



Instructions for Form MT-40

MT-40-I
(9/09)**Return of Tax on Wines, Liquors, Alcohol, and Distilled or Rectified Spirits; and Schedules A (Form MT-42), B (Form MT-43), C (Form MT-44), D (Form MT-45), and E (Form MT-46)**

Who must file this return

Distributors and noncommercial importers must complete this return and pay the alcoholic beverages tax due on wines (excluding cider), liquors, alcohol, and distilled or rectified spirits.

Distributors must file Form MT-40 for each month, even if no tax is due. However, certain wine distributors may elect to file on an annual basis. See Annual filing option, below. Noncommercial importers must file Form MT-40 only for those months in which they imported wines, liquors, alcohol, and distilled or rectified spirits into New York State.

Do **not** file Form MT-40 to compute the alcoholic beverages tax on cider. File Form MT-60, *Cider Tax Return*, for cider containing more than 3.2% alcohol by volume.

Forms that may be needed to complete Form MT-40:

Form number	Form name
Form MT-41	<i>Beverage Inventories and Purchases to be used by Distillers, Rectifiers, Blenders, and/or Fortifiers of Wine or Liquor</i>
Form MT-42	<i>Schedule A - Tax-Free Purchases</i>
Form MT-43	<i>Schedule B - Tax-Paid Purchases</i>
Form MT-44	<i>Schedule C - Out-of-State Sales</i>
Form MT-45	<i>Schedule D - Tax-Free Sales and Use</i>
Form MT-46	<i>Schedule E - New York City Tax</i>

When to file Form MT-40

For monthly filers, Form MT-40 is due on or before the 20th day of the following month.

Annual filing option

You may elect to file Form MT-40 on an annual basis if you are a registered wine distributor who is:

- licensed with the New York State Liquor Authority (SLA) as a farm winery pursuant to Alcoholic Beverage Control (ABC) Law section 76-a, as a special farm winery pursuant to ABC Law section 76-d, or as a micro-winery pursuant to ABC Law section 76-f; or
- an out-of-state winery registered as a distributor solely to ship your wine directly to New York State residents for their personal use, and licensed with the SLA as a direct shipper, pursuant to ABC Law section 79-c.

You may make this election at any time during the calendar year by filing Form MT-38, *Application for Annual Filing Status for Certain Beer and Wine Manufacturers*, with a copy of your current SLA license and returning it to the address shown on that form.

When you apply for annual filing status, you must continue to file monthly returns until the Tax Department notifies you that your request to file annually has been received and approved. Your first annual filing will cover the period beginning with the month following the month of approval through the end of the calendar year.

You must notify the Tax Department if you no longer meet one of the requirements for annual filing. Under these circumstances, you must file an abbreviated annual return based on the period ending with the month the requirement was no longer met. Thereafter, you must file monthly returns for the remainder of the calendar year. To reapply for annual filing status in a subsequent year, send a letter to the Tax Department containing 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 filer status, you must continue to file monthly returns until the Tax Department notifies you that your request has been received and approved.

The annual return is due on or before the 20th day of the following January.

Definitions

Alcohol includes ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or by whatever process produced.

An *out-of-state direct wine shipper (DWS)* is any out-of-state wine manufacturer licensed by the SLA as a *direct shipper*, and licensed by the New York State Tax Department for sales tax (*Certificate of Authority*) and as a distributor of alcoholic beverages. For additional information, see TSB-M-05(6)M, (9)S, *Tax information regarding direct wine shipments into New York State by out-of-state wineries*.

A *distributor of liquors* is any person who imports (or causes to be imported) into New York State liquors for sale or use in New York State; any purchaser of warehouse receipts for liquors stored in a warehouse located in New York State who causes the removal of such liquors from the warehouse; and any person who produces, brews, or manufactures liquors offered for sale within New York State.

A *distributor of liquors* also includes any person who sells or imports (or causes to be imported) into New York City (from any location) liquor over 24% alcohol by volume, for sale or commercial use. (Sales in New York City include sales to purchasers whose licensed premises are located within New York City, and sales for delivery to purchasers located within the city.)

A *distributor of liquors* also includes any individual who will import more than 360 liters of liquors for personal use and consumption during a one-year period.

