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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 24 and 70

[Docket No. TTB–2015–0013; T.D. TTB–130]

RIN 1513–AB92

Return of Wine to Bonded Premises

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

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is revising the wine regulations governing the return of wine to bonded wine premises in response to two statutory changes. First, to incorporate a provision contained in the Taxpayer Relief Act of 1997, TTB is removing a regulatory requirement that wine returned to bond must be unmerchantable. Second, to incorporate a provision contained in the Internal Revenue Service Restructuring and Reform Act of 1998, TTB is revising the regulations to clarify that the refund or credit of excise tax applies to any wine removed from a bonded wine cellar and subsequently returned to bond. The current regulatory text states that a refund or credit of tax is available only for wine produced in the United States.

DATES: This rule is effective on [INSERT DATE 30 DAYS FROM PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division; telephone 202–453–1039, ext. 275.

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

Chapter 51 of the Internal Revenue Code of 1986, as amended (IRC), 26 U.S.C. chapter 51, sets forth excise tax collection and related provisions pertaining to, among other things, the production and importation of wine. Under 26 U.S.C. 5041(a), a Federal excise tax is imposed on all wine in bond in, produced in, or imported, into the United States, and such tax is determined at the time the wine is removed for consumption or sale. As a general matter, the tax is determined or paid at the time the product is removed from bonded premises in accordance with 26 U.S.C. 5041(a). Tax on imported wine, however, is imposed when the product is imported into the United States, and is generally determined or paid when the product is removed from bonded premises or from customs custody for consumption or sale in accordance with relevant statutory provisions and Treasury regulations and orders.

Section 5361 of the IRC (26 U.S.C. 5361) provides that taxpaid wine may be returned to bonded wine premises, and section 5044(a) of the IRC (26 U.S.C. 5044(a)) states that, under regulations prescribed by the Secretary of the

Treasury, when wine is removed from a bonded wine cellar and subsequently returned to bond, then: (1) if tax on wine returned to bond has been paid (taxpaid wine), that tax shall be refunded or credited, without interest, to the proprietor of the bonded wine cellar to which the wine is delivered; and (2) if tax on wine returned to bond has not been paid, the person liable for the tax may be relieved of liability.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers chapter 51 of the IRC pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120-01, dated December 10, 2013, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Current Regulatory Requirements

Regulations implementing the provisions of chapter 51 of the IRC pertaining to the establishment and operation of wine premises are contained in 27 CFR part 24. Provisions regarding the return of wine to bonded premises are contained in 27 CFR 24.295. Section 24.295(a) states that when taxpaid wine produced in the United States has been removed from bonded premises and subsequently found to be unmerchantable, such wine may be returned to a bonded wine premises for reconditioning, reformulation, or destruction. When such wine is returned to bond, the tax paid on such wine may be refunded or credited without interest to the proprietor of the bonded premises to which the wine was delivered if a claim pursuant to 27 CFR part 70, subpart G has or will

not be made. In the case of untaxpaid domestic wine that was removed from bonded premises and then found to be unmerchantable, the person liable for the tax may be relieved of that liability when such wine is returned to bond. Claims for relief, credit, or refund may be filed pursuant to § 24.66.

Section 24.66 (27 CFR 24.66) currently provides that a claim for credit or refund, or relief from liability, of tax on unmerchantable U.S. wine returned to bond will be filed with the appropriate TTB officer within six months after the date of the return of the wine to bond. A single claim may not be filed under this section for a quantity on which the credit or refund of tax would be less than \$25. However, this limitation does not apply to any returned wine on which the six-month period for filing a claim will expire.

Statutory Changes and Conforming Regulatory Amendments

Public Law 105–34

Section 1416 of the Taxpayer Relief Act of 1997, Pub. L. 105–34, 111 Stat. 788, amended section 5044 of the IRC to remove a previous requirement that wine returned to bond must be unmerchantable. Accordingly, TTB is amending its regulatory provisions to conform the regulations to the statute by removing the word “unmerchantable” from where it appears in §§ 24.66(a), 24.295, and 24.312, and from the undesignated center heading that precedes § 24.295. TTB is also removing the definition of unmerchantable wine from 27 CFR 24.10 since that definition is no longer relevant with respect to the part 24 regulations. In addition, TTB is removing the word “unmerchantable” in the four instances where it appears in Part 70, Procedure and Administration (see

§§ 70.411(c)(10), 70.413(c)(2)(ii) (removing the phrase “as unmerchantable”), 70.413(d)(2), and 70.414(d)(3)).

Public Law 105–206

Section 6014(b)(2) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685, amended section 5044 of the IRC by removing a prior requirement that wine returned to bond must have been produced in the United States and instead required only that the wine first have been removed from a bonded wine cellar. To conform the regulations to the statute, TTB is removing references to “United States” or “produced in the United States” when it modifies the term “wine” in §§ 24.66(a) and 24.295, respectively. TTB is also removing the word “domestic” in the two instances where it modifies “wine” in part 70, Procedure and Administration (see §§ 70.413(d)(2) and 70.414(d)(3)).

OMB Information Collection Control Numbers

In addition, TTB is removing obsolete references to Office of Management and Budget (OMB) control numbers for information collection requests used by the former Bureau of Alcohol, Tobacco and Firearms (ATF) and replacing them with the OMB control numbers assigned to TTB. Specifically, in the second parenthetical statement at the end of § 24.66, OMB control number “1512–0492” is updated to “1513–0030”; in the second parenthetical statement at the end of § 24.295, OMB control numbers “1512–0216,” “1512–0298,” and “1512–0492” are updated to “1513–0053,” “1513–0115,” and “1513–0030” respectively; in the second parenthetical statement at the end of § 24.312, OMB control number

“1512–0298” is updated to “1513–0115”; and in the first parenthetical statement at the end of § 70.413, OMB control number “1512–0141” is updated to “1513–0030.” The changes to these OMB control numbers are technical in nature and do not change any TTB information collection or recordkeeping requirement.

Inapplicability of Prior Notice and Comment

TTB is issuing this final rule without prior notice and comment pursuant to authority under section 4(a) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)). This provision authorizes an agency to issue a rule without prior notice and comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” TTB finds that prior notice and comment for this rule is unnecessary because the rule is limited to conforming TTB regulations to statutory amendments that TTB lacks discretion to change.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the IRC, TTB submitted this final rule to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the regulations, and no comments were received.

Paperwork Reduction Act

The collections of information in the regulations contained in this final rule have been previously reviewed and approved by the Office of Management and

Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), and assigned control numbers 1513–0030, 1513–0053, and 1513–0115. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. There is no new collection of information imposed by this final rule.

Executive Order 12866

This final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, it requires no regulatory assessment.

Drafting Information

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

List of Subjects

27 CFR Part 24

Administrative practice and procedure, 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 flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of information, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surety bonds.

Amendments to the Regulations

For the reasons discussed in the preamble, TTB amends 27 CFR, chapter I, parts 24 and 70 as set forth below:

PART 24—WINE

1. The authority citation for 27 CFR 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, 5121, 5122–5124, 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, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 24.10 [Amended]

2. Section 24.10 is amended by removing the definition of “Unmerchantable wine”.

§ 24.66 [Amended]

3. In § 24.66:
 - a. The first sentence of paragraph (a) is amended by removing the words “unmerchantable United States”; and
 - b. The second parenthetical phrase at the end of the section is amended by removing the Office of Management and Budget control number “1512–0492” and adding, in its place, the number “1513–0030”.

Subpart N [Amended]

4. In subpart N, the undesignated center heading located before § 24.295 is revised to read as follows:

RETURN OF WINE TO BOND

5. In § 24.295:

- a. The section heading and paragraph (a) are revised;
- b. The first sentences of paragraph (b) and paragraph (c) are amended by removing the word “unmerchantable”;
- c. Paragraph (b) is amended by removing the term “United States” where it occurs in two instances; and
- d. The second parenthetical phrase at the end of the section is amended by removing the Office of Management and Budget control numbers “1512–0216, 1512–0298, and 1512–0492” and adding, in their place, the numbers “1513–0053, 1513–0115, and 1513–0030”.

The revisions read as follows:

§ 24.295 Return of wine to bond.

(a) General. Wine, domestic or imported, which has been taxpaid and removed from bonded wine premises, may be received by the proprietor of a bonded wine premises for return to bond. The proprietor may, when such taxpaid wine is returned to bond, make a claim for refund or credit, without interest. However, tax will not be refunded or credited for any wine for which a claim has been or will be made under 27 CFR part 70, subpart G. If the tax has been determined but not paid, the person liable for the tax may, when such wine is returned to bond, be relieved of the liability. Claims for refund or credit, or relief from tax paid or determined on wine returned to bond, are filed in accordance with § 24.66.

* * * * *

6. In § 24.312:

a. The section heading is revised, and the introductory text is amended by removing the word “unmerchantable”; and

b. The second parenthetical phrase at the end of the section is amended by removing the Office of Management and Budget control number “1512–0298” and adding, in its place, the number “1513–0115”.

The revision reads as follows:

§ 24.312 Wine returned to bond record.

* * * * *

PART 70—PROCEDURE AND ADMINISTRATION

7. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5123, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

§ 70.411 [Amended]

8. Section 70.411 is amended by removing the word “unmerchantable” from paragraph (c)(10).

§ 70.413 [Amended]

9. In § 70.413:

- a. Paragraph (c)(2)(ii) is amended by removing the words “as unmerchtable,”;
- b. Paragraph (d)(2) is amended by removing the words “unmerchtable domestic”; and
- c. The first parenthetical phrase at the end of the section is amended by removing the Office of Management and Budget control number “1512–0141” and adding, in its place, the number “1513–0030”.

§ 70.414 [Amended]

10. Section 70.414 is amended by removing the words “unmerchtable domestic” from paragraph (d)(3).

Signed: June 11, 2015.

John J. Manfreda,
Administrator.

Approved: June 19, 2015.

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

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