DECLARATORY RULING NO. 2012-1

CONNECTICUT BOTTLE BILL

FACTS:

Twelve distributors have, pursuant to Conn. Gen. Stat. §4-176 and Conn. Agencies Regs. §12-2-4a, petitioned for a declaratory ruling.[1] Each of the Petitioners is a distributor, as defined in Conn. Gen. Stat. §22a-243(6), and a deposit initiator, as defined in Conn. Gen. Stat. §22a-243(12) (hereinafter "deposit initiator(s)").[2] The Petitioners claim that the Department has "incorrectly adopted a policy interpreting provisions of the Connecticut's 'Bottle Bill', codified at Conn. Gen. Stat. §§22a-243 et seq., as amended by Public Acts 08-1, 09-1 and 10-25, ('the Act')."[3] The Petitioners are petitioning the Department to make the following declaratory ruling: "A declaration that expenses that may be lawfully withdrawn from the Petitioners' special accounts are not limited to reimbursement of refund values, but also include the one and a half cent ($0.15) handling fee required to be paid to the retailer for each empty beer container returned, and with respect to soft drink containers, the two-cent ($.02) handling fee for the return of empty soft drink containers, as required by Connecticut General Statutes §§22a-245(d)."

ISSUE:

Whether the Department may lawfully issue the declaratory ruling that the Petitioners seek, and thereby conclude that the handling fee that a deposit initiator is required by Conn. Gen. Stat. §22a-245(d) to pay to any dealer or operator of a redemption center is an allowable withdrawal from the special account that the deposit initiator is required to establish pursuant to Conn. Gen. Stat. §22a-245a(a).

[1] The twelve distributors are: A. Gallo & Company; Allan S. Goodman, Inc. d/b/a Rogo Distributors, Dichello Distributors, Inc., Dwan & Company, Inc., F&F Distributors, Inc., Franklin Distributors, Inc., G&G Beverage Distributors, Inc., Hartford Distributors, Inc., Levine Distributing Co., Inc., Northeast Beverage Corp. of Connecticut, Pepsi Cola Newburgh Bottling Co., Inc. d/b/a Pepsi Cola Bristol, and Star Distributors, Inc. (hereinafter, "the Petitioners"). Eleven of the Petitioners are beer distributors and one is a soft drink distributor. The Department received the Petition for Declaratory Ruling on December 5, 2011. In connection with the Petition for Declaratory Ruling, the Department received a Petition to Intervene from Adirondack Beverages, Inc., Coca-Cola Bottling Company of Northern New England, Inc., Coca-Cola Enterprises, Inc., Pepsi Bottling Group, LLC, Polar Beverages and Windham Pepsi-Cola, Inc. (hereinafter, "the Intervenors"). The Department granted the Petition to Intervene on May 10, 2012.

[2] All deposit initiators are distributors, however not all distributors are bottle initiators as those terms are defined in Conn. Gen. Stat. §22a-243. For purposes of this Declaratory Ruling, the Petitioners are both distributors and deposit initiators and are herein referred to as "deposit initiator(s)".

[3] The reference to "Public Act 08-1" is understood by the Department to mean 2008 Conn. Pub. Acts 1 (Nov. 24 Spec. Sess.). The Bottle Bill has also been amended by 2011 Conn. Pub. Acts 59.

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DECLARATORY RULING:

The Department may not lawfully issue the declaratory ruling that the Petitioners seek, because the handling fee that a deposit initiator is required by Conn. Gen. Stat. §22a-245(d) to pay to any dealer or operator of a redemption center is not an allowable withdrawal from the special account that the deposit initiator is required to establish pursuant to Conn. Gen. Stat. §22a-245a(a).

DISCUSSION:

The plain meaning of Conn. Gen. Stat. §22a-245a does not allow a deposit initiator to withdraw from its special account the handling fee that the deposit initiator is required by Conn. Gen. Stat. §22a-245(d) to pay.

