

statement under section 3402 (relating to withholding of income tax at source on wages) which results in reduced withholding and for which there was no reasonable basis.

There was a reasonable basis for a statement of the number of exemptions an individual claimed on a Form W-4 if the individual properly completed the Form W-4 by taking into account only allowable amounts for items which are allowable and by computing the number of exemptions in accordance with the instructions on the Form W-4.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that this temporary regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 28, 1982.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553 (b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of these regulations is Barry L. Wold of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR Part 30

Employment taxes, Income taxes, Withholding, Penalties.

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding, Penalties.

Adoption of Amendments to the Regulations

Accordingly, a new Part 30, Temporary Employment Tax Regulations under the Economic Recovery Tax Act of 1981, is added to Title 26 of the Code of Federal Regulations, and the following amendments are made to the regulations:

1. A new Part 30, Temporary Employment Tax Regulations under the Economic Recovery Tax Act of 1981, is

added to Title 26 of the Code of Federal Regulations. Part 30 reads as follows:

PART 30—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE ECONOMIC RECOVERY TAX ACT OF 1981

Sec.

30.6682-1 False information with respect to withholding.

Authority: Sec. 7805, Internal Revenue Code, 68A Stat. 917; 26 U.S.C. 7805.

§ 30.6682-1 False information with respect to withholding.

(a) *Civil penalty.* If any individual makes a statement under section 3402 (relating to income tax collected at source) which results in a lesser amount of income tax actually deducted and withheