

§ 179.182 Forfeitures.

Any firearm involved in any violation of the provisions of 26 U.S.C. Chapter 53, shall be subject to seizure, and forfeiture under the internal revenue laws: *Provided, however*, That the disposition of forfeited firearms shall be in conformance with the requirements of 26 U.S.C. 5872. In addition, any vessel, vehicle or aircraft used to transport, carry, convey or conceal or possess any firearm with respect to which there has been committed any violation of any provision of 26 U.S.C. Chapter 53, or the regulations in this part issued pursuant thereto, shall be subject to seizure and forfeiture under the Customs laws, as provided by the act of August 9, 1939 (49 U.S.C. App., Chapter 11).

[T.D. ATF-270, 53 FR 10512, Mar. 31, 1988]

Subpart O—Other Laws Applicable

§ 179.191 Applicability of other provisions of internal revenue laws.

All of the provisions of the internal revenue laws not inconsistent with the provisions of 26 U.S.C. Chapter 53 shall be applicable with respect to the taxes imposed by 26 U.S.C. 5801, 5811, and 5821 (see 26 U.S.C. 5846).

[T.D. ATF-48, 44 FR 55843, Sept. 28, 1979]

§ 179.192 Commerce in firearms and ammunition.

For provisions relating to commerce in firearms and ammunition, including the movement of destructive devices, machine guns, short-barreled shotguns, or short-barreled rifles, see 18 U.S.C. Chapter 44, and Part 178 of this chapter issued pursuant thereto.

[36 FR 14256, Aug. 3, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55843, Sept. 28, 1979]

§ 179.193 Arms Export Control Act.

For provisions relating to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war, see the Arms Export Control Act (22 U.S.C. 2778), and the regulations issued pursu-

ant thereto. (See also Part 47 of this chapter.)

[T.D. ATF-270, 53 FR 10512, Mar. 31, 1988]

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AUTHORITY: 26 U.S.C. 5001, 5002, 5111–5114, 5116, 5117, 5121–5124, 5142, 5143, 5145, 5146, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 7011, 7805.

SOURCE: 25 FR 6270, July 2, 1960, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

Subpart A—Scope of Regulations

§ 194.1 Applicability.

This part contains the substantive and procedural requirements relating to the special taxes imposed on wholesale and retail dealers in liquors and in beer, requirements and procedures pertaining to operations of such dealers prescribed under Title 26 of the United States Code, as amended, and provisions relating to entry of premises and inspection of records by ATF officers.

[T.D. ATF–271, 53 FR 17552, May 17, 1988]

§ 194.2 Territorial extent.

The provisions of this part shall be applicable in the several States of the United States and the District of Columbia.

§ 194.3 Basic permit requirements.

Every person, except an agency of a State or political subdivision thereof, who intends to engage in the business of selling distilled spirits, wines, or

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beer to other dealers is required by regulations in in Part 1 of this chapter to obtain a basic permit authorizing him to engage in such business.

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55843, Sept. 28, 1979]

§ 194.4 Relation to State and municipal law.

The payment of any tax imposed by 26 U.S.C. Chapter 51, for carrying on any trade or business specified in §194.1 shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on such trade or business within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.

(72 Stat. 1348; 26 U.S.C. 5145)

[T.D. 7130, 36 FR 12852, July 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55843, Sept. 28, 1979]

Subpart B—Definitions

§ 194.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms “includes” and “including” do not exclude things not enumerated which are in the same general class.

ATF Officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol

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by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.

Bonded wine cellar. An establishment qualified under this chapter for the production, blending, cellar treatment, storage, bottling, and packaging or re-packaging of untaxpaid wine.

Brewery. An establishment qualified under this chapter for the production of beer.

CFR. The Code of Federal Regulations.

Dealer. Any person who sells, or offers for sale, any distilled spirits, wines, or beer.

Denatured spirits or denatured alcohol. Spirits to which denaturants have been added as prescribed under this chapter.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Director of the service center. A director of an internal revenue service center.

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof, from whatever source or by whatever process produced.

Distilled spirits plant. An establishment qualified under Part 19 of this chapter for the production, storage or processing of distilled spirits.

District director. A district director of internal revenue.

Fiscal year. The period from October 1 of one calendar year through September 30 of the following year.

Gallon or wine gallon. A United States gallon of liquid measure equivalent to the volume of 231 cubic inches.

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to adequately protect the revenue.

Liquors. Distilled spirits, wines, or beer.

Liter. A metric unit of capacity equal to 1,000 cubic centimeters of alcoholic beverage, and equivalent to 33.814 fluid

ounces. A liter is divided into 1,000 milliliters. Milliliter or milliliters may be abbreviated as “ml”.

Person. An individual, a trust, estate, partnership, association or other unincorporated organization, fiduciary, company, or corporation, or the District of Columbia, a State, or a political subdivision thereof (including a city, county, or other municipality).

Place, or place of business. The entire office, plant, or area of the business in any one location under the same proprietorship; and passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises shall not be deemed a separation for special tax purposes, if the various divisions are otherwise contiguous.

Reclaim. To grind up a liquor bottle or container and use the ground up material to make products other than liquor bottles or containers.

Recycle. To grind up a liquor bottle or container and use the ground up material to make new liquor bottles or containers.

Regional director (compliance). The principal ATF regional official responsible for administering regulations in this part.

Sale at retail or retail sale. Sale of liquors to a person other than a dealer.

Sale at wholesale or wholesale sale. Sale of liquors to a dealer.

Special tax. The occupational tax imposed on a dealer in liquors or a dealer in beer.

Tax year. The period from July 1 of one calendar year through June 30 of the following year.

U.S.C. The United States Code.

Wine. When used without qualification, the term includes every kind (class and type) of product produced on bonded wine premises from grapes, other fruit (including berries), or other suitable agricultural products and containing not more than 24 percent of alcohol by volume. The term includes all imitation, other than standard, or artificial wine and compounds sold as wine. A wine product containing less than one-half of one percent alcohol by vol-

ume is not taxable as wine when removed from the bonded wine premises.

(26 U.S.C. 7805 (68A Stat. 917, as amended) 27 U.S.C. 205 (49 Stat. 981, as amended))

[T.D. ATF-48, 43 FR 13541, Mar. 31, 1978, as amended by T.D. ATF-50, 43 FR 37180, Aug. 22, 1978; 44 FR 55843, Sept. 28, 1979; T.D. ATF-62, 44 FR 71693, Dec. 11, 1979; T.D. ATF-114, 47 FR 43949, Oct. 5, 1982; T.D. ATF-344, 58 FR 40355, July 28, 1993]

Subpart C—Special (Occupational) Taxes

§ 194.21 Basis of tax.

Special taxes are imposed on persons engaging in or carrying on the business or occupation of selling or offering for sale alcoholic liquors fit for use as a beverage or any alcoholic liquors sold for use as a beverage. The classes of liquor dealer business on which special occupational tax is imposed and the conditions under which such tax is incurred are specified in §§ 194.23 through 194.26. No person shall engage in any business on which the special tax is imposed until he has filed a special tax return as provided in § 194.26 of this part and paid the special tax for such business.

(72 Stat. 1346; 26 U.S.C. 5142)

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-271, 53 FR 17552, May 17, 1988]

§ 194.22 Selling or offering for sale.

Whether the activities of any person constitute engaging in the business of selling or offering for sale is to be determined by the facts in each case, but any course of selling or offering for sale, though to a restricted class of persons or without a view to profit, is within the meaning of the statute.

DEALERS CLASSIFIED

§ 194.23 Retail dealer in liquors.

(a) *General.* Every person who sells or offers for sale distilled spirits, wines, or beer to any person other than a dealer is, except as provided in paragraph (b) of this section, a retail dealer in liquors. Every retail dealer in liquors shall pay special tax at the rate

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specified in § 194.101 for such dealer, unless such dealer is exempt from such special tax as provided in paragraph (c) of this section.

(b) *Persons not deemed to be retail dealers in liquors.* The following persons are not deemed to be retail dealers in liquors within the meaning of 26 U.S.C. Chapter 51, and are not required to pay special tax as such dealer:

(1) A retail dealer in beer as defined in § 194.25,

(2) A limited retail dealer as specified in § 194.27, or

(3) A person who only sells or offers for sale distilled spirits, wines, or beer as provided in § 194.188 through § 194.190 or § 194.191(a).

(c) *Persons exempt from special tax.* The following persons are exempt from special tax as retail dealers in liquors:

(1) A wholesale dealer in liquors selling or offering for sale distilled spirits, wines, or beer, whether to dealers or persons other than dealers, at any place where such wholesale dealer in liquors is required to pay special tax as such dealer.

(2) A wholesale dealer in beer selling or offering for sale beer only, whether to dealers or persons other than dealers, at any place where such wholesale dealer in beer is required to pay special tax as such dealer, or

(3) A person who is exempt from special tax under the provisions of §§ 194.181–194.184, 194.187, or 194.187a.

(72 Stat. 1340, 1343, 1344; 26 U.S.C. 5113, 5121, 5122)

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55843, Sept. 28, 1979; T.D. ATF-271, 53 FR 17552, May 17, 1988]

§ 194.24 Wholesale dealer in liquors.

(a) *General.* Every person who sells or offers for sale distilled spirits, wines, or beer to another dealer is, except as provided in paragraph (b) of this section, a wholesale dealer in liquors. Every wholesale dealer in liquors is required to pay special tax at the rate specified in § 194.101 for such dealer, unless such dealer is exempt from such special tax as provided in paragraph (c) of this section.

(b) *Persons not deemed to be wholesale dealers in liquors.* The following persons are not deemed to be wholesale dealers

in liquors within the meaning of 26 U.S.C., Chapter 51, and are not required to pay special tax as such dealer:

(1) A wholesale dealer in beer as defined in § 194.26,

(2) A person who only sells or offers for sale distilled spirits, wines, or beer as provided in §§ 194.188 through 194.190 or § 194.192, or

(3) A person returning liquors for credit, refund, or exchange as provided in § 194.193.

(c) *Persons exempt from special tax.* (1) The following persons are exempt from special tax as wholesale dealers in liquors:

(i) A retail dealer in liquors who consummates sales of distilled spirits, beer or wine, or any combination thereof, to a limited retail dealer at the place where such retail dealer in liquors has paid the special tax as such dealer for the current tax year,

(ii) A retail dealer in beer who, having paid the special tax as such dealer for the current tax year, consummates sales at his place of business of beer to a limited retail dealer, or

(iii) A person who is exempt from such tax under the provision of §§ 194.181 through 194.184.

(2) A wholesale dealer in liquors who has paid the special tax as such dealer at the place or places, from which he conducts his selling operations is exempt from additional special tax on account of his sales of beer or wines to other dealers at the places of business of such dealers.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340, as amended, 1344, as amended; sec. 1905, Pub. L. 94-455, 90 Stat. 1819 (26 U.S.C. 5111, 5112, 5113, 5123))

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-21, 40 FR 56887, Dec. 5, 1975; T.D. ATF-42, 42 FR 8369, Feb. 10, 1977]

§ 194.25 Retail dealer in beer.

(a) *General.* Every person who sells or offers for sale beer, but not distilled spirits or wines, to any person other than a dealer is, except as provided in paragraph (b) of this section, a retail dealer in beer. Every retail dealer in beer shall pay special tax at the rate specified in § 194.101 for such dealer, unless such dealer is exempt from such

special tax as provided in paragraph (c) of this section.

(b) *Persons not deemed to be retail dealers in beer.* The following persons are not deemed to be retail dealers in beer within the meaning of Chapter 51, I.R.C., and are not required to pay a special tax as such dealer:

(1) A limited retail dealer as specified in §194.27, or

(2) A person who only sells or offers for sale beer, but not distilled spirits or wines, as provided in §194.188 through §194.189 or §194.191(a).

(c) *Persons exempt from special tax.* The following persons are exempt from special tax as retail dealers in beer:

(1) A wholesale dealer in beer selling or offering for sale beer, but not distilled spirits or wines, whether to dealers or persons other than dealers, at any place where such wholesale dealer in beer is required to pay special tax as such dealer.

(2) A person who is exempt from special tax under the provisions of §§194.181, 194.184, 194.187, or 194.187a.

(72 Stat. 1340, 1343, 1344; 26 U.S.C. 5113, 5121, 5122)

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55843, Sept. 28, 1979; T.D. ATF-271, 53 FR 17552, May 17, 1988]

§ 194.26 Wholesale dealer in beer.