The starting point for analysis of Conn. Gen. Stat. §22a-245a is the "plain meaning" provision of the General Statutes, which states:

> The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

Conn. Gen. Stat. § 1-2z.

Applying this standard, courts approach a constructional question by examining not only the language of the statute at issue, but also the statutory context in which the provision exists. If, in the process of reviewing the meaning of a particular statutory provision and attempting to comprehend its meaning from the text itself, and taking into account the provision's relationship to other relevant statutes, a court concludes that, as applied, there is but one reasonable or plausible meaning of the statutory language and that meaning does not lead to absurd or unworkable results, a court need go no farther to ascertain the provision's meaning from extratextual sources. If the language is plain and unambiguous, "we need look no further for interpretive guidance because we assume that the words themselves express the intention of the legislature." *Rhodes v. Hartford,* 201 Conn. 89, 93 (1986).

Conversely, if a statute, read in context, is susceptible of more than one plausible meaning, recourse to extratextual materials may be consulted to arrive at the meaning of the provision as applied to the facts of the case. *See, e.g., Doe v. Norwich Roman Catholic Diocesan Corp.*, 279 Conn. 207, 212 (2006). The test to determine ambiguity is "whether the statute, when read in context, is susceptible to more than one reasonable interpretation." *Id.*, quoting *Tarnowsky v. Socci,* 271 Conn. 284, 287 n. 3 (2004). Statutory language, however, does not become ambiguous "merely because the parties contend for different meaning . . . ." *Glastonbury Co. v. Gillies,* 209 Conn. 175, 180 (1988).

By contrast, the phrases "plain meaning" or "plain and unambiguous meaning", for example, have been determined by the Connecticut Supreme Court to mean "the meaning that is so strongly indicated or suggested by the language as applied to the facts of the case, without consideration, however, of its purpose or the other, extratextual sources of meaning . . . that, when the language is read as so applied, it appears to be *the* meaning and appears to preclude any other likely meaning." *Kinsey v. Pacific Employers Insurance Co.,* 277 Conn. 398, 407-408 (2006) (emphasis in original).

The special accounts system devised by the General Assembly has the following features. A deposit initiator is required to set up a "special interest-bearing account at a Connecticut branch of a financial institution

. . . to the credit of the deposit initiator." Conn. Gen. Stat. §22a-245a(a). The special account is funded with "an amount equal to the refund value established" pursuant to Conn. Gen. Stat. §22a-244(a) for each beverage container sold by the deposit initiator. Conn. Gen. Stat. §22a-245a(a). These refund values constitute the only "deposit" to the special account, other than special account interest earned on those same monies, which itself is "paid directly into such account." Upon deposit, the amount becomes a "special fund in trust for the state." *Id*. "Such moneys shall be kept separate and apart from all other moneys in the possession of the deposit initiator." *Id*. Significantly, Conn. Gen. Stat. §22a-245a(b)(1) states that "any reimbursement of the refund value" for a redeemed beverage container "shall be paid from the deposit initiator's special account[.]" No other "pay-out" is described in Conn. Gen. Stat. §22a-245a, other than the payment of the outstanding balance to the State on or before the last day of the month next succeeding the close of each calendar quarter. Conn. Gen. Stat. §22a-245a(d).

Conn. Gen. Stat. §22a-245a(c)(2), which applies to quarterly payments for calendar quarter beginning on or after July 1, 2010, requires a deposit initiator to submit a report for the immediately preceding calendar quarter the last day of the month next succeeding the close of the quarter.[4]

The remaining subsections of Conn. Gen. Stat. §22a-245a provide as follows:

- Conn. Gen. Stat. §22a-245a(d)(2) requires the deposit initiators to pay the "balance outstanding in the special account" to the Commissioner of Revenue Services for deposit in the General Fund;

- Conn. Gen. Stat. §22a-245a(e) provides that a deficiency in any quarter is to be subtracted from the next succeeding payment(s) due "until the amount of the deficiency has been subtracted in full." (A deficiency would occur where the payment of refund values under Conn. Gen. Stat. §22a-245a(b)(1) in a calendar quarter exceeds the deposit of refund values on beverage containers sold by the deposit initiator.);

- Conn. Gen. Stat. §22a-245a(j) provides that a deposit initiator may take a credit against the payment made pursuant to Conn. Gen. Stat. §22a-245a(d) "in the amount of deposits refunded on beverage containers" donated for charitable purposes.

