

Annual Filing Option Available for Certain Wine Distributors

The alcoholic beverage tax regulations were recently amended to allow certain wine distributors to elect to file Form MT-40, *Return of Tax on Wines, Liquors, Alcohol, and Distilled or Rectified Spirits*, on an annual basis rather than a monthly basis. The annual return will cover the calendar year and must be filed on or before January 20 of the following year.

You may elect to file an annual wine tax return if you are a registered distributor who is:

- (1) licensed with the New York State Liquor Authority (SLA) as a farm winery pursuant to Alcoholic Beverage Control (ABC) Law section 76-a, as a special farm winery pursuant to ABC Law section 76-d, or as a micro-winery pursuant to ABC Law section 76-f; or
- (2) an out-of-state winery registered as a distributor solely to ship your wine directly to New York State residents for their personal use, and licensed with the SLA as a direct shipper, pursuant to ABC Law section 79-c.

You may make this election at any time during the calendar year by completing Form MT-38, *Application for Annual Tax Return Filing Status for Certain Beer and Wine Manufacturers*, and returning it to the address shown on that form.

When you apply for annual filing status, you must continue to file monthly returns until the Tax Department notifies you that your request to file annually has been received and approved. Your first annual filing will cover the period beginning with the *month following the month of approval* through the end of the calendar year.

Examples:

- On August 12, 2009, the Tax Department notifies you that you have been approved to file annually. You must file your last monthly Form MT-40 covering the month of August 2009 on or before September 20, 2009. You must file an abbreviated annual Form MT-40, covering the period September 1, 2009, through December 31, 2009, on or before January 20, 2010.
- On December 28, 2009, the Tax Department notifies you that you have been approved to file annually. You must file your last monthly Form MT-40 covering the month of December 2009 on or before January 20, 2010. You must file your first annual Form MT-40, covering the period January 1, 2010, through December 31, 2010, on or before January 20, 2011.

Loss of eligibility for annual filing

If, at any time, you cease to meet one of the requirements for annual filing, you must begin filing monthly returns. For example, pursuant to ABC Law section 76-a, a farm winery may not manufacture more than 150,000 finished gallons of wine in a single year. Therefore, a winery that is no longer licensed by the State Liquor Authority as a farm winery because it expanded its operations to produce more than 150,000 finished gallons of wine in a single year would be required to begin filing monthly returns. The first monthly return must cover the first full month following the month in which you failed to meet one of the requirements for annual filing. In addition, you must file an abbreviated annual return covering your activities from January 1 through the end of the month in which you ceased to meet the requirements for annual filing.

Reinstatement for annual filing

If you lose your eligibility to file annually, you may request reinstatement as an annual filer for the next or any subsequent calendar year in which you anticipate that you will again meet the requirements. To do this, you must send a letter to the Tax Department, including an explanation of the activities that resulted in the disqualification, and a summary of how the circumstances have changed. Address the letter to:

NYS TAX DEPARTMENT
ABT RETURNS PROCESSING UNIT
WA HARRIMAN CAMPUS
ALBANY NY 12227

Note: When requesting reinstatement as an annual filer, you must continue to file monthly returns until the Tax Department notifies you that your request has been received and approved.

Need forms?

Form MT-40 will be mailed to all annual filers each December. Additionally, Form MT-38 and Form MT-40 are available on the Tax Department's Web site at www.nystax.gov, or you may call (518) 457-5431 to request a copy by mail. In-state callers without free long distance may call 1 800 462-8100 to request forms.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.