



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

GRETCHEN WHITMER
GOVERNOR

RACHAEL EUBANKS
STATE TREASURER

**NOTICE REGARDING TREATMENT OF
KOMBUCHA PRODUCTS UNDER
MICHIGAN'S BOTTLE DEPOSIT LAW**

Issued: December 11, 2019

Revised: March 27, 2020

Michigan's Beverage Containers Act, MCL 445.571 *et seq.*, commonly known as the "bottle deposit law," prohibits Michigan beverage retailers from selling certain defined "beverages" to consumers in non-returnable containers for off-premises consumption. Consumers pay a ten-cent deposit on each returnable container and, in turn, the retailer pays a refund of ten cents to each consumer returning an empty beverage container of the same size, kind, and brand sold by the retailer. The bottle deposit law further requires that all containers filled with beverages that are subject to the deposit requirement be clearly labeled with the refund value of the container and the name of this state – the "MI 10 cents" (or similar) mark commonly seen on returnable cans and bottles sold by Michigan retailers.

In general, the bottle deposit law applies to containers used for beverages that constitute one of the following:

- A soft drink, soda water, carbonated natural or mineral water, or other non-alcoholic carbonated drink;
- beer, ale, or other malt drink of whatever alcoholic content; or
- a mixed wine drink or a mixed spirit drink.

In recent years, kombucha products have become popular, and many different brands are currently available on the market. Kombucha is a beverage produced by fermenting sweetened green or black tea with bacteria and yeast. Because the mixture is fermented, all kombucha products contain a small amount of alcohol. Kombucha naturally becomes carbonated after fermentation.

Over the past several years, the Department has occasionally provided informal email responses to questions from retailers and manufacturers regarding the treatment of kombucha products under the bottle deposit law. In those informal responses, the Department opined that containers of kombucha were not subject to Michigan's bottle deposit law and, accordingly, did not have to be marked with the required deposit information. This initial determination was based primarily on the fact that, because kombucha contains a small amount of alcohol, it could not qualify as a "non-alcoholic carbonated drink" within the meaning of the statute.

Recently, however, the Department changed its interpretation of the term “non-alcoholic.” Federal law and regulations consistently take the position that “non-alcoholic” is not synonymous with “alcohol-free.” Due to natural fermentation as well as the use of flavoring extracts, many common beverages considered by consumers to be non-alcoholic actually contain trace levels of alcohol. Federally, a beverage is considered “non-alcoholic” if it contains less than 0.5% alcohol by volume. Under this analysis, kombucha would be classified as a “non-alcoholic” beverage, because it contains trace levels of alcohol (less than 0.5% by volume) derived from natural fermentation.

Going forward, the Department will adhere to the federal definition of the term “non-alcoholic” in interpreting the bottle deposit law. Accordingly, this Notice provides formal public advice and guidance that kombucha is a “non-alcoholic carbonated drink” within the meaning of Michigan’s bottle deposit law, and the deposit and labeling requirements of that law apply to containers used for kombucha products.

The Department is cognizant that retailers and manufacturers may have relied upon its previous informal guidance that kombucha products were not subject to the bottle deposit law. In its Notice issued December 11, 2018, the Department stated that retailers and manufacturers must begin complying with the Department’s determination by May 1, 2020. Since that Notice was issued, the Department has determined to permit affected parties additional time to comply with this directive. **Accordingly, retailers and manufacturers now have until September 1, 2020, to begin complying with the Department’s determination.** After that date, all parties in the distribution chain must begin collecting and refunding deposits on kombucha containers, as they do for other non-alcoholic carbonated beverages, and kombucha containers that are not marked with the required deposit information may not validly be sold in the state.

Questions regarding this Notice may be directed to the Bureau of Tax Policy at (517) 335-7478.