

1513-0030

26 U.S.C.

Sec. 5008. Abatement, remission, refund, and allowance for loss or destruction of distilled spirits

(a) Distilled spirits lost or destroyed in bond

(1) Extent of loss allowance

No tax shall be collected in respect of distilled spirits lost or destroyed while in bond, except that such tax shall be collected--

(A) Theft

In the case of loss by theft, unless the Secretary finds that the theft occurred without connivance, collusion, fraud, or negligence on the part of the proprietor of the distilled spirits plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them;

(B) Voluntary destruction

In the case of voluntary destruction, unless such destruction is carried out as provided in subsection (b); and

(C) Unexplained shortage

In the case of an unexplained shortage of bottled distilled spirits.

(2) Proof of loss

In any case in which distilled spirits are lost or destroyed, whether by theft or otherwise, the Secretary may require the proprietor of the distilled spirits plant or other person liable for the tax to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the burden shall be upon the proprietor of the distilled spirits plant or other person responsible for the distilled spirits tax to establish to the satisfaction of the Secretary that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the proprietor of the distilled spirits plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(3) Refund of tax

In any case where the tax would not be collectible by virtue of paragraph (1), but such tax has been paid, the Secretary shall refund such tax.

(4) Limitations

Except as provided in paragraph (5), no tax shall be abated, remitted, credited, or refunded under this subsection where the loss occurred after the tax was determined (as provided in section 5006(a)). The abatement, remission, credit, or refund of taxes provided for by paragraphs (1) and (3) in the case of loss of distilled spirits by theft shall only be allowed to the extent that the claimant is not indemnified against or recompensed in respect of the tax for such loss.

(5) Applicability

The provisions of this subsection shall extend to and apply in respect of distilled spirits lost after the tax was determined and

before completion of the physical removal of the distilled spirits from the bonded premises.

(b) Voluntary destruction

The proprietor of the distilled spirits plant or other persons liable for the tax imposed by this chapter or by section 7652 with respect to any distilled spirits in bond may voluntarily destroy such spirits, but only if such destruction is under such supervision and under such regulations as the Secretary may prescribe.

(c) Distilled spirits returned to bonded premises

(1) In general

Whenever any distilled spirits on which tax has been determined or paid are returned to the bonded premises of a distilled spirits plant under section 5215(a), the Secretary shall abate or (without interest) credit or refund the tax imposed under section 5001(a)(1) (or the tax equal to such tax imposed under section 7652) on the spirits so returned.

(2) Claim must be filed within 6 months of return of spirits

No allowance under paragraph (1) may be made unless claim therefor is filed within 6 months of the date of the return of the spirits. Such claim may be filed only by the proprietor of the distilled spirits plant to which the spirits were returned, and shall be filed in such form as the Secretary may by regulations prescribe.

(d) Distilled spirits withdrawn without payment of tax

The provisions of subsection (a) shall be applicable to loss of distilled spirits occurring during transportation from bonded premises of a distilled spirits plant to--

(1) the port of export, in case of withdrawal under section 5214(a)(4);

(2) the customs manufacturing bonded warehouse, in case of withdrawal under section 5214(a)(6);

(3) the vessel or aircraft, in case of withdrawal under section 5214(a)(7);

(4) the foreign-trade zone, in case of withdrawal under section 5214(a)(8); and

(5) the customs bonded warehouse in the case of withdrawal under sections 5066 and 5214(a)(9).

The provisions of subsection (a) shall be applicable to loss of distilled spirits withdrawn from bonded premises without payment of tax under section 5214(a)(10) for certain research, development, or testing, until such distilled spirits are used as provided by law.

(e) Other laws applicable

All provisions of law, including penalties, applicable in respect of the internal revenue tax on distilled spirits, shall, insofar as applicable and not inconsistent with subsection (c), be applicable to the credits or refunds provided for under such subsection to the same extent as if such credits or refunds constituted credits or refunds of such tax.

(f) Cross reference

For provisions relating to allowance for loss in case of wine spirits withdrawn for use in wine production, see section 5373(b)(3).

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1323; amended Pub. L. 89-44, title VIII, Sec. 805(a), June 21, 1965, 79 Stat.

160; Pub. L. 90-630, Sec. 1, Oct. 22, 1968, 82 Stat. 1328; Pub. L. 91-659, Secs. 1, 2(a), (b), Jan. 8, 1971, 84 Stat. 1964; Pub. L. 94-273, Sec. 47, Apr. 21, 1976, 90 Stat. 382; Pub. L. 94-455, title XIX, Secs. 1905(a)(2), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1818, 1834; Pub. L. 95-176, Secs. 2(f), 4(e), Nov. 14, 1977, 91 Stat. 1364, 1366; Pub. L. 96-39, title VIII, Sec. 807(a)(6), July 26, 1979, 93 Stat. 281; Pub. L. 105-34, title XIV, Sec. 1411(a), Aug. 5, 1997, 111 Stat. 1046.)

Sec. 5056. Refund and credit of tax, or relief from liability

(a) Beer returned or voluntarily destroyed

Any tax paid by any brewer on beer removed for consumption or sale may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, under such regulations as the Secretary may prescribe, if such beer is returned to any brewery of the brewer or is destroyed under the supervision required by such regulations. In determining the amount of tax due on beer removed on any day, the quantity of beer returned to the same brewery from which removed shall be allowed, under such regulations as the Secretary may prescribe, as an offset against or deduction from the total quantity of beer removed from that brewery on the day of such return.

(b) Beer lost by fire, theft, casualty, or act of God

Subject to regulations prescribed by the Secretary, the tax paid by any brewer on beer removed for consumption or sale may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, if such beer is lost, whether by theft or otherwise, or is destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God before the transfer of title thereto to any other person. In any case in which beer is lost or destroyed, whether by theft or otherwise, the Secretary may require the brewer to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the first sentence shall not apply unless the brewer establishes to the satisfaction of the Secretary that such theft occurred before removal from the brewery and occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(c) Beer received at a distilled spirits plant

Any tax paid by any brewer on beer removed for consumption or sale may be refunded or credited to the brewer, without interest, or if the tax has not been paid, the brewer may be relieved of liability therefor, under regulations as the Secretary may prescribe, if such beer is received on the bonded premises of a distilled spirits plant pursuant to the provisions of section 5222(b)(2), for use in the production of distilled spirits.

(d) Limitations

No claim under this section shall be allowed (1) unless filed within 6 months after the date of the return, loss, destruction, rendering unmerchantable, or receipt on the bonded premises of a distilled spirits plant or (2) if the claimant was indemnified by insurance or otherwise in respect of the tax.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1335; amended Pub. L. 91-673, Sec. 1(a), Jan. 12, 1971, 84 Stat. 2056; Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105-34, title XIV, Sec. 1414(c), Aug. 5, 1997, 111 Stat. 1047; Pub. L. 105-206, title VI, Sec. 6014(a)(3), July 22, 1998, 112 Stat. 820.)

Sec. 5370. Losses

(a) General

No tax shall be collected in respect of any wines lost or destroyed while in bond, except that tax shall be collected--

(1) Theft

In the case of loss by theft, unless the Secretary shall find that the theft occurred without connivance, collusion, fraud, or negligence on the part of the proprietor or other person responsible for the tax, or the owner, consignor, consignee, bailee, or carrier, or the agents or employees of any of them; and

(2) Voluntary destruction

In the case of voluntary destruction, unless the wine was destroyed under Government supervision, or on such adequate notice to, and approval by, the Secretary as regulations shall provide.

(b) Proof of loss

In any case in which the wine is lost or destroyed, whether by theft or otherwise, the Secretary may require by regulations the proprietor of the bonded wine cellar or other person liable for the tax to file a claim for relief from the tax and submit proof as to the cause of such loss. In every case where it appears that the loss was by theft, the burden shall be on the proprietor or other person liable for the tax to establish to the satisfaction of the Secretary, that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the proprietor, owner, consignor, consignee, bailee, or carrier, or the agents or employees of any of them.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1381; amended Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

Sec. 5705. Credit, refund, or allowance of tax

(a) Credit or refund

Credit or refund of any tax imposed by this chapter or section 7652 shall be allowed or made (without interest) to the manufacturer, importer, or export warehouse proprietor, on proof satisfactory to the Secretary that the claimant manufacturer, importer, or export warehouse proprietor has paid the tax on tobacco products and cigarette papers and tubes withdrawn by him from the market; or on such articles lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession of ownership of the claimant.

(b) Allowance

If the tax has not yet been paid on tobacco products and cigarette papers and tubes provided to have been withdrawn from the market or lost or destroyed as aforesaid, relief from the tax on such articles may be extended upon the filing of a claim for allowance therefor in accordance

with such regulations as the Secretary shall prescribe.

(c) Limitation

Any claim for credit or refund of tax under this section shall be filed within 6 months after the date of the withdrawal from the market, loss, or destruction of the articles to which the claim relates, and shall be in such form and contain such information as the Secretary shall by regulations prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 709; Pub. L. 85-859, title II, Sec. 202, Sept. 2, 1958, 72 Stat. 1419; Pub. L. 89-44, title VIII, Sec. 808(b)(1), (2), (c)(1), June 21, 1965, 79 Stat. 164, 165; Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

Sec. 6404. Abatements

(a) General rule

The Secretary is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which--

(1) is excessive in amount, or

(2) is assessed after the expiration of the period of limitation properly applicable thereto, or

(3) is erroneously or illegally assessed.

(b) No claim for abatement of income, estate, and gift taxes

No claim for abatement shall be filed by a taxpayer in respect of any assessment of any tax imposed under subtitle A or B.

(c) Small tax balances

The Secretary is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if the Secretary determines under uniform rules prescribed by the Secretary that the administration and collection costs involved would not warrant collection of the amount due.

(d) Assessments attributable to certain mathematical errors by Internal Revenue Service

In the case of an assessment of any tax imposed by chapter 1 attributable in whole or in part to a mathematical error described in section 6213(g)(2)(A), if the return was prepared by an officer or employee of the Internal Revenue Service acting in his official capacity to provide assistance to taxpayers in the preparation of income tax returns, the Secretary is authorized to abate the assessment of all or any part of any interest on such deficiency for any period ending on or before the 30th day following the date of notice and demand by the Secretary for payment of the deficiency.

(e) Abatement of interest attributable to unreasonable errors and delays by Internal Revenue Service

(1) In general

In the case of any assessment of interest on--

(A) any deficiency attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Internal Revenue Service (acting in his official capacity) in performing a ministerial or managerial act, or

(B) any payment of any tax described in section 6212(a) to the extent that any unreasonable error or delay in such payment is attributable to such an officer or employee being erroneous or dilatory in performing a ministerial or managerial act, the Secretary may abate the assessment of all or any part of such

interest for any period. For purposes of the preceding sentence, an error or delay shall be taken into account only if no significant aspect of such error or delay can be attributed to the taxpayer involved, and after the Internal Revenue Service has contacted the taxpayer in writing with respect to such deficiency or payment.

(2) Interest abated with respect to erroneous refund check

The Secretary shall abate the assessment of all interest on any erroneous refund under section 6602 until the date demand for repayment is made, unless--

(A) the taxpayer (or a related party) has in any way caused such erroneous refund, or

(B) such erroneous refund exceeds \$50,000.

(f) Abatement of any penalty or addition to tax attributable to erroneous written advice by the Internal Revenue Service

(1) In general

The Secretary shall abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the Internal Revenue Service, acting in such officer's or employee's official capacity.

(2) Limitations

Paragraph (1) shall apply only if--

(A) the written advice was reasonably relied upon by the taxpayer and was in response to a specific written request of the taxpayer, and

(B) the portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide adequate or accurate information.

(3) Initial regulations

Within 180 days after the date of the enactment of this subsection, the Secretary shall prescribe such initial regulations as may be necessary to carry out this subsection.

(g) Suspension of interest and certain penalties where Secretary fails to contact taxpayer

(1) Suspension

(A) In general

In the case of an individual who files a return of tax imposed by subtitle A for a taxable year on or before the due date for the return (including extensions), if the Secretary does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability before the close of the 1-year period (18-month period in the case of taxable years beginning before January 1, 2004) beginning on the later of--

(i) the date on which the return is filed; or

(ii) the due date of the return without regard to extensions,

the Secretary shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

(B) Separate application

This paragraph shall be applied separately with respect to each item or adjustment.

(2) Exceptions

Paragraph (1) shall not apply to--

- (A) any penalty imposed by section 6651;
- (B) any interest, penalty, addition to tax, or additional amount in a case involving fraud;
- (C) any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on the return; or
- (D) any criminal penalty.

(3) Suspension period

For purposes of this subsection, the term ``suspension period'' means the period--

- (A) beginning on the day after the close of the 1-year period (18-month period in the case of taxable years beginning before January 1, 2004) under paragraph (1); and
- (B) ending on the date which is 21 days after the date on which notice described in paragraph (1)(A) is provided by the Secretary.

(h) Review of denial of request for abatement of interest

(1) In general

The Tax Court shall have jurisdiction over any action brought by a taxpayer who meets the requirements referred to in section 7430(c)(4)(A)(ii) to determine whether the Secretary's failure to abate interest under this section was an abuse of discretion, and may order an abatement, if such action is brought within 180 days after the date of the mailing of the Secretary's final determination not to abate such interest.

(2) Special rules

(A) Date of mailing

Rules similar to the rules of section 6213 shall apply for purposes of determining the date of the mailing referred to in paragraph (1).

(B) Relief

Rules similar to the rules of section 6512(b) shall apply for purposes of this subsection.

(C) Review

An order of the Tax Court under this subsection shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.

(i) Cross reference

For authority to suspend running of interest, etc. by reason of Presidentially declared disaster or terroristic or military action, see section 7508A.

(Aug. 16, 1954, ch. 736, 68A Stat. 792; Pub. L. 94-455, title XII, Sec. 1212(a), title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1712, 1834; Pub. L. 96-589, Sec. 6(b)(2), Dec. 24, 1980, 94 Stat. 3407; Pub. L. 99-514, title XV, Sec. 1563(a), Oct. 22, 1986, 100 Stat. 2762; Pub. L. 100-647, title I, Sec. 1015(n), title VI, Sec. 6229(a), Nov. 10, 1988, 102 Stat. 3572, 3733; Pub. L. 104-168, title III, Secs. 301(a), (b), 302(a), title VII, Sec. 701(c)(3), July 30, 1996, 110 Stat. 1457, 1464; Pub. L. 105-206, title III, Secs. 3305(a), 3309(a), July 22, 1998, 112 Stat. 743, 745; Pub. L. 105-277, div. J, title IV, Sec. 4003(e)(2), Oct. 21, 1998, 112 Stat. 2681-909; Pub. L. 107-134, title I, Sec. 112(d)(1), Jan. 23, 2002, 115 Stat. 2434.)

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Sec. 17.141 Drawback.

Upon the filing of a claim as provided in this subpart, drawback shall be allowed to any person who meets the requirements of this part. Drawback shall be paid at the rate specified by 26 U.S.C. 5134 on each proof gallon of distilled spirits on which the tax has been paid or determined and which have been used in the manufacture of nonbeverage products. The drawback rate is \$1.00 less than the effective tax rate. Drawback shall be allowed only to the extent that the claimant can establish, by evidence satisfactory to the appropriate TTB, the actual quantity of taxpaid or tax-determined distilled spirits used in the manufacture of the product, and the effective tax rate applicable to those spirits. Special tax as a manufacturer of nonbeverage products shall be paid before drawback is allowed.

Sec. 17.142 Claims.

(a) General. The manufacturer must file claim for drawback with the appropriate TTB officer who has the authority to approve or disapprove claims. A separate claim shall be filed for each place of business. Each claim shall pertain only to distilled spirits used in the manufacture or production of nonbeverage products during any one quarter of the tax year. Unless the manufacturer is eligible to file monthly claims (see Sec. Sec. 17.143 and 17.144), only one claim per quarter may be filed for each place of business. Claims shall be filed on TTB Form 2635 (5620.8), Claim--Alcohol and Tobacco Taxes.

(b) Manufacturers who are also proprietors of distilled spirits plants. If a manufacturer of nonbeverage products is owned and operated by the same business entity that owns and operates a distilled spirits plant, the manufacturer's claim for drawback may be filed for credit on Form 2635 (5620.8). After the claim is approved, the distilled spirits plant may use the claim as an adjustment decreasing the taxes due in Schedule B of TTB Form 5000.24, Excise Tax Return. Adjustments resulting from an approved drawback claim are not subject to interest. This procedure may be utilized only if the manufacturer of nonbeverage products and the distilled spirits plant have the same employer identification number.

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

Sec. 19.41 Claims on spirits, denatured spirits, articles, or wines lost or destroyed in bond.

(a) Claims for remission. All claims for remission of tax required by this part, relating to the destruction or loss of spirits, denatured spirits, articles, or wines in bond, shall be filed with the appropriate TTB officer and shall set forth the following:

(1) Identification (including serial numbers if any) and location of the container or containers from which the spirits, denatured spirits, articles, or wines were lost, or removed for destruction;

(2) Quantity of spirits, denatured spirits, articles, or wines lost

or destroyed from each container, and the total quantity of spirits or wines covered by the claim;

(3) Total amount of tax for which the claim is filed;

(4) Name, number, and address of the plant from which withdrawn without payment of tax or removed for transfer in bond (if claim involves spirits so withdrawn or removed or if claim involves wines transferred in bond) and date and purpose of such withdrawal or removal, except that in the case of imported spirits lost or destroyed while being transferred from customs custody to TTB bond as provided in Sec. 19.481, the name of the customs warehouse, if any, and port of entry will be given instead of the plant name, number, and address;

(5) Date of the loss or destruction (or, if not known, date of discovery), the cause or nature thereof, and all the facts relative thereto;

(6) Name of the carrier, where a loss in transit is involved;

(7) The name and address of the consignee, in the case of spirits withdrawn without payment of tax which are lost before being used for research, development or testing;

(8) If lost by theft, facts establishing that the loss did not occur as the result of any negligence, connivance, collusion or fraud on the part of the proprietor of the plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them;

(9) In the case of a loss by theft, whether the claimant is indemnified or recompensed for the spirits or wines lost and if so, the amount and nature of indemnity or recompense and the actual value of the spirits or wines, less the tax.

(b) Claims for abatement, credit or refund. Claims for abatement of an assessment, or for credit or refund of tax which has been paid or determined, for spirits, denatured spirits, articles, or wines lost or destroyed in bond shall be filed with the appropriate TTB officer. The claims shall set forth the information required under paragraph (a) of this section and, in addition, shall set forth--

(1) The date of assessment or payment (or of tax determination, if the tax has not been assessed or paid) of the tax for which abatement, credit or refund is claimed, and

(2) The name, plant number, and the address of the plant where the tax was determined, paid, or assessed (or name, address and capacity of any other person who paid or was assessed the tax, if the tax was not paid by or assessed against a proprietor).

(c) Supporting document. (1) Claims under paragraphs (a) and (b) of this section shall be supported (whenever possible) by affidavits of persons having personal knowledge of the loss or destruction. For claims on spirits, denatured spirits, articles, or wines lost while being transferred by carrier, the claim shall be supported by a copy of the bill of lading.

(2) For claims pertaining to losses of spirits withdrawn without payment of tax and lost prior to being used for research, development or testing, the claim shall be supported by a copy of the proprietor's sample record prescribed in subpart W of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370))

Sec. 19.42 Claims on spirits returned to bonded premises.

(a) Claims for credit or refund of tax on spirits which have been withdrawn from bonded premises on payment or determination of tax and which are returned under 26 U.S.C. 5215 shall be filed with the appropriate TTB officer and shall set forth the following:

- (1) Quantity of spirits so returned;
- (2) Amount of tax for which the claim is filed;
- (3) Name, address, and plant number of the plant to which the spirits were returned and the date of the return;
- (4) The purpose for which returned; and
- (5) The serial number of the gauge record on which the spirits were returned.

(b) If the alcoholic content of the spirits contain at least 92 percent Puerto Rican or Virgin Islands rum, or if the spirits contain rum imported from any area other than Puerto Rico and the Virgin Islands, the claim shall show:

- (1) Proof gallons of the finished product derived from Puerto Rican or Virgin Islands spirits, or derived from rum imported from any other area; and
- (2) The amount of tax imposed by 26 U.S.C. 7652 or 26 U.S.C. 5001, determined at the time of withdrawal from bond, on the Puerto Rican or Virgin Islands spirits, or on the rum imported from any other area, contained in the product.

(c) Claims for credit or refund of tax on spirits containing eligible wine or eligible flavors must set forth the date and serial number of the record of tax determination and the effective tax rate at which the tax was paid or determined. If this information is not provided, the amount of tax claimed will be based on the lowest effective tax rate applied to the product.

(d) Claims for credit or refund of tax shall be filed by the proprietor of the plant to which the spirits were returned within six months of the date of the return. No interest is allowed on any claims for refund or credit.

[T.D. ATF-198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF-233, 51 FR 28077, Aug. 5, 1986; T.D. ATF-297, 55 FR 18063, Apr. 30, 1990]

Sec. 19.43 Claims relating to spirits lost after tax determination.

Claims for abatement, credit, or refund of tax under this part, relating to losses of spirits occurring on bonded premises after tax determination but prior to physical removal from such premises, shall be prepared and filed as provided in, and contain the information called for under Sec. 19.41(b) and be supported by documents as provided under Sec. 19.41(c).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

Sec. 19.44 Execution of claims and supporting documents.

All claims filed under this part shall be filed on Form 2635 (5620.8). Claims for abatement, remission, credit, or refund shall (a) show the name, address, and capacity of the claimant, (b) be signed by the claimant or his duly authorized agent, and (c) be executed under the penalties of perjury as provided in Sec. 19.100. Supporting documents required by this part to be submitted with a claim shall be attached to

the claim and shall be deemed to be a part thereof. The appropriate TTB officer officer may require the submission of additional evidence in support of any claim filed under this part when deemed necessary for proper action on the claim.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended (26 U.S.C. 5008); sec. 807, Pub. L. 96-39, 93 Stat. 285 (26 U.S.C. 5215))

[T.D. ATF-198, 50 FR 8464, Mar. 1, 1985; 50 FR 23410, June 4, 1985; T.D. ATF-251, 52 FR 19313, May 22, 1987]

Sec. 19.45 Claims for credit of tax.

Claims for credit of tax, as provided in this part, may be filed after determination of the tax whether or not the tax has been paid. The claimant may not anticipate allowance of a credit or make an adjusting entry in a tax return pending action on the claim.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended (26 U.S.C. 5008); sec. 807, Pub. L. 96-39, 93 Stat. 285 (26 U.S.C. 5215))

Sec. 19.487 Abatement, remission, credit or refund.

The provisions of 26 U.S.C. 5008, authorizing abatement, remission, credit or refund for loss or destruction of distilled spirits, shall apply to spirits brought into the United States from Puerto Rico or the Virgin Islands, with respect to the following:

- (a) Spirits lost while in TTB bond;
- (b) Voluntary destruction of spirits in bond;
- (c) Spirits returned to bonded premises after withdrawal from bonded premises without payment of tax; and
- (d) Spirits returned to bonded premises after withdrawal from bonded premises upon tax determination.

Claims relating to spirits lost in bond, in addition to the information required by Sec. 19.41, shall show the name of the producer, and the serial number and date of the formula, where required, under which produced.

(Sec. 201, Pub. L. 95-859, 72 Stat. 1323, as amended (26 U.S.C. 5008); sec. 807, Pub. L. 96-39, 93 Stat. 285 (26 U.S.C. 5215))

Sec. 19.561 Losses in general.

Losses

(a) Allowable losses. Except as provided in paragraph (b) of this section, tax shall not be collected or, if paid, the tax shall be refunded when spirits, denatured spirits or wines are lost or destroyed while in bond.

(b) Exceptions. Tax shall be collected in the case of:

(1) Theft, unless the appropriate TTB officer finds that the theft occurred without connivance, collusion, fraud or negligence on the part of the proprietor, owner, consignor, consignee, bailee, or carrier, or

the employees or agents of any of them;

(2) Voluntary destruction carried out other than as provided in subpart U of this part;

(3) Unexplained shortage of bottled spirits.

(c) Burden of proof. When it appears that a loss occurred due to theft, the burden of proof shall be on the proprietor or other person liable for the tax to establish to the satisfaction of the appropriate TTB officer that the loss did not result from connivance, collusion, fraud, or negligence on the part of the proprietor, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(d) Claims for losses allowable under this section shall be filed in accordance with applicable provisions of subpart C of this part.

(e) Limitations. The abatement, remission, credit, or refund of taxes on spirits, denatured spirits, or wines lost by theft shall be allowed only to the extent that the claimant is not indemnified against or recompensed for the taxes.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370))

Sec. 19.562 Determination of losses in bond.

(a) General. (1) Losses (whether by theft, unauthorized voluntary destruction, or otherwise) of spirits, denatured spirits, and wines shall be determined by the proprietor:

(i) Each time a tank or bulk conveyance is emptied;

(ii) On the basis of required physical inventories; and

(iii) Upon discovery of accidents or unusual variations in gauges.

(2) When it appears that any container in bond has sustained a loss resulting from theft or unauthorized voluntary destruction, such loss shall be taxpaid or the container shall be segregated (as necessary) with the loss reported promptly to the appropriate TTB officer.

(3) In any instance in which spirits, denatured spirits or wines are lost or destroyed in bond, whether by theft, unauthorized voluntary destruction, or otherwise, the appropriate TTB officer may require the proprietor or other person liable for the tax to file a claim for relief from the tax in accordance with Sec. 19.41.

(b) Missing packages. Whenever any packages of spirits, denatured spirits, or wine recorded as deposited on bonded premises cannot be located or otherwise accounted for, the proprietor shall promptly report such fact to the appropriate TTB officer, and the proprietor shall either pay the tax on the lost spirits, denatured spirits, or wines, or file a claim with respect thereto under the provisions of Sec. 19.41.

(c) Tampering, material deficiency, or loss of proof. When it is found that spirits, denatured spirits, or wines in a container have been tampered with, or when a material deficiency in the recorded quantity of such products is found without evidence of loss by leakage or casualty, or when there is a loss of proof of such products not attributable to variations in gauging, the proprietor shall segregate the container (as necessary) and shall promptly report such fact to the appropriate TTB officer, unless the proprietor acknowledges liability for the tax on the loss and elects to pay the tax on the quantity lost.

(d) Excessive in-transit losses. Losses of spirits, denatured spirits, or wines received in bond in bulk conveyances which exceed one percent of the quantity of a product consigned shall be considered as

excessive in-transit losses. However, in the case of transcontinental transfers in bond of wine, only losses in excess of two percent of the quantity of wine consigned shall be considered as excessive in-transit losses. The proprietor shall promptly report all such excessive in-transit losses to the appropriate TTB officer.

(e) Storage account loss limitation. When the quantity of spirits lost from all the storage tanks and bulk conveyances exceeds 1½ percent of the total quantity contained in the tanks and bulk conveyances during the calendar quarter, the loss shall be taxpaid unless a claim for remission is filed in accordance with the provisions of Sec. 19.41 and is allowed by the appropriate TTB officer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended, 1381, as amended (26 U.S.C. 5008, 5370))

Sec. 19.564 Losses after tax determination.

(a) Applicability. Pursuant to a claim, the tax on spirits which are lost after determination of tax and before completion of physical removal from bonded premises, may be abated or remitted or refunded or credited without interest to the proprietor of the bonded premises where the loss occurred.

(b) Conditions. (1) Claims for losses under this section shall be filed in accordance with subpart C of this part.

(2) This section shall not apply if the tax would have been collectible by reason of 26 U.S.C. 5008(a)(1) if the loss occurred on bonded premises before determination of tax.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

Sec. 19.681 Return of taxpaid spirits to bonded premises.

Returns

(a) General. This section and Sec. 19.682 pertain only to taxpaid spirits returned to bonded premises under 26 U.S.C. 5215(a). The return of taxpaid bottled spirits to bonded premises solely for relabeling or reclosing is covered in Sec. 19.393.

(b) Return. Distilled spirits on which the tax has been paid or determined may only be returned to the bonded premises of a distilled spirits plant under this section for:

- (1) Destruction, in accordance with Sec. 19.691;
- (2) Denaturation, in accordance with subpart N;
- (3) Redistillation, in accordance with subpart K;
- (4) Reconditioning; or
- (5) Rebottling.

(c) Claims. Claims for credit or refund of tax on spirits returned to bonded premises shall be filed as provided in, and accompanied by the information prescribed by, Sec. 19.42.

(d) Applicability of 26 U.S.C. Chapter 51. All provisions of 26 U.S.C. Chapter 51 and this part, applicable to spirits in TTB bond, shall be applicable to spirits when returned to bonded premises under this section. The provisions of this subpart do not apply to taxpaid bottled spirits returned to bond solely for relabeling or reclosing and under the provisions of subpart M of this part.

(Sec. 807, Pub. L. 96-39, 93 Stat. 285 (26 U.S.C. 5215))

[T.D. ATF-198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF-206, 50 FR 23952, June 7, 1985]

Sec. 20.202 Losses in transit.

(a) Reporting losses. Upon discovering any loss of specially denatured spirits while in transit, the carrier shall immediately inform the consignee, in writing, of the facts and circumstances relating to the loss. In the case of theft, the carrier shall also immediately notify the consignee's appropriate TTB officer of the facts and circumstances relating to the loss.

(b) Recording losses. At the time the shipment or report of loss is received, the consignee shall determine the quantity of specially denatured spirits lost. The consignee shall note the quantity lost on the receiving document and attach all relevant information to the record of receipt, prescribed in Sec. 20.163. For the purpose of maintaining the records prescribed in subpart P of this part, receipts of specially denatured spirits will only include the quantity actually received.

(c) Claims. A claim for allowances of losses of specially denatured spirits will, as prescribed in Sec. 20.205, be filed:

(1) If the quantity lost in transit exceeds one percent of the total quantity shipped and is more than 10 gallons, the consignee shall file a claim for allowance of the entire quantity lost; or

(2) If the loss was due to theft or other unlawful removal, the consignee shall file a claim for allowance of the entire quantity lost, regardless of the quantity or percentage involved.

(Reporting approved by the Office of Management and Budget under control number 1512-0336; recordkeeping approved by the Office of Management and Budget under control number 1513-0062)

Sec. 20.203 Losses on premises.

(a) Recording of losses. A permittee shall determine and record, in the records prescribed by subpart P of this part, the quantity of specially denatured spirits or recovered alcohol lost on premises:

(1) When an inventory is taken,

(2) At the time a container is emptied, or

(3) Immediately upon the discovery of any loss due to casualty, theft or other unusual causes.

(b) Claims. A claim for allowance of specially denatured spirits will be filed as prescribed in Sec. 20.205, in the following circumstances:

(1) If the quantity lost during the annual accounting period (Sec. 20.263(c)) exceeds one percent of the quantity to be accounted for during that period, and is more than 50 gallons; or,

(2) If the loss was due to theft or unlawful use or removal, the permittee shall file a claim for allowance of losses regardless of the quantity involved.

(Approved by the Office of Management and Budget under control number 1513-0062)

Sec. 20.204 Incomplete shipments.

(a) Subject to the provisions of this part (and Part 19 of this chapter for shipments made by a distilled spirits plant), when containers of specially denatured spirits have sustained losses in transit other than by theft, and the shipment will not be delivered to the consignee, the carrier may return the shipment to the shipper.

(b) When specially denatured spirits are returned to the shipper in accordance with this section, the carrier shall inform the shipper, in writing, of the facts and circumstances relating to the loss. In the case of theft, the carrier shall also immediately notify the shipper's appropriate TTB officer of the facts and circumstances relating to the loss.

(c) Subject to the limitations for loss prescribed in Sec. 20.202, the dealer or proprietor shall file a claim for allowance of the entire quantity lost, in the same manner provided in that section. The claim shall include the applicable data required by Sec. 20.205.

Sec. 20.205 Claims.

Claims for allowance of losses of specially denatured spirits or recovered alcohol will be filed, on Form 2635 (5620.8), within 30 days from the date the loss is ascertained, and will contain the following information:

(a) Name, address, and permit number of claimant;

(b) Identification and location of the container(s) from which the specially denatured spirits or recovered alcohol was lost, and the quantity lost from each container;

(c) Total quantity of specially denatured spirits or recovered alcohol covered by the claim and the aggregate quantity involved;

(d) Date of loss or discovery, the cause or nature of loss, and all relevant facts, including facts establishing whether the loss occurred as a result of negligence, connivance, collusion, or fraud on the part of any person, employee or agent participating in or responsible for the loss;

(e) Name of carrier where a loss in transit is involved. The carrier's statement regarding the loss, prescribed by Sec. 20.202 or Sec. 20.204, will accompany the claim; and,

(f) Any additional evidence which the appropriate TTB officer may require to be submitted in support of the claim.

Sec. 24.65 Claims for wine or spirits lost or destroyed in bond.

(a) Claim for remission of tax on spirits. All claims for remission of tax required by this part, relating to the loss or destruction of spirits in bond, will be filed with the appropriate TTB officer within 30 days of discovery of the loss. A claim filed under this paragraph will set forth the following information:

(1) The name, registry number, and location of the distilled spirits plant which produced the spirits;

(2) The serial numbers of the containers from which the spirits were lost, the quantity lost from each, and the total quantity of spirits covered by the claim;

(3) The total amount of tax for which claim is filed;

(4) The date of the loss or destruction (or, if not known, the date

of discovery);

(5) The nature and cause (if known) of the loss will be stated specifically and in sufficient detail to disclose all material facts and circumstances surrounding the loss;

(6) If lost in transit, the name of the carrier and the points between which shipped; and

(7) If lost by theft, evidence establishing that the loss did not occur as the result of negligence, connivance, collusion, or fraud on the part of the proprietor, owner, consignor, consignee, bailee or carrier, or the agents or employees of any of them.

(b) Claim for allowance of loss on wine. A claim for allowance of loss required by this part, relating to the loss or destruction of wine in bond, will be filed with the appropriate TTB officer. A claim for allowance of loss for wine lost in transit, by fire or other casualty, or any other extraordinary or unusual losses, including a loss by theft, will be filed immediately. Any other claim for allowance of loss will be attached to and submitted with the TTB F 5120.17, Report of Bonded Wine Premises Operations, for the reporting period in which the inventory required by Sec. 24.313 is taken or, in the case of discontinuance of the premises or change in proprietorship, to the final report filed. A claim filed under this paragraph will set forth the information required by paragraphs (a)(5) to (a)(7) of this section and, in addition, will set forth the following information:

(1) The original volume of wine which sustained the loss, the tax class, the quantity of wine lost, and the percentage of wine lost;

(2) Where the claim covers losses sustained at bonded wine premises during the tax year, the claimant shall state:

(i) The quantities of wine on hand at the beginning of the tax year, received in bond during the tax year, and produced during the tax year;

(ii) Where the percentage of loss is calculated separately by tax class, the volume of wine by tax class; and

(iii) If effervescent wine is produced, the volume of wine produced by fermentation in bottles, by artificial carbonation, and by bulk processing; and

(3) Claims covering losses of wine during transit in bond will show the volume lost from each container, the serial number, if any, and the volume shipped.

