

1513-0083

26 U.S.C.

Sec. 5061. Method of collecting tax

(a) Collection by return

The taxes on distilled spirits, wines, and beer shall be collected on the basis of a return. The Secretary shall, by regulation, prescribe the period or event for which such return shall be filed, the time for filing such return, the information to be shown in such return, and the time for payment of such tax.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1335; amended Pub. L. 94-455, title XIX, Secs. 1905(a)(6), (b)(2)(E)(iii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1819, 1822, 1834; Pub. L. 96-39, title VIII, Secs. 804(b), 807(a)(9), July 26, 1979, 93 Stat. 274, 281; Pub. L. 98-369, div. A, title I, Sec. 27(c)(1), July 18, 1984, 98 Stat. 509; Pub. L. 99-509, title VIII, Sec. 8011(b)(1), Oct. 21, 1986, 100 Stat. 1952; Pub. L. 99-514, title XVIII, Sec. 1801(c)(1), Oct. 22, 1986, 100 Stat. 2786; Pub. L. 100-647, title II, Sec. 2003(b)(1)(A), (B), Nov. 10, 1988, 102 Stat. 3598; Pub. L. 101-508, title XI, Secs. 11201(b)(3), 11704(a)(21), Nov. 5, 1990, 104 Stat. 1388-416, 1388-519; Pub. L. 103-465, title I, Sec. 136(c)(5), title VII, Sec. 712(b), Dec. 8, 1994, 108 Stat. 4842, 5000; Pub. L. 104-188, title I, Sec. 1702(b)(6), Aug. 20, 1996, 110 Stat. 1869; Pub. L. 109-59, title XI, Sec. 11127(a), (b), Aug. 10, 2005, 119 Stat. 1958, 1959.)

Sec. 5703. Liability for tax and method of payment

(b) Method of payment of tax

(1) In general

The taxes imposed by section 5701 shall be determined at the time of removal of the tobacco products and cigarette papers and tubes. Such taxes shall be paid on the basis of return. The Secretary shall, by regulations, prescribe the period or the event for which such return shall be made and the information to be furnished on such return. Any postponement under this subsection of the payment of taxes determined at the time of removal shall be conditioned upon the filing of such additional bonds, and upon compliance with such requirements, as the Secretary may prescribe for the protection of the revenue. The Secretary may, by regulations, require payment of tax on the basis of a return prior to removal of the tobacco products and cigarette papers and tubes where a person defaults in the postponed payment of tax on the basis of a return under this subsection or regulations prescribed thereunder. All administrative and penalty provisions of this title, insofar as applicable, shall apply to any tax imposed by section 5701.

(2) Time for payment of taxes

(A) In general

Except as otherwise provided in this paragraph, in the case of taxes on tobacco products and cigarette papers and tubes removed during any semimonthly period under bond for deferred payment of tax, the last day for payment of such taxes shall be the 14th day after the last day of such semimonthly period.

(B) Imported articles

In the case of tobacco products and cigarette papers and tubes which are imported into the United States--

(i) In general

The last day for payment of tax shall be the 14th day after the last day of the semimonthly period during which the article is entered into the customs territory of the United States.

(ii) Special rule for entry for warehousing

Except as provided in clause (iv), in the case of an entry for warehousing, the last day for payment of tax shall not be later than the 14th day after the last day of the semimonthly period during which the article is removed from the 1st such warehouse.

(iii) Foreign trade zones

Except as provided in clause (iv) and in regulations prescribed by the Secretary, articles brought into a foreign trade zone shall, notwithstanding any other provision of law, be treated for purposes of this subsection as if such zone were a single customs warehouse.

(iv) Exception for articles destined for export

Clauses (ii) and (iii) shall not apply to any article which is shown to the satisfaction of the Secretary to be destined for export.

(C) Tobacco products and cigarette papers and tubes brought into the United States from Puerto Rico

In the case of tobacco products and cigarette papers and tubes which are brought into the United States from Puerto Rico, the last day for payment of tax shall be the 14th day after the last day of the semimonthly period during which the article is brought into the United States.

(D) Special rule for tax due in September

(i) In general

Notwithstanding the preceding provisions of this paragraph, the taxes on tobacco products and cigarette papers and tubes for the period beginning on September 16 and ending on September 26 shall be paid not later than September 29.

(ii) Safe harbor

The requirement of clause (i) shall be treated as met if the amount paid not later than September 29 is not less than $\frac{11}{15}$ of the taxes on tobacco products and cigarette papers and tubes for the period beginning on September 1 and ending on September 15.

(iii) Taxpayers not required to use electronic funds transfer

In the case of payments not required to be made by electronic funds transfer, clauses (i) and (ii) shall be applied by substituting "September 25" for "September 26", "September 28" for "September 29", and " $\frac{2}{3}$ " for " $\frac{11}{15}$ ".

(E) Special rule where due date falls on Saturday, Sunday, or holiday

Notwithstanding section 7503, if, but for this subparagraph, the due date under this paragraph would fall on a Saturday, Sunday, or a legal holiday (as defined in section 7503), such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday (or the immediately following day where the due date described in subparagraph (D) falls on a Sunday).

(3) Payment by electronic fund transfer

Any person who in any 12-month period, ending December 31, was liable for a gross amount equal to or exceeding \$5,000,000 in taxes imposed on tobacco products and cigarette papers and tubes by section 5701 (or 7652) shall pay such taxes during the succeeding calendar year by electronic fund transfer (as defined in section 5061(e)(2)) to a Federal Reserve Bank. Rules similar to the rules of section 5061(e)(3) shall apply to the \$5,000,000 amount specified in the preceding sentence.

27 CFR

Sec. 19.515 Determination and payment of tax.

(a) General. Distilled spirits may be withdrawn from bonded premises on determination of tax in approved containers, or, to the contiguous premises of a manufacturer of nonbeverage products, by pipeline. All tax which is to be prepaid or deferred shall be determined prior to the physical removal of the spirits from bonded premises. The proprietor shall record the results of each tax determination on a record of tax determination as required by Sec. 19.761.

(b) Payment of tax. The tax on the spirits shall be prepaid on Form 5000.24 before removal of the spirits from bonded premises unless the proprietor has furnished a withdrawal or unit bond to secure payment of the tax. Where such bond is in less than the maximum penal sum, the proprietor shall prepay the tax for any withdrawal which would cause the outstanding liability for tax to exceed the limits of coverage under the bond.

(Sec. 807, Pub. L. 96-39, 93 Stat. (26 U.S.C. 5213))

[T.D. ATF-198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF-219, 50 FR 51387, Dec. 17, 1985]

Sec. 19.519 Methods of tax payment.

The tax on spirits shall be paid pursuant to a return on Form 5000.24, filed as provided in Sec. 19.523 or Sec. 19.524 and Sec. 19.525. Except for remittance to be effected by electronic fund transfer under Sec. 19.524, remittance for the tax in full shall accompany the return and may be in any form which the appropriate TTB officer is authorized to accept under the provisions of Sec. 70.61 (Payment by check or money order) and which is acceptable to him. However, where a check or money order tendered in payment for taxes is not paid on presentment, or where the taxpayer is otherwise in default in payment, any remittance made during the period of such default, and until the appropriate TTB officer finds that the revenue will not be jeopardized by the acceptance of a personal check (if acceptable to the appropriate TTB officer), shall be in cash or in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or a money order, as provided in Sec. 70.61. Checks and money orders shall be made payable to ``Alcohol and Tobacco Tax and Trade Bureau''.

(Act of August 16, 1954, Ch. 736, 68A Stat. 777, as amended (26 U.S.C. 6311); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

[T.D. ATF-198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF-219, 50 FR 51387, Dec. 17, 1985; T.D. ATF-251, 52 FR 19313, May 22, 1987; T.D. ATF-301, 55 FR 47605, Nov. 14, 1990]

Sec. 19.520 Employer identification number.

The employer identification number (defined at 26 CFR 301.7701-12) of the taxpayer who has been assigned such a number shall be shown on each return on Form 5000.24 filed pursuant to the provisions of this part. Failure of the taxpayer to include his employer identification number on Form 5000.24 may result in assertion and collection of the penalty specified in Sec. 70.113 of this chapter.

(Sec. 1, Pub. L. 87-397, 75 Stat. 828, as amended (26 U.S.C. 6109, 6676))

[T.D. ATF-198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF-219, 50 FR 51387, Dec. 17, 1985; T.D. ATF-301, 55 FR 47605, Nov. 14, 1990]

Sec. 19.522 Taxes to be collected by returns.

(a)(1) Deferred payment of taxes. The tax on spirits to be withdrawn from bond for deferred payment of tax shall be paid pursuant to a return on Form 5000.24, Excise Tax Return. The return, Form 5000.24, shall be executed and filed for each return period notwithstanding that no tax is due for payment for such period. The proprietor of each bonded premises shall include, for payment, on his return on Form 5000.24, the full amount of distilled spirits tax determined in respect of all spirits released for withdrawal from the bonded premises on determination of tax during the period covered by the return (except spirits on which tax has been prepaid).

(2) Return periods--(i) Definitions. For purposes of this section, the following terms have the meanings indicated:

Reasonably expects. When used with reference to a taxpayer, reasonably expects means the taxpayer was not liable for more than \$50,000 in taxes the previous year and there is no other existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's liability to increase beyond that limit.

Taxpayer. A taxpayer is a person who is liable for excise tax imposed with respect to distilled spirits by 26 U.S.C. 5001 and 7652 under the same Employer Identification Number as defined in 26 CFR 301.7701-12.

(ii) Semimonthly return period. Except in the case of a taxpayer who qualifies for, and chooses to use, quarterly return periods as provided in paragraph (b)(3) of this section, all taxpayers must use semimonthly return periods for deferred payment of tax. The semimonthly return periods shall run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in Sec. 19.523(c).

(iii) Quarterly return period. Effective January 1, 2006, a taxpayer who reasonably expects to be liable for not more than \$50,000 in taxes with respect to distilled spirits imposed by 26 U.S.C. 5001 and 7652 for the current calendar year, and who was liable for not more than \$50,000 in such taxes in the preceding calendar year, may choose to use a quarterly return period. In such a case the last day for payment of tax and filing of the return will be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds \$50,000, and any tax which has not been

paid on that date will be due on the 14th day after the last day of the semimonthly period in which that date occurs.

(b) Conditions under which deferral is denied. Notwithstanding the posting of a withdrawal or unit bond by the proprietor, the tax shall be prepaid as provided in paragraph (c) of this section--

(1) Where a proprietor has defaulted in any payment of tax under this section, during the period of such default and until the appropriate TTB officer finds that the revenue will not be jeopardized by deferral; or

(2) Where a proprietor, who, after having been notified of his deficiency by the appropriate TTB officer (i) fails to maintain records required by this part to substantiate the correctness of his tax returns or (ii) otherwise fails to comply with any provisions of this part, is so notified by the appropriate TTB officer.

(c) Prepaid taxes. The tax on distilled spirits shall be paid pursuant to a prepayment return on Form 5000.24 in all cases where the tax is required to be paid before the spirits are withdrawn from bond. A single prepayment return on Form 5000.24 may cover one or more transactions. The proprietor shall note the serial number of the Form 5000.24 and the date and time such prepayment return was filed on the individual record of tax determination.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended, 1395, as amended (26 U.S.C. 5061, 5555))

[T.D. ATF-198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF-219, 50 FR 51387, Dec. 17, 1985; T.D. ATF-365 60 FR 33668, June 28, 1995; T.D. TTB-41, 71 FR 5601, Feb. 2, 2006]

Sec. 19.523 Time for filing returns.

(a) Payment pursuant to semimonthly return. Except when payment is pursuant to a quarterly return as provided in paragraph (d) of this section, where the proprietor of bonded premises has withdrawn spirits from such premises on determination and before payment of tax, the proprietor shall file a semimonthly tax return covering such spirits on Form 5000.24, and remittance, as required by Sec. 19.524 or Sec. 19.525, not later than the 14th day after the last day of the return period, except as provided by paragraph (c) of this section. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by paragraph (c) (3) of this section.

(b) Payment pursuant to prepayment return. If the proprietor of a distilled spirits plant desires to withdraw spirits from bonded premises on determination of tax and does not have on file an approved withdrawal or unit bond of sufficient penal sum to cover the withdrawal, if there is default by him in any payment of tax under this part, or the proprietor is notified by the appropriate TTB officer as provided in Sec. 19.522(b)(2), the proprietor shall not remove the spirits from the bonded premises until the tax thereon has been paid. To pay the tax, the proprietor of the bonded premises shall file a prepayment return on Form 5000.24, and remittance as required by Sec. 19.524 or Sec. 19.525, before removal of the spirits.

(c) Special rule for taxes due for the month of September (effective after December 31, 1994). (1)(i) Except as provided in paragraph (c)(1)(ii) of this section, the second semimonthly period for the month of

September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16-26, no later than September 29. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 27-30, no later than October 14.

(ii) Taxpayment not by electronic fund transfer. In the case of taxes not required to be remitted by electronic fund transfer as prescribed by Sec. 19.524, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16-25, no later than September 28. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 26-30, no later than October 14.

