



# Instructions for Form MT-40

Return of Tax on Wines, Liquors, Alcohol, and Distilled or Rectified Spirits; and Schedules A (Form MT-42), B (Form MT-43), C (Form MT-44), D (Form MT-45), and E (Form MT-46)

## Who must file this return

Distributors and noncommercial importers must complete this return and pay the alcoholic beverages tax due on wines (excluding cider), liquors, alcohol, and distilled or rectified spirits.

Distributors, including out-of-state direct wine shippers, must file Form MT-40 for each month, even if no tax is due. Noncommercial importers must file Form MT-40 only for those months in which they imported wines, liquors, alcohol, and distilled or rectified spirits into New York State. A distributor includes an out-of-state wine manufacturer that is licensed by the New York State Liquor Authority as a *direct shipper* of wines. See *Special instructions for out-of-state direct wine shippers (DWS)* only below.

Do **not** file Form MT-40 to compute the alcoholic beverages tax on cider. File Form MT-60, *Cider Tax Return*, for cider containing more than 3.2% alcohol by volume.

### Special instructions for out-of-state direct wine shippers (DWS) only

An out-of-state direct wine shipper has limited reporting requirements on Form MT-40, *Return of Tax on Wines, Liquors, Alcohol, and Distilled or Rectified Spirits*. Read the following carefully.

In the *Nature of business activity* box, check the box for *Manufacturer* and the box for *Direct wine shipper (DWS)*. Enter the tax period and all other taxpayer identification if it is not preprinted, or make corrections to preprinted listings as needed.

You are not required to complete lines 1 through 11; lines 18 through 20; or the New York City column for lines 21 through 24. Accordingly, you are not required to complete any of the corresponding schedules (Forms MT-41 through MT-46).

On Form MT-40, line 12, enter the net quantity taxable in the appropriate wines columns D, E, and F for the amount of wines shipped into New York State and delivered directly to New York State residents during the filing period covered by this return. Multiply the amounts in the columns by the alcoholic beverages tax rate and complete applicable lines down to and including line 25. Complete all items in the certification section including your signature and the date.

**Note:** A wine manufacturer that already holds a license as a *distributor of alcoholic beverages* may also get a *direct shipper's license* from the New York State Liquor Authority so that it can make direct shipments of wine to New York State consumers from its out-of-state location(s). Such a manufacturer must continue to complete all lines on Form MT-40 and all schedules, as applicable. This manufacturer must also be sure to include on Form MT-40, line 12, the amount of wine shipped directly to New York State consumers from its out-of-state location(s).

**Note:** New York State wineries and farm wineries **must complete** all applicable schedules and lines on Form MT-40.

## When to file Form MT-40

Form MT-40 is due on or before the 20th day of the following month.

## Definitions

*Alcohol* includes ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or by whatever process produced.

An *out-of-state direct wine shipper (DWS)* is any out-of-state wine manufacturer licensed by the New York State Liquor Authority as a *direct shipper*, and licensed by the New York State Tax Department for sales tax (*Certificate of Authority*) and as a distributor of alcoholic beverages. For additional information, see TSB-M-05(6)M, (9)S, *Tax information regarding direct wine shipments into New York State by out-of-state wineries*.

A *distributor of liquors* is any person who imports (or causes to be imported) into New York State liquors for sale or use in New York State; any purchaser of warehouse receipts for liquors stored in a warehouse located in New York State who causes the removal of such liquors from the warehouse; and any person who produces, brews, or manufactures liquors offered for sale within New York State.

A *distributor of liquors* also includes any person who sells or imports (or causes to be imported) into New York City (from any location) liquor over 24% alcohol by volume, for sale or commercial use. (Sales in New York City include sales to purchasers whose licensed premises are located within New York City, and sales for delivery to purchasers located within the city.)

A *distributor of liquors* also includes any individual who will import more than 360 liters of liquors for personal use and consumption during a one-year period.

A *distributor of wines* is any person who imports (or causes to be imported) into New York State wine for sale or for any commercial purposes; any purchaser of warehouse receipts for wine stored in a warehouse located in New York State who causes the removal of such wine from the warehouse; and any person who produces, brews, or manufactures wine offered for sale within New York State.

*Liquors* include distilled or rectified spirits, alcohol, brandy, cordials (whether the base is wine or liquor), whiskey, rum, gin, and all other distilled beverages containing alcohol, including all dilutions and mixtures of one or more of the foregoing, and also any alcoholic liquors which would be wines if the alcoholic content were not more than 24% by volume.

A *noncommercial importer of wines* is any person (other than a distributor) who imports (or causes to be imported) into New York State wines that will **not** be offered for sale or used for any commercial purpose. However, persons purchasing wine outside New York State during a journey and bringing such wine back into New York State in the quantities and under the circumstances specified as exempt in Tax Law section 424(4) are not deemed to be noncommercial importers, and thus will not have to file this return. For information on the section 424(4) exemption, see Publication 570, *Information on the Alcoholic Beverages Tax*.

**Note:** The term *noncommercial importer* does not apply to **liquors**.

*Person* is an individual, co-partnership, society, association, corporation, joint stock company, or any combination of individuals. *Person* also includes an executor, administrator, receiver, trustee, or other fiduciary.

*Sale* means any transfer, exchange, or barter, in any manner or by any means whatsoever. Thus, in addition to cash and credit sales, the giving of alcoholic beverages as samples, prizes, or gifts, and the exchanging of alcoholic beverages for any consideration other than money, are also considered sales. However, sales of warehouse receipts given upon the storage of alcoholic beverages are not considered sales of those beverages.

*Use* is any compounding or mixing of alcoholic beverages with other ingredients (or other treatments) that renders them unfit or unsuitable for consumption as a beverage. *Use* also includes the actual consumption or possession for consumption of alcoholic beverages.

*Wines* include wine (both still and sparkling and when fortified by the addition of alcohol or spirits), fruit juice containing one-half of 1% or more alcohol by volume, and all other beverages containing alcohol manufactured or produced by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar, provided they contain not more than 24% of alcohol by volume.

**Note:** For purposes of this return, wines do **not** include cider.

## Tax period and taxpayer identification

Enter the month and year of the period covered by this return.

Enter your legal name and complete address if they are not preprinted on the form. If the printed information is incorrect, make the appropriate corrections on the return **and** complete Form DTF-95, *Business Tax Account Update*. If only your address is incorrect, file Form DTF-96, *Report of Address Change for Business Tax Accounts*. These forms are available on the Tax Department's Web site at [www.nystax.gov](http://www.nystax.gov).

If you are a distributor, enter your business telephone number, liquor tax registration number, federal employer identification number or social security number, and State Liquor Authority (SLA) license number.

If you are a noncommercial importer, write **N/A** in both the *Liquor tax registration number* box and the *SLA license number* box, and enter your social security number.

Check the appropriate box(es) to indicate whether the business is a manufacturer, importer, or both; or to indicate that you are a noncommercial importer. Direct wine shippers (DWS) should check the box for *Manufacturer* **and** the box for *Direct Wine Shipper (DWS)*.

Check *Yes* or *No* to indicate whether or not you use or sell, within New York City or to purchasers whose licensed premises are within New York City, liquor with more than 24% alcohol by volume. If *Yes*, complete Form MT-46, *Schedule E — New York City Tax*, and lines 18 through 20 of Form MT-40.

**No business this month** — Check the box if, during the month reported on this return, you did not manufacture, sell, or import (or cause to be imported) into New York State, any wines, liquors, alcohol, or distilled or rectified spirits. Sign your return and mail it to the address indicated on the return (see *Payment and mailing addresses* on page 3).

**Cancel registration** — Check the box if you are filing a final return and requesting that your registration be canceled. Complete this return for your operations during the month and send it to the address indicated on the return (see *Payment and mailing addresses* on page 3).

**Amended return** — Check the box if this return amends a previous return. Enter the month and year of the period covered by the amended return in the space provided. The amended return should indicate the correct figures for that month — **not** the difference between the amount previously reported and the new figures. A full explanation of the changes must accompany the amended return.

## Rate

Effective July 1, 1994, the New York State alcoholic beverages tax rate on still wines, natural sparkling wines, and artificially carbonated sparkling wines is \$0.1893 per gallon.

Effective July 16, 1989, the New York State alcoholic beverages tax rate on liquors containing not more than 2% alcohol by volume is \$0.01 per liter.

Effective June 1, 1990:

- The New York State alcoholic beverages tax rate on liquors containing more than 2% but not more than 24% alcohol by volume is \$0.67 per liter.
- The New York State alcoholic beverages tax rate on liquors containing more than 24% alcohol by volume is \$1.70 per liter.

## Computation of the alcoholic beverages tax

All amounts must be reported in either whole liters or whole gallons (see *Rounding to whole liters or whole gallons* on the back of Form MT-40).

Out-of-state direct wine shippers, see *Special instructions for out-of-state direct wine shippers (DWS)* only on the front page.

