

this section is treated as if it constitutes a reduction in the rate of the tax.

(d) *Computation of credit.* The credit which may be taken on the first 100,000 gallons of wine (other than champagne and other sparkling wine) removed for consumption or sale by an eligible person during a calendar year is computed as follows:

(1) For persons who produce 150,000 gallons or less of wine during the calendar year, the credit is \$0.90 per gallon for wine (\$0.056 for hard cider);

(2) For persons who produce more than 150,000 gallons but not more than 250,000 gallons during the calendar year, the credit is reduced by 1 percent for every 1,000 gallons produced in excess of 150,000 gallons. For example, the credit that would be taken by a person who produced 160,500 gallons of wine and hard cider during a calendar year would be reduced by 10 percent, for a net credit against the tax of \$0.81 per gallon for wine or \$0.0504 for hard cider, as long as the wine or hard cider was among the first 100,000 gallons removed for consumption or sale during the calendar year.

(e) *Definitions*—(1) *Production.* For purposes of determining if a person's production of wine is within the 250,000 gallon limit, production includes, in addition to wine produced by fermentation, any increase in the volume of wine due to the winery operations of amelioration, wine spirits addition, sweetening, or production of formula wine. Production of champagne and other sparkling wines is included for purposes of determining whether total production of a winery exceeds 250,000 gallons. Production includes all wine produced at qualified bonded wine premises within the United States and wine produced outside the United States by the same person.

(2) *Removals.* For purposes of determining if a person's removals are within the 100,000 gallon limit, removals include wine that the person removed from all qualified bonded wine premises within the United States. Wine removed by a transferee in bond under paragraph (b)(2) of this section must be counted against the 100,000 gallon limit of the small producer who owns that wine, and not against the limit of the

transferee in bond if the transferee is also a small producer. Champagne and other sparkling wines, which are not eligible for credit, do not count as removals against the 100,000 gallon limit.

(f) *Preparation of tax return.* A person who is eligible for the credit must show the amount of wine tax before credit on the Excise Tax Return, TTB F 5000.24, and must enter the quantity of wine subject to the credit and the applicable credit rate as the explanation for an adjusting entry in Schedule B of the return for each tax period. Where a person does not use the credit authorized by this section to directly reduce the rate of Federal excise tax on wine, that person must report on TTB F 5000.24 where the credit will be, or has been, applied. Where a transferee in bond takes credit on behalf of one or more small producers, the transferee must show in Schedule B of the return the name of each producer, each producer's credit rate, and the total credit taken on behalf of each producer during the tax return period.

(g) *Denial of deduction.* Pursuant to 26 U.S.C. 5041(c)(5), any deduction under 26 U.S.C. subtitle A with respect to any tax against which the credit is allowed under paragraph (a) of this section must only be for the amount of the tax as reduced by the credit.

(h) *Exception to credit.* The appropriate TTB officer will deny any tax credit taken under paragraph (a) of this section where it is determined that the allowance of the credit would benefit a person who would otherwise fail to qualify for the use of the credit.

(26 U.S.C. 5041(c).)

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#### § 24.279 Tax adjustments related to wine credit.

(a) *Increasing adjustments.* Persons who produce more wine than the amount used in computation of the credit, or who lose eligibility by not producing during a calendar year, must make increasing tax adjustments. Where an increasing adjustment to a person's tax return is necessary as a result of an incorrect credit rate claimed pursuant to § 24.278, that person must

make the adjustment on the Excise Tax Return, TTB F 5000.24, no later than the return period in which production (or the production of the controlled group of which the person is a member) exceeds the amount used in computation of the credit. If the adjustment is due to failure to produce, the person must make the adjustment no later than the last return period of the calendar year. The adjustment is the difference between the credit taken for prior return periods in that year and the appropriate credit for those return periods. The person must make tax adjustments for all bonded wine premises where excess credits were taken against tax that year, and must include interest payable. In the case of a person who continued to deduct credit after reaching the 100,000 gallon maximum during the calendar year, that person must make an adjustment in the full amount of excess credit taken and must include interest payable under 26 U.S.C. 6601 from the date on which the excess credit was taken. In addition, the person must include the penalty payable under 26 U.S.C. 6662 if the appropriate TTB officer determines that the underpayment was due to negligence or disregard of rules or regulations and advises the person to include the penalty as part of the adjustment. The appropriate TTB officer will provide information, when requested, regarding interest rates applicable to specific time periods and regarding any applicable penalties. In the case of a controlled group of bonded wine premises that took excess credits, all member proprietors who took incorrect credits must make tax adjustments as determined in this section. In the case of a small producer who instructed a transferee in bond to take credit as authorized by § 24.278(b)(2), and subsequently determines that the credit was less or not applicable, that producer must immediately inform the transferee in bond, in writing, of the correct credit information. The transferee must make any increasing adjustment on its next tax return based on revised credit information given by the producer or a TTB officer.

(b) *Decreasing adjustments.* Where a person fails to deduct the credit or deducts less than the appropriate credit

provided for by § 24.278 during the calendar year, the person may file a claim for refund of excess tax paid. The claim must be filed in accordance with § 24.69. In the case of wine removed on behalf of a small producer by a transferee in bond, if the transferee in bond was instructed to deduct credit and failed to deduct credit or deducted less than the appropriate credit and was later reimbursed for the tax by that producer, the transferee may file the claim. The provisions of 26 U.S.C. 6423 and 27 CFR part 70, subpart F, will apply, and the producer and transferee in bond must show that the conditions of § 24.278(b)(2) were met.

(26 U.S.C. 5041(c))

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#### TRANSFER OF WINE IN BOND

##### § 24.280 General.

Wine may be removed for transfer in bond, from one bonded wine premises to another bonded wine premises or to a distilled spirits plant. For bulk wine transferred in bond between adjacent or contiguous bonded wine premises or to an adjacent or contiguous distilled spirits plant, an accurately calibrated tank for measuring the wine is required on at least one of the premises. The volume of wine transferred will be recorded to the nearest whole gallon, five-tenths gallon being converted to the next full gallon. (Sec. 201, Pub. L. 85-859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

##### § 24.281 Consignor premises.

Prior to transferring wine in bond, the proprietor shall prepare a transfer record prescribed by § 24.309. Except for multiple transfers as provided in § 24.282, a transfer record will be prepared for each shipment. On completion of lading (or completion of transfer by pipeline), the proprietor shall retain one copy of the transfer record for the files and forward the original to the consignee (by the close of the next business day). (Sec. 201, Pub. L. 85-859,