(2) Amount of payment: Safe harbor rule. (i) Taxpayers are considered to have met the requirements of paragraph (c)(1)(i) of this section, if the amount paid no later than September 29 is not less than $\frac{11}{15}$ (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (c)(1)(ii) of this section, if the amount paid no later than September 28 is not less than $\frac{2}{3}$ (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) Last day for payment. If the required taxpayment due date for the periods September 16-25 or September 16-26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(4) Example. Payment of tax for the month of September. (i) Facts. X, a distilled spirits plant proprietor required to pay taxes by electronic fund transfer, incurred tax liability in the amount of \$30,000 for the first semimonthly period of September. For the period September 16-26, X incurred tax liability in the amount of \$45,000, and for the period September 27-30, X incurred tax liability in the amount of \$2,000.

(ii) Payment requirement. X's payment of tax in the amount of \$30,000 for the first semimonthly period of September is due no later than September 29 (Sec. 19.522(a)). X's payment of tax for the period September 16-26 is also due no later than September 29 (Sec. 19.523(c)(1)(i)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16-26 (Sec. 19.523(c)(2)). Under the safe harbor rule, X's payment of tax must equal $\frac{11}{15}$ ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of \$2,000 for the period September 27-30 must be paid no later than October 14 (Sec. 19.523(c)(1)(i)). X must also pay the underpayment of tax, \$23,010.00, for the period September 16-26, no later than October 14 (Sec. 19.523(c)(2)).

(d) Payment pursuant to quarterly return. Where the proprietor of bonded premises has withdrawn spirits from such premises on determination and before payment of tax, and the proprietor uses quarterly return periods as provided in Sec. 19.522(b)(3), the proprietor shall file a quarterly tax return covering such spirits on Form 5000.24, and remittance, as required by Sec. 19.525, not later

than the 14th day after the last day of the quarterly return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday.

(Approved by the Office of Management and Budget under control number 1513-0083)

[T.D. ATF-219, 50 FR 51387, Dec. 17, 1985, as amended by T.D. ATF-246, 52 FR 668, Jan. 8, 1987; T.D. ATF-365, 60 FR 33668, June 28, 1995; T.D. TTB-41, 71 FR 5602, Feb. 2, 2006]

Sec. 19.525 Manner of filing returns.

(a) Each return on Form 5000.24 shall be filed with TTB, in accordance with the instructions on the form. If the return and remittance are to be filed with a designated appropriate TTB officer, the proprietor shall file the return and remittance no later than 2:00 p.m. on the date the return is required to be filed.

(b) When the proprietor sends the return on Form 5000.24 by U.S. mail, the official postmark of the U.S. Postal Service stamped on the cover in which the return was mailed shall be considered the date of delivery of the remittance. When the postmark on the cover is illegible, the burden of proving when the postmark was made will be on the proprietor. When the proprietor sends the return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, shall be treated as the date of delivery of the return and, if accompanied, of the remittance.

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302))

[T.D. ATF-198, 50 FR 8464, Mar. 1, 1985, as amended by T.D. ATF-219, 50 FR 51388, Dec. 17, 1985; T.D. ATF-251, 52 FR 19313, May 22, 1987]

Sec. 19.565 Shortages of bottled distilled spirits.

(a) Determination of shortage. Unexplained shortages shall be determined by comparing the spirits recorded to be on hand with the results of the quantitative determination of the spirits found to be on hand by actual count during the physical inventory required by Sec. 19.402. When the recorded quantity is greater than the quantity determined by the physical inventory, the difference is an unexplained shortage. The records shall be adjusted to reflect the physical inventory.

(b) Payment of tax on shortage. An unexplained shortage of bottled distilled spirits shall be taxpaid:

(1) Immediately on a prepayment return on Form 5000.24, or

(2) On the return on Form 5000.24 for the return period during which the shortage was ascertained.

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

[T.D. TTB-41, 71 FR 5602, Feb. 2, 2006]

Sec. 19.703 Taxpayment of samples.

When tax is required to be paid on samples:

(a) If the proprietor is qualified to defer payment of tax, the tax shall be included in the proprietor's next deferred payment of tax on Form 5000.24.

(b) If the proprietor is not qualified to defer the payment of tax, the tax shall be paid on a prepayment tax return on Form 5000.24.

[T.D. ATF-219, 50 FR 51388, Dec. 17, 1985, as amended by T.D. TTB-41, 71 FR 5602, Feb. 2, 2006]

Sec. 24.271 Payment of tax by return with remittance.

(a) General. The tax on wine is paid by an Excise Tax Return, Form 5000.24, which is filed with remittance (check, cash, or money order) for the full amount of tax due. Prepayments of tax on wine during the period covered by the return are shown separately on the Excise Tax Return form. If no tax is due for the return period, the filing of a return is not required.

(b) Return periods and due dates--(1) Return periods. (i) Definitions. For purposes of this section, the following terms have the meanings indicated:

Reasonably expects. When used with reference to a taxpayer, reasonably expects means the taxpayer was not liable for more than \$50,000 in taxes the previous year and there is no other existing or anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's liability to increase beyond that limit.

Taxpayer. A taxpayer is a person who is liable for excise tax imposed with respect to wine by 26 U.S.C. 5041 and 7652 under the same Employer Identification Number as defined in 26 CFR 301.7701-12.

(ii) Semimonthly return period. Except in the case of a taxpayer who qualifies for, and chooses to use, the annual return period as provided in Sec. 24.273 or the quarterly return period as provided in paragraph (b)(1)(iii) of this section, all taxpayers who have filed a bond for deferred payment of taxes must use semimonthly return periods. The semimonthly return periods shall run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month, except as otherwise provided in paragraph (c) of this section.

(iii) Quarterly return period. Effective January 1, 2006, a taxpayer who has filed a bond for deferred payment of taxes, who reasonably expects to be liable for not more than \$50,000 in taxes with respect to wine imposed by 26 U.S.C. 5041 and 7652 for the current calendar year, and who was liable for not more than \$50,000 in such taxes in the preceding calendar year, may choose to use a quarterly return period. In such a case the last day for payment of tax and filing the return will be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds \$50,000, and any tax which has not been paid on that date will be due on the 14th day after the last day of the semimonthly period in which that date occurs.

(2) Semimonthly and quarterly tax return due dates. The taxpayer shall file the semimonthly or quarterly return, with remittance, for each return period not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately

preceding day which is not a Saturday, Sunday, or legal holiday, except as otherwise provided in paragraph (c)(3) of this section.

(c) Special September rule for taxes due by semimonthly return(1) Division of second semimonthly period--(i) General. Except as provided in paragraph (c)(1)(ii) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16-26, no later than September 29. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 27-30, no later than October 14.

(ii) Taxpayment not by electronic fund transfer. In the case of taxes not required to be remitted by electronic fund transfer as prescribed by Sec. 24.272, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16-25, no later than September 28. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 26-30, no later than October 14.