(a) *General.* Every person who sells or offers for sale beer, but not distilled spirits or wines, to another dealer is, except as provided in paragraph (b) of this section, a wholesale dealer in beer. Every wholesale dealer in beer is required to pay special tax at the rate specified in §194.101 for such dealer, unless such dealer is exempt from such special tax as provided in paragraph (c) of this section.

(b) *Persons not deemed to be wholesale dealers in beer.* The following persons are not deemed to be wholesale dealers in beer within the meaning of 26 U.S.C., Chapter 51, and are not required to pay special tax as such dealer:

(1) A person who only sells or offers for sale beer, but not distilled spirits or wines, as provided in §194.188 through §194.189 or §194.192, or

(2) A person returning beer for credit, refund or exchange as provided in §194.193.

(c) *Persons exempt from special tax.* (1) The following persons are exempt from special tax as wholesale dealers in beer:

(i) A retail dealer in liquors who commingles sales of distilled spirits, beer or wine, or any combination thereof, to a limited retail dealer at the place where such retail dealer in liquors has paid the special tax as such dealer for the current tax year,

(ii) A retail dealer in beer who commingles sales of beer to a limited dealer at the place where such retail dealer in beer has paid the special tax as such dealer for the current tax year, or

(iii) A person who is exempt from such tax under the provisions of §§194.181 and 194.184.

(2) A wholesale dealer in beer who has paid the special tax as such dealer at the place, or places, from which he conducts his selling operations is exempt from additional special tax on account of his sales of beer to other dealers at the places of business of such dealers.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340, as amended, 1344, as amended; sec. 1905, Pub. L. 94-455, 90 Stat. 1819 (26 U.S.C. 5111, 5112, 5113, 5123))

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-42, 42 FR 8369, Feb. 10, 1977]

§ 194.27 Limited retail dealer; persons eligible.

Any person selling distilled spirits, beer or wine, or any combination thereof, to members, guests, or patrons of bona fide fairs, reunions, picnics, carnivals, or similar outings, and any fraternal, civic, church, labor, charitable, benevolent, or ex-servicemen's organization selling distilled spirits, beer or wine, or any combination thereof, on the occasion of any kind of entertainment, dance, picnic, bazaar, or festival held by it, is a "limited retail dealer," if the person or organization is not otherwise engaged in business as a dealer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1344; sec. 1905, Pub. L. 94-455, 90 Stat. 1819, as amended (26 U.S.C. 5122))

[T.D. ATF-271, 53 FR 17552, May 17, 1988]

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§ 194.28 Sales of 20 wine gallons (75.7 liters) or more.

Any person who sells or offers for sale distilled spirits, wines, or beer, in quantities of 20 wine gallons (75.7 liters) or more, to the same person at the same time, shall be presumed and held to be a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be, unless such person shows by satisfactory evidence that such sale, or offer for sale, was made to a person other than a dealer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1413 (26 U.S.C. 5691))

[T.D. ATF-34, 41 FR 46860, Oct. 26, 1976]

SPECIAL TAX LIABILITY OF CERTAIN ORGANIZATIONS, AGENCIES AND PERSONS

§ 194.29 Clubs or similar organizations.

A club or similar organization shall pay special tax if such club or organization:

(a) Furnishes liquors to members under conditions constituting sale (including the acceptance of orders therefor, furnishing the liquors ordered and collecting the price thereof); or

(b) Conducts a bar for the sale of liquors on the occasion of an outing, picnic, or other entertainment, unless the club is a "limited retail dealer" under § 194.27 (the special tax stamp of the proprietor of the premises where the bar is located will not relieve the club or organization of special tax liability); or

(c) Purchases liquors for members without prior agreement concerning payment therefor and such organization subsequently recoups.

However, special tax liability is not incurred if money is collected in advance from members for the purchase of liquors, or money is advanced for purchase of liquors on agreement with the members for reimbursement.

(72 Stat. 1340, 1343, 1344; 26 U.S.C. 5111, 5121, 5122)

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55843, Sept. 28, 1979; T.D. ATF-271, 53 FR 17552, May 17, 1988]

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§ 194.30 Restaurants serving liquors with meals.

Proprietors of restaurants and other persons who serve liquors with meals to customers, though no separate or specific charge for the liquors is made, shall pay special tax.

(72 Stat. 1344; 26 U.S.C. 5122)

§ 194.31 States, political subdivisions thereof, or the District of Columbia.

A State, a political subdivision thereof, or the District of Columbia which engages in the business of selling, or offering for sale, distilled spirits, wines, or beer is not exempt from special tax. However, no such governmental entity shall be required to pay more than one special tax as a retail dealer in liquors regardless of the number of locations at which such entity carries on business as a retail dealer in liquors. Any such governmental entity which has paid the applicable wholesale dealer special tax at its principal office, and has paid the applicable special tax as a retail dealer, shall not be required to pay additional wholesale dealer special tax at its retail stores by reason of the sale thereof of distilled spirits, wines, or beer, to dealers qualified to do business as such within the jurisdiction of such entity.

(72 Stat. 1340, 1343, 1344, as amended; 26 U.S.C. 5111, 5113, 5121, 5123)

[T.D. 7130, 36 FR 12852, July 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 194.32 Sales of denatured spirits or articles.

Any person who sells denatured spirits or any substance or preparation made with or containing denatured spirits for use, or for sale for use, for beverage purposes, or who sells any of such products under circumstances from which it might reasonably appear that it is the intention of the purchaser to procure the same for sale or use for beverage purposes, shall pay special tax.

(72 Stat. 1314; 26 U.S.C. 5001)

§ 194.33 Sales of alcoholic compounds, preparations, or mixtures containing distilled spirits, wines, or beer.

(a) *Special tax liability.* Special tax liability will be incurred with respect to the sale, or offering for sale, of alcoholic compounds, preparations, or mixtures containing distilled spirits, wines, or beer, unless such compounds, preparations, or mixtures are unfit for use for beverage purposes and are sold solely for use for nonbeverage purposes.

(b) *Products unfit for beverage use.* Products meeting the requirements for exemption from qualification under the provisions of §19.58 of this chapter shall be deemed to be unfit for beverage purposes for the purposes of this part.

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-379, 61 FR 31426, June 20, 1996]

§ 194.34 Sales by agencies and instrumentalities of the United States.

Unless specifically exempt by statute, any agency or instrumentality of the United States, including post exchanges, ship's stores, ship's service stores, and commissaries, or any canteen, club, mess, or similar organization operated under regulations of any such agency or instrumentality, which sells, or offers for sale, distilled spirits, wines, or beer shall pay special tax as a dealer in liquors or as a dealer in beer, as the case may be, for carrying on such business.

(72 Stat. 1340, 1343, 1347; 26 U.S.C. 5111, 5121, 5143)

§ 194.35 Warehouse receipts covering spirits.

Since the sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits, every person who sells or offers for sale warehouse receipts for spirits held or stored in a distilled spirits plant, customs bonded warehouse, or elsewhere, is required to file a special tax return and pay special tax as a wholesale dealer in liquors, or as a retail dealer in liquors, as the case may be, at the place where such warehouse receipts are sold, or offered for

sale, unless exempt by the provisions of subpart L, of this part.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

Subpart D—Administrative Provisions

§ 194.41 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

(5 U.S.C. 552(a); 80 Stat. 383, as amended)

[T.D. ATF-92, 46 FR 46916, Sept. 23, 1981, as amended by T.D. ATF-249, 52 FR 5962, Feb. 27, 1987; T.D. 372, 61 FR 20725, May 8, 1996]

§ 194.42 Right of entry and examination.

Any ATF officer may enter during business hours the premises (including places of storage) of any dealer for the purpose of inspecting or examining any records or other documents required to be kept by such dealer under this part and any distilled spirits, wines, or beer kept or stored by such dealer on such premises.

(72 Stat. 1348; 26 U.S.C. 5146)

Subpart E—Places Subject to Special Tax

§ 194.51 Special tax liability incurred at each place of business.

Except as provided in §§194.31 and 194.181 through 194.193, liability to special tax is incurred at each and every place where distilled spirits, wines, or beer are sold or offered for sale: *Provided*, That the term "place" as used in this section means the entire office, plant or area of the business in any one location under the same proprietorship; and passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises shall not

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be deemed sufficient separation to require the payment of addition special tax, if the various divisions are otherwise contiguous.

(72 Stat. 1347; 26 U.S.C. 5143)

[T.D. 7130, 36 FR 12852, July 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 194.52 Place of sale.

The place at which ownership of liquors is transferred, actually or constructively, is the place of sale.

(72 Stat. 1347; 26 U.S.C. 5143)

§ 194.53 Place of offering for sale.

Liquors are offered for sale (a) at the place where they are kept for sale and where a sale may be effected, or (b) at any place where sales are consummated. Liquors are not offered for sale by sending abroad an agent to take orders, or by establishing an office for the mere purpose of taking orders, provided in each case the orders received are transmitted to the principal for acceptance at the place where he holds a special tax stamp or is exempt from special tax as provided in subpart L of this part.

(72 Stat. 1347; 26 U.S.C. 5143)

§ 194.54 Places of storage; deliveries therefrom.

Special tax is not required to be paid for warehouses and similar places which are used by dealers merely for the storage of liquors and are not places where orders for liquors are accepted. Where orders for liquors are received and duly accepted at a place where the dealer holds the required special tax stamp, the subsequent actual delivery of the liquors from a place of storage does not require the payment of special tax at such place of storage. Except as provided in §§ 194.185 and 194.186, a dealer holding a special tax stamp at a given place, who makes actual delivery of liquors from a warehouse at another place, without prior constructive delivery by the acceptance of an order therefor at the place covered by the special tax stamp, shall pay special tax at the place where ownership of the liquors is transferred.

(72 Stat. 1340, 1347; 26 U.S.C. 5113, 5143)

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§ 194.55 Caterers.

(a) *General.* Where a contract to furnish liquors is made by a caterer at his place of business where he holds a special tax stamp, no liability to special tax is incurred by the serving of the liquors at a different location.

(b) *Additional liability.* Where the contract of a caterer provides for the sale of liquors by the drink at a place, or simultaneously at different places, other than his place of business where he holds a special tax stamp, a separate liability to special tax is incurred at each such place.

(c) *Records.* Caterers must maintain sufficient commercial records to verify that their special (occupational) tax liabilities have been satisfied for all locations at which activities subject to special (occupational) tax occur. These commercial records should indicate the names and addresses of locations at which alcoholic beverages have been sold or offered for sale and the dates and times that such activities occurred. These commercial records must be available to ATF officers upon request.

(26 U.S.C. 5121, 5122, 5143, 5555, 6806, 7011)

[T.D. 7008, 34 FR 3664, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF-329, 57 FR 39598, Sept. 1, 1992]

§ 194.56 Peddling.

No person shall peddle distilled spirits, wines, or beer, except as provided in §§ 194.126, 194.185, and 194.186. Persons peddling liquors and not meeting the exemptions specified in §§ 194.126, 194.185, and 194.186 are required to pay special tax at each place where sales are consummated.

(72 Stat. 1344, 1347; 26 U.S.C. 5123, 5143)

SALES IN TWO OR MORE AREAS ON THE
SAME PREMISES

§ 194.57 General.

Where liquors are sold by a proprietor in two or more areas within his place of business, only one special tax stamp is required. Where the proprietor lets to another person or persons the privilege of selling liquors in two or more areas within his place of business, whether such privilege is exercised separately or simultaneously with the

proprietor or another concessionaire, each such person shall pay but one special tax.

§ 194.58 Hotels.

The proprietor of a hotel who conducts the sale of liquors throughout the hotel premises shall pay but one special tax. For example, different areas in a hotel such as banquet rooms, meeting rooms, guest rooms, or other such areas, operated by the proprietor, collectively constitute a single place of business. Where any concessionaire conducts the sale of liquors at two or more areas in a hotel, such areas shall be regarded as a single place of business, and he shall pay but one special tax.

§ 194.59 Ball park, race track, etc.; sales throughout the premises.

The proprietor of a ball park, race track, stadium, pavilion, or other similar enclosure constituting one premises, who engages in the business of selling liquors throughout such enclosure, including sales from baskets or containers by his employees in his behalf, shall pay but one special tax for such enclosure. Each concessionaire having the same privilege throughout the enclosure, whether such privilege is exercised separately or simultaneously with the proprietor or another concessionaire, or concessionaires, shall pay but one special tax for such enclosure.

