



Distilled Spirits – An Introduction to the Federal Laws and Regulations

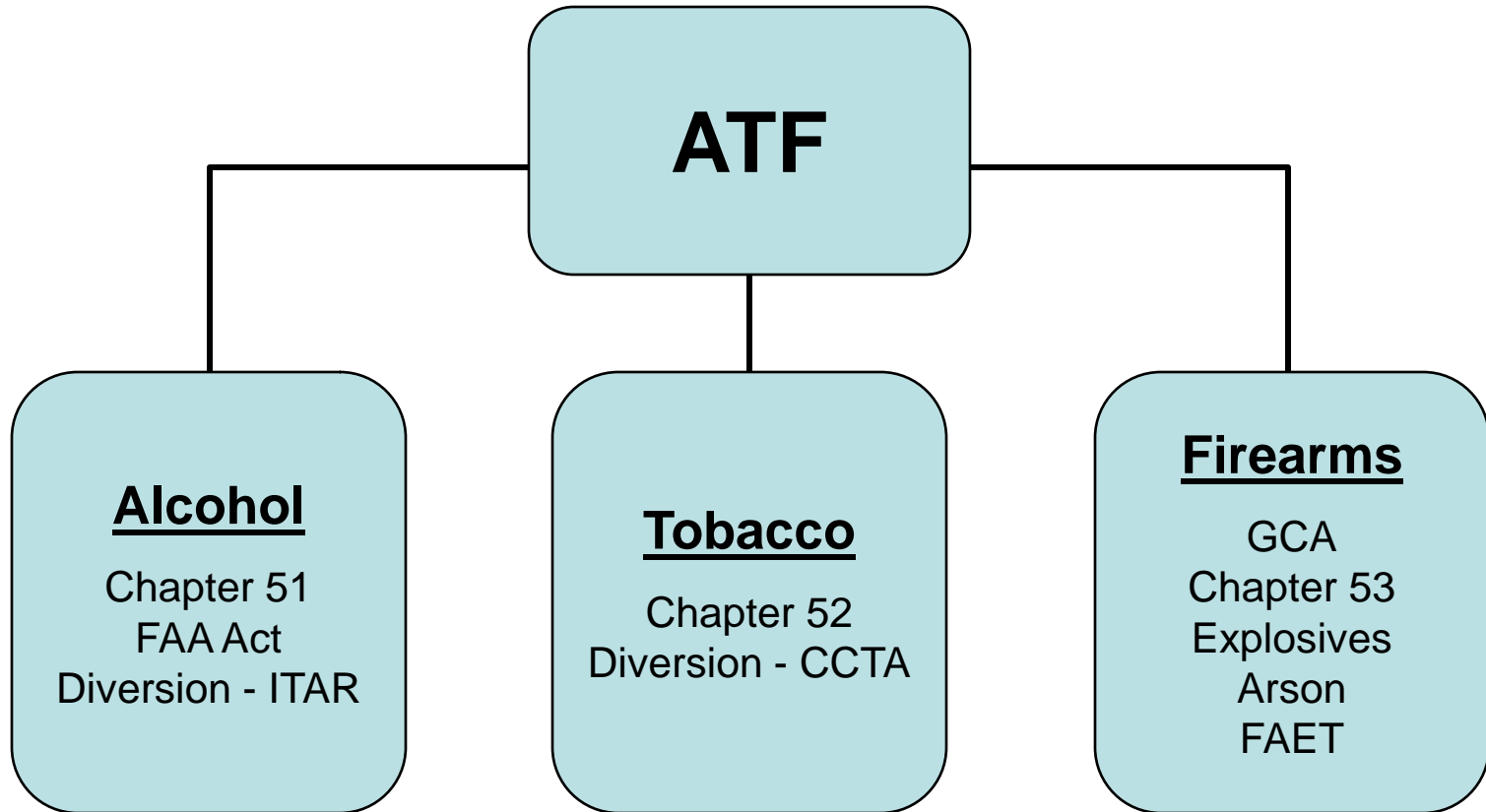
Presented by
Tom Niekamp, Senior Counsel

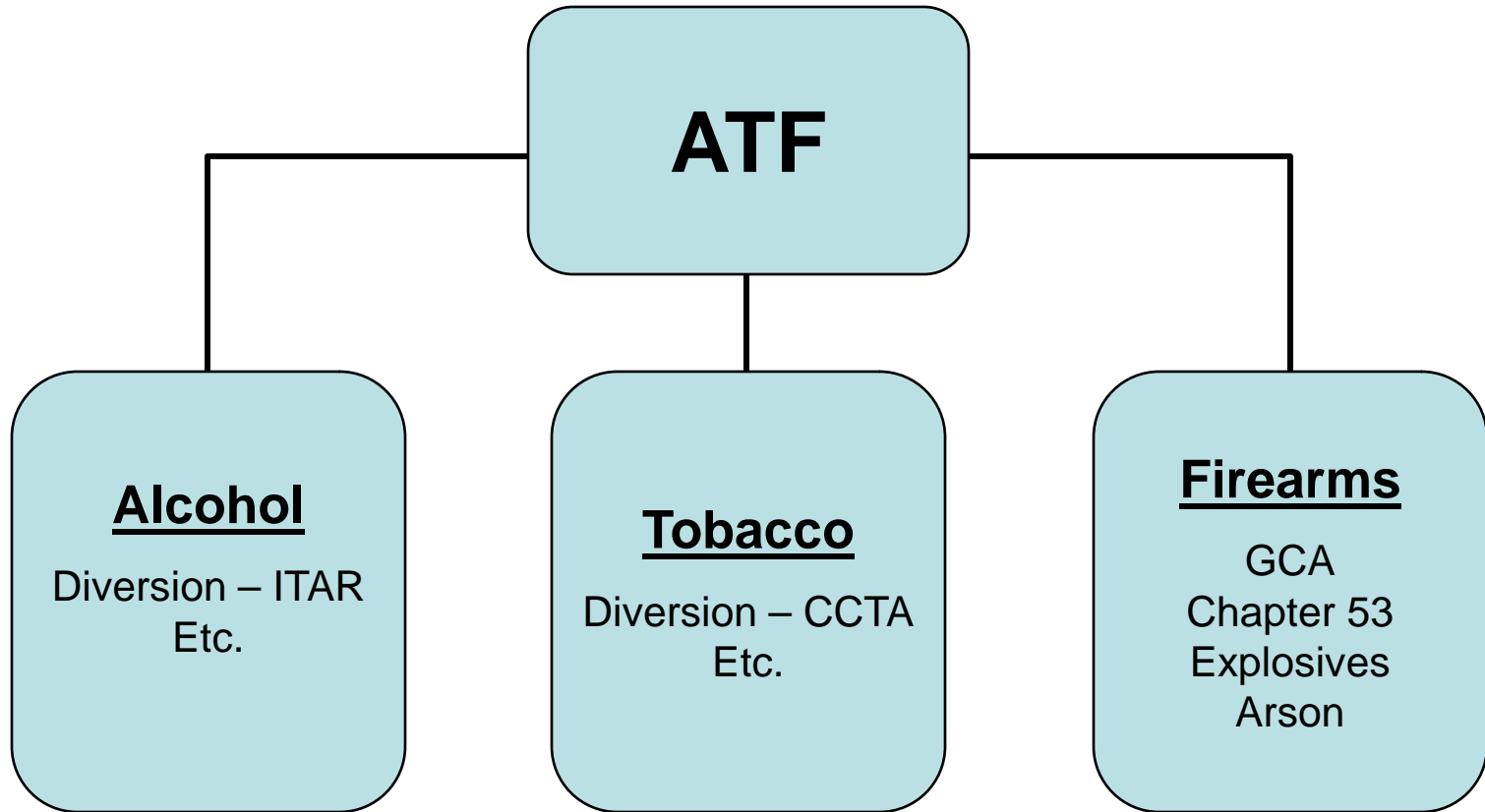


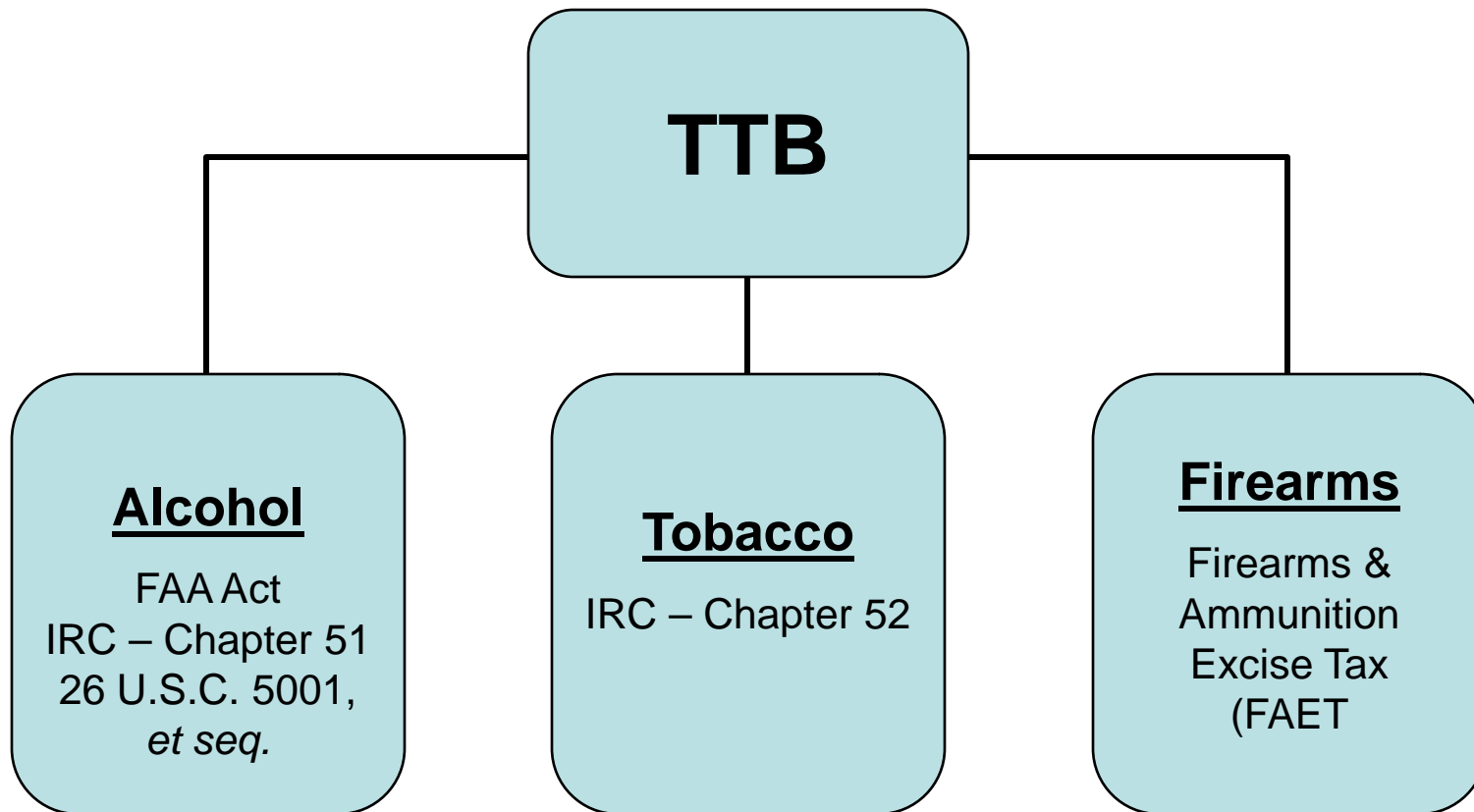
- Recent History
- Quick look at the Federal Alcohol Administration Act
- Internal Revenue Code – Subtitle E
 - Chapter 51 – Alcohol
 - Taxation
 - Qualification
 - Operations
 - Penalty provisions

Recent History

- Before 2003 – ATF and TTB were one agency
- In 2003 – ATF goes to DOJ
- TTB keeps jurisdiction over alcohol (FAA Act and Chapter 51 of IRC) and tobacco







