



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Washington, D.C. 20226

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DISTILLED SPIRITS TAX REVISION ACT OF 1979

Proprietors of Distilled Spirits Plants;
Bonded Wine Cellars;
and Others Concerned:

Purpose. The Distilled Spirits Tax Revision Act of 1979, Subtitle A of Title VIII of the Trade Agreements Act of 1979 (Public Law 96-39), was signed by President Carter on July 26, 1979. The Distilled Spirits Tax Revision Act of 1979 will become effective on January 1, 1980.

Since the effective date of the new law is January 1, 1980, the Bureau wishes to advise the regulated industry via this circular of certain actions which will have to be taken by industry in order to effect the transition to the new law on the effective date. These actions will involve the filing of new bonds and applications. Since previous editions of forms may not be used for this purpose, the regional regulatory administrators will initially distribute the new or revised forms to the industry.

Following are matters which the industry should consider between now and January 1, 1980:

1. NEW DEFINITIONS. Section 5002 of the Internal Revenue Code of 1954, as amended, redefines the term "bonded premises" when used with respect to distilled spirits, to mean the premises of a distilled spirits plant, or part thereof, on which distilled spirits operations are authorized to be conducted.

A new term "processor" is defined as any person who manufactures, mixes, or otherwise processes distilled spirits, or manufactures any article. The term "processor" includes but is not limited

to a rectifier, bottler, or denaturer. Certain operations are not treated as processing, such as operations as a distiller, mixing of taxpaid spirits for immediate consumption, and any process performed by an apothecary with respect to distilled spirits which such apothecary uses exclusively in preparation or making up of medicines unfit for use for beverage purposes.

The term "warehouseman" means any person who stores bulk distilled spirits.

The term "bulk distilled spirits" means distilled spirits in a container having a capacity in excess of one wine gallon.

2. BONDS. Section 5173 of the Code as amended will require that proprietors of distilled spirits plants furnish new bonds covering operations at and withdrawals of spirits before payment of the tax from such plants.

No person intending to establish a distilled spirits plant may commence operations at such plant unless such person has furnished bond covering operations at the plant. The three types of operations bonds are (1) "one plant bond", covering operations at a single distilled spirits plant; (2) "adjacent wine cellar bond", covering operations at a distilled spirits plant and at an adjacent bonded wine cellar; and (3) "area bond", covering operations at two or more distilled spirits plants and adjacent bonded wine cellars which are located in the same geographical area and are operated by the same person (or in the case of a corporation, by such corporation and its controlled subsidiaries).

The "withdrawal bond" covers withdrawals from the bonded premises of one or more distilled spirits plants for deferred payment of tax where the operations on these multiple premises could be covered by the same operations bond.

A "unit bond" covering operations at and withdrawals from one or more bonded premises which could be covered by the same operations bond is also provided for under the amended Code.

A single bond form, ATF F 5110.56, will be utilized for operations, withdrawal and unit bonds. Bond forms 2601, 2613, 2614, and 2615 will be obsoleted. (Bond form 700 for bonded winery operations remains unchanged.)

In general, a bond furnished under Section 5173 shall be conditioned that the person furnishing the bond "will faithfully comply with all provisions of law and regulations relating to the activities covered by such bond and will pay all taxes imposed by this chapter, and all penalties incurred by, or fines imposed on, such person for violation of any such provision". Any bond furnished under this section shall contain such other terms and conditions as may be required by regulations. The penal sum of any bond shall be determined under regulations prescribed by the Secretary of the Treasury. Specific requirements for a bond covering withdrawals but not operations are that "such bond shall be in addition to the operations bond, and if distilled spirits are withdrawn under such bond, the operations bond shall no longer cover liability for payment of the tax on the spirits withdrawn". No bonded wine cellar shall be considered to be "adjacent" to a distilled spirits plant unless "such distilled spirits plant is qualified under this subchapter for the production of distilled spirits, and such wine cellar and the distilled spirits plant are operated by the same person". The bond furnished under this section covering operations on such adjacent wine cellar shall be in lieu of any bond which would otherwise be required under Section 5354 with respect to such wine cellar (other than supplemental bonds required for deferral of wine tax).

