and bottled water.<sup>2</sup> When the consumer returns these beverage containers to a retailer or redemption center, the deposits are returned to the consumer. When a consumer chooses not to return a beverage container for a deposit return, the deposit money is considered “unredeemed.” Other terms are “abandoned” and “unclaimed.”

In the states where the deposit is 5 cents, 10 to 40 percent of beverage containers sold are not returned for their refund value. Since all of the deposit states also have municipal recycling programs, some of the unredeemed containers are recycled either through curbside programs or drop-off sites.

Redemption rates vary widely depending on a variety of factors, but they are primarily a function of the deposit amount. A higher deposit results in a higher return rate and fewer unclaimed deposits. In Michigan, the only state with a dime deposit, 6 percent of containers sold are not redeemed. In other states, the return rates range from 57 percent to 90 percent.

### **Who keeps the unclaimed deposits?**

#### California and Hawaii – State-Managed Systems

In the States of California and Hawaii, a special unit of the State manages and controls the finances of the beverage container recycling system. In the other U.S. states that have container deposit systems, the operations and financing are managed by the beverage industry.

In California and Hawaii, the state collects the deposits from distributors when the beverages are sold to retailers. The bottler or distributor pays the deposit directly into a state-managed fund and collects the deposit from the retailer. The retailer then collects the deposit from the consumer. Refunds are paid to the consumers out of the state-managed fund, which is also used to pay for program operation and administration.

#### Oregon, Iowa and Vermont – Distributors Keep Unclaimed Deposits

In Oregon, Iowa and Vermont, the bottlers and distributors keep all unclaimed deposits.

## Connecticut, Massachusetts, New York, Maine and Michigan – Full and Partial Escheats

In these states, distributors and bottlers are required to turn over all or a portion of unclaimed deposits to the state. The unclaimed deposits are said to “escheat” to the state, in much the same way that abandoned property escheats to the state when there are no heirs to claim or take ownership of it. Michigan escheats 75 percent of unclaimed deposits, and distributes the other 25 percent to retailers as a way to offset their handling costs. Massachusetts and Connecticut escheat 100 percent of unclaimed deposits; New York escheats 80 percent of unclaimed deposits, and Maine escheats unclaimed deposits from those distributors that are not part of a commingling agreement.

**A note about escheats:** **Escheat** is a common law doctrine that transfers the property of a person who dies without heirs to the state. The escheat law ensures that property is not left in limbo without recognized ownership.

In 2011, unclaimed (abandoned) deposits amounted to approximately \$104 million in New York, \$33.5 million in Massachusetts and \$17.8 million in Michigan.[3](#)

### **Who should keep unclaimed deposits?**

Beer distributors and soft drink bottlers argue that any unredeemed deposits should be utilized to help them offset their costs of managing the container deposit return system. Others argue that the beverage industry is already keeping revenue from the sale of scrap container materials (aluminum, plastic and glass) as well as the “float” (deposits collected from retailers that can be invested for short-term returns), and that unclaimed deposits are tax-free, windfall profits for the bottler/distributor. They argue that unclaimed deposits, like other types of abandoned property, should belong to the state and be used for public benefit. Nearly every deposit state has attempted to escheat the unclaimed deposits as a source of revenue, usually to fund environmental programs.

The economics of each state’s program are unique, and depend upon several factors, such as the mix of material types (e.g., aluminum, plastic and glass), the collection mechanism, access to markets for recyclables, and the legislated handling fee. Some are likely making a net profit because the revenue from unredeemed deposits and sale of scrap add up to more than the handling fees paid out and transportation costs. It was reported in *Plastics Recycling Update* magazine that, “Whatever profits the co-op generates are divided among the 80 beverage

distributors that own the Oregon Beverage Recycling Cooperative.” (“Bringing the Bottles Back Home, Part 1,” August 2012.)

### **How have unclaimed deposit funds been used?**

The first escheat law related to container deposit systems was passed in Massachusetts in January 1989.<sup>4</sup> In 1990, the first year of implementation, 10 percent of the unclaimed deposits went into the state’s Clean Environment Fund (CEF) and 90 percent went into the general fund. Over the next five years, the percent of unclaimed deposits accruing to the CEF increased, while the percentage going into the general fund decreased. As of FY 1995, 100 percent of the unclaimed deposits were earmarked for the CEF.

The intent of Massachusetts’ original law was to use the CEF *exclusively* for solid waste management, with specific proportions earmarked to provide support for recycling, composting, solid waste source reduction, and other environmental programs related to the bottle bill.<sup>5</sup> However, the actual allocation of the funds is subject to appropriation by each subsequent legislature. Instead of receiving up to \$226 million available from the CEF from FY 1990 to FY 2002, no more than \$60 million (27%) was used to stimulate and support recycling, the bottle bill, and other innovative solid waste programs.<sup>6</sup> The other \$166 million (73%) went toward Department of Environmental Protection (DEP) overhead costs unrelated to the original mandate of the law.<sup>7</sup>

Michigan’s escheat law was also passed in 1989.<sup>8</sup> The law calls for 75 percent of the unclaimed deposits to be transferred into the Cleanup and Redevelopment Trust Fund, overseen by the Michigan Department of Treasury, and the other 25 percent to be distributed by the Treasury to retailers. Amended in 1996, the law specifies how the state must distribute its share of the unclaimed deposits. Eighty percent of this Cleanup and Redevelopment Trust Fund is immediately available for appropriation for municipal landfill cost-share grants, matching federal Superfund dollars, response activities addressing public health and environmental problems, redevelopment facilitation, or emergency response actions. Ten percent is deposited into the Community Pollution Prevention Fund, and the remaining 10 percent is deposited into and must remain in the Cleanup and Redevelopment Trust Fund until the amount accrues to a maximum of \$200 million.