- Three primary features of FAA Act:
 - Permit provisions
 - Regulation of certain “Trade Practices”
 - Regulation of formulation, labeling and advertising of alcoholic beverages

- Required for:
 - Importers and wholesalers of all beverage alcohol products as well as producers of wine and distilled spirits (See 27 U.S.C. 203)

- Basic Permit continues until:
 - Suspended,
 - Revoked,
 - Annulled, or
 - Voluntarily surrendered

27 U.S.C. 204(g) (Continued)

- However, if permit is leased, sold or otherwise voluntarily transferred, the permit shall be automatically terminated

- If a permit is transferred by operation of law, or if actual or legal control of the permittee is acquired, the permit shall automatically terminate at the expiration of 30 days
- Provided: that if a new permit is applied for within 30 days, then the outstanding permit continues in effect until such application is acted upon

- Subtitle E – Alcohol, Tobacco and Certain Other Excise Taxes:
 - Chapter 51 – Distilled Spirits, Wines and Beer (26 U.S.C. 5001, *et seq.*)
 - Regulations are set forth at Title 27, Code of Federal Regulations, part 19
- Statute and regulations are available on TTB's Web site www.ttb.gov

Chapter 51 of IRC

- Subchapter A – Excise Taxes on Distilled Spirits
- Subchapter B – Qualifications of DSPs
- Subchapter C – Operations of DSPs
- Subchapter D – Industrial use of Distilled Spirits
- Subchapters E and I – General Provisions
- Subchapter J – Penalties

- 26 U.S.C. 5002:
 - Distilled Spirits Plant
 - Bonded Premises
 - Distiller
 - Processor
- See also 27 CFR 19.11

- 26 U.S.C. 5001 – “Tax is hereby imposed on all distilled spirits produced in or imported into the U.S. . . . at the rate of \$13.50 on each proof gallon”
- Section 5001(b) – Tax attaches at time distilled spirits come into existence

- 26 U.S.C. 5006 – “Tax on Distilled Spirits is determined when the spirits are removed from bond”

Method for Collecting Tax

- Section 5061(a) – Tax is collected on basis of a return (TTB Form 5000.24)
- Section 5061(d) – Time for collecting taxes is semi-monthly or quarterly
- Section 5061(e) – Large producers must pay by Electronic Fund Transfer (EFT)

Spirits Lost or Destroyed in Bond

- Section 5008 – Then **NO TAX SHALL BE COLLECTED:**
 - Unless there is theft caused by connivance, collusion, fraud or negligence, or
 - Regulations are not complied with in voluntary destruction, or
 - Unexplained shortages of bottled distilled spirits

Spirits Returned to Bond

- Section 5215(a) – Distilled spirits may be returned to bond, but only for destruction, denaturation, redistillation, reconditioning or rebottling
- Section 5215(b) – All taxing and bonding provisions then become applicable again
- Section 5215(c) – Tax shall not again be collected if returned only for relabeling or reclosure

Spirits Returned to Bond (Continued)

- Section 5008(c)(1) – The Secretary shall abate, credit or refund the tax
- Section 5008(c)(2) – Claim must be filed within 6 months
- NOTE: Whiskey case

Whiskey Returned for Destruction

Producer of
Whiskey

Retailer

DSP for
Destruction

Section 5010 Credit For Wine or Flavor Content

- Wine content:
 - For each proof gallon of wine content [alcohol derived from wine] there is allowed a credit equal to \$13.50 minus the rate of tax imposed on wine
- Flavors content:
 - For each proof gallon of flavors content there is allowed a credit of \$13.50 (not to exceed 2½ percent of the finished product)

- Section 5062 – “On the exportation of distilled spirits ... there shall be allowed a drawback equal to the amount of the tax found to have been paid”

- Pursuant to Public Law 109-58 (Aug. 2005):
 - All of the alcohol Occupational Taxes were repealed effective July 1, 2008.

