

more separate items affecting the tax liability of the taxpayer.

(3) *Taxable periods ending subsequent to date of closing agreement.* Closing agreements with respect to taxable periods ending subsequent to the date of the agreement may relate to one or more separate items affecting the tax liability of the taxpayer.

(c) *Finality.* A closing agreement which is approved within such time as may be stated in such agreement, or later agreed to, shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

However, a closing agreement with respect to a taxable period ending subsequent to the date of the agreement is subject to any change in, or modification of, the law enacted subsequent to the date of the agreement and made applicable to such taxable period, and each closing agreement shall so recite.

(d) *Procedure with respect to closing agreements—(1) Submission of request.* A request for a closing agreement which relates to a prior taxable period may be submitted at any time before a case with respect to the tax liability involved is filed with a court of the United States. The procedure with respect to requests for closing agreements shall be under such rules as may be prescribed from time to time by the Administrator in accordance with the regulations under this section.

(2) *Collection, credit, or refund.* Any tax or deficiency in tax determined pursuant to a closing agreement shall be assessed and collected, and any overpayment determined pursuant thereto shall be credited or refunded,

in accordance with the applicable provisions of law.

(26 U.S.C. 7121)

[T.D. ATF-301, 55 FR 47655, Nov. 14, 1990]

#### § 70.486 Managerial review.

If at any step in the collection process a taxpayer does not agree with an TTB employee under the authority of the appropriate TTB officer, the taxpayer has the right to discuss the matter with the employee's immediate supervisor. The TTB employee will give the taxpayer the name and telephone number of the person to be contacted.

[T.D. ATF-301, 55 FR 47655, Nov. 14, 1990]

### Subpart F—Application of Section 6423, Internal Revenue Code of 1954, as Amended, to Refund or Credit of Tax on Distilled Spirits, Wines, and Beer

SOURCE: T.D. ATF-376, 61 FR 31031, June 19, 1996, unless otherwise noted.

#### GENERAL

#### § 70.501 Meaning of terms.

When used in this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section.

*Article.* The commodity in respect to which the amount claimed was paid or collected as a tax.

*Claimant.* Any person who files a claim for a refund or credit of tax under this subpart.

*District director of customs.* The district director of customs at a headquarters port of the district (except the district of New York, N.Y.); the area directors of customs in the district of New York, N.Y.; and the port director at a port not designated as a headquarters port.

*I.R.C.* Internal Revenue Code of 1986, as amended.

*Owner.* A person who, by reason of a proprietary interest in the article, furnished the amount claimed to the claimant for the purpose of paying the tax.

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*Person.* An individual, a trust, estate, partnership, association, company, or corporation.

*Tax.* Any tax imposed by 26 U.S.C. 5001-5066, or by any corresponding provision of prior internal revenue laws, and in the case of any commodity of a kind subject to a tax under any such sections, any tax equal to any such tax, any additional tax, or any floor stocks tax. The term includes an extraction denominated a "tax", and any penalty, addition to tax, additional amount, or interest applicable to any such tax.

### § 70.502 Applicability to certain credits or refunds.

The provisions of this subpart apply only where the credit or refund is claimed on the grounds that an amount of tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive. This subpart does not apply to:

- (a) Any claim for drawback,
- (b) Any claim made in accordance with any law expressly providing for credit or refund where an article is withdrawn from the market, returned to bond, or lost or destroyed, and
- (c) Any claim based solely on errors in computation of the quantity of an article subject to tax or on mathematical errors in computation of the amount of the tax due, or to any claim in respect of tax collected or paid on an article seized and forfeited, or destroyed, as contraband.

### § 70.503 Ultimate burden.

For the purposes of this subpart, the claimant, or owner, shall be treated as having borne the ultimate burden of an amount of tax only if:

- (a) The claimant or owner has not, directly or indirectly, been relieved of such burden or shifted such burden to any other person,
- (b) No understanding or agreement exists for any such relief or shifting, and
- (c) If the claimant or owner has neither sold nor contracted to sell the articles involved in such claim, such claimant or owner agrees that there will be no such relief or shifting.

## 27 CFR Ch. I (4-1-10 Edition)

### § 70.504 Conditions to allowance of credit or refund.

No credit or refund to which this subpart is applicable shall be allowed or made, pursuant to a court decision or otherwise, of any amount paid or collected as a tax unless a claim therefor has been filed, as provided in this subpart, by the person who paid the tax and the claimant, in addition to establishing that such claimant is otherwise legally entitled to credit or refund of the amount claimed, establishes:

- (a) That the claimant bore the ultimate burden of the amount claimed, or
- (b) That the claimant has unconditionally repaid the amount claimed to the person who bore the ultimate burden of such amount, or
- (c) That:
  - (1) The owner of the article furnished the claimant the amount claimed for payment of the tax;
  - (2) The claimant has filed with the appropriate TTB officer the written consent of such owner to the allowance to the claimant of the credit or refund; and
  - (3) Such owner satisfies the requirements of paragraph (a) or (b) of this section.

### § 70.505 Requirements on persons intending to file claim.

Any person who, having paid the tax with respect to an article, desires to claim refund or credit of any amount of such tax to which the provisions of this subpart are applicable must:

- (a) File a claim, as provided in § 70.506, and
- (b) Comply with any other provisions of law or regulations which may apply to the claim.

#### CLAIM PROCEDURE

### § 70.506 Execution and filing of claim.

Claims to which this subpart is applicable must be executed on Form 2635 (5620.8) in accordance with the instructions on the form. (For provisions relating to handcarried documents, see 27 CFR 70.304). Claims for credit or refund of taxes collected by district directors of customs, to which the provisions of section 6423, I.R.C., are applicable and which Customs regulations (19 CFR