(72 Stat. 1347; 26 U.S.C. 5143)

Subpart F—Each Business Taxable

§ 194.71 Different businesses of same ownership and location.

Where more than one taxable business is conducted by the same person at the same place, special tax for each business shall be paid at the rates severally prescribed, except as provided in §§ 194.24 and 194.26.

(72 Stat. 1347; 26 U.S.C. 5143)

§ 194.72 Dealer in beer and dealer in liquors at the same location.

(a) *Rule in effect prior to January 1, 1988.* Any person who was required to pay special tax as a wholesale or retail dealer in beer, who entered business as such, and who thereafter, in the same

or a subsequent month prior to January 1, 1988, began to sell distilled spirits or wine shall, in addition, pay the special tax as a wholesale or retail dealer in liquors before commencing the sale, or offering for sale, of distilled spirits or wine.

(b) *Rule in effect on January 1, 1988, and thereafter.* Any person who pays special tax as a retail dealer in beer for a period beginning on or after January 1, 1988, (including one who pays such tax under the transition rule of § 194.103(b)) is exempt from additional special tax as a retail dealer in liquors with respect to sales of distilled spirits or wine at the place and during the period for which the tax as a retail dealer in beer was paid. Similarly, any person who pays special tax as a wholesale dealer in beer for a period beginning on or after January 1, 1988, (including one who pays such tax under the transition rule of § 194.103(b)) is exempt from additional special tax as a wholesale dealer in liquors with respect to sales of distilled spirits or wine at the place and during the period for which the tax as a wholesale dealer in beer was paid.

(26 U.S.C. 5113, 5143)

[T.D. ATF-285, 54 FR 12610, Mar. 28, 1989]

Subpart G—Partnerships

§ 194.91 Liability of partners.

Any number of persons carrying on one business in partnership at any one place during any fiscal year shall be required to pay but one special tax for such business.

(72 Stat. 1347; 26 U.S.C. 5143)

§ 194.92 Addition of partners or incorporation of partnership.

Where a number of persons who have paid special tax as partners admit one or more new members to the firm or form a corporation (a separate legal entity) to take over the business, the new firm or corporation shall pay special tax before commencing business.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 194.93 Formation of a partnership by two dealers.

Where two persons, each holding a special tax stamp for a business carried

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on by himself, form a partnership, the firm shall pay special tax to cover the business conducted by the partnership.
(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 194.94 Withdrawal of one or more partners.

When one or more partners withdraw from a partnership which has paid special tax, the remaining partner, or partners, may file with ATF a notice of succession to the partnership business within 30 days after the change in control, as provided in §194.169, and carry on the same business at the same address for the remainder of the taxable period for which special tax was paid without paying additional special tax. However, where the remaining partner, or partners, do not file such timely notice of succession, they are required to pay special tax, as provided in §194.170.

(68A Stat. 846, 72 Stat. 1347; 26 U.S.C. 7011, 5143)

[25 FR 6270, July 2, 1960, as amended by T.D. 7008, 34 FR 3664, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

Subpart H—Payment of Special Tax

§ 194.101 Special tax rates.

(a) *Previous rates.* Prior to January 1, 1988, the special (occupational) taxes imposed on dealers in liquors and beer were as follows:

(1) *Annual (tax year) rates:*

Wholesale dealer in liquors (spirits, wines, beer).....	\$255.00
Wholesale dealer in beer (beer only)	123.00
Retail dealer in liquors (spirits, wines, beer).....	54.00
Retail dealer in beer (beer only).....	24.00

(2) *Monthly (calendar month) rates:*

Limited retail dealer (spirits, wines, beer).....	\$4.50
Limited retail dealer (wines, beer).....	2.20

(b) *Current rates.* Effective January 1, 1988, special (occupational) taxes are imposed on dealers in liquors and beer at the following rates:

Wholesale dealer in liquors (spirits, wines, beer).....	\$500
Wholesale dealer in beer (beer only)	500

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Retail dealer in liquors (spirits, wines, beer).....	250
Retail dealer in beer (beer only)	250

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340, 1343; sec. 1905, Pub. L. 94-455, 90 Stat. 1819 (26 U.S.C. 5111, 5121))

[T.D. ATF-271, 53 FR 17552, May 17, 1988; 54 FR 11866, Mar. 22, 1989]

§ 194.102 Date special tax is due.

Special taxes shall be paid on or before July 1 of each year, or before engaging in businesses.

(72 Stat. 1346; 26 U.S.C. 5142)

§ 194.103 Computation of special tax.

(a) *General.* In the case of a person engaged in a business subject to special tax during the month of July, the special tax liability shall be reckoned for the entire tax year beginning July 1 and ending June 30 following. Where business is commenced subsequent to July, the liability shall be reckoned proportionately from the first day of the month in which the liability to a special tax commenced to June 30 following. For example, a person commencing business in August is liable to special tax for 11 months, or eleven-twelfths of the annual tax.

(b) *Transition rule.* A taxpayer who was engaged in a business on January 1, 1988, for which a special (occupational) tax was paid for a taxable period which began before January 1, 1988, and included that date, shall pay an increased special tax for the period January 1, 1988, through June 30, 1988. The increased tax shall not exceed one-half the excess (if any) of (1) the rate of special tax in effect on January 1, 1988, over (2) the rate of such tax in effect on December 31, 1987. The increased special tax shall be paid on or before April 1, 1988.

(72 Stat. 1346; 26 U.S.C. 5142)

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55843, Sept. 28, 1979; T.D. ATF-271, 53 FR 17554, May 17, 1988]

FILING RETURN AND PAYMENT OF SPECIAL TAX

§ 194.104 Time for filing return.

Every person who intends to engage in a business subject to special tax

under the provisions of this part shall, on or before the date such business is commenced, file a special tax return, Form 5630.5, with payment of tax; and every taxpayer who continues into a new tax year a business subject to special tax under the provisions of this part shall file a Form 5630.5 with tax on or before July 1 of the new tax year. A taxpayer subject to special tax for the same period at two or more locations shall file one special tax return, Form 5630.5, prepared as provided in § 194.106, with payment of tax to cover all such locations. If the return and tax are received in the mail and the U.S. postmark on the cover shows that it was deposited in the mail in the United States within the time prescribed for filing in an envelope or other appropriate wrapper which was properly addressed with postage prepaid, the return shall be considered as timely filed. If the postmark is not legible, the sender has the burden of proving the date when the postmark was made. When registered mail is used the date of registration shall be accepted as the postmark date.

(68A Stat. 732 as amended, 749 as amended (26 U.S.C. 6011, 6071); sec. 201, Pub. L. 85-859, 72 Stat. 1346 as amended (26 U.S.C. 5142))

[T.D. ATF-70, 45 FR 33979, May 21, 1980, as amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

§ 194.104a Place for filing return.

Form 5630.5 with remittance of tax shall be filed with ATF in accordance with the instructions on the form.

[T.D. ATF-251, 52 FR 19335, May 22, 1987]

§ 194.105 Method of payment.

Payment of special tax shall be made in cash, or by check or money order payable to "Bureau of Alcohol, Tobacco and Firearms". If a check or money order so tendered is not honored when presented for payment, the person who tendered such check or money order shall remain liable for the payment of the special tax, and for all penalties and additions, to the same extent as if the check or money order had not been tendered. In addition, unless the person who tendered the check or money order can show that such check or money order was issued in good

faith, and with reasonable cause to believe that it would be duly paid, there shall be paid as penalty an amount equal to 1 percent of the amount of the check or money order, except that if the amount of the check or money order is less than \$500, the penalty shall be \$5, or the amount of the check or money order, whichever is lesser.

(68A Stat. 777, 826; 26 U.S.C. 6311, 6657)

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

SPECIAL TAX RETURN, FORM 5630.5

§ 194.106 Special tax returns.

(a) *General.* Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with AFT in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5.* All of the information called for on ATF Form 5630.5 shall be provided, including:

- (1) The true name of the taxpayer.
- (2) The trade name(s) (if any) of the business(es) subject to special tax.
- (3) The employer identification number (see § 194.106a).
- (4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: That is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph

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need not be stated if the same information has been previously provided to ATF, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 194.237.

(26 U.S.C. 6011, 6151, 7011)

[T.D. ATF-271, 53 FR 17552, May 17, 1988]

§ 194.106a Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701-12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.113 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS-4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax re-

turn. IRS Form SS-4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS-4.* The taxpayer shall prepare and file IRS Form SS-4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

[T.D. ATF-271, 53 FR 17553, May 17, 1988; as amended by T.D. ATF-301, 55 FR 47657, Nov. 14, 1990]

§ 194.107 Execution of Form 5630.5.

The return of an individual proprietor shall be signed by the proprietor; the return of a partnership shall be signed by a member of the firm; and the return of a corporation shall be signed by a duly authorized officer thereof: *Provided*, That any individual, partnership, or corporation may appoint an agent to sign in his behalf. In each case, the person signing the return shall designate his capacity as "individual owner," "member of firm," "agent," "attorney-in-fact" or, in the case of a corporation, the title of the officer. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a dealer by reason of death, insolvency, or other circumstances, shall indicate the fiduciary capacity in which they act. Returns signed by persons, as agents or attorneys-in-fact, will not be accepted unless, in each instance, the principal named on the return has executed a power of attorney authorizing such person to sign the return, and such power of attorney is filed with the ATF officer with whom the Form 5630.5 is required to be filed. Form 11 shall be verified by a written declaration that the return has been executed under the penalties of perjury.

(68A Stat. 748, 749; 26 U.S.C. 6061, 6065)

[T.D. 7008, 34 FR 3665, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

§ 194.109 Penalty for failure to file return or to pay tax.

(a) *Failure to file return.* Any person required by this part to file a return on Form 5630.5 who fails to file the return

on or before the last date prescribed in §194.104 shall pay, as an addition to the tax, a delinquency penalty, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The delinquency penalty for failure to file the return on or before the last date prescribed shall be 5 percent of the amount required to be shown as tax on the return if the failure is for not more than one month; with an additional 5 percent for each additional month or fraction thereof during which such delinquency continues, but not more than 25 percent in the aggregate.

(b) *Failure to pay tax.* Any person who files a return on Form 5630.5 under the provisions of this part and who fails to pay the amount shown as tax on the return on or before the date prescribed in §194.104 for payment of such tax, shall pay, as an addition to the tax, a penalty, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The penalty for failure to pay the tax on or before the date prescribed for payment shall be 0.5 percent of the amount shown as tax on the return if the failure is not more than one month; with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not exceeding 25 percent in the aggregate.

(c) *Limitations.* With respect to any return on Form 5630.5, the amount of the addition under paragraph (a) of this section shall be reduced by the amount of the addition under paragraph (b) of this section for any month to which an addition to tax applies under both paragraphs (a) and (b) of this section. If the amount of tax required to be shown as tax on the return is less than the amount shown as tax on such return, the penalties prescribed in paragraphs (a) and (b) of this section shall be applied by substituting such lower amount.

(68A Stat. 821, as amended; 26 U.S.C. 6651)

[T.D. 7110, 36 FR 8034, Apr. 29, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

§ 194.110 Interest on unpaid tax.

(a) *General.* Interest is due on unpaid special tax from the date the tax was required to be paid to the date paid. Interest shall be charged for each day at

the rate prescribed by law in effect on that day.

(b) *Adjusted interest rates.* Adjusted interest rates are announced by the Commissioner of Internal Revenue not later than October 15 of any year, in accordance with variations in the prime interest rate during September of that year, as prescribed by 26 U.S.C. 6621(b). The regional director (compliance) will provide information, when requested, regarding interest rates applicable to specific time periods.

(Sec. 7, Pub. L. 96-625, 88 Stat. 2114 as amended (26 U.S.C. 6621); 68A Stat. 817 (26 U.S.C. 6601))

[T.D. ATF-116, 47 FR 51571, Nov. 16, 1982]

DELINQUENT RETURNS

§ 194.111 Waiver of penalties.

In every case where a special tax return is not filed, or the tax is not paid, at the time prescribed in §194.104, the delinquency penalties specified in §194.109 for failure to file a return or for failure to pay the amount shown as tax on the return will be asserted and collected unless a reasonable cause for delay in filing the return or payment of the tax is clearly established. A dealer who believes the circumstances which delayed his filing of the return or payment of the tax are reasonable, and who desires to have the penalties waived, shall submit with his return a written statement under the penalties of perjury, affirmatively showing all of the circumstances alleged as reasonable causes for delay. If the regional director (compliance) determines that the delinquency was due to a reasonable cause and not to willful neglect or gross negligence, the addition to the tax will not be assessed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, or if he made a satisfactory showing that he exercised ordinary business care and prudence in providing for payment of his tax liability and was nevertheless either unable to pay the tax or would have suffered an undue hardship if he had paid on the due date, then the delay is due to reasonable cause. Mere ignorance of the

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law will not be considered a reasonable cause.

