

DEPARTMENT OF THE TREASURY

ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

Supporting Statement -- Information Collection Request

OMB Control Number 1513-0104

**Information Collected in Support of Wine Producer's Tax Credit Transfers
(TTB REC 5120/11)**

Changes Since Last Approval

Changes made to the Supporting Statement since this information collection's last approval:

- In response to the program changes associated with this information collection resulting from recent amendments to the Internal Revenue Code (IRC) at 26 U.S.C. 5041(c), and to clarify its purpose, TTB is revising this collection's title—from "Information Collected in Support of Small Producer's Wine Tax Credit (TTB REC 5120/11)," to "Information Collected in Support of Wine Producer Tax Credit Transfers (TTB REC 5120/11)."
- In Question 1, TTB has revised its response due to the program changes to this collection resulting from recent amendments to the IRC at 26 U.S.C. 5041(c), which expanded wine tax credits and thus the number of wine producers eligible to receive and transfer such credits.
- In Question 8, TTB has updated the Federal Register publication citation for the most recent 60-day notice requesting comments on this information collection.
- In Question 12, TTB has updated the estimated burden for this information collection in response to the program changes associated with this collection, and is now providing an estimate of respondent labor costs resulting from this revised collection.
- In Question 15, TTB explains the program changes to this information collection resulting from the recent amendments to the IRC at 26 U.S.C. 5041.
- Throughout the Supporting Statement, TTB is making minor editorial and grammatical changes for clarity.

A. Justification

1. What are the circumstances that make this collection of information necessary, and what legal or administrative requirements necessitate the collection? Also align the information collection to TTB's Line of Business/Sub-function and IT Investment, if one is used.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers chapter 51 (distilled spirits, wine, and beer), chapter 52 (tobacco products, processed tobacco, and cigarette papers and tubes), and sections 4181–4182 (firearms and ammunition excise taxes) of the Internal Revenue Code of 1986 (IRC, 26 U.S.C.). TTB administers those IRC provisions pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C.

531(d). In addition, the Secretary of the Treasury (the Secretary) has delegated certain IRC administrative and enforcement authorities to TTB through Treasury Order 120–01.

In general, the IRC at 26 U.S.C. 5041 imposes an excise tax on domestic and imported wine, including hard cider, the rate of which varies by the wine’s alcohol content and its carbon dioxide content and source.¹ However, under 26 U.S.C. 5041(c), all domestic wine producers and certain importers are eligible for tax credits on limited quantities of wine removed for consumption or sale during a calendar year.² Additionally, under 26 U.S.C. 5041(c)(5), domestic wine producers may transfer their tax credits to other bonded premises that store their wine and ship it on their instructions, provided that the producer supplies such transferees with information necessary to properly determine the transferee’s tax credits under section 5041(c). Further, 26 U.S.C. 5041(c)(7) authorizes the Secretary to prescribe regulations necessary to carry out those tax credit provisions.

The TTB regulations concerning Federal wine excise taxes and tax credits are contained in 27 CFR Part 24, Wine. In particular, the regulations at 27 CFR 24.278(b)(2) allow a domestic wine producer to transfer its tax credits to another bonded wine premises (the “transferee”) under certain conditions. Specific to this collection, under § 24.278(b)(2)(iv), the wine producer must provide the transferee (usually a bonded wine cellar or warehouse) with a written record showing the names of the producer and transferee, the quantity and tax class of the wine to be shipped, the date of its removal from bond for consumption or sale, confirmation that the producer is eligible for the tax credit, and the tax credit rate to which the wine is entitled. Producers may supply such information to transferees using usual and customary business records such as shipping invoices. Producers and transferees also must maintain copies of the required tax credit transfer record, together with a copy of the related taxpaid removal from bond record required under 27 CFR 24.310.³

This information collection is necessary to ensure that the IRC provisions regarding wine producer tax credits and their transfer are properly applied.

