

§ 28.316

agents of any of them. However, the remission of tax on wine withdrawn without payment of tax under this part and which is lost while in transit may be allowed only to the extent that the claimant is not indemnified or recompensed for such tax.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1381, 1382 (26 U.S.C. 5370, 5371))

[T.D. ATF-88, 46 FR 39816, Aug. 5, 1981, as amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

§ 28.316 Notice to exporter.

If, on examination of the TTB Form 5100.11 received from the officer required to certify the same under the provisions of subpart N, the appropriate TTB officer is of the opinion that wine reported lost had been unlawfully diverted, or had been lost by theft, he will advise the exporter by letter:

- (a) Of the identity of the containers;
- (b) Of the amount of the loss;
- (c) Of the circumstances indicating diversion or theft;
- (d) That allowance of the loss will be subject to filing (1) proof that such loss is allowable under the provisions of 26 U.S.C. 5370, and (2) claim for remission of the tax on the wine so lost; and
- (e) That action in respect of the loss will be withheld for a period of not more than 30 days to afford an opportunity to file such proof and claim.

In any case in which wines are lost during transportation, as described in § 28.315, whether by theft or otherwise, the appropriate TTB officer may require the exporter to file a claim for relief in accordance with § 28.317. Where circumstances may warrant, extensions of additional time for submission of the proof and claim may be granted by the appropriate TTB officer. Where such proof and claim are not filed within the 30-day period, or such extensions as the appropriate TTB officer may grant, the tax on the wine diverted or lost will be assessed, or liability as-

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serted against the bond covering the shipment, as the case may be.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1381, as amended (26 U.S.C. 5370))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55854, Sept. 28, 1979; T.D. ATF-62, 44 FR 71726, Dec. 11, 1979; T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

§ 28.317 Filing of claims.

Claims, for remission of tax on the wine under § 28.315, shall be filed on Form 2635 (5620.8), in duplicate, and shall set forth the following:

- (a) The name, address, and capacity of the claimant;
- (b) The name, registry number, and location of the bonded wine cellar from which the wine was withdrawn;
- (c) The date, penal sum, and form number of the bond under which withdrawal and shipment was made;
- (d) Identification (including serial numbers, if any) and location of the container or containers from which the wine was lost;
- (e) The quantity of wine lost from each container, and the total quantity of wine covered by the claim;
- (f) The total amount of tax for which the claim is filed;
- (g) The date of the loss (or, if not known, date of discovery), the cause thereof, and all the facts relative thereto;
- (h) Name of the carrier;
- (i) If lost by theft, the facts establishing that the loss did not occur as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the agents or employees of any of them; and
- (j) Whether the claimant is indemnified or recompensed in respect of the tax on the wine lost, and, if so, the amount and nature of such indemnity or recompense and the actual value of the wine, less the tax.

The claim shall be signed by the exporter or his authorized agent under the penalties of perjury, and shall be