A bond form 2601 which presently covers a distilled spirits plant qualified for production and an adjacent bonded wine cellar will automatically terminate at the close of business December 31, 1979. Accordingly, the proprietor will file a new bond on ATF F 5110.56 covering operations on both premises.

3. ALTERNATION OF PREMISES BETWEEN DISTILLED SPIRITS PLANT AND BONDED WINERY. A proprietor who presently alternates a portion of bonded wine cellar premises for use as a distilled spirits plant for rectification and bottling of certain wines will have to file a new bond on ATF F 5110.56 covering the distilled spirits operations conducted on the distilled spirits plant premises. The bond, form 700, covering operations on the bonded winery premises may remain unchanged.
4. NEW REGISTRATION OF DISTILLED SPIRITS PLANTS. Section 5171 of the Code is amended to require that the operations of a "processor" as well as the operations of a distiller or a warehouseman must be conducted only on the bonded premises of a distilled spirits plant by a person qualified under this subchapter. A distilled spirits plant may be established only by a person who intends to conduct at such a plant the operations of a distiller or warehouseman or both. Before a new proprietor of a distilled spirits plant (DSP) can commence operations on or after January 1, 1980, such person must make application for, and receive notice of, the registration of such plant. An existing DSP proprietor must file a new application for registration but final approval of the application is not required in order to continue operations after December 31, 1979.
5. APPLICATION TO RECEIVE SPIRITS IN BOND. An approved application covering the transfer of spirits and/or denatured spirits in bond from another distilled spirits plant or from customs custody will not be valid for transfers after close of business December 31, 1979. Accordingly, proprietors should prepare applications on ATF Form 5100.16 (formerly ATF F 2609), Application for Transfer of Spirits and/or Denatured Spirits in Bond, for filing with their new bond(s) in order that the new applications may be processed, approved and returned by January 1, 1980.
6. APPLICATION FOR OPERATING PERMIT. Each person required to file an application for registration whose distilled spirits plant operations are not required to be covered by a basic permit under the

Federal Alcohol Administration Act shall, before commencing the operations, apply for and obtain an operating permit to engage in such operations. Proprietors of distilled spirits plants are reminded that new applications for operating permits must be filed with the appropriate regional regulatory administrator prior to January 1, 1980. Operations may be continued under current permits pending action on the new applications.

7. SUPERVISION OF OPERATIONS. Current law requires that an ATF officer be assigned before a proprietor may conduct bonded operations. Amended Section 5202 states that "All operations on the premises of a distilled spirits plant shall be conducted under such supervision and controls (including the use of Government locks or seals) as the Secretary shall by regulations prescribe". With repeal of the statutory obligation to assign ATF officers to distilled spirits plants under the present "joint custody" system of supervision and control, the Bureau anticipates the gradual removal of ATF officers assigned to such plants to be accomplished on a plant-by-plant basis. This will provide the Government with the opportunity to evaluate the degree of Government supervision needed at each plant and will provide proprietors the opportunity to adjust to their new responsibilities. ATF officers may be assigned to and removed from plants at the discretion of regional regulatory administrators.

8. USE OF PROPRIETORS' LOCKS. With the gradual phasing out of Government supervision, Government locks will be removed and proprietors will supply their own approved locks to replace Government locks which are presently being used to secure bonded production facilities and the exteriors of bonded storage areas. Each proprietor will have to coordinate this activity with the regional regulatory administrator in whose region the distilled spirits plant is located. Government locks will not be available for purchase by industry members.

Under consideration for forthcoming regulations are the following specifications for approval of locks:

- 1) Case-hardened shackle, minimum 5/16 of an inch in diameter with "heel and toe" locking feature;
- 2) Metal body having minimum width of 2 inches;
- 3) Minimum 5-pin tumbler with "captured key" feature whereby the key cannot be removed from the lock when the shackle is in the opened position;
- 4) Corresponding serial numbers on key and on lock; and
- 5) No markings on key or on lock which refer to the bitting.