Any reporting described in Conn. Gen. Stat. §22a-245a(c) relates solely to the mechanics of the special account system described in Conn. Gen. Stat. §22a-245a. The special account upon which the State trust is impressed is funded with refund values collected by the deposit initiator on the sale of beverage containers and any interest, dividends and returns earned on the special account. Conn. Gen. Stat. §22a-245a(a). These are the "credits" to the special account. The allowable "debits" to the special account are set forth in Conn. Gen. Stat. §22a-245a(c)(1)(C). These are limited to withdrawals, service charges, overdraft charges, and payments made pursuant to Conn. Gen. Stat. §22a-245a (d). A "withdrawal" has to be restricted to payments made under Conn. Gen. Stat. §22a-245a(b)(1). This is necessarily so, because there are only two species of "payment" in this system.

[4] "Each such report shall be submitted to the Commissioner of Revenue Services, on a form prescribed by the Commissioner of Revenue Services, and with such information as the Commissioner of Revenue Services deems necessary, including, but not limited to, the following information: (A) The balance in the special account at the beginning of the quarter for which the report is prepared; (B) all deposits credited to such account during such quarter, including all refund values paid to the deposit initiator and all interest, dividends or returns received on such account; (C) all withdrawals from such account during such quarter, including all service changes and overdraft charges on such account and all payments made pursuant to subsection (d) of this section; and (D) the balance in such account at the close of the quarter for which the report is prepared…" Conn. Gen. Stat. §22a-245a(c)(2).

First, there is the payment of "[a]ny reimbursement of the refund value," which "shall be paid from the deposit initiator's account." Conn. Gen. Stat. §22a-245a(b)(1).

Secondly, there is the payment of the balance in the special account to the State at the close of a calendar reporting period quarter, which is accounted for inasmuch as it is listed in Conn. Gen. Stat. §22a-245a(c). (The deficiency allowance provision set forth in Conn. Gen. Stat. §22a-245a(e), whereby special account funds that are insufficient to pay for withdrawals "shall be subtracted from the next succeeding payment or payments due pursuant to [Conn. Gen. Stat. §22a-245a(d)] until the amount of the deficiency has been subtracted in full," likewise conforms these provisions to the proper characterization as a closed system that focuses upon refund values "in" and reimbursement of refund values "out" of the system.)

Therefore, "withdrawal" in Conn. Gen. Stat. §22a-245a(c) can only mean the payment authorized under Conn. Gen. Stat. §22a-245a(b)(1), because that is the only other "payment" authorized in the system.

The Department's reading of Conn. Gen. Stat. §22a-245a(c)(1) yields neither absurd nor unworkable results.

A reading of Conn. Gen. Stat. §22a-245a(c)(1) that disallows any withdrawal of monies in the special account to cover other expenses of the deposit initiator, such as the handling fee, yields neither absurd nor unworkable results. Conn. Gen. Stat. §1-2z. The special account constitutes a corpus of funds that will be paid to the State. It is funded with the refund values paid to a deposit initiator from the sale of beverage containers. The account is debited with "reimbursements" of those refund values paid by the deposit initiator to dealers or to operators of redemption centers within the deposit initiator's territory. Conn. Gen. Stat. §22a-245(c). Once account maintenance fees and earnings are reconciled for the account, the in-trust balance is paid to the State; and if in any reporting quarter the amount of reimbursements paid exceeds the amount of refund values on deposit, the deposit initiator is allowed to carry the deficiency over to the next quarter(s) until the amount of the deficiency has been eliminated. The overall statutory scheme is simple, and the objective is straightforward: if the beverage recycling traffic results in fewer refund values paid out than paid into the account, the positive balance escheats to the State; if the refund values paid out are greater than the refund values paid into the account, the deposit initiator carries any such deficiency over until it is eliminated.