(2) Amount of payment: Safe harbor rule. (i) Taxpayers are considered to have met the requirements of paragraph (c)(1)(i) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (c)(1)(ii) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) Last day for payment. If the required due date for taxpayment for the periods September 16-25 or September 16-26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(4) Example. Payment of tax for the month of September. (i) Facts. X, a proprietor required to pay taxes by electronic fund transfer, incurred tax liability in the amount of \$30,000 for the first semimonthly period of September. For the period September 16-26, X incurred tax liability in the amount of \$45,000, and for the period September 27-30, X incurred tax liability in the amount of \$2,000.

(ii) Payment requirement. X's payment of tax in the amount of \$30,000 for the first semimonthly period of September is due no later than September 29 (Sec. 24.271(b)). X's payment of tax for the period September 16-26 is also due no later than September 29 (Sec. 24.271(c)(1)(i)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16-26 (Sec. 24.271(c)(2)). Under the safe harbor rule, X's payment of tax must equal \$21,990.00, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of \$2,000 for the period September 27-30 must be paid no later than October 14 (Sec. 24.271(c)(1)(i)). X must also pay the underpayment of tax, \$23,010.00, for the period September 16-26, no later than October 14 (Sec. 24.271(c)(2)).

(Approved by the Office of Management and Budget under control numbers 1513-0083 and 1513-0088)

[T.D. ATF-299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF-365, 60 FR 33668, June 28, 1995; T.D. TTB-41, 71 FR 5602, Feb. 2, 2006]

Sec. 24.273 Exception to filing semimonthly or quarterly tax returns.

(a) Eligibility for annual filing. A proprietor may file the Excise Tax Return, Form 5000.24, and remittance, within 30 days after the end of the calendar year instead of semimonthly or quarterly as provided in Sec. 24.271, if the proprietor has not given a bond for deferred payment of wine excise tax and if the proprietor:

(1) Paid wine excise taxes in an amount less than \$1,000 during the previous calendar year, or

(2) Is the proprietor of a newly established bonded wine premises and expects to pay less than \$1,000 in wine excise taxes before the end of the calendar year.

(b) Loss of eligibility for annual filing. (1) If before the close of the current calendar year the wine excise tax owed will exceed the amount of the coverage under the proprietor's operations bond for wine removed from bonded wine premises on which tax has been determined but not paid, the proprietor will file an Excise Tax Return with the total remittance on the date the wine excise tax owed will exceed such amount and file an aggregate Excise Tax Return within 30 days after the close of the calendar year showing the total wine tax liability for such calendar year. If before the close of the current calendar year the wine excise tax liability (including any amounts paid or owed) equals \$1,000 or more, the proprietor will commence semimonthly or quarterly filing of the wine Excise Tax Returns and making of payments as required by Sec. 24.271.

(2) If there is a jeopardy to the revenue, the appropriate TTB officer may deny the exceptions to filing tax returns provided in this section at any time.

(c) Other rules apply. A proprietor who files under this section is subject to the failure to pay or file provisions of Sec. 24.274.

[T.D. TTB-41, 71 FR 5602, Feb. 2, 2006]

Sec. 24.275 Prepayment of tax.

(a) General. The proprietor shall, before removal of wine for consumption or sale, file Excise Tax Return, TTB F 5000.24, with remittance, where:

(1) Required to prepay tax under Sec. 24.276; or,

(2) The tax deferral bond is not in the maximum penal sum and the tax determined and unpaid at any one time exceeds the penal sum of the bond by more than the amount of such tax covered by the wine operations coverage of the wine bond; or,

(3) There is no approved tax deferral bond and the total amount of tax unpaid at any one time exceeds the amount of the wine operations coverage of the wine bond designated for wine removed from bonded wine premises on which tax has been determined but not paid. The return with remittance is forwarded pursuant to the instructions printed on the return. For the purpose of complying with this section, the term ``forwarding'' means deposit in the United States mail properly addressed to TTB.

(b) Electronic fund transfer. When the proprietor is required by Sec. 24.272 to deliver payment of tax by electronic fund transfer, the proprietor shall prepay the tax before any wine can be removed for consumption or sale by:

(1) Completing the Excise Tax Return and by mailing it, as instructed on the form, to TTB and

(2) Directing the proprietor's financial institution to effect an electronic fund transfer. (August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391, as amended (26 U.S.C. 6301, 6311, 6302))

(Approved by the Office of Management and Budget under control numbers 1513-0083 and 1513-0088)

[T.D. ATF-299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF-338, 58 FR 19064, Apr. 12, 1993]

Sec. 24.277 Date of mailing or delivering of returns.

(a) When the proprietor sends the Excise Tax Return, TTB F 5000.24, with or without remittance, by United States mail, the official postmark of the United States Postal Service stamped on the cover of the envelope in which the return was mailed is considered the date of delivery of the tax return and, if accompanied, the date of delivery of the remittance. When the postmark on the cover is illegible, it is the proprietor's responsibility to prove when the postmark was made.

(b) When the proprietor sends the tax return by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, is treated at the date of delivery of the tax return and, if accompanied, the date of delivery of the remittance. (August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391, as amended (26 U.S.C. 6301, 6311, 6302))

(Approved by the Office of Management and Budget under control numbers 1513-0083 and 1513-0088)

Sec. 24.278 Tax credit for certain small domestic producers.

(a) General. A person who produces not more than 250,000 gallons of wine during the calendar year may take a credit against any tax imposed by Title 26 of the United States Code (other than Chapters 2, 21, and 22), in an amount computed in accordance with paragraph (d) of this section, on the first 100,000 gallons of wine (other than champagne and other sparkling wine) removed during that year for consumption or sale. This credit applies only to wine that has been produced at a qualified bonded wine premises in the United States. The small domestic wine producer tax credit is available only to eligible proprietors engaged in the business of producing wine. A proprietor who has a basic permit to produce wine but does not produce wine during a calendar year may not take the small producer wine tax credit on wine removed during that calendar year. A proprietor who has obtained a new wine producer basic permit may not take the small producer wine tax credit on wine removed until the proprietor has produced wine. ``Production'' of wine includes those activities described in paragraph (e)(1) of this section.

(b) Special rules relating to eligibility for wine credit--(1) Controlled groups. For purposes of this section and Sec. 24.279, the term ``person'' includes a controlled group of corporations, as defined

in 26 U.S.C. 1563(a), except that the phrase ``more than 50 percent'' must be substituted for the phrase ``at least 80 percent'' wherever it appears. Also, the rules for a ``controlled group of corporations'' apply in a similar fashion to groups that include partnerships and/or sole proprietorships. Production and removals of all members of a controlled group are treated as if they were the production and removals of a single taxpayer for the purpose of determining what credit a person may use.

