

1513-0114

26 U.S.C.

Sec. 5051. Imposition and rate of tax

(a) Rate of tax

(1) In general

A tax is hereby imposed on all beer brewed or produced, and removed for consumption or sale, within the United States, or imported into the United States. Except as provided in paragraph (2), the rate of such tax shall be \$18 for every barrel containing not more than 31 gallons and at a like rate for any other quantity or for fractional parts of a barrel.

(2) Reduced rate for certain domestic production

(A) \$7 a barrel rate

In the case of a brewer who produces not more than 2,000,000 barrels of beer during the calendar year, the per barrel rate of the tax imposed by this section shall be \$7 on the first 60,000 barrels of beer which are removed in such year for consumption or sale and which have been brewed or produced by such brewer at qualified breweries in the United States.

(B) Controlled groups

In the case of a controlled group, the 2,000,000 barrel quantity specified in subparagraph (A) shall be applied to the controlled group, and the 60,000 barrel quantity specified in subparagraph (A) shall be apportioned among the brewers who are component members of such group in such manner as the Secretary or his delegate shall by regulations prescribed. For purposes of the preceding sentence, the term "controlled group" has the meaning assigned to it by subsection (a) of section 1563, except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" in each place it appears in such subsection. Under regulations prescribed by the Secretary or his delegate, principles similar to the principles of the preceding two sentences shall be applied to a group of brewers under common control where one or more of the brewers is not a corporation.

(C) Regulations

The Secretary may prescribe such regulations as may be necessary to prevent the reduced rates provided in this paragraph from benefiting any person who produces more than 2,000,000 barrels of beer during a calendar year.

(3) Tolerances

Where the Secretary or his delegate finds that the revenue will not be endangered thereby, he may by regulations prescribe

tolerances for barrels and fractional parts of barrels, and, if such tolerances are prescribed, no assessment shall be made and no tax shall be collected for any excess in any case where the contents of a barrel or a fractional part of a barrel are within the limit of the applicable tolerance prescribed.

(b) Assessment on materials used in production in case of fraud

Nothing contained in this subpart or subchapter G shall be construed to authorize an assessment on the quantity of materials used in producing or purchased for the purpose of producing beer, nor shall the quantity of materials so used or purchased be evidence, for the purpose of taxation, of the quantity of beer produced; but the tax on all beer shall be paid as provided in section 5054, and not otherwise; except that this subsection shall not apply to cases of fraud, and nothing in this subsection shall have the effect to change the rules of law respecting evidence in any prosecution or suit.

(c) Illegally produced beer

The production of any beer at any place in the United States shall be subject to tax at the rate prescribed in subsection (a) and such tax shall be due and payable as provided in section 5054(a)(3) unless--

- (1) such beer is produced in a brewery qualified under the provisions of subchapter G, or
- (2) such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1333; amended Pub. L. 86-75, Sec. 3(a)(6), June 30, 1959, 73 Stat. 157; Pub. L. 86-564, title II, Sec. 202(a)(8), June 30, 1960, 74 Stat. 290; Pub. L. 87-72, Sec. 3(a)(8), June 30, 1961, 75 Stat. 193; Pub. L. 87-508, Sec. 3(a)(7), June 28, 1962, 76 Stat. 114; Pub. L. 88-52, Sec. 3(a)(8), June 29, 1963, 77 Stat. 72; Pub. L. 88-348, Sec. 2(a)(8), June 30, 1964, 78 Stat. 237; Pub. L. 89-44, title V, Sec. 501(d), June 21, 1965, 79 Stat. 150; Pub. L. 94-529, Sec. 1, Oct. 17, 1976, 90 Stat. 2485; Pub. L. 95-458, Sec. 2(b)(2)(A), Oct. 14, 1978, 92 Stat. 1256; Pub. L. 101-508, title XI, Sec. 11201(c), Nov. 5, 1990, 104 Stat. 1388-416.)

Sec. 5053. Exemptions

(a) Removals for export

Beer may be removed from the brewery, without payment of tax, for export, in such containers and under such regulations, and on the giving of such notices, entries, and bonds and other security, as the Secretary may by regulations prescribe.

(b) Removals when unfit for beverage use

When beer has become sour or damaged, so as to be incapable of use as such, a brewer may remove the same from his brewery without payment of tax, for manufacturing purposes, under such regulations as the Secretary may prescribe.

(c) Removals for laboratory analysis

Beer may be removed from the brewery, without payment of tax, for laboratory analysis, subject to such limitations and under such regulations as the Secretary may prescribe.

(d) Removals for research, development, or testing

Under such conditions and regulations as the Secretary may prescribe, beer may be removed from the brewery without payment of tax for use in research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials, or equipment relating to beer or brewery operations.

(e) Beer for personal or family use

Subject to regulation prescribed by the Secretary, any adult may, without payment of tax, produce beer for personal or family use and not for sale. The aggregate amount of beer exempt from tax under this subsection with respect to any household shall not exceed--

- (1) 200 gallons per calendar year if there are 2 or more adults in such household, or
- (2) 100 gallons per calendar year if there is only 1 adult in such household.

For purposes of this subsection, the term ``adult'' means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the household is situated at which beer may be sold to individuals, whichever is greater.

(f) Removal for use as distilling material

Subject to such regulations as the Secretary may prescribe, beer may be removed from a brewery without payment of tax to any distilled spirits plant for use as distilling material.

(g) Removals for use of foreign embassies, legations, etc.

(1) In general

Subject to such regulations as the Secretary may prescribe--

(A) beer may be withdrawn from the brewery without payment of tax for transfer to any customs bonded warehouse for entry pending withdrawal therefrom as provided in subparagraph (B), and

(B) beer entered into any customs bonded warehouse under subparagraph (A) may be withdrawn for consumption in the United States by, and for the official and family use of, such foreign governments, organizations, and individuals as are entitled to withdraw imported beer from such warehouses free of tax.

