

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 However, the remission of tax on wine withdrawn without payment of tax under this part and which is lost while in transit may be allowed only to the extent that the claimant is not indemnified or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

supported (whenever possible) by affidavits of persons having personal knowledge of the loss. The appropriate TTB officer may require such further evidence as he deems necessary.

(68A Stat. 749, 72 Stat. 1381, 1382; 26 U.S.C. 6065, 5370, 5371)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

§ 28.318 Action on claim.

Action on claims filed under § 28.317 shall be, insofar as applicable, in accordance with the procedure prescribed in § 28.304.

(72 Stat. 1381; 26 U.S.C. 5370)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

BEER AND BEER CONCENTRATE

§ 28.320 Loss of beer and beer concentrate in transit.

(a) *Losses not requiring inspection.* When, on receipt by the appropriate TTB officer of Form 1689 (5130.12) from the officer required to certify it under the provisions of subpart N of this part, it is disclosed that there has been a loss of beer or beer concentrate after removal from the brewery without payment of tax while in transit to the port of export, the vessel or aircraft, or the foreign-trade zone, and the report of the certifying officer shows that the loss was a normal one caused by casualty, leakage, or spillage, the appropriate TTB officer will allow the loss.

(b) *Losses requiring inspection.* When it is disclosed that the loss of beer or beer concentrate is large or unusual, the appropriate TTB officer will conduct an investigation of the loss. When it is disclosed that the loss in transit has occurred by reason of casualty, leakage or spillage, credit for the loss will be allowed. When the investigation discloses evidence indicating that the loss resulted from theft or from fraud, the appropriate TTB officer will afford the brewer opportunity to submit a written

explanation with respect to the causes of the loss before taking further action.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended, 1334, as amended, 1335, as amended (26 U.S.C. 5051, 5053, 5056))

[T.D. ATF-224, 51 FR 7700, Mar. 5, 1986, as amended by T.D. TTB-8, 69 FR 3835, Jan. 27, 2004]

§ 28.321 Tax assessed on loss not accounted for.

The appropriate TTB officer shall make demand on the brewer for an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on; (a) The quantity of beer not satisfactorily accounted for, or (b) the quantity of beer used to produce the quantity of beer concentrate which is not satisfactorily accounted for.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

[T.D. ATF-224, 51 FR 7700, Mar. 5, 1986, as amended by T.D. TTB-8, 69 FR 3835, Jan. 27, 2004]

Subpart P—Action on Claims

§ 28.331 Claims supported by bond, Form 2738 (5110.68).

On receipt of a claim for drawback of tax on distilled spirits or wines on which the tax has been determined, and of the evidence of exportation required by § 28.40, or of lading for use on vessels or aircraft required by § 28.41, or of deposit in a foreign-trade zone or of deposit of distilled spirits in a customs bonded warehouse, as required by § 28.42, as the case may be, the appropriate TTB officer shall, if a good and sufficient bond has been filed as provided in § 28.65, and the notice of removal has been properly completed, allow the claim in accordance with the rate of drawback established in respect of the particular spirits or wines on which claim is based and charge the amount allowed against the bond. On receipt of the original of the claim properly executed by the appropriate customs official or armed services officer, as required by this part, and, in the case of claims on Form 1582-A