Locks may be stamped or otherwise marked with a proprietor's name or registry number. Also, a proprietor may utilize a master key locking system.

Locks meeting the specifications required by regulations, when affixed by proprietors to the exteriors of production and storage areas, will be approved locks under the provisions of 26 U.S.C. 5682 and any person who destroys, breaks, injures, or tampers with such a lock will be subject to the penalty provisions of that section of the Code.

The Bureau anticipates that, prior to the replacement of Government locks with proprietors' locks, each proprietor may be required by regulations to file with and receive approval of a statement of security by the regional regulatory administrator. The statement of security probably will include a description of the type(s) of locks used to replace Government locks as well as a certification signed by the proprietor that such locks meet the specifications which will be prescribed in the forthcoming regulations.

Any lock which is presently approved for use under an authorized pilot operation and which does not meet the specifications which will be prescribed in the forthcoming regulations may

continue to be used until the proprietor is notified otherwise by the regional regulatory administrator.

9. CONVERSION OF CONTROLLED STOCK AND BULK WINES TO BONDED STOCK. The Bureau is issuing an ATF Procedure and Industry Circular 79-13 which will address this topic. However, proprietors should note that they are entitled to refund or credit only for distilled spirits, wine or rectification taxes paid or determined on the distilled spirits or wines actually contained in products in controlled stock. Such taxes should not be confused with the "tax value" of the controlled stock inventory as shown in Schedule B of ATF Form 4077.
10. RETURN OF TAXPAID SPIRITS TO BOND. Amended Section 5215 of the Code provides that distilled spirits on which tax has been paid or determined may be returned to the bonded premises of a distilled spirits plant on or after January 1, 1980, solely for destruction, denaturation, redistillation, reconditioning, or rebottling. Additionally, bottled distilled spirits withdrawn from bonded premises may be returned to bonded premises for relabeling or restamping.

Section 808(e) of the Trade Agreements Act of 1979 provides that distilled spirits products which contain alcoholic ingredients other than distilled spirits and which have been withdrawn from a distilled spirits plant prior to January 1, 1980, may be returned under Section 5215(a) for destruction, denaturation, redistillation, reconditioning, or rebottling only to the plant from which withdrawn.

11. STATUS OF TAXPAID STOCK REMAINING ON BONDED PREMISES DURING THE YEAR 1980. Section 808(c) of the Trade Agreements Act of 1979 provides that taxpaid stock on premises which become bonded premises on January 1, 1980, may remain on such premises during the year 1980. However, such distilled spirits and/or wine must be physically separated from other distilled spirits and wine.

Any taxpaid goods which are on the bonded premises on December 31, 1980, must be removed to a taxpaid room or wholesale liquor dealer premises or must be dumped for destruction, denaturation, distillation, etc., prior to January 1, 1981.

12. AMENDMENT OF BASIC PERMITS ISSUED UNDER THE FEDERAL ALCOHOL ADMINISTRATION ACT. A proprietor who is currently qualified under an FAA Act basic permit as engaged in the business of rectifying, blending, or bottling distilled spirits, should file application to amend the permit to include the operations of a warehouseman.
13. STRIP STAMPS. The blue export strip stamp for bottled-in-bond spirits and the white strip stamp for alcohol will be eliminated and replaced with the red strip stamp. The green strip stamp will be retained for bottling-in-bond. Forthcoming regulations will implement the changes announced in the Notice of Proposed Rulemaking No. 312.
14. BOTTLING-IN-BOND. The repeal of the existing bottling-in-bond provisions of the law eliminates the distinct status of "bottled-in-bond" products for tax purposes since all spirits will literally be bottled in bond. However, "bottled-in-bond" will continue as a distinctive product designation under the labeling regulations of the Federal Alcohol Administration Act.
15. INDUSTRY ORIENTATION MEETINGS. Presently, each ATF regional office is planning orientation meetings for industry members. The regional regulatory administrators will notify industry members of the time and place for each meeting.
16. ATF FORMS REVISIONS. Following is a preliminary listing of changes in ATF forms. The forms are listed in numerical order under the subject classification system.

