

DESCRIPTION OF THE OBJECTION

DEPARTMENT OF TAXATION AND FINANCE

This rule was previously proposed as a consensus rule and published in the *State Register* on October 24, 2007, and identified as TAF-43-07-00002-P. However, a Notice of Withdrawal was published in the *State Register* on April 2, 2008, because an objection was received from Southern Wine and Spirits (Southern).

Southern expressed concern that the rule allowing certain farm wineries, micro-wineries, and out-of-state direct wine shippers to file tax returns annually rather than monthly would diminish the state's ability to collect taxes, resulting in a potential loss of tax revenue. Southern indicated its belief that the rule would result in "[f]urther erosion of regulations that ensure tight controls of this industry" and that the low volume of wine shipped into New York State reported by out-of-state direct wine shippers is due to under reporting. In Southern's view, the rule provided an "[u]nfair competitive advantage to one sector in the industry at the expense of larger distributors."

The Department disagrees with these objections. This rule change was originally prompted by correspondence received from a small out-of-state winery that was filing monthly alcoholic beverage tax returns to pay a minimal amount of tax. Representatives from Wine America, The Wine Institute, and the New York State Wine and Grape Foundation reviewed and fully support the draft proposal. In addition, the amount of tax owed by most of the New York State farm and micro wineries as well as the out-of-state direct wine shippers is minimal. Accordingly, there is no need to continue to require monthly filing for these small wineries. It should also be noted that similar amendments were made in 2000 to allow distributors whose activities relate to the production of beer and are registered with the State Liquor Authority as micro-brewers or restaurant breweries to file annual alcoholic beverage tax returns.