

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. The rule also eliminates an unnecessarily specific reference to annual production by farm breweries and eliminates an obsolete citation to the Alcoholic Beverage Control Law.

3. Needs and benefits: The rule amends section 60.1(a) of the Alcoholic Beverage Tax Regulations to allow entities licensed by the State Liquor Authority of New York State as a farm distillery, pursuant to section 61 of the Alcoholic Beverage Control Law, to apply to file annual alcoholic beverage tax returns rather than monthly returns as currently required. Records show that the tax liability of these farm distilleries 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 farm distilleries that 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 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 Filing Status for Certain Beer and Wine Manufacturers.” Form MT-38 is a half-page form, currently used by certain beer and wine distributors to elect to file annual tax returns. Form MT-38 will be modified to accommodate certain farm distilleries. 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. Because the returns that may be filed annually instead of monthly will be filed in the same fiscal year in which the monthly returns would have been filed, there will be no fiscal impact attributable to filing in a different fiscal year. The Department may experience a minimal cost from a loss in the use of the money. It is estimated that fewer than 50 farm distilleries will be eligible to remit tax annually rather than monthly, and eligible distilleries have such small liability and interest rates are so low, that the Department believes the loss would be insignificant.

Additionally, 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: This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department’s Taxpayer Guidance Division, Office of Counsel, Office

of Tax Policy Analysis Bureau of Tax and Fiscal Studies, 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. 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, reduce the number of returns 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, 2015.