What *is* an unworkable result is the Petitioners' insistence that the Conn. Gen. Stat. §22a-245a special account scheme *includes* the statutory handling fee payment that distributors are required by Conn. Gen. Stat. §22a-245(d) to pay to dealers or operators of redemption centers. On its face, Conn. Gen. Stat. §22a-245a makes no reference to the handling fee that a deposit initiator is required pursuant to Conn. Gen. Stat. §22a-245(d) to pay to dealers or operators of redemption centers "[i]n addition to the refund value of a beverage container." Obviously, the handling fee is *not* a "refund value" that is deposited in the special account. The language and logic of the special account scheme dictates that the handling fee cannot be a "withdrawal" from the special account. The General Assembly's omission of any reference to handling fees in the special account scheme is patent: unredeemed refund values are impressed with a trust for the state and they are not to be in any manner reduced. The Petitioners' reading of Conn. Gen. Stat. §22a-245a injects a wholly new species of "expense" on the debit side of the calculus that invariably reduces the balance of any unredeemed refund values otherwise due the State. Under the Petitioners' reading, the special account scheme would be materially changed without any explicit reference to an "expense" that is not a refund value. Such a reading works against the plain meaning of the statutory language.

Even if the meaning of Conn. Gen. Stat. §22a-245a is not plain and unambiguous, the legislative history of the amendments supports the Department's position that the handling fee that a deposit initiator is required by Conn. Gen. Stat. §22a-245(d) to pay is not an allowable withdrawal from the special account.

The plain meaning of Conn. Gen. Stat. §22a-245a(b)(1) supports the Commissioner's contention that "withdrawals" includes only refund values, special account expenses and the resulting balance in the special account. *Even if it were otherwise*, any ambiguity deemed to exist in the text of Conn. Gen. Stat. §22a-245a(b)(1) should, given that the balance in the special account is held in trust for the state, be resolved in favor of the Department's construction of the provision.[5]

The overarching objective of statutory construction is to give effect to the legislative intent. *See Johnson v. Mazza*, 80 Conn. App. 155, 159 (2003). A statute should be construed, having in view the nature and reason of the remedy and the object of the statute, in order to give effect to the legislative intent. *Newton's Appeal*, 84 Conn. 234, 241 (1911).

The Bottle Bill, although amended several times, has never included any express provision for a deposit initiator to be reimbursed for the handling fees that the deposit initiator pays to dealers or operators of a redemption center.[6] While a deposit initiator would still be responsible for the payment of the handling fee, *regardless of the rate of return of containers*, ideally, all containers would come back to a deposit initiator and there would be no unredeemed values left over from which to pay out a self-reimbursement for the handling fee. That result, however, would be entirely in accord with the main objective of the Bottle Bill, which is recycling and the removal of the containers from disposal as part of the general waste stream.

The unredeemed refund values represent containers that were *never* returned to the deposit initiator. Conn. Gen. Stat. §22a-245(d). The handling fee is not paid as to these containers, because they are not returned by retailers or operators of a redemption center. As to containers that are returned by retailers or operators of a redemption center, the handling fees assessed in Conn. Gen. Stat. §22a-245(d) were *not* subjected to any new payment or recoupment statutory provisions by the 2008, 2009, or 2010 amendments to the Bottle Bill. As a result, those amendments *leave a deposit initiator in exactly the same position the deposit initiator was in under the original Bottle Bill were the original Bottle Bill to have worked perfectly to recapture for recycling or reuse one hundred (100%) percent of the beverage containers subject to its provisions.*