<u>Form Number</u>	<u>Title</u>	<u>Status</u>
3A	Indemnity Bond	Obsoleted
IRS F 11	Special Tax Return	Revised to eliminate rectifier's special tax

<u>Form Number</u>	<u>Title</u>	<u>Status</u>
1602	Consent	Obsoleted
1617	Indemnity Bond- Removal of Property Subject to Lien	Obsoleted
2602	Consent to Addi- tional Conditions on Indemnity Bond, Form 3A	Obsoleted; bond requirement eliminated
2613	Bond Covering Deferred Payment of Tax on Spirits Withdrawn by Proprietor of Bonded Premises	Obsoleted; to be replaced by DSP bond ATF F 5110.56
2614	Bond Covering Deferred Payment of Tax on Spirits Withdrawn by Proprietor of Bottling Premises	Same as above
428 (5100.7)	Requisition for Stamps	Revised to delete white & blue strip stamps
2260 (5100.8)	Quarterly Report of Bottle Strip Stamps	Revised to delete white & blue strip stamps; renumbered to 5100.8; semi- annual submission; alternate devices added
206 (5100.11)	Withdrawal of Spirits, Specially Denatured Spirits, or Wines For Exportation	Revised; entry for deposit and bonded export references deleted; renumbered to 5100.11

<u>Form Number</u>	<u>Title</u>	<u>Status</u>
3039 (5100.13)	Application for Distilled Spirits Stamps (Puerto Rico)	Revised to delete references to rectification tax
2609 (5100.16)	Application for Transfer of Spirits and/or Denatured Spirits in Bond	Revised; assigned officer references deleted; renumbered to 5100.16
2637 (5100.20)	Bottling Tank Report	Obsoleted
2731 (5110.11)	Monthly Report of Bonded Storage Operations	Revised; renumbered to 5110.11; quarterly submission
2611 (5110.13)	Statement of Losses at Bottling Premises	Obsoleted
1467 (5110.15)	Details of Packages Filled With Denatured Spirits	Discontinued for use by proprietors of distilled spirits plants
5110.17	Tax Paid Spirits Returned to Bonded Premises	Revised; approval of ATF officer eliminated; references to obsoleted forms eliminated
4738 (5110.18)	Notice and Gauge of Spirits Returned to Bottling Premises	Obsoleted
1577 (5110.19)	Destruction of Spirits	Obsoleted
2634 (5110.20)	Denaturation of Spirits	Obsoleted

<u>Form Number</u>	<u>Title</u>	<u>Status</u>
179 (5110.21)	Withdrawal of Spirits Tax Determined	Obsoleted
5110.21	Daily Report of Tax Determinations	New form will be prepared daily to record tax deter- minations
4077 (5110.22)	Distilled Spirits Tax Return-Deferred Payment-Bottling Premises	Obsoleted; to be replaced by ATF F 5110.35
2604 (5110.23)	Operating Permit Under 26 U.S.C. 5171(b)	Retitled and renumbered to 5110.23
2603 (5110.25)	Application for Operating Permit Under 26 U.S.C. 5171(b)	Revised to show types of distilled spirits operations: distilling, ware- housing, and denaturing; retitled and renumbered to 5110.25
2629 (5110.26)	Gauge Report	Revised to elimi- nate verification by assigned officer; renumbered to 5110.26
236 (5110.27)	Transfer of Spirits or Denatured Spirits in Bond	Revised; renumbered to 5110.27; changed to include wine transfers
2733 (5110.28)	Monthly Report of Bottling Premises Operations	Revised; renumbered to 5110.28; quarterly submission

