

## **New Requirement for the Filing of Information Returns for Alcoholic Beverage Wholesalers**

Recently enacted legislation (Subpart G of Part V-1 of Chapter 57 of the Laws of 2009), requires that information returns be filed by certain parties, including specified alcoholic beverage wholesalers, regarding their transactions with particular businesses required to collect state and local sales tax (collectively referred to as vendors). Alcoholic beverage wholesalers required to file the information returns under the new law include every alcoholic beverage wholesaler licensed by the State Liquor Authority that has made a sale of an alcoholic beverage during the period covered by the return without collecting sales or use tax. **Sales made to an exempt organization or to another alcoholic beverage wholesaler whose license does not allow it to make retail sales of alcoholic beverages do not need to be reported on the return.**

The first information returns required under the new law are due on or before September 20, 2009, and will cover the period March 1, 2009 through August 31, 2009. The next information returns will be due on or before March 20, 2010, and will cover the period September 1, 2009 through February 28, 2010. Subsequently, annual information returns will be due on or before March 20<sup>th</sup> of each year, and will cover the period from March 1<sup>st</sup> of the previous year through February 28 (29) of the current year. The annual information returns must be filed using the procedure described in *Instructions for filing the information return* on page 3.

### **Information required to be provided on the returns**

Alcoholic beverage wholesalers who are required to file an information return under the new law must provide the following information for the period covered by the return with respect to each vendor located in New York State to whom it has made a sale without collecting sales or use tax:

- vendor's name (legal entity name);
- vendor's DBA name (if different from legal entity name);
- vendor's New York State Liquor Authority License Number (SLA#);
- total monthly sales amounts for sales of alcoholic beverages to each vendor exclusive of total amounts for deposit and returns;
- month and year of sales reported;
- vendor's phone number;\*
- vendor's address as it appears on its SLA license;\*

- vendor's mailing address;\*
- vendor's Federal Identification Number (EIN), which is the vendor's Social Security Number if vendor is a sole proprietorship;\* and
- vendor's New York State Sales Tax Certificate of Authority Number.\*

**Note:** If an alcoholic beverage wholesaler is unable to provide any of the information listed above that is marked with an asterisk (\*) on the information return required to be filed on or before September 20, 2009, the alcoholic beverage wholesaler **will not** be considered to have failed to provide information that is required on the return, as long as the other information is provided. However, for all information returns due March 20, 2010, and thereafter, the information listed above marked with an asterisk must be provided along with the information that is not marked with an asterisk, in order for the return to be considered to be properly filed.

### **Requirement to notify vendors regarding their information provided in the information returns filed by alcoholic beverage wholesalers**

The new law provides that alcoholic beverage wholesalers must give to each vendor included on the return a *statement* showing the same information reported for that vendor on the information return. The statement given to each vendor may be in a summary format but it must include the identifying information pertinent to the vendor along with the total monthly sales amounts for sales of alcoholic beverages exclusive of total amounts for deposits and returns for that vendor, during the period covered by the return. The information provided on the return, when necessary, will be used to determine the accuracy of income and sales tax returns that the vendors have filed with the Tax Department.

The statement must be given to each vendor on or before March 20<sup>th</sup> of each year. For the statement due on or before March 20, 2010, in addition to the information reported for the vendor on the information return due on or before March 20, 2010, the statement must also include the information pertaining to the vendor that was reported on the first information return that was required to be filed on or before September 20, 2009. There is no specific form for this statement. Therefore, alcoholic beverage wholesalers can use any format for the statement as long as it can be verified by the Tax Department that the statement was sent to each vendor in a proper and timely manner.

### **Penalties**

If an alcoholic beverage wholesaler fails to comply with the new law, the following penalties will apply:

- (1) If an alcoholic beverage wholesaler fails to:
  - provide any of the information as required on the information return;
  - include information on the information return that is true and correct; or

- provide to each affected vendor, on or before March 20<sup>th</sup> of each year, the statement as described above;

the alcoholic beverage wholesaler is subject to a penalty of \$500 for 10 or fewer failures and up to \$50 for each additional failure.

- (2) If an alcoholic beverage wholesaler fails to timely file an information return under the new law, in addition to the penalties as described above, a penalty of not less than \$500 but up to \$2000, will apply to each failure.

The penalties described above cannot exceed a total of \$10,000 for any filing period.

If the Tax Department determines that any failure to comply with the requirements of this new law was entirely due to reasonable cause and not to willful neglect, the penalties as described above will be waived.

### **Instructions for filing the information return**

Alcoholic beverage wholesalers must file their information returns **electronically**. To file the return and for additional information go to the Tax Department's Web site: <http://www.nystax.gov/sbc/thirdpty.htm>. You may also reach this Web site by going to [www.nystax.gov](http://www.nystax.gov).

Information regarding the actual filing of the electronic return will be available on the Tax Department's Web site by September 1, 2009. The Tax Law contains strict secrecy provisions to protect the confidentiality of tax returns and tax return information. Consequently, the Tax Department limits access to return information collected through the department's Web site to only those employees or subcontractors who need access to the information in the performance of their official duties.

### **Voluntary Disclosure and Compliance program**

The Tax Department will be using the information provided by alcoholic beverage wholesalers to determine the accuracy of income and sales tax returns filed by vendors to whom they make sales. Taxpayers, including vendors who make purchases from alcoholic beverage wholesalers, are still eligible for the Tax Department's Voluntary Disclosure and Compliance program. The goal of the program is to encourage taxpayers to voluntarily disclose and correct delinquent tax liabilities and avoid penalties. For more information on this program, go to the department's Web site [www.nystax.gov](http://www.nystax.gov) or call 1(866)763-7115.

**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.