(c) Claim for abatement, credit or refund. A claim for an abatement of an assessment under Sec. 24.61, or credit or refund of tax which has been paid or determined, will be filed with the appropriate TTB officer in accordance with the provisions of this paragraph and the provisions of 27 CFR part 70, subpart F. A claim filed under this paragraph with respect to spirits, wine, or volatile fruit-flavor concentrate, will set forth the applicable information required by paragraphs (a) and (b) of this section. In addition, any claim filed under this paragraph will set forth the following information:

(1) The date of the assessment for which abatement is claimed; and

(2) The name, registry number, and address of the premises where the tax was assessed (or name, address, and title of any other person who was assessed the tax, if the tax was not assessed against the proprietor).

(d) Indemnification or recompense. A claim filed under paragraph (a) or (b) of this section will specify whether the claimant has been or will be indemnified or recompensed for the spirits or wine lost and, if so, the amount and nature of indemnity or recompense and the actual value of the spirits or wine, less the tax.

(e) Supporting documents. A claim filed under paragraph (a), (b), or (c) of this section will be supported by affidavits of persons having personal knowledge of the loss or destruction. In addition, if filed for tax on wine or spirits lost in transit, the claim will be supported by a copy of the carrier's bill of lading. (Sec. 201, Pub. L. 85-859, 72 Stat. 1323, as amended, 1381, as amended, 1382, as amended (26 U.S.C. 5008, 5370, 5373))

(Approved by the Office of Management and Budget under control numbers 1513-0053 and 1513-0088)

[T.D. ATF-299, 55 FR 24989, June 19, 1991, as amended by T.D. ATF-338, 58 FR 19063, Apr. 12, 1993; T.D. ATF-376, 61 FR 31030, June 19, 1996; T.D. ATF-409, 64 FR 13683, Mar. 22, 1999]

Sec. 24.69 Filing of claims.

(a) Claims. All claims filed under this part for abatement, refund, credit, or remission of tax will be filed on TTB F 5620.8 (2635). Each claim filed under this part will:

(1) Show the name, address, and title of the claimant;

(2) Be signed by the claimant or the duly authorized agent of the claimant; and

(3) Be executed under the penalties of perjury.

(b) Supporting documents. Forms, supporting statements, and any other documents required by this part to be submitted with a claim will be attached to the claim and be considered a part of the claim. The appropriate TTB officer may require the submission of additional evidence in support of any claim filed under this part. (Sec. 201, Pub. L. 85-859, 72 Stat. 1381, as amended (26 U.S.C. 5064, 5370))

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

[T.D. ATF-299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF-409, 64 FR 13683, Mar. 22, 1999]

Sec. 25.224 Refund or adjustment of tax.

(a) Claim for refund or relief of tax. The tax paid by a brewer on beer produced in the United States and destroyed in accordance with this subpart may be refunded to the brewer. If the tax has not been paid, the brewer may be relieved of liability for the tax. Claims for refund or relief of tax will be filed as provided in subpart T of this part.

(b) Adjustments to the excise tax return. A brewer may make an adjustment (without interest) to the excise tax return, Form 5000.24, covering the tax paid on beer produced in the United States and destroyed in accordance with this subpart. Procedures for making adjustments to tax returns are contained in subpart T of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

Sec. 25.225 Destruction of taxpaid beer which was never removed from brewery premises.

(a) General. A brewer operating a taven on brewery premises under Sec. 25.25 may destroy taxpaid or tax-determined beer which was never removed from brewery premises, in accordance with the recordkeeping requirements of paragraph (b) of this section, and with the benefit of the tax refund provisions of paragraph (c) of this section.

(b) Recordkeeping. (1) When taxpaid or tax-determined beer which was never removed from brewery premises is destroyed, the brewer shall prepare a record of the quantity of beer destroyed, and the reason for, date of, and method of, destruction. The brewer may prepare this record on Form 2635 (5620.8) for submission as a claim under Sec. 25.283.

(2) When required by the appropriate TTB officer, the brewer shall notify the appropriate TTB officer prior to the intended destruction, in accordance with procedures established by the appropriate TTB officer.

(c) Refund of tax. After destruction is completed, the brewer may file a claim for refund or credit of tax, in accordance with Sec. 25.283(c).

[T.D. ATF-268, 53 FR 8629, Mar 16, 1988]

Sec. 25.281 General.

(a) Reasons for refund or adjustment of tax or relief from liability. The tax paid by a brewer on beer produced in the United States may be refunded, or adjusted on the tax return (without interest) or, if the tax has not been paid, the brewer may be relieved of liability for the tax on:

(1) Beer returned to any brewery of the brewer subject to the conditions outlined in subpart M of this part;

(2) Beer voluntarily destroyed by the brewer subject to the conditions outlined in subpart N of this part;

(3) Beer lost by fire, theft, casualty, or act of God subject to the conditions outlined in Sec. 25.282.

(b) Refund of beer tax excessively paid. A brewer may be refunded the tax excessively paid on beer subject to the conditions outlined in Sec. 25.285.

(c) Rate of tax. Brewers who have filed the notice required by Sec. 25.167 and who have paid the tax on beer at the reduced rate of tax shall make claims for refund or relief of tax, or adjustments on the tax return, based upon the lower rate of tax. However, a brewer may make adjustments or claims for refund or relief of tax based on the higher rate of tax if the brewer can establish to the satisfaction of the appropriate TTB officer that the tax was paid or determined at the higher rate of tax.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

Sec. 25.282 Beer lost by fire, theft, casualty, or act of God.

(a) General. The tax paid by any brewer on beer produced in the United States may be adjusted (without interest) on the excise tax return, may be refunded or credited (without interest) or, if the tax has not been paid, the brewer may be relieved of liability for the tax if, before transfer of title to the beer to any other person, the beer is lost, whether by theft or otherwise, or is destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God. The tax liability on excessive losses of beer from transfer between breweries of the same ownership may be remitted as provided in Sec. 25.286.

(b) Unmerchantable beer. When beer is rendered unmerchantable by fire, casualty, or act of God, refund, credit or adjustment of tax, or relief from liability of tax will not be allowed unless the brewer proves to the satisfaction of the appropriate TTB officer that the beer cannot be salvaged and returned to the market for consumption or sale.

(c) Beer lost or destroyed. When beer is lost or destroyed, whether by theft or otherwise, the appropriate TTB officer may require the brewer to file a claim for relief from the tax and to submit proof as to the cause of the loss.

(d) Beer lost by theft. When it appears that beer was lost by theft, the tax shall be collected unless the brewer proves to the satisfaction of the appropriate TTB officer that the theft occurred before removal from the brewery and occurred without connivance, collusion, fraud, or negligence on the part of the brewer, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(e) Notification of appropriate TTB officer. (1) A brewer who sustains a loss of beer before transfer of title of the beer to another person and who desires to adjust the tax on the excise tax return or to file a claim for refund or for relief from liability of tax, must, on learning of the loss of beer, immediately notify in writing the appropriate TTB officer of the nature, cause, and extent of the loss, and the place where the loss occurred. Statements of witnesses or other supporting documents must be furnished if available.

(2) A brewer possessing unmerchantable beer and who desires to adjust the tax on the excise tax return or to file a claim for refund or for relief from liability must notify in writing the appropriate TTB officer, of the circumstances by which the beer became unmerchantable, and must state why the beer cannot be salvaged and returned to the market for consumption or sale.

(f) Additional information. The appropriate TTB officer may require the brewer to submit additional evidence necessary to verify the tax adjustment or for use in connection with a claim.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-437, 66 FR 5480, Jan. 19, 2001]

Sec. 25.283 Claims for refund of tax.

(a) Beer returned to brewery or voluntarily destroyed at a location other than a brewery. Claims for refund of tax on beer returned to a brewery under the provisions of Sec. 25.213 or voluntarily destroyed at a location other than a brewery shall include:

(1) The name and address of the brewer filing the claim, the address of the brewery from which the beer was removed, and the address of the brewery to which the beer was returned, as applicable;

(2) The quantity of beer covered by the claim and the rate(s) of tax at which the beer was tax paid or determined;

(3) The amount of tax for which the claim is filed;

(4) The reason for return or voluntary destruction of the beer and the related facts;

(5) Whether the brewer is indemnified by insurance or otherwise in respect of the tax, and if so, the nature of the indemnification;

(6) The claimant's reasons for believing the claim should be allowed;

(7) The date the beer was returned to the brewery, if applicable;

(8) The name of the person from whom the beer was received;
(9) A statement that the tax has been fully paid or determined; and
(10) A reference to the notice (if required) filed under Sec. Sec. 25.213 or 25.222.

(b) Beer lost, destroyed, or rendered unmerchantable. Claims for refund of tax on beer lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God shall contain:

(1) Information required by paragraphs (a)(1), (2), (3), (5), and (6) of this section;
(2) A statement of the circumstances surrounding the loss;
(3) When applicable, the reason the beer rendered unmerchantable cannot be returned to the market for consumption or sale;
(4) Date of the loss, and if lost in transit, the name of the carrier;
(5) A reference incorporating the notice required by Sec. 25.282; and
(6) When possible, affidavits of persons having knowledge of the loss, unless the affidavits are contained in the notice given under Sec. 25.282.

(c) Voluntary destruction of taxpaid beer which was never removed from brewery premises. Claims for refund or credit of tax on beer voluntarily destroyed under the provisions of Sec. 25.225, shall include:

(1) Information required by paragraphs (a)(1), (a)(2), (a)(3), (a)(5), and (a)(9) of this section; and
(2) The information contained in the record required by Sec. 25.225(b).

(d) Additional evidence. The appropriate TTB officer may require the submission of additional evidence in support of any claim filed under this section.

(e) Filing of claim. Claim for refund of tax shall be filed on Form 2635 (5620.8). Claims shall be filed within 6 months after the date of the return, loss, destruction, or rendering unmerchantable. Claims will not be allowed if filed after the prescribed time or if the claimant was indemnified by insurance or otherwise in respect of the tax.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5056))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1987, as amended by T.D. ATF-251, 52 FR 19314, May 22, 1987; T.D. ATF-268, 53 FR 8629, Mar 16, 1988; T.D. ATF-437, 66 FR 5480, Jan. 19, 2001]

Sec. 25.285 Refund of beer tax excessively paid.

(a) Eligibility. A brewer who, under the provisions of Sec. 25.152, is eligible to pay the reduced rate of tax on beer prescribed by 26 U.S.C. 5051 (a)(2), but who did not pay tax at the reduced rate by return, Form 5000.24, during the calendar year for which the brewer was eligible, may file a claim for refund of tax excessively paid on beer for that year. The brewer shall file the claim for refund to tax on Form 2635 (5620.8) within the period of limitation prescribed in 26 U.S.C. 6511(a). For rules relating to the period of limitation on filing claims, see Sec. Sec. 70.82 and 70.83.

(b) Calculation of refund. The brewer shall file the claim based on the quantity of beer eligible to be taxpaid at the lower rate of tax, but which was paid at the higher rate of tax, subject to a maximum of

60,000 barrels of beer per calendar year or the limitation as determined in Sec. 25.152(d). The brewer shall exclude from the claim the quantity of beer removed that calendar year on which a credit or refund at the higher rate of tax has been taken.

(c) Information to be furnished. Each claim for refund of tax filed under this section shall include the following information:

(1) Name and address of the brewer.

(2) Quantity of beer covered by the claim as determined in paragraph (b) of this section.

(3) Amount of tax paid in excess.

(4) A statement of the exact number of barrels of beer which the brewer produced during the calendar year.

(5) A statement that the brewer is not a member of a controlled group of brewers (as defined in Sec. 25.152(b)(1) or, if the brewer is a member of a controlled group of brewers, a list of the names and addresses of all the members of the controlled group of brewers and a statement of the combined number of barrels of beer produced by all members of the controlled group in the calendar year.

(6) If the brewer is a member of a controlled group of brewers, a statement of how the 60,000 barrel limitation for the reduced rate of tax is to be apportioned among the members of the controlled group of brewers.