Maine’s escheat law was enacted in 1991.<sup>9</sup> Unlike the laws or provisions in Massachusetts and Michigan, Maine collected only 50 percent of the abandoned deposits, and the distributors and bottlers retained the other 50%. The revenue was

used to fund the Maine Solid Waste Management Agency. Since the state received only half of all unclaimed deposits, and because Maine's redemption rate for beverage containers was so high, the state chose to repeal the law in 1995, just a few years after it was implemented, because the State was afraid they might have to pay out more than it took in. A new escheat law came into effect in 2004, in which all unclaimed deposits escheat to the state *except those on containers that are part of a distributor commingling agreement*. (See the [Maine Quick Facts page](#) for more information on commingling agreements)

In all three states, lawsuits were filed to contest the escheat laws, and in all three states courts resolved the question in favor of the state.

In Massachusetts, Suffolk County Superior Court Judge William Bartlett ruled in October 1991 that the escheat law: a) did not cause an unconstitutional taking of the bottlers' money; b) was a proper act of the legislature; and c) that refunds belong to the consumer until escheated to the state. The Massachusetts Wholesalers of Malt Beverages appealed this ruling, but the Supreme Judicial Court ultimately upheld the law in 1993.<sup>10</sup>

In Michigan, a lower court ruled in 1991 that the unclaimed deposits were the property of the beverage industry and that the law resulted in an unconstitutional taking by the state. The case was appealed by the Department of Treasury. The Michigan United Conservation Clubs (MUCC), the group that had spearheaded the original escheat campaign, put together an amicus brief for the Court. They were joined by several other organizations, including the Container Recycling Institute. The Court of Appeals, in 1994, overturned the lower court ruling, claiming that the amendment "constituted a valid exercise of legislative powers."<sup>11</sup> The State Supreme Court chose not to hear an appeal, effectively affirming the Court of Appeals' ruling.

In Maine in 1991, the beverage industry took the state to court over the escheat amendment. The law was upheld by a Superior Court, but the Maine Beer and Wine Wholesalers and the Maine Soft Drink Association appealed the ruling. In 1993, the State Supreme Court ruled in favor of the state.<sup>12</sup> As mentioned above, however, the state voluntarily repealed the escheat law in 1995.

## **The Future for Unclaimed Deposits**

In 2003, five bottle bill states did not have escheat provisions in their deposit laws. But during the 2003 legislative session, joint committees in the Connecticut and New York State legislatures were considering bills which would escheat unclaimed

deposits to the state. Policymakers and activists in New York hoped to pass escheat legislation that would make \$80 to \$170 million available to the state's Environmental Protection Fund. Connecticut lawmakers were considering bills to escheat 50 to 100 percent of unclaimed deposits to the state, for use in the General Fund or a dedicated recycling or environmental fund. Delaware was even considering a bill which would retroactively escheat all unclaimed deposit monies that the industry had retained since the law's inception in 1983; but Delaware's container deposit law was repealed in 2010.

In 2008, New York passed a law to escheat 80 percent of unclaimed deposits, and Connecticut escheated 100 percent of unclaimed deposits.

In 2016, in Vermont, Iowa and Oregon, distributors keep all of the unclaimed deposits. In Hawaii and California, the state, which is the system operator, keeps unclaimed deposits to operate the system. The remainder of the States escheat unclaimed deposits, either fully or partially.

### **Endnotes**

1. The states are Oregon, Vermont, New York, Michigan, Connecticut, Iowa, Massachusetts, Maine, California and Hawaii. Guam passed a deposit law in 2011, but it has not yet been implemented.
2. Two states require deposits on carbonated beverages and beer only (Michigan and Massachusetts). Eight states (Maine, Connecticut, California, Iowa, Oregon, New York, Vermont, and Hawaii) require deposits on one or more other types of beverages in addition to beer and soft drinks.
3. Sources: "Deposit Initiator Deposit and Payment Statistics, 2008-2011," prepared by the New York State Department of Environmental Conservation; August 30, 2012 email from Sean Sylver, Massachusetts Department of Environmental Protection, and "Bottle Deposit Information," prepared by the Michigan Department of Treasury, Office of Revenue and Tax Analysis.
4. Massachusetts escheat legislation can be found [below](#) and at <http://www.state.ma.us/legis/laws/mgl/94-323B.htm>.
5. See St. 1989, c. 653, s. 70 as codified in G. L. c. 94, s. 323F.
6. E-mail with Tom Collins, Director, Division of Local Mandates, MA State Auditor's Office, Jan. 22, 2003.

7. Ibid.

8. Michigan escheat legislation can be found [below](#) and at [www.deq.state.mi.us/documents/deq-wmd-swp-Bottle-Bill.doc](http://www.deq.state.mi.us/documents/deq-wmd-swp-Bottle-Bill.doc).

9. Maine escheat legislation is reprinted [at the end of this document](#).

10. *Mass Wholesalers of Malt Beverages, Inc. v. Commonwealth* (1993) 609 N.E. 2d 67, 414 Mass. 411.

11. *Michigan Soft Drink Association v. Department of Treasury* (1995) 206 Mich App 392; 522 NW2d 643 lv den 448 Mich 898; 533 NW2d 313.

12. *Maine Beer & Wine Wholesalers Ass'n v. State* (1993) Me., 619 A.2d 94.