§ 19.43 Claims relating to spirits lost after tax determination.

Claims for abatement, credit, or refund of tax under this part, relating to losses of spirits occurring on bonded premises after tax determination but prior to physical removal from such premises, shall be prepared and filed as provided in, and contain the information called for under § 19.41(b) and be supported by documents as provided under § 19.41(c).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

§ 19.44 Execution of claims and supporting documents.

All claims filed under this part shall be filed on Form 2635 (5620.8). Claims for abatement, remission, credit, or refund shall (a) show the name, address, and capacity of the claimant, (b) be signed by the claimant or his duly authorized agent, and (c) be executed under the penalties of perjury as provided in § 19.100. Supporting documents required by this part to be submitted with a claim shall be attached to the claim and shall be deemed to be a part thereof. The regional director (compliance) may require the submission of additional evidence in support of any claim filed under this part when deemed necessary for proper action on the claim.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008); sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985; T.D. ATF–251, 52 FR 19313, May 22, 1987]

§ 19.45 Claims for credit of tax.

Claims for credit of tax, as provided in this part, may be filed after determination of the tax whether or not the tax has been paid. The claimant may not anticipate allowance of a credit or make an adjusting entry in a tax return pending action on the claim.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008); sec. 807, Pub. L. 96–39, 93 Stat. 285 (26 U.S.C. 5215))

§ 19.46 Adjustments for credited tax.

When notification of allowance of credit is received from the regional director (compliance), including notification of credit for tax on spirits exported with benefit of drawback as provided in 27 CFR part 28, the claimant shall make an adjusting entry and explanatory statement (specifically identifying the notification of allowance of credit) in the next excise tax return (or returns) to the extent necessary to exhaust the credit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended, 1336, as amended (26 U.S.C. 5008, 5062))

[T.D. ATF–198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF–219, 50 FR 51387, Dec. 17, 1985; T.D. TTB–8, 69 FR 3829, Jan. 27, 2004]

Subpart Ca—Special (Occupational) Taxes

SOURCE: T.D. ATF–271, 53 FR 17541, May 17, 1988, unless otherwise noted.

§ 19.49 Liability for special tax.

(a) *Proprietor of distilled spirits plant*—(1) *General.* Except as provided in § 19.906, every proprietor of a distilled spirits plant shall pay a special (occupational) tax at a rate specified by § 19.50. The tax shall be paid on or before the date of commencing business as a distilled spirits plant proprietor, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(2) *Transition rule.* For purposes of paragraph (a)(1) of this section, a proprietor engaged in distilled spirits plant operations on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(b) *Liquor Dealer*—(1) *General.* A proprietor of a distilled spirits plant shall be subject to or exempt from a liquor dealer's special (occupational) tax as provided in part 194 of this chapter.

(2) *Exemption for sales by a proprietor of a distilled spirits plant.* A proprietor of a distilled spirits plant is not required to pay special tax as a wholesale

or retail dealer in liquor because of sales, at the principal place of business or at the distilled spirits plant, of liquor which at the time of sale is stored at the distilled spirits plant or which had been removed and stored in a taxpaid storeroom operated in connection with the distilled spirits plant. Each proprietor of a distilled spirits plant shall have only one exemption from dealer's special tax for each distilled spirits plant. The distiller may designate, in writing to the regional director (compliance), that the principal place of business will be exempt from dealer's special tax; otherwise, the exemption will apply to the distilled spirits plant.

(c) *Each place of business taxable*—(1) *General.* A proprietor of a distilled spirits plant incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partititions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(2) *Exception for contiguous areas.* A proprietor of a distilled spirits plant does not incur additional special tax liability for sales of liquor made at a location other than on distilled spirits plant premises described on the notice of registration, Form 5110.41, if the location where such sales are made is contiguous to the distilled spirits plant premises in the manner described in paragraph (c)(1) of this section.

(26 U.S.C. 5081, 5111, 5113, 5142, 5143)

[T.D. ATF–271, 53 FR 17541, May 17, 1988, as amended by T.D. ATF–285, 54 FR 12609, Mar. 28, 1989]

§ 19.50 Rates of special tax.

(a) *General.* Title 26 U.S.C. 5081(a)(1) imposes a special tax of $1,000 per year on every proprietor of a distilled spirits plant.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5081(b) provides for a reduced rate of $500 per year with respect to any distilled spirits plant proprietor whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 19.49 relates) are less than $500,000. The ''taxable year'' to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a ''controlled group''; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. ''Controlled group'' means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words ''at least 80 percent'' shall be replaced by the words ''more than 50 percent'' in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a ''controlled group of corporations'' apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period, as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during that year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5081)