§ 27-1012. Deposit and disposition of refund values; registration; reports.

1. Each deposit initiator shall deposit in a refund value account an amount equal to the refund value initiated under section 27-1005 of this title which is received with respect to each beverage container sold by such deposit initiator. Such deposit initiator shall hold the amounts in the refund value account in trust for the state. A refund value account shall be an interest-bearing account established in a banking institution located in this state, the deposits in which are insured by an agency of the federal government. Deposits of such amounts into the refund value account shall be made not less frequently than every five business days. All interest, dividends and returns earned on the refund value account shall be paid directly into said account. The monies in such accounts shall be kept separate and apart from all other monies in the possession of the deposit initiator. The commissioner of taxation and finance may specify a system of accounts and records to be maintained with respect to accounts established under this subdivision.

2. Payments of refund values pursuant to section 27-1007 of this title shall be paid from each deposit initiator's refund value account. No other payment or withdrawal from such account may be made except as prescribed by this section.

3. Each deposit initiator shall file quarterly reports with the commissioner of taxation and finance on a form and in the manner prescribed by such commissioner. The commissioner of taxation and finance may require such reports to be filed electronically. The quarterly reports required by this subdivision shall be filed for the quarterly periods ending on the last day of May, August, November and February of each year, and each such report shall be filed within twenty days after the end of the quarterly period covered thereby. Each such report shall include all information such commissioner shall determine appropriate including but not limited to the following information:

a. the balance in the refund value account at the beginning of the quarter for which the report is prepared;

b. all such deposits credited to the refund value account and all interest, dividends or returns received on such account, during such quarter;

c. all withdrawals from the refund value account during such quarter, including all reimbursements paid pursuant to subdivision two of this section, all service charges on the account, and all payments made pursuant to subdivision four of this section; and

d. the balance in the refund value account at the close of such quarter.

4. a. Quarterly payments. An amount equal to eighty percent of the balance outstanding in the refund value account at the close of each quarter shall be paid to the commissioner of taxation and finance at the time the report provided for in subdivision three of this section is required to be filed. The commissioner of taxation and finance may require that the payments be made electronically. The remaining twenty percent of the balance outstanding at the close of each quarter shall be the monies of the deposit initiator and may be withdrawn from such account by the deposit initiator. If the provisions of this section with respect to such account have not been fully complied with, each deposit initiator shall pay to such commissioner at such time, in lieu of the amount described in the preceding sentence, an amount equal to the balance which would have been outstanding on such date had such provisions been fully complied with. The commissioner of taxation and finance may require that the payments be made electronically.

b. Refund value account shortfall. In the event a deposit initiator pays out more in refund values than it collects in deposits of refund values during the course of a quarterly period as described in subdivision three of this section, the deposit initiator may apply to the commissioner of taxation and finance for a refund of the amount of such excess payment of refund values from sources other than the refund value account, in the manner as provided by the commissioner of taxation and finance. A deposit initiator must apply for a refund no later than

twelve months after the due date for filing the quarterly report for the quarterly period for which the refund claim is made. No interest shall be payable for any refund paid pursuant to this paragraph.

c. Final report. A deposit initiator who ceases to do business in this state as a deposit initiator shall file a final report and remit payment of eighty percent of all amounts remaining in the refund value account as of the close of the deposit initiator's last day of business. The commissioner of taxation and finance may require that the payments be made electronically. The deposit initiator shall indicate on the report that it is a "final report". The final report is due to be filed with payment twenty days after the close of the quarterly period in which the deposit initiator ceases to do business. In the event the deposit initiator pays out more in refund values than it collects in such final quarterly period, the deposit initiator may apply to the commissioner of taxation and finance for a refund of the amount of such excess payment of refund values from sources other than the refund value account, in the manner as provided by the commissioner of taxation and finance.

5. All moneys collected or received by the department of taxation and finance pursuant to this title shall be deposited to the credit of the comptroller with such responsible banks, banking houses or trust companies as may be designated by the comptroller. Such deposits shall be kept separate and apart from all other moneys in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected, the comptroller shall retain the amount determined by the commissioner of taxation and finance to be necessary for refunds out of which the comptroller must pay any refunds to which a deposit initiator may be entitled. After reserving the amount to pay refunds, the comptroller must, by the tenth day of each month, pay into the state treasury to the credit of the general fund the revenue deposited under this subdivision during the preceding calendar month and remaining to the comptroller's credit on the last day of that preceding month; provided, however, that, beginning April first, two thousand thirteen, nineteen million dollars, and all fiscal years thereafter, twenty-three million dollars plus all funds received from the payments due each fiscal year pursuant to subdivision

four of this section in excess of the greater of the amount received from April first, two thousand twelve through March thirty-first, two thousand thirteen or one hundred twenty-two million two hundred thousand dollars, shall be deposited to the credit of the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

6. The commissioner and the commissioner of taxation and finance shall promulgate, and shall consult each other in promulgating, such rules and regulations as may be necessary to effectuate the purposes of this title. The commissioner and the commissioner of taxation and finance shall provide all necessary aid and assistance to each other, including the sharing of any information that is necessary to their respective administration and enforcement responsibilities pursuant to the provisions of this title.