This information collection is aligned with —

- Line of Business/Sub-function: General Government/Taxation Management.
- IT Investment: None.

¹ Under 26 U.S.C. 5041(b), the wine excise tax rates are: (1) \$1.07 per wine gallon on still wines containing no more than 16% alcohol by volume (ABV); (2) \$1.57 per wine gallon on still wines containing over 16% but no more than 21% ABV; (3) \$3.15 per wine gallon on still wines containing over 21% but no more than 24% ABV; (in general, still wines are those containing no more than 0.392 grams of carbon dioxide per 100 milligrams of wine); (4) \$3.40 per wine gallon for champagne and other sparkling wines; (5) \$3.30 per wine gallon for artificially carbonated wines; and (6) 22.6 cents per wine gallon for hard cider (as defined in 26 U.S.C. 5041(g)). All wines containing more than 24% ABV are classed as distilled spirits and taxed accordingly.

² Under 26 U.S.C. 5041(c), as recently amended, tax credits are available to all wine producers and importers on the first 750,000 wine gallons produced or imported, as follows: (1) \$1.00/gallon for wine and 6.2 cents/gallon for hard cider on the first 30,000 gallons produced; (2) 90 cents/gallon for wine and 5.6 cents/gallon for hard cider on the next 100,000 gallons produced; and (3) 53.3 cents/gallon for wine and 3.3 cents/gallon for hard cider on the next 620,000 gallons produced.

³ The taxpaid removal from bond recordkeeping requirement contained in 27 CFR 24.310 is approved separately under OMB Control No. 1513–0115.

2. *How, by whom, and for what purpose is this information used?*

Respondents use the information required on wine producer tax credit transfer records when preparing their Federal excise tax returns. In particular, wine producers use those records to ensure that they do not exceed the authorized tax credits, and transferees use them to ensure that they take the appropriate tax credits on behalf of the transferring producers. TTB personnel routinely inspect the required records when conducting tax audits to ensure that the IRC provisions regarding wine tax credits and their transfer are properly applied.

3. *To what extent does this collection of information involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology? What consideration is given to use information technology to reduce burden?*

Wine producers and transferees maintain the required tax credit transfer records at their business premises, and such respondents may, at their discretion, produce and keep the required records using automated, electronic, or other forms of information technology.

4. *What efforts are used to identify duplication? Can similar information already available be used or modified for use for the purposes described in Item 2 above?*

This collection contains information that is pertinent to each respondent and applicable to specific transfers of wine producer tax credits. As far as TTB can determine, similar information regarding such transfers is not available elsewhere.

5. *If this collection of information impacts small businesses or other small entities, what methods are used to minimize burden?*

TTB considers this information collection to be the minimum necessary to ensure that the IRC provisions regarding wine producer tax credits and their transfer are properly applied. Producers may supply the required information to transferees using usual and customary business records such as shipping invoices. As such, TTB believes that this information collection does not have a significant impact on small entities.

6. *What consequences to Federal program or policy activities and what, if any, technical or legal obstacles to reducing burden will occur if this collection is not conducted or is conducted less frequently?*

If TTB did not mandate collection of the required wine producer tax credit transfer records by wine producers and transferees, it could not ensure that the IRC provisions regarding such tax credits and their transfer are properly applied, which could jeopardize the revenue. In addition, respondents generate and keep the required records only when wine producer tax credits are transferred. As such, TTB cannot conduct this collection less frequently.

7. *Are there any special circumstances associated with this information collection that would require it to be conducted in a manner inconsistent with OMB guidelines? (See 5 CFR 1320.5(d)(2).)*

There are no special circumstances associated with this information collection that would require it to be inconsistent with OMB guidelines.

8. *What effort was made to notify the general public about this collection of information? Summarize the public comments that were received and describe the action taken by the agency in response to those comments.*

To solicit comments from the public, TTB published a “60-day” notice for this information collection in the Federal Register on February 18, 2022, at 87 FR 9420. TTB received no comments on this information collection in response.

