

Legislative Analysis



TAX CREDIT FOR BOTTLE DEPOSITS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4443 as reported from committee
Sponsor: Rep. Jim Lilly

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4444 (H-1) as reported from committee
Sponsor: Rep. Kevin Hertel

Committee: Regulatory Reform
Complete to 4-27-21

BRIEF SUMMARY: House Bills 4443 and 4444 would amend different acts to provide a tax credit for distributors who originate bottle deposits and to revise the annual disbursement of money in the Bottle Deposit Fund.

FISCAL IMPACT: House Bill 4443 could result in a loss of general fund dollars, but that loss could be offset for three years under provisions of House Bill 4444. (See **Fiscal Information**, below, for further discussion.)

THE APPARENT PROBLEM:

Money from bottle deposit collections on carbonated beverages and alcoholic beverages that are not refunded is deposited into the Bottle Deposit Fund. The manner in which money from that fund is distributed has not been revised in 25 years. The last major change was made in 1996, when the state needed to find new revenue sources to meet its environmental obligations (see **Background Information**, below). Many things have changed since 1996, including growing costs by distributors to obtain and maintain the equipment and processes to collect and recycle the redeemed containers efficiently and safely. Although a portion of the unredeemed bottle deposits are shared with retailers, distributors receive nothing to offset those costs.

THE CONTENT OF THE BILLS:

House Bill 4443 would amend Parts 1 and 2 of the Income Tax Act to provide a credit against the tax for distributors who originate bottle deposits. The bill would apply retroactively to tax years that begin on and after January 1, 2020.

Under the bill, for tax years that begin on and after January 1, 2020, a taxpayer that is a *distributor* who originates a deposit on a *beverage container* could claim a credit against the tax imposed under Part 1 or Part 2, as applicable, that is equal to the sum of the following:

- One half of one cent per *returnable container* sold during the tax year. (Beginning with the 2021 tax year, the amount of this credit would be adjusted annually by the percentage increase in the United States Consumer Price Index for all urban consumers the immediately preceding calendar year.)

- The refund value per returnable container over-redeemed during the tax year as established under section 2 of 1976 IL 1 (commonly known as the bottle deposit law).

For purposes of the bill, *beverage container*, *distributor*, and *returnable container* would mean those terms as defined in section 1 of the bottle deposit law.¹

The taxpayer would have to attach the report required under section 3a of the bottle deposit law to the annual return on which a credit was claimed.² If the credit exceeded the tax liability of the taxpayer for the tax year, the portion exceeding the tax liability would be refunded.

A distributor that is a partnership, limited liability company, or subchapter S corporation could claim the credit under Part 1 against the partner's, member's, or shareholder's tax liability based on the partner's, member's, or shareholder's proportionate share of ownership or based on an alternative method approved by the Department of Treasury.

Proposed MCL 206.279 and 206.679

House Bill 4444 would amend the bottle deposit law, which governs returnable containers for a variety of beverages, including soft drinks, soda water, other carbonated nonalcoholic drinks, beer, and mixed wine or mixed spirit drinks, to revise how money from the Bottle Deposit Fund is disbursed.

Currently, the Department of Treasury deposits the money paid to it by underredeemers (manufacturers or distributors who collect more in deposits than they pay out as refunds for returned containers) into the Bottle Deposit Fund. The department must annually disburse the money in the fund as follows:

- Seventy-five percent to the Cleanup and Redevelopment Trust Fund.
- Twenty-five percent to dealers based on the number of empty returnable containers handled by a dealer as determined by the department.

Under the bill, for the annual disbursement for 2020, 2021, and 2022, if the amount paid by underredeemers for a calendar year exceeded \$50.0 million, the department could disburse an amount that is the difference between the total amount paid by underredeemers and \$50.0 million to the general fund for credits claimed for the corresponding year under the provisions proposed by House Bill 4443. The balance of the funds that remain in the bottle deposit fund after a disbursement under this provision would be disbursed for environmental cleanup efforts and to dealers as described above.

The bill would take effect 90 days after being enacted.

MCL 445.573c

¹ See <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-445-571.pdf>

² This is an annual report of the distributor's deposits originated and refunds paid out in the previous year. See <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-445-573a.pdf>

BACKGROUND INFORMATION:

Until 1989 PA 148 was enacted, the deposit paid on a deposit-bearing can or bottle that was not returned remained in the hands of the wholesaler or bottler that distributed the product to the retailer. Since then, beverage manufacturers and distributors must turn over the difference between the amount collected in deposits and the amount paid out in refunds for deposit into the Bottle Deposit Fund. The 1989 legislation also required 75% of the money in the Bottle Deposit Fund to be distributed to the Michigan Unclaimed Bottle Fund and 25% to dealers based on the number of empty returnable bottles each handled. During the first 10 years of the existence of the Michigan Unclaimed Bottle Fund (that is, from 1990 to 2000), any money received by the fund and interest earned on that money was to remain permanently in the fund. Money received by the fund thereafter, plus any interest on that money and any interest on the money deposited during the first 10 years, was to be distributed evenly each year between the Environmental Response Fund (for toxic contamination cleanup), the Longer Term Maintenance Trust Fund (for prevention of environmental contamination), and the Clean Michigan Fund (for solid waste grant programs). The Unclaimed Bottle Fund principal was intended to remain intact.