(68A Stat. 821, as amended; 26 U.S.C. 6651)

[T.D. 7110, 36 FR 8034, Apr. 29, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

Subpart I—Special Tax Stamps

§ 194.121 Issuance of stamps.

(a) *Issuance.* Upon filing a return properly executed on Form 5630.5, together with a remittance in the full amount due, the taxpayer will be issued an appropriately designated stamp. Special tax stamps will not be issued in the case of a return covering liability for a past period.

(b) *Multiple locations.* If Form 5630.5 with remittance covers multiple locations, the taxpayer will be issued one stamp for each location listed in the attachment to Form 5630.5 required by § 194.106(c) but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(Sec. 1905, Pub. L. 94-455, 90 Stat. 1820 (26 U.S.C. 5142))

[T.D. ATF-42, 42 FR 8369, Feb. 10, 1977, as amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

§ 194.121a Distribution of stamps for multiple locations.

On receipt of the special tax stamps, the taxpayer will verify that he has one stamp for each location listed in his copy of the attachment to Form 5630.5 and examine them to insure that his name and address are correctly stated thereon. Incorrect stamps shall be returned to the regional director (compliance) as provided in § 194.134. The taxpayer shall designate one stamp for each location listed in his copy of the attachment to Form 5630.5 required by § 194.106 and shall type thereon the trade name, if different from the name in which the stamp was issued, and the address of the business conducted at the location for which that stamp is designated. He shall then forward each stamp to the place of business designated on the stamp. On

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receipt of the stamp at the designated place of business, it shall be examined to verify that the name and address of the business are correctly stated. If they are not, the stamp shall be returned, with a statement showing the nature of the error and the correct data, to the principal office of the taxpayer who will compare the data on the stamp with his retained copy of the attachment to Form 5630.5. If the error in name and address was made by the taxpayer, he will correct the stamp and return it to the designated place of business. If the error was made in the attachment to Form 5630.5, the taxpayer will file with ATF an amended Form 5630.5 and an amended attachment with a statement explaining the error.

[T.D. 7110, 36 FR 8035, Apr. 29, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

§ 194.122 Receipt in lieu of stamp prohibited.

No receipt shall be issued in lieu of a special tax stamp. A receipt may be given only pending the issuance of a stamp, or where the tax liability relates to a prior fiscal year.

(68A Stat. 778; 26 U.S.C. 6314)

§ 194.123 Stamps covering business in violation of State law.

Regional directors (compliance) are without authority to refuse to issue a special tax stamp to a liquor dealer engaged in business in violation of State law. The stamp is not a Federal permit or license, but is merely a receipt for the tax. The stamp affords the holder no protection against prosecution for violation of State law.

(72 Stat. 1348; 26 U.S.C. 5145)

[25 FR 6270, July 2, 1960, as amended by T.D. 7008, 34 FR 3665, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

§ 194.124 Stamps for passenger trains, aircraft, and vessels.

Special tax stamps may be issued in general terms "in the United States" to persons who will carry on the business of retail dealers in liquors or retail dealers in beer, on trains, aircraft, boats or other vessels, engaged in the

business of carrying passengers. If sales of liquors are made at the same time on two or more passenger carriers, a special tax stamp shall be obtained for each such carrier. However, a dealer may transfer any such stamp from one passenger carrier to another on which he conducts his business, without registering the transfer with ATF, and he may conduct such business throughout the passenger carrying train, aircraft, boat or other vessel, to which the stamp is transferred. A person subject to special tax on two or more passenger carriers shall file one Form 5630.5, prepared in the manner prescribed in §194.106(b), with payment of tax, to cover all such carriers and shall specify on the Form 5630.5 the number of passenger carriers for which special tax is being paid.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1344 as amended, 1347 as amended (26 U.S.C. 5123, 5143))

[T.D. ATF-70, 45 FR 33980, May 21, 1980, as amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

§ 194.125 Carriers not engaged in passenger service.

Except as provided in §194.126, a special tax stamp may not be issued for the retailing of liquor on any railroad train, aircraft, or boat that is not engaged in the business of carrying passengers.

(72 Stat. 1344, 1347; 26 U.S.C. 5123, 5143)

§ 194.126 Stamps for supply boats or vessels.

Special tax stamps may be issued to persons carrying on the business of a retail dealer in liquor or a retail dealer in beer on supply boats or vessels operated by them, when such persons operate from a fixed address in a port or harbor and supply exclusively boats or other vessels, or persons thereon, at such port or harbor. Any person desiring to obtain a special tax stamp for such business shall file Form 5630.5, prepared in the manner prescribed in §194.106(b), with remittance, and shall specify on the Form 5630.5, or on an attachment thereto, (a) that the business will consist of supplying exclusively boats, vessels, or persons thereon, (b) the name of the port or harbor at

which the business is to be carried on, and (c) the fixed address from which operations are to be conducted: *Provided*, That where such sales are to be made from two or more supply boats or vessels, the dealer shall obtain a special tax stamp for each such boat or vessel, and shall, in addition to the information required by paragraphs (a), (b), and (c) of this section, specify on the Form 5630.5 the number of supply boats or vessels for which special tax is being paid. A dealer may transfer any such stamp from any boat or vessel on which he discontinues such sales to any other boat or vessel on which he proposes to conduct such business, without registering the transfer with ATF. If the taxpayer operates from two or more fixed addresses, he shall prepare, as required by §194.106(c), one tax return, Form 5630.5, to cover all such addresses and shall, in addition, show on the attachment to the Form 5630.5 the number of stamps to be procured for supply boats or vessels operating from each address. On receipt of the special tax stamps, the taxpayer shall designate an appropriate number of stamps for each location and shall type thereon the trade name, if different from the name in which the stamp was issued, and the fixed address of the business conducted at the location for which the stamps are designated. He shall then forward the stamps to the place of business designated on the stamps. The taxpayer shall enter on each stamp received for retailing liquors on supply boats or vessels, immediately after the occupational tax classification, the phrase "on supply boats" and in the lower margin the notation, "Covers supplying exclusively of boats or vessels, or persons thereon, at the Port (or Harbor) of" followed by the name of such port or harbor.

(72 Stat. 1344, 1347; 26 U.S.C. 5123, 5143)

[T.D. 7110, 36 FR 8035, Apr. 29, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

§ 194.127 Stamps for retail dealers "At Large."

A retail dealer in liquors or a retail dealer in beer whose business requires him to travel from place to place in different States of the United States,

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such as those who sell at carnivals or circuses, may obtain a special tax stamp "At Large" covering his activities throughout the United States with the payment of but one special tax as a retail dealer in liquors or a retail dealer in beer, as required by his business. A dealer desiring such stamp shall state on his special tax return, Form 11, or on an attached statement, the nature of his business and the reason he requires a special tax stamp "At Large." Unless satisfied that the business of the dealer requires him to travel in more than one State, the regional director (compliance) will not issue a stamp "At Large" to the applicant.

(72 Stat. 1344; 26 U.S.C. 5123)

[25 FR 6270, July 2, 1960, as amended by T.D. 7008, 34 FR 3665, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

STAMP TO BE AVAILABLE FOR EXAMINATION

§ 194.131 General.

A dealer shall keep his special tax stamp available in his place of business for inspection by any ATF officer during business hours. A dealer holding a special tax stamp as a retail dealer in liquors or a retail dealer in beer "At Large" or "In the United States" shall keep the stamp available for inspection where he is conducting such business.

(72 Stat. 1348; 26 U.S.C. 5146)

[T.D. 7130, 36 FR 12852, July 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 194.132 Lost or destroyed.

If a special tax stamp has been lost or destroyed, the dealer shall immediately notify the regional director (compliance) who issued the stamp. A "Certificate in Lieu of Lost or Destroyed Special Tax Stamp" will be issued to the dealer who submits an affidavit showing to the satisfaction of the regional director (compliance) that the stamp was lost or destroyed. The certificate shall be kept available for inspection in the same manner as pre-

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scribed for a special tax stamp in § 194.131.

[T.D. 7130, 36 FR 12852, July 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

§ 194.133 Seizure by State authorities.

Where a stamp designated "Retail Dealer in Liquors" is seized by State authorities because it does not conform to the dealer's local license or permit (wine, or wine and beer), the regional director (compliance) will, on request, issue a "Certificate in Lieu of Lost or Destroyed Special Tax Stamp" to show that the dealer has paid special tax as a "Retail Dealer in Wine" or "Retail Dealer in Wines and Beer," as the case may require.

[25 FR 6270, July 2, 1960, as amended by T.D. 7008, 34 FR 3665, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

CORRECTION OF ERRORS ON SPECIAL TAX STAMPS

§ 194.134 Errors disclosed by taxpayers.

On receipt of a special tax stamp, the dealer will examine it to insure that the name and address are correctly stated; if not, the taxpayer will return the stamp to the regional director (compliance) who issued the stamp with a statement showing the nature of the error and the correct name or address. The regional director (compliance), on receipt of such stamp and statement, will compare the data on the stamp with that of the Form 5630.5 in his files, correct the error if made in his office, and return the stamp to the taxpayer. However, if the error was in the taxpayer's preparation of the Form 5630.5, the regional director (compliance) will require such taxpayer to file a new Form 5630.5, designated "Amended Return," setting forth the taxpayer's correct name and address, and a statement explaining the error on the original Form 5630.5. On receipt of the amended Form 5630.5 and a satisfactory explanation of the error, the regional director (compliance) will

make the proper correction on the stamp and return it to the taxpayer.

[T.D. 7008, 34 FR 3665, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19335, May 22, 1987; T.D. ATF-344, 58 FR 40355, July 28, 1993]

§ 194.135 Errors discovered on inspection.

When an ATF officer discovers a material error on a special tax stamp in the name, ownership, or address of the dealer, he will secure from the dealer a new Form 5630.5, designated "Amended Return," showing correctly all of the information required in §194.106 and, in the body of the form or in an attachment thereto, a statement of the reason for requesting correction of the stamp. On receipt of the amended return and an acceptable explanation for the error, the officer will make the proper correction on the stamp and return it to the taxpayer. However, if the error found by the ATF officer is on a special tax stamp obtained pursuant to a return on Form 5630.5 filed under the provisions of §194.106(c), he shall instruct the taxpayer to return the stamp, with a statement showing the nature of the error and the correct data, to the dealer's principal office as provided in §194.121a.

[T.D. 7110, 36 FR 8035, Apr. 29, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

STAMPS FOR INCORRECT PERIOD OR
INCORRECT LIABILITY

§ 194.136 General.

Where a dealer through error has filed a return and paid special tax for an incorrect period of liability or incorrect class of business, he shall prepare a correct Form 5630.5 for each taxable year involved, designating it as an "Amended Return," and submit the amended return, or returns, with remittance for the total tax and additions to the tax (delinquency penalties and interest) incurred, to ATF in accordance with the instructions on the Form 5630.5 or, if the error is discovered by an ATF officer, to such officer: *Provided*, That, subject to the limitations imposed by 26 U.S.C. 6511, the tax

(including additions thereto) paid for the incorrect period of liability or incorrect class of business may be allowed as a credit against the correct tax (including any additions thereto) as provided in §194.137 or §194.139 on surrender of the incorrect stamp or stamps with the amended return or returns noted to show that credit is requested. Tax (including additions thereto) paid for a stamp for an incorrect period of liability or incorrect class of business which is not credited as provided in §194.137 or §194.139, including any creditable tax and additions thereto in excess of the correct tax (including additions thereto), may be refunded pursuant to the provisions of subpart M of this part where the dealer has filed a correct return on Form 5630.5 with remittance for the correct amount of tax (including any additions thereto). A new stamp will be issued only in respect of a current period of liability.

(68A Stat. 732; 26 U.S.C. 6011)

[T.D. 7008, 34 FR 3666, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55844, Sept. 28, 1979; T.D. ATF-251, 52 FR 19335, May 22, 1987]

§ 194.137 Credit by an ATF officer.