(Act of August 16, 1954, 68A Stat. 791, as amended (26 U.S.C. 6402); sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1987, as amended by T.D. ATF-251, 52 FR 19314, May 22, 1987; T.D. ATF-437, 66 FR 5480, Jan. 19, 2001]

Sec. 25.286 Claims for remission of tax on beer lost in transit between breweries.

(a) Filing of claim. Claims for remission of tax on beer lost in transit between breweries of the same ownership shall be prepared on Form 2635 (Form 5620.8) by the brewer or the brewer's authorized agent and submitted with the Form 5130.9 of the receiving brewery for the reporting period in which the shipment is received. When the loss is by casualty, the claim will be submitted with the Form 5130.9 for the reporting period in which the loss is discovered. When, for valid reason, the required claim cannot be submitted with Form 5130.9, the brewer shall attach a statement to Form 5130.9 stating the reason why the claim cannot be filed at the time and stating when it will be filed. A claim will not be allowed unless filed within 6 months of the date of the loss.

(b) Information to be shown. The claim will show the following information:

(1) The date of the shipment;

(2) The quantity of beer lost (number and size of packages and their equivalent in barrels), and the rate(s) of tax at which the beer would have been removed for consumption or sale;

(3) The percent of loss;

(4) The specific cause of the loss;

(5) The nature of the loss (leakage, breakage, casualty, etc.);

(6) Information as to whether the claimant has been indemnified by insurance or otherwise in respect to the tax, or has any claim for indemnification; and

(7) For losses due to casualty or accident, statements from the

carrier or other persons having personal knowledge of the loss, if available.

(27 U.S.C. 5056, 5414)

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986; 51 FR 9190, Mar. 18, 1986; T.D. ATF-345, 58 FR 40357, July 28, 1993]

Sec. 26.173 Claims for drawback.

(a) General. Persons bringing eligible articles into the United States from Puerto Rico must file claim for drawback on TTB Form 2635 (5620.8). Upon finding that the claimant has satisfied the requirements of this subpart, the appropriate TTB officer must allow the drawback of taxes at a rate of \$1 less than the lesser of \$10.50 a proof gallon or the rate specified in 26 U.S.C. 5001(a).

(b) Information on claims. The claim must set forth the following:

(1) That the special tax has been paid;

(2) That the eligible articles brought into the United States on which drawback is claimed are fully tax paid or tax-determined;

(3) That the eligible articles on which drawback is claimed are nonbeverage products; and

(4) That the eligible articles were manufactured in Puerto Rico in compliance with an approved formula in accordance with Sec. 26.51.

(c) Supporting data. Each claim shall be accompanied by supporting data as specified in this paragraph. TTB Form 5154.2, Supporting Data for Nonbeverage Drawback Claims, may be used, or the claimant may use any suitable format that provides the following information:

(1) The control number of the Special Tax Stamp and the tax year for which issued;

(2) A description of each eligible article as follows:

(i) Name and type of each product;

(ii) Name and address of the manufacturer of each product;

(iii) Formula number;

(iv) Alcohol content of each product;

(v) Quantity of each product;

(vi) Proof gallons of distilled spirits contained in each product;

(vii) Date of entry of the eligible product into the United States,

and

(viii) The serial number of each TTB Form 487-B (5170.7) covering such articles shipped to the United States.

(d) Date of filing claim. Quarterly claims for drawback shall be filed within the 6 months next succeeding the quarter in which the eligible products covered by the claim were brought into the United States. Monthly claims for drawback may be filed at any time after the end of the month in which the eligible products covered by the claim were brought into the United States, but must be filed not later than the close of the sixth month succeeding the quarter in which the eligible products were brought into the United States.

(Approved by the Office of Management and Budget under control number 1513-0089)

[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.

ATF-451, 66 FR 21669, May 1, 2001. Redesignated and amended by T.D. ATF-459, 66 FR 38550, 38552, July 25, 2001]

Sec. 26.306 Drawback of tax.

Source: T.D. ATF-263, 52 FR 46595, Dec. 9, 1987, unless otherwise noted.

Any person who brings eligible articles into the United States from the Virgin Islands may claim drawback of the distilled spirits excise taxes paid on such articles as provided in this subpart.

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. 26.308 Bonds.

(a) General. Persons bringing eligible articles into the United States from the Virgin Islands and intending to file monthly claims for drawback under the provisions of this subpart shall obtain a bond on Form 5154.3. When the limit of liability under a bond given in less than the maximum amount has been reached, further drawback on monthly claims may be suspended until a strengthening or superseding bond in a sufficient amount has been furnished. For provisions relating to bonding requirements, subpart E of part 17 of this chapter is incorporated in this part.

(b) Approval required. No person bringing eligible articles into the United States from the Virgin Islands may file monthly claims for drawback under the provisions of this subpart until a bond on TTB Form 5154.3 has been approved.

[T.D. ATF-379, 61 FR 31427, June 20, 1996, as amended by T.D. ATF-451, 66 FR 21670, May 1, 2001]

Sec. 26.309 Claims for drawback.

(a) General. Persons bringing eligible articles into the United States from the Virgin Islands must file claim for drawback on TTB Form 2635 (5620.8). Upon finding that the claimant has satisfied the requirements of this subpart, the appropriate TTB officer must allow the drawback of taxes at a rate of \$1 less than the lesser of \$10.50 a proof gallon or the rate specified in 26 U.S.C. 5001(a).

(b) Information on claims. The claim must set forth the following:

- (1) That the special tax has been paid;
- (2) That the eligible articles brought into the United States on which drawback is claimed are fully taxpaid or tax-determined;
- (3) That the eligible articles on which drawback is claimed are nonbeverage products; and
- (4) That the eligible articles were manufactured in the Virgin Islands in compliance with approved formulas in accordance with Sec. 26.221.

(c) Supporting data. Each claim shall be accompanied by supporting data as specified in this paragraph. TTB Form 5154.2, Supporting Data for Nonbeverage Drawback Claims, may be used, or the claimant may use any suitable format that provides the following information:

(1) The control number of the Special Tax Stamp and the tax year for which issued;

(2) A description of each eligible article as follows:

- (i) Name and type of each product;
- (ii) Name and address of the manufacturer of each product;
- (iii) Formula number under which each product was manufactured;
- (iv) Alcohol content of each product;
- (v) Quantity of each product;
- (vi) Proof gallons of distilled spirits contained in each product;
- (vii) Date of entry of the eligible product into the United States;

and

(viii) Evidence of taxpayment of distilled spirits in accordance with Sec. 26.266.

(d) Date of filing claim. Quarterly claims for drawback shall be filed within the 6 months next succeeding the quarter in which the eligible products covered by the claim were brought into the United States. Monthly claims for drawback may be filed at any time after the end of the month in which the eligible products covered by the claim were brought into the United States, but must be filed not later than the close of the sixth month succeeding the quarter in which the eligible products were brought into the United States.

(Approved by the Office of Management and Budget under control number 1513-0089)

[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. ATF-451, 66 FR 21670, May 1, 2001. Redesignated and amended by T.D. ATF-459, 66 FR 38550, 38552, July 25, 2001]

Sec. 26.310 Records.

(a) General. Every person intending to file claim for drawback on

eligible articles brought into the United States from the Virgin Islands shall keep permanent records of the data elements required by this section. Such records shall be maintained at the business premises for which the claim is filed and shall be available for inspection by any appropriate TTB officer during business hours.

(b) Details of records. Each person intending to claim drawback on eligible articles brought into the United States shall maintain permanent records showing the following data:

(1) The name, description, quantity, and formula number of each such article.

(2) The alcohol content of each such article.

(3) Name and address of the manufacturer and shipper, and date of entry into the United States.

(4) Evidence of taxpayment of distilled spirits in accordance with paragraph (e) of this section.

(c) Form of record. No particular form of record is prescribed, but the data required to be shown shall be readily ascertainable from the records kept by the drawback claimant.

(d) Evidence of taxpayment of distilled spirits. Evidence of taxpayment of eligible articles (such as Customs Forms 7501 and 7505 receipted to indicate payment of tax) shall be maintained as evidence of taxpayment to support information required to be furnished in the supporting data filed with a claim.

(e) Retention of records. Each drawback claimant shall retain for a period of not less than three years all records required by this subpart, all commercial invoices or shipping documents, and all bills of lading received evidencing receipt and tax determination of the spirits. In addition, a copy of each approved formula returned to the manufacturer of eligible articles shall be retained for not less than three years from the date he files his last claim for drawback under the formula. The records, forms, and formulas shall be readily available during regular business hours for examination by appropriate TTB officers.

(Approved by the Office of Management and Budget under control number 1513-0089)

[T.D. ATF-263, 52 FR 46595, Dec. 9, 1987, as amended by T.D. ATF-451, 66 FR 21669, May 1, 2001]

Sec. 28.303 Filing of claims.

Claims, for remission of tax on the distilled spirits under Sec. 28.301, shall be filed on Form 2635 (5620.8), in duplicate, and shall set forth the following:

(a) Name, address, and capacity of the claimant;

(b) Identification (including serial numbers, if any) and location of the container or containers from which the spirits were lost;

(c) Quantity of spirits lost from each container, and the total quantity of spirits covered by the claim;

(d) Total amount of tax for which the claim is filed;

(e) The date, penal sum, and form number of the bond under which withdrawal and shipment were made;

(f) Name, number, and address of the distilled spirits plant from which withdrawn without payment of tax;

(g) Date of the loss (or, if not known, date of discovery), the

cause thereof, and all the facts relative thereto;

(h) Name of the carrier;

(i) If lost by theft, facts establishing that the loss did not occur as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them;

(j) In the case of a loss by theft, whether the claimant is indemnified or recompensed in respect of the tax on the spirits lost, and, if so, the amount and nature of such indemnity or recompense and the actual value of the spirits, less the tax.

The claim shall be executed by the exporter or his authorized agent under the penalties of perjury, and shall be supported (whenever possible) by affidavits of persons having personal knowledge of the loss. The appropriate TTB officer may require such further evidence as he deems necessary.

(68A Stat. 749, 72 Stat. 1323; 26 U.S.C. 6065, 5008)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

Sec. 28.310 Loss of specially denatured spirits in transit.

Losses of specially denatured spirits withdrawn free of tax under this part during transportation from the bonded premises of the distilled spirits plant from which withdrawn to (a) the port of export, or (b) the foreign-trade zone, as the case may be, may be allowed if evidence satisfactory to the appropriate TTB officer establishes that such specially denatured spirits have not been unlawfully diverted, or lost by theft as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them. The giving of notice to the exporter, filing claims for allowance of loss, and action on the claims shall be, insofar as applicable, in accordance with the procedure prescribed in Sec. Sec. 28.302 through 28.304.

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

Sec. 28.315 Loss of wine in transit.

The tax on wine withdrawn without payment of tax under this part and which is lost during transportation from the bonded wine cellar from which withdrawn to (a) the port of export, (b) the vessel or aircraft, (c) the foreign-trade zone, (d) the manufacturing bonded warehouse, or (e) the customs bonded warehouse, as the case may be, may be remitted if evidence satisfactory to the appropriate TTB officer establishes that such wine has not been unlawfully diverted, or lost by theft with connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier or the employees or agents of any of them. However, the remission of tax on wine withdrawn without payment of tax under this part and which is lost while in transit may be allowed only to the extent that the claimant is not indemnified or recompensed for such tax.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1381, 1382 (26 U.S.C. 5370, 5371))

[T.D. ATF-88, 46 FR 39816, Aug. 5, 1981, as amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

Sec. 28.317 Filing of claims.

