

## § 26.77

United States until a permit to ship, on Form 487B, is applied for and obtained from the Secretary.

[T.D. 6551, 26 FR 1490, Feb. 22, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 26.76, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### DISTILLED SPIRITS

#### § 26.77 Subject to tax.

(a) Distilled spirits of Puerto Rican manufacture, and any products containing such distilled spirits, brought into the United States and withdrawn for consumption or sale are subject to a tax equal to the tax imposed in the United States by 26 U.S.C. 5001.

(b) A credit against the tax imposed on distilled spirits by 26 U.S.C. 7652 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine or from eligible flavors which do not exceed 2½ percent of the finished product on a proof gallon basis. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

(c) Where credit against the tax is desired, the person liable for the tax shall establish an effective tax rate in accordance with § 26.79a. The effective tax rate established will be applied to each withdrawal or other disposition of the distilled spirits for consumption or sale within the United States.

(Approved by Office of Management and Budget under control number 1512-0203)

(Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652); Sec. 201, Pub. L. 85-859, 72 Stat. 1314, as amended (26 U.S.C. 5001); Sec. 6, Pub. L. 96-598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

[T.D. ATF-297, 55 FR 18066, Apr. 30, 1990. Redesignated and amended by T.D. ATF-459, 66 FR 38550, 38551, July 25, 2001]

#### § 26.78 Application and permit, ATF Form 5110.51.

Application for permit to compute the tax on, and to withdraw, distilled spirits shall be made on ATF Form 5110.51, in quintuplicate, by the proprietor. The proprietor shall forward all copies of the form to the Secretary. If the application is properly prepared

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and is otherwise in order, the Secretary or his delegate shall execute the permit, retain one copy, and forward the original and remaining copies of the form to the revenue agent at the premises where the products are located.

[T.D. ATF-62, 44 FR 71711, Dec. 11, 1979, as amended by T.D. ATF-251, 52 FR 19338, May 22, 1987]

#### § 26.79 Inspection or gauge and computation of tax.

On receipt of permit to compute the tax on ATF Form 5110.51, the revenue agent shall:

(a) In the case of spirits in packages, prepare a gauge record as provided in § 26.164a in quadruplicate, compute the tax thereon, and attach all copies of the gauge record to ATF Form 5110.51;

(b) In the instance of spirits in cases, verify by inspection the quantity of spirits described on the form; or

(c) In the case of spirits in a bulk conveyance, verify by gauge or inspection the quantity of spirits described on the form.

If the revenue agent determines any variation between his gauge and the quantity of spirits described on Form 5110.51, he shall amend and initial the data in part I of the form. The revenue agent shall deliver all copies of Form 5110.51 and any accompanying package gauge record to the proprietor. The proprietor shall then compute and enter the amount of tax on all copies of Form 5110.51.

(Approved by the Office of Management and Budget under control number 1512-0250)

[T.D. ATF-198, 50 FR 8549, Mar. 1, 1985. Redesignated and amended by T.D. ATF-459, 66 FR 38550, 38551, July 25, 2001]

#### § 26.79a Computation of effective tax rate.

(a) The proprietor shall compute the effective tax rate for distilled spirits containing eligible wine or eligible flavors as the ratio of the numerator and denominator as follows:

(1) the numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

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(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b) (1), (2), or (3), as applicable; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½% of the denominator prescribed in paragraph (a)(2) of this section.

(2) The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) In determining the effective tax rate, quantities of distilled spirits, eligible wine, and eligible flavors will be expressed to the nearest tenth of a

proof gallon. The effective tax rate may be rounded to as many decimal places as the proprietor deems appropriate, provided that, such rate is expressed no less exactly than the rate rounded to the nearest whole cent, and the effective tax rates for all products will be consistently expressed to the same number of decimal places. In such case, if the number is less than five it will be dropped; if it is five or over, a unit will be added.

(c) The following is an example of the use of the formula.

**BATCH RECORD**

Distilled spirits .....	2249.1	proof
		gallons.
Eligible wine (14% alcohol by	2265.0	wine
volume).		gallons
Eligible wine (19% alcohol by	1020.0	wine
volume).		gallons
Eligible flavors .....	100.9	proof
		gallons

$$\frac{2249.1(\$12.50) + [2265.0(\$17) + 1020(\$67)] + 16.6^1(\$12.50)}{2249.1 + 100.9 + [2265.0(.28) + 1020.0(.38)]} =$$

$$\frac{2249.1(\$13.50) + [2265.0(\$1.07) + 1020(\$1.57)] + 16.6^1(\$13.50)}{2249.1 + 100.9 + (2265.0 \times .28) + (1020 \times .38)} =$$

$$\frac{\$30,362.85 + \$2,423.55 + \$1,601.40 + \$224.10}{2,350.0 + 634.2 + 387.6} =$$

$$\frac{\$34,611.90}{3,371.8} = \$10.27, \text{ the effective tax rate.}$$

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 (Sec. 6, Pub. L. 96-598, 94 Stat. 3488, as amended (26 U.S.C. 5010))  
 [T.D. ATF-297, 55 FR 18066, Apr. 30, 1990, as amended by T.D. ATF-307, 55 FR 52741, Dec 21, 1990]

**§ 26.80 Deferred payment of tax—release of spirits.**

(a) *Action by proprietor.* Where the proprietor has furnished bond on ATF Form 5110.50, and payment of the tax is to be deferred, he shall execute an agreement on ATF Form 5110.51 to pay the amount of tax which has been com-

puted and entered on the form. He shall also certify, under the penalties of perjury, that he is not in default of any payment of tax chargeable against his bond, and that his bond is in the maximum penal sum, or that it is sufficient to cover the amount of tax on the distilled spirits described on the form in

<sup>1</sup>Proof gallons by which distilled spirits derived from eligible flavors exceed 2½% of the

total proof gallons in the batch (100.9 - (2½%) × 3.371.8 = 16.6).