



# Department of Taxation and Finance

## Important

The Alcoholic Beverages Tax information in this document is outdated and provided only for historical purposes.

For up-to-date information, see [Alcoholic beverages tax](#).

This TSB-M begins on page 2 below.



## **Brewer's Exemption Declared Unconstitutional**

This TSB-M explains the effect of the court's order nullifying the brewer's exemption for sales on or after March 28, 2012.

On March 28, 2012, the New York State Supreme Court, in *Shelton v. NYS Liquor Authority & NYS Department of Taxation and Finance*, issued an order that declared certain provisions of the Alcoholic Beverage Control Law and Tax Law unconstitutional and of no force and effect.

The court's order nullified section 424(6) of the Tax Law, which provided an alcoholic beverages tax exemption for the first 6.2 million gallons of beer brewed in New York and sold or used in New York in a calendar year by a distributor whose principal executive office is located in New York. As a result, the brewer's exemption is no longer applicable for sales or uses of beer in New York State on or after March 28, 2012, and distributors are subject to a tax of 14 cents per gallon on all beer sold or used in New York State, and an additional tax of 12 cents per gallon on all beer sold or used in New York City (unless another exemption applies).

### **Forms and instructions**

The Tax Department is revising forms and instructions to reflect this change.

When completing Form MT-50, *Beer Tax Return* (line 14), and Form MT-53, Schedule E, *New York City Beer and Similar Fermented Malt Beverages* (line 5), do not include any beer sold on or after March 28, 2012, in determining the brewer's exemption. If you file monthly, you may only claim the exemption for sales completed or uses made between March 1, 2012, and March 27, 2012, on your March 2012 return, filed April 20, 2012. If you file annually, you may only claim the exemption for sales completed or uses made between January 1, 2012, and March 27, 2012, on your annual return, filed January 20, 2013.

**NOTE:** A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.