A *distributor of wines* is any person who imports (or causes to be imported) into New York State wine for sale or for any commercial purposes; any purchaser of warehouse receipts for wine stored in a warehouse located in New York State who causes the removal of such wine from the warehouse; and any person who produces, brews, or manufactures wine offered for sale within New York State.

Liquors include distilled or rectified spirits, alcohol, brandy, cordials (whether the base is wine or liquor), whiskey, rum, gin, and all other distilled beverages containing alcohol, including all dilutions and mixtures of one or more of the foregoing, and also any alcoholic liquors which would be wines if the alcoholic content were not more than 24% by volume.

A *noncommercial importer of wines* is any person (other than a distributor) who imports (or causes to be imported) into New York State wines that will **not** be offered for sale or used for any commercial purpose. However, persons purchasing wine outside New York State during a journey and bringing such wine back into New York State in the quantities and under the circumstances specified as exempt in Tax Law section 424(4) are not deemed to be noncommercial importers, and thus will not have to file this return. For information on the section 424(4) exemption, see Publication 570, *Information on the Alcoholic Beverages Tax*.

Note: The term *noncommercial importer* does not apply to **liquors**.

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.

Sale means any transfer, exchange, or barter, in any manner or by any means whatsoever. Thus, in addition to cash and credit sales, the giving of alcoholic beverages as samples, prizes, or gifts, and the exchanging of alcoholic beverages for any consideration other than money, are also considered sales. However, sales of warehouse receipts given upon the storage of alcoholic beverages are not considered sales of those beverages.

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.

Wines include wine (both still and sparkling and when fortified by the addition of alcohol or spirits), fruit juice containing one-half of 1% or more alcohol by volume, and all other beverages containing alcohol manufactured or produced by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar, provided they contain not more than 24% of alcohol by volume.

Note: For purposes of this return, wines do **not** include cider.

Tax period and taxpayer identification

Monthly filers: Enter the month and year for the period covered by this return.

Annual filers: Enter the year covered by this return.

Abbreviated annual filers: Enter the period covered by this return (for example, March through December) and the year.

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 at www.nystax.gov, 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, by fax, or by phone; or call the Miscellaneous Tax Information Center for assistance (see *Need help?*).

If you are a distributor, enter your business telephone number, liquor tax registration number, federal employer identification number (EIN) or social security number, and SLA license number.

If you are a noncommercial importer, write **N/A** in both the *Liquor tax registration number* box and the *SLA license number* box, and enter your social security number.

In the *Nature of business activity* box, mark an **X** in the appropriate box(es). Direct wine shippers (DWS), farm wineries, special farm wineries, and micro-wineries must also mark the *Manufacturer* box.

Mark an **X** in the Yes or No box to indicate whether or not you use or sell, within New York City or to purchasers whose licensed premises are within New York City, liquor with more than 24% alcohol by volume. If Yes, complete Form MT-46 and lines 18 through 20 of Form MT-40.

No business this period — Mark an **X** in the box if, during the filing period reported on this return, you did not manufacture, sell, or import (or cause to be imported) into New York State, any wines, liquors, alcohol, or distilled or rectified spirits. Sign your return and mail it to the address under *Payment and mailing addresses*.

Cancel registration — Mark an **X** in the box if you are filing a final return and requesting that your registration be canceled. Complete this return for your operations during the filing period and mail it to the address under *Payment and mailing addresses*.

Amended return — Mark an **X** in the box if this return amends a previous return. Enter the filing period covered by the amended return in the space provided. The amended return should indicate the correct figures for that filing period — **not** the difference between the amount previously reported and the new figures. A full explanation of the changes must accompany the amended return.

Abbreviated annual return — Mark an **X** in the box if you have been approved to file on an annual basis and are filing an annual return for a period of less than the full calendar year.

Rate

Effective July 16, 1989, the New York State alcoholic beverages tax rate on liquors containing not more than 2% alcohol by volume is \$0.01 per liter.

Effective June 1, 1990:

- The New York State alcoholic beverages tax rate on liquors containing more than 2% but not more than 24% alcohol by volume is \$0.67 per liter.
- The New York State alcoholic beverages tax rate on liquors containing more than 24% alcohol by volume is \$1.70 per liter.