Distillers, rectifiers, blenders, or fortifiers of wine or liquors must complete and attach Form MT-41, *Beverage Inventories and Purchases*. They must not enter amounts on lines 1 through 5 on Form MT-40.

Noncommercial importers must complete only line 2 (and Form MT-42, Schedule A, for name and address of seller, liters or gallons purchased during the month, and total amounts for each type of alcoholic beverage), line 4, line 6, and lines 12 through 25, if applicable.

**Note:** Noncommercial importers who bring or cause to bring certain alcoholic beverages into New York City, for which the city tax has not been paid, **must** enter the number of liters and compute the tax on line 18. However, noncommercial importers are not required to complete Form MT-46, Schedule E.

**Line 1** — Enter in each column, for each type of alcoholic beverage, the amount on hand at the beginning of the month. Do not include alcoholic beverages held in bonded warehouses.

**Line 2** — Enter the total number of liters or gallons you purchased without paying the alcoholic beverages tax (from Form MT-42, *Schedule A — Tax-Free Purchases*).

**Line 3** — Enter the total number of liters or gallons you purchased on which you paid the alcoholic beverages tax (from Form MT-43, *Schedule B — Tax-Paid Purchases*).

**Line 5** — Enter the total amount on hand at the end of the month.

**Line 6** — Subtract line 5 from line 4 or, if you are a distiller, rectifier, blender, or fortifier of wine or liquors, enter the amount from line 10 of Form MT-41, *Beverage Inventories and Purchases*.

**Line 7** — Enter your deduction for loss and breakages on the premises. You must explain this deduction on a separate sheet. It is subject to approval by the Tax Department.

**Line 8** — Enter the number of liters or gallons you purchased on which you paid the alcoholic beverages tax (from Form MT-43, *Schedule B — Tax-Paid Purchases*).

**Line 9** — Enter your total sales outside New York State (from Form MT-44, *Schedule C — Out-of-State Sales*).

**Line 10** — Enter your total tax-free sales or use inside New York State (from Form MT-45, *Schedule D — Tax-Free Sales and Use*).

**Line 16** — Enter the total amount of any **New York State** adjustments from prior returns. Enter any subtraction in [brackets]. Deduct any overpayment or add any underpayment from previous returns. Include amounts from any debit or credit memoranda sent to you from the Tax Department. Attach a complete explanation.

**Note:** If you filed an amended return to report New York State changes to a prior return, you may **not** claim that adjustment on line 16.

**Line 17** — If the total New York State adjustments from prior returns results in an underpayment of tax, **add** lines 15 and 16. If the total state adjustments from prior returns results in an overpayment of tax, **subtract** line 16 from line 15. This is the net tax due for New York State.

**Line 18** — Compute the New York City tax due. Distributors must enter the number of liters from Form MT-46, Schedule E, line 7. Noncommercial importers must enter the number of liters imported or caused to be imported into New York City. Both must multiply the number of liters by \$0.264 and enter the result.

**Line 19** — Enter the total amount of any **New York City** adjustments from prior returns. Enter any subtraction in [brackets]. Deduct any overpayment or add any underpayment from previous returns. Include amounts from any debit or credit memoranda sent to you from the Tax Department. Attach a complete explanation.

**Note:** If you filed an amended return to report New York City changes to a prior return, you may **not** claim that adjustment on line 19.

**Line 20** — If the total New York City adjustments from prior returns results in an underpayment of tax, **add** lines 18 and 19. If the total city adjustments from prior returns results in an overpayment of tax, **subtract** line 19 from line 18. This is the net tax due for New York City.

**Line 21** — Penalty is imposed at the rate of 10% (.10) of the amount of tax due for the first month or fraction of a month that the tax remains unpaid, plus 1% (.01) for each subsequent month or fraction of a month that the tax remains unpaid, up to a maximum penalty of 30% (.30) of the tax due.

If a return is filed more than 60 days after its due date, the minimum penalty becomes the lesser of \$100 or 100% of the tax required.

**Line 22** — Interest is computed at the rate set by the Commissioner of Taxation and Finance and is compounded daily. It is computed from the day the tax was due until the day the tax is paid. Interest is a charge for the use of state money and may not be waived. If you require assistance in the computation of interest, call the Business Tax Information Center at 1 800 972-1233. From areas outside the U.S. and outside Canada call (518) 485-6800.