<u>Form Number</u>	<u>Title</u>	<u>Status</u>
2323 (5110.29)	Deposit, Transfer Between Tanks or Mingling of Distilled Spirits in Bond	Obsoleted
5110.29	Tank Record of Spirits in Storage	New form; will serve as storage tank record
1582 (5110.30)	Drawback on Distilled Spirits Exported	Revised to delete references to rectification and obsolete ATF Forms; renumbered to 5110.30
4776 (5110.31)	Application and Permit to Ship Puerto Rican Spirits to the United States Under 26 U.S.C. 5232	Revised to delete references to rectification tax; renumbered to 5110.31
2521 (5110.32)	Prepayment Return - Distilled Spirits Tax	Revised; renumbered to 5110.32; to be based on record of tax determination
4737 (5110.33)	Indemnity Bond- Judgment or Other Involuntary Lien	Obsoleted
2610 (5110.34)	Change in Status of Plant	Revised; to include bonded wine cellar and taxpaid wine bottling house; changed to notice; renumbered to 5110.34
2522 (5110.35)	Distilled Spirits Tax Return - Deferred Payment - Bonded Premises	Revised; renumbered to 5110.35; will be based on daily report of tax determinations

<u>Form Number</u>	<u>Title</u>	<u>Status</u>
1515 (5110.36)	Distilled Spirits Bottled in Bond	Obsoleted
1621 (5110.37)	Summary of Deposits and Withdrawals at Bonded Warehouses	Revised; renumbered to 5110.37; retitled "Storage Summary Account"
27B Supplemental (5110.38)	Formula and Process for Rectified Products	Revised; renumbered to 5110.38; rectification references deleted; retitled; process statement modified
2527 (5110.39)	Rectifier's Return - Deferred Taxes	Obsoleted; rectification tax eliminated
2730 (5110.40)	Monthly Report of Production Operations	Revised; renumbered to 5110.40; quarterly submission
2607 (5110.41)	Registration of Distilled Spirits Plant	Revised to show types of distilled spirits operations: distilling, warehousing, and denaturing; renumbered to 5110.41
2732 (5110.43)	Monthly Report of Denaturing Operation	Revised; quarterly submission; renumbered to 5110.43
2633 (5110.44)	Withdrawal of Spirits Free of Tax	Obsoleted

<u>Form Number</u>	<u>Title</u>	<u>Status</u>
2630 (5110.45)	Package Gauge Report	Revised to delete gauge by assigned officer; renumbered to 5110.45
257 (5110.46)	Withdrawal of Wine Spirits to Bonded Wine Cellar	Revised; assigned officer references deleted; renumbered to 5120.38
332 (5110.49)	Statement by Kinds, Seasons and Years of Production of Spirits in Bonded Warehouses	Obsoleted
2896 (5110.50)	Tax Deferral Bond - Distilled Spirits and Rectified Products (Puerto Rico)	Revised; renumbered to 5110.50; bond language changed
2899 (5110.51)	Application, Permit and Report - Distilled Spirits (Puerto Rico)	Revised; renumbered to 5110.51; references to wine gallons deleted
2901 (5110.52)	Deferred Tax Return - Distilled Spirits and Rectified Products (Puerto Rico)	Revised; renumbered to 5110.52; references to rectification tax deleted
2925 (5110.53)	Prepayment Tax Return - Distilled Spirits and Rectified Products (Puerto Rico)	Revised; renumbered to 5110.53; references to rectification tax deleted

<u>Form Number</u>	<u>Title</u>	<u>Status</u>
2926 (5110.54)	Statement of Liability for Rectification Taxes (Puerto Rico)	Obsoleted; rectification tax elimi- nated
2601 (5110.56)	Distilled Spirits Bond	Obsoleted
5110.56	Distilled Spirits Bond	New form showing bond categories
1685 (5110.57)	Blending of Rums and Brandies in Bond	Obsoleted
2615 (5110.59)	Blanket Withdrawal Bond	Obsoleted; replaced by Bond F 5110.56
2523 (5110.60)	Rectifier's Return - Prepayment of Taxes	Obsoleted
275 (5120.28)	Application for Release of Wine Spirits and Report of Addition of Wine	Reference to assigned officer deleted; renumbered to 5120.28
487-B (5170.7)	Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture to the United States	Revised; reference to rectifica- tion tax eliminated
2635 (5620.8)	Claim-Alcohol and Tobacco Taxes	Revised; minor changes to eliminate references to Part 201

INQUIRIES. Inquiries concerning this circular should refer to its number and be addressed to the Assistant Director (Regulatory Enforcement), Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

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