

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in subdivision First of section 171, subdivision (1) of section 429, and section 436 (not subdivided) of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendments to the Alcoholic Beverage Tax Regulations of the Department of Taxation and Finance, as published in Subchapter H of Chapter 1 of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1. Paragraph 1 of subdivision (a) of section 60.1 of such regulations is amended to read as follows:

- (a) (1) Except as provided in paragraphs (2) [and], (3), and (4) of this subdivision, every distributor must, on or before the 20th day of each month, file with the Department of Taxation and Finance a monthly tax return, for the preceding month, on a form or forms prescribed by the department for such purpose, even though no tax may be payable. [In] Except for a distributor as defined in clause (“a”) of subparagraph (i) of paragraph (4) of this subdivision, in addition to any other required information, such return must show, the number of gallons of beers or wines (or fractional part thereof) or liters of liquors (or fractional part thereof) that are:
- (i) on hand at the beginning of the preceding month;
 - (ii) manufactured or purchased during the preceding month;
 - (iii) on hand at the end of the preceding month; and
 - (iv) sold or used in this State during the preceding month.

Such return must also include the number of gallons of beers or wines or liters of liquors in transit during the return period and the extent of the distributor's other receipts and distributions of alcoholic beverages in New York State during the return period. For a distributor as defined in clause ("a") of subparagraph (i) of paragraph (4) of this subdivision, in addition to any other required information, such return must show the total number of gallons of wines (or fractional part thereof) that are sold directly to New York State residents for such residents' personal use during the preceding month. The return must be prepared in accordance with the instructions provided by the department and must be accompanied by all supporting schedules.

Section 2. A new paragraph 4 is added to subdivision (a) of section 60.1 of such regulations to read as follows:

(4) (i) A distributor that:

("a")("1") is an out-of-state winery and is required to register as a distributor solely because such person ships its wine directly to any New York State resident for such resident's personal use; and

("2") is licensed by the State Liquor Authority of New York State as a direct shipper, pursuant to section 79-c of the Alcoholic Beverage Control Law; or

("b") is licensed by the State Liquor Authority of New York State as a farm winery, pursuant to section 76-a of the Alcoholic Beverage Control Law, as a special farm winery pursuant to section 76-d of the Alcoholic Beverage Control Law, or as a micro-winery pursuant to section 76-f of the Alcoholic Beverage Control Law;

may apply to the department to file an annual tax return in lieu of the monthly returns required by paragraph (1) of this subdivision. Such annual return shall relate to the distributor's activities during the calendar year and shall be due on or before January 20th of the succeeding calendar year. Such return must show the information required in paragraph (1) of this subdivision, except that "month" shall be read as "year," and must be

accompanied by proof of such distributor's continuing license as a direct shipper, farm winery, special farm winery or micro-winery.

(ii)(“a”) If a distributor meeting the requirements of subparagraph (i) of this paragraph (a “qualifying distributor”) at any time during the period to be covered by an annual return ceases to be licensed by the State Liquor Authority, such distributor must file a return reflecting the distributor's activities from January 1st of such annual period through the end of the month during which the distributor ceased to meet the qualifications of subparagraph (i) of this paragraph. Such return must be filed on or before the 20th day of the month following the month during which the distributor ceased to meet the requirements of subparagraph (i) of this paragraph, and any tax due must be paid with filing of such return.

(“b”) If a distributor meeting the requirements of clause (“b”) of subparagraph (i) of this paragraph at any time during the period to be covered by an annual return becomes reclassified with the State Liquor Authority as a winery other than a farm winery, a special farm winery, or a micro-winery, such distributor must immediately begin filing monthly tax returns, as described in paragraph (1) of this subdivision.

(iii) If it becomes necessary for a qualifying distributor to begin filing monthly returns during an annual period, pursuant to the provisions of clause (“b”) of subparagraph (ii) of this paragraph, such distributor must also file a return reflecting the distributor's activities from January 1st of such annual period through the end of the month during which the distributor ceased to meet the qualifications of subparagraph (i) of this paragraph. Such return must be filed on or before the 20th day of the month following the month during which the distributor ceased to meet the requirements of such subparagraph (i) of this paragraph, and any tax due must be paid with filing of such return.

(iv) If it becomes necessary for a qualifying distributor to begin filing monthly returns during an annual period, pursuant to the provisions of clause (“b”) of subparagraph (ii) of this paragraph, such distributor may apply to the department to file on an annual basis for the next or any subsequent calendar year if such distributor

anticipates that it will again meet the requirements of clause (“b”) of subparagraph (i) of this paragraph. Such application must include an explanation of why the distributor was required to begin filing monthly returns during the previous annual period and why the distributor does not expect such circumstances to re-occur in the upcoming annual period.

Dated: Albany, New York
January 30, 2009

Robert L. Megna
Commissioner of Taxation and Finance