



Instructions for Form MT-50-SA Special Annual Beer Tax Return for Calendar Year 2012 (and Similar Fermented Malt Beverages) and Schedules C (Form MT-51) and D (Form MT-52)

General information

The special return is necessary in order to determine the brewer's exemption for 2012. On March 28, 2012, the New York State Supreme Court, in *Shelton v. NYS Liquor Authority & NYS Department of Taxation and Finance*, issued an order that declared certain provisions of the Alcoholic Beverage Control Law and Tax Law unconstitutional and of no force and effect. As a result of this decision, distributors may not claim the exemption for sales completed or uses made after March 27, 2012.

Who must file Form MT-50-SA

Distributors who have elected to file on an annual basis must complete Form MT-50-SA and pay the alcoholic beverages tax due on beer for calendar year 2012.

Distributors may elect to file on a calendar-year basis, provided certain qualifications are maintained. This election may be made at any time during the year. To qualify, a person must be licensed as a beer distributor solely because they are engaged in the production of beer and be licensed with the State Liquor Authority (SLA) as either a microbrewery or as a restaurant brewer. To qualify as a *microbrewery*, less than 60,000 barrels (1,860,000 gallons) of beer per year may be produced. A barrel of beer equals 31 gallons for computation purposes. Prior to filing as an annual filer, a distributor must request annual filing status from the Tax Department by filing Form MT-38, *Application for Annual Filing Status for Certain Beer and Wine Manufacturers*, together with a copy of their current SLA microbrewery or restaurant brewer's license.

The distributor must notify the Tax Department if they no longer meet the necessary qualifications for annual filing status. Under these circumstances, the distributor must file an abbreviated annual return based on the period ending with the month the qualifications were no longer met. Thereafter, the distributor must file monthly returns for the remainder of the calendar year. To reapply for annual status in a subsequent year, the distributor 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. Mail the letter to:

**NYS TAX DEPARTMENT
ABT RETURNS PROCESSING UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227**

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

When to file Form MT-50-SA

A distributor must file Form MT-50-SA on or before January 20, 2013, even if no tax is due.

Definitions

Beer includes all alcoholic beer, lager beer, ale, porter, and stout, and all other fermented beverages of any name or description manufactured from malt, wholly or in part, or from any substitute containing one-half of 1%, or more, of alcohol by volume.

Distributor as used with respect to beer is any person who imports (or causes to be imported) into New York State, beer for sale or for any commercial purpose; any purchaser of warehouse receipts for beer stored in a warehouse located in New York State who causes the removal of such beer from the warehouse; and any person who produces, brews, or manufactures, within New York State, beer that is offered for sale.

Person is an individual, copartnership, limited liability company, society, association, corporation, joint stock company, or any combination of individuals. Person also includes an executor, administrator, receiver, trustee, or other fiduciary.

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.

Taxpayer identification

Change of business information – Enter your legal name and complete mailing address if they are not preprinted on the form. If the printed information needs to be changed, make corrections on the form **and either** select the option to change your address on our Web site (see *Need help?*) or submit Form DTF-95, *Business Tax Account Update*. If only your address needs to be changed, you can submit Form DTF-96, *Report of Address Change for Business Tax Accounts*, instead of Form DTF-95. You can get these forms from our Web site or by phone; or call the Miscellaneous Tax Information Center for assistance (see *Need help?*).

Distributor: Enter your business telephone number, beer tax registration number, federal employer identification number (EIN) or social security number (SSN), and SLA license number.

No business this period – Mark an **X** in this box if you did not manufacture beer during the period being reported on this return. Sign, date, and mail your return to the address shown under *Where to file*.

Cancel registration – Mark an **X** in this box if you are filing a final return and requesting that your registration be canceled. Complete this return for your operations during the period and send it to the address shown under *Where to file*.

Amended return – Mark an **X** in this box if this return amends a previous Form MT-50-SA, *Special Annual Beer Tax Return for Calendar Year 2012*. The amended return should indicate the correct figures for that period – **not** the difference between the amount previously reported and the new figures. A full explanation of the changes must accompany the amended return.

Rounding to whole gallons

The tax on beer is calculated on the basis of whole gallons.

Complete and accurate records must be maintained for the actual volume of beer sold, purchased, and manufactured, whether the amounts are whole or partial gallons. However, each **total** must be rounded to whole gallons for tax purposes.