Claims, for remission of tax on the wine under Sec. 28.315, shall be filed on Form 2635 (5620.8), in duplicate, and shall set forth the following:

- (a) The name, address, and capacity of the claimant;
- (b) The name, registry number, and location of the bonded wine cellar from which the wine was withdrawn;
- (c) The date, penal sum, and form number of the bond under which withdrawal and shipment was made;
- (d) Identification (including serial numbers, if any) and location of the container or containers from which the wine was lost;
- (e) The quantity of wine lost from each container, and the total quantity of wine covered by the claim;
- (f) The total amount of tax for which the claim is filed;
- (g) The date of the loss (or, if not known, date of discovery), the

cause thereof, and all the facts relative thereto;

(h) Name of the carrier;

(i) If lost by theft, the facts establishing that the loss did not occur as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the agents or employees of any of them; and

(j) Whether the claimant is indemnified or recompensed in respect of the tax on the wine lost, and, if so, the amount and nature of such indemnity or recompense and the actual value of the wine, less the tax. The claim shall be signed by the exporter or his authorized agent under the penalties of perjury, and shall be supported (whenever possible) by affidavits of persons having personal knowledge of the loss. The appropriate TTB officer may require such further evidence as he deems necessary.

(68A Stat. 749, 72 Stat. 1381, 1382; 26 U.S.C. 6065, 5370, 5371)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. TTB-8, 69 FR 3834, Jan. 27, 2004]

Sec. 31.201 Claims.

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

[T.D. ATF-251, 52 FR 19336, May 22, 1987. Redesignated and amended by T.D. TTB-25, 70 FR 19884, 19886, Apr. 15, 2005]

Sec. 31.202 Time limit on filing of claim.

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

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

Sec. 31.203 Discontinuance of business.

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

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

Sec. 40.281 Abatement of assessment.

General

A claim for abatement of the unpaid portion of the assessment of any tax on tobacco products or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed. Any claim under this section shall be prepared on Form 2635 (5620.8), in duplicate, and shall set forth the particulars under which the claim is filed. The original of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid, shall be filed with the appropriate TTB officer, and the duplicate of the claim shall be retained by the manufacturer.

(68A Stat. 792; 26 U.S.C. 6404)

[T.D. 6871, 31 FR 38, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987]

Sec. 40.282 Allowance of tax.

Relief from the payment of tax on tobacco products may be extended to a manufacturer by allowance of the tax where the tobacco products after removal from the factory upon determination of tax and prior to the payment of such tax, are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such products, or are withdrawn by him from the market. Any claim for allowance under this section shall be filed on Form 2635, in duplicate, with the appropriate TTB officer, and shall show the date the tobacco products were removed from the factory. A claim relating to products lost or destroyed shall be supported as prescribed in Sec. 40.301. In the case of a claim relating to tobacco products withdrawn from the market the schedule prescribed in Sec. 40.311 shall be filed with the appropriate TTB officer. The manufacturer may not anticipate allowance of his claim by making the adjusting entry in a tax return pending consideration and action on the claim. Tobacco products to which such a claim relates must be shown as removed on determination of tax in the return covering the period during which such products were so removed. Upon action on the claim by the appropriate TTB officer he will return the copy of Form 2635 to the manufacturer as notice of such action, which copy, with the copy of any verified supporting schedules, shall be retained by the manufacturer. When such notification of allowance of the claim or any part thereof is received prior to the time the return covering the tax on the tobacco products to which the claim relates is to be filed, the manufacturer may make an adjusting entry and explanatory statement in that tax return. Where the notice of allowance is received after the filing of the return and taxpayment of the tobacco products to which the claim relates, the manufacturer may make an adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take credit in the amount of the allowance.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6961, 33 FR 9488, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

Sec. 40.283 Credit or refund of tax.

The taxes paid on tobacco products may be credited or refunded (without interest) to a manufacturer on proof satisfactory to the appropriate TTB officer that the claimant manufacturer paid the tax on tobacco products lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer, or withdrawn by him from the market. Any claim for credit or refund under this section shall be prepared on Form 2635 (5620.8), in duplicate. Claims shall include a statement that the tax imposed on tobacco products by 26 U.S.C. 7652 or chapter 52, was paid in respect to the tobacco products covered by the claim, and that the products were lost, destroyed, or withdrawn from the market within 6 months preceding the date the claim is filed. A claim for credit or refund relating to products lost or destroyed shall be supported as prescribed in Sec. 40.301, and a claim relating to products withdrawn from the market shall be accompanied by a schedule prepared and verified as prescribed in Sec. 40.311 and 40.313. The original and one copy of Form 2635 (5620.8), claim for credit, or the original of Form 2635 (5620.8), claim for refund, shall be filed with the appropriate TTB officer. Upon action by the appropriate TTB officer on a claim for credit he will return the copy of Form 2635 to the manufacturer as notification of allowance or disallowance of the claim or any part thereof, which copy, with the copy of any verified supporting schedules, shall be retained by the manufacturer. When the manufacturer is notified of allowance of the claim for credit or any part thereof he shall make an adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take credit in the amount of the allowance. Prior to consideration and action on his claim the manufacturer may not anticipate allowance of his claim by taking credit in his tax return. The duplicate of a claim for refund, with the copy of any verified supporting schedules, shall be retained by the manufacturer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1419)

[T.D. 6961, 33 FR 9489, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-219, 50 FR 51389, Dec. 17, 1985; T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987]

Sec. 40.284 Remission of tax liability.

Remission of the tax liability on tobacco products may be extended to the manufacturer liable for the tax where tobacco products in bond are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer. Where tobacco products are so lost or destroyed the manufacturer shall report promptly such fact, and the circumstances, to the appropriate TTB officer. If the manufacturer wishes to be relieved of the tax liability thereon he shall also prepare a claim on Form 2635, in duplicate,

setting forth the nature, date, place, and extent of the loss or destruction. Both copies of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid, shall be filed with the appropriate TTB officer. Upon action on the claim by the appropriate TTB officer he will return the copy of Form 2635 to the manufacturer as notice of such action, which copy shall be retained by the manufacturer.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6961, 33 FR 9489, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

Sec. 40.286 Refund of overpayment.

Where an error in computation of the quantity of tobacco products or in computation of the amount of tax due results in an overpayment and such error is specifically identified and supported by records, the manufacturer may file claim for refund or may make an adjustment in his semimonthly tax return as provided in Sec. 40.164. (Section 6511, 26 U.S.C., provides that, in most cases, any adjustment of claim for refund of an overpayment of tax on tobacco products must be made or filed within three years after the tax is paid.) If the manufacturer elects to file a claim for refund of an overpayment resulting from such a computational error, he shall do so on Form 2635 (5620.8), in duplicate. The original shall be filed with the appropriate TTB officer, and the duplicate retained by the manufacturer. Where an overpayment of tax on tobacco products results from other than a computational error any claim for refund or credit shall be made in accordance with subpart A of part 46 of this chapter.

(68A Stat. 791, 72 Stat. 9; 26 U.S.C. 6402, 6423)

[T.D. 6871, 31 FR 39, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987; T.D. ATF-457, 66 FR 32220, June 14, 2001]

Sec. 40.287 Remission of tax liability on shortage.

Whenever a manufacturer of tobacco products desires to submit a claim for remission of tax liability on shortages of tobacco products in bond, disclosed by physical inventory as set forth in Sec. 40.255, he shall prepare such claim on Form 2635, in duplicate. Both copies of the claim shall be filed with the appropriate TTB officer. The claim shall specify the quantities of tobacco products on which claim is made and the tax liability in respect thereof, and shall set forth the circumstances surrounding the shortage and the reason the manufacturer believes tax is not due or payable. The appropriate TTB officer will, after such investigation as he deems appropriate, allow the claim to the extent he is satisfied the shortage was due to operating losses such as damage during grading, sorting, or packaging, and was not caused by theft or other unlawful or improper removal. Upon action on the claim by the appropriate TTB officer he will return the copy of Form 2635 to the

manufacturer as notice of such action, which copy shall be retained by the manufacturer.

(72 Stat. 1414, as amended, 1417, 1419, as amended; 26 U.S.C. 5701, 5703, 5705)

[T.D. 6961, 33 FR 9489, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

Sec. 40.301 Action by claimant.

Where tobacco products are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, and the manufacturer desires to file a claim for the tax on such products under the provisions of Sec. 40.282 or Sec. 40.283, he shall indicate on the claim the nature, date, place, and extent of such loss or destruction. The claim shall be accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6871, 31 FR 39, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986]

Sec. 40.313 Disposition of tobacco products and schedule.

When so authorized, as evidenced by the appropriate TTB officer's statement on the schedule, the manufacturer shall dispose of the tobacco products (and destroy the stamps, if any) as specified in the schedule. After the manufacturer has disposed of the products (and destroyed the stamps, if any), he shall execute a certificate on both copies of the schedule returned to him by the appropriate TTB officer, to show the disposition and the date of disposition of the products (and stamps, if any). In connection with a claim for allowance the manufacturer then shall return the original of the schedule to the appropriate TTB officer who authorized such disposition, who will cause such schedule to be associated with the claim, Form 2635 (5620.8), filed under Sec. 40.282. In connection with a claim for credit or refund the manufacturer shall attach the original of the schedule to his claim for credit, Form 2635 (5620.8), or claim for refund, Form 2635 (5620.8), filed under Sec. 40.283. When an appropriate TTB officer is assigned to verify the schedule and supervise disposition of the tobacco products, such officer shall, upon completion of his assignment, execute a certificate on all copies of the schedule to show the disposition and the date of disposition of the products. In connection with a claim for allowance the officer shall return one copy of the schedule to be included in the manufacturer's records, and in connection with a claim for credit or refund, the officer shall return the original and one copy of the schedule to the manufacturer, the original of which the manufacturer shall attach to the claim, Form 2635 (5620.8), filed under Sec. 40.283.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6871, 31 FR 39, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987]

Sec. 40.471 Abatement.

A claim for abatement of the unpaid portion of the assessment of any tax on cigarette papers and tubes, or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after the expiration of the applicable period of limitation, or is erroneously or illegally assessed. Any claim under this section shall be prepared on TTB Form 2635 (5620.8), in duplicate, and shall set forth the particulars under which the claim is filed. The original of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid, shall be filed with the appropriate TTB officer.

(68A Stat. 792, 6404)

Sec. 40.472 Allowance.

Relief from the payment of tax on cigarette papers and tubes may be extended to a manufacturer by allowance of the tax where the cigarette papers and tubes, after removal from the factory upon determination of tax and prior to the payment of such tax, are lost (otherwise than by theft) or destroyed by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such articles, or are withdrawn by the manufacturer from the market. Any claim for allowance under this section shall be filed on TTB Form 2635 (5620.8) with the appropriate TTB officer, shall be executed under penalties and perjury and shall show the date the cigarette papers and tubes were removed from the factory. A claim relating to articles lost or destroyed shall be supported as prescribed in Sec. 40.475. In the case of a claim relating to cigarette papers or tubes withdrawn from the market the schedule prescribed in Sec. 40.476 shall be filed with the appropriate TTB officer. The manufacturer may not anticipate allowance of a claim by making the adjusting entry in a tax return pending consideration and action on the claim. Cigarette papers and tubes to which such a claim relates must be shown as removed on determination of tax in the return covering the period during which such articles were so removed. Upon action on the claim by the appropriate TTB officer a copy of TTB Form 2635 (5620.8) will be returned to the manufacturer as notice of such action. This copy of TTB Form 2635 (5620.8), with the copy of any verified supporting schedules, shall be retained by the manufacturer. When such notification of allowance of the claim or any part thereof is received prior to the time the return covering the tax on the cigarette papers or tubes to which the claim relates is to be filed, the manufacturer may make an adjusting entry and explanatory statement in that tax return. Where the notice of allowance is received after the filing of the return and taxpayment of the cigarette papers or tubes to which the claim relates, the manufacturer may make an adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take credit in the amount of the allowance.

(72 Stat. 1419, as amended, 26 U.S.C. 5705)

Sec. 40.473 Credit or refund.