Where the ATF officer discovers that tax was paid for an incorrect class of business for a correct period of liability and examination of the incorrect stamp discloses that no additions to the tax were collected, he may, where the correct tax (including any additions thereto) exceeds the incorrect tax paid, credit the tax paid against such correct tax on receipt by him of an amended Form 5630.5, as provided in §194.136, remittance of the difference between the tax paid and the correct tax plus any additions thereto, and the incorrect stamp. The regional director (compliance) will issue a correct stamp if the additional tax collected is for a current year.

(68A Stat. 791, 808; 26 U.S.C. 6402, 6511)

[25 FR 6270, July 2, 1960, as amended by T.D. 7008, 34 FR 3665, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

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§ 194.138 Receipt for taxes.

An ATF officer will issue a receipt to a dealer if cash is received as a remittance in payment of special tax (including penalties and interest, if any), or for any type of remittance received if the dealer requests a receipt.

[T.D. ATF-21, 40 FR 56887, Dec. 5, 1975]

§ 194.139 Credit for incorrect stamp.

The regional director (compliance) may credit the tax (including additions thereto) paid for an incorrect stamp if the taxpayer has filed an amended return on Form 5630.5, as provided in § 194.136, and has, with his amended return, surrendered the incorrect stamp for credit and submitted a remittance for the difference between the incorrect tax and the correct tax. Where the tax (and additions thereto) paid for the incorrect stamp surrendered exceeds the amount due, the regional director (compliance) shall advise the dealer to file claim for refund of such excess on ATF Form 2635 (5620.8). The applicable provisions of subpart M of this part shall govern claims for refund.

(68A Stat. 791, 808; 26 U.S.C. 6402, 6511)

[T.D. 7008, 34 FR 3666, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15 1975, and amended by T.D. ATF-251, 52 FR 19335, May 22, 1987]

Subpart J—Change of Location

§ 194.151 Amended return, Form 5630.5; endorsement on stamp.

(a) *General.* A dealer who, during the taxable period for which special tax was paid, removes the business to a place other than that specified on the original special tax return on Form 5630.5, and stated on the special tax stamp, shall, within 30 days from the date the dealer begins to carry on such business at the new location, register the change with ATF by filing a new return on Form 5630.5, designated "Amended Return", setting forth the time when and the place to which such removal was made, and shall surrender the special tax stamp with the Form 5630.5 for endorsement of the change in location: *Provided*, That a dealer, whose original return on ATF Form 5630.5 covered only one location, may deliver

the amended return and the stamp at any ATF office, or to any ATF officer inspecting the business, in lieu of mailing them to ATF: *Provided further*, That a dealer who filed an original return under the provisions of § 194.106(c) shall forward with the amended return an attachment showing both the old and new address of any place of business which has been relocated, and the special tax stamp covering the location from which the business was removed. The regional director (compliance) or the ATF officer receiving such return or stamp shall, if the return is submitted within the 30-day period, enter the proper endorsement on the stamp and return it to the taxpayer.

(b) *Caterers.* A caterer who sells liquor by the drink at locations other than his or her principal place of business shall not be required to provide the change of location registration prescribed in paragraph (a) of this section for such catering activities provided the records prescribed by § 194.55(c) are maintained as required. For a permanent change in location of the principal place of business, an amended return must be filed in accordance with paragraph (a) of this section.

[T.D. 7008, 34 FR 3666, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-21, 40 FR 56887, Dec. 5, 1975; T.D. ATF-251, 52 FR 19336, May 22, 1987; T.D. ATF-271, 53 FR 17553, May 17, 1988; T.D. ATF-329, 57 FR 39598, Sept. 1, 1992]

§ 194.152 Failure to register change of address within 30 days.

A dealer who removes his business to a place other than that stated on his special tax stamp and fails to register such removal with ATF within 30 days from the date he begins to carry on such business at the new location is required to pay special tax, and interest on the amount required to be shown on the return as tax, just as if he were engaging in business for the first time (as to liability for delinquency penalty see § 194.109). The amount of tax, delinquency penalty, and interest to be paid shall be computed as provided in

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§§ 194.103, 194.109, and 194.110, respectively.

(68A Stat. 846, 72 Stat. 1347; 26 U.S.C. 7011, 5143)

[25 FR 6270, July 2, 1960, as amended by T.D. 7008, 34 FR 3664, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-251, 52 FR 19336, May 22, 1987]

§ 194.153 Certificate in lieu of lost or destroyed special tax stamp.

The provisions of this part shall apply to certificates in lieu of lost or destroyed special tax stamps issued to taxpayers under the provisions of §§ 194.132 and 194.133.

Subpart K—Change in Proprietorship or Control

§ 194.161 Sale of business.

A special tax stamp is a receipt for tax, personal to the one to whom issued, and is not transferable from one dealer to another. Where there occurs a change in the proprietorship of a business for which special tax has been paid, the successor shall pay special tax and procure a special tax stamp for such business, except as provided in § 194.169.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 194.162 Incorporation of business.

Where an individual or a firm engaged in business requiring payment of special tax forms a corporation to take over and conduct the business, the corporation (a separate legal entity) shall pay special tax and procure a stamp in its own name.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 194.163 New corporation.

Where a new corporation is formed to take over and conduct the business of one or more corporations which have paid special tax, the new corporation shall pay special tax and procure a stamp in its own name.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 194.164 Stockholder continuing business of corporation.

A special tax stamp held by a corporation as a dealer in liquors, or as a dealer in beer, cannot cover the same

business carried on by one or more of its stockholders after dissolution of the corporation.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 194.165 Change in trade name or style of business.

A dealer who has paid the special tax for his business at a given location is not required to pay additional special tax by reason of a mere change in the trade name or style under which he conducts such business, or by reason of a change in management which involves no change in proprietorship of the business.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 194.166 Change of name or increase in capital stock of a corporation.

Additional special tax is not required by reason of a change of name or increase in the capital stock of a corporation if a new corporation is not created under the laws of the State of incorporation.

(72 Stat. 1340, 1343; 26 U.S.C. 5111, 5121)

§ 194.167 Change in ownership of capital stock.

Additional special tax is not required by reason of the sale or transfer of all or a controlling interest in the capital stock of a corporation.

§ 194.168 Change in membership of unincorporated club.

Additional special tax is not required of an unincorporated club by reason of changes in membership, where such changes do not result in the dissolution thereof and the formation of a new club.

§ 194.169 Change of control, persons having right of succession.

Certain persons other than the special taxpayer may, without paying additional special tax, secure the right to carry on the same business at the same address for the remainder of the taxable period for which the special tax was paid. Such persons are:

- (a) The surviving spouse or child, or executor, administrator, or other legal representative of a deceased dealer;
- (b) A husband or wife succeeding to the business of his or her living spouse;

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(c) A receiver or trustee in bankruptcy, or an assignee for benefit of creditors; and

(d) The partner or partners remaining after death or withdrawal of a member of a partnership.

In order to secure such right, the person or persons continuing the business shall file with ATF, within 30 days from the date on which the successor begins to carry on the business, an amended special tax return on Form 5630.5, showing the basis of the succession, and shall surrender the unexpired special tax stamp or stamps for endorsement of the change in control: *Provided*, That, if the original return, Form 5630.5, was filed under the provisions of §194.106(b), the person succeeding to the business may deliver the amended return and stamp to any ATF office, or to any ATF officer inspecting the business, in lieu of mailing them to ATF. If the applicant has the right of succession and the return and stamp are submitted on time, the regional director (compliance) or other ATF officer receiving them will enter the proper endorsement on the stamp and return it to the successor.

(68A Stat. 846, 72 Stat. 1347; 26 U.S.C. 7011, 5143)

[T.D. 7110, 36 FR 8036, Apr. 29, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975; as amended at 52 FR 19336, May 22, 1987]

§ 194.170 Failure to perfect right of succession within 30 days.

A person who would have had the privilege of succeeding, as provided in §194.169, to a business for which the special tax had been paid for the remainder of the taxable period but failed to register such succession within 30 days from the date he began to carry on such business is required to pay special tax, and interest on the amount required to be shown on the return as tax, just as if he were engaging in a new business (as to liability for delinquency penalty see §194.109). The amount of tax, delinquency penalty, and interest to be paid shall be computed as provided in §§194.103, 194.109, and 194.110.

(68A Stat. 846, 72 Stat. 1347; 26 U.S.C. 7011, 5143)

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Subpart L—Exemptions and Exceptions

PERSONS EXEMPT FROM LIQUOR AND BEER DEALER SPECIAL TAXES

§ 194.181 Single sale of liquors or warehouse receipts.

A single sale of distilled spirits, wines, or beer, or a single sale of one or more warehouse receipts for distilled spirits, unattended by circumstances showing the person making the sale to be engaged in the business, does not subject the vendor to special tax.

(72 Stat. 1340, 1343, 1346; 26 U.S.C. 5111, 5121, 5142)

§ 194.182 Proprietors of distilled spirits plants selling certain distilled spirits or wines.

(a) *Exemption of proprietor.* No proprietor of a distilled spirits plant shall be required to pay special tax as a wholesale or retail dealer in liquors on account of the sale at his principal business office as designated in writing to the regional director (compliance), or at his distilled spirits plant, of distilled spirits or wines which, at the time of sale, are stored at his distilled spirits plant, or had been removed from such plant to a taxpaid storeroom the operations of which are integrated with the operations of such plant and which is contiguous or adjacent to, or in the immediate vicinity of, such plant. However, no such proprietor shall have more than one place of sale, as to each plant, that shall be exempt from special tax under this section.

(b) *Place of exemption.* Unless the exemption is claimed elsewhere, it will be presumed that the exemption is claimed at the plant where the spirits or wines are stored. If the proprietor wishes to be exempt from payment of special tax with respect to sales at his principal business office rather than for sales at his plant, he shall notify the regional director (compliance) of the region in which the plant is located of his intention. Such notice shall be in writing, on letter size paper and shall be submitted in triplicate. On approval, two copies will be returned to the proprietor, one to be filed at the principal office, and the original will be retained by the regional director (compliance).

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Where the exemption is claimed for a place other than the plant, special tax shall be paid at the plant if sales are made thereat.

(72 Stat. 1340; 26 U.S.C. 5113)

§ 194.183 Proprietors of bonded wine cellars selling certain wines or wine spirits.

(a) *Exemption of proprietor.* No proprietor of a bonded wine cellar shall be required to pay special tax as a wholesale or retail dealer in liquors on account of the sale at his principal business office as designated in writing to the regional director (compliance), or at his bonded wine cellar, of wines or wine spirits which, at the time of sale, are stored at his bonded wine cellar, or had been removed from such bonded wine cellar to a taxpaid storeroom the operations of which are integrated with the operations of such bonded wine cellar and which is contiguous or adjacent to, or in the immediate vicinity of, such bonded wine cellar. However, no such proprietor shall have more than one place of sale, as to each bonded wine cellar, that shall be exempt from special tax under this section.

(b) *Place of exemption.* Unless the exemption is claimed elsewhere, it will be presumed that the exemption is claimed at the bonded wine cellar where the wines or wine spirits are stored. If the proprietor wishes to be exempt from special tax with respect to sales at his principal office rather than for sales at his bonded wine cellar, he shall notify the regional director (compliance) of the region in which the bonded wine cellar is located of his intention. Such notice shall be in writing, on letter size paper and shall be submitted in triplicate. On approval two copies will be returned to the proprietor, one to be filed at the principal office, and the original will be retained by the regional director (compliance). Where the exemption is claimed for a place other than the bonded wine cellar, special tax shall be paid at the bonded wine cellar if sales are made thereat.

(c) *Exception.* Where the proprietor of a bonded wine cellar consummates sales of wines to other dealers at the purchasers' places of business, through a delivery route salesman or otherwise,

the proprietor of the bonded wine cellar is required to pay special tax as a wholesale dealer in liquors (or wines) at each place from which he conducts such selling operations.

(72 Stat. 1340; 26 U.S.C. 5113)

§ 194.183a Proprietors of taxpaid wine bottling houses selling certain wines.

(a) *Exemption of proprietor.* No proprietor of a taxpaid wine bottling house shall be required to pay special tax as a wholesale or retail dealer in liquors for a period beginning on or after January 1, 1988, (including such tax under the transition rule of § 194.103(b)) on account of sales of wine transacted at the proprietor's principal business office, as designated in writing to the regional director (compliance), or at the proprietor's taxpaid wine bottling house. However, this exemption applies only to wines which, at the time of sale, are either stored at the taxpaid wine bottling house or had been removed therefrom to a taxpaid storeroom whose operations are integrated with those of the taxpaid wine bottling house and which is contiguous or adjacent to, or in the immediate vicinity of, the taxpaid wine bottling house. Moreover, no such proprietor shall have more than one place of sale, as to each taxpaid wine bottling house, that shall be exempt from special tax under this section.