7. a. Any person who is a deposit initiator under this title before April first, two thousand nine, must apply by June first, two thousand nine to the commissioner of taxation and finance for registration as a deposit initiator. Any person who becomes a deposit initiator on or after April first, two thousand nine shall apply for registration prior to collecting any deposits as such a deposit initiator. Such application shall be in a form prescribed by the commissioner of taxation and finance and shall require such information deemed to be necessary for proper administration of this title. The commissioner of taxation and finance may require that applications for registration must be submitted electronically. The commissioner of taxation and finance shall electronically issue a deposit initiator registration certificate in a form prescribed by the commissioner of taxation and finance within fifteen days of receipt of such application or may take an additional ten days if the commissioner of taxation and finance deems it necessary to consult with the commissioner before issuing such registration certificate. A registration certificate issued pursuant to this subdivision may be issued for a specified term of not less than three years and shall be subject to renewal in accordance with procedures specified by the commissioner of taxation and finance. The commissioner of taxation and finance shall furnish to the commissioner a complete

list of registered deposit initiators and shall continually update such list as warranted. The commissioner shall share any information with the commissioner of taxation and finance that is necessary for the administration of this subdivision.

b. The commissioner of taxation and finance shall have the authority to revoke or refuse to renew any registration issued pursuant to this subdivision when he or she has determined or has been informed by the commissioner that any of the provisions of this title or rules and regulations promulgated thereunder have been violated. Such violations shall include, but not be limited to, the failure to file quarterly reports, the failure to make payments pursuant to this subdivision, the providing of false or fraudulent information to either the department of taxation and finance or the department, or knowingly aiding or abetting another person in violating any of the provisions of this title. A notice of proposed revocation or non-renewal shall be given to the deposit initiator in the manner prescribed for a notice of deficiency of tax and all the provisions applicable to a notice of deficiency under article twenty-seven of the tax law shall apply to a notice issued pursuant to this paragraph, insofar as such provisions can be made applicable to a notice authorized by this paragraph, with such modifications as may be necessary in order to adapt the language of such provisions to the notice authorized by this paragraph. All such notices issued by the commissioner of taxation and finance pursuant to this paragraph shall contain a statement advising the deposit initiator that the revocation or non-renewal of registration may be challenged through a hearing process and the petition for such a challenge must be filed with the commissioner of taxation and finance within ninety days after such notice is issued. A deposit initiator whose registration has been so revoked or not renewed shall cease to do business as a deposit initiator in this state, until this title has been complied with and a new registration has been issued. Any deposit initiator whose registration has been so revoked may not apply for registration for two years from the date such revocation takes effect.

8. The commissioner of taxation and finance may require the maintenance of such accounts, records or documents relating to the sale

of beverage containers, by any deposit initiator, bottler, distributor, dealer or redemption center as such commissioner may deem appropriate for the administration of this section. Such commissioner may make examinations, including the conduct of facility inspections during regular business hours, with respect to the accounts, records or documents required to be maintained under this subdivision. Such accounts, records and documents shall be preserved for a period of three years, except that such commissioner may consent to their destruction within that period or may require that they be kept longer. Such accounts, records and documents may be kept within the meaning of this subdivision when reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic or other process which actually reproduces the original accounts, records or documents.

9. a. Any person required to be registered under this section who, without being so registered, sells or offers for sale beverage containers in this state, in addition to any other penalty imposed by this title, shall be subject to a penalty to be assessed by the commissioner of taxation and finance in an amount not to exceed five hundred dollars for the first day on which such sales or offers for sale are made, plus an amount not to exceed five hundred dollars for each subsequent day on which such sales or offers for sale are made, not to exceed twenty-five thousand dollars in the aggregate.

b. Any deposit initiator who fails to file reports, make quarterly payments or maintain accounts or records pursuant to this section, unless it is shown that such failure was due to reasonable cause and not due to negligence or willful neglect, in addition to any other penalty imposed by this title, shall be subject to a penalty to be assessed by the commissioner of taxation and finance of not more than one thousand dollars for each quarter during which such failure occurred, and an additional penalty of not more than one thousand dollars for each quarter such failure continues.

10. The provisions of article twenty-seven of the tax law shall apply to the provisions of this title for which the commissioner of taxation and finance is responsible, including collection of refund value

amounts, in the same manner and with the same force and effect as if the language of such article had been incorporated in full into this section except to the extent that any provision of such article is either inconsistent with a provision of this section or is not relevant to this section as determined by the commissioner of taxation and finance. Furthermore, for purposes of applying the provisions of article twenty-seven of the tax law, where the terms "tax" and "taxes" appear in such article, such terms shall be construed to mean "refund value" or "balance in the refund value account".

11. If any deposit initiator fails or refuses to file a report or furnish any information requested in writing by the department of taxation and finance or the department, the department of taxation and finance with the assistance of the department may, from any information in its possession, make an estimate of the deficiency and collect such deficiency from such deposit initiator.

12. a. Each deposit initiator shall provide a report to the department describing all the types of beverage containers on which it initiates deposits. The report shall include the product name, type of beverage, size and composition of the beverage container, universal product code, and any other information the department may require. Upon request, a deposit initiator shall also provide to the department a copy of the container label or a picture of any beverage container sold or offered for sale in this state on which it initiates a deposit. Such information shall be provided in a form as prescribed by the department. The department may require that such forms be filed electronically.

b. A bottler may place on a beverage container a universal product code or other distinctive marking that is specific to the state or used only in the state and any other states with laws substantially similar to this title as a means of preventing the sale or redemption of beverage containers on which no deposit was initiated.

c. A bottler or deposit initiator shall notify the department, in a form prescribed by the department, whenever a beverage container or beverage container label is revised by altering the universal product

code, or whenever the container on which a universal product code appears is changed in size, composition or glass color, or whenever the container or container label on which a universal product code appears is changed to include a universal product code that is unique to the state or used only in the state and any other states with laws substantially similar to this title.