9. *Was any payment or gift given to respondents, other than remuneration of contractors or grantees? If so, why?*

No payment or gift is associated with this information collection.

10. *What assurance of confidentiality was provided to respondents, and what was the basis for the assurance in statute, regulations, or agency policy?*

TTB provides no specific assurance of confidentiality for this information collection, which consists of wine producer tax credit transfer records maintained by certain wine industry members at their business premises. However, the IRC at 26 U.S.C. 6103 prohibits disclosure of tax returns and taxpayer-related information, unless disclosure of the information is specifically authorized by law.

11. *What is the justification for questions of a sensitive nature? If personally identifiable information (PII) is being collected in an electronic system, identify the Privacy Impact Assessment (PIA) that has been conducted for the information collected under this request and/or the Privacy Act System of Records notice (SORN) issued for the electronic system in which the PII is being stored.*

This information collection, which consists of records kept by respondents at their business premises, contains no questions or records of a sensitive nature, and it does not collect personally identifiable information (PII) in a government electronic system. Therefore, no Privacy Impact Assessment (PIA) or System of Records Notice (SORN) is required for this collection.

12. *What is the estimated hour burden of this collection of information?*

Estimated Respondent Burden: Based on recent data, TTB estimates that 3,000 wine industry members will respond to this information collection an average of 10 times each per year, for a total of 30,000 annual responses. Because respondents may use usual and customary business records such as shipping invoices to respond to this collection, TTB estimates that each response requires no more than 1 hour to complete. Therefore, the annual burden associated with this collection is no more than 10 hours per respondent, and no more than 30,000 hours in total.

(3,000 respondents x 10 responses each = 30,000 responses x 1 hour per response = 30,000 annual burden hours.)

Estimated Respondent Labor Costs: TTB estimates the annual per-respondent and total respondent labor costs for this information collection as follows:

Annual Respondent Labor Costs for OMB No. 1513-0104 NAICS 312000 – Beverage Manufacturing – Office & Administrative Support Occupations Fully-loaded Labor Rate/Hour⁴ = \$32.16*					
Avg. Time / Response	Labor Cost / Response	Responses / Respondent	Labor Costs / Respondent	Total Responses	Total Labor Costs
1.0 hour	\$32.16	10	\$321.60	3,0000	\$964,800.00

* Labor costs rounded to the nearest whole cent unless otherwise shown.

Recordkeeping: Under 27 CFR 24.300(d), respondents must maintain all records required under part 24 for a period of at least 3 years from the date of the record or the date of the last entry, whichever is later.

13. *What is the estimated annual cost burden to respondents or record keepers resulting from this information collection request (excluding the value of the hour burden in Question 12 above)?*

There are no additional annual costs to respondents associated with this information collection as it consists largely of usual and customary shipping records kept by wine industry members during the normal course of business.

14. *What is the annualized cost to the Federal Government?*

There are no annualized costs to the Federal Government for this information collection as it consists of records kept by respondents at their business premises.

15. *What is the reason for any program changes or adjustments reported?*

Program changes: Previously, under the IRC at 26 U.S.C. 5041(c), producers making no more than 250,000 gallons of wine during a calendar year could claim a tax credit of 90 cents per gallon on the first 100,000 gallons of wine removed for consumption or sale during that year. Additionally, under that section, such “small” wine producers could transfer their tax credits to other bonded premises that received their wine for storage and shipment on their instructions. As such, this information collection was originally titled “Information Collected in Support of Small Producer’s Wine Tax Credit (TTB REC 5120/11).”

