

Group, Office of the General Counsel, NASA Headquarters, telephone (202) 358-2065, fax (202) 358-4341.

**SUPPLEMENTARY INFORMATION:** The Department of Commerce issued Government-wide regulations which prescribe the terms, conditions, and procedures upon which a federally-owned invention may be licensed both internationally and domestically. The Department of Commerce regulations take precedence over individual agency licensing regulations. NASA grants licenses in accordance with the Department of Commerce regulations. Thus, NASA is cancelling its foreign licensing regulations.

#### List of Subjects in 14 CFR Part 1245

Authority delegations (Government agencies), Inventions and patents.

■ Under the authority, 42 U.S.C. 2473, 14 CFR part 1245 is amended as follows:

#### PART 1245—PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS

■ 1. The authority citation for part 1245 continues to read as follows:

**Authority:** 42 U.S.C. 2457, 35 U.S.C. 200 *et seq.*

#### Subpart 4—[Removed and Reserved]

■ 2. Remove and reserve Subpart 4, consisting of §§ 1245.400 through 1245.405.

**Michael D. Griffin,**

*Administrator.*

[FR Doc. E7-22704 Filed 11-20-07; 8:45 am]

**BILLING CODE 7510-13-P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 24

[T.D. TTB-64; Re: T.D. ATF-390 and ATF Notice No. 852]

RIN 1513-AA05

#### Small Domestic Producer Wine Tax Credit—Implementation of Public Law 104-188, Section 1702, Amendments Related to the Revenue Reconciliation Act of 1990 (96R-028T)

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule (Treasury decision).

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau is adopting as a final rule, with some clarifying or editorial changes, the temporary regulations concerning transfer of the small

domestic producer wine tax credit and computation of the wine bond that were adopted in response to the Small Business Job Protection Act of 1996.

**EFFECTIVE DATE:** November 21, 2007.

**FOR FURTHER INFORMATION CONTACT:** Marjorie D. Ruhf, Regulations and Rulings Division, 1310 G Street, NW., Washington, DC 20220; (202) 927-8202; or *Marjorie.Ruhf@ttb.gov*.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for administering the provisions of Chapter 51 of the Internal Revenue Code of 1986 (IRC), including promulgating regulations pursuant to Chapter 51 pertaining to Federal excise taxes on alcohol beverage products. Section 5041 of the IRC (26 U.S.C. 5041) imposes a tax on wines in bond in, produced in, or imported into, the United States. Section 5041(c) allows a credit against the tax for small domestic wine producers. The regulations implementing this credit were promulgated in part 24 of the TTB regulations (27 CFR part 24). Prior to January 24, 2003, our predecessor Agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), administered the regulations in part 24.

##### *History of the Small Domestic Producer Wine Tax Credit*

The Revenue Reconciliation Act of 1990

The Revenue Reconciliation Act of 1990 (the RRA), Title XI of Public Law 101-508, 104 Stat. 1388-400, was enacted on November 5, 1990. Section 11201 of the RRA increased by 90 cents per wine gallon the rate of tax on still wines and artificially carbonated wines removed from bonded premises or Customs custody on or after January 1, 1991. The law did not increase the tax rate on champagne and other sparkling wine.

Section 11201 also provided a credit of up to 90 cents per wine gallon for small domestic wine producers on the first 100,000 gallons of wine (other than champagne and other sparkling wine) removed for consumption or sale during a calendar year. This credit could be taken by a bonded wine premises proprietor who produced not more than 250,000 gallons of wine in a given calendar year. The provisions of section 11201 separated the activities of production and removal in such a way that eligibility for the credit was based on removal of wine by an eligible small producer and was not conditioned on the producer actually producing the wine removed. Thus, a proprietor who

produced less than 250,000 gallons of wine a year could take the small domestic producer wine tax credit on wine purchased and received in bond as long as the wine was within the first 100,000 gallons of wine removed from the small producer's bonded premises during the calendar year.

Under the RRA, small wine producers were eligible to take the small producer wine tax credit only on wine removed for consumption or sale by that producer. If the producer transferred wine in bond to another bonded wine premises (for example, a bonded wine cellar used as a warehouse) for storage pending subsequent removal by the warehouse, then the producer could not claim a credit on that wine, since the producer had not removed the wine for consumption or sale. If the warehouse did not produce wine at all, or produced more than 250,000 gallons of wine, then the warehouse was not eligible for the small producer wine tax credit. Even if the warehouse produced wine and was eligible for credit in its own right, its eligibility was limited to the first 100,000 gallons removed during the year. In order to receive the credit, some small wineries began to taxpay their wines at the time of removal and store the wines in a taxpaid status rather than transfer them in bond.