However, by the mid-1990s, a number of events, including the insolvency of the Michigan Underground Storage Tanks Financial Assurance (MUSTFA) Fund, left the state looking for resources to finance the cleanup of “orphan shares” of contaminated sites and other environmental challenges. At that time, the Department of Environmental Quality proposed as a funding source, among other things, using \$20.0 million from unclaimed bottle deposits.

Instead, the legislature enacted several different acts to meet the challenges faced by the state. One new act, 1996 PA 384, eliminated the provisions of 1989 PA 148 regarding deposits being made from the Bottle Deposit Fund to the Unclaimed Bottle Fund, no expenditures being made from the Unclaimed Bottle Fund for its first 10 years, and preservation of that fund’s principal, and instead established the Cleanup and Redevelopment Trust Fund, with 75% of the money in the Bottle Deposit Fund being allocated to the new fund. (The remaining 25% continued to be disbursed to dealers.) Redesignating money from the Unclaimed Bottle Fund to the new Cleanup and Redevelopment Trust Fund was seen as a way to accomplish part of the state’s objectives in accomplishing its environmental cleanup objectives.

FISCAL INFORMATION:

Assuming that the number of returnables remains relatively constant between 3.8 billion and 3.9 billion per year and adjusting the credit per returnable for projected inflation, House Bill 4443 would reduce general fund revenue by about \$20.0 million per year.

It is anticipated that, while the balance in the bottle deposit fund will generally not exceed \$50.0 million, the balance may be greater than \$50.0 million in 2020. In that instance, the general fund may be reimbursed for the revenue loss.

ARGUMENTS:

For:

Distributors are an important part of the state's bottle/can deposit system, along with retailers and recyclers. Distributors are responsible for initiating the 10-cent deposit and ensuring that the returned cans and bottles are picked up from retailers and recycled. The refundable income tax credit may not fully offset all of the costs of implementing the bottle deposit program, but even a partial reimbursement will help to purchase or repair new equipment used in the collections, as well as cover other collection costs. By some accounts, the cost to distributors to initiate the deposit and ensure that the containers are picked up and recycled has increased over 20% over the past decade due to increases in labor, insurance, trucking, equipment, maintenance, and other expenses. Beer distributors alone are reported to spend about \$50.0 million per year to implement the bottle deposit program and simply cannot continue to absorb all of the costs. At one time, distributors shared in the revenue escheated to the state by unredeemed deposits. House Bill 4443 would replace a portion of the assistance once provided to distributors.

Under House Bill 4444, the general fund could be reimbursed for the tax credits described above from the bottle fund, but only if that fund exceeded \$50.0 million in unredeemed bottle deposits. Typically, the fund is below \$50.0 million, so there is no assurance that there will be an amount over \$50.0 million. However, it is believed that there may be an excess if the pandemic deterred consumers from taking returnables back to the store and collecting their deposits. Under the bill, the first \$50.0 million from underredeemers would be preserved for the current 25/75 split between retailers and environmental cleanup. Only an amount needed to reimburse the general fund for the amount claimed by distributors as a tax credit could be taken from the bottle fund. Conceivably, if the amount of the tax credits was less than the amount that exceeded \$50.0 million, there would be more than \$50.0 million to be disbursed for retailers and environmental cleanup.

Against:

Part of the bill package would provide a refundable income tax credit for distributors at the expense of the general fund at a time when the ongoing pandemic has increased the need for services and support of many of the state's residents. The other part of the package would siphon off a potential short-term increase in unredeemed deposits to repay the general fund for the tax credits to distributors that could be used to make a dent in cleaning up the many contaminated sites across the state (at least 20,000 registered sites). Such contaminated sites pose public health risks from toxic chemicals that can leach into groundwater and the state's waterways. Other approaches to help relieve the burden on distributors should be explored so that general fund money is available to fund needed assistance programs (should there not be sufficient money from underredeemers to reimburse the general fund) and cleanup sites can benefit from a short-term windfall to the bottle fund (should there be a significant decrease in the number of bottles returned for a deposit).

POSITIONS:

Representatives of the following entities testified in support of the bills (3-9-21):

- Schupan and Sons
- Michigan Beer and Wine Wholesalers
- UBCR, LLC

The Michigan Soft Drink Association indicated support for the bills. (3-9-21)

The following entities indicated opposition to the bills:

- Department of Environment, Great Lakes, and Energy (3-9-21)
- Department of Treasury (3-16-21)
- Clean Water Action (3-9-21)

The following entities indicated opposition to House Bill 4444 (3-9-21):

- Michigan Environmental Council
- Sierra Club Michigan Chapter
- Michigan League of Conservation Voters

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Jim Stansell

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.