(2) Credit for transferees in bond. A person other than the eligible small producer (hereafter in this paragraph referred to as the ``transferee'') may take the credit under paragraph (a) of this section that would be allowed to that producer if the wine removed by the transferee had been removed by the producer on that date, under the following conditions:

(i) Wine produced by any person would be eligible for any credit under this section if removed by that person during the calendar year;

(ii) Wine produced by that person is removed during that calendar year by the transferee to whom that wine was transferred in bond and who is liable for the tax imposed by 26 U.S.C. 5041 with respect to that wine;

(iii) That producer holds title to that wine at the time of its removal and provides to the transferee such information as is necessary to properly determine the transferee's credit under this paragraph; and

(iv) At the time of taxable removal, the producer provides to the transferee, in writing (each retaining a copy with the record of taxpaid removal from bond pursuant to Sec. 24.310), the following information:

(A) The names of the producer and transferee;

(B) The quantity and tax class of the wines to be shipped;

(C) The date of removal from bond for consumption or sale;

(D) A confirmation that the producer is eligible for credit, with the credit rate to which the wines are entitled; and

(E) A confirmation that the subject shipment is within the first 100,000 gallons of eligible wine removed by (or on behalf of) the producer for the calendar year.

(c) Time for determining and allowing credit. The credit referred to in paragraph (a) of this section will be determined at the same time as the tax is determined under 26 U.S.C. 5041(a), and will be allowable at the time any tax described in paragraph (a) of this section is payable. The credit allowable by this section is treated as if it constitutes a reduction in the rate of the tax.

(d) Computation of credit. The credit which may be taken on the first 100,000 gallons of wine (other than champagne and other sparkling wine) removed for consumption or sale by an eligible person during a calendar year is computed as follows:

(1) For persons who produce 150,000 gallons or less of wine during the calendar year, the credit is \$0.90 per gallon for wine (\$0.056 for hard cider);

(2) For persons who produce more than 150,000 gallons but not more than 250,000 gallons during the calendar year, the credit is reduced by 1 percent for every 1,000 gallons produced in excess of 150,000 gallons. For example, the credit that would be taken by a person who produced 160,500 gallons of wine and hard cider during a calendar year would be reduced by 10 percent, for a net credit against the tax of \$0.81 per gallon for wine or \$0.0504 for hard cider, as long as the wine or hard cider was among the first 100,000 gallons removed for consumption or sale during the calendar year.

(e) Definitions--(1) Production. For purposes of determining if a

person's production of wine is within the 250,000 gallon limit, production includes, in addition to wine produced by fermentation, any increase in the volume of wine due to the winery operations of amelioration, wine spirits addition, sweetening, or production of formula wine. Production of champagne and other sparkling wines is included for purposes of determining whether total production of a winery exceeds 250,000 gallons. Production includes all wine produced at qualified bonded wine premises within the United States and wine produced outside the United States by the same person.

(2) Removals. For purposes of determining if a person's removals are within the 100,000 gallon limit, removals include wine that the person removed from all qualified bonded wine premises within the United States. Wine removed by a transferee in bond under paragraph (b)(2) of this section must be counted against the 100,000 gallon limit of the small producer who owns that wine, and not against the limit of the transferee in bond if the transferee is also a small producer. Champagne and other sparkling wines, which are not eligible for credit, do not count as removals against the 100,000 gallon limit.

(f) Preparation of tax return. A person who is eligible for the credit must show the amount of wine tax before credit on the Excise Tax Return, TTB F 5000.24, and must enter the quantity of wine subject to the credit and the applicable credit rate as the explanation for an adjusting entry in Schedule B of the return for each tax period. Where a person does not use the credit authorized by this section to directly reduce the rate of Federal excise tax on wine, that person must report on TTB F 5000.24 where the credit will be, or has been, applied. Where a transferee in bond takes credit on behalf of one or more small producers, the transferee must show in Schedule B of the return the name of each producer, each producer's credit rate, and the total credit taken on behalf of each producer during the tax return period.

(g) Denial of deduction. Pursuant to 26 U.S.C. 5041(c)(5), any deduction under 26 U.S.C. subtitle A with respect to any tax against which the credit is allowed under paragraph (a) of this section must only be for the amount of the tax as reduced by the credit.

(h) Exception to credit. The appropriate TTB officer will deny any tax credit taken under paragraph (a) of this section where it is determined that the allowance of the credit would benefit a person who would otherwise fail to qualify for the use of the credit.

(26 U.S.C. 5041(c).)

(Approved by the Office of Management and Budget under control number 1513-0104)

[T.D. TTB-64, 72 FR 65454, Nov. 21, 2007]

Sec. 24.279 Tax adjustments related to wine credit.

(a) Increasing adjustments. Persons who produce more wine than the amount used in computation of the credit, or who lose eligibility by not producing during a calendar year, must make increasing tax adjustments. Where an increasing adjustment to a person's tax return is necessary as a result of an incorrect credit rate claimed pursuant to Sec. 24.278, that person must make the adjustment on the Excise Tax Return, TTB F 5000.24, no later than the return period in which production (or the production of the controlled group of which the person is a member) exceeds the amount used in computation of the credit. If the adjustment is due to failure to produce, the person must make the adjustment no later than the last return period of the calendar year. The adjustment is the difference between the credit taken for prior return periods in that year and the appropriate credit for those return periods. The person must make tax adjustments for all bonded wine premises where excess credits were taken against tax that year, and must include interest payable. In the case of a person who continued to deduct credit after reaching the 100,000 gallon maximum during the calendar year, that person must make an adjustment in the full amount of excess credit taken and must include interest payable under 26 U.S.C. 6601 from the date on which the excess credit was taken. In addition, the person must include the penalty payable under 26 U.S.C. 6662 if the appropriate TTB officer determines that the underpayment was due to negligence or disregard of rules or regulations and advises the person to include the penalty as part of the adjustment. The appropriate TTB officer will provide information, when requested, regarding interest rates applicable to specific time periods and regarding any applicable penalties. In the case of a controlled group of bonded wine premises that took excess credits, all member proprietors who took incorrect credits must make tax adjustments as determined in this section. In the case of a small producer who instructed a transferee in bond to take credit as authorized by Sec. 24.278(b)(2), and subsequently determines that the credit was less or not applicable, that producer must immediately inform the transferee in bond, in writing, of the correct credit information. The transferee must make any increasing adjustment on its next tax return based on revised credit information given by the producer or a TTB officer.

(b) Decreasing adjustments. Where a person fails to deduct the credit or deducts less than the appropriate credit provided for by Sec. 24.278 during the calendar year, the person may file a claim for refund of excess tax paid. The claim must be filed in accordance with Sec. 24.69. In the case of wine removed on behalf of a small producer by a transferee in bond, if the transferee in bond was instructed to deduct credit and failed to deduct credit or deducted less than the appropriate credit and was later reimbursed for the tax by that producer, the transferee may file the claim. The provisions of 26 U.S.C. 6423 and 27 CFR part 70, subpart F, will apply, and the producer and transferee in bond must show that the conditions of Sec. 24.278(b)(2) were met.