## Instructions for Completing Schedules A, B, C, D and E

### Schedule A — Tax-Free Purchases (Form MT-42)

Report the monthly total of all tax-free purchases of wines, liquors, alcohol, and distilled or rectified spirits made by you in New York State. Include in this schedule all alcoholic beverages on which the New York State alcoholic beverages tax was not paid that were returned to you for credit by your customers. Do not include any alcoholic beverages that you returned to your supplier for credit, if they were originally purchased in New York State free of the New York State alcoholic beverages tax. All purchases and returns may be reported as a one-item total from each source. However, bonded warehouse withdrawals must be listed separately by warehouse name, release number, and warehouse address.

If applicable, attach a completed copy of Form MT-42 to the return (Form MT-40).

### Schedule B — Tax-Paid Purchases (Form MT-43)

Report the monthly total of all tax-paid purchases of wines, liquors, alcohol, and distilled or rectified spirits made by you in New York State. Include all alcoholic beverages on which the New York State alcoholic beverages tax was paid that were returned to you for credit by your customers. Do not include any alcoholic beverages on which the New York State alcoholic beverages tax was paid that you returned to your supplier for credit, if they were originally purchased in New York State. All purchases and returns may be reported as a one-item total from each source.

If applicable, attach a completed copy of Form MT-43 to the return (Form MT-40).

### Schedule C — Out-of-State Sales (Form MT-44)

Report all tax-free sales of wines, liquors, alcohol, and distilled or rectified spirits to customers outside New York State. **File in duplicate.**

In order to sell the alcoholic beverages tax-free to a purchaser outside New York State, alcoholic beverages must be transferred to the purchaser at a point outside New York State. If a purchaser outside New York State (or his or her agent) takes possession of the alcoholic beverages within New York State, a taxable sale has taken place. The alcoholic beverages tax is due on that sale and is not refundable to you.

You must file a separate schedule for each state or province into which the alcoholic beverages were sold for purposes of resale or consumption outside of New York State.

If applicable, attach two completed copies of Form MT-44 (for each such state) to the return (Form MT-40).

### Schedule D — Tax-Free Sales and Use (Form MT-45)

Report all tax-free sales of alcoholic beverages imported by you from a foreign country and sold by you in the original package of importation to customers inside New York State. Include any sales on which New York State does not have the authority to impose tax. Include any sales to customers who have obtained written permission from the New York State Tax Department to purchase alcoholic beverages free of New York State alcoholic beverages tax. Include any sales of liquors and wines made by you to other wineries or distillers. Include any sales of alcoholic beverages from a point outside New York State direct to a customer's premises in this state (whereby the customer must be a registered distributor and is liable for payment of the alcoholic beverages tax).

If applicable, attach a completed copy of Form MT-45 to the return (Form MT-40).

### Schedule E — New York City Tax (Form MT-46)

Noncommercial importers are not required to complete Schedule E.

Complete this schedule if you are engaged in the sale or **commercial** use of liquors containing over 24% alcohol by volume in New York City. Complete this schedule if you are selling liquors containing over 24% alcohol by volume to purchasers whose licensed premises are in New York City. Report the monthly total of all tax-paid purchases on which the New York City alcoholic beverages tax was paid. Report the monthly total of sales outside New York City. Report the monthly sales within New York City without the New York City alcoholic beverages tax. All purchases and sales may be reported as a one-item total from each source.

If applicable, attach a completed copy of Form MT-46 to the return (Form MT-40).

### Payment and mailing addresses

Make your check or money order payable to: **Commissioner of Taxation and Finance**. On your check or money order, write **Form MT-40**, your identification number, and the period that you are reporting.

Attach your remittance to the return and mail to:

**NYS ALCOHOLIC BEVERAGES TAX — PROCESSING**  
**PO BOX 22025**  
**ALBANY NY 12201-2025**

### Private delivery services

If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to file your return and pay tax. However, if, at a later date, you need to establish the date you filed your return or paid your tax, you cannot use the date recorded by a private delivery service **unless** you used a delivery service that has been designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance. (Currently designated delivery services are listed in Publication 55, *Designated Private Delivery Services*. See *Need help?* on Form MT-40 for information on ordering forms and publications.) If you have used a designated private delivery service and need to establish the date you filed your return, contact that private delivery service for instructions on how to obtain written proof of the date your return was given to the delivery service for delivery. If you use **any** private delivery service, whether it is a designated service or not, address your return to:

**NYS TAX DEPARTMENT**  
**MISCELLANEOUS TAX INSOURCING UNIT**  
**W A HARRIMAN CAMPUS**  
**ALBANY NY 12227**