

REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, section 171, subdivision First, and sections 429(1) and 436 (not subdivided). Section 171, subdivision First of the Tax Law provides for the Commissioner of Taxation and Finance to make reasonable rules and regulations, which are consistent with the law, that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. Section 436 of the Tax Law provides for the authority provided by section 171 to be exercisable specifically with respect to the alcoholic beverage tax imposed by Article 18 of the Tax Law. Section 429(1) of the Tax Law, while providing generally for monthly alcoholic beverage tax returns, provides that the Commissioner may require tax returns to be made at such times and covering such periods as is deemed necessary in order to insure the payment of the tax.

2. Legislative objectives: The rule is being proposed pursuant to this authority to allow returns to be filed by certain filers for periods and upon such dates other than those prescribed in the Tax Law.

3. Needs and benefits: The rule amends section 60.1(a) of the Alcoholic Beverage Tax Regulations to allow certain New York State farm wineries, micro-wineries, and out-of-state direct wine shippers to apply to file annual alcoholic beverage tax returns rather than monthly returns as currently required. In addition, the rule reflects that out-of-state direct wine shippers are not required to report certain inventory information on their alcoholic beverage tax returns, which conforms to current department policy. Records show that the tax liability of these wine distributors is minimal; annual filing would reduce the burden placed upon these filers.

4. Costs:

(a) Costs to regulated persons: The regulated parties affected by this rule are approximately 750 out-of-state direct wine shippers and 185 licensed New York State farm wineries who are currently filing Form

MT-40, "Return of Tax on Wines, Liquors, Alcohol, and Distilled or Rectified Spirits," each month. The regulated parties may elect to file an annual wine tax return. Form MT-40 will be modified to accommodate both monthly and annual filing. The administrative cost and burden of tax return filing will be reduced. However, to make the election to file an annual return, the regulated party will need to file Form MT-38, "Application For Annual Beer Tax Return Filing Status." Form MT-38 is a half-page form, currently used by certain beer distributors to elect to file annual beer tax returns. Form MT-38 will be modified to accommodate certain farm wineries, micro-wineries, and out-of-state direct wine shippers. The cost to the regulated parties choosing to file annually to fill out this application form is miniscule. Overall, there is no measurable cost impact resulting from adopting this rule, which will benefit the regulated parties.

(b) Costs to the State and its local governments including this agency: It is estimated that implementation of this regulation will cause an estimated minimal State revenue loss, based on a one time spin-down in revenues, of approximately \$45,000 in State fiscal year 2009-2010. It is further estimated that the implementation of this regulation will cause an estimated minimal State revenue loss of less than \$3,500 annually. It is estimated that annual, rather than monthly, processing of these returns should result in a slight reduction of this agency's administrative costs. This rule will have no cost in terms of revenue impact on local governments.

(c) Information and methodology: The estimated State fiscal year 2009-2010 State revenue loss is attributable to a one time spin-down in revenues as collections associated with alcoholic beverage tax (ABT) liabilities for certain New York State farm wineries, micro-wineries, and out-of-state direct wine shippers for the January and February 2009 monthly liability periods will be shifted from State fiscal year 2009-2010 under current regulations to State fiscal year 2010-2011 under the proposed regulations. The assumption for this estimate is that all eligible licensed New York State farm wineries, micro-wineries, and out-of-state direct wine

shippers will choose the annual filing option. This is a one time spin-down as each subsequent fiscal year will receive a full 12 months of collections.

In addition, the estimated \$3,500 annual State revenue loss is attributable to a minimal “cash flow” loss (i.e. interest) as ABT revenues which would have come in monthly under current rules will be delayed until January of the subsequent year under the rule. The estimate uses average quarterly collections for the 2007 calendar year for New York State farm wineries, micro-wineries, and out-of-state direct wine shippers and estimates the State revenue foregone in delaying the tax receipts. A two-month Jumbo CD with an annualized interest rate of 1.5% was used to project the estimated investment revenue lost to the State due to the delay in access to the tax receipts. It is projected that similar minimal “cash flow” losses (i.e. interest) will continue in subsequent years as ABT revenues are received on an annual basis rather than on a monthly basis. Estimates of forgone future interest will be based on market interest rates at the time.

These conclusions are based upon the information and methodology discussed above and an analysis of the rule from the Department’s Taxpayer Guidance Division, Office of Tax Policy Analysis, Transaction and Transfer Tax Audit Bureau, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: This rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: The rule imposes no reporting requirements, forms or other paperwork upon regulated parties beyond those required by statute. The instructions for Form MT-40, “Return of Tax on Wines, Liquors, Alcohol, and Distilled or Rectified Spirits,” currently provide special instructions for out-of-state direct wine shippers. It is noted that this rule will reduce the number of returns required to be filed by the affected parties who apply and are allowed to file annual returns and, in turn, processed by the Department.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

8. Alternatives: The intention of the Department is to allow the option of annual filing for affected parties which will benefit both the affected parties and the Department. An alternative would be to offer quarterly filing, which would not be as beneficial to the affected parties or the Department.

9. Federal standards: The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

10. Compliance schedule: No time is needed in order for regulated parties to comply with this rule nor does the rule impose any new compliance requirements. The rule will take effect on the date that the Notice of Adoption is published in the *State Register* and affected parties will be allowed to make the election to file annual ABT returns for tax years beginning on or after January 1, 2009. Once the rule has been adopted, the department intends to issue a technical memorandum explaining the changes to affected parties, along with the revised application for annual filing, Form MT-38.