

## § 26.111

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2900 executed by the appropriate TTB officer to show receipt of TTB Form 5000.25, and remittance, the revenue agent shall execute his report of release on TTB Form 5110.51 or Form 2900 and release the articles containing distilled spirits, or release the wine and/or beer for use in the manufacture of articles. He shall forward one copy of TTB Form 5110.51 or Form 2900, and any package gauge record as provided in § 26.164a, to the Bureau of Alcoholic Beverage Taxes and one copy of each to the District Revenue Agent (Commonwealth of Puerto Rico), deliver one copy of each to the applicant, and retain one copy. A permit shall be obtained as provided in §§ 26.114 through 26.116 before the articles manufactured from such liquors may be shipped to the United States.

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[T.D. ATF-198, 50 FR 8550, Mar. 1, 1985, as amended by T.D. ATF-251, 52 FR 19338, May 22, 1987; T.D. ATF-277, 53 FR 45268, Nov. 9, 1988. Redesignated and amended by T.D. ATF-459, 66 FR 38550, 38551, July 25, 2001]

### PAYMENT OF TAX BY RETURN

#### § 26.111 General.

All taxes imposed by 26 U.S.C. 7652(a), and which, under the provisions of this part, are paid in Puerto Rico, shall be paid and collected on the basis of a tax return as provided in this subpart. Any tax which has been paid in accordance with the provisions of this part in effect at the time of such payment, and before provision was made in the part for payment of such tax by return, shall be deemed to have been prepaid as prescribed in this part.

[T.D. 6551, 26 FR 1490, Feb. 22, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55852, Sept. 28, 1979; T.D. ATF-277, 53 FR 45268, Nov. 9, 1988]

#### § 26.112 Returns for deferred payment of tax.

(a) *Returns.* The taxes imposed by 26 U.S.C. 7652(a), (equal to the taxes imposed in the United States by 26 U.S.C. 5001(a)(1), 5041, or 5051), the payment of which has been deferred under the provisions of §§ 26.80, 26.95 or 26.104 of this part, shall be paid pursuant to a return

on TTB Form 5000.25 prepared in accordance with the instructions on the form.

(b) *Return periods.* (1) *Definitions.* For purposes of this section, the following terms have the meanings indicated:

*Reasonably expects.* When used with reference to a taxpayer, *reasonably expects* means the taxpayer was not liable for more than \$50,000 in taxes the previous year and there is no other existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's liability to increase beyond that limit.

*Taxpayer.* A *taxpayer* is a person who is liable for excise tax under 26 U.S.C. 7652 under the same Employer Identification Number as defined in 26 CFR 301.7701-12.

(2) *Semimonthly return period.* Except in the case of a taxpayer who qualifies for, and chooses to use, quarterly return periods as provided in paragraph (b)(3) of this section, all taxpayers must use semimonthly return periods for deferred payment of tax. The semimonthly return periods shall run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in paragraph (e) of this section.

(3) *Quarterly return period.* Effective January 1, 2006, a taxpayer who reasonably expects to be liable for not more than \$50,000 in taxes imposed by 26 U.S.C. 7652 for the current calendar year, and who was liable for not more than \$50,000 in such taxes in the preceding calendar year, may choose to use a quarterly return period. In such a case the last day for payment of tax and filing the return will be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds \$50,000, and any tax which has not been paid on that date will be due on the 14th day after the last day of semimonthly period in which that date occurs.

(c) *Filing.* (1) The original of TTB Form 5000.25, with remittance covering

the full amount of the tax, shall be filed with the appropriate TTB officer not later than the 14th day after the last day of the return period except as provided by paragraph (d) of this section. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by paragraph (d) of this section.

(2) The tax shall be paid in full by remittance at the time the return is filed, unless the proprietor is required to make remittances by electronic fund transfer in accordance with § 26.112a.

(3) The remittance may be in any form that is authorized to be accepted under the provisions of § 70.61 of this chapter.

(4) When the return and remittance are delivered by U.S. mail to the office of the appropriate TTB officer, the date of the official postmark of the U.S. Postal Service stamped on the cover in which the return and remittance were mailed shall be treated as the date of delivery.

(d) *Special September rule for taxes due by semimonthly return.* (1) *General.* The second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The taxpayer shall file a return on Form 5000.24, and make remittance, for the period September 16-26, no later than September 29. The taxpayer shall file a return on Form 5000.24, and make remittance, for the period September 27-30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 26.112a, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The taxpayer shall file a return on Form 5000.24, and make remittance, for the period September 16-25, no later than September 28. The taxpayer shall file a return on Form 5000.24, and make remittance, for

the period September 26-30, no later than October 14.

(3) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (d)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (d)(2) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(4) *Last day for payment.* If the required due date for taxpayment for the periods September 16-25 or September 16-26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(e) *Default.* Where a taxpayer has defaulted in any payment of tax under this section, during the period of such default and until the appropriate TTB officer finds that the revenue will not be jeopardized by deferred payment of tax under this section, the tax shall be prepaid by such taxpayer in accordance with the provisions of § 26.113. During such period, distilled spirits, wine, or beer shall not be released from the proprietor's bonded premises before the proprietor has paid the tax thereon. In the event of default, the appropriate TTB officer shall immediately notify the Secretary and the revenue agent at the premises that tax is to be prepaid until further notice, and upon a finding that the revenue will not be jeopardized by resumption of deferred payment

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or tax under this section, the appropriate TTB officer shall notify the Secretary and the revenue agent that deferred payment may be resumed.

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(Aug. 16, 1954, Ch. 736, 68A Stat. 775, (26 U.S.C. 6301); June 29, 1956, Ch. 462, 70 Stat. 391 (26 U.S.C. 6301))

[T.D. ATF-277, 53 FR 45268, Nov. 9, 1988, as amended by T.D. ATF-301, 55 FR 47658, Nov. 14, 1990; T.D. ATF-365, 60 FR 33674, June 28, 1995; T.D. ATF-451, 66 FR 21669, May 1, 2001. Redesignated and amended by T.D. ATF-459, 66 FR 38550, 38551, July 25, 2001; T.D. TTB-41, 71 FR 5604, Feb. 2, 2006]

### § 26.112a Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and parts 19 and 27 of this chapter, a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and parts 24 and 27 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and parts 25 and 27 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of such taxes during the succeeding calendar year. Payment by cash, check, or money order, of distilled spirits taxes, wine taxes, or beer taxes, as described in § 26.112, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is to be summarized separately for distilled spirits taxes, wine taxes, or beer taxes, and is defined as the gross tax liability on each type of product for which taxes are paid in accordance with this subpart, taxable withdrawals from premises in the United States, and importation during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises at which tax liabilities are incurred by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes 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 it appears 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 determining who is required to make remittances by EFT.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate tax return, for each premises from which distilled spirits, wine, or beer is withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and parts 19 and 27 of this chapter, a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and parts 24 and 27 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and parts 25 and 27 of this chapter during the previous calendar year, shall notify, in writing, the appropriate TTB officer. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer’s bank to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account