Effective May 1, 2009, the New York State alcoholic beverages tax rate on still wines, natural sparkling wines, and artificially carbonated sparkling wines increased \$0.1107 (from \$0.1893 to \$0.30) per gallon.

Computation of the alcoholic beverages tax

The tax on liquors is calculated on whole liters. The tax on wines is calculated on whole gallons.

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

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

Conversion chart — You may use the following chart to convert liters to gallons when you calculate your excise tax liability.

3.785 liters = 1 gallon	0.757 liter = 1 fifth
1.8925 liters = 1 half gallon	0.473 liter = 1 pint
0.946 liter = 1 quart	0.2365 liter = 1 half pint

Line instructions

Out-of-state direct wine shippers — You are not required to complete lines 1 through 11; lines 18 through 20; or the New York City column for lines 21 through 24. Accordingly, you are not required to complete any of the corresponding schedules (Forms MT-41 through MT-46).

On Form MT-40, line 12, enter the net quantity taxable in the appropriate wines columns D, E, and F for the amount of wines shipped into New York State and delivered directly to New York State residents during the filing period covered by this return. Multiply the amounts in the columns by the alcoholic beverages tax rate and complete applicable lines down to and including line 25. Complete all items in the certification section including your signature and the date.

Note: A wine manufacturer that already holds a license as a *distributor of alcoholic beverages* may also get a *direct shipper's license* from the SLA so that it can make direct shipments of wine to New York State consumers from its out-of-state location(s). Such a manufacturer must continue to complete all lines on Form MT-40 and all schedules, as applicable. This manufacturer must also include on Form MT-40, line 12, the amount of wine shipped directly to New York State consumers from its out-of-state location(s).

Note: New York State wineries and farm wineries **must complete** all applicable schedules and lines on Form MT-40.

Distillers, rectifiers, blenders, or fortifiers of wine or liquors — Complete and attach Form MT-41. Do not enter amounts on lines 1 through 5 on Form MT-40.

Noncommercial importers — Complete only line 2 (and Form MT-42, for name and address of seller, liters or gallons purchased during the month, and total amounts for each type of alcoholic beverage), line 4, line 6, and lines 12 through 25, if applicable.

Note: Noncommercial importers who import or cause to be imported certain alcoholic beverages into New York City, for which the city tax has not been paid, **must** enter the number of liters and compute the tax on line 18. However, noncommercial importers are not required to complete Form MT-46.

Line 1 — Enter in each column, for each type of alcoholic beverage, the amount on hand at the beginning of the filing period. Do not include alcoholic beverages held in bonded warehouses.

Line 2 — Enter the total number of liters or gallons you purchased without paying the alcoholic beverages tax (from Form MT-42).

Line 3 — Enter the total number of liters or gallons you purchased on which you paid the alcoholic beverages tax (from Form MT-43).

Line 6 — Subtract line 5 from line 4 or, if you are a distiller, rectifier, blender, or fortifier of wine or liquors, enter the amount from line 10 of Form MT-41.

Line 7 — Enter your deduction for loss and breakages on the premises. You must explain this deduction on a separate sheet. It is subject to approval by the Tax Department.

Line 8 — Enter the number of liters or gallons you purchased on which you paid the alcoholic beverages tax (from Form MT-43).

Line 9 — Enter your total sales outside New York State (from Form MT-44).

Line 10 — Enter your total tax-free sales or use inside New York State (from Form MT-45).

Line 16 — Enter the total amount of any **New York State** adjustments from prior returns. Include amounts from any debit or credit memoranda sent to you from the Tax Department. If the total adjustments from prior returns results in an overpayment of tax, enter as a negative amount using a minus sign (-). Attach a complete explanation.

Note: If you filed an amended return to report New York State changes to a prior return, you may **not** claim that adjustment on line 16.

Line 17 — If line 16 is a positive amount, **add** lines 15 and 16. If line 16 is a negative amount, **subtract** line 16 from line 15. This is the net tax due for New York State.

Line 18 — Compute the New York City tax due. Distributors must enter the number of liters from Form MT-46, line 7. Noncommercial importers must enter the number of liters imported or caused to be imported into New York City. Both must multiply the number of liters by \$0.264 and enter the result.