Beer transferred to any customs bonded warehouse under subparagraph (A) shall be entered, stored, and accounted for in such warehouse under such regulations and bonds as the Secretary may prescribe, and may be withdrawn therefrom by such governments, organizations, and individuals free of tax under the same conditions and procedures as imported beer.

(2) Other rules to apply

Rules similar to the rules of paragraphs (2) and (3) of section 5362(e) shall apply for purposes of this subsection.

(h) Removals for destruction

Subject to such regulations as the Secretary may prescribe, beer may be removed from the brewery without payment of tax for destruction.

(i) Removal as supplies for certain vessels and aircraft

For exemption as to supplies for certain vessels and aircraft, see section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309).

(Added Pub. L. 85-859, title II, Sec. 201, Sept. 2, 1958, 72 Stat. 1334; amended Pub. L. 89-44, title VIII, Sec. 807(b), June 21, 1965, 79 Stat. 164; Pub. L. 91-673, Sec. 2, Jan. 12, 1971, 84 Stat. 2056; Pub. L. 94-455, title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-458, Sec. 2(b)(1), Oct. 14, 1978, 92 Stat. 1255; Pub. L. 105-34, title XIV, Secs. 1414(b), 1418(a), 1419(a), Aug. 5, 1997, 111 Stat. 1047-1049.)

27 CFR

Sec. 25.300 Retention and preservation of records.

(a) Place of maintenance. Records required by this part will be prepared and kept by the brewer at the brewery where the operation or transaction occurs and will be available for inspection by any appropriate TTB officer during business hours.

(b) Reproduction of original records. Whenever any record, because of its condition, becomes unsuitable for its intended or continued use, the brewer shall reproduce the record by a process under Sec. 25.301. The reproduced record will be treated and considered for all purposes as though it were the original record, and all provisions of law applicable to the original are applicable to the reproduction.

(c) Retention of records. Records required by this part will be preserved for a period of not less than three years from the date thereof or the date of the last entry required to be made thereon, whichever is later. The appropriate TTB officer may require records to be kept for an additional period not exceeding three years in any case where such retention is deemed necessary or advisable for the protection of the revenue.

(d) Data Processing. (1) Notwithstanding any other provision of this section, record data maintained on data processing equipment may be kept at a location other than the brewery if the original transaction (source) records required by Sec. Sec. 25.292-25.298 are kept available for inspection at the brewery.

(2) Data which has been accumulated on cards, tapes, discs, or other accepted record media will be retrievable within five business days.

(3) The applicable data processing program will be made available for examination if requested by an appropriate TTB officer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1390, as amended (26 U.S.C. 5415))

Sec. 28.142 Notice, Form 1689 (5130.12).

When a brewer intends to remove beer or beer concentrate without payment of tax from a brewery for exportation or for transportation to and deposit in a foreign-trade zone, or remove beer for use as supplies on vessels and aircraft, the brewer shall prepare a notice on Form 1689 (5130.12) for each withdrawal. The brewer shall execute Form 1689 (5130.12) in quadruplicate, except when the shipment is for use on aircraft the brewer shall execute an extra copy which will be marked ``Consignee's Copy.''

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

Sec. 28.144 Export marks.

(a) General Requirement. In addition to the marks and brands required to be placed on containers of beer or beer concentrate under the provisions of part 25 of this chapter, the brewer shall mark the word ``Export'' on each container or case of beer, or the words ``Beer

concentrate for export'' on each container of beer concentrate, before removal from the brewery for any exportation authorized under this subpart.

(b) Exceptions. A brewer need not apply the mark ``Export'' on cases of beer being exported under the following circumstances:

(1) When beer is being directly exported by the brewer, and the brewer can furnish documentation (such as an ocean or air freight bill of lading, or a foreign landing certificate) that the beer was directly exported to a foreign country;

(2) When cased beer is transferred from a brewery to a foreign-trade zone for export or for storage pending exportation; or

(3) When cased beer is exported to the military.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

Sec. 28.146 Disposition of forms.

On removal of the beer or beer concentrate withdrawn under the provisions of this subpart, the brewer shall forward one copy of Form 1689 (5130.12) to the appropriate TTB officer, retain one copy for the files, and deliver the original and remaining copy to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by subpart M of this part. When the shipment is for delivery for use on aircraft, the copy marked ``Consignee's Copy,'' provided for in Sec. 28.142, will be forwarded to the airline company at the airport.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

[T.D. ATF-224, 51 FR 7699, Mar. 5, 1986, as amended by T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]

Sec. 28.147 Return of beer or beer concentrate.

Beer or beer concentrate removed without payment of tax under the provisions of this subpart may be returned to the brewery from which removed if lading of the beer or beer concentrate is delayed more than the period provided in Sec. 28.262 or when the brewer has other good cause for return. The brewer shall request the district director of customs to release the beer or beer concentrate for return to the brewery and, on such release, the district director of customs shall endorse both copies of the appropriate Form 1689 (5130.12) to show the release of the beer or beer concentrate and shall return the forms to the brewer. On return of the beer or beer concentrate to the brewery, the brewer shall record the quantity in the brewery daily records, mark the two copies of Form 1689 (5130.12) returned by the district director of customs, ``Canceled--Returned to Brewery,'' and forward one copy to the appropriate TTB officer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5053, 5056))

[T.D. ATF-224, 51 FR 7699, Mar. 5, 1986, as amended by T.D. TTB-8, 69 FR 3833, Jan. 27, 2004]