(b) *Place of exemption.* Unless the exemption is claimed elsewhere, it will be presumed that the exemption is claimed at the taxpaid wine bottling house where the wines are stored. If the proprietor wishes to be exempt from special tax with respect to sales at the proprietor's principal office rather than at the proprietor's taxpaid wine bottling house, the proprietor shall so notify the regional director (compliance) of the region in which the taxpaid wine bottling house is located. The notice shall be in writing, on letter size paper, and shall be submitted in triplicate. On approval, two copies will be returned to the proprietor, one to be filed at the proprietor's principal office, and the original will be retained by the regional director (compliance). Where the exemption is claimed for a

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place other than the taxpaid wine bottling house, special tax shall be paid at the taxpaid wine bottling house if sales are made there.

(c) *Exception.* Where the proprietor of a taxpaid wine bottling house consummates sales of wines to other dealers at the purchasers' places of business, through a delivery route salesman or otherwise, the proprietor of the taxpaid wine bottling house is required to pay special tax as a wholesale dealer in liquors at each place from which the proprietor conducts such selling operations.

(26 U.S.C. 5113)

[T.D. ATF-285, 53 FR 12610, Mar. 28, 1989]

§ 194.184 Proprietors of breweries selling beer stored at their breweries.

(a) *Exemption of proprietor.* No proprietor of a brewery shall be required to pay special tax as a wholesale or retail dealer in beer on account of the sale at his principal business office as designated in writing to the regional director (compliance), or at his brewery, of beer which, at the time of sale, is stored at his brewery, or had been removed from such brewery to a taxpaid storeroom the operations of which are integrated with the operations of such brewery and which is contiguous or adjacent to, or in the immediate vicinity of, such brewery. However, no such proprietor shall have more than one place of sale, as to each brewery, that shall be exempt from special tax under this section.

(b) *Place of exemption.* Unless the exemption is claimed elsewhere, it will be presumed that the exemption is claimed at the brewery where the beer is stored. If the proprietor wishes to be exempt from special tax with respect to sales at his principal office rather than for sales at his brewery, he shall notify the regional director (compliance) of the region in which the brewery is located of his intention. Such notice shall be in writing, on letter size paper and shall be submitted in triplicate. On approval, two copies will be returned to the proprietor, one to be filed at the principal office, and the original will be retained by the regional director (compliance). Where the exemption is claimed for a place

other than the brewery, special tax shall be paid at the brewery if sales are made thereat.

(c) *Exception.* Where the proprietor of a brewery consummates sales of beer to dealers at the purchasers' places of business (through delivery route salesman or otherwise), such proprietor is required to pay special tax as a wholesale dealer in beer at each place from which he conducts such selling operations.

(72 Stat. 1340; 26 U.S.C. 5113)

§ 194.185 Wholesale dealers in liquors consummating sales of wines or beer at premises of other dealers.

(a) *Sales of wines.* Any wholesale dealer in liquors (including the proprietor of a bonded wine cellar) who has paid special tax as a wholesale dealer in liquors for the place from which he conducts his selling operations may consummate sales of wines to other wholesale or retail dealers in liquors, or to limited retail dealers, at the purchasers' places of business without being required to pay additional special tax on account of such sales.

(b) *Sales of beer.* Any wholesale dealer in liquors who has paid the tax as provided in paragraph (a) of this section may also consummate sales of beer to wholesale or retail dealers in beer, to wholesale or retail dealers in liquors, or to limited retail dealers, at the purchasers' place of business without being required to pay additional special tax on account of such sales.

(72 Stat. 1340; 26 U.S.C. 5113)

§ 194.186 Wholesale dealers in beer consummating sales at premises of other dealers.

Any dealer (including the proprietor of a brewery) who has paid special tax as a wholesale dealer in beer for the place from which he conducts his selling operations may consummate sales of beer (but not wines or distilled spirits) to other dealers at the purchasers' places of business without being required to pay additional special tax on account of such sales.

(72 Stat. 1340; 26 U.S.C. 5113)

§ 194.187 Hospitals.

Hospitals and similar institutions furnishing liquors to patients are not required to pay special tax, provided no specific or additional charge is made for the liquors so furnished.

§ 194.187a Limited retail dealers.

Limited retail dealers, as specified in § 194.27, are not required to pay special tax.

[T.D. ATF-271, 53 FR 17553, May 17, 1988]

§ 194.187b Coordination of taxes under 26 U.S.C. 5111 and 5121.

Effective January 1, 1988, special tax is not imposed concurrently under both 26 U.S.C. 5111(a) (relating to wholesale liquor sales) and 26 U.S.C. 5111(b) (relating to wholesale beer sales), nor under both 26 U.S.C. 5121(a) (relating to retail liquor sales) and 26 U.S.C. 5121(b) (relating to retail beer sales), with respect to a taxpayer's activities at a single place during a single tax year. (See § 194.72.)

(26 U.S.C. 5113(g), 5123(c))

[T.D. ATF-285, 54 FR 12611, Mar. 28, 1989]

PERSONS WHO ARE NOT DEALERS IN
LIQUORS OR BEER

§ 194.188 Persons making casual sales.

Certain persons making casual sales of liquors are not liquor or beer dealers within the meaning of the statute; they are as follows:

(a) Administrators, executors, receivers, and other fiduciaries who receive distilled spirits, wines, or beer in their fiduciary capacities and sell such liquors in one parcel, or at public auction in parcels of not less than 20 wine gallons (75.7 liters);

(b) Creditors who receive distilled spirits, wines, or beer as security for, or in payment of, debts and sell such liquors in one parcel, or at a public auction in parcels of not less than 20 wine gallons (75.7 liters);

(c) Public officers or court officials who levy on distilled spirits, wines, or beer under order or process of any court or magistrate and sell such liquors in one parcel, or at public auction in parcels of not less than 20 wine gallons (75.7 liters); or,

(d) A retiring partner, or representative of a deceased partner, who sells distilled spirits, wines, or beer to the incoming or remaining partner, or partners, of a partnership.

Persons making such sales are not required to pay special tax, or keep the records or reports required of dealers in subpart O of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340 (26 U.S.C. 5113))

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-34, 41 FR 46860, Oct. 26, 1976]

§ 194.189 Agents, auctioneers, brokers, etc., acting on behalf of others.

Certain persons may sell liquors as agents or employees of others, or receive and transmit orders therefor to a dealer, without being considered liquor or beer dealers on account of such activities; they are as follows:

(a) Auctioneers who merely sell liquors at auction on behalf of others,

(b) Agents or brokers who merely solicit orders for liquors in the name of a principal, but neither stock nor deliver the liquors for which orders are taken,

(c) Employees who merely sell liquors on behalf of their employers, and

(d) Retail dealers in liquors or retail dealers in beer who merely receive and transmit to a wholesale dealer orders for liquors or beer to be billed, charged, and shipped to customers by such wholesale dealers.

Such persons, who have no property rights in the liquors or beer sold, may make collections for their principals and receive commissions for their services, or guarantee the payment of accounts, without being required to pay special tax. In all such cases, however, the principal is required to pay special tax at each place where sales are consummated, unless he is exempt therefrom under the provisions of this subpart.

§ 194.190 Apothecaries or druggists selling medicines and tinctures.

Apothecaries and druggists who use wines or spirituous liquors for compounding medicines and in making tinctures which are unfit for use for beverage purposes are not required to pay special tax as dealers in liquors by

§ 194.191

reason of the sale of such compounds or tinctures for nonbeverage purposes.

(72 Stat. 1328; 26 U.S.C. 5025)

§ 194.191 Persons selling products unfit for beverage use.

(a) *Vendors not deemed dealers in liquors or beer.* No person selling or offering for sale for nonbeverage purposes products classed as unfit for beverage use under the provisions of § 19.58 of this chapter shall be deemed, solely by reason of such sales, to be a dealer in liquors.

(b) *Restrictions.* Any person who sells or offers for sale any nonbeverage products for use, or for sale for use, for beverage purposes, or who sells any of such products under circumstances from which it might reasonably appear that it is the intention of the purchaser to procure the same for sale or use for beverage purposes, shall pay special tax as a wholesale or retail dealer in liquors or as a wholesale or retail dealer in beer, as the case may be.

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-379, 61 FR 31426, June 20, 1996]

§ 194.192 Retail dealer selling in liquidation his entire stock.

No retail dealer in liquors or retail dealer in beer, selling in liquidation his entire stock of liquors in one parcel, or in parcels embracing not less than his entire stock of distilled spirits, of wines, or of beer, which parcels may contain a combination of any or all such liquors, to any other dealer shall be deemed to be a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be, by reason of such sale or sales. A retail dealer making such sale or sales is not required to keep records or submit reports thereof.

(72 Stat. 1340; 26 U.S.C. 5113)

§ 194.193 Persons returning liquors for credit, refund, or exchange.

No retail dealer in liquors or beer, or other person, shall be deemed to be a wholesale dealer in liquors or a wholesale dealer in beer, as defined in this part, by reason of his bona fide return of distilled spirits, wines, or beer, as the case may be, to the dealer from

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whom purchased (or to the successor of such vendor's business or line of merchandise) for credit, refund, or exchange, and the giving of such credit, refund or exchange shall not be deemed to be a purchase within the meaning of 26 U.S.C. 5117 of § 194.211 of this part. Except in the case of wholesale dealers in liquors required to keep records of their transactions under §§ 194.225 and 194.226, or retail dealers required to keep records under § 194.234, persons returning liquors as provided herein are not required to keep records or submit reports of such transactions.

(72 Stat. 1340, 1343; 26 U.S.C. 5113, 5117)

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55844, Sept. 28, 1979; T.D. ATF-116, 47 FR 51571, Nov. 16, 1982]

Subpart M—Refund of Special Taxes

§ 194.201 Claims.

Claims for abatement of assessment of special tax (including penalties and interest), or for refund of an overpayment of special tax (including interest and penalties), shall be filed on Form 2635 (5620.8). Claims shall be filed with the regional director (compliance) serving the region in which the special tax was paid or assessed. Each claim shall set forth in detail each ground on which it is made and shall contain facts sufficient to apprise the Bureau of Alcohol, Tobacco and Firearms of the exact basis thereof. If the claim is for refund of special tax for which a stamp was issued, such stamp shall be attached to and made a part of the claim, or the claimant shall include in the claim evidence satisfactory to the Bureau of Alcohol, Tobacco and Firearms that the stamp cannot be submitted.

[T.D. ATF-251, 52 FR 19336, May 22, 1987]

§ 194.202 Time limit on filing of claim.

No claim for the refund of a special tax or penalty shall be allowed unless presented within 3 years next after the payment of such tax or penalty.

(68A Stat. 808; 26 U.S.C. 6511)

§ 194.203 Discontinuance of business.

A dealer who for any reason discontinues business is not entitled to refund for the unexpired portion of the fiscal year for which the special tax stamp was issued.

(72 Stat. 1346; 26 U.S.C. 5142)

Subpart N—Restrictions Relating to Purchases of Distilled Spirits**§ 194.211 Unlawful purchases of distilled spirits.**

(a) *General.* It is unlawful for any dealer to purchase distilled spirits for resale from any person other than:

(1) A dealer who has paid special tax as a wholesale dealer in liquors at the place where the distilled spirits are purchased;

(2) A wholesale dealer whose place of business comes within the exemptions provided by §194.151 for changes in location and §194.169 for changes in control;

(3) The proprietor of a distilled spirits plant who is exempt from special tax as a dealer at the place where the distilled spirits are purchased;

(4) A retail liquor store operated by a State, a political subdivision thereof, or the District of Columbia, which is not required to pay special tax as a wholesale dealer in liquors as provided in §194.31;

(5) A person not required to pay special tax as a wholesale liquor dealer, as provided in §§194.188 through 194.190 and 194.192 through 194.193.