Line 19 — Enter the total amount of any **New York City** adjustments from prior returns. Include amounts from any debit or credit memoranda sent to you from the Tax Department. If the total adjustments from prior returns results in an overpayment of tax, enter as a negative amount using a minus sign (-). Attach a complete explanation.

Note: If you filed an amended return to report 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. If line 19 is a negative amount, **subtract** line 19 from line 18. This is the net tax due for New York City.

Line 21 — Penalty is imposed at the rate of 10% (.10) 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% (.30) 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.

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. If you require assistance in the computation of interest, call the Tax Department (see *Need help?*).

Instructions for Completing Schedules A, B, C, D and E

Schedule A — Tax-Free Purchases (Form MT-42)

Report the total of all tax-free purchases of wines, liquors, alcohol, and distilled or rectified spirits made by you in New York State during the filing period. Include in this schedule all alcoholic beverages on which the New York State alcoholic beverages tax was not paid that were returned to you for credit by your customers. Do not include any alcoholic beverages that you returned to your supplier for credit, if they were originally purchased in New York State free of the New York State alcoholic beverages tax. All purchases and returns may be reported as a one-item total from each source. However, bonded warehouse withdrawals must be listed separately by warehouse name, release number, and warehouse address.

If applicable, attach a completed copy of Form MT-42 to Form MT-40.

Schedule B — Tax-Paid Purchases (Form MT-43)

Report the total of all tax-paid purchases of wines, liquors, alcohol, and distilled or rectified spirits made by you in New York State during the filing period. Include all alcoholic beverages on which the New York State alcoholic beverages tax was paid that were returned to you for credit by your customers. Do not include any alcoholic beverages on which the New York State alcoholic beverages tax was paid that you returned to your supplier for credit, if they were originally purchased in New York State. All purchases and returns may be reported as a one-item total from each source.

If applicable, attach a completed copy of Form MT-43 to Form MT-40.

Schedule C — Out-of-State Sales (Form MT-44)

Report all tax-free sales of wines, liquors, alcohol, and distilled or rectified spirits to customers outside New York State. **File in duplicate.**

In order to sell the alcoholic beverages tax-free to a purchaser outside New York State, alcoholic beverages must be transferred to the purchaser at a point outside New York State. If a purchaser outside New York State (or his or her agent) takes possession of the alcoholic beverages 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.

You must file a separate schedule for each state or province into which the alcoholic beverages were sold for purposes of resale or consumption outside of New York State.

If applicable, attach two completed copies of Form MT-44 (for each such state or province) to Form MT-40.

Schedule D — Tax-Free Sales and Use (Form MT-45)

Report any sales 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 alcoholic beverages free of New York State alcoholic beverages tax. Include any sales of liquors and wines made by you to other wineries or distillers. Include any sales of alcoholic beverages from a point outside New York State direct to a customer's premises in this state (whereby the customer must be a registered distributor and is liable for payment of the alcoholic beverages tax).

If applicable, attach a completed copy of Form MT-45 to Form MT-40.

Schedule E — New York City Tax (Form MT-46)

Noncommercial importers are not required to complete Schedule E.

Complete this schedule if you are engaged in the sale or **commercial** use of liquors containing over 24% alcohol by volume in New York City. Complete this schedule if you are selling liquors containing over 24% alcohol by volume to purchasers whose licensed premises are in New York City. Report the total of all tax-paid purchases on which the New York City alcoholic beverages tax was paid during the filing period. Report the total of sales outside New York City during the filing period. Report the sales within New York City without the New York City alcoholic beverages tax during the filing period. All purchases and sales may be reported as a one-item total from each source.

If applicable, attach a completed copy of Form MT-46 to Form MT-40.

Payment and mailing addresses

Make your check or money order payable to: **Commissioner of Taxation and Finance**. On your check or money order, write **Form MT-40**, your identification number, and the period that you are reporting.

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.

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.

Need help?



Internet access: www.nystax.gov
(for information, forms, and publications)



Fax-on-demand forms: Forms are available 24 hours a day, 7 days a week. 1 800 748-3676



Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.
Miscellaneous Tax Information Center: (518) 457-5735
In-state callers without free long distance: 1 800 470-4353
To order forms and publications: (518) 457-5431
In-state callers without free long distance: 1 800 462-8100



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at 1 800 634-2110. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



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.