The point of the 2009 and 2010 amendments to the Bottle Bill was to escheat the unredeemed refund values. What is at issue here is nothing more than a manifestation of the General Assembly's inherent power to amend legislation in order to refine its scope. *Cf. Massachusetts Wholesalers of Malt Beverages, Inc. v. Commonwealth,* 414 Mass. 411, 609 N.E.2d 67, 70-71 (1993).[7]

The General Assembly was well aware, in adopting the 2009 amendments to the Bottle Bill, that DEP, in prescribing the quarterly reports that the 2008 amendments to the Bottle Bill required a deposit initiator to file with DEP, was not allowing a deposit initiator to reimburse itself for the handling fees out of the special

[5] This was also the construction given to the provision by the Department of Environmental Protection (DEP)—a position well known to the General Assembly.

[6] In any event, the distributor gets the container returned for its reuse or reduction to value as recyclable material or scrap.

[7] As noted by the Supreme Judicial Court in this case, the power of the legislature to amend or clarify a statute is plenary; furthermore, in commenting upon changes in the Massachusetts bottle bill that effected an escheat of unredeemed refund values, the Court emphasized that "the value was both created and diminished as an incident of the operations of the government. For if the enjoyment of a benefit thus derived from the public acts of government were a source of legal rights to have it perpetuated, the powers of government would be exhausted by their exercise." *Massachusetts Wholesalers,* 609 A.2d at 71 n. 13.

account.[8] The General Assembly made clear its intendment and effectively sanctioned DEP's reading of the 2008 amendments to the Bottle Bill and adopted it as its own without disowning it. *See* 2B Singer, Sutherland Statutory Construction (7th ed. 2008) § 49.10 (legislative inaction following "a contemporaneous and practical interpretation is evidence that the legislature intends to adopt such an interpretation"). Accordingly, the legislative purpose – the closing of the budget gap by cutting spending and increasing revenue – and the specific legislative intendment behind section 15[9] of the 2009 amendment respecting the escheat of unredeemed refund values are plainly contrary to the interpretation of the legislation proffered by the Petitioners. The last word on the subject and on legislative intent was uttered by Sen. Williams, the President Pro Tempore of the Senate.

> Very briefly, I do want to make a specific comment on section 15 of the bill for purposes of legislative history. It pertains to the bottle deposits. I'm comfortable with the Department of Environmental Protection's interpretation of the so-called special account and the refund value that goes in and is accounted for and also the fact that, *under the language here along with statutes that are already law that any handling fees and other expenses of any kind are not subtracted from the refund value, are not subtracted from the escheats for the purposes of counting the escheat and finding out how much we have or for the purposes of paragraph (d) within section 15 and the rest of section 15.*

52 S. Proc., Pt. 2, 2009 Special Sess., p. 426. (Remarks of Sen. Williams) (Emphasis added.)

No further debate on the bill ensued; the Senate roll was thereafter called; and the bill was passed. The remarks of Sen. Williams are completely transparent. They expressly address the issue in contention here and undercut the Petitioners' claim that DEP's reporting form, which disallowed any set-offs for expenses, incorrectly assessed the legislative directive.

If the General Assembly, in approving the 2009 amendments to Conn. Gen. Stat. §22a-245a, was well aware that DEP was not allowing a deposit initiator to recoup its expenses from the deposit initiator's special account, and took no steps to allow a deposit initiator to recoup its expenses, then, *a fortiori*, the General Assembly, in approving the 2010 amendments to Conn. Gen. Stat. §22a-245a, was even more aware of and ratifying DEP's position – and now the Department's position – that a deposit initiator is not allowed to reimburse itself for the handling fees out of the special account.

Kevin B. Sullivan **June 1, 2012**
Commissioner of Revenue Services

[8] "It's my understanding that the Department of Environmental Protection, which is charged under this section with creating the form upon which this information is reported, is just seeking the nickels out and the nickels back to the deposit initiator." 52 S. Proc., Pt. 2, 2009 Special Sess., p. 410. (Remarks of Senator Harris)
[9] Amending Conn. Gen. Stat. §22a-245a.