1513-0021

27 U.S.C.

Sec. 5131. Eligibility and rate of tax

(a) Eligibility for drawback

Any person using distilled spirits on which the tax has been determined, in the manufacture or production of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which are unfit for beverage purposes, on payment of a special tax per annum, shall be eligible for drawback at the time when such distilled spirits are used in the manufacture of such products as provided for in this subpart.

(b) Rate of tax

The special tax imposed by subsection (a) shall be $500 per year.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1345; amended Pub. L. 94-455, title XIX, Sec. 1905(a)(11), Oct. 4, 1976, 90 Stat. 1819; Pub. L. 100-203, title X, Sec. 10512(d), Dec. 22, 1987, 101 Stat. 1330-448; Pub. L. 103-465, title I, Sec. 136(b), Dec. 8, 1994, 108
Stat. 4841.)

Sec. 5132. Registration and regulation

Every person claiming drawback under this subpart shall register annually with the Secretary; keep such books and records as may be necessary to establish the fact that distilled spirits received by him and on which the tax has been determined were used in the manufacture or production of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which were unfit for use for beverage purposes; and be subject to such rules and regulations in relation thereto as the Secretary shall prescribe to secure the Treasury against frauds.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1345; amended Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 103-465, title I, Sec. 136(b), Dec. 8, 1994, 108 Stat. 4841.)

Sec. 5133. Investigation of claims

For the purpose of ascertaining the correctness of any claim filed under this subpart, the Secretary is authorized to examine any books, papers, records, or memoranda bearing upon the matters required to be alleged in the claim, to require the attendance of the person filing the claim or of any officer or employee of such person or the attendance of any other person having knowledge in the premises, to take testimony with reference to any matter covered by the claim, and to administer oaths to any person giving such testimony.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1346; amended Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

Sec. 5134. Drawback

(a) Rate of drawback

In the case of distilled spirits on which the tax has been paid or determined, and which have been used as provided in this subpart, a drawback shall be allowed on each proof gallon at a rate of $1 less than the rate at which the distilled spirits tax has been paid or determined.

(b) Claims

Such drawback shall be due and payable quarterly upon filing of a proper claim with the Secretary; except that, where any person entitled to such drawback shall elect in writing to file monthly claims therefor, such drawback shall be due and payable monthly upon filing of a proper claim with the Secretary. The Secretary may require persons electing to file monthly drawback claims to file with him a bond or other security in such amount and with such conditions as he shall by regulations prescribe. Any such election may be revoked on filing of notice thereof with the Secretary. No claim under this subpart shall be allowed unless filed with the Secretary within the 6 months next succeeding the quarter in which the distilled spirits covered by the claim were used as provided in this subpart.

(c) Allowance of drawback even where certain requirements not met

(1) In general

No claim for drawback under this section shall be denied in the case of a failure to comply with any requirement imposed under this subpart or any rule or regulation issued thereunder upon the claimant's establishing to the satisfaction of the Secretary that distilled spirits on which the tax has been paid or determined were in fact used in the manufacture or production of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which were unfit for beverage purposes.

(2) Penalty

(A) In general

In the case of a failure to comply with any requirement imposed under this subpart or any rule or regulation issued thereunder, the claimant shall be liable for a penalty of $1,000 for each failure to comply unless it is shown that the failure to comply was due to reasonable cause.

(B) Penalty may not exceed amount of claim

The aggregate amount of the penalties imposed under subparagraph (A) for failures described in paragraph (1) in respect of any claim shall not exceed the amount of such claim (determined without regard to subparagraph (A)).

(3) Penalty treated as tax

The penalty imposed by paragraph (2) shall be assessed, collected, and paid in the same manner as taxes, as provided in section 6665(a).

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1346; amended Pub. L. 90-615, Sec. 2(a), Oct. 21, 1968, 82 Stat. 1210; Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title IV, Sec. 452, July 18, 1984, 98 Stat. 819; Pub. L. 103-465, title I, Sec. 136(b), Dec. 8, 1994, 108 Stat. 4841; Pub. L. 104-188, title I, Sec. 704(t)(12), Aug. 20, 1996, 110 Stat. 1888.)

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Sec. 17.121 Product formulas.

(a) General. Except as provided in Sec. Sec. 17.132 and 17.182, manufacturers shall file quantitative formulas for all preparations for which they intend to file drawback claims. Such formulas shall state the quantity of each ingredient, and shall separately state the quantity of spirits to be recovered or to be consumed as an essential part of the manufacturing process.