However, due to the statutory changes made to 26 U.S.C. 5041(c) by the Craft Beverage Modernization Act and its recent amendments, *all domestic wine producers, regardless of size*, as well as certain importers, may now claim the expanded tax credits prescribed in those amendments on the first 750,000 gallons of wine that they produce or import (see

⁴ The Fully-loaded Labor Rate = Hourly wage rate + benefit costs, which, for the private sector, is calculated as hourly wage x 1.44. Per the most recent U.S. Department of Labor, Bureau of Labor Statistics, data for National Industry-Specific Occupational Employment and Wage Estimates for NAICS 312100—Beverage Manufacturing, the average fully-loaded labor rate per hour for Office and Administrative Support Occupations (43-0000) is \$32.16. See https://www.bls.gov/oes/current/naics4_312100.htm.

Footnote 2 above). Additionally, as was previously authorized, domestic wine producers may transfer their tax credits to other bonded premises that receive their wine for storage and shipment on their instructions.⁵

Therefore, now that all domestic wine producers, rather than just “small” producers, are eligible for, and may transfer, the expanded tax credits described in 26 U.S.C. 5041(c), as amended, TTB is:

- (1) Revising the title of this information collection from “Information Collected in Support of Small Producer’s Wine Tax Credit (TTB REC 5120/11),” to “Information Collected in Support of Wine Producer Tax Credit Transfers (TTB REC 5120/11)” in order to more accurately reflect its purpose.
- (2) Increasing the estimated annual burden associated with this information collection, from 280 respondents to 3,000, from 2,800 responses to 30,000, and from 2,800 burden hours to 30,000. (The average number of responses per respondent remains the same at 10 annually, and the average per-response burden remains unchanged at 1 hour.)

However, while the recent statutory amendments to 26 U.S.C. 5041(c) redesignated the wine tax credit transfer provisions found in paragraph (c)(6) of that section as paragraph (c) (5), the amendments did not otherwise alter those provisions. As such, the wine producer tax credit transfer record requirements contained in 27 CFR 24.278(b)(2)(iv) as previously approved under this collection remain unchanged.⁶

Adjustments: There are no adjustments associated with this information collection at this time; all respondent burden changes noted above result from the described program changes resulting from the described statutory changes.

16. Outline plans for tabulation and publication for collections of information whose results will be published.

TTB will not publish the results of this information collection.

17. If seeking approval to not display the expiration date for OMB approval of this information collection, what are the reasons that the display would be inappropriate?

There is no prescribed TTB form for this information collection as it consists of records kept by respondents at their business premises. As such, there is no medium for TTB to display this information collection’s OMB approval expiration date.

⁵ On December 27, 2020, the President signed the Consolidated Appropriations Act of 2021 (Public Law 116–260). Division EE, titled the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (“the Tax Relief Act of 2020”), included amendments to the IRC provisions related to excise taxes on distilled spirits, wine, and beer. In general, the Tax Relief Act of 2020 made permanent most amendments to those tax provisions previously made on a temporary basis by the Craft Beverage Modernization and Tax Relief Act (CBMA; included in the Tax Cuts and Jobs Act of 2017 (Public Law 115–97)), and by the Further Consolidated Appropriations Act, 2020 (Public Law 116–94). Specifically, section 106 of Tax Relief Act of 2020 amended the IRC to provide expanded tax credits and reduced tax rates on certain quantities of distilled spirits, wine, and beer produced and removed from domestic distilled spirits plants (DSPs), wineries, and breweries, or imported into the United States. In addition, the Taxpayer Relief Act of 2020 continued to authorize domestic wine producers to transfer their tax credits to other bonded premises that receive a producer’s wine in bond. That Act also addressed how the tax credits and reduced tax rates applied to controlled groups and other circumstances in which multiple entities were to be treated as a “single taxpayer.”

⁶ TTB will revise the former wine tax credit limits that are currently cited in 27 CFR 24.278(a) in a future rulemaking.

18. *What are the exceptions to the certification statement?*

- (c) See item 5 above.
- (i) No statistics are involved.
- (j) See item 3 above.

B. Collections of Information Employing Statistical Methods.

This information collection does not employ statistical methods.