The taxes paid on cigarette papers and tubes may be credited or refunded (without interest) to a manufacturer on proof satisfactory to the appropriate TTB officer that the claimant manufacturer paid the tax on cigarette papers and tubes lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer, or withdrawn by the manufacturer from the market. Any claim for credit or refund under this section shall be prepared on TTB Form 2635 (5620.8), in duplicate. Claims shall include a statement that the tax imposed on cigarette papers and tubes by 26 U.S.C. 7652 or Chapter 52, was paid in respect to the cigarette papers or tubes covered by the claim, and that the articles were lost, destroyed, or withdrawn from the market within 6 months preceding the date the claim is filed. A claim for credit or refund relating to articles lost or destroyed shall be supported as prescribed in Sec. 40.475, and a claim relating to articles withdrawn from the market shall be accompanied by a schedule prepared and verified as prescribed in Sec. 40.476, and 40.477. The original and one copy of TTB Form 2635 (5620.8), shall be filed with the appropriate TTB officer. Upon action by the appropriate TTB officer on a claim for credit, a copy of TTB Form 2635 (5620.8) will be returned to the manufacturer as notification of allowance or disallowance of the claim or any part thereof. This copy, with the copy of any verified supporting schedules, shall be retained by the manufacturer. When the manufacturer is notified of allowance of the claim for credit or any part thereof, the manufacturer shall make an adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take credit in the amount of the allowance. The manufacturer may not anticipate allowance of a claim by taking credit on a tax return prior to consideration and action on such claim. The duplicate of a claim for refund or credit, with a copy of any verified supporting schedules, shall be retained by the manufacturer.

(72 Stat. 1419, as amended, 26 U.S.C. 5705)

Sec. 40.474 Remission.

Remission of the tax liability on cigarette papers and tubes may be extended to the manufacturer liable for the tax where cigarette papers and tubes in bond are lost (other than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer. Where cigarette papers and tubes are so lost or destroyed the manufacturer shall report promptly such fact, and the circumstances, to the appropriate TTB officer. If the manufacturer wishes to be relieved of the tax liability, a claim on TTB Form 2635 (5620.8), in duplicate, shall also be prepared, setting forth the nature, date, place, and extent of the loss or destruction. The original and one copy of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid, shall be filed with the appropriate TTB officer. Upon action on the claim by the appropriate TTB officer, the copy of TTB Form 2635 (5620.8) will be returned to the manufacturer as notice of such action, which copy shall be retained by the manufacturer.

(72 Stat. 1419, as amended, 26 U.S.C. 5707)

Sec. 41.161 Abatement of assessment.

General

A claim for abatement of the unpaid portion of the assessment of any tax on tobacco products and cigarette papers and tubes, or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed. Any claim under this section shall be prepared on Form 2635 (5620.8), in duplicate, and shall set forth the particulars under which the claim is filed. The original of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid, shall be filed with the appropriate TTB officer, and the duplicate of the claim shall be retained by the claimant.

(68A Stat. 792; 26 U.S.C. 6404)

[T.D. 6871, 31 FR 46, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19341, May 22, 1987. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

Sec. 41.162 Losses caused by disaster occurring after September 2, 1958.

Claims involving internal revenue tax paid or determined and customs duty paid on tobacco products and cigarette papers and tubes removed, which are lost, rendered unmarketable, or condemned by a duly authorized official by reason of a ``major disaster'' occurring in the United States after September 2, 1958, shall be filed in accordance with the provisions of subpart C of part 46 of this chapter.

(72 Stat. 1420; 26 U.S.C. 5708)

[T.D. 6871, 31 FR 46, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-457, 66 FR 32220, June 14, 2001]

Sec. 41.163 Refund of tax.

The taxes paid on tobacco products and cigarette papers and tubes imported or brought into the United States may be refunded (without interest) to the taxpayer on proof satisfactory to the appropriate TTB officer that the taxpayer has paid the tax on tobacco products and cigarette papers and tubes lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such taxpayer, or withdrawn by him from the market. Any claim for refund of tax under this section shall be prepared on Form 2635 (5620.8), in duplicate, and shall include a statement that the tax imposed on tobacco products and cigarette papers and tubes by 26 U.S.C. 7652 or chapter 52, as applicable, has been paid in respect to the articles covered in the claim, and that the articles were lost,

destroyed, or withdrawn from the market, within six months preceding the date the claim is filed and shall be executed under the penalties of perjury. A claim for refund relating to articles lost or destroyed shall be supported as prescribed in Sec. 41.165, and a claim relating to articles withdrawn from the market shall include a schedule prepared and verified as prescribed in Sec. Sec. 41.170 and 41.171 or Sec. Sec. 41.172 and 41.173. The original of the claim shall be filed with the appropriate TTB officer. The duplicate of the claim, with the copy of any verified supporting schedules, shall be retained by the claimant.

(68A Stat. 907, as amended, 72 Stat. 1419, as amended; 26 U.S.C. 7652, 5705)

[T.D. 6871, 31 FR 46, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19341, May 22, 1987. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

Sec. 41.165 Action by taxpayer.

Where tobacco products and cigarette papers and tubes which have been imported or brought into the United States are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, and the taxpayer desires to file claim for refund of the tax on such articles, he shall, in addition to complying with the requirements of Sec. 41.163, indicate on the claim the nature, date, place, and extent of such loss or destruction. The claim shall be accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6871, 31 FR 46, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

Sec. 44.152 Claim for remission of tax liability.

Remission of the tax liability on tobacco products, and cigarette papers and tubes may be extended to the export warehouse proprietor liable for the tax where such articles in bond are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such proprietor. Where articles are so lost or destroyed the proprietor shall report promptly such fact, and the circumstances, to the appropriate TTB officer. If the proprietor wishes to be relieved of the tax liability, the proprietor must prepare and file a claim on TTB Form 5620.8. The nature, date, place, and extent of the loss or destruction must be stated in such claim. The claim must be accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid. When the appropriate TTB officer has acted on the claim, such officer will return a copy of TTB Form 5620.8 to the proprietor as notice of such action. The proprietor must keep the copy of TTB Form 5620.8 for 3 years following the close of the calendar year in which the claim is

filed.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6961, 33 FR 9492, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28088, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-421, 64 FR 71925, Dec. 22, 1999; T.D. ATF-480, 67 FR 30802, May 8, 2002]

Sec. 44.153 Claim for abatement of assessment.

A claim for abatement of the unpaid portion of the assessment of any tax on tobacco products, and cigarette papers and tubes, or any liability in respect of such tax, alleged to be excessive in amount, assessed after the expiration of the period of limitation applicable thereto, or erroneously or illegally assessed, shall be filed on Form 5620.8. Such claim shall set forth the reasons relied upon for the allowance of the claim and shall be supported by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid.

(68A Stat. 792; 26 U.S.C. 6404)

[T.D. 6871, 31 FR 51, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28088, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19341, May 22, 1987; T.D. ATF-421, 64 FR 71925, Dec. 22, 1999; T.D. ATF-480, 67 FR 30802, May 8, 2002]

Sec. 44.154 Claim for refund of tax.

The taxes paid on tobacco products, and cigarette papers and tubes may be refunded (without interest) to an export warehouse proprietor on proof satisfactory to the appropriate TTB officer that the claimant proprietor paid the tax on such articles which were after taxpayment lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such export warehouse proprietor, or withdrawn by him from the market. Any claim for refund under this section shall be prepared on Form 5620.8, in duplicate, and shall include a statement that the tax imposed by 26 U.S.C. 7652 or chapter 52, was paid in respect to the articles covered by the claim, and that the articles were lost, destroyed, or withdrawn from the market within 6 months preceding the date the claim is filed. The claim must be filed on TTB Form 5620.8 and supported by such evidence as is necessary to establish to the satisfaction of the appropriate TTB officer that the claim is valid. The duplicate of the claim shall be retained by the export warehouse proprietor for 3 years following the close of the calendar year in which the claim is filed. Where an export warehouse proprietor has paid the tax on tobacco products, or cigarette papers or tubes, he may file claim for refund of an overpayment of tax under subpart A of part 46 of this chapter if, at the time the tax was paid, these articles had been exported, destroyed, or otherwise disposed of in such a manner that tax was not due and payable.

(68A Stat. 791, 72 Stat. 9, 1419, as amended; 26 U.S.C. 6402, 6423, 5705)

[T.D. 6961, 33 FR 9492, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55856, Sept. 28, 1979; T.D. ATF-232, 51 FR 28088, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19341, May 22, 1987; T.D. ATF-421, 64 FR 71925, Dec. 22, 1999; T.D. ATF-457, 66 FR 32220, June 14, 2001; T.D. ATF-480, 67 FR 30802, May 8, 2002]

Sec. 46.5 Conditions to allowance of credit or refund.

No credit or refund to which this subpart is applicable shall be allowed or made, pursuant to a court decision or otherwise, of any amount paid or collected as a tax unless a claim therefor has been filed, as provided in this subpart, by the person who paid the tax and the claimant, in addition to establishing that he is otherwise legally entitled to credit or refund of the amount claimed, establishes:

- (a) That he bore the ultimate burden of the amount claimed, or
- (b) That he has unconditionally repaid the amount claimed to the person who bore the ultimate burden of such amount, or
- (c) That (1) the owner of the article furnished him the amount claimed for payment of the tax, (2) he has filed with the appropriate TTB officer the written consent of such owner to the allowance to the claimant of the credit or refund, and (3) such owner satisfies the requirements of paragraph (a) or (b) of this section.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

Sec. 46.6 Requirements for persons intending to file claim.

Any person who, having paid the tax with respect to an article, desires to claim refund or credit of any amount of such tax to which the provisions of this subpart are applicable must:

- (a) File a claim, as provided in Sec. 46.7,
- (b) Comply with any other provisions of law or regulations which may apply to the claim, and
- (c) If, at the time of filing the claim, neither he nor the owner has sold or contracted to sell the articles involved in the claim, file a bond on TTB Form 5620.10, as provided by Sec. 46.10.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

Sec. 46.7 Execution and filing of claim.

Claims to which this subpart is applicable must be executed on Form 2635 (5620.8) in accordance with instructions for the form. (For provisions relating to hand-carried documents, see Sec. 70.304 of this chapter.) The claim shall set forth each ground upon which the claim is made in sufficient detail to apprise the appropriate TTB officer of the exact basis therefor. Allegations pertaining to the bearing of the ultimate burden relate to additional conditions which must be established for a claim to be allowed and are not in themselves legal grounds for allowance of a claim. There shall also be attached to the form and made a part of the claim the supporting data required by Sec.

46.8. All evidence relied upon in support of such claim shall be clearly set forth and submitted with the claim.

[T.D. 7008, 34 FR 3672, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55857, Sept. 28, 1979; T.D. ATF-251, 52 FR 19342, May 22, 1987; T.D. ATF-301, 55 FR 47658, Nov. 14, 1990; T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

Sec. 46.8 Data to be shown in claim.

Claims to which this subpart is applicable, in addition to the requirements of Sec. 46.7, must set forth or contain the following:

(a) A statement that the claimant paid the amount claimed as a ``tax'' as defined in this subpart.

(b) Full identification (by specific reference to the form number, the date of filing, the place of filing, and the amount paid on the basis of the particular form or return) of the tax forms or returns covering the payments for which refund or credit is claimed.

(c) The written consent of the owner to allow the refund or credit to the claimant (where the owner of the article on which the tax was paid has furnished the claimant the amount claimed for the purpose of paying the tax).

(d) If the claimant or the owner, as the case may be, has neither sold nor contracted to sell the articles involved in the claim, a statement that the claimant or the owner, as the case may be, agrees not to shift, directly or indirectly in any manner whatsoever, the burden of the tax to any other person.

(e) If the claim is for refund of a floor stocks tax, or of an amount resulting from an increase in rate of tax applicable to an article, a statement as to whether the price of the article was increased on or following the effective date of such floor stocks tax or rate increase, and, if so, the date of the increase, together with full information as to the amount of such price increase.