##### The Small Business Job Protection Act of 1996

Section 1702 of the Small Business Job Protection Act of 1996 (the SBJPA), Public Law 104-188, 110 Stat. 1755, enacted on August 20, 1996, included an amendment to the small domestic wine producer tax credit provision in section 5041(c). The SBJPA amendment allowed the tax credit authorized under section 5041(c) to be taken by "transferees in bond" such as bonded wine cellars used as warehouses on behalf of their small producer customers. As a result of this amendment, section 5041(c) now provides that if wine produced by any person would be eligible for the small producer credit if removed by the producer, and if wine produced by that person is transferred in bond to another person (the transferee) who removes the wine during the calendar year and is liable for the tax on the wine, then the transferee (and not the producer) will be allowed to take the small producer credit under certain circumstances. The producer of the wine must hold title to the wine at the time of its removal and must provide to the transferee such information as is necessary to properly determine the transferee's credit under section 5041(c)(6). The statutory language thus limits the application of

the credit to transferees in bond receiving wine from the actual producer of the wine in question and not from a subsequent owner who may also be a small producer.

In addition to the transfer of credit provisions, the SBJPA included an amendment to the bond computation rules in 26 U.S.C. 5354, which allowed the small domestic producer wine tax credit to be taken into account when calculating the penal sum of the bond.

The SBJPA provided that the amendments made by section 1702 took effect as if they had been included in the provisions of the RRA to which the amendment related. Accordingly, the amendments made to the small domestic producer wine tax credit provisions under the SBJPA were retroactive to January 1, 1991.

#### The Taxpayer Relief Act of 1997

The Taxpayer Relief Act of 1997 (the TRA), Public Law 105-34, 111 Stat. 788, was enacted on August 5, 1997. Section 908 of the TRA added to section 5041 a new wine tax class, "hard cider," imposed a \$0.226 rate of tax on hard cider, and provided for a reduced amount of the small domestic producer wine tax credit (\$0.056) applicable to the hard cider tax rate. These provisions applied to hard cider removed from bond on or after October 1, 1997.

#### Rulemaking Actions

In response to these three statutory changes, ATF took the following regulatory actions.

On December 11, 1990, ATF published T.D. ATF-307 (55 FR 52732), a final rule effective January 1, 1991, to implement a number of changes related to the RRA. Among other changes, T.D. ATF-307 added two new sections to 27 CFR part 24. New § 24.278 implemented the wine tax credit for small domestic producers. New § 24.279 set forth the procedure for making adjustments to tax returns as a result of improper application of the tax credit. ATF did not request comments prior to issuing this final rule.

On June 2, 1997, ATF published at 62 FR 29663 a temporary rule, T.D. ATF-390, to amend §§ 24.148, 24.278, and 24.279 (27 CFR 24.148, 24.278, and 24.279) to implement the SBJPA statutory changes. In the temporary rule, ATF also incorporated in § 24.278(a) the provisions of ATF Ruling 92-1 (A.T.F. Q.B. 1992-3, 55), which held that the small producer wine tax credit is available only to eligible proprietors engaged in the business of producing wine. On the same day, ATF published a Notice of Proposed Rulemaking, Notice No. 852 (62 FR 29681), inviting

comments on this temporary rule. The one comment that ATF received on this temporary rule is discussed below.

On August 21, 1998, ATF published at 63 FR 44779 another temporary rule, T.D. ATF-398, to implement the hard cider tax rate and several other provisions of the TRA. This temporary rule amended § 24.278 to reflect a new rate for the small domestic producer wine tax credit on hard cider. On the same day, ATF published a Notice of Proposed Rulemaking, Notice No. 859 (63 FR 44819), inviting comments on that temporary rule. For various reasons unrelated to the amendment of the credit provision in § 24.278, ATF extended the comment period, postponed the labeling compliance date, and solicited comments on alternative labeling rules. The T.D. ATF-398 amendment to § 24.278 was adopted as a final rule without any change by T.D. ATF-470 (66 FR 68938) on November 26, 2001.

#### Discussion of Comment Received in Response to T.D. ATF-390

As previously stated, ATF received only one comment in response to the temporary rule implementing the SBJPA statutory changes. Kenwood Vineyards commented that the provisions of the temporary rule placed the burden of "recordkeeping, reporting, compliance and cash flow" on the transferee in bond and suggested that the small producer should pay the tax, subject to any appropriate credit, on its own return when the transferee removes the wine. TTB cannot adopt this suggestion because under 26 U.S.C. 5043, when wine is transferred in bond as authorized by 26 U.S.C. 5362(b), the liability for payment of the tax becomes the liability of the transferee at the time of removal of the wine from the transferor's premises. The law provides that liability for paying the tax transfers to the transferee when the wine is transferred in bond and that the transferor is relieved of liability. TTB cannot by regulation alter who is liable to pay the tax.

#### Adoption of Final Rule

Based on the legislative and rulemaking history outlined above, TTB has determined that the temporary regulations published in T.D. ATF-390 should be adopted as a final rule with minor corrections and clarifications as discussed below.

In § 24.148, we are making two corrections in the table:

1. In the first column (Bond), we are updating the form number of the Wine Bond to read TTB F 5120.36.

2. In the second column (Basis), we are revising paragraph (1). Prior to the amendment by T.D. ATF-390, the first sentence of paragraph (1), which sets out the basis for calculating the bond coverage, read, in pertinent part, "tax on all wine or spirits possessed, in transit or unaccounted for at any one time \* \* \*." This wording was based on that of the underlying statute, 26 U.S.C. 5354, which reads, in pertinent part, "tax on any wine or distilled spirits possessed or in transit at any one time \* \* \*." In T.D. ATF-390, we inadvertently omitted the word "possessed." We are correcting that omission by restoring the word "possessed" to mirror the statute. We are also subdividing paragraph (1) to separate the two maximum penal sum amounts.

In § 24.278, we are making the following changes and corrections:

1. In paragraph (b)(2)(ii), we are substituting the phrase "tax imposed by 26 U.S.C. 5041" for the words "tax imposed by this section." The latter wording reflects the precise statutory language, which is inapposite in the context of the regulatory text.

2. We are retaining, in paragraphs (d)(1) and (d)(2), the references to hard cider adopted in T.D. ATF-470, as previously discussed.

3. At the end of paragraph (e)(2), we are adding a sentence to clarify that sparkling wine, which is not eligible for credit, does not count as a removal against the 100,000 gallon limitation. This reflects the longstanding position of TTB and ATF.

4. In § 24.278(g), we are adding a reference to section 5041(c)(5) of the IRC to clarify the statutory basis for the language setting forth the requirements with regard to deductions under Subtitle A of the IRC.

In § 24.279(a), we are adding a reference to the statutory conditions for imposition of penalties under section 6662 of the IRC. The added language clarifies circumstances in which TTB would require the inclusion of these penalties as part of the adjustment for excess credit taken during a calendar year.

Finally, we are making some plain language and other editorial changes to §§ 24.148, 24.278, and 24.279 to enhance their clarity and readability without substantively affecting the texts, and we have added the Office of Management and Budget (OMB) control number to § 24.148 and updated the OMB control numbers for §§ 24.278 and 24.279 as noted in the Paperwork Reduction Act discussion in this preamble.

**Inapplicability of Delayed Effective Date Requirement**

Pursuant to the provisions of 5 U.S.C. 553(d)(1) and (d)(3), we are issuing these regulations without a delayed effective date. These final regulations recognize an exemption within the meaning of section 553(d)(1) because they implement a 1996 statutory amendment expanding the scope of the small domestic producer wine tax credit in order to cover removals by transferees in bond under specified circumstances. Furthermore, TTB has determined that good cause exists to provide wineries with immediate guidance on their utilization of this credit in accordance with section 553(d)(3).

**Regulatory Flexibility Act**

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), we certify that these regulations will not have a significant economic impact on a substantial number of small entities. Any revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Accordingly, a regulatory flexibility analysis is not required. Pursuant to 26 U.S.C. 7805(f), the temporary regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and we received no comments.

**Executive Order 12866**

It has been determined that this rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. The collections of information in the regulations contained in this final rule have been previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)) under control numbers 1512-0058, 1512-0540, and 1512-0492, originally issued to ATF. When TTB took over the administration of the wine tax, these control numbers were changed by OMB to 1513-0009, 1513-0104, and 1513-0088, respectively. Although sections of the regulations covered by these approvals are amended for clarity, this final rule imposes no new or revised collection of information, and does not change the reporting or recordkeeping burden.

**Drafting Information**

Marjorie Ruhf of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

**List of Subjects in 27 CFR Part 24**

Administrative practice and procedure, Authority delegations,

Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

**Amendments to the Regulations**

■ Accordingly, for the reasons set forth in the preamble, the temporary rule amending 27 CFR part 24, which was published on June 2, 1997, at 62 FR 29663, is adopted as a final rule with the changes as discussed above and set forth below.

**PART 24—WINE**

■ 1. The authority citation for part 24 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111-5113, 5121, 5122, 5142, 5143, 5148, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364-5373, 5381-5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 2. Section 24.148 is revised to read as follows:

**§ 24.148 Penal sums of bonds.**

The penal sums of bonds prescribed in this part are as follows:

Bond	Basis	Penal sum	
		Minimum	Maximum
(a) Wine Bond, TTB F 5120.36 .....	(1) Wine operations coverage. (i) Not less than the tax on all wine or spirits possessed, in transit, or unaccounted for at any one time, taking into account the appropriate small producer wine tax credit.	\$1,000	\$50,000
	(ii) Where the liability exceeds \$250,000 .....	500	100,000
(b) Wine Vinegar Plant Bond, TTB F 5510.2.	(2) Tax deferral coverage. Where the unpaid tax amounts to more than \$500, not less than the amount of tax which, at any one time, has been determined but not paid. Exception: \$1,000 of the wine operations coverage may be allocated to cover the amount of tax which, at any one time, has been determined but not paid, if the total operations coverage is \$2,000 or more.		250,000
	Not less than the tax on all wine on hand, in transit, or unaccounted for at any one time.	1,000	100,000

\* The proprietor of bonded wine premises who operates an adjacent or contiguous wine vinegar plant with a wine bond that does not cover the operation may file a consent of surety to extend the terms of the wine bond in lieu of filing a wine vinegar plant bond.

(26 U.S.C. 5354, 5362)

(Approved by the Office of Management and Budget under control number 1513-0009)

■ 3. Section 24.278 is revised to read as follows:

**§ 24.278 Tax credit for certain small domestic producers.**

(a) *General.* A person who produces not more than 250,000 gallons of wine during the calendar year may take a credit against any tax imposed by Title 26 of the United States Code (other than Chapters 2, 21, and 22), in an amount

computed in accordance with paragraph (d) of this section, on the first 100,000 gallons of wine (other than champagne and other sparkling wine) removed during that year for consumption or sale. This credit applies only to wine that has been produced at a qualified bonded wine premises in the United

States. The small domestic wine producer tax credit is available only to eligible proprietors engaged in the business of producing wine. A proprietor who has a basic permit to produce wine but does not produce wine during a calendar year may not take the small producer wine tax credit on wine removed during that calendar year. A proprietor who has obtained a new wine producer basic permit may not take the small producer wine tax credit on wine removed until the proprietor has produced wine. "Production" of wine includes those activities described in paragraph (e)(1) of this section.

(b) *Special rules relating to eligibility for wine credit*—(1) *Controlled groups.* For purposes of this section and § 24.279, the term "person" includes a controlled group of corporations, as defined in 26 U.S.C. 1563(a), except that the phrase "more than 50 percent" must be substituted for the phrase "at least 80 percent" wherever it appears. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups that include partnerships and/or sole proprietorships. Production and removals of all members of a controlled group are treated as if they were the production and removals of a single taxpayer for the purpose of determining what credit a person may use.

(2) *Credit for transferees in bond.* A person other than the eligible small producer (hereafter in this paragraph referred to as the "transferee") may take the credit under paragraph (a) of this section that would be allowed to that producer if the wine removed by the transferee had been removed by the producer on that date, under the following conditions:

(i) Wine produced by any person would be eligible for any credit under this section if removed by that person during the calendar year;

(ii) Wine produced by that person is removed during that calendar year by the transferee to whom that wine was transferred in bond and who is liable for the tax imposed by 26 U.S.C. 5041 with respect to that wine;

(iii) That producer holds title to that wine at the time of its removal and provides to the transferee such information as is necessary to properly determine the transferee's credit under this paragraph; and

(iv) At the time of taxable removal, the producer provides to the transferee, in writing (each retaining a copy with the record of tax paid removal from bond pursuant to § 24.310), the following information:

(A) The names of the producer and transferee;

(B) The quantity and tax class of the wines to be shipped;

(C) The date of removal from bond for consumption or sale;

(D) A confirmation that the producer is eligible for credit, with the credit rate to which the wines are entitled; and

(E) A confirmation that the subject shipment is within the first 100,000 gallons of eligible wine removed by (or on behalf of) the producer for the calendar year.

(c) *Time for determining and allowing credit.* The credit referred to in paragraph (a) of this section will be determined at the same time as the tax is determined under 26 U.S.C. 5041(a), and will be allowable at the time any tax described in paragraph (a) of this section is payable. The credit allowable by 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).)

(Approved by the Office of Management and Budget under control number 1513-0104)

■ 4. Section 24.279 is revised to read as follows:

**§ 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))

(Approved by the Office of Management and Budget under control number 1513-0088)

Signed: August 24, 2007.

**John J. Manfreda,**  
*Administrator.*

Approved: November 5, 2007.

**Timothy E. Skud,**  
*Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).*

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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 45

[T.D. TTB-63; Re: T.D. TTB-26]

RIN 1513-AA99

#### Removal of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, for United States Use in Law Enforcement Activities (2003R-268P)

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** This Treasury decision adopts as a final rule, without change, a temporary rule that allows manufacturers of tobacco products and cigarette papers and tubes to remove these articles without payment of tax for use by Federal agencies in law enforcement activities, and without inclusion of the otherwise required tax-exempt label.

**DATES:** *Effective Date:* November 21, 2007.

**FOR FURTHER INFORMATION CONTACT:** Amy Greenberg, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division, 1310 G Street, NW., Suite 200-E, Washington, DC 20220; telephone 202-927-8210; or e-mail [Amy.Greenberg@ttb.gov](mailto:Amy.Greenberg@ttb.gov).

**SUPPLEMENTARY INFORMATION:**

## Statutory and Regulatory Provisions

Section 5704(b) of the Internal Revenue Code of 1986 (26 U.S.C. 5704(b)) provides that a manufacturer may, among other things, remove tobacco products and cigarette papers and tubes without payment of tax for use of the United States, in accordance with regulations prescribed by the Secretary of the Treasury. The regulations administered by the Alcohol and Tobacco Tax and Trade Bureau (TTB) include, in part 45 (27 CFR part 45), provisions that implement this aspect of section 5704(b). Section 45.31 of those regulations (27 CFR 45.31) previously set forth two circumstances in which manufacturers of tobacco products and cigarette papers and tubes were permitted to remove those articles without payment of Federal excise tax for gratuitous distribution under the supervision of a Federal agency. Neither of those circumstances included the removal of articles for use by Federal agencies in law enforcement activities.

In addition, Section 45.46 of the TTB regulations (27 CFR 45.46) provided that every package of tobacco products and cigarette papers and tubes removed under part 45 must have the words "Tax-Exempt. For Use of U.S. Not To Be Sold." adequately imprinted on the package or on a label securely affixed to the package.

### Publication of Temporary Rule

On April 15, 2005, TTB published in the **Federal Register** at 70 FR 19888, as T.D. TTB-26, a temporary rule that amended the TTB regulations to eliminate the need for manufacturers of tobacco products and cigarette papers and tubes to obtain a variance to remove their products without payment of tax for use by a Federal Agency in an investigation or other law enforcement activity. Under the temporary rule, the supplying of tobacco products and cigarette papers and tubes by manufacturers to Federal agencies continued to be voluntary. The changes to the regulations did not impose additional cost, compliance, or reporting burdens on manufacturers. The temporary rule revised § 45.31 by dividing that section into paragraphs (a) and (b) in order to include the substantive change and improve the readability of the section.

In addition, we amended § 45.46 by adding an exception to the tax exempt labeling requirements.

The Bureau received three comments on the temporary rule. One commenter specifically endorsed the temporary changes, recognizing that they would significantly help law enforcement