(b) *Special provisions for limited retail dealers.* A limited retail dealer may purchase distilled spirits for resale from a retail dealer in liquors.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1343; sec. 1905, Pub. L. 94-455, 90 Stat. 1819 (26 U.S.C. 5117))

[T.D. ATF-42, 42 FR 8370, Feb. 10, 1977]

Subpart O—Prescribed Records and Reports, and Posting of Signs**WHOLESALE DEALERS' RECORDS AND REPORTS****§ 194.221 General requirements as to distilled spirits.**

Except as provided in §§194.223 and 194.224, every wholesale dealer in liquors shall keep daily records of the physical receipt and disposition of distilled spirits, as prescribed in §§194.225 and 194.226. When required in writing by the regional director (compliance), dealers shall also prepare and file a monthly summary report totaling the daily receipts and disposition of distilled spirits as prescribed in §194.230.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

[T.D. ATF-116, 47 FR 51571, Nov. 16, 1982]

§ 194.222 Requirements as to wines and beer.

Each wholesale dealer in liquors who receives wines, or wines and beer, and each wholesale dealer in beer shall keep at his place of business a complete record of all wines and beer received, showing (a) the quantities thereof, (b) from whom received, and (c) the receiving dates. This record, which must be kept for a period of not less than three years as prescribed in §194.237, shall consist of all purchase invoices or bills covering wines and beer received or, at the option of the dealer, a book record containing all of the required information. Wholesale dealers are not required to prepare or submit reports to regional director (compliance) of transactions relating to wines and beer.

(Approved by the Office of Management and Budget under control number 1512-0353)

(68A Stat. 731 (26 U.S.C. 6001); sec. 201, Pub. L. 85-859, 72 Stat. 1342, 1345, 1348, 1395 (26 U.S.C. 5114, 5124, 5146, 5555))

[T.D. ATF-50, 43 FR 20494, May 12, 1978, as amended by T.D. ATF-116, 47 FR 51571, Nov. 16, 1982; T.D. ATF-172, 49 FR 14942, Apr. 16, 1984]

§ 194.223 Records to be kept by States, political subdivisions thereof, or the District of Columbia.

The provisions of this subpart relative to the maintenance of records and the submission of reports shall not apply to States, political subdivisions thereof, or the District of Columbia, or any liquor stores operated by such entities that maintain and make available for inspection by ATF officers records which will enable such officers to verify receipts of wines and beer and trace readily all distilled spirits received and disposed of by them: *Provided*, That such States, political subdivisions thereof, or the District of Columbia, and liquor stores operated by them, shall, on request of the regional director (compliance), furnish such transcripts, summaries, and copies of their records as he shall require.

(72 Stat. 1342, 1348, 1395; 26 U.S.C. 5114, 5146, 5555)

§ 194.224 Records to be kept by proprietors of distilled spirits plants.

Wholesale liquor dealer operations conducted by proprietors of distilled spirits plants shall be recorded and reported in accordance with the applicable provisions of Part 19 of this chapter.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended (26 U.S.C. 5114); sec. 807, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

[T.D. ATF-62, 44 FR 71693, Dec. 11, 1979]

§ 194.225 Records of receipt.

(a) *Information required.* Every wholesale dealer in liquors shall maintain a daily record of the physical receipt of each individual lot or shipment of distilled spirits, which record shall show (1) name and address of consignor, (2) date of receipt (to include date of inventory for recorded gains), (3) brand name, (4) name of producer or bottler, except that this may be omitted if the dealer keeps available for inspection a separate list or record identifying the producer or bottler with the brand name, (5) kind of spirits, except that this may be omitted if the dealer keeps available for inspection a separate list or record identifying "kind" with the brand name, (6) quantity actually received (showing number of packages, if

any, and number of cases by size of bottle, and explaining any difference from the quantity shown on the commercial papers covering the shipment), and (7) package identification numbers of containers of alcohol received for repackaging for industrial use pursuant to subpart R of this part. Additional information may also be shown.

(b) *Form of record.* The record prescribed by paragraph (a) of this section will be a part of the accounting system and shall consist of consignors' invoices (or, where such invoices are not available on the day the shipment is received, memorandum receiving records prepared on the day of receipt of distilled spirits, to include records of inventory for recorded gains), and credit memorandums covering distilled spirits returned to the dealer, which contain all required information.

(Approved by the Office of Management and Budget under control number 1512-0353)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

[T.D. ATF-46, 42 FR 44758, Sept. 6, 1977, as amended by T.D. ATF-116, 47 FR 51571, Nov. 16, 1982; T.D. ATF-172, 49 FR 14942, Apr. 16, 1984]

§ 194.226 Records of disposition.

(a) *Information required.* Every wholesale dealer in liquors shall prepare a daily record of the physical disposition of each individual lot of distilled spirits, which record shall show (1) name and address of consignee, (2) date of disposition (to include date of discovery in the case of casualty, theft or recorded inventory losses), (3) brand name, (4) kind of spirits, except that this may be omitted if the dealer keeps available for inspection a separate list or record identifying "kind" with the brand name, (5) number of packages, if any, and number of cases by size of bottle, and (6) package identification numbers of containers of alcohol repackaged for industrial use pursuant to subpart R of this part. Additional information may also be shown.

(b) *Form of record.* The record prescribed by paragraph (a) of this section will be part of the accounting system and shall consist of wholesale dealer's invoices (or, where such invoices are not available at the time the spirits

are removed, memorandum shipping records prepared at the time of removal of the distilled spirits, to include date of discovery in the case of casualty, theft or recorded inventory losses) which contain all required information.

(Approved by the Office of Management and Budget under control number 1512-0353)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

[T.D. ATF-46, 42 FR 44759, Sept. 6, 1977, as amended by T.D. ATF-116, 47 FR 51571, Nov. 16, 1982; T.D. ATF-172, 49 FR 14942, Apr. 16, 1984]

§ 194.227 Canceled or corrected records.

Entries on the records of receipt and disposition prescribed by §§194.225 and 194.226 shall not be erased or obliterated. Correction or deletion of any entry shall be accomplished by drawing a line through such entry, and making appropriate correction or explanation. If a wholesale dealer in liquors voids an invoice for any reason, the file copy prescribed in §194.235 will be marked "Cancelled" and be filed as provided in that section; any remaining copy of the voided invoice will be destroyed or similarly cancelled and filed. If a new invoice is prepared, its serial number will be cross referenced on any retained copies of the cancelled invoice.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended (26 U.S.C. 5114))

[T.D. 7014, 34 FR 8912, June 4, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-116, 47 FR 51572, Nov. 16, 1982]

§ 194.228 Previously prescribed or approved records of receipt and disposition.

A wholesale dealer in liquors may continue to use records of receipt and disposition in a format previously prescribed, or approved for him, provided he gives written notice of such intent to the regional director (compliance). Such records shall show the information required by paragraph (a) of §194.225 or paragraph (a) of §194.226, as applicable. Such records shall be preprinted with the name and address of the wholesale dealer. Each sheet or page shall bear a preprinted serial

number, or page serial numbers may be affixed in unbroken sequence during the preparation or processing of the records. A serial number shall not be duplicated within a period of 6 months.

(72 Stat. 1342; 26 U.S.C. 5114)

[T.D. 7014, 34 FR 8912, June 4, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 194.229 Variations in format, or preparation, of records.

(a) *Authorization.* The Director may approve variations in the type and format of records of receipt and disposition, or in the methods of preparing such records, where it is shown that variations from the requirements are necessary in order to use data processing equipment, other business machines, or existing accounting systems, and will not (1) unduly hinder the effective administration of this part, (2) jeopardize the revenue, or (3) be contrary to any provision of law. A dealer who proposes to employ such a variation shall submit written application so to do, in triplicate, to the regional director (compliance). Such application shall describe the proposed variations and set forth the need therefor. The regional director (compliance) will determine the need for the variations, and whether approval thereof would unduly hinder the effective administration of this part or result in jeopardy to the revenue. The regional director (compliance) will forward two copies of the application to the Director together with a report of his findings and his recommendation. Variations in type and format of records or methods of preparation shall not be employed until approval is received from the Director.

(b) *Requirements.* Any information required by this part to be kept or filed is subject to the provisions of law and this part relating to required records and reports, regardless of the form or manner in which kept or filed.

(Approved by the Office of Management and Budget under control number 1512-0357)

[T.D. 7014, 34 FR 8912, June 4, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-172, 49 FR 14942, Apr. 16, 1984]

§ 194.230 Monthly summary report.

(a) *Requirement.* Every wholesale dealer in liquors shall, when required, submit to the regional director (compliance), a monthly summary report of the total quantities of all distilled spirits received and disposed of daily during the month (including the date of discovery for theft, casualty and inventory losses and inventory gains). This report will be posted by the wholesaler on a daily basis. If there were no receipts or disposals of distilled spirits during the month, the report will be marked "No Transactions During Month." This report will be filed not later than the 15th day of the month following the report period, and a copy retained by the dealer. Upon receipt of an application the regional director (compliance) may authorize a dealer to post the report less frequently until otherwise notified. The regional director's (compliance) authorization will specify the intervals at which the posting will be accomplished, but not less frequently than monthly.

(b) *Form of report.* When required, the monthly summary report may be prepared in a format which most conveniently adapts itself to the dealer's accounting and recordkeeping systems. In addition to any other information shown therein, the report will include the daily totals of all distilled spirits received and disposed of, including dispositions caused by inventory, casualty or theft losses and receipts caused by recorded gains in inventory; and

(1) Daily totals of all bottled spirits received and disposed of, recorded separately by wine gallons, or liters,

(2) Daily totals of all bulk spirits in packages received and disposed of, recorded separately by proof gallons.

(c) *Declaration.* When required to be filed, the monthly summary report will bear the following declaration signed by the dealer or an authorized agent:

I declare under the penalties of perjury that I have examined this report and to the best of my knowledge and belief, it is true, correct, and complete, and is supported by true, correct, and complete records which are available for inspection.

(d) When the monthly summary report is not required by the regional director (compliance) to be filed, every

wholesale dealer in distilled spirits is still required to maintain and make available for review by ATF officers:

(1) Records of receipt, required by § 194.225;

(2) Records of disposition, required by § 194.226; and

(3) Any other supporting information or documents regarding the receipt and disposition of distilled spirits which have a direct bearing in determining the completeness and accuracy of the accounting and recordkeeping systems.

(Approved by the Office of Management and Budget under control number 1512-0353)

(Act of August 16, 1954, 68A Stat. 749 (26 U.S.C. 6065); sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1348, as amended, 1395, as amended (26 U.S.C. 5114, 5146, 5555))

[T.D. ATF-116, 47 FR 51572, Nov. 16, 1982, and amended by T.D. ATF-172, 49 FR 14942, Apr. 16, 1984]

§ 194.231 Conversion between metric and U.S. units.

When liters are converted to wine gallons, the quantity in liters shall be multiplied by 0.264172 to determine the equivalent quantity in wine gallons. Cases containing the same quantity of spirits of the same proof in metric bottles may be converted to U.S. units by multiplying the liters in one case by the number of cases to be converted, as follows:

(a) If the conversion from liters to U.S. units is made before multiplying by the number of cases, the quantity in U.S. units shall be rounded to the sixth decimal.

(b) If the conversion is made after multiplying by the number of cases, the quantity in U.S. units shall be rounded to the nearest hundredth.

Once converted to wine gallons, the proof gallons of spirits in cases shall be determined as provided in 27 CFR 30.52.

(26 U.S.C. 7805 (68A Stat. 917, as amended); 27 U.S.C. 205 (49 Stat. 981, as amended))

[T.D. ATF-198, 50 FR 8542, Mar. 1, 1985]

§ 194.232 Discontinuance of business.

When a wholesale dealer in liquors, who is required under § 194.230 to file a monthly summary report, discontinues business, a monthly summary report marked "Final" shall be filed covering

transactions through the date of discontinuance.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

[T.D. ATF-115, 47 FR 51572, Nov. 16, 1982]

§ 194.233 Requirements when a wholesale dealer in liquors maintains a retail department.

(a) When a wholesale dealer in liquors maintains a separate department on the premises for the retailing of distilled spirits, and the retail sales of distilled spirits normally represent 90 percent or more of the volume of distilled spirits sold, the dealer may "constructively" receive all distilled spirits in the retail department. Sales involving a wholesale transaction may be "constructively" sold through the wholesale department.

(1) *Receipts.* In lieu of maintaining and preparing the records required by §§ 194.225 and 194.226, a wholesale dealer may constructively receive *all* distilled spirits in its retail department. In this case, the receiving document will serve as a receipt for (through) the wholesale department and a disposition (transfer) to the retail department. The receiving document will be maintained by the retail department, as required by § 194.234.

