

(2) A statement that the brewer is not a member of a controlled group of brewers, or if the brewer is a member of a controlled group of brewers, a statement that the controlled group will not or is not likely to produce more than 2,000,000 barrels of beer in the calendar year for which the notice is filed.

(3) If the brewer operates more than one brewery, a statement of the locations of all the breweries and a statement of how the 60,000 barrel limitation for the reduced rate of tax will be apportioned among the breweries. If the brewer is a member of a controlled group of brewers, a statement of the names and locations of all other brewers in the group and a statement of how the 60,000 barrels limitation will be apportioned among the brewers in the group.

(c) *Perjury statement.* Each notice described in this section will be executed by the brewer under penalties of perjury as defined in § 25.11.

(Act of Aug. 16, 1954, 68A Stat. 749, as amended (26 U.S.C. 6065); sec. 201, Pub. L. 85-859, 72 Stat. 1390, as amended, 1395, as amended (26 U.S.C. 5415, 5555))

§ 25.168 Employer identification number.

The employer identification number (defined at 26 CFR 301.7701-12) of the taxpayer who has been assigned the number will be shown on each return on Form 5000.24, filed under this part. Failure of the taxpayer to include the employer identification number on Form 5000.24 may result in imposition of the penalty specified in § 70.113 of this chapter. A brewer shall apply for an employer identification number on IRS Form SS-4 as provided in §§ 25.122 and 25.123.

(Pub. L. 87-397, 75 Stat. 828, as amended (26 U.S.C. 6109, 6676))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-301, 55 FR 47605, Nov. 14, 1990]

PREPAYMENT OF TAX

§ 25.173 Brewer in default.

(a) When a remittance in payment of taxes on beer is not paid upon presentment of check or money order tendered, or when the brewer is otherwise

in default in payment of tax under § 25.164, beer may not be removed for consumption or sale or taken from the brewery for consumption or sale until the tax has been prepaid as provided in § 25.175. The brewer shall continue to prepay while in default and thereafter until the appropriate ATF officer finds the revenue will not be jeopardized by deferred payment of tax as provided in § 25.164.

(b) Any remittance made while the brewer is required to prepay under this section will be in cash or in the form of a certified, cashier's or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the law of any State, Territory, or possession of the United States, or in the form of a money order as provided in § 70.61 of this chapter (payment by check or money order), or will be made in the form of an electronic fund transfer as provided by §§ 25.164 and 25.165.

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1987, as amended by T.D. ATF-251, 52 FR 19313, May 22, 1987; T.D. ATF-301, 55 FR 47605, Nov. 14, 1990]

§ 25.174 Bond not sufficient.

When the penal sum of the brewer's bond is in less than the maximum amount, the brewer shall prepay the tax on any withdrawal which would cause the outstanding liability for tax to exceed the limits of coverage of the bond. Prepayments will be made in accordance with § 25.175.

§ 25.175 Prepayment of tax.

(a) *General.* When a brewer is required to prepay tax under § 25.173, or if the penal sum of the bond, Form 5130.22, is insufficient for deferral of payment of tax on beer to be removed for consumption or sale, or if a brewer is not entitled to defer the tax under the provisions of this subpart, the brewer shall prepay the tax before any beer is removed for consumption or sale, or taken out of the brewery for removal for consumption or sale.

(b) *Method of prepayment.* (1) Prepayment will be made by forwarding a tax return, Form 5000.24, with remittance, covering the tax on beer.

(2) If a brewer is required by § 25.165 to make payment of tax by electronic

§ 25.177

fund transfer, the brewer shall prepay the tax before any beer can be removed for consumption or sale by completing the return and by forwarding it, in accordance with the instructions on the form. At the same time, the brewer shall direct his or her bank to make remittance by EFT.

(3) For the purpose of complying with this section, the term *forwarding* means depositing in the U.S. mail, properly addressed in accordance with the instructions on the form.

(Act of Aug. 16, 1954, 68A Stat. 777, as amended (26 U.S.C. 6311); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1987, as amended by T.D. ATF-251, 52 FR 19313, May 22, 1987]

FAILURE TO PAY TAX

§ 25.177 Evasion of or failure to pay tax; failure to file a tax return.

Sections 5671, 5673, 5684, 6651, and 6656 of Title 26 United States Code provide penalties for evasion or failure to pay tax on beer or for failure to file a tax return.

(Act of Aug. 16, 1954, 68A Stat. 821, as amended, 826, as amended (26 U.S.C. 6651, 6656); sec. 201, Pub. L. 85-859, 72 Stat. 1408, 1410, as amended (26 U.S.C. 5671, 5673, 5684))

Subpart L—Removals Without Payment of Tax

TRANSFER TO ANOTHER BREWERY OF SAME OWNERSHIP

§ 25.181 Eligibility.

A brewer may remove beer without payment of tax for transfer to any other brewery of the same ownership. These removals include a removal from a brewery owned by one corporation to a brewery owned by another corporation if (a) one corporation owns the controlling interest in the other corporation, or (b) the controlling interest in each corporation is owned by the same person. Beer removed under this section may, while in transit, be re-recognized to another brewery of the same

27 CFR Ch. I (4-1-04 Edition)

ownership or be returned to the shipping brewery.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.182 Kinds of containers.

A brewer may transfer beer without payment of tax from one brewery to another brewery belonging to the same brewer (a) in the brewer's packages or (b) in bulk containers, subject to limitations and conditions as may be imposed by the appropriate ATF officer. The brewer shall mark, brand or label containers as provided by subpart J of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.183 Determination of quantity transferred.

The shipping brewer shall determine the quantity of beer shipped at the time of removal from the consignor brewery, and the receiving brewer shall determine the quantity of beer received at the time of receipt at the consignee brewery. The brewer shall equip the consignor and consignee breweries with suitable measuring devices to allow accurate determination of the quantities of beer to be shipped and received in bulk conveyances.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1389, as amended (26 U.S.C. 5414))

§ 25.184 Losses in transit.

(a) *Liability for losses.* The brewer is liable under the bond of the brewery to which beer is transferred for the tax on beer lost in transit. If the brewer re-recognizes beer while in transit or returns beer to the shipping brewery, the brewer is liable under the bond of the brewery to which the beer is re-recognized or returned for the tax on beer lost in transit.

(b) *Losses allowable without claim.* If loss of beer being transferred does not exceed two percent of the quantity shipped, the brewer is not required to file a report of loss or a claim for allowance of the loss if there are no circumstances indicating that the beer, or any portion of the beer lost, was stolen or otherwise diverted to an unlawful purpose.