(b) Filing. Formulas shall be filed on TTB Form 5154.1, Formula and Process for Nonbeverage Products. Filing shall be accomplished no later than 6 months after the end of the quarter in which taxpaid distilled spirits were first used to manufacture the product for purposes of drawback. If a product's formula is disapproved, no drawback shall be allowed on spirits used to manufacture that product, unless it is later used as an intermediate product, as provided in Sec. 17.137.

(c) Numbering. The formulas shall be serially numbered by the manufacturer, commencing with number 1 and continuing thereafter in numerical sequence. However, a new formula for use at several plants shall be given the highest number next in sequence at any of those plants. The numbers that were skipped at the other plants shall not be used subsequently.

(d) Distribution and retention of approved formulas. One copy of each approved Form 5154.1 shall be returned to the manufacturer. The formulas returned to manufacturers shall be kept in serial order at the place of manufacture, as provided in Sec. 17.170, and shall be made available to appropriate TTB officers for examination in the investigation of drawback claims.

[T.D. ATF-179, 61 FR 31412, June 20, 1996, as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

Sec. 17.126 Formulas for intermediate products.

(a) The manufacturer shall submit a formula on TTB Form 5154.1 for each self-manufactured ingredient made with taxpaid spirits and intended for the manufacturer's own use in nonbeverage products, unless the formula for any such ingredient is fully expressed as part of the approved formula for each nonbeverage product in which that ingredient is used, or unless the formula for the ingredient is contained in one of the pharmaceutical publications listed in Sec. 17.132.

(b) Upon receipt of Form 5154.1 covering a self-manufactured ingredient made with taxpaid spirits, the formula shall be examined under Sec. 17.131. If the formula is approved for drawback, the ingredient shall be treated as a finished nonbeverage product for purposes of this part, rather than as an intermediate product,

notwithstanding its use by the manufacturer. (For example, see Sec. 17.152(d).) If the formula is disapproved for drawback, the ingredient may be treated as an intermediate product in accordance with this part. Requirements pertaining to intermediate products are found in Sec. 17.185(b).

(c) If there is a change in the composition of an intermediate product, the manufacturer shall submit an amended or revised formula, as provided in Sec. 17.122.

Sec. 17.127 Self-manufactured ingredients treated optionally as unfinished nonbeverage products.

A self-manufactured ingredient made with taxpaid spirits, which otherwise would be treated as an intermediate product, may instead be treated as an unfinished nonbeverage product, if the ingredient's formula is fully expressed as a part of the approved formula for the nonbeverage product in which the ingredient will be used. A manufacturer desiring to change the treatment of an ingredient from ``intermediate product'' to ``unfinished nonbeverage product'' (or vice versa) may do so by resubmitting the applicable formula(s) on TTB Form 5154.1. Requirements pertaining to unfinished nonbeverage products are found in Sec. 17.185(c).

Sec. 17.132 U.S.P., N.F., and H.P.U.S. preparations.

(a) General. Except as otherwise provided by paragraph (b) of this section or by TTB ruling, formulas for compounds in which alcohol is a prescribed quantitative ingredient, which are stated in the current revisions or editions of the United States Pharmacopoeia (U.S.P.), the National Formulary (N.F.), or the Homeopathic Pharmacopoeia of the United States (H.P.U.S.), shall be considered as approved formulas and may be used as formulas for drawback products without the filing of TTB Form 5154.1.

(b) Exceptions. Alcohol (including dehydrated alcohol and dehydrated alcohol injection), U.S.P.; alcohol and dextrose injection, U.S.P.; and tincture of ginger, H.P.U.S., have been found to be fit for beverage use and are disapproved for drawback. All attenuations of other H.P.U.S. products diluted beyond one part in 10,000 (``4x'') are also disapproved for drawback, unless the manufacturer receives approval for a formula submitted on Form 5154.1 in accordance with this subpart. The formula for such attenuations shall be submitted with a sample of the product and a statement explaining why it should be classified as unfit for beverage use.

Sec. 17.136 Compliance with Food and Drug Administration requirements.

A product is not a medicine, medicinal preparation, food product, flavor, flavoring extract, or perfume for nonbeverage drawback if its formula would violate a ban or restriction of the U.S. Food and Drug Administration (FDA) pertaining to such products. If FDA bans or restricts the use of any ingredient in such a way that further manufacture of a product in accordance with its formula would violate the ban or restriction, then the manufacturer shall change the formula and resubmit it on TTB Form 5154.1 . This section does not preclude approval for products manufactured solely for export or for uses other than internal human consumption (e.g. tobacco flavors or animal feed flavors) in accordance with laws and regulations administered by FDA. Under Sec. 17.123, manufacturers may be required to demonstrate compliance with FDA requirements applicable to this section.