

§ 24.60

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors; and

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member;

(d) *Change in location.* If there is a change in location of a taxable place of business, the proprietor shall, within 30 days after the change, file with ATF an amended special (occupational) tax return covering the new location. The proprietor shall attach the special (occupational) tax stamp or stamps for endorsement of the change in location. No new special (occupational) tax is required to be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor is required to pay a new special (occupational) tax and obtain a new special (occupational) tax stamp. (26 U.S.C. 5143, 7011)

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ASSESSMENTS

§ 24.60 General.

Where the appropriate ATF officer determines by examination of records, inventories, or otherwise that the proprietor has incurred liability for the tax on wine, distilled spirits, or special (occupational) tax, and the proprietor does not pay the tax upon notification of the liability, the tax will be assessed. (August 16, 1954, Ch. 736, 68A Stat. 767, as amended (26 U.S.C. 6201))

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[T.D. ATF-299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF-409, 64 FR 13683, Mar. 22, 1999]

§ 24.61 Assessment of tax.

When wine or spirits in bond are lost or destroyed (except wine or spirits on which the tax is not collectible by reason of the provisions of 26 U.S.C. 5008 or 26 U.S.C. 5370, as applicable) and the proprietor or other person liable for the tax on the wine or spirits fails to file a claim when required pursuant to § 24.29 or when the claim is denied, the

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tax will be assessed. In any case where wine is produced, imported, or received otherwise than as authorized by law, or where wine or spirits are removed, possessed, or knowingly used in violation of applicable law, or volatile fruit-flavor concentrate is sold, transported, or used in violation of law, the tax will be assessed. (Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended, 1323, as amended, 1332, as amended, 1335, as amended, 1381, as amended, 1387, as amended, 1392, as amended (26 U.S.C. 5001, 5008, 5043, 5061, 5370, 5391, 5512))

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§ 24.62 Notice.

If an investigation or an examination of records discloses that liability for the tax on wine or distilled spirits, or special (occupational) tax has been incurred by the proprietor, the appropriate ATF officer will notify the proprietor by letter of the basis and the amount of the proposed assessment in order to afford the proprietor an opportunity to submit a protest, with supporting evidence, within 45 days, or to request a conference with regard to the tax liability. However, if collection of the tax liability may be jeopardized by a delay, the appropriate ATF officer may take immediate jeopardy assessment action pursuant to 26 U.S.C. 6861. (Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370, 6862))

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[T.D. ATF-299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF-409, 64 FR 13683, Mar. 22, 1999]

CLAIMS

§ 24.65 Claims for wine or spirits lost or destroyed in bond.

(a) *Claim for remission of tax on spirits.* All claims for remission of tax required by this part, relating to the loss or destruction of spirits in bond, will be filed with the appropriate ATF officer within 30 days of discovery of the loss. A claim filed under this paragraph will set forth the following information:

(1) The name, registry number, and location of the distilled spirits plant which produced the spirits;

(2) The serial numbers of the containers from which the spirits were lost, the quantity lost from each, and the total quantity of spirits covered by the claim;

(3) The total amount of tax for which claim is filed;

(4) The date of the loss or destruction (or, if not known, the date of discovery);

(5) The nature and cause (if known) of the loss will be stated specifically and in sufficient detail to disclose all material facts and circumstances surrounding the loss;

(6) If lost in transit, the name of the carrier and the points between which shipped; and

(7) If lost by theft, evidence establishing that the loss did not occur as the result of negligence, connivance, collusion, or fraud on the part of the proprietor, owner, consignor, consignee, bailee or carrier, or the agents or employees of any of them.

(b) *Claim for allowance of loss on wine.* A claim for allowance of loss required by this part, relating to the loss or destruction of wine in bond, will be filed with the appropriate ATF officer. A claim for allowance of loss for wine lost in transit, by fire or other casualty, or any other extraordinary or unusual losses, including a loss by theft, will be filed immediately. Any other claim for allowance of loss will be attached to and submitted with the ATF F 5120.17, Report of Bonded Wine Premises Operations, for the reporting period in which the inventory required by §24.313 is taken or, in the case of discontinuance of the premises or change in proprietorship, to the final report filed. A claim filed under this paragraph will set forth the information required by paragraphs (a)(5) to (a)(7) of this section and, in addition, will set forth the following information:

(1) The original volume of wine which sustained the loss, the tax class, the quantity of wine lost, and the percentage of wine lost;

(2) Where the claim covers losses sustained at bonded wine premises during the tax year, the claimant shall state:

(i) The quantities of wine on hand at the beginning of the tax year, received

in bond during the tax year, and produced during the tax year;

(ii) Where the percentage of loss is calculated separately by tax class, the volume of wine by tax class; and

(iii) If effervescent wine is produced, the volume of wine produced by fermentation in bottles, by artificial carbonation, and by bulk processing; and

(3) Claims covering losses of wine during transit in bond will show the volume lost from each container, the serial number, if any, and the volume shipped.