(2) *Dispositions.* In lieu of the records required by § 194.226, a wholesale dealer may constructively sell distilled spirits from its retail department to other dealers. The sales invoice or bill will be filed in the wholesaler's disposition records and will serve as a record of receipt from the retail department and a record of disposition to another dealer.

(b) Except as provided in paragraph (a) of this section, a wholesale dealer shall prepare and maintain the required records of receipt and disposition as prescribed in §§ 194.225 and 194.226. Transfers between the wholesale and retail departments will be treated in the same manner as any other transaction involving the wholesale department.

(c) When required by § 194.230, a wholesale dealer shall prepare and file the monthly summary report of actual or constructive receipts and dispositions of all distilled spirits.

(d) Wholesale and retail departments need not be physically separated.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1345, as amended, 1395, as amended (26 U.S.C. 5114, 5124, 5555))

[T.D. ATF-116, 47 FR 51572, Nov. 16, 1982]

RETAIL DEALER'S RECORDS

§ 194.234 Requirements for retail dealers.

(a) *Records of receipt.* All retail dealers shall keep at their place of business complete records of all distilled spirits, wines, or beer received showing (1) the quantities thereof, (2) from whom received, and (3) the receiving dates. The regional director (compliance) may, pursuant to an application authorize the records to be maintained at another business premises under the control of the same dealer when it is determined that such maintenance will not cause undue inconvenience to ATF officers desiring to examine such records. Records of receipts shall consist of all purchase invoices or bills covering distilled spirits, wines, and beer received, or, at the option of the dealer, a book record containing all of the required information.

(b) *Records of sales of 20 wine gallons (75.7 liters) or more.* Every retail dealer who makes sales of distilled spirits, of wines, or of beer in quantities of 20 wine gallons (75.7 liters) or more to the same person at the same time shall prepare and keep a record of each such sale, which shall show (1) the date of sale, (2) the name and address of the purchaser, (3) the kind and quantity of each kind of liquors sold, and (4) the serial numbers of all full cases of distilled spirits included in the sale. Each entry on such record shall be supported by a corresponding delivery receipt (which may be executed on a copy of the sales slip) signed by the purchaser or his agent.

(Approved by the Office of Management and Budget under control number 1512-0354)

(Sec. 201, Pub. L. 85-859, 72 Stat. 1345, 1348, 1395, 1413 (26 U.S.C. 5124, 5146, 5555, 5691))

[T.D. 7130, 36 FR 12853, July 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-34, 41 FR 46861, Oct. 26, 1976. Redesignated and amended by T.D. ATF-116, 47 FR 51572, Nov. 16, 1982; T.D. ATF-172, 49 FR 14942, Apr. 16, 1984]

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FILES OF RECORDS AND REPORTS

§ 194.235 Filing.

The required records of receipt and disposition of all distilled spirits, as prescribed in §§ 194.225 and 194.226, may be filed in accordance with the wholesaler's regular accounting and record-keeping systems. The required records shall consist of the dealer's own file copies of the receiving or shipping invoices.

(a) Dealers may file records of receipt and disposition in accordance with their own filing system as long as the filing system systematically and accurately accounts for all receipts and dispositions of distilled spirits.

(b) The required records of receipt and disposition will be filed not later than one business day following the date the transaction occurred.

(c) Supporting documents for receipts and dispositions, such as delivery receipts and bills of lading, may be filed in accordance with the wholesaler's regular accounting and record-keeping practices.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

[T.D. ATF-116, 47 FR 51573, Nov. 16, 1982]

§ 194.236 Place of filing.

Prescribed records of receipt and disposition and monthly summary reports required by § 194.230 will be maintained by transaction or reporting date, at the dealer's place of business. The regional director (compliance) may, pursuant to an application, authorize files, or an individual file, to be maintained at another business location under the control of the dealer, if the alternative location does not cause undue inconvenience to ATF officers desiring to examine the files.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1342, as amended (26 U.S.C. 5114))

[T.D. ATF-116, 47 FR 51573, Nov. 16, 1982]

PERIOD OF RETENTION

§ 194.237 Retention of records and files.

All records prescribed by this part, documents or copies of documents supporting these records, and file copies of

reports submitted, shall be retained by the person required to keep the documents for a period of not less than three years, and during this period shall be available, during business hours, for inspection and copying by ATF officers. Furthermore, the regional director (compliance) may require these records to be kept for an additional period of not more than three years in any case where he determines retention necessary or advisable. Any records, or copies thereof, containing any of the information required by this part to be prepared, wherever kept, shall also be made available for inspection and copying.

(68A Stat. 731 (26 U.S.C. 6001); sec. 201, Pub. L. 85-859, 72 Stat. 1342, 1345, 1348, 1395 (26 U.S.C. 5114, 5124, 5146, 5555))

[T.D. ATF-50, 43 FR 20494, May 12, 1978. Re-designated by T.D. ATF-116, 47 FR 51573, Nov. 16, 1982]

§ 194.238 Photographic copies of records.

(a) *General.* Dealers may record, copy, or reproduce records required by this part. Dealers may use any process which accurately reproduces the original record, and which forms a durable medium for reproducing and preserving the original record.

(b) *Copies of records treated as original records.* Whenever records are reproduced under this section, the produced records will be preserved in conveniently accessible files, and provisions will be made for examining, viewing, and using the reproduced record the same as if it were the original record, and it will be treated and considered for all purposes as though it were the original record. All provisions of law and regulations applicable to the original record are applicable to the reproduced record. As used in this section, "original record" means the record required by this part to be maintained or preserved by the dealer, even though it may be an executed duplicate or other copy of the document.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

[T.D. ATF-116, 47 FR 51573, Nov. 16, 1982]

§§ 194.239–194.241 [Reserved]

Subpart P [Reserved]

Subpart Q—Reuse and Possession of Used Liquor Bottles

§ 194.261 Refilling of liquor bottles.

No person who sells, or offers for sale, distilled spirits, or agent or employee of such person, shall (a) place in any liquor bottle any distilled spirits whatsoever other than those contained in such bottle at the time of closing under the provisions of 26 U.S.C. Chapter 51, or (b) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of closing under the provisions of 26 U.S.C. Chapter 51.

(72 Stat. 1374; 26 U.S.C. 5301)

[T.D. 6954, 33 FR 6814, May 4, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55844, Sept. 28, 1979; T.D. ATF-206, 50 FR 23953, June 7, 1985]

§ 194.262 Possession of refilled liquor bottles.

No person who sells, or offers for sale, distilled spirits, or agent or employee of such person, shall:

(a) Possess any liquor bottle in which any distilled spirits have been placed in violation of the provisions of § 194.261, or

(b) Possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of the provisions of § 194.261.

(72 Stat. 1374; 26 U.S.C. 5301)

§ 194.263 Possession of used liquor bottles.

The possession of used liquor bottles by any person other than the person who empties the contents thereof is prohibited except for the following:

(a) The owner or occupant of any premises on which such bottles have been lawfully emptied may assemble the same on such premises—

(1) For delivery to a bottler or importer on specific request of such bottler or importer;

(2) For destruction, either on the premises on which the bottles are emptied or elsewhere, including disposition for purposes which will result in the bottles being rendered unusable as bottles; or

(3) In the case of unusual or distinctive bottles, for disposition or sale as collectors' items or for other purposes not involving the packaging of any product for sale.

(b) Any person may possess, offer for sale, or sell unusual or distinctive bottles for purposes not involving the packaging of any product for sale.

(c) Any person may assemble used liquor bottles for the purpose of recycling or reclaiming the glass or other approved liquor bottle material.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

[T.D. ATF-114, 47 FR 43950, Oct. 5, 1982]

§ 194.264 Mixed cocktails.

A retail liquor dealer who mixes cocktails or compounds any alcoholic liquors in advance of sale, as provided in § 194.293, may not use liquor bottles in which distilled spirits have been previously packaged for the storage of the mixture pending sale.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

[T.D. ATF-62, 44 FR 71694, Dec. 11, 1979]

Subpart R—Packaging of Alcohol for Industrial Uses

§ 194.271 Requirements and procedure.

On compliance with the provisions of Part 19 of this chapter applicable to persons repackaging distilled spirits, a dealer in liquor engaged in the business of supplying alcohol for industrial use may obtain bulk alcohol on which the tax has been paid or determined and repackage the alcohol for sale for industrial use in containers of a capacity in excess of 1 wine gallon and not more than 5 wine gallons.

(a) *Qualification procedure.* Application for registration, Form 5110.41, and application for an operating permit, Form 5110.25, modified in accordance with instructions of the regional director (compliance), shall be executed and

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filed with the regional director (compliance). No alcohol shall be repackaged until the approved application for registration and the operating permit are received.

(b) *Operations.* Repackaging operations shall be conducted in accordance with the bottling and packaging requirements of Part 19 of this chapter. Packaging and labeling operations may be carried on without supervision of an ATF officer unless the regional director (compliance) requires supervision.

(c) *Records.* The dealer shall keep records, daily, showing the bulk alcohol received, dumped for packaging, packaged, and disposed of, including the name and address of each consignor and consignee. The dealer shall prepare a monthly report on Form 5110.28 of bulk alcohol received, packaged, and disposed of. Reports on Form 5110.28 shall be submitted to the regional director (compliance) not later than the 15th day of the month succeeding the period for which rendered. Records, documents, or copies of documents supporting the records, and copies of reports submitted to the regional director (compliance) shall be filed and retained as prescribed in §§194.236 and 194.237.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1343, as amended, 1358, as amended, 1360, as amended (26 U.S.C. 5116, 5205, 5206))

[T.D. ATF-62, 44 FR 71694, Dec. 11, 1979, as amended by T.D. ATF-206, 50 FR 23953, June 7, 1985]

§ 194.272 Labeling.

Every dealer packaging alcohol for industrial use shall affix to each package filled a label bearing in conspicuous print the words "Alcohol" and "For Industrial Use," the proof of the alcohol, the capacity of the container, and the packaging dealer's name and address. The dealer may incorporate in the label other appropriate statements; however, such statements shall not obscure or contradict the data required hereby to be shown on such labels.

(72 Stat. 1343, 1360; 26 U.S.C. 5116, 5206)

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Subpart S—Distilled Spirits for Export With Benefit of Drawback

§ 194.281 General.

A state, or political subdivision thereof, or a person holding a wholesale liquor dealer's basic permit issued under Part 1 of this chapter, may export bottled taxpaid distilled spirits with benefit of drawback to the extent provided in §252.171 of this chapter. The marking of cases, preparation of notice of shipment on Form 5110.30, the removal and exportation of the distilled spirits, and the filing of claims by the processor of the spirits shall be in accordance with the applicable provisions of Parts 19 and 252 of this chapter.

[T.D. ATF-206, 50 FR 23953, June 7, 1985]

§ 194.283 Records.

The provisions of subpart O of this part regarding records and reports relating to liquors for domestic use are hereby extended to export transactions permitted under the provisions of this subpart.

[T.D. 7002, 34 FR 1592, Feb. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

Subpart T—Miscellaneous

§ 194.291 Destruction of marks and brands on wine containers.

The dealer who empties any cask, barrel, keg, or other bulk container of wine shall scrape or obliterate from the empty container all marks, brands, tags, or labels placed thereon under the provisions of part 24 of this chapter as evidence of the payment or determination of the tax on the wine removed therein from the bonded wine cellar.

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-344, 58 FR 40355, July 28, 1993]

§ 194.292 Wine bottling.

Each person desiring to bottle, package, or repackage taxpaid wines shall, before carrying on such operations, apply and receive permission from the regional director (compliance), as required under part 24 of this chapter. The decanting of wine by caterers or

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other retail dealers for table or room service, banquets, and similar purposes shall not be considered as "bottling," if the decanters are not furnished for the purpose of carrying wine away from the area where served.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1378, as amended (26 U.S.C. 5352))

[T.D. ATF-62, 44 FR 71694, Dec. 11, 1979, as amended by T.D. ATF-344, 58 FR 40355, July 28, 1993]

§ 194.293 Mixing cocktails in advance of sale.

A retail liquor dealer shall not mix cocktails, or compound any alcoholic liquors in advance of sale, except for the purpose of filling, for immediate consumption on the premises, orders received at the bar or in the expectation of the immediate receipt of orders. (For further provisions, see § 194.264.)

(Sec. 805, Pub. L. 96-39, 93 Stat. 277 (26 U.S.C. 5002))

[T.D. ATF-62, 44 FR 71694, Dec. 11, 1979]

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