Manufacturers of Nonbeverage Products

- Section 5111 – “Any person using distilled spirits on which tax has been determined in the manufacture or production of medicines, medicinal preparations, food products, flavors, flavoring extracts or perfumes which are unfit for beverage purposes ... shall be eligible for a drawback ... when such distilled spirits are used”
- Section 5114 – Drawback is at rate of \$1.00 less than rate of tax paid

Qualification Requirements

- Section 5171 – Operations may be conducted only on bonded premises of DSP by a person qualified under this subchapter
- Must apply for and receive Notice of Registration
- Section 5171(d) – Must obtain a permit
 - If operations are for beverage only – FAA Act Basic Permit
 - Operations for industrial alcohol – IRC permit required

- Section 5173 – Requires that DSPs must post bonds:
 - Operations Bonds
 - Withdrawal Bonds
 - Area Bonds
 - Unit Bonds
 - Export Bonds (Section 5175)
- Terms and conditions
- Penal sums – maximums and minimums

Subchapter C Operations

- DSP shall keep such records in such form and in such manner as required by regulations of:
 - Production and storage
 - Denaturation activities
 - Processing activities
- Mainly record of receipt, production and removal
- Reports must be rendered and records must be preserved and made available for inspection

26 U.S.C. 5207

Withdrawals Free of Tax

- Section 5214 – Distilled spirits may be withdrawn from bond **free of tax** after denaturation for:
 - Export
 - Manufacture of ether, chloroform, or similar products
 - Any other use in arts and industries and for fuel, light, and power [industrial alcohol]

Denaturing Distilled Spirits

- Section 5242 – Denaturing shall be such as to render spirits “unfit for beverage use or internal human medicinal use”

Withdrawals Free of Tax (Continued)

- Section 5214 – Distilled spirits may be withdrawn from bond **free of tax** WITHOUT denaturation for:
 - Use of government for nonbeverage uses
 - Use by educational institutions, hospitals, labs, etc. ... if it is used for nonbeverage purposes and if it is not for resale or for use in the manufacture of any products for sale

Withdrawals Free of Tax (Continued)

- Section 5214 – Distilled spirits may be withdrawn from bond **without payment of tax** for:
 - Exportation
 - Use in wine production
 - Transfers to Foreign Trade Zones
 - Etc.

Industrial Use of Distilled Spirits

- Section 5271(a) – No person shall procure or use distilled spirits free of tax, or procure, deal in, or use Specially Denatured Alcohol (SDA) or recover SDA or completely Denatured Alcohol (CDA) until he or she has applied for and received a permit

- Operating Permit:
 - Distilling for industrial use
 - Denaturing spirits
 - Warehousing of spirits
 - Bottling or packaging of distilled spirits
 - Warehousing of spirits for non-industrial use
 - Manufacturing articles

Types of IRC Permits (Continued)

- User Permits:
 - Deal in SDA
 - Use SDA
 - Use tax-free alcohol
 - Recover SDA articles and tax-free alcohol

- Section 5181 – DSP can be established exclusively for producing, processing, storing, and using or distributing distilled spirits for fuel use
 - Can be withdrawn free of tax but must be rendered unfit for beverage use
- See also 27 CFR 19.911

- Section 5601 – Outlines a number of prohibited activities:
 - Possession of unregistered stills (no personal use exemption)
 - False applications
 - Unlawful production of distilled spirits, etc.
- Section 5603(a) – Fraudulent records
- All punishable by 5 years and/or \$10,000 fine

- What happens if the excise taxes are not paid?
 - Section 6201 – “The Secretary is authorized and required to make assessments of all taxes” (including interest and assessable penalties)
 - Assessment is a formal recording of taxpayer’s tax liability

- Section 6651 – Allows for penalties to be imposed for delinquent taxes and returns:
 - Failure to file
 - Failure to pay
 - Failure to deposit (i.e., EFT)

- 27 U.S.C. 204(e) – Basic permit for DSP can be revoked or suspended for willful violations of the conditions thereof:
 - i.e., failure to pay tax, improper removals, labeling, failure to keep records, etc.
- Can be offers in compromise to resolve the violations

- Utilize the resources of TTB:
 - National Revenue Center
 - Advertising, Labeling and Formulation Division
 - Regulations and Rulings Division
 - Field Offices
 - Counsel
 - www.ttb.gov
 - More...

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