(26 U.S.C. 5041(c))

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

[T.D. TTB-64, 72 FR 65455, Nov. 21, 2007]

Sec. 25.160 Tax adjustment for brewers who produce more than 2,000,000 barrels of beer.

Each brewer who has paid tax on beer by return, Form 5000.24, at the reduced rate of tax during a calendar year, but whose production (or the production of a controlled group of brewers of which the brewer is a member) exceeds 2,000.000 barrels of beer in that calendar year, is no longer eligible to pay tax on beer at the reduced rate of tax for any beer removed that calendar year for consumption or sale. The brewer shall make a tax adjustment for the payment of additional tax no later than the return period in which production (or the production of a controlled group of brewers of which the brewer is a member) exceeds 2,000,000 barrels of beer. The adjustment will be determined by multiplying the difference between the higher and lower rates of tax applicable to beer by the number of barrels removed by the brewer that year at the reduced rate of tax. The brewer shall make tax adjustments for all breweries where tax was paid at the lower rate that year, and shall include interest payable from the date on which tax was paid at the lower rate. In the case of a controlled group of brewers whose production exceeds 2,000,000 barrels of beer, all member brewers who paid tax at the lower rate shall make tax adjustments as determined in this section.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1333, as amended (26 U.S.C. 5051))

Sec. 25.163 Method of tax payment.

A brewer shall pay the tax on beer by return on Form 5000.24, as provided in Sec. Sec. 25.164, 25.164a, 25.173 and 25.175. The brewer shall pay the tax by remittance at the time the tax return is rendered, and the remittance will be by check or money order payable to the ``Bureau of Alcohol, Tobacco and Firearms'' and mailed with the return, or will be effected by an electronic fund transfer. In paying the tax, a fractional part of a cent will be disregarded unless it amounts to one-half cent or more, in which case it will be increased to one cent.

[T.D. ATF-251, 52 FR 19314, May 22, 1987, as amended by T.D. ATF-365, 60 FR 33669, June 28, 1995]

Sec. 25.164 Quarterly and semimonthly returns.

(a) Requirement for filing. Each brewer shall pay the tax on beer (unless prepaid) by return on Form 5000.24. The brewer shall file Form 5000.24 as a return regardless of whether tax has been prepaid as provided in Sec. 25.175 during the return period. The brewer shall file a return on Form 5000.24 for each return period even though no beer was removed for consumption or sale.

(b) Payment of tax. The brewer shall include for payment with the return the full amount of tax required to be determined (and which has not been prepaid) on all beer removed for consumption or sale during the period covered by the return.

(c) Return periods.

(1) Definitions. For purposes of this section, the following terms have the meanings indicated:

Reasonably expects. When used with reference to a taxpayer, reasonably expects means the taxpayer was not liable for more than \$50,000 in taxes the previous year and there is no other existing or

anticipated circumstance known to the taxpayer (such as an increase in production capacity) that would cause the taxpayer's liability to increase beyond that limit.

Taxpayer. A taxpayer is a person who is liable for excise tax imposed with respect to beer by 26 U.S.C. 5051 and 7652 under the same Employer Identification Number as defined in 26 CFR 301.7701-12.

(2) **Semimonthly return period.** Except in the case of a taxpayer who qualifies for, and chooses to use, quarterly return periods as provided in paragraph (c)(3) of this section, all taxpayers must use semimonthly return periods for deferred payment of tax. The semimonthly return periods shall run from the brewer's business day beginning on the first day of each month through the brewer's business day beginning on the 15th day of that month, and from the brewer's business day beginning on the 16th day of the month through the brewer's business day beginning on the last day of the month, except as otherwise provided in Sec. 25.164a.

(3) **Quarterly return period.** Effective January 1, 2006, a taxpayer who reasonably expects to be liable for not more than \$50,000 in taxes with respect to beer imposed by 26 U.S.C. 5051 and 7652 for the current calendar year, and who was liable for not more than \$50,000 in such taxes in the preceding calendar year, may choose to use a quarterly return period. In such a case the last day for payment of tax and filing of the return will be the 14th day after the last day of the calendar quarter. However, the taxpayer may not use the quarterly return period procedure for any portion of the calendar year following the first date on which the aggregate amount of tax due from the taxpayer during the calendar year exceeds \$50,000, and any tax which has not been paid on that date will be due on the 14th day after the last day of the semimonthly period in which that date occurs.

(d) **Time for filing returns and paying tax.** Except as otherwise provided in Sec. 25.164a for semimonthly tax returns, the brewer shall file the tax return, Form 5000.24, for each return period, and make remittance as required by this section, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as otherwise provided in Sec. 25.164a(c).

(e) **Timely filing.** (1) When the brewer sends the semimonthly or quarterly tax return, Form 5000.24, by U.S. mail, in accordance with the instructions on the form, as required by this section, with remittance as provided for in this section, or without remittance as provided for in Sec. 25.165, the date of the official postmark of the United States Postal Service stamped on the cover in which the return and remittance were mailed is considered the date of delivery of the return and the date of delivery of the remittance, if enclosed with the return. When the postmark on the cover is illegible, the burden is on the brewer to prove when the postmark was made.

(2) When the brewer sends the semimonthly or quarterly return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail be treated as the date of delivery of the semimonthly or quarterly return and of the remittance, if enclosed with the return.

(Approved by the Office of Management and Budget under control number 1513-0083)

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302));

sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

[T.D. ATF-224, 51 FR 7673, Mar. 5, 1986, as amended by T.D. ATF-246, 52 FR 668, Jan. 8, 1987; T.D. ATF-251, 52 FR 19314, May 22, 1987, T.D. ATF-365, 60 FR 33669, June 28, 1995; T.D. TTB-41, 71 FR 5603, Feb. 2, 2006]

Sec. 25.175 Prepayment of tax.

(a) General. When a brewer is required to prepay tax under Sec. 25.173, or if the penal sum of the bond, Form 5130.22, is insufficient for deferral of payment of tax on beer to be removed for consumption or sale, or if a brewer is not entitled to defer the tax under the provisions of this subpart, the brewer shall prepay the tax before any beer is removed for consumption or sale, or taken out of the brewery for removal for consumption or sale.

(b) Method of prepayment. (1) Prepayment will be made by forwarding a tax return, Form 5000.24, with remittance, covering the tax on beer.

(2) If a brewer is required by Sec. 25.165 to make payment of tax by electronic fund transfer, the brewer shall prepay the tax before any beer can be removed for consumption or sale by completing the return and by forwarding it, in accordance with the instructions on the form. At the same time, the brewer shall direct his or her bank to make remittance by EFT.

(3) For the purpose of complying with this section, the term forwarding means depositing in the U.S. mail, properly addressed in accordance with the instructions on the form.

