

§ 194.94

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on by himself, form a partnership, the firm shall pay special tax to cover the business conducted by the partnership. (72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 194.94 Withdrawal of one or more partners.

When one or more partners withdraw from a partnership which has paid special tax, the remaining partner, or partners, may file with ATF a notice of succession to the partnership business within 30 days after the change in control, as provided in §194.169, and carry on the same business at the same address for the remainder of the taxable period for which special tax was paid without paying additional special tax. However, where the remaining partner, or partners, do not file such timely notice of succession, they are required to pay special tax, as provided in §194.170.

(68A Stat. 846, 72 Stat. 1347; 26 U.S.C. 7011, 5143)

[25 FR 6270, July 2, 1960, as amended by T.D. 7008, 34 FR 3664, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

Subpart H—Payment of Special Tax

§ 194.101 Special tax rates.

(a) Previous rates. Prior to January 1, 1988, the special (occupational) taxes imposed on dealers in liquors and beer were as follows:

(1) Annual (tax year) rates:

Table with 2 columns: Dealer type and Rate. Rows include Wholesale dealer in liquors (spirits, wines, beer) at \$255.00, Wholesale dealer in beer (beer only) at 123.00, Retail dealer in liquors (spirits, wines, beer) at 54.00, and Retail dealer in beer (beer only) at 24.00.

(2) Monthly (calendar month) rates:

Table with 2 columns: Dealer type and Rate. Rows include Limited retail dealer (spirits, wines, beer) at \$4.50 and Limited retail dealer (wines, beer) at 2.20.

(b) Current rates. Effective January 1, 1988, special (occupational) taxes are imposed on dealers in liquors and beer at the following rates:

Table with 2 columns: Dealer type and Rate. Rows include Wholesale dealer in liquors (spirits, wines, beer) at \$500 and Wholesale dealer in beer (beer only) at 500.

Table with 2 columns: Dealer type and Rate. Rows include Retail dealer in liquors (spirits, wines, beer) at 250 and Retail dealer in beer (beer only) at 250.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340, 1343; sec. 1905, Pub. L. 94-455, 90 Stat. 1819 (26 U.S.C. 5111, 5121))

[T.D. ATF-271, 53 FR 17552, May 17, 1988; 54 FR 11866, Mar. 22, 1989]

§ 194.102 Date special tax is due.

Special taxes shall be paid on or before July 1 of each year, or before engaging in businesses.

(72 Stat. 1346; 26 U.S.C. 5142)

§ 194.103 Computation of special tax.

(a) General. In the case of a person engaged in a business subject to special tax during the month of July, the special tax liability shall be reckoned for the entire tax year beginning July 1 and ending June 30 following. Where business is commenced subsequent to July, the liability shall be reckoned proportionately from the first day of the month in which the liability to a special tax commenced to June 30 following. For example, a person commencing business in August is liable to special tax for 11 months, or eleven-twelfths of the annual tax.

(b) Transition rule. A taxpayer who was engaged in a business on January 1, 1988, for which a special (occupational) tax was paid for a taxable period which began before January 1, 1988, and included that date, shall pay an increased special tax for the period January 1, 1988, through June 30, 1988. The increased tax shall not exceed one-half the excess (if any) of (1) the rate of special tax in effect on January 1, 1988, over (2) the rate of such tax in effect on December 31, 1987. The increased special tax shall be paid on or before April 1, 1988.

(72 Stat. 1346; 26 U.S.C. 5142)

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55843, Sept. 28, 1979; T.D. ATF-271, 53 FR 17554, May 17, 1988]

FILING RETURN AND PAYMENT OF SPECIAL TAX

§ 194.104 Time for filing return.

Every person who intends to engage in a business subject to special tax

under the provisions of this part shall, on or before the date such business is commenced, file a special tax return, Form 5630.5, with payment of tax; and every taxpayer who continues into a new tax year a business subject to special tax under the provisions of this part shall file a Form 5630.5 with tax on or before July 1 of the new tax year. A taxpayer subject to special tax for the same period at two or more locations shall file one special tax return, Form 5630.5, prepared as provided in § 194.106, with payment of tax to cover all such locations. If the return and tax are received in the mail and the U.S. postmark on the cover shows that it was deposited in the mail in the United States within the time prescribed for filing in an envelope or other appropriate wrapper which was properly addressed with postage prepaid, the return shall be considered as timely filed. If the postmark is not legible, the sender has the burden of proving the date when the postmark was made. When registered mail is used the date of registration shall be accepted as the postmark date.

(68A Stat. 732 as amended, 749 as amended (26 U.S.C. 6011, 6071); sec. 201, Pub. L. 85-859, 72 Stat. 1346 as amended (26 U.S.C. 5142))

[T.D. ATF-70, 45 FR 33979, May 21, 1980, as amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

#### § 194.104a Place for filing return.

Form 5630.5 with remittance of tax shall be filed with ATF in accordance with the instructions on the form.

[T.D. ATF-251, 52 FR 19335, May 22, 1987]

#### § 194.105 Method of payment.

Payment of special tax shall be made in cash, or by check or money order payable to "Bureau of Alcohol, Tobacco and Firearms". If a check or money order so tendered is not honored when presented for payment, the person who tendered such check or money order shall remain liable for the payment of the special tax, and for all penalties and additions, to the same extent as if the check or money order had not been tendered. In addition, unless the person who tendered the check or money order can show that such check or money order was issued in good

faith, and with reasonable cause to believe that it would be duly paid, there shall be paid as penalty an amount equal to 1 percent of the amount of the check or money order, except that if the amount of the check or money order is less than \$500, the penalty shall be \$5, or the amount of the check or money order, whichever is lesser.

(68A Stat. 777, 826; 26 U.S.C. 6311, 6657)

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

#### SPECIAL TAX RETURN, FORM 5630.5

#### § 194.106 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with AFT in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on ATF Form 5630.5 shall be provided, including:

- (1) The true name of the taxpayer.
- (2) The trade name(s) (if any) of the business(es) subject to special tax.
- (3) The employer identification number (see § 194.106a).
- (4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).
- (5) The class(es) of special tax to which the taxpayer is subject.
- (6) Ownership and control information: That is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph