

1513-0113

26 U.S.C.

§ 4181. Imposition of tax

There is hereby imposed upon the sale by the manufacturer, producer, or importer of the following articles a tax equivalent to the specified percent of the price for which so sold:

Articles taxable at 10 percent--

Pistols.
Revolvers.

Articles taxable at 11 percent--

Firearms (other than pistols and revolvers).
Shells, and cartridges.

(Aug. 16, 1954, ch. 736, 68A Stat. 490.)

§ 4182. Exemptions

(a) Machine guns and short barrelled firearms

The tax imposed by section 4181 shall not apply to any firearm on which the tax provided by section 5811 has been paid.

(b) Sales to defense department

No firearms, pistols, revolvers, shells, and cartridges purchased with funds appropriated for the military department shall be subject to any tax imposed on the sale or transfer of such articles.

(c) Records

Notwithstanding the provisions of sections 922(b)(5) and 923(g) of title 18, United States Code, no person holding a Federal license under chapter 44 of title 18, United States Code, shall be required to record the name, address, or other information about the purchaser of shotgun ammunition, ammunition suitable for use only in rifles generally available in commerce, or component parts for the aforesaid types of ammunition.

(Aug. 16, 1954, ch. 736, 68A Stat. 490; Pub. L. 91-128, Sec. 5, Nov. 26, 1969, 83 Stat. 269.)

§ 5081. Imposition and rate of tax

(a) General rule

Every proprietor of -

- (1) a distilled spirits plant,
- (2) a bonded wine cellar,
- (3) a bonded wine warehouse, or
- (4) a taxpaid wine bottling house, shall pay a tax of \$1,000 per year in respect of each such premises.

(b) Reduced rates for small proprietors

- (1) In general

Subsection (a) shall be applied by substituting "\$500" for "\$1,000" with respect to any taxpayer not described in subsection (c) the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than \$500,000.

(2) Controlled group rules

All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

(3) Certain rules to apply

For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply.

c) Exemption for small producers

Subsection (a) shall not apply with respect to any taxpayer who is a proprietor of an eligible distilled spirits plant (as defined in section 5181(c)(4)).

§ 5091. Imposition and rate of tax

(a) General rule

Every brewer shall pay a tax of \$1,000 per year in respect of each brewery.

(b) Reduced rates for small brewers

Rules similar to the rules of section 5081(b) shall apply for purposes of subsection (a).

§ 5111. Imposition and rate of tax

(a) Wholesale dealers in liquors

Every wholesale dealer in liquors shall pay a special tax of \$500 a year.

(b) Wholesale dealers in beer

Every wholesale dealer in beer shall pay a special tax of \$500 a year.

§ 5121. Imposition and rate of tax

(a) Retail dealers in liquors

Every retail dealer in liquors shall pay a special tax of \$250 a year.

(b) Retail dealers in beer

Every retail dealer in beer shall pay a special tax of \$250 a year.

§ 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.

§ 5142. Payment of tax

(a) Condition precedent to carrying on business

No person shall be engaged in or carry on any trade or business subject to tax under this part (except the tax imposed by section 5131) until he has paid the special tax therefor.

(b) Computation

All special taxes under this part (except the tax imposed by section 5131) shall be imposed as of on the first day of July in each year, or on commencing any trade or business on which such tax is imposed. In the

former case the tax shall be reckoned for 1 year, and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

(c) How paid

(1) Payment by return

The special taxes imposed by this part shall be paid on the basis of a return under such regulations as the Secretary shall prescribe.

(2) Stamp denoting payment of tax

After receiving a properly executed return and remittance of any special tax imposed by this subpart, the Secretary shall issue to the taxpayer an appropriate stamp as a receipt denoting payment of the tax. This paragraph shall not apply in the case of a return covering liability for a past period.

§ 5276. Occupational tax

(a) General rule

Except as otherwise provided in this section, a permit issued under section 5271 shall not be valid with respect to acts conducted at any place unless the person holding such permit pays a special tax of \$250 with respect to such place.

(b) Certain occupational tax rules to apply

Rules similar to the rules of subpart G of part II of subchapter A shall apply for purposes of this section.

(c) Exception for United States

Subsection (a) shall not apply to any permit issued to an agency or instrumentality of the United States.

(d) Exception for certain educational institutions

Subsection (a) shall not apply with respect to any scientific university, college of learning, or institution of scientific research which -

(1) is issued a permit under section 5271, and

(2) with respect to any calendar year during which such permit is in effect, procures less than 25 gallons of distilled spirits free of tax for experimental or research use but not for consumption (other than organoleptic tests) or sale.

§ 5731. Imposition and rate of tax

(a) General rule

Every person engaged in business as -

(1) a manufacturer of tobacco products,

(2) a manufacturer of cigarette papers and tubes, or

(3) an export warehouse proprietor, shall pay a tax of \$1,000 per year in respect of each premises at which such business is carried on.

(b) Reduced rates for small proprietors

(1) In general

Subsection (a) shall be applied by substituting "\$500" for "\$1,000" with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than \$500,000.

(2) Controlled group rules

All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

(3) Certain rules to apply

For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply.

(c) Certain occupational tax rules to apply

Rules similar to the rules of subpart G of part II of subchapter A of chapter 51 shall apply for purposes of this section.

(d) Penalty for failure to register

Any person engaged in a business referred to in subsection (a) who willfully fails to pay the tax imposed by subsection (a) shall be fined not more than \$5,000, or imprisoned not more than 2 years, or both, for each such offense.

§ 5801. Imposition of tax

(a) General rule

On 1st engaging in business and thereafter on or before July 1 of each year, every importer, manufacturer, and dealer in firearms shall pay a special (occupational) tax for each place of business at the following rates:

(1) Importers and manufacturers: \$1,000 a year or fraction thereof.

(2) Dealers: \$500 a year or fraction thereof.

(b) Reduced rates of tax for small importers and manufacturers

(1) In general

Paragraph (1) of subsection (a) shall be applied by substituting "\$500" for "\$1,000" with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than \$500,000.

(2) Controlled group rules

All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

(3) Certain rules to apply

For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply.

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Sec. 17.21 Payment of special tax.

(a) General. Except as otherwise provided in paragraph (b) of this section, each person who uses taxpaid distilled spirits in the manufacture or production of nonbeverage products shall pay special tax as specified in Sec. 17.22 in order to be eligible to receive drawback on the spirits so used. Special tax shall be paid for each tax year during which spirits were used in the manufacture of a product covered by a drawback claim. If a claim is filed covering taxpaid distilled spirits used during the preceding tax year, and special tax has not been paid for the preceding tax year, then special tax for the preceding tax year shall be paid. Regardless of the portion of a tax year covered by a claim, the full annual special tax shall be paid. The manufacturer is not required to pay the special tax if drawback is not claimed.

(b) Suspension of tax. During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. Accordingly, payment of the tax is not a prerequisite for claiming drawback on spirits used during that period. However, the drawback claimant still must register by filing the special tax return on Form 5630.5 during the suspension period even though the amount of tax due is zero.

[T.D. ATF-379, 61 FR 31412, June 20, 1996, as amended by T.D. TTB-36, 70 FR 62241, Oct. 31, 2005]

Sec. 17.22 Rate of special tax.

Effective January 1, 1988, the rate of special tax is \$500 per tax year for all persons claiming drawback on distilled spirits used in the manufacture or production of nonbeverage products, except that the tax rate is zero during the suspension period described in Sec. 17.21(b).

[T.D. ATF-379, 61 FR 31412, June 20, 1996, as amended by T.D. TTB-36, 70 FR 62241, Oct. 31, 2005]

Sec. 17.23 Special tax for each place of business.

Subject to Sec. 17.21(b), a separate special tax shall be paid for each place where distilled spirits are used in the manufacture or production of nonbeverage products, except for any such place in a tax year for which no claim is filed, or no drawback is paid, on spirits used at that place.

[T.D. ATF-379, 61 FR 31412, June 20, 1996, as amended by T.D. TTB-36, 70 FR 62241, Oct. 31, 2005]

Sec. 17.24 Time for payment of special tax.

(a) General. Special tax may be paid in advance of actual use of distilled spirits. Special tax shall be paid before a claimant may receive drawback. Special tax may be paid without penalty under 26 U.S.C. 5134(c) at any time prior to completion of final action on the claim.

(b) Suspension of tax. The rate of special tax is zero during the

period from July 1, 2005, through June 30, 2008 (see Sec. 17.21(b)). During this period, the registration requirement continues. The drawback claimant must register by filing a special tax return, Form 5630.5. The claimant may register without penalty under 26 U.S.C. 5134(c) at any time prior to completion of final action on the first claim submitted for each tax year.

[T.D. ATF-379, 61 FR 31412, June 20, 1996, as amended by T.D. TTB-36, 70 FR 62241, Oct. 31, 2005]

Sec. 17.31 Filing of return and payment of special tax.

Special tax shall be paid by return. The prescribed return is TTB Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with TTB in accordance with instructions on the form, and the filing of a return is required for registration purposes even though no tax is due during the suspension period described in Sec. 17.21(b).

(26 U.S.C. 609l, 6151)

[T.D. ATF-379, 61 FR 31412, June 20, 1996, as amended by T.D. TTB-36, 70 FR 62241, Oct. 31, 2005]

Sec. 17.32 Completion of TTB Form 5630.5.

(a) General. All of the information called for on 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 Sec. Sec. 17.41-43).
- (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 of special tax to which the taxpayer is subject or to which the return relates during the suspension period described in Sec. 17.21(b).

(6) Ownership and control information: 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 need not be stated if the same information has been previously provided to TTB, and if the information previously provided is still current.

(b) Multiple locations. A taxpayer subject to special tax, or required to register during the suspension period described in Sec. 17.21(b), for the same period at more than one location or for more than one class of tax shall--

- (1) File one special tax return, Form 5630.5, with payment of applicable 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 the 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, or for which registration is being made during the suspension period described in Sec. 17.21(b). The original of the list shall be filed 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 Sec. 17.170.

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

[T.D. ATF-379, 61 FR 31412, June 20, 1996, as amended by T.D. TTB-36, 70 FR 62241, Oct. 31, 2005]

Sec. 17.33 Signature on returns, TTB 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 general partner; and the return of a corporation shall be signed by a corporate officer. All signatures must be original; photocopies are not acceptable. In each case, the person signing the return shall designate his or her capacity, as "individual owner," "member of partnership," 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 bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

Sec. 17.34 Verification of returns.

TTB Forms 5630.5 shall contain or be verified by a written declaration that the return is made under the penalties of perjury.

(68A Stat. 749 (26 U.S.C. 6065))

Sec. 17.51 Issuance of stamps.

(a) Except as otherwise provided in paragraph (b) of this section, each manufacturer of nonbeverage products, upon filing a properly executed return on TTB Form 5630.5, together with the proper tax payment in the applicable full amount due, shall be issued a special tax stamp designated "Manufacturer of Nonbeverage Products." This special tax stamp shall not be sold or otherwise transferred to another person (except as provided in Sec. Sec. 17.71 and 17.72). If the Form 5630.5 submitted with the tax payment covers multiple locations, the taxpayer shall be issued one appropriately designated stamp for each location listed in the attachment to Form 5630.5 required by Sec. 17.32(b)(2), 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).

(b) During the suspension period described in Sec. 17.21(b) when registration is required but no tax is due, a special tax stamp will not be issued.

[T.D. ATF-379, 61 FR 31412, June 20, 1996, as amended by T.D. TTB-36, 70 FR 62241, Oct. 31, 2005]

Sec. 17.52 Distribution of stamps for multiple locations.

On receipt of the special tax stamps, the taxpayer shall verify that a stamp has been obtained for each location listed on the retained copy of the attachment to TTB Form 5630.5 required by Sec. 17.32(b)(2). The taxpayer shall designate one stamp for each location and shall type on it the trade name (if different from the name in which the stamp was issued) and address of the business conducted at the location for which the stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

Sec. 17.53 Correction of errors on stamps.

(a) Single location. On receipt of a special tax stamp, the taxpayer shall examine it to ensure that the name and address are correctly stated. If an error has been made, the taxpayer shall return the stamp to TTB at the address shown thereon, with a statement showing the nature of the error and setting forth the proper name or address. On receipt of the stamp and statement, the data shall be compared with that on TTB Form 5630.5, and if an error on the part of TTB has been made, the stamp shall be corrected and returned to the taxpayer. If the Form 5630.5 agrees with the data on the stamp, the taxpayer shall be required to file a new Form 5630.5, designated "Amended Return," disclosing the proper name and address.

(b) Multiple locations. If an error is discovered on a special tax stamp obtained under the provisions of Sec. 17.32(b), relating to multiple locations, and if the error concerns any of the information contained in the attachment to Form 5630.5, the taxpayer shall return the stamp, with a statement showing the nature of the error and the correct data, to his or her principal office. The data on the stamp shall then be compared with the taxpayer's copy of the attachment to Form 5630.5, retained at the principal office. If the error is in the name and address and was made by the taxpayer, the taxpayer shall 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 shall file with TTB an amended Form 5630.5 and an amended attachment with a statement showing the error.

Sec. 17.54 Lost or destroyed stamps.

If a special tax stamp is lost or accidentally destroyed, the taxpayer shall immediately notify the appropriate TTB officer. On receipt of this notification, the appropriate TTB officer shall issue to the taxpayer a "Certificate in Lieu of Lost or Destroyed Special Tax Stamp." The taxpayer shall keep the certificate available for inspection in the same manner as prescribed for a special tax stamp in Sec. 17.55.

Sec. 17.55 Retention of special tax stamps.

Taxpayers shall keep their special tax stamps at the place of business covered thereby for the period specified in Sec. 17.170, and shall make them available for inspection by any appropriate TTB officer during business hours.

(Title II, sec. 201, Pub. L. 85-859, 72 Stat. 1348 (26 U.S.C. 5146))

Sec. 17.61 General.

A manufacturer who, during a tax year for which a special tax return has been filed with payment of any tax due, moves its place of manufacture to a place other than that specified on the return, shall register the change, by executing a new return on Form 5630.5, designated as ``Amended Return.'' This Amended Return shall set forth the time of the move and the address of the new location. If a special tax stamp was issued for the former location, the taxpayer shall also submit the special tax stamp for endorsement of the change in location. In general, the taxpayer must submit the new return and the special tax stamp within 90 days after the move to the new premises. However, if the move occurs during the suspension period described in Sec. 17.21(b) when no tax was due and no special tax stamp was issued, the taxpayer may submit the new return alone without penalty at any time prior to completion of final action on the first claim covering use of spirits at the new premises, or within 90 days of the move, whichever is later.

(Title II, sec. 201, Pub. L. 85-859, 72 Stat. 1374 (26 U.S.C. 5143))
[T.D. TTB-36, 70 FR 62241, Oct. 31, 2005]

Sec. 17.62 Failure to register.

Except in the case of claims covering spirits used during the suspension period described in Sec. 17.21(b) when the special tax rate is zero, a manufacturer who fails to register a change of location with TTB, as required by Sec. 17.61, shall pay a new special tax for the new location if a claim for drawback is filed on distilled spirits used at the new location during the tax year for which the original special tax was paid.

[T.D. ATF-379, 61 FR 31412, June 20, 1996, as amended by T.D. TTB-36, 70 FR 62242, Oct. 31, 2005]

Sec. 17.63 Certificates in lieu of lost stamps.

The provisions of Sec. Sec. 17.61 and 17.62 apply to certificates issued in lieu of lost or destroyed special tax stamps.

Sec. 17.71 General.

(a) Subject to paragraph (b) of this section, certain persons may qualify for succession to the same privileges granted by law to the taxpayer, to cover the remainder of the tax year for which the special tax was paid, or for which registration was made during the suspension period described in Sec. 17.21(b). Those who may qualify are specified in Sec. 17.72. To secure these privileges, the successor or successors shall file with TTB, within 90 days after the date on which the successor or successors assume control, a return on TTB Form 5630.5, showing the basis of the succession.

(b) With respect to spirits used during the suspension period described in Sec. 17.21(b), the successor or successors must file the return prior to completion of final action on the claim(s) covering such spirits, or within 90 days of the change in control, whichever is later.

[T.D. ATF-379, 61 FR 31412, June 20, 1996, as amended by T.D. TTB-36, 70 FR 62242, Oct. 31, 2005]

Sec. 17.73 Failure to register.

Except in the case of claims covering spirits used during the suspension period described in Sec. 17.21(b) when the special tax rate is zero, a person eligible for succession to the privileges of a taxpayer, in accordance with Sec. Sec. 17.71 and 17.72, who fails to register the succession with TTB, as required by Sec. 17.71, shall pay a new special tax if a claim for drawback is filed on distilled spirits used by the successor during the tax year for which the original special tax was paid.

[T.D. ATF-379, 61 FR 31412, June 20, 1996, as amended by T.D. TTB-36, 70 FR 62242, Oct. 31, 2005]

Sec. 17.74 Certificates in lieu of lost stamps.

The provisions of Sec. Sec. 17.71-73 apply to certificates issued in lieu of lost or destroyed special tax stamps.

Sec. 17.91 Absence of liability, refund of special tax.

The special tax paid may be refunded if it is established that the taxpayer did not file a claim for drawback for the period covered by the special tax stamp. If a claim for drawback is filed, the special tax may be refunded if no drawback is paid or allowed for the period covered by the stamp.

Sec. 19.49 Liability for special tax.

Source: T.D. ATF-271, 53 FR 17541, May 17, 1988, unless otherwise noted.

(a) Proprietor of distilled spirits plant--(1) General. Except as provided in Sec. 19.906, every proprietor of a distilled spirits plant shall pay a special (occupational) tax at a rate specified by Sec. 19.50. The tax shall be paid on or before the date of commencing business as a distilled spirits plant proprietor, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(2) Transition rule. For purposes of paragraph (a)(1) of this section, a proprietor engaged in distilled spirits plant operations on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(3) Suspension of tax. During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a)(1) of this section is zero. However, each proprietor still must register by filing the special tax return on Form 5630.5 during this suspension period even though the amount of tax due is zero. During the suspension period, as at other times, the special tax return is due on or before commencement of business and on or before July 1 of each year thereafter.

(b) Liquor Dealer--(1) General. A proprietor of a distilled spirits plant shall be subject to or exempt from a liquor dealer's special (occupational) tax as provided in part 31 of this chapter.

(2) Exemption for sales by a proprietor of a distilled spirits plant. A proprietor of a distilled spirits plant is not required to pay special tax, or to register during the suspension period described in paragraph (a)(3) of this section, as a wholesale or retail dealer in liquor because of sales, at the principal place of business or at the distilled spirits plant, of liquor which at the time of sale is stored at the distilled spirits plant or which had been removed and stored in a taxpaid storeroom operated in connection with the distilled spirits plant. Each proprietor of a distilled spirits plant shall have only one exemption from dealer's special tax, or from dealer's registration, for each distilled spirits plant. The distiller may designate, in writing to the appropriate TTB officer, that the principal place of business will be exempt from dealer's special tax or registration; otherwise, the exemption will apply to the distilled spirits plant.

(c) Each place of business taxable--(1) General. A proprietor of a distilled spirits plant incurs special tax liability, or an obligation to register during the suspension period described in paragraph (a)(3) of this section, at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(2) Exception for contiguous areas. A proprietor of a distilled spirits plant does not incur additional special tax liability, or an obligation to register during the suspension period described in paragraph (a)(3) of this section, for sales of liquor made at a location other than on distilled spirits plant premises described on the notice of registration, Form 5110.41, if the location where such sales are made is contiguous to the distilled spirits plant premises in the manner described in paragraph (c)(1) of this section.

(26 U.S.C. 5081, 5111, 5113, 5142, 5143)

[T.D. ATF-271, 53 FR 17541, May 17, 1988, as amended by T.D. ATF-285, 54 FR 12609, Mar. 28, 1989; T.D. TTB-25, 70 FR 19882, Apr. 15, 2005; T.D. TTB-36, 70 FR 62242, Oct. 31, 2005]]

Sec. 19.50 Rates of special tax.

(a) General. Title 26 U.S.C. 5081(a)(1) imposes a special tax of \$1,000 per year on every proprietor of a distilled spirits plant. However, under 26 U.S.C. 5148(a) the tax rate is zero during the suspension period described in Sec. 19.49(a)(3).

(b) Reduced rate for small proprietors. Except during the suspension period described in Sec. 19.49(a)(3) when the tax rate is zero, title 26 U.S.C. 5081(b) provides for a reduced rate of \$500 per year with respect to any distilled spirits plant proprietor whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by Sec. 19.49 relates) are less than \$500,000. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts

of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a ``controlled group''; in that case, the rules of paragraph (c) of this section shall apply.

(c) Controlled group. All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section.

``Controlled group'' means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words ``at least 80 percent'' shall be replaced by the words ``more than 50 percent'' in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a ``controlled group of corporations'' apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) Short taxable year. Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period, as required by 26 U.S.C. 448(c)(3).

(e) Returns and allowances. Gross receipts for any taxable year shall be reduced by returns and allowances made during that year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5081)

[T.D. ATF-271, 53 FR 17541, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62243, Oct. 31, 2005]

Sec. 19.51 Special tax returns.

(a) General. Special tax shall be paid by return, and the filing of a return is required for registration purposes even though no tax is due during the suspension period described in Sec. 19.49(a)(3). The prescribed return is Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of applicable tax, shall be filed in accordance with instructions on the form.

(b) Preparation of TTB Form 5630.5. All of the information called for on 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 Sec. 19.52).

(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 or to which the return relates during the suspension period described in Sec. 19.49(a)(3).

(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 need not be stated if the same information has been previously provided to TTB in connection with a permit application, and if the information previously provided is still current.

(c) Multiple locations and/or classes of tax. A taxpayer subject to special tax, or required to register during the suspension period described in Sec. 19.49(a)(3), for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, Form 5630.5, with payment of applicable 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 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, or for which registration is being made during the suspension period described in Sec. 19.49(a)(3). The original of the list shall be filed 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 Sec. 19.723(c).

(d) Signing of TTB Forms 5630.5--(1) Ordinary returns. The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) Fiduciaries. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) Agent or attorney in fact. If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the TTB office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) Perjury statement. TTB Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 6061, 6065, 6151, 7011)

[T.D. ATF-271, 53 FR 17541, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62243, Oct. 31, 2005]

Sec. 19.52 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 Sec. 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 return. 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 17541, May 17, 1988, as amended by T.D. ATF-301, 55 FR 47605, Nov. 14, 1990]

Sec. 19.53 Issuance, distribution, and examination of special tax stamps.

(a) Issuance of special tax stamps--(1) General. Except as otherwise provided in paragraph (a)(2) of this section, upon filing a properly executed return on Form 5630.5, together with the applicable full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by Sec. 19.51(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).

(2) Exception for suspension period. During the suspension period described in Sec. 19.49(a)(3) when registration is required but no tax is due, a special tax stamp will not be issued.

(b) Distribution of special tax stamps for multiple locations. On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to TTB Form 5630.5. The taxpayer shall designate one stamp for each location and shall type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) Examination of special tax stamps. All stamps denoting payment of special tax shall be kept available for inspection by appropriate TTB officers, at the location for which designated, during business hours.

(26 U.S.C. 5146, 6806)

[T.D. ATF-271, 53 FR 17541, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62243, Oct. 31, 2005]

Sec. 19.54 Changes in special tax stamps.

(a) Change in name. If there is a change in the corporate or firm name, or in the trade name, as shown on Form 5630.5, the proprietor shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade name. No new special tax is required to be paid. The proprietor shall attach the special tax stamp for endorsement of the change in name except if the change occurs during the suspension period described in Sec. 19.49(a)(3).

(b) Change in proprietorship--(1) General. If there is a change in the proprietorship of a distilled spirits plant, the successor shall file a new special tax return, pay a new special tax, and obtain the required special tax stamps. However, if the change in proprietorship occurs during the suspension period described in Sec. 19.49(a)(3) when no tax is due and no stamp is issued, only the filing of a new special tax return is required.

(2) Exemption for certain successors. Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid (or for which registration was made during the suspension period described in Sec. 19.49(a)(3)), without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on Form 5630.5, which shows the basis of succession. Except during the suspension period described in Sec. 19.49(a)(3), a person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business. During the suspension period, a failure to register the succession may result in a penalty under 26 U.S.C. 5603(b).

(c) Persons having right of succession. Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) Death. The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) Succession of spouse. A husband or wife succeeding to the business of his or her spouse (living);

(3) Insolvency. A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) Withdrawal from firm. The partner or partners remaining after death or withdrawal of a member.

(d) Change in location. (1) Subject to paragraph (d)(2) of this section, if there is a change in location of a taxable place of business, the proprietor shall, within 30 days after the change, file an amended special tax return covering the new location. The proprietor shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor is required to file a new special tax return, pay a new special tax, and obtain a new special tax stamp.

(2) If the change in location occurs during the suspension period described in Sec. 19.49(a)(3) when no tax is due and no special tax stamp is issued, the requirements of paragraph (d)(1) of this section still apply, except with regard to attachment of a special tax stamp and payment of a new special tax. During the suspension period, a failure to comply with paragraph (d)(1) of this section may result in a penalty under 26 U.S.C. 5603(b).

(26 U.S.C. 5143, 7011)

[T.D. ATF-271, 53 FR 17541, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62243, Oct. 31, 2005]

Sec. 19.906 Special (occupational) tax.

(a) General rule. A proprietor of an alcohol fuel plant established under this subpart shall be subject to a special (occupational) tax as prescribed in subpart Ca of this part, and shall hold a separate special tax stamp to cover the alcohol fuel operations except during the suspension period described in Sec. 19.49(a)(3) when special tax stamps are not issued.

(b) Exemption for small plants (effective July 1, 1989). On and after July 1, 1989, paragraph (a) of this section shall not apply to small alcohol fuel plants as defined in Sec. 19.907. If the annual production (including receipts) of a small plant exceeds 10,000 proof gallons in any calendar year, special tax is due as provided in Sec. 19.49(a)(1) for the special tax year (July 1 through June 30) commencing during that calendar year, regardless of whether an application for change of plant type under Sec. 19.921(a) has been filed or approved. If a medium or large plant produces 10,000 or fewer proof gallons (including receipts) in any calendar year, the plant shall be exempt from special tax under this paragraph, as for a small plant, for the special tax year (July 1 through June 30) commencing during that calendar year, regardless of whether an application under Sec. 19.921(c) has been filed or approved.

(26 U.S.C. 5081)

[T.D. ATF-271, 53 FR 17543, May 17, 1988, as amended by T.D. ATF-285, 53 FR 12609, Mar. 28, 1989; T.D. ATF-312, 56 FR 31077, July 9, 1991; T.D. TTB-36, 70 FR 62243, Oct. 31, 2005]

Sec. 20.38 Liability for special tax.

Source: T.D. ATF-271, 53 FR 17544, May 17, 1988, unless otherwise noted.

(a) Industrial alcohol permittee. Except as otherwise provided in this section, every person required to hold a permit under 26 U.S.C. 5271 to procure, use, sell, and/or recover denatured distilled spirits for industrial purposes shall pay a special (occupational) tax at the rate of \$250 per year. A separate tax shall be paid for each industrial alcohol permit which the permittee holds, and permits issued under this part shall not be valid unless special tax is paid. The tax shall be paid on or before the date of commencing business as an industrial alcohol permittee, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) Transition rule. For purposes of paragraph (a) of this section, a permittee engaged in denatured distilled spirits operations on January 1, 1988, shall be treated as having commenced business on that date. The

special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(c) Each place of business taxable. Special (occupational) tax liability is incurred at each place of business for which a permit under subpart D of this part to procure, use, sell, and/or recover denatured distilled spirits has been issued. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(d) Exception for United States. Agencies and instrumentalities of the United States are not required to pay special tax under this subpart.

(e) Exemption for certain educational institutions (effective July 1, 1989). (1) On and after July 1, 1989, a scientific university, college of learning, or institution of scientific research, which holds a permit to procure and use specially denatured spirits under this part, is exempt from payment of special tax under this subpart if--

(i) The university, college, or institution procures less than 25 gallons of specially denatured spirits per calendar year; and

(ii) Such spirits are procured for use exclusively for experimental or research use and not for consumption (other than organoleptic tests) or sale.

(2) A scientific university, college of learning, or institution of scientific research, which holds a permit under this part, and which does not operate as described in paragraphs (e)(1)(i) and (ii) of this section during any calendar year, shall pay special tax as provided in Sec. 20.38(a) for the special tax year (July 1 through June 30) commencing during that calendar year.

(26 U.S.C. 5143, 5276)

[T.D. ATF-271, 53 FR 17544, May 17, 1988, as amended by T.D. ATF-285, 54 FR 12610, Mar. 28, 1989]

Sec. 20.38a Special tax returns.

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

(b) Preparation of TTB Form 5630.5. All of the information called for on 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 Sec. 20.39).

(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 percent or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to TTB in connection with a permit application, 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, TTB 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 TTB 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 TTB 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 Sec. 20.267.

(d) Signing of TTB Forms 5630.5--(1) Ordinary returns. The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as ``individual owner,'' ``member of firm,'' or, in the case of a corporation, the title of the officer.

(2) Fiduciaries. Receivers, trustees, assignees, executors administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) Agent or attorney in fact. If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the TTB office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) Perjury statement. TTB Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 6061, 6065, 6151, 7011)

Sec. 20.39 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 Sec. 70.105 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 return. 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)

Sec. 20.40 Issuance, distribution, and examination of special tax stamps.

(a) Issuance of special tax stamps. Upon filing a properly executed return on TTB Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by Sec. 20.38a(c)(2), 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).

(b) Distribution of special tax stamps for multiple locations. On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to TTB Form 5630.5. The taxpayer shall designate one stamp for each location and shall type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) Examination of special tax stamps. All stamps denoting payment of special tax shall be kept available for inspection by TTB officers, at the location for which designated, during business hours.

(26 U.S.C. 5143, 5146, 6806)

Sec. 20.40a Changes in special tax stamps.

(a) Change in name. If there is a change in the corporate or firm name, or in the trade name, as shown on TTB Form 5630.5, the permittee shall file an amended special tax return, as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The permittee shall attach the

special tax stamp for endorsement of the change in name.

(b) Change in proprietorship--(1) General. If there is a change in the proprietorship of an industrial alcohol operation, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) Exemption for certain successors. Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on TTB Form 5630.5 with TTB, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) Persons having right of succession. Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) Death. The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) Succession of spouse. A husband or wife succeeding to the business of his or her spouse (living);

(3) Insolvency. A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) Withdrawal from firm. The partner or partners remaining after death or withdrawal of a member.

(d) Change in location. If there is a change in location of a taxable place of business, the proprietor shall, within 30 days after the change, file with TTB an amended special tax return covering the new location. The proprietor shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

Sec. 20.241 General.

The United States or any of its Government agencies may withdraw specially denatured spirits from a distilled spirits plant or dealer under this part, as authorized by 26 U.S.C. 5214(a)(2) and 5271. Before any specially denatured spirits may be withdrawn, a permit to procure the spirits shall be obtained as provided in Sec. 20.25. Payment of special (occupational) tax is not required for any Governmental agency of the United States to procure specially denatured spirits.

(26 U.S.C. 5214, 5271, 5272, 5276)

[T.D. ATF-199, 50 FR 9162, Mar. 6, 1985, as amended by T.D. ATF-285, 54 FR 12610, Mar. 28, 1989; T.D. ATF-435, 66 FR 5475, Jan. 19, 2001; T.D. ATF-476, 67 FR 17939, Apr. 12, 2002]

Sec. 22.37 Liability for special tax.

Source: T.D. ATF-271, 53 FR 17545, May 17, 1988, unless otherwise noted.

(a) Tax-free alcohol permittee. Except as otherwise provided in this section, every person who is required to hold a permit under 26 U.S.C. 5271 to procure, use, sell, and/or recover alcohol free of tax for nonbeverage purposes shall pay a special (occupational) tax at the rate of \$250 per year. A separate tax shall be paid for each tax-free alcohol permit which the permittee holds, and permits issued under this part shall not be valid unless special tax is paid. The tax shall be paid on or before the date of commencing the business of a tax-free alcohol permittee, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) Transition rule. For purposes of paragraph (a) of this section, a permittee engaged in nonbeverage tax-free distilled spirits operations on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(c) Each place of business taxable. Special (occupational) tax liability is incurred at each place of business for which a permit under subpart D of this part to procure, use, and/or recover distilled spirits free of tax has been issued. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(d) Exception for United States. Agencies and instrumentalities of the United States are not required to pay special tax under this subpart.

(e) Exception for certain educational institutions. (1) On and after July 1, 1989, a scientific university, college of learning, or institution of scientific research as specified in Sec. 22.104, which holds a permit to procure and use distilled spirits free of tax under this part, is not required to pay special tax under this subpart if--

(i) The university, college, or institution procures less than 25 gallons of tax free spirits per calendar year; and

(ii) Such spirits are procured for use exclusively for experimental or research use and not for consumption (other than organoleptic tests) or sale.

(2) A scientific university, college of learning, or institution of scientific research, which holds a permit under this part, and which does not operate as described in paragraphs (e)(1) (i) and (ii) of this section during any calendar year, shall pay special tax as provided in paragraph (a) of this section for the special tax year (July 1 through June 30) commencing during that calendar year.

(26 U.S.C. 5143, 5276)

[T.D. ATF-271, 53 FR 17545, May 17, 1988, as amended by T.D. ATF-285, 53 FR 12610, Mar. 28, 1989; T.D. ATF-337, 58 FR 19061, Apr. 12, 1993]

Sec. 22.38 Special tax returns.

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

(b) Preparation of TTB Form 5630.5. All of the information called for on 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 Sec. 22.38a).

(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 need not be stated if the same information has been previously provided to TTB in connection with a permit application, 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, TTB 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 TTB 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 TTB 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 corporate taxpayer) for the period specified on Sec. 22.164.

(d) Signing of TTB Forms 5630.5--(1) Ordinary returns. The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) Fiduciaries. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) Agent or attorney in fact. If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A

return signed by a person as agent will not be accepted unless there is filed, with the TTB office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) Perjury statement. TTB Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 6061, 6065, 6151, 7100)

Sec. 22.38a 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 Sec. 70.105 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 return. 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)

Sec. 22.39 Issuance, distribution, and examination of special tax stamps.

(a) Issuance of special tax stamps. Upon filing a properly executed return on TTB Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by Sec. 22.38(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).

(b) Distribution of special tax stamps for multiple locations. On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to TTB Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) Examination of special tax stamps. All stamps denoting payment of special tax shall be kept available for inspection by appropriate TTB officers, at the location for which designated, during business hours.

(26 U.S.C. 5143, 5146, 6806)

Sec. 22.40 Changes in special tax stamps.

(a) Change in name. If there is a change in the corporate or firm name, or in the trade name, as shown on TTB Form 5630.5, the permittee shall file an amended special tax return, as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The permittee shall attach the special tax stamp for endorsement of the change in name.

(b) Change in proprietorship--(1) General. If there is a change in the proprietorship of a tax-free alcohol operation, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) Exemption for certain successors. Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on TTB Form 5630.5 with TTB, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) Persons having right of succession. Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) Death. The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) Succession of spouse. A husband or wife succeeding to the business of his or her spouse (living);

(3) Insolvency. A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) Withdrawal from firm. The partner or partners remaining after death or withdrawal of a member.

(d) Change in location. If there is a change in location of a taxable place of business, the permittee shall, within 30 days after the change, file with TTB an amended special tax return covering the new location. The permittee shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the permittee does not file the amended return within 30 days, he or she is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

Sec. 22.171 General.

(a) The United States or any of its Government agencies may withdraw tax-free spirits for nonbeverage purposes from a distilled spirits plant under this part, as authorized by 26 U.S.C. 5214(a)(2). Before any tax-free spirits may be withdrawn, a permit to procure the spirits shall be obtained from the appropriate TTB officer. Payment of special (occupational) tax and filing of a bond are not required for any Governmental agency of the United States to procure tax-free spirits.

(b) The provisions of subpart M of 27 CFR part 27 cover the withdrawal of imported spirits, free of tax, for use of the United States or any of its Government agencies.

(26 U.S.C. 5214, 5271, 5272, 5276)

[T.D. ATF-199, 50 FR 9183, Mar. 6, 1985, as amended by T.D. ATF-285, 54 FR 12610, Mar. 28, 1989; T.D. ATF-479, 67 FR 30798, May 8, 2002]

Sec. 24.50 Payment of special (occupational) tax.

(a) General. Except as otherwise provided in paragraph (c) of this section, every proprietor of a bonded wine premises or a taxpaid wine bottling house shall pay a special (occupational) tax at the rate specified by Sec. 24.51. The tax will be paid on or before the date of commencing business as a bonded wine premises or taxpaid wine bottling house, and thereafter every year on or before July 1. On commencing business, the tax will be computed from the first day of the month in which the liability is incurred, through the following June 30. Thereafter, the tax will be computed for the entire year (July 1 through June 30).

(b) Each place of business taxable. Subject to paragraph (c) of this section, proprietors of a bonded wine premises or a taxpaid wine bottling house incur special (occupational) tax at each place of business in which an occupation subject to special (occupational) tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special (occupational) tax, if the divisions of the premises are otherwise contiguous. A proprietor of a bonded wine premises or a taxpaid wine bottling house does not incur additional special (occupational) tax liability for sales of wine made at a location other than on wine premises described in the application, TTB F 5120.25, if the location where the sales are made is contiguous to the bonded wine premises or the taxpaid wine bottling house in the manner described in this paragraph. (26 U.S.C. 5081, 5142, 5143)

(c) Suspension of tax. During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. However, the proprietor must register by filing the special tax return on Form 5630.5 during the suspension period even though the amount of tax due is zero. During the suspension period, as at other times, the special tax return is due on or before commencement of business and on or before July 1 of each year thereafter.

(26 U.S.C. 5081, 5142, 5143)

(Approved by the Office of Management and Budget under control numbers 1513-0088 and 1513-0113)

[T.D. ATF-299, 55 FR 24989, June 19, 1990, as amended by T.D. TTB-36, 70 FR 62244, Oct. 31, 2005]

Sec. 24.51 Rates of special (occupational) tax.

(a) General. Title 26 U.S.C. 5081(a) (2), (3), and (4) impose a special (occupational) tax of \$1,000 per year on every proprietor of a bonded wine premises or a taxpaid wine bottling house. However, under 26 U.S.C. 5148(a), the tax rate is zero during the suspension period described in Sec. 24.50(c).

(b) Reduced rate for small proprietors. Except during the suspension period described in Sec. 24.50(c) when the tax rate is zero, title 26 U.S.C. 5081(b) provides for a reduced rate of \$500 per year with respect to any proprietor of a bonded wine premises or a taxpaid wine bottling house whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special (occupational) tax imposed by Sec. 24.50 relates) are less than \$500,000. The ``taxable year'' to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer will be included, not just the gross receipts of the business subject to special (occupational) tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special (occupational) tax, qualify for the reduced special (occupational) tax rate, unless the business is a ``controlled group''; in that case, the rules of paragraph (c) of this section apply.

(c) Controlled group. All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. ``Controlled group'' means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words ``at least 80 percent'' is replaced by the words ``more than 50 percent'' in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a ``controlled group of corporations'' apply in similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) Short taxable year. Gross receipts for any taxable year of less than 12 months will be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period, as required by 26 U.S.C. 448(c)(3).

(e) Returns and allowances. Gross receipts for any taxable year will be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3). (26 U.S.C. 448, 5061, 5081)

(Approved by the Office of Management and Budget under control numbers 1512-0112 and 1512-0088)

[T.D. ATF-299, 55 FR 24989, June 19, 1990, as amended by T.D. TTB-36, 70 FR 62244, Oct. 31, 2005]

Sec. 24.52 Exemption from special (occupational) tax.

(a) General. The proprietor of a bonded wine premises or a taxpaid wine bottling house will not be required to pay special (occupational) tax or to register during the suspension period described in Sec.

24.50(c), as a wholesale dealer or retail dealer on account of the sale, at the bonded wine premises or the taxpaid wine bottling house, or at the principal business office as designated in writing to the appropriate TTB officer, of wine which, at the time of sale, is stored at the bonded wine premises or taxpaid wine bottling house, or has been removed from the bonded wine premises to a taxpaid wine premises, the operations of which are integrated with the operations of the bonded wine premises and which is adjacent to or in the immediate vicinity of the bonded wine premises. The proprietor may not have more than one place of sale, as to each bonded wine premises or taxpaid wine bottling house, that will be exempt from special (occupational) tax or registration under this section.

(b) Place of exemption. Unless the proprietor has claimed the exemption elsewhere, it will be presumed that the exemption is claimed at the bonded wine premises or taxpaid wine bottling house where the wine or spirits are stored. If exemption from payment of special (occupational) tax or from registration is to be claimed for sales at the principal business office rather than for sales at the bonded wine premises or taxpaid wine bottling house, the proprietor shall state such intention in the approved application or file a notice in letter form of this intention with the appropriate TTB officer. Where the exemption is claimed for a place other than the bonded wine premises or taxpaid wine bottling house, the special (occupational) tax will be paid or registration will be made during the suspension period described in Sec. 24.50(c), for any sales made at the bonded wine premises or taxpaid wine bottling house.

(c) Exception. Where the proprietor of a bonded wine premises or a taxpaid wine bottling house has not paid special (occupational) tax or has not registered during the suspension period described in Sec. 24.50(c), as a wholesale dealer and consummates sales of wine to another dealer at the purchaser's place of business through a delivery route sales personnel or otherwise, the proprietor of the bonded wine premises or taxpaid wine bottling house shall be required to pay special (occupational) tax or to register during that suspension period, as a wholesale dealer.

(d) Wholesaler's special (occupational) tax. A wholesale dealer in liquors who has paid the appropriate special (occupational) tax or who has registered during the suspension period described in Sec. 24.50(c), as provided in part 31 of this chapter will not again be required to pay special (occupational) tax or register as a wholesale dealer because of sales of wine to wholesale or retail dealers in liquors, or to limited retail dealers, at the purchaser's place of business. (Sec. 201, Pub. L. 85-859, 72 Stat. 1340, as amended (26 U.S.C. 5111, 5113, 5142))

(Approved by the Office of Management and Budget under control numbers 1512-0112 and 1512-0088)

[T.D. ATF-299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF-409, 64 FR 13683, 13684, Mar. 22, 1999; T.D. TTB-25, 70 FR 19882, Apr. 15, 2005; T.D. TTB-36, 70 FR 62244, Oct. 31, 2005]

Sec. 24.53 Special (occupational) tax returns.

(a) General. Special (occupational) tax is paid by filing TTB F 5630.5, Special Tax Registration and Return, with payment of tax, in accordance with the instructions on the form. During the suspension period described in Sec. 24.50(c), an annual return is required even

though no tax is due.

(b) Preparation of TTB F 5630.5. Unless correctly preprinted on a renewal form, all of the information called for on F 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 (occupational) tax.

(3) The employer identification number (see Sec. 24.45).

(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 will be the taxpayer's principal place of business (or principal office, in case of a corporate taxpayer).

(5) The class(es) of special (occupational) tax to which the taxpayer is subject or to which the return relates during the suspension period described in Sec. 24.50(c).

(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 (occupational) tax. "Owner of the business" includes 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 need not be stated if the same information has been previously provided to TTB in connection with a permit application, and if the information previously provided is still current.

(c) Multiple locations and/or classes of tax. A taxpayer subject to special (occupational) tax (or required to register during the suspension period described in Sec. 24.50(c)) for the same period at more than one location or for more than one class of tax shall:

(1) File one special (occupational) tax return, TTB F 5630.5, with payment of applicable tax, to cover all such locations and classes of tax; and

(2) Unless correctly printed on a renewal form, prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on TTB F 5630.5), employer identification number, and period covered by the return. The list will show, by States, the name, address, and tax class of each location for which special (occupational) tax is being paid or for which registration is being made during the suspension period described in Sec. 24.50(c). The original of the list will be filed with TTB in accordance with instructions on the return, and the copy will be retained at the taxpayer's principal place of business (or principal office, in case of a corporate taxpayer) for the period specified in Sec. 24.300(d).

(d) Signing of TTB F 5630.5--(1) Ordinary returns. The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any corporate officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) Fiduciaries. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) Agent or attorney-in-fact. If a return is signed by an agent or

attorney-in-fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney-in-fact. A return signed by a person as agent will not be accepted unless there is filed, with the TTB office where the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) Perjury statement. TTB F 5630.5 will contain or be verified by a written declaration that the return has been executed under the penalties of perjury. (26 U.S.C. 5142, 6061, 6065, 6151, 7011)

(Approved by the Office of Management and Budget under control numbers 1512-0112 and 1512-0088)

[T.D. ATF-299, 55 FR 24989, June 19, 1990, as amended by T.D. TTB-36, 70 FR 62244, Oct. 31, 2005]

Sec. 24.54 Special (occupational) tax stamps.

(a) Issuance of special (occupational) tax stamps--(1) General. Except as otherwise provided in paragraph (a)(2) of this section, upon filing a properly executed return on Form 5630.5, together with the applicable full remittance, the taxpayer will be issued an appropriately designated special (occupational) tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by Sec. 24.53(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 case of a corporate taxpayer).

(2) Exception for suspension period. During the suspension period described in Sec. 24.50(c) when registration is required but no tax is due, a special tax stamp will not be issued.

(b) Distribution of special (occupational) tax stamps for multiple locations. On receipt of the special (occupational) tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to TTB F 5630.5. Unless correctly printed on the renewal stamp, the taxpayer shall designate one stamp for each location and shall type or print on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) Examination of special (occupational) tax stamps. All stamps denoting payment of special (occupational) tax will be kept available for inspection by appropriate TTB officers, at the location for which designated, during business hours. (26 U.S.C. 5146, 6806)

(Approved by the Office of Management and Budget under control numbers 1512-0472 and 1512-0492)

[T.D. ATF-299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF-409, 64 FR 13684, Mar. 22, 1999; T.D. TTB-36, 70 FR 62244, Oct. 31, 2005]

Sec. 24.55 Changes in special (occupational) tax stamps.

(a) Change in name. If there is a change in the corporate or firm name, or in the trade name, as shown on TTB F 5630.5, the proprietor shall file an amended special (occupational) tax return as soon as practicable after the change covering the new corporate or firm name, or trade name. No new special (occupational) tax is required to be paid.

The proprietor shall attach the special (occupational) tax stamp for endorsement of the change in name, except if the change occurs during the suspension period described in Sec. 24.50(c).

(b) Change in proprietorship--(1) General. If there is a change in the proprietorship of a bonded wine premises or taxpaid wine bottling house, the successor shall file a new special tax return, pay a new special (occupational) tax, and obtain the required special (occupational) tax stamps. However, if the change in proprietorship occurs during the suspension period described in Sec. 24.50(c) when no tax is due and no stamp is issued, only the filing of a new special tax return is required.

(2) Exemption for certain successors. Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special (occupational) tax was paid (or for which registration was made during the suspension period described in Sec. 24.50(c)), without paying a new special (occupational) tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special (occupational) tax return on Form 5630.5, which shows the basis of succession. Except during the suspension period described in Sec. 24.50(c), a person who is a successor to a business for which special (occupational) tax has been paid and who fails to register the succession is liable for special (occupational) tax computed from the first day of the calendar month in which he or she began to carry on the business. During the suspension period, a failure to register the succession may result in a penalty under 26 U.S.C. 5603(b).

(c) Persons having right of succession. Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) Death. The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) Succession of spouse. A husband or wife succeeding to the business of his or her spouse (living);

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

(4) Withdrawal from firm. The partner or partners remaining after death or withdrawal of a member;

(d) Change in location. (1) Subject to paragraph (d)(2) of this section, if there is a change in location of a taxable place of business, the proprietor shall, within 30 days after the change, file an amended special (occupational) tax return covering the new location. The proprietor shall attach the special (occupational) tax stamp or stamps for endorsement of the change in location. No new special (occupational) tax is required to be paid. However, if the proprietor does not file the amended return within 30 days, the proprietor is required to file a new special (occupational) tax return, pay a new special (occupational) tax, and obtain a new special (occupational) tax stamp.

(2) If the change in location occurs during the suspension period described in Sec. 24.50(c) when no tax is due and no special (occupational) tax stamp is issued, the requirements of paragraph (d)(1) of this section still apply, except with regard to attachment of a special (occupational) tax stamp and payment of a new special (occupational) tax. During the suspension period, a failure to comply with paragraph (d)(1) of this section may result in a penalty under 26 U.S.C. 5603(b).

(Approved by the Office of Management and Budget under control numbers 1513-0088 and 1513-0113)

[T.D. ATF-299, 55 FR 24989, June 19, 1990, as amended by T.D. TTB-36, 70 FR 62244, Oct. 31, 2005]

Sec. 25.111 Brewer's special tax.

Liability for Special Tax

(a) General. Except as otherwise provided in paragraph (c) of this section, every brewer shall pay a special (occupational) tax at the rate specified by Sec. 25.111a or Sec. 25.111b, whichever is applicable. The tax shall be paid on or before the date of commencing business as a brewer, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) Transition rule. A brewer who was engaged in business on January 1, 1988, and paid a special (occupational) tax 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 special 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.

(c) Suspension of tax. During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. However, the proprietor must register by filing the special tax return on Form 5630.5 during the suspension period even though the amount of tax due is zero. During the suspension period, as at other times, the special tax return is due on or before commencement of business and on or before July 1 of each year thereafter.

(26 U.S.C. 5091, 5142)

[T.D. ATF-271, 53 FR 17547, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62245, Oct. 31, 2005]

Sec. 25.111a Special tax rates.

(a) Prior rates. The special (occupational) tax imposed on brewers prior to January 1, 1988, was \$110 a year, except that the special tax for any brewer of less than 500 barrels a year was \$55 a year.

(b) Rate effective January 1, 1988. The special tax rate imposed on brewers (other than small brewers as defined in Sec. 25.111b) is \$1000 a year, except that the tax rate is zero during the suspension period described in Sec. 25.111(c).

(26 U.S.C. 5091)

[T.D. ATF-271, 53 FR 17547, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62245, Oct. 31, 2005]

Sec. 25.111b Reduced rate of tax for small brewers.

(a) General. Effective January 1, 1988, 26 U.S.C. 5091(b) provides for a reduced rate of tax with respect to any brewer whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the tax imposed by Sec. 25.111 relates) are less than \$500,000. The rate of tax for such a brewer is \$500 a year, except that the tax rate is zero during the suspension period described in Sec. 25.111(c). The ``taxable year'' to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a ``controlled group''; in that case, the rules of paragraph (b) of this section shall apply.

(b) Controlled group. In determining gross receipts, all persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for purposes of paragraph (a) of this section. ``Controlled group'' means a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words ``at least 80 percent'' shall be replaced by the words ``more than 50 percent'' in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a ``controlled group of corporations'' apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(c) Short taxable year. Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(d) Returns and allowances. Gross receipts for any taxable year shall be reduced by returns and allowances made during that year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5091)

[T.D. ATF-271, 53 FR 17547, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62245, Oct. 31, 2005]

Sec. 25.112 Wholesaler's special tax.

A brewer shall be subject to or exempt from a wholesaler's special (occupational) tax as provided in part 31 of this chapter.

(26 U.S.C. 5111, 5142)

[T.D. ATF-271, 53 FR 17548, May 17, 1988, as amended by T.D. TTB-25, 70 FR 19883, Apr. 15, 2005]

Sec. 25.113 Each place of business taxable.

(a) General. A brewer incurs special tax liability, or must register by filing the special tax return during the suspension period

described in Sec. 25.111(c), for each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(b) Exception for contiguous areas. A brewer will not incur additional special tax liability (or will not have to register during the suspension period described in Sec. 25.111(c)) for sales of beer made at a location other than on brewery premises described on the brewer's notice, Form 5130.10, if the location where such sales are made is contiguous to the brewery premises in the manner described in paragraph (a) of this section.

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

[T.D. ATF-271, 53 FR 17547, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62245, Oct. 31, 2005]

Sec. 25.114 Exemptions from dealer's special taxes.

(a) Brewer. A brewer is not required to pay special tax or to register during the suspension period described in Sec. 25.111(c), as a wholesale or retail dealer in beer because of sales, at the principal place of business or at the brewery, of beer which at the time of sale is stored at the brewery or which had been removed and stored in a taxpaid storeroom operated in connection with the brewery. Each brewer shall have only one exemption from dealer's special tax or registration for each brewery. The brewer may designate, in writing to the appropriate TTB officer, that the principal place of business will be exempt from dealer's special tax or registration; otherwise, the exemption will apply to the brewery.

(b) Wholesale dealer. A wholesale dealer in beer who has paid the appropriate special tax, or who has registered during the suspension period described in Sec. 25.111(c), will not again be required to pay special tax or register as a wholesale dealer in beer because of sales of beer to wholesale or retail dealers in liquors or beer or to limited retail dealers, at the purchaser's place of business.

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

[T.D. ATF-271, 53 FR 17547, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62245, Oct. 31, 2005]

Sec. 25.117 Special tax returns.

Special tax shall be paid by return, and a return is required during the suspension period described in Sec. 25.111(c) even though no tax is due. The prescribed return is TTB Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of applicable tax, shall be filed with TTB in accordance with instructions on the form.

[T.D. ATF-271, 53 FR 17548, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62245, Oct. 31, 2005]

Sec. 25.118 Preparation of TTB Form 5630.5.

All of the information called for on Form 5630.5 shall be provided, including:

(a) The true name of the taxpayer.

(b) The trade name(s) (if any) of the business(es) subject to special tax.

(c) The employer identification number (see Sec. 25.121).

(d) 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).

(e) The class(es) of special tax to which the taxpayer is subject or to which the return relates during the suspension period described in Sec. 25.111(c).

(f) 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 need not be stated if the same information has been previously provided to TTB in connection with the Brewer's Notice, and if the information previously provided is still current.

[T.D. ATF-271, 53 FR 17548, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62245, Oct. 31, 2005]

Sec. 25.119 Multiple locations and/or classes of tax.

A taxpayer subject to special tax (or required to register during the suspension period described in Sec. 25.111(c)) for the same period at more than one location or for more than one class of tax shall--

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

(b) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on TTB 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 or for which registration is being made during the suspension period described in Sec. 25.111(c). The original of the list shall be filed with TTB 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 Sec. 25.300(c).

[T.D. ATF-271, 53 FR 17548, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62245, Oct. 31, 2005]

Sec. 25.120 Signing of TTB Forms 5630.5.

(a) Ordinary returns. The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his

or her capacity as ``individual owner,' ' ``member of firm,' ' or, in the case of a corporation, the title of the officer.

(b) Fiduciaries. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(c) Agent or attorney in fact. If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the TTB office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(d) Perjury statement. TTB Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 6061, 6065, 6151, 7011)

[T.D. ATF-271, 53 FR 17548, May 17, 1988]

Sec. 25.121 Employer identification number.

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 Sec. 70.113 of this chapter.

(26 U.S.C. 6109, 6676)

[T.D. ATF-271, 53 FR 17548, May 17, 1988, as amended by T.D. ATF-301, 55 FR 47605, Nov. 14, 1990]

Sec. 25.122 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 return. IRS Form SS-4 may be obtained from the director of an IRS service center or from any IRS district director.

(26 U.S.C. 6109)

[T.D. ATF-271, 53 FR 17548, May 17, 1988]

Sec. 25.123 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 17549, May 17, 1988]

Sec. 25.125 Issuance of special tax stamps.

(a) Except as otherwise provided in paragraph (b) of this section, upon filing a properly executed return on TTB Form 5630.5, together with the applicable full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by Sec. 25.119, 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).

(b) During the suspension period described in Sec. 25.111(c) when registration is required but no tax is due, a special tax stamp will not be issued.

(26 U.S.C. 6806)

[T.D. ATF-271, 53 FR 17549, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62245, Oct. 31, 2005]

Sec. 25.126 Distribution of stamps for multiple locations.

On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-251, 52 FR 19313, May 22, 1987]

Sec. 25.131 Change in name.

If there is a change in the corporate or firm name, or in the trade name, as shown on Form 5630.5, the brewer shall file an amended special tax return as soon as practicable after the change covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The brewer shall attach the special tax stamp for endorsement of the change in name, except if the change occurs during the suspension period described in Sec. 25.111(c).

(26 U.S.C. 7011)

[T.D. ATF-271, 53 FR 17549, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62246, Oct. 31, 2005]

Sec. 25.132 Change in proprietorship.

(a) General. If there is a change in the proprietorship of a brewery, the successor shall file a new special tax return, pay a new special tax, and obtain the required special tax stamps. However, if the change in proprietorship occurs during the suspension period described in Sec. 25.111(c) when no tax is due and no stamp is issued, only the filing of a new special tax return is required.

(b) Exemption for certain successors. Persons having the right of succession provided for in Sec. 25.133 may carry on the business for the remainder of the period for which the special tax was paid (or for which registration was made during the suspension period described in Sec. 25.111(c)), if within 30 days after the date on which the successor begins to carry on the business, the successor files a return on Form 5630.5, which shows the basis of succession. Except during the suspension period described in Sec. 25.111(c), a person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business. During the suspension period, a failure to register the succession may result in a penalty under 26 U.S.C. 5603(b).

(Act of August 16, 1954, 68A Stat. 845, as amended (26 U.S.C. 7011); sec. 201, Pub. L. 85-859, 72 Stat. 1347, as amended (26 U.S.C. 5143))

[T.D. TTB-36, 70 FR 62246, Oct. 31, 2005]

Sec. 25.133 Persons having right of succession.

Under the conditions indicated in Sec. 25.132, the right of succession will pass to certain persons in the following cases:

- (a) Death. The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;
- (b) Succession of spouse. A husband or wife succeeding to the business of his or her spouse (living);
- (c) Insolvency. A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;
- (d) Withdrawal from firm. The partner or partners remaining after death or withdrawal of a member.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1347, as amended (25 U.S.C. 5143))

Sec. 25.134 Change in location.

(a) Subject to paragraph (b) of this section, if there is a change in location of a taxable place of business, the brewer shall, within 30 days after the change, file an amended special tax return covering the new location. The brewer shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the brewer does not file the amended return within 30 days, the brewer is required to file a new special tax return, pay a new special tax, and obtain a new special tax stamp.

(b) If the change in location occurs during the suspension period described in Sec. 25.111(c) when no tax is due and no special tax stamp is issued, the requirements of paragraph (a) of this section still apply, except with regard to attachment of a special tax stamp and payment of a new special tax. During the suspension period, a failure to comply with paragraph (a) of this section may result in a penalty under 26 U.S.C. 5603(b).

(26 U.S.C. 5143, 7011)

[T.D. TTB-36, 70 FR 62246, Oct. 31, 2005]

Sec. 26.44 Liquor dealer's special taxes.

(a) General. Except as otherwise provided in paragraph (b) of this section, every person bringing liquors into the United States from Puerto Rico, who sells, or offers for sale, such liquors shall file Form 5630.5 with TTB in accordance with the instructions of the form, and pay special (occupational) tax as a wholesale dealer in liquor or as a retail dealer in liquor in accordance with the law and regulations governing the payment of such special taxes (part 31 of this chapter).

(b) Suspension of tax. During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. However, every person described in paragraph (a) of this section must register by filing the special tax return on Form 5630.5, in accordance with part 31 of this chapter, during the suspension period even though the amount of tax due is zero.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340 as amended, 1343 as amended, 1344 as amended (26 U.S.C. 5111, 5112, 5121, 5122))

[T.D. ATF-70, 45 FR 33980, May 21, 1980, as amended by T.D. ATF-251, 52 FR 19338, May 22, 1987; T.D. TTB-25, 70 FR 19883, Apr. 15, 2005; T.D. TTB-36, 70 FR 62246, Oct. 31, 2005]

Sec. 26.45 Warehouse receipts covering distilled spirits.

The sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits. Accordingly, except during the suspension period described in Sec. 26.44(b), every person bringing distilled spirits into the United States from Puerto Rico, who sells, or offers for sale, warehouse receipts for distilled spirits stored in warehouses, or elsewhere, incurs liability to special tax as a dealer in liquors at the place where such warehouse receipts are sold, or offered for sale, and must file return and pay occupational tax as provided in Sec. 26.44(a). During the suspension period, every such person must register as provided in Sec. 26.44(b).

(68A Stat. 618, 620, 621; 26 U.S.C. 5111, 5112, 5121, 5122)

[T.D. TTB-36, 70 FR 62246, Oct. 31, 2005]

Sec. 26.46 Distilled spirits plant proprietor's special (occupational) tax.

(a) General. Except as otherwise provided in paragraph (b) of this section, every proprietor of a distilled spirits plant producing industrial spirits, denatured spirits, or products made with denatured spirits, for shipment to the United States, shall file Form 5630.5 with TTB in accordance with instructions on the form and pay special (occupational) tax as a distilled spirits plant proprietor in accordance with part 19 of this chapter.

(b) Suspension of tax. During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. However, every person described in paragraph (a) of this section must register by filing the special tax return on Form 5630.5, in accordance with part 19 of this chapter, during the suspension period even though the amount of tax due is zero.

(26. U.S.C. 5081, 5314)

[T.D. ATF-271, 53 FR 17559, May 17, 1988, as amended by T.D. TTB-36, 70 FR 62246, Oct. 31, 2005]

Sec. 26.47 Specially denatured spirits user's and dealer's special (occupational) taxes.

Every user of specially denatured spirits who manufactures products made with such spirits for shipment to the United States, and every dealer in specially denatured spirits who ships such spirits to the United States, who is required by Sec. 26.36 to obtain a permit under part 20 of this chapter, shall file Form 5630.5 with TTB in accordance with instructions on the form and pay special (occupational) tax as a user or dealer in specially denatured spirits under part 20 of this chapter.

(.S.C. 5271, 5276, 5314)

[T.D. ATF-271, 53 FR 17559, May 17, 1988. Redesignated and amended by T.D. ATF-459, 66 FR 38550, July 25, 2001]

Sec. 26.171 Special tax.

(a) General. Except as otherwise provided in paragraph (b) of this section, any person filing claim for drawback of tax on eligible articles brought into the United States from Puerto Rico shall pay special tax as required by 26 U.S.C. 5131. For purposes of special tax, subparts C and D of part 17 of this chapter shall apply as if the use and tax determination occurred in the United States at the time the article was brought into the United States and, each business location from which entry of eligible articles is caused or effected shall be treated as a place of manufacture. If special tax is paid for any such business location under part 197 of this chapter, as a place where nonbeverage products are manufactured for purposes of drawback, then no additional special tax need be paid for that location under this section.

(b) Suspension of tax. During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. However, any person described in paragraph (a) of this section must register by filing the special tax return on Form 5630.5, in accordance with part 17 of this chapter, during the suspension period even though the amount of tax due is zero.

[T.D. ATF-263, 52 FR 46594, Dec. 9, 1987, as amended by T.D. ATF-271, 53 FR 17559, May 17, 1988; T.D. ATF-379, 61 FR 31427, June 20, 1996; T.D. TTB-36, 70 FR 62246, Oct. 31, 2005]

Sec. 26.307 Special tax.

(a) General. Except as otherwise provided in paragraph (b) of this section, any person filing claim for drawback of tax on eligible articles brought into the United States from the Virgin Islands shall pay special tax as required by 26 U.S.C. 5131. For purposes of special tax, subparts C and D of part 17 of this chapter shall apply as if the use and tax determination occurred in the United States at the time the

article was brought into the United States, and each business location from which entry of eligible articles is caused or effected shall be treated as a place of manufacture. If special tax is paid for any such business location under part 17 of this chapter, as a place where nonbeverage products are manufactured for purposes of drawback, then no additional special tax need be paid for that location under this section.

(b) Suspension of tax. During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. However, any person described in paragraph (a) of this section must register by filing the special tax return on Form 5630.5, in accordance with part 17 of this chapter, during the suspension period even though the amount of tax due is zero.

[T.D. ATF-263, 52 FR 46595, Dec. 9, 1987, as amended by T.D. ATF-271, 53 FR 17559, May 17, 1988; T.D. ATF-379, 61 FR 31427, June 20, 1996; T.D. TTB-36, 70 FR 62247, Oct. 31, 2005]

Sec. 27.30 Special (occupational) tax.

(a) General. Except as otherwise provided in paragraph (b) of this section, importers engaged in the business of selling, or offering for sale, distilled spirits, wines or beer are subject to the provisions of part 31 of this chapter relating to special (occupational) taxes. Part 31 requires that the special tax return, Form 5630.5, with payment of the tax, shall be filed with TTB in accordance with the instruction on the form, before commencing business. Subsequently, Form 5630.5 with tax shall be filed each year on or before July 1, as long as the proprietor continues in business.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340 as amended, 1343 as amended, 1344 as amended (26 U.S.C. 5111, 5112, 5121, 5122))

(b) Suspension of tax. During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. However, the persons described in paragraph (a) of this section must register by filing the special tax return on Form 5630.5, in accordance with part 31 of this chapter, during the suspension period even though the amount of tax due is zero.

[T.D. ATF-70, 45 FR 33981, May, 21, 1980, as amended by T.D. ATF-251, 52 FR 19339, May 22, 1987; T.D. TTB-25, 70 FR 19883, Apr. 15, 2005; T.D. TTB-36, 70 FR 62247, Oct. 31, 2005]

Sec. 27.31 Warehouse receipts covering distilled spirits.

The sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits. Accordingly, except during the suspension period described in Sec. 27.30(b), every person engaged in business as an importer of distilled spirits, who sells, or offers for sale, warehouse receipts for distilled spirits stored in customs bonded warehouses, or elsewhere, incurs liability to special tax as a dealer in liquors at the place where the warehouse receipts are sold or offered for sale, and must file return and pay occupational tax as provided in Sec. 27.30(a). During the suspension period, every such person must register as provided in Sec. 27.30(b).

(68A Stat. 618, 620, 621; 26 U.S.C. 5111, 5112, 5121, 5122)
[T.D. TTB-36, 70 FR 62247, Oct. 31, 2005]

Sec. 31.1 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 TTB officers.

[T.D. ATF-271, 53 FR 17552, May 17, 1988, as amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005]

Sec. 31.21 Basis of tax.

(a) General. Except as otherwise provided in paragraph (b) of this section, 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 Sec. Sec. 31.23 through 31.26. 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 Sec. 31.26 of this part and paid the special tax for such business.

(b) Suspension of tax. During the period from July 1, 2005, through June 30, 2008, the rate of the tax described in paragraph (a) of this section is zero. However, liquor dealers must register by filing the special tax return on Form 5630.5 during the suspension period even though the amount of tax due is zero. During the suspension period, as at other times, the special tax return is due on or before commencement of business and on or before July 1 of each year thereafter.

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

Sec. 31.23 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. Except during the suspension period described in Sec. 31.21(b), every retail dealer in liquors shall pay special tax at the rate specified in Sec. 31.101 for such dealer, unless such dealer is exempt from such special tax as provided in paragraph (c) of this section. During the suspension period described in Sec. 31.21(b) when no tax is due, the dealer must register by filing the special tax return, Form 5630.5.

(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 (or to register during the suspension period described in Sec. 31.21(b)) as such dealer:

- (1) A retail dealer in beer as defined in Sec. 31.25,
- (2) A limited retail dealer as specified in Sec. 31.27, or
- (3) A person who only sells or offers for sale distilled spirits, wines, or beer as provided in Sec. 31.188 through Sec. 31.190 or Sec. 31.191(a).

(c) Persons exempt from special tax. The following persons are exempt from special tax (and from registration during the suspension period described in Sec. 31.21(b)) 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 (or to register during the suspension period described in Sec. 31.21(b)) 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 (or to register during the suspension period described in Sec. 31.21(b)) as such dealer, or

(3) A person who is exempt from special tax under the provisions of Sec. Sec. 31.181-31.184, 31.187, or 31.187a.

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

[T.D. TTB-36, 70 FR 62247, Oct. 31, 2005]

Sec. 31.24 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. Except during the suspension period described in Sec. 31.21(b), every wholesale dealer in liquors is required to pay special tax at the rate specified in Sec. 31.101 for such dealer, unless such dealer is exempt from such special tax as provided in paragraph (c) of this section. During the suspension period when no tax is due, the dealer must register by filing the special tax return, Form 5630.5, in accordance with Sec. 31.21(b).

(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 (or to register during the suspension period described in Sec. 31.21(b)) as such dealer:

(1) A wholesale dealer in beer as defined in Sec. 31.26,

(2) A person who only sells or offers for sale distilled spirits, wines, or beer as provided in Sec. Sec. 31.188 through 31.190 or Sec. 31.192, or

(3) A person returning liquors for credit, refund, or exchange as provided in Sec. 31.193.

(c) Persons exempt from special tax. (1) The following persons are exempt from special tax (and from registration during the suspension period described in Sec. 31.21(b)) 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 (or has registered during the suspension period described in Sec. 31.21(b)) as such dealer for the current tax year,

(ii) A retail dealer in beer who, having paid the special tax (or having registered during the suspension period described in Sec. 31.21(b)) 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 provisions of Sec. Sec. 31.181 through 31.184.

(2) A wholesale dealer in liquors who has paid the special tax (or

has registered during the suspension period described in Sec. 31.21(b)) as such dealer at the place or places from which he conducts his selling operations is exempt from additional special tax (or from additional registration during the suspension period described in Sec. 31.21(b)) 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))

[T.D. TTB-36, 70 FR 62248, Oct. 31, 2005]

Sec. 31.25 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. Except during the suspension period described in Sec. 31.21(b), every retail dealer in beer shall pay special tax at the rate specified in Sec. 31.101 for such dealer, unless such dealer is exempt from such special tax as provided in paragraph (c) of this section. During the suspension period when no tax is due, the dealer must register by filing the special tax return, Form 5630.5, in accordance with Sec. 31.21(b).

(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 26 U.S.C. chapter 51, and are not required to pay a special tax (or to register during the suspension period described in Sec. 31.21(b)) as such dealer:

(1) A limited retail dealer as specified in Sec. 31.27, or

(2) A person who only sells or offers for sale beer, but not distilled spirits or wines, as provided in Sec. 31.188 through Sec. 31.189 or Sec. 31.191(a).

(c) Persons exempt from special tax. The following persons are exempt from special tax (and from registration during the suspension period described in Sec. 31.21(b)) 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 (or to register during the suspension period described in Sec. 31.21(b)) as such dealer.

(2) A person who is exempt from special tax under the provisions of Sec. Sec. 31.181, 31.184, 31.187, or 31.187a.

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

[T.D. TTB-36, 70 FR 62248, Oct. 31, 2005]

Sec. 31.26 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. Except during the suspension period described in Sec. 31.21(b), every wholesale dealer in beer is required to pay special tax at the rate specified in Sec. 31.101 for such dealer, unless such dealer is exempt from such special tax as provided in paragraph (c) of this section. During the

suspension period when no tax is due, the dealer must register by filing the special tax return, Form 5630.5, in accordance with Sec. 31.21(b).

(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 (or to register during the suspension period described in Sec. 31.21(b)) as such dealer:

(1) A person who only sells or offers for sale beer, but not distilled spirits or wines, as provided in Sec. 31.188 through Sec. 31.189 or Sec. 31.192, or

(2) A person returning beer for credit, refund or exchange as provided in Sec. 31.193.

(c) Persons exempt from special tax. (1) The following persons are exempt from special tax (and from registration during the suspension period described in Sec. 31.21(b)) as wholesale dealers in beer:

(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 (or has registered during the suspension period described in Sec. 31.21(b)) as such dealer for the current tax year,

(ii) A retail dealer in beer who consummates sales of beer to a limited dealer at the place where such retail dealer in beer has paid the special tax (or has registered during the suspension period described in Sec. 31.21(b)) as such dealer for the current tax year, or

(iii) A person who is exempt from such tax under the provisions of Sec. Sec. 31.181 and 31.184.

(2) A wholesale dealer in beer who has paid the special tax (or has registered during the suspension period described in Sec. 31.21(b)) as such dealer at the place, or places, from which he conducts his selling operations is exempt from additional special tax (or from additional registration during the suspension period described in Sec. 31.21(b)) 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))

[T.D. TTB-36, 70 FR 62248, Oct. 31, 2005]

Sec. 31.27 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. Redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005]

Sec. 31.29 Clubs or similar organizations.

(a) Subject to paragraph (b) of this section, a club or similar organization shall pay special tax (or register during the suspension period as provided in Sec. 31.21(b)) if such club or organization:

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

(2) 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 Sec. 31.27 (the special tax stamp or registration of the proprietor of the premises where the bar is located will not relieve the club or organization from its own special tax payment or registration); or

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

(b) Special tax payment or registration is not required 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)

[T.D. TTB-36, 70 FR 62249, Oct. 31, 2005]

Sec. 31.30 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 or shall register during the suspension period as provided in Sec. 31.21(b).

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

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62249, Oct. 31, 2005]

Sec. 31.31 States, political subdivisions thereof, or the District of Columbia.

(a) General. "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.

(b) Suspension of tax. During the suspension period described in Sec. 31.21(b) when no tax is due, the States, their political subdivisions, and the District of Columbia must register only once per

tax year by filing a special tax return, Form 5630.5, in accordance with Sec. 31.21(b).

(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, and further redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62249, Oct. 31, 2005]

Sec. 31.32 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 or shall register during the suspension period as provided in Sec. 31.21(b).

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

[25 FR 6270, July 2, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and further redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62249, Oct. 31, 2005]

Sec. 31.33 Sales of alcoholic compounds, preparations, or mixtures containing distilled spirits, wines, or beer.

(a) Special tax. Special tax payment (or registration during the suspension period as provided in Sec. 31.21(b)) will be required 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 Sec. 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. Redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62249, Oct. 31, 2005]

Sec. 31.34 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 (or register during the suspension period as provided in Sec. 31.21(b)) 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)

[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 and further redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62249, Oct. 31, 2005]

Sec. 31.35 Warehouse receipts covering spirits.

The sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits. Accordingly, except during the suspension period described in Sec. 31.21(b), 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. During the suspension period, such persons must register as provided in Sec. 31.21(b).

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

[T.D. TTB-36, 70 FR 62249, Oct. 31, 2005]

Sec. 31.51 Special tax liability incurred at each place of business.

Except as provided in Sec. Sec. 31.31 and 31.181 through 31.193, payment of special tax (or registration during the suspension period as provided in Sec. 31.21(b)) is required for 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 be deemed sufficient separation to require the payment of additional special tax (or to require additional registration), if the various divisions are otherwise contiguous.

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

[T.D. TTB-36, 70 FR 62249, Oct. 31, 2005]

Sec. 31.52 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)

[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 and further redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005]

Sec. 31.53 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 for which he has registered during the suspension period described in Sec. 31.21(b) when no tax is due and no special tax stamp is issued) or is exempt from special tax or registration as provided in subpart L of this part.

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

[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 and further redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62249, Oct. 31, 2005]

Sec. 31.54 Places of storage; deliveries therefrom.

Special tax is not required to be paid (and registration under Sec. 31.21(b) is not required) 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 (or for which the dealer has registered during the suspension period described in Sec. 31.21(b) when no special tax stamp is issued), the subsequent actual delivery of the liquors from a place of storage does not require the payment of special tax (or registration) at such place of storage. Except as provided in Sec. Sec. 31.185 and 31.186, a dealer holding a special tax stamp (or having registered during the suspension period) 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 (or by registration during the suspension period), shall pay special tax (or shall register during the suspension period as provided in Sec. 31.21(b)) at the place where ownership of the liquors is transferred.

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

[T.D. TTB-36, 70 FR 62249, Oct. 31, 2005]

Sec. 31.55 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 (or for which he has registered during the suspension period described in Sec. 31.21(b)), no payment of special tax (or registration during the suspension period) is required 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 (or for which he has registered during the suspension period described in Sec. 31.21(b)), a separate payment of special tax

(or registration during the suspension period) is required for each such place.

(c) Records. Caterers must maintain sufficient commercial records to verify that their special (occupational) tax liabilities (or registration obligations during the suspension period described in Sec. 31.21(b)) have been satisfied for all locations at which activities subject to special (occupational) tax or registration 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 appropriate TTB officers upon request.

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

[T.D. TTB-36, 70 FR 62250, Oct. 31, 2005, as amended by T.D. TTB-44, 71 FR 16948, Apr. 4, 2006]

Sec. 31.56 Peddling.

No person shall peddle distilled spirits, wines, or beer, except as provided in Sec. Sec. 31.126, 31.185, and 31.186. Persons peddling liquors and not meeting the exemptions specified in Sec. Sec. 31.126, 31.185, and 31.186 are required to pay special tax (or to register during the suspension period as provided in Sec. 31.21(b)) at each place where sales are consummated.

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

[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 and further redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62250, Oct. 31, 2005]

Sec. 31.57 General.

Where liquors are sold by a proprietor in two or more areas within his place of business, only one special tax stamp (or one registration during the suspension period described in Sec. 31.21(b) when no tax is due and no special tax stamp is issued) 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, or shall register only once per tax year during the suspension period in accordance with Sec. 31.21(b).

[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 and further redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62250, Oct. 31, 2005]

Sec. 31.58 Hotels.

The proprietor of a hotel who conducts the sale of liquors throughout the hotel premises shall pay but one special tax, or shall register only once per tax year during the suspension period described in Sec. 31.21(b). 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, or shall register only once per tax year during the suspension period in accordance with Sec. 31.21(b).

[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 and further redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62250, Oct. 31, 2005]

Sec. 31.59 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 (or shall register only once per tax year during the suspension period described in Sec. 31.21(b)) 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 (or shall register only once per tax year during the suspension period described in Sec. 31.21(b)) for such enclosure.

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

[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 and further redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62250, Oct. 31, 2005]

Sec. 31.71 Different businesses of same ownership and location.

(a) General. 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 Sec. Sec. 31.24 and 31.26.

(b) Suspension of tax. The person must register for each business during the suspension period as provided in Sec. 31.21(b) when no tax is due, except as provided in Sec. Sec. 31.24 and 31.26.

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

[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 and further redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62250, Oct. 31, 2005]

Sec. 31.72 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 (or who registers during the suspension period as provided in Sec. 31.21(b)) 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 Sec. 31.103(b)) is exempt from additional special tax (or from additional registration during the suspension period) 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 was paid (or registration was completed) as a retail dealer in beer. Similarly, any person who pays special tax (or who registers during the suspension period as provided in Sec. 31.21(b)) 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 Sec. 31.103(b)) is exempt from additional special tax (or from additional registration during the suspension period) 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 was paid (or registration was completed) as a wholesale dealer in beer.

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

[T.D. ATF-285, 54 FR 12610, Mar. 28, 1989. Redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62250, Oct. 31, 2005]

Sec. 31.92 Addition of partners or incorporation of partnership.

Except during the suspension period described in Sec. 31.21(b), 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. During the suspension period described in Sec. 31.21(b), the new firm or corporation must register as a new dealer.

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

[T.D. TTB-36, 70 FR 62250, Oct. 31, 2005]

Sec. 31.93 Formation of a partnership by two dealers.

Except during the suspension period described in Sec. 31.21(b), where two persons, each holding a special tax stamp for a business carried on by himself, form a partnership, the firm shall pay special tax to cover the business conducted by the partnership. During the suspension period described in Sec. 31.21(b), if two registered dealers form a partnership, the firm must register as a new dealer.

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

[T.D. TTB-36, 70 FR 62251, Oct. 31, 2005]

Sec. 31.94 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 the appropriate TTB officer a notice of succession to the partnership business within 30 days after the change in control, as provided in Sec. 31.169, 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, except during the suspension period described in Sec. 31.21(b), where the remaining partner, or partners, do not file such timely notice of succession, they are required to pay special tax, as provided in Sec. 31.170. During the suspension period, the remaining partner or partners must file a new registration on Form 5630.5 within 30 days after the change in control.

(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. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62251, Oct. 31, 2005; T.D. TTB-44, 71 FR 16948, Apr. 4, 2006]

Sec. 31.101 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) General--(1) 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 |
| Retail dealer in liquors (spirits, wines, beer)..... | 250 |
| Retail dealer in beer (beer only)..... | 250 |

(2) Rate during suspension period. During the suspension period described in Sec. 31.21(b), the special (occupational) tax rate for all dealers in liquor or beer is zero.

(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. Redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62251, Oct. 31, 2005]

Sec. 31.103 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. Redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005]

Sec. 31.104 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 applicable 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 applicable tax on or before July 1 of the new tax year. A taxpayer subject to special tax (or required to register during the suspension period described in Sec. 31.21(b)) for the same period at two or more locations shall file one special tax return, Form 5630.5, prepared as provided in Sec. 31.106, with payment of applicable tax to cover all such locations. If the return and applicable 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. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62251, Oct. 31, 2005]

Sec. 31.104a Place for filing return.

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

[T.D. ATF-251, 52 FR 19335, May 22, 1987. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62251, Oct. 31, 2005]

Sec. 31.105 Method of payment.

Payment of special tax shall be made in cash, or by check or money order payable to Alcohol and Tobacco Tax and Trade Bureau. 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. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005]

Sec. 31.106 Special tax returns.

(a) General. Special tax shall be paid by return, and the filing of a return is required for registration purposes even though no tax is due during the suspension period described in Sec. 31.21(b). The prescribed return is TTB Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with TTB in accordance with instructions on the form.

(b) Preparation of TTB Form 5630.5. All of the information called for on TTB 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 Sec. 31.106a).

(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 or to which the return relates during the suspension period described in Sec. 31.21(b).

(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 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, or required to register during the suspension period described in Sec. 31.21(b), for the same period at more than one location or for more than one class of tax shall--

(1) File one special tax return, TTB Form 5630.5, with payment of applicable 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 TTB 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 or for which registration is being made during the suspension period described in Sec. 31.21(b). The original of the list shall be filed with TTB 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 Sec. 31.237.

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

[T.D. ATF-271, 53 FR 17552, May 17, 1988. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62251, Oct. 31, 2005]

Sec. 31.107 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 TTB 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. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005]

Sec. 31.121 Issuance of stamps.

(a) Issuance--(1) General. Except as otherwise provided in paragraph (a)(2) of this section, upon filing a return properly executed on Form 5630.5, together with a remittance in the applicable 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.

(2) Exception for suspension period. During the suspension period described in Sec. 31.21(b) when registration is required but no tax is due, a special tax stamp will not be issued.

(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 Sec. 31.106(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. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62251, Oct. 31, 2005]

Sec. 31.121a 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 appropriate TTB officer as provided in Sec. 31.134. The taxpayer shall designate one stamp for each location listed in his copy of the attachment to Form 5630.5 required by Sec. 31.106 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 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 TTB 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. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005]

Sec. 31.124 Passenger trains, aircraft, and vessels.

(a) Issuance of stamps--(1) Except as otherwise provided in paragraph (a)(2) of this section, 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 TTB, and he may conduct such business throughout the passenger carrying train, aircraft, boat or other vessel, to which the stamp is transferred.

(2) During the suspension period described in Sec. 31.21(b) when no tax is due, dealers operating on trains, aircraft, and vessels must register as provided in paragraph (b) of this section, but no special tax stamps will be issued.

(b) Filing of Form 5630.5 and payment of tax. A person subject to special tax (or to registration during the suspension period described in Sec. 31.21(b)) on one or more passenger carriers shall file one Form 5630.5, prepared in the manner prescribed in Sec. 31.106(b), with payment of applicable tax in accordance with Sec. 31.101, 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 (or for which registration is being completed).

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

[T.D. TTB-36, 70 FR 62251, Oct. 31, 2005]

Sec. 31.125 Carriers not engaged in passenger service.

Except as provided in Sec. 31.126, the retailing of liquor on any railroad train, aircraft, or boat that is not engaged in the business of carrying passengers is prohibited.

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

[T.D. TTB-36, 70 FR 62252, Oct. 31, 2005]

Sec. 31.126 Supply boats or vessels.

(a) General. Subject to paragraph (b) of this section, 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 Sec. 31.106(b), with any required remittance, and shall specify on the Form 5630.5, or on an attachment thereto: that the business will consist of supplying exclusively boats, vessels, or persons thereon; the name of the port or harbor at which the business is to be carried on; and 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 above to be specified on the Form 5630.5 or attachment, specify on the Form 5630.5 the number of supply boats or vessels for which special tax is being paid (or for which registration is being made during the suspension period described in Sec. 31.21(b)). 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 TTB. If the taxpayer operates from two or more fixed addresses, he shall prepare, as required by Sec. 31.106(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.

(b) Suspension of tax. During the suspension period described in Sec. 31.21(b), the requirements of paragraph (a) of this section will apply except with regard to the payment of special (occupational) tax and the issuance of special tax stamps.

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

[T.D. TTB-36, 70 FR 62252, Oct. 31, 2005]

Sec. 31.127 Retail dealers ``At Large.''

(a) General. Subject to paragraph (b) of this section, 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, 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 appropriate TTB officer will not issue a stamp ``At Large'' to the applicant.

(b) Suspension of tax. During the suspension period described in Sec. 31.21(b), the requirements of paragraph (a) of this section will apply except with regard to the payment of special (occupational) tax and the issuance of special tax stamps.

(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. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62252, Oct. 31, 2005]

Sec. 31.131 General.

Except during the suspension period described in Sec. 31.21(b) when no special tax stamps are issued, a dealer shall keep his special tax stamp available in his place of business for inspection by any appropriate TTB 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. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62252, Oct. 31, 2005; T.D. TTB-44, 71 FR 16948, Apr. 4, 2006]

Sec. 31.134 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 appropriate TTB officer who issued the stamp with a statement showing the nature of the error and the correct name or address. The appropriate TTB officer, 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 appropriate TTB officer 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 appropriate TTB officer 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. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005]

Sec. 31.135 Errors discovered on inspection.

When an appropriate TTB 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 Sec. 31.106 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 appropriate TTB officer is on a special tax stamp obtained pursuant to a return on Form 5630.5 filed under the provisions of Sec. 31.106(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 Sec. 31.121a.

[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.]

Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-44, 71 FR 16948, Apr. 4, 2006]

Sec. 31.136 General.

Where a dealer through error has filed a return and paid special tax (or filed a return as a registration during the suspension period described in Sec. 31.21(b)) for an incorrect period of liability or incorrect class of business, he shall prepare a correct Form 5630.5 for each tax year involved, designating it as an "Amended Return," and submit the amended return, or returns, with remittance for the total applicable tax and additions to the tax (delinquency penalties and interest) incurred, to TTB in accordance with the instructions on the Form 5630.5 or, if the error is discovered by an appropriate TTB 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 Sec. 31.137 or Sec. 31.139 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 Sec. 31.137 or Sec. 31.139, 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. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62252, Oct. 31, 2005; T.D. TTB-44, 71 FR 16948, Apr. 4, 2006]

Sec. 31.137 Credit by an ATF officer.

Where the appropriate TTB 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 Sec. 31.136, remittance of the difference between the tax paid and the correct tax plus any additions thereto, and the incorrect stamp. The appropriate TTB officer 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. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-44, 71 FR 16948, Apr. 4,

2006]

Sec. 31.139 Credit for incorrect stamp.

The appropriate TTB officer 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 Sec. 31.136, 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 appropriate TTB officer shall advise the dealer to file claim for refund of such excess on TTB 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. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005]

Sec. 31.151 Amended return, Form 5630.5; endorsement on stamp.

(a)(1) General. Subject to paragraph (a)(2) of this section, a dealer who, during the tax year for which special tax was paid (or for which registration was completed during the suspension period described in Sec. 31.21(b)), removes the business to a place other than that specified on the original special tax return on Form 5630.5, shall, within 30 days from the date the dealer begins to carry on such business at the new location, register the change with TTB 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 TTB Form 5630.5 covered only one location, may deliver the amended return and the stamp at any TTB office, or to any TTB officer inspecting the business, in lieu of mailing them to TTB: Provided further, That a dealer who filed an original return under the provisions of Sec. 31.106(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 appropriate TTB officer or the TTB 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.

(2) If the change of location occurs during the suspension period described in Sec. 31.21(b) when no tax is due and no special tax stamp is issued, the requirements of paragraph (a)(1) of this section still apply, except with regard to surrendering the special tax stamp.

(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 Sec. 31.55(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. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62252, Oct. 31, 2005]

Sec. 31.152 Failure to register change of address within 30 days.

(a) Except as otherwise provided in paragraph (b) of this section, a dealer who removes his business to a place other than that stated on his Form 5630.5, Special Tax Registration and Return, and fails to register such removal with TTB 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 Sec. 31.109). The amount of tax, delinquency penalty, and interest to be paid shall be computed as provided in Sec. Sec. 31.103, 31.109, and 31.110, respectively.

(b) During the suspension period described in Sec. 31.21(b) when no tax is due and no special tax stamp is issued, a failure to register the change of address may result in a penalty under 26 U.S.C. 5603(b).

(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. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62253, Oct. 31, 2005]

Sec. 31.161 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 a change occurs in the proprietorship of a business for which special tax has been paid or for which registration has been completed during the suspension period described in Sec. 31.21(b), the successor shall pay special tax (or shall register during the suspension period) for such business, except as provided in Sec. 31.169.

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

[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. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62253, Oct. 31, 2005]

Sec. 31.162 Incorporation of business.

Where an individual or a firm engaged in business requiring payment of special tax (or requiring registration during the suspension period described in Sec. 31.21(b)) forms a corporation to take over and conduct the business, the corporation (a separate legal entity) shall pay special tax (or shall register during the suspension period) in its own name.

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

[T.D. TTB-36, 70 FR 62253, Oct. 31, 2005]

Sec. 31.163 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 (or which have registered during the suspension period described in Sec. 31.21(b)), the new corporation shall pay special tax (or shall register during the suspension period) in its own name.

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

[T.D. TTB-36, 70 FR 62253, Oct. 31, 2005]

Sec. 31.165 Change in trade name or style of business.

A dealer who has paid the special tax (or who has registered during the suspension period described in Sec. 31.21(b)) for his business at a given location is not required to pay additional special tax (or to complete a new registration) 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)

[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. Redesignated T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62253, Oct. 31, 2005]

Sec. 31.166 Change of name or increase in capital stock of a corporation.

Additional special tax (or additional registration during the suspension period described in Sec. 31.21(b)) 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)

[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. Redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62253, Oct. 31, 2005]

Sec. 31.167 Change in ownership of capital stock.

Additional special tax (or additional registration during the suspension period described in Sec. 31.21(b)) is not required by reason of the sale or transfer of all or a controlling interest in the capital stock of a corporation.

[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. Redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62253, Oct. 31, 2005]

Sec. 31.168 Change in membership of unincorporated club.

Additional special tax (or additional registration during the suspension period described in Sec. 31.21(b)) 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.

[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. Redesignated by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62253, Oct. 31, 2005]

Sec. 31.169 Change of control, persons having right of succession.

Certain persons may, without paying additional special tax, secure the right to carry on the same business at the same address for the remainder of the tax year for which the special tax was paid, or for which registration was made during the suspension period described in Sec. 31.21(b). 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;

(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 TTB, 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 (except if the change of control occurs during the suspension period described in Sec. 31.21(b) when a special tax stamp is not issued) 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 Sec. 31.106(b), the person succeeding to the business may deliver the amended return and stamp to any TTB office, or to any TTB officer inspecting the business, in lieu of mailing them to TTB. If the applicant has the right of succession and the return and stamp are submitted on time, the appropriate TTB officer or other TTB 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. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62253, Oct. 31, 2005]

Sec. 31.170 Failure to perfect right of succession within 30 days.

(a) Except as otherwise provided in paragraph (b) of this section, a person who would have had the privilege of succeeding, as provided in Sec. 31.169, 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 Sec. 31.109). The amount of tax, delinquency penalty, and interest to be paid shall be computed as provided in Sec. Sec. 31.103, 31.109, and 31.110.

(b) During the suspension period described in Sec. 31.21(b) when no tax is due and no special tax stamp is issued, a failure to register the succession may result in a penalty under 26 U.S.C. 5603(b).

(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. Redesignated and amended by T.D. TTB-25, 70 FR 19884, Apr. 15, 2005; T.D. TTB-36, 70 FR 62253, Oct. 31, 2005]

Sec. 40.31 Liability for special tax.

Source: T.D. ATF-271, 53 FR 17560, May 17, 1988, unless otherwise noted.

(a) Manufacturer of tobacco products. Every manufacturer of tobacco products shall pay a special (occupational) tax at a rate specified by Sec. 40.32 of the part. The tax shall be paid on or before the date of commencing the business of manufacturing tobacco products, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) Transition rule. For purposes of paragraph (a) of this section, a proprietor engaged in the business of manufacturing tobacco products on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(c) Each place of business taxable. A manufacturer of tobacco products incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5731)

Sec. 40.32 Rates of special tax.

(a) General. Title 26 U.S.C. 5731(a)(1) imposes a special tax of \$1,000 per year on every manufacturer of tobacco products.

(b) Reduced rate for small proprietors. Title 26 U.S.C. 5731(b) provides for a reduced rate of \$500 per year with respect to any manufacturer of tobacco products whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by Sec. 40.31 relates) are less than \$500,000. The "taxable year" to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a "controlled group"; in that case, the rules of paragraph (c) of this section shall apply.

(c) Controlled group. All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. "Controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) Short taxable year. Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) Returns and allowances. Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

Sec. 40.33 Special tax returns.

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

(b) Preparation of TTB Form 5630.5. All of the information called for on 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 Sec. 40.34).

(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 need not be stated if the same information has been previously provided to TTB in connection with a permit application, 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, TTB 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 TTB 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 TTB 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 Sec. 40.185.

(d) Signing of TTB Forms 5630.5--(1) Ordinary returns. The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) Fiduciaries. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) Agent or attorney in fact. If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the TTB office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) Perjury statement. TTB Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 6061, 6065, 6151, 7011)

Sec. 40.34 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 Sec. 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 return. 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 17560, May 17, 1988, as amended by T.D. ATF-301, 55 FR 47658, Nov. 14, 1990]

Sec. 40.35 Issuance, distribution, and examination of special tax stamps.

(a) Issuance of special tax stamps. Upon filing a properly executed return on TTB Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by Sec. 40.33(c)(2), 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).

(b) Distribution of special tax stamps for multiple locations. On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to TTB Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) Examination of special tax stamps. All stamps denoting payment of special tax shall be kept available for inspection by appropriate TTB officers, at the location for which designated, during business hours.

(26 U.S.C. 5146, 6806)

Sec. 40.36 Changes in special tax stamps.

(a) Change in name. If there is a change in the corporate or firm name, or in the trade name, as shown on TTB Form 5630.5, the manufacturer shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The manufacturer shall attach the special tax stamp for endorsement of the change in name.

(b) Change in proprietorship--(1) General. If there is a change in the proprietorship of a tobacco factory, the successor shall pay a new

special tax and obtain the required special tax stamps.

(2) Exemption for certain successors. Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on Form 5630.5 with TTB, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) Persons having right of succession. Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) Death. The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) Succession of spouse. A husband or wife succeeding to the business of his or her spouse (living);

(3) Insolvency. A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) Withdrawal from firm. The partner or partners remaining after death or withdrawal of a member.

(d) Change in location. If there is a change in location of a taxable place of business, the manufacturer shall, within 30 days after the change, file with TTB an amended special tax return covering the new location. The manufacturer shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the manufacturer does not file the amended return within 30 days, the manufacturer is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

Sec. 40.371 Liability for special tax.

(a) Manufacturer of cigarette papers and tubes. Every manufacturer of cigarette papers and tubes shall pay a special (occupational) tax at a rate specified by Sec. 40.372 of this part. The tax shall be paid on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) Each place of business taxable. A manufacturer of cigarette papers and tubes incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5731)

Sec. 40.372 Rate of special tax.

(a) General. Title 26 U.S.C. 5731(a)(2) imposes a special tax of

\$1,000 per year on every manufacturer of cigarette papers and tubes.

(b) Reduced rate for small proprietors. Title 26 U.S.C. 5731(b) provides for a reduced rate of \$500 per year with respect to any manufacturer of cigarette papers and tubes whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by Sec. 40.371 relates) are less than \$500,000. The ``taxable year'' to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a ``controlled group''; in that case the rules of paragraph (c) of this section shall apply.

(c) Controlled group. All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. ``Controlled group'' means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4. Also, the rules for a ``controlled group of corporations'' apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) Short taxable year. Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) Returns and allowances. Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

Sec. 40.373 Special tax returns.

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

(b) Preparation of TTB Form 5630.5. All of the information called for on TTB 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 Sec. Sec. 40.359-361).

(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 need not be stated if the same information has been previously provided to TTB in connection with a permit application, 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, TTB 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 TTB Form 5630.5), employer identification number, and period covered by the return. The list shall show, by State, 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 TTB 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 Sec. 40.371.

(d) Signing of TTB Forms 5630.5--(1) Ordinary returns. The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the person signing the return shall designate his or her capacity as ``individual owner,' 'member of firm,' or, in the case of a corporation, the title of the officer.

(2) Fiduciaries. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) Agent or attorney in fact. If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the TTB office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) Perjury statement. TTB Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

Sec. 40.374 Issuance, distribution, and examination of special tax stamps.

(a) Issuance of special tax stamps. Upon filing a properly executed return on TTB Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by Sec. 40.373(c)(2), 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).

(b) Distribution of special tax stamps for multiple locations. On

receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to TTB Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) Examination of special tax stamps. All stamps denoting payment of special tax shall be kept available for inspection by the appropriate TTB officers, at the location for which designated, during business hours.

(26 U.S.C. 5142, 5146, 6806)

Sec. 40.375 Changes in special tax stamps.

(a) Change in name. If there is a change in the corporate or firm name, or in the trade name, as shown on TTB Form 5630.5, the manufacturer shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The manufacturer shall attach the special tax stamp for endorsement of the change in name.

(b) Change in proprietorship--(1) General. If there is a change in the proprietorship of a cigarette papers and tubes factory, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) Exemption for certain successors. Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on TTB Form 5630.5 with TTB, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which the successor began to carry on the business.

(c) Persons having right of succession. Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) Death. The spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) Succession of spouse. A husband or wife succeeding to the business of his or her spouse (living);

(3) Insolvency. A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) Withdrawal from firm. The partner or partners remaining after death or withdrawal of a member.

(d) Change in location. If there is a change in location of a taxable place of business, the manufacturer shall within 30 days after the change, file with TTB an amended special tax return covering the new location. The manufacturer shall attach the special tax stamp or stamps for endorsement of the change in location. No new special tax is required to be paid. However, if the manufacturer does not file the amended return within 30 days, the manufacturer is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

Sec. 44.31 Liability for special tax.

Source: T.D. ATF-271, 53 FR 17563, May 17, 1988, unless otherwise noted.

(a) Export warehouse proprietor. Every export warehouse proprietor shall pay a special (occupational) tax at a rate specified by Sec. 44.32. The tax shall be paid on or before the date of commencing the business of an export warehouseman, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) Transition rule. For purposes of paragraph (a) of this section, a proprietor engaged in the business of an export warehouseman on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(c) Each place of business taxable. An export warehouse proprietor under this part incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5731)

Sec. 44.32 Rate of special tax.

(a) General. Title 26 U.S.C. 5731(a)(3) imposes a special tax of \$1,000 per year on every export warehouse proprietor.

(b) Reduced rate for small proprietors. Title 26 U.S.C. 5731(b) provides for a reduced rate of \$500 per year with respect to any export warehouse proprietor whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by Sec. 44.31 relates) are less than \$500,000. The ``taxable year'' to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a ``controlled group''; in that case, the rules of paragraph (c) of this section shall apply.

(c) Controlled group. All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. ``Controlled group'' means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words ``at least 80 percent'' shall be replaced by the words ``more than 50 percent'' in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the

implementing regulations. Also, the rules for a ``controlled group of corporations'' apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) Short taxable year. Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) Returns and allowances. Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

Sec. 44.33 Special tax returns.

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

(b) Preparation of TTB Form 5630.5. All of the information called for on 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 Sec. 44.34).

(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 need not be stated if the same information has been previously provided to TTB in connection with a permit application, 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, TTB 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 TTB 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 TTB 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 Sec. 44.142.

(d) Signing of TTB Forms 5630.5--(1) Ordinary returns. The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by an officer. In each case, the person signing the return shall designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the title of the officer.

(2) Fiduciaries. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) Agent or attorney in fact. If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the TTB office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) Perjury statement. TTB Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 6061, 6065, 6151, 7011)

Sec. 44.34 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 Sec. 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 return. 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 17563, May 17, 1988, as amended by T.D. ATF-301, 55 FR 47658, Nov. 14, 1990]

Sec. 44.35 Issuance, distribution, and examination of special tax stamps.

(a) Issuance of special tax stamps. Upon filing a properly executed

return on TTB Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment to TTB Form 5630.5 required by Sec. 44.33(c)(2), 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).

(b) Distribution of special tax stamps for multiple locations. On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to TTB Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) Examination of special tax stamps. All stamps denoting payment of special tax shall be kept available for inspection by appropriate TTB officers, at the location for which designated, during business hours.

(26 U.S.C. 5146, 6806)

Sec. 44.36 Changes in special tax stamps.

(a) Change in name. If there is a change in the corporate or firm name, or in the trade name, as shown on TTB Form 5630.5, the export warehouse proprietor shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The export warehouse proprietor shall attach the special tax stamp for endorsement of the change in name.

(b) Change in proprietorship--(1) General. If there is a change in the proprietorship of an export warehouse, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) Exemption for certain successors. Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on TTB Form 5630.5 with TTB, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) Persons having right of succession. Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) Death. The widowed spouse or child, or executor, administrator or other legal representative of the taxpayer;

(2) Succession of spouse. A husband or wife succeeding to the business of his or her spouse (living);

(3) Insolvency. A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) Withdrawal from firm. The partner or partners remaining after death or withdrawal of a member.

(d) Change in location. If there is a change in location of a taxable place of business, the export warehouse proprietor shall, within 30 days after the change, file with TTB an amended special tax return

covering the new location. The export warehouse proprietor shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the export warehouse proprietor does not file the amended return within 30 days, he or she is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

Sec. 53.61 Imposition and rates of tax.

(a) Imposition of tax. Section 4181 of the Code imposes a tax on the sale of the following articles by the manufacturer, producer, or importer thereof:

- (1) Pistols;
- (2) Revolvers;
- (3) Firearms (other than pistols and revolvers); and
- (4) Shells and cartridges.

(b) Parts or accessories--(1) In general. No tax is imposed by section 4181 of the Code on the sale of parts or accessories of firearms, pistols, revolvers, shells, and cartridges when sold separately or when sold with a complete firearm for use as spare parts or accessories. The tax does attach, however, to sales of completed firearms, pistols, revolvers, shells, and cartridges, and to sale of such articles that, although in knockdown condition, are complete as to all component parts.

(2) Component parts. Component parts are items that would ordinarily be attached to a firearm during use and, in the ordinary course of trade, are packaged with the firearm at the time of sale by the manufacturer or importer. All component parts for firearms are includible in the price for which the article is sold.

(3) Nontaxable parts. Parts sold with firearms that duplicate component parts that are not includible in the price for which the article is sold.

(4) Nontaxable accessories. Items that are not designed to be attached to a firearm during use or that are not, in the ordinary course of trade, provided with the firearm at the time of the sale by the manufacturer or importer are not includible in the price for which the article is sold.

(5) Examples--(i) In general. The following examples are provided as guidelines and are not meant to be all inclusive.

(ii) Component parts. Component parts include items such as a frame or receiver, breech mechanism, trigger mechanism, barrel, buttstock, forestock, handguard, grips, buttplate, fore end cap, trigger guard, sight or set of sights (iron or optical), sight mount or set of sight mounts, a choke, a flash hider, a muzzle brake, a magazine, a set of sling swivels, and/or an attachable ramrod for muzzle loading firearms when provided by the manufacturer or importer for use with the firearm in the ordinary course of commercial trade. Component parts also include any part provided with the firearm that would affect the tax status of the firearm, such as an attachable shoulder stock.

(iii) Nontaxable parts. Nontaxable parts include items such as extra barrels, extra sights, optical sights and mounts (in addition to iron sights), spare magazines, spare cylinders, extra choke tubes, and spare pins.

(iv) Nontaxable accessories. Nontaxable accessories include items such as cleaning equipment, slings, slip on recoil pads (in addition to

standard buttplate), tools, gun cases for storage or transportation, separate items such as knives, belt buckles, or medallions. Nontaxable accessories also include optional items purchased by the customer at the time of retail sale that do not change the tax classification of the firearm, such as telescopic sights and mounts, recoil pads, slings, sling swivels, chokes, and flash hiders/muzzle brakes of a type not provided by the manufacturer or importer of the firearm in the ordinary course of commercial trade.

(c) Rates of tax. Tax is imposed on the sale of the articles specified in section 4181 of the Code at the rates indicated below.

| | Percent |
|------------------------------------------------------|---------|
| (1) Pistols..... | 10 |
| (2) Revolvers..... | 10 |
| (3) Firearms (other than pistols and revolvers)..... | 11 |
| (4) Shells and cartridges..... | 11 |

(d) Computation of tax. The tax is computed by applying to the price for which the article is sold the applicable rate. For definition of the term "price" see section 4216 of the Code and the regulations contained in subpart J of this part.

(e) Liability for tax. The tax imposed by section 4181 of the Code is payable by the manufacturer, producer, or importer making the sale.

[T.D. ATF-308, 56 FR 303, Jan. 3, 1991, as amended by T.D. ATF-404, 63 FR 52603, Oct. 1, 1998]