(f) Specific evidence (such as relevant records, invoices, or other documents, or affidavits of individuals having personal knowledge of pertinent facts) which will satisfactorily establish the conditions of allowance set forth in Sec. 46.5.

The appropriate TTB officer may require the claimant to furnish as a Part of the claim such additional information as he may deem necessary.

[T.D. ATF-42, 42 FR 8372, Feb. 10, 1977, as amended by T.D. ATF-472a, 67 FR 63544, Oct. 15, 2002]

Sec. 46.74 Execution of claims.

Disaster loss claims for tobacco products or cigarette papers or tubes must be executed on TTB Form 2635 (5620.8), Claim--Alcohol, Tobacco and Firearms Taxes, in accordance with the instructions on the form. If a claim involves taxes on both domestic and imported products, the quantities of each must be shown separately in the claim. Prepare a separate claim in respect of customs duties.

[T.D. ATF-420, 64 FR 71945, Dec. 22, 1999]

Sec. 46.75 Required information for claim.

The claim should contain the following information:

- (a) That the tax on such tobacco products, or cigarette papers or tubes has been paid or determined and customs duty has been paid;
- (b) That such tobacco products, or cigarette papers or tubes were lost, rendered unmarketable, or condemned by a duly authorized official, by reason of a disaster;
- (c) The type and date of occurrence of the disaster and the location of the tobacco products, or cigarette papers or tubes at that time;
- (d) That the claimant was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the tobacco products, or cigarette papers or tubes covered by the claim;
- (e) That no amount of internal revenue tax or customs duty claimed has been or will be otherwise claimed under any other provision of law or regulations,
- (f) That the claimant is entitled to payment under this subpart, and
- (g) The claim must set forth the quantity and kind of tobacco products and cigarette papers and tubes in sufficient detail to calculate the amount of tax and duty paid on these products, substantially as shown in the examples below:

[Example using 1993-1999 Rates]

Rate of tax	Quantity Amount	Article
20,000.....		Small cigars.....
\$1.125 per thousand.....	\$22.50	
1,000.....		Large cigars--sale price \$100/ 12.75% of sale price.....
	12.75	thousand.
500.....		Large cigars--sale price \$236/ \$30 per thousand.....
	15.00	thousand.
10,000.....		Small cigarettes.....
\$12 per thousand.....	120.00	
5,000.....		Large cigarettes.....
\$25.20 per thousand.....	126.00	
2,000 sets.....		Cigarette papers--50 per set..
\$0.0075 per set.....	15.00	
1,000 sets.....		Cigarette papers--100 per set.
\$0.015 per set.....	15.00	
1,000.....		Cigarette tubes.....
\$0.015 per 50 tubes.....	0.30	
100 lbs.....		Chewing tobacco.....
\$0.12 per pound.....	12.00	
200 lbs.....		Snuff.....
\$0.36 per pound.....	72.00	
100 lbs.....		Pipe tobacco.....
\$0.675 per pound.....	67.50	
300 lbs.....		Roll-your-own tobacco.....
\$0 per pound.....		

Total
 claimed..... 478.05

[Example using 2000-2001 Rates]

Rate of tax	Quantity Amount	Article
20,000.....		Small cigars.....
\$1.594 per thousand.....	\$31.88	
1,000.....		Large cigars--sale price \$100/ thousand.
18.063% of sale price.....	18.06	
500.....		Large cigars--sale price \$236/ thousand.
\$42.50 per thousand.....	21.25	
10,000.....		Small cigarettes.....
\$17.00 per thousand.....	170.00	
5,000.....		Large cigarettes.....
\$35.70 per thousand.....	178.50	
199,975.....		Cigarette papers.....
\$0.0106 per 50 papers.....	42.40	
1,000.....		Cigarette tubes.....
\$0.0213 per 50 tubes.....	0.43	
100 lbs.....		Chewing tobacco.....
\$0.17 per pound.....	17.00	
200 lbs.....		Snuff.....
\$0.51 per pound.....	102.00	
100 lbs.....		Pipe tobacco.....
\$0.9567 per pound.....	95.67	
300 lbs.....		Roll-your-own tobacco.....
\$0.9567 per pound.....	287.01	
Total claimed.....	964.20	

[Example using rates for 2002 and

After]

Rate of tax	Quantity Amount	Article
20,000.....		Small cigars.....
\$1.828 per thousand.....	36.56	
1,000.....		Large cigars--sale price \$100/ 20.719% of sale price.....
	20.72	

	thousand.	
500.....	Large cigars--sale price \$236/ \$48.75 per thousand.....	24.38
	thousand.	
10,000.....	Small cigarettes.....	
\$19.50 per thousand.....		195.00
5,000.....	Large cigarettes.....	
\$40.95 per thousand.....		204.75
199,975.....	Cigarette papers.....	
\$0.0122 per 50 papers.....		48.80
1,000.....	Cigarette tubes.....	
\$0.0244 per 50 tubes.....		0.49
100 lbs.....	Chewing tobacco.....	
\$0.195 per pound.....		19.50
200 lbs.....	Snuff.....	
\$0.585 per pound.....		117.00
100 lbs.....	Pipe tobacco.....	
\$1.0969 per pound.....		109.69
300 lbs.....	Roll-your-own tobacco.....	
\$1.0969 per pound.....		329.07
Total		
claimed.....		1,105.96
.....		
.....		

[T.D. ATF-420, 64 FR 71945, Dec. 22, 1999]

Sec. 46.76 Supporting evidence.

The claimant must support the claim with any available evidence (such as inventories, statements, invoices, bills, records, stamps, and labels), relating to the tobacco products or cigarette papers or tubes on hand at the time of the disaster and claimed to have been lost, rendered unmarketable, or condemned as a result thereof. If the claim is for refund of duty, the claimant must furnish, if practicable, the customs entry number, date of entry, and the name of the port of entry.

[T.D. ATF-420, 64 FR 71946, Dec. 22, 1999]

Sec. 46.77 Time and place of filing.

Disaster loss claims must be filed within 6 months after the date on which the President makes the determination that the disaster has occurred. All forms, including claims for duty on imported products,

must be filed with the appropriate TTB officer.

[T.D. ATF-420, 64 FR 71946, Dec. 22, 1999]

Sec. 53.171 Claims for credit or refund of overpayments of manufacturers taxes.

Any claims for credit or refund of an overpayment of a tax imposed by chapter 32 of the Code shall be made in accordance with the applicable provisions of this subpart and the applicable provisions of 27 CFR 70.123 (Procedure and Administration). A claim on TTB Form 2635 (5620.8) is not required in the case of a claim for credit, but the amount of the credit shall be claimed by entering that amount as a credit on a return of tax under this subpart filed by the person making the claim. In this regard, see Sec. 53.185.

Sec. 70.121 Amounts treated as overpayments.

(a) The term overpayment includes any payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation applicable thereto.

(b) An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

(26 U.S.C. 6401)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

Sec. 70.122 Authority to make credits or refunds.

The appropriate TTB officer, within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment and the balance, if any, shall be refunded, subject to 26 U.S.C. 6402 (c) and (d) and the regulations thereunder, to such person by the appropriate TTB officer.

(26 U.S.C. 6402)

[T.D. ATF-301, 55 FR 47615, Nov. 14, 1990]

Sec. 70.123 Claims for credit or refund.

(a) Requirement that claim be filed. (1) Credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim therefor has been filed by the taxpayer. Furthermore, under section 7422 of the Internal Revenue Code, a civil action for refund may not be instituted unless a claim has been filed within the properly applicable period of limitation.

(2) All claims relating to provisions of 26 U.S.C. enforced and administered by the Bureau, together with appropriate supporting

evidence, shall be filed with the appropriate TTB officer. As to interest in the case of credits or refunds, see section 6611 of the Internal Revenue Code. See section 7502 for provisions treating timely mailing as timely filing and section 7503 for time for filing claim when the last day falls on a Saturday, Sunday, or legal holiday.

(b) Grounds set forth in claim. (1) No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed before the expiration of such period. The claim must set forth in detail each ground upon which credit or refund is claimed and facts sufficient to apprise the appropriate TTB officer of the exact basis thereof. The statement of the grounds and facts must be verified by a written declaration that it is made under the penalties of perjury. A claim which does not comply with this paragraph will not be considered for any purpose as a claim for the refund or credit.

(2) The appropriate TTB officers do not have authority to refund on equitable grounds penalties or other amounts legally collected.

(c) Form for filing claim. All claims by taxpayers for the refunding of taxes, interest, penalties, and additions to tax shall be made on Form 2635 (5620.8).

(d) Proof of representative capacity. If a return is filed by an individual and, after the individual's death, a refund claim is filed by a legal representative, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the legal representative to file the claim. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In such cases, if a refund is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim. A claim may be executed by an agent of the person assessed, but in such case a power of attorney must accompany the claim.

(e) Mailing of refund check. (1) Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and, except as provided in paragraph (e)(2) of this section, the checks may be sent direct to the claimant or to such person in care of an attorney or agent who has filed a power of attorney specifically authorizing the attorney or agent to receive such checks.

(2) Checks in payment of claims which have either been reduced to judgment or settled in the course or as a result of litigation will be drawn in the name of the person or persons entitled to the money and will be sent to the Assistant Attorney General, Tax Division, Department of Justice, for delivery to the taxpayer or the counsel of record in the court proceeding.

(3) For restrictions on the assignment of claims, see 31 U.S.C. 3727.

(26 U.S.C. 6402)

(Approved by the Office of Management and Budget under control number

1513-0030)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47615, Nov. 14, 1990; T.D. ATF-450, 66 FR 29025, May 29, 2001]

Sec. 70.124 Payments in excess of amounts shown on return.

In certain cases, the taxpayer's payments in respect of a tax liability, made before the filing of the taxpayer's return, may exceed the amount of tax shown on the return. In any case in which the appropriate TTB officer determines that the payments by the taxpayer (made within the period prescribed for payment and before the filing of the return) are in excess of the amount of tax shown on the return, the appropriate TTB officer may make credit or refund of such overpayment without awaiting examination of the completed return and without awaiting filing of a claim for refund. However, the provisions of Sec. 70.123 of this part are applicable to such overpayment, and taxpayers should submit claims for refund to protect themselves in the event the appropriate TTB officer fails to make such determination and credit or refund.

(26 U.S.C. 6402)

(Approved by the Office of Management and Budget under control number 1513-0030)

[T.D. ATF-301, 55 FR 47616, Nov. 14, 1990]

Sec. 70.125 Abatements.

(a) The appropriate TTB officer may abate the unpaid portion of any assessment or liability, if the assessment is in excess of the correct tax liability, if the assessment is made subsequent to the expiration of the period of limitation applicable thereto, or if the assessment has been erroneously or illegally made.

(b) If more than the correct amount of tax, interest, additional amount, addition to the tax, or assessable penalty is assessed but not paid to TTB, the person against whom the assessment is made may file a claim for abatement of such overassessment. Each claim for abatement under this section shall be made on Form 2635 (5020.8), Claim--Alcohol, Tobacco and Firearms Taxes, in accordance with the instructions on the form. All such claims must be filed with the appropriate TTB officer who made demand for the amount assessed.

(c) The appropriate TTB officer may issue uniform instructions to abate amounts the collection of which is not warranted because of the administration and collection costs.

(26 U.S.C. 6404)

(Approved by the Office of Management and Budget under control number 1513-0030)

[T.D. ATF-301, 55 FR 47616, Nov. 14, 1990, as amended by T.D. ATF-450, 66 FR 29025, May 29, 2001]

Sec. 70.127 Overpayment of installment.

If any installment of tax is overpaid, the overpayment shall first be applied against any outstanding installments of such tax. If the overpayment exceeds the correct amount of tax due, the overpayment shall be credited or refunded as provided in Sec. Sec. 70.122 to 70.124 of this part, inclusive.

(26 U.S.C. 6403)

[T.D. ATF-301, 55 FR 47616, Nov. 14, 1990]