

1513-0116

26 U.S.C.

Sec. 5131. Eligibility and rate of tax

(a) Eligibility for drawback

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

(b) Rate of tax

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

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1345; amended Pub. L. 94-455, title XIX, Sec. 1905(a)(11), Oct. 4, 1976, 90 Stat. 1819; Pub. L. 100-203, title X, Sec. 10512(d), Dec. 22, 1987, 101 Stat. 1330-448; Pub. L. 103-465, title I, Sec. 136(b), Dec. 8, 1994, 108 Stat. 4841; Pub. L. 109-59, title XI, Sec. 11125(a)(2), (b)(3)(A), Aug. 10, 2005, 119 Stat. 1953.)

Sec. 5132. Registration and regulation

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

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1345; amended Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 103-465, title I, Sec. 136(b), Dec. 8, 1994, 108 Stat. 4841; Pub. L. 109-59, title XI, Sec. 11125(b)(3)(A), Aug. 10, 2005, 119 Stat. 1953.)

Sec. 5133. Investigation of claims

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

with reference to any matter covered by the claim, and to administer oaths to any person giving such testimony.

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1346; amended Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 109-59, title XI, Sec. 11125(b)(3)(A), Aug. 10, 2005, 119 Stat. 1953.)

Sec. 5134. Drawback

(a) Rate of drawback

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

(b) Claims

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

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

(1) In general

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

(2) Penalty

(A) In general

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

(B) Penalty may not exceed amount of claim

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

(3) Penalty treated as tax

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

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1346; amended Pub. L. 90-615, Sec. 2(a), Oct. 21, 1968, 82 Stat. 1210; Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title IV, Sec. 452, July 18, 1984, 98 Stat. 819; Pub. L. 103-465, title I, Sec. 136(b), Dec. 8, 1994, 108 Stat. 4841; Pub. L. 104-188, title I, Sec. 1704(t)(12), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 109-59, title XI, Sec. 11125(b)(3)(A), Aug. 10, 2005, 119 Stat. 1953.)

27 CFR

Sec. 17.101 General.

A bond shall be filed by each person claiming drawback on a monthly basis. Persons who claim drawback on a quarterly basis are not required to file bonds. Bonds shall be prepared and executed on TTB Form 5154.3, Bond for Drawback Under 26 U.S.C. 5131, in accordance with the provisions of this part and the instructions printed on the form. The bond requirement of this part shall be satisfied either by bonds obtained from authorized surety companies or by deposit of collateral security. Appropriate TTB officers are authorized to approve all bonds and consents of surety required by this part.

Sec. 17.102 Amount of bond.

The bond shall be a continuing one, in an amount sufficient to cover the total drawback to be claimed on spirits used during any quarter. However, the amount of any bond shall not exceed \$200,000 nor be less than \$1,000.

Sec. 17.103 Bonds obtained from surety companies.

(a) The bond may be obtained from any surety company authorized by the Secretary of the Treasury to be a surety on Federal bonds. Surety companies so authorized are listed in the current revision of Department of the Treasury Circular 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies), and subject to such amendatory circulars as may be issued from time to time. Bonds obtained from surety companies are also governed by the provisions of 31 U.S.C. 9304, and 31 CFR part 223.

(b) A bond executed by two or more surety companies shall be the joint and several liability of the principal and the sureties; however, each surety company may limit its liability, in terms upon the face of the bond, to a definite, specified amount. This amount shall not exceed the limitations prescribed for each surety company by the Secretary, as stated in Department of the Treasury Circular 570. If the sureties limit their liability in this way, the total of the limited liabilities shall equal the required amount of the bond.

(c) Department of the Treasury Circular No. 570 is published in the Federal Register annually on the first workday in July. As they occur, interim revisions of the circular are published in the Federal Register. Copies of the circular may be obtained from: Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20227.

(Sec. 1, Pub. L. 97-258, 96 Stat. 1047 (31 U.S.C. 9304))

Sec. 17.104 Deposit of collateral.

Except as otherwise provided by law or regulations, bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by principals as collateral security in lieu of bonds obtained from surety companies. Deposit of collateral security is governed by the provisions of 31 U.S.C. 9303, and 31 CFR part 225.

(Sec. 1, Pub. L. 97-258, 96 Stat. 1046 (31 U.S.C. 9301, 9303))

Sec. 17.107 Strengthening bonds.

Whenever the amount of a bond on file and in effect becomes insufficient, the principal may give a strengthening bond in a sufficient amount, provided the surety is the same as on the bond already on file and in effect; otherwise a superseding bond covering the entire liability shall be filed. Strengthening bonds, filed to increase the bond liability of the surety, shall not be construed in any sense to be substitute bonds, and the appropriate TTB officer shall not approve a strengthening bond containing any notation which may be interpreted as a release of any former bond or as limiting the amount of either bond to less than its full amount.

Sec. 17.108 Superseding bonds.

(a) The principal on any bond filed pursuant to this part may at any time replace it with a superseding bond.

(b) Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity continuing or liquidating the business of the principal, shall execute and file a superseding bond or obtain the consent of the surety or sureties on the existing bond or bonds.

(c) When, in the opinion of the appropriate TTB officer, the interests of the Government demand it, or in any case where the security of the bond becomes impaired in whole or in part for any reason whatever, the principal shall file a superseding bond. A superseding bond shall be filed immediately in case of the insolvency of the surety. If a bond is found to be not acceptable or for any reason becomes invalid or of no effect, the principal shall immediately file a satisfactory superseding bond.

(d) A bond filed under this section to supersede an existing bond shall be marked by the obligors at the time of execution, ``Superseding Bond.'' When such a bond is approved, the superseded bond shall be released as to transactions occurring wholly subsequent to the effective date of the superseding bond, and notice of termination of the superseded bond shall be issued, as provided in Sec. 17.111.

Sec. 17.144 Bond for monthly claims.

Each person intending to file claims for drawback on a monthly basis shall file an executed bond on TTB Form 5154.3, conforming to the provisions of subpart E of this part. A monthly drawback claim shall not be allowed until bond coverage in a sufficient amount has been approved by the appropriate TTB officer. 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 is furnished.