A quantity of less than one-half gallon (0.5) should be rounded down to the nearest whole gallon. A quantity of one-half gallon or more should be rounded up to the nearest whole gallon.

Line instructions

Line 8 – Enter the number of gallons deducted for loss and waste on the premises. This deduction must be fully explained on a separate sheet and is subject to approval.

Line 14 – For sales and uses prior to March 28, 2012, a distributor whose principal executive office is located within New York State is exempt from the New York State tax on the first 200,000 barrels (6,200,000 gallons) of beer brewed in New York State and sold or used in New York State. A barrel of beer equals 31 gallons for computation purposes.

Enter the total number of exempt gallons for sales completed or uses made in New York State from January 1, 2012, through March 27, 2012. The total gallons exempt from the New York State tax cannot exceed 6,200,000 gallons and does not include any beer sold or used on or after March 28, 2012.

Line 16 – Enter in the *New York State* column the net taxable gallons amount shown on line 15.

Enter an amount in the *New York City* column only if you sold beer in New York City or sold beer to a purchaser whose licensed premises are located in New York City. If you are a distributor, enter the number of gallons from Form MT-53-SA, *Schedule E for Calendar Year 2012 - New York City*, line 8.

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Line 18 – Compute the amount of New York State and New York City tax due. Multiply the amount on line 16 by the rate per gallon shown on line 17 and enter the result(s).

Line 19 – Enter the total amount of any adjustments from prior returns. Enter negative amounts using a minus sign (-). Deduct any overpayment or add any underpayment from previous returns. Include amounts from any debit or credit memoranda sent to you from the New York State Tax Department. Attach a complete explanation.

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

Line 20 – If line 19 is a positive amount, **add** lines 18 and 19 within the appropriate column. If line 19 is a negative amount, **subtract** line 19 from line 18 within the appropriate column. Add the amounts from the *New York State* and *New York City* columns and enter the result in the *Total* column. This is the net tax due.

Lines 21 and 22 – Compute the appropriate penalty and interest amounts, if applicable, and add the amounts from the *New York State* and *New York City* columns and enter the result in the *Total* column.

Line 21 – Penalty is imposed at the rate of 10% (0.1) 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% (0.3) 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 to be paid.

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.

Note: You may compute your penalty and interest by accessing our Web site and clicking on *Online Services*, or you may call and we will compute the penalty and interest for you (see *Need help?* below).

Line 24 – Fee for payments returned by banks – The law allows the Tax Department to charge a \$50 fee when a check, money order, or electronic payment is returned by a bank for nonpayment. However, if an electronic payment is returned as a result of an error by the bank or the department, the department won't charge the fee. If your payment is returned, we will send a separate bill for \$50 for each return or other tax document associated with the returned payment.

Instructions for Schedules C and D

Schedule C – Out-of-State Sales (Form MT-51)

Report all tax-free sales of beer made to customers outside New York State. Use a separate schedule for each state.

To sell beer tax free to an out-of-state purchaser, possession of the beer must be transferred to the purchaser at a point outside New York State. If an out-of-state purchaser (or his or her agent) takes possession of beer 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.

If applicable, attach **two** completed copies of Form MT-51 to Form MT-50-SA.

Schedule D – Tax-Free Sales (Form MT-52)

Report any sales of beer 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 beer free of New York State alcoholic beverages tax. Include any sales of beer made by you to other distributors.

If applicable, attach a completed copy of Form MT-52 to Form MT-50-SA.

Where to file

Attach your remittance to the return and mail to:

**NYS TAX DEPARTMENT
ABT 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 mail in your form and tax payment. However, if, at a later date, you need to establish the date you filed 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?* below for information on obtaining forms and publications.) If you have used a designated private delivery service and need to establish the date you filed your form, contact that private delivery service for instructions on how to obtain written proof of the date your form was given to the delivery service for delivery. If you use **any** private delivery service, whether it is a designated service or not, send the forms covered by these instructions to: NYS Tax Department, Misc Tax Insourcing Unit, W A Harriman Campus, Albany NY 12227.

Need help?



Visit our Web site at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features



Telephone assistance

Miscellaneous Tax Information Center: (518) 457-5735

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

Privacy notification – The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.