(Act of Aug. 16, 1954, 68A Stat. 777, as amended (26 U.S.C. 6311); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

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

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. 25.284 Adjustment of tax.

(a) Adjustment of tax in lieu of refund. In lieu of filing a claim for refund of tax as provided in Sec. 25.283, a brewer may make an adjustment (without interest) to the excise tax return, Form 5000.24, for the amount of tax paid on beer returned to the brewery, voluntarily destroyed, lost, destroyed, or rendered unmerchantable.

(b) Beer returned to brewery other than from which removed. An adjustment may be made on the excise tax return for the amount of tax

paid on beer returned to the brewery under Sec. 25.213. The adjustment will be made on the tax return filed for the brewery to which the beer was returned. The adjustment may not be made prior to the return of beer to the brewery. If the brewer is required to file a notice under Sec. 25.213, the adjustment may not be made until the appropriate TTB officer authorizes disposition of the beer.

(c) Beer voluntarily destroyed. An adjustment may be made on the excise tax return for the amount of tax paid on beer voluntarily destroyed under subpart N of this part. The adjustment will be made on the tax return filed for the brewery from which the beer was removed. The adjustment may not be made prior to the destruction of the beer.

(d) Beer lost, destroyed or rendered unmerchantable. An adjustment may be made on the excise tax return for the amount of tax paid on beer lost, destroyed, or rendered unmerchantable under Sec. 25.282. The adjustment will be made on the tax return filed for the brewery from which the beer was removed. A brewer may not make an adjustment prior to notification required under Sec. 25.282(e). When beer appears to have been lost due to theft, the brewer may not make an adjustment to the tax return until establishing 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) Condition of adjustments. (1) All adjustments will be made within 6 months of the return, destruction, loss, or rendering unmerchantable of the beer.

(2) Adjustment of the tax paid will be made without interest.

(3) An adjustment may not be taken if the brewer was indemnified by insurance or otherwise in respect of the tax.

(f) Records. When brewers make adjustments on the excise tax return in lieu of filing a claim, they shall keep the following records;

(1) For beer returned to the brewery or voluntarily destroyed, the records required by Sec. Sec. 25.283(a)(1), (2), (4), (5), (7), (8), and (10).

(2) For beer lost, destroyed, or rendered unmerchantable, the records required by Sec. 25.283 (a)(1), (2), (5), (b) (2), (3), (4), (5), and (6).

(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; T.D. ATF-437a, 66 FR 17809, Apr. 4, 2001]

Sec. 40.162 Semimonthly tax return.

Every manufacturer of tobacco products shall file, for each of his factories, a semimonthly tax return on Form 5000.24 for each return period, including any period during which a manufacturer begins or discontinues business. The return shall be filed with TTB in accordance with the instructions on the form. The manufacturer shall file the return at the time specified in Sec. 40.165 regardless of whether tobacco products are removed or whether tax is due for that particular return period. However, when the manufacturer requests by letter and the appropriate TTB officer grants specific authorization, the manufacturer need not during the term of such authorization file a tax return for which tax is not due or payable.

[T.D. ATF-232, 51 FR 35353, Oct. 3, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF-251, 52 FR 19339, May 22, 1987]

Sec. 40.165 Times for filing semimonthly return.

(a) General. Except as provided by Sec. 40.164, and paragraph (b) of this section, semimonthly returns on Form 5000.24 shall be filed, for each return period, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by Sec. 40.164(c).

(b) Postmark. The official postmark of the U.S. Postal Service stamped on the cover in which the return was mailed shall be considered the date of delivery of the tax return and, if the return was accompanied by a remittance, the date of delivery of the remittance. When the postmark is illegible, the manufacturer shall prove when the postmark was made. When the proprietor sends the tax return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, shall be treated as the date of delivery of the tax return and, if accompanied, of the remittance.

(Approved by the Office of Management and Budget under control number 1513-0083)

[T.D. ATF-246, 52 FR 669, Jan. 8, 1987, as amended by T.D. ATF-251, 52 FR 19339, May 22, 1987; T.D. ATF-365, 60 FR 33675, June 28, 1995; T.D. ATF-446, 66 FR 16602, Mar. 27, 2001; T.D. ATF-446a, 66 FR 19089, Apr. 13, 2001]

Sec. 40.165a Payment of tax by electronic fund transfer.

(a) General. (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 41 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of taxes on tobacco products, cigarette papers, and cigarette tubes during the succeeding calendar year. Payment of taxes on tobacco products by cash, check, or money order, as described in Sec. 40.168, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including tobacco products, cigarette papers, and cigarette tubes brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words ``at least 80 percent'' shall be replaced by the words ``more than 50 percent'' in each place it appears in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a ``controlled group of corporations'' apply in a similar

fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of determining who is required to make remittances by EFT.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate return, Form 5000.24, for each factory from which tobacco products are withdrawn upon determination of tax.

(b) Requirements. (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 41 of this chapter, during the previous calendar year, shall notify, in writing, the appropriate TTB officer. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the tax payment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in Sec. 40.165 or Sec. 40.167. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 41 of this chapter during the preceding calendar year, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return on as prescribed by Sec. 40.168. Upon filing the first return which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the appropriate TTB officer by attaching a written notification to Form 5000.24, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) Remittance. (1) Each taxpayer shall show on the return, Form 5000.24, information about remitting the tax for that return period by EFT and shall file the return with the TTB, in accordance with the instructions on Form 5000.24.

(2) Remittances shall be considered as made when the taxpayment by electronic fund transfer is received by the Treasury Account. For purposes of this section, a taxpayment by electronic fund transfer shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) Failure to make a taxpayment by EFT. The taxpayer is subject to a penalty imposed by 26 U.S.C. 5761, 6651, or 6656, as applicable, for failure to make a tax payment by EFT on or before the close of business on the prescribed last day for filing.

(e) Procedure. Upon the notification required under paragraph (b)(1) of this section, the appropriate TTB officer will issue to the taxpayer an TTB Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(Approved by the Office of Management and Budget under control number 1512-0457)

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 202, Pub. L. 85-859, 72 Stat. 1417, as amended (26 U.S.C. 5703))

[T.D. ATF-198, 49 FR 37582, Sept. 25, 1984, as amended by T.D. ATF-219, 50 FR 51390, Dec. 17, 1985; T.D. ATF-232, 51 FR 28081, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-245, 52 FR 533, Jan. 7, 1987; T.D. ATF-251, 52 FR 19339, May 22, 1987; T.D. ATF-262, 52 FR 47560, Dec. 15, 1987; T.D. ATF-446, 66 FR 16602, Mar. 27, 2001; T.D. ATF-446a, 66 FR 19089, Apr. 13, 2001; T.D. TTB-16, 69 FR 52423, Aug. 26, 2004]

Sec. 40.167 Prepayment tax return.

(a) To prepay the tax on tobacco products a manufacturer shall file a prepayment tax return on Form 5000.24 showing the tax to be paid on the tobacco products prior to removal. The return shall be executed and filed, prior to the removal of such products, with TTB, in accordance with the instructions on the form. A manufacturer prepaying the taxes on tobacco products under the provisions of this section shall continue to file semimonthly returns as required by Sec. 40.162.

(b) However, if a manufacturer is required by Sec. 40.165a to pay the tax by electronic fund transfer, the manufacturer shall prepay the tax before any tobacco products can be removed for consumption or sale by completing the return and filing it with TTB, in accordance with the instructions on the form. At the same time, the manufacturer shall direct his bank to effect an EFT.

(Sec. 202, Pub. L. 85-859, 68A Stat. 1417 (26 U.S.C. 5703); sec. 202, Pub. L. 85-859, 72 Stat. 1423, as amended (26 U.S.C. 5741); (Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302)); 26 U.S.C. 7805 (68A Stat. 917, as amended))

[T.D. 6871, 31 FR 34, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-77, 46 FR 3008, Jan. 13, 1981; T.D. ATF-219, 50 FR 51390, Dec. 17, 1985; T.D. ATF-232, 51 FR 28081, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987]

Sec. 40.355 Return of manufacturer.

(a) Requirement for filing. A manufacturer of cigarette papers and tubes shall file, for each factory, a semimonthly tax return on TTB Form 5000.24. A return shall be filed for each semimonthly return period regardless of whether cigarette papers and tubes were removed subject to tax or whether tax is due for that particular return period.

(b) Waiver from filing. The manufacturer need not file a return for each semimonthly return period if:

(1) Cigarette papers and tubes were not removed subject to tax during the period, and

(2) The appropriate TTB officer has granted a waiver from filing in response to a written request from the manufacturer.

(c) Semimonthly return periods. Except as provided by paragraph (g) of this section, semimonthly return periods shall run from the first day of the month through the 15th day of the month, and from the 16th day of the month through the last day of the month.

(d) Preparation and filing. The return shall be executed and filed with TTB in accordance with the instructions on the form.

(e) Remittance of tax. Except as provided in Sec. 40.357, remittance of the tax, if any, shall accompany the return.

(f) Time for filing. Except as provided by paragraph (g) of this section, for each semimonthly return period, the return shall be filed not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday or legal holiday.

(g) Special rule for taxes due for the month of September (effective after December 31, 1994). (1) Except as provided in paragraph (g)(2) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16-26, no later than September 29. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 27-30, no later than October 14.

(2) Taxpayment not by electronic fund transfer. In the case of taxes not required to be remitted by electronic fund transfer as prescribed by Sec. 40.357, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and remittance, for the period September 16-25, no later than September 28. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 26-30, no later than October 14.

(3) Amount of payment: Safe harbor rule. (i) Taxpayers are considered to have met the requirements of paragraph (g)(1) of this section, if the amount paid no later than September 29 is not less than $\frac{11}{15}$ (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (g)(2) of this section, if the amount paid no later than September 28 is not less than two-thirds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(4) Last day for payment. If the required due date for taxpayment for the periods September 16-25 or September 16-26, as applicable, falls on a Saturday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(Approved by the Office of Management and Budget under Control Number

1513-0083)

Sec. 40.357 Payment of tax by electronic fund transfer.

(a) General. (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five millions dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 41 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of taxes on tobacco products, cigarette papers, and cigarette tubes during the succeeding calendar year. Payment of taxes on tobacco products, cigarette papers, and cigarette tubes in any other form of remittance, as authorized in Sec. 40.355, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including tobacco products, cigarette papers, and cigarette tubes brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR Sec. Sec. 1.563-1 through 1.1563-4. Also, the rules for a ``controlled group of corporations'' apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of determining who is required to make remittances by EFT.

(3) A taxpayer who is required by this section to make remittances by EFT shall make a separate EFT remittance and file a separate return, TTB Form 5000.24, for each factory from which cigarette papers or cigarette tubes are withdrawn upon determination of tax.

(b) Requirements. (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 41 of this chapter during the previous calendar year, shall notify, in writing, the appropriate TTB officer. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Department of the Treasury's General Account or the Federal Reserve Bank of New York as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in Sec. 40.355. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 41 of this chapter during the preceding calendar year, the taxpayer may choose

either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by Sec. 40.355. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the appropriate TTB officer by attaching a written notification to TTB Form 5000.24, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) Remittance. (1) Each taxpayer shall show on the return, TTB Form 5000.24, information about remitting the tax for that return period by EFT and shall file the return with TTB, in accordance with the instructions of TTB Form 5000.24.

(2) Remittances shall be considered as made when the taxpayment by EFT is received by the Treasury Account. For purposes of this section, a taxpayment by EFT shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

(3) When the taxpayer directs the bank to effect an EFT message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) Failure to make a taxpayment by EFT. The taxpayer is subject to a penalty imposed by 26 U.S.C. 5761, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) Procedure. Upon the notification required under paragraph (b)(1) of this section, the appropriate TTB officer will issue to the taxpayer an TTB Procedure entitled Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

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(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 202, Pub. L. 85-859, 72 Stat. 1417, as amended (26 U.S.C. 5703))

[T.D. ATF-384, 61 FR 54085, Oct. 17, 1996, as amended by T.D. TTB-16, 69 FR 52423, Aug. 26, 2004]

Sec. 44.67 Payment of tax.

(a) General. The taxes on tobacco products, and cigarette papers and tubes with respect to which the evidence described in Sec. 44.66 is not timely furnished shall become immediately due and payable. The taxes shall be paid to TTB, with sufficient information to identify the taxpayer, the nature and purpose of the payment, and the articles covered by the payment. (TTB Form 5000.24 may be used for this purpose.)

(b) Large cigars. The amount of tax liability on large cigars shall be based on the maximum tax rate prescribed in Sec. 40.21 of this part, unless the person liable for the tax establishes that a lower tax rate is applicable.

(All recordkeeping requirements have been approved under OMB Control No. 1512-0180)

[T.D. ATF-80, 46 FR 18311, Mar. 24, 1981, as 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-307, 55 FR 52745, Dec. 21, 1990; T.D. ATF-460, 66 FR 39093, July 27, 2001]

Sec. 45.36 Payment of tax.

Any tax which becomes due and payable on tobacco products, and cigarette papers and tubes removed under this part shall be paid to appropriate TTB officer, with sufficient information to identify the taxpayer, the nature and purpose of the payment, and the articles covered by the payment: Provided, That a manufacturer of tobacco products or cigarette papers or tubes may pay any tax for which he becomes liable under this part by an appropriate adjustment in his current tax return Form 5000.24. In paying the tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

[T.D. ATF-232, 51 FR 28090, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF-251, 52 FR 19341, May 22, 1987; T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