(c) *Claim for abatement, credit or refund.* A claim for an abatement of an assessment under §24.61, or credit or refund of tax which has been paid or determined, will be filed with the appropriate ATF officer in accordance with the provisions of this paragraph and the provisions of 27 CFR part 70, subpart F. A claim filed under this paragraph with respect to spirits, wine, or volatile fruit-flavor concentrate, will set forth the applicable information required by paragraphs (a) and (b) of this section. In addition, any claim filed under this paragraph will set forth the following information:

(1) The date of the assessment for which abatement is claimed; and

(2) The name, registry number, and address of the premises where the tax was assessed (or name, address, and title of any other person who was assessed the tax, if the tax was not assessed against the proprietor).

(d) *Indemnification or recompense.* A claim filed under paragraph (a) or (b) of this section will specify whether the claimant has been or will be indemnified or recompensed for the spirits or wine lost and, if so, the amount and nature of indemnity or recompense and the actual value of the spirits or wine, less the tax.

(e) *Supporting documents.* A claim filed under paragraph (a), (b), or (c) of this section will be supported by affidavits of persons having personal knowledge of the loss or destruction. In addition, if filed for tax on wine or spirits lost in transit, the claim will be supported by a copy of the carrier's bill of lading. (Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended, 1381, as amended,

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1382, as amended (26 U.S.C. 5008, 5370, 5373))

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§ 24.66 Claims on wine returned to bond.

(a) *General.* A claim for credit or refund, or relief from liability, of tax on unmerchantable United States wine returned to bonded wine premises will be filed with the appropriate ATF officer within six months after the date of the return of the wine to bond. A single claim may not be filed under this section for a quantity on which credit or refund of tax would be in an amount less than \$25. This limitation does not apply with respect to any returned wine on which the six month period for filing a claim will expire.

(b) *Filing.* A claim filed under this section will set forth the following information:

(1) The kind, volume, and tax class of the wine;

(2) As to each tax class, the amount of tax previously paid or determined; and

(3) The date the wine was returned to bond.

(c) *Indemnification or recompense.* A claim filed under this section will specify whether the claimant has been or will be indemnified or recompensed for the wine returned to bond and if so, the amount and nature of indemnity or recompense and the actual value of the wine, less the tax. (Sec. 201., Pub. L. 85-859, 72 Stat. 1332, as amended, 1380, as amended (26 U.S.C. 5044, 5361, 5371))

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[T.D. ATF-299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF-409, 64 FR 13683, Mar. 22, 1999]

§ 24.67 Other claims.

The requirements with respect to a claim for:

(a) Remission of tax on wine withdrawn without payment of tax under the provisions of § 24.292, and lost in transit to the port of export, vessel or

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aircraft, foreign-trade zone, customs bonded warehouse, or manufacturing bonded warehouse, as applicable, are contained in 27 CFR part 252.

(b) Refund or credit of any tax imposed on wine or other liquors by 26 U.S.C. chapter 51, part I, subchapter A, on the grounds that an amount of tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that the amount was excessive, are contained in 27 CFR part 70 subpart F.

(c) Payment of an amount equal to the internal revenue tax paid or determined and customs duties paid on wines or other liquors previously withdrawn, which are lost, rendered unmarketable, or condemned by a duly authorized official as a result of

(1) A major disaster,

(2) Fire, flood, casualty, or other disaster, or

(3) Breakage, destruction, or damage (excluding theft) resulting from vandalism or malicious mischief, are found in 27 CFR part 70, subpart G.

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[T.D. ATF-299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF-376, 61 FR 31030, June 19, 1996]

§ 24.68 Insurance coverage.

The remission, abatement, refund, credit, or other relief, of taxes on wine or spirits provided for under this part will be allowed only to the extent that the claimant is not indemnified or recompensed for such tax by any valid claim of insurance or otherwise. (Sec. 201, Pub. L. 85-859, 72 Stat. 1382, as amended (26 U.S.C. 5064, 5371))

§ 24.69 Filing of claims.

(a) *Claims.* All claims filed under this part for abatement, refund, credit, or remission of tax will be filed on ATF F 5620.8 (2635). Each claim filed under this part will:

(1) Show the name, address, and title of the claimant;

(2) Be signed by the claimant or the duly authorized agent of the claimant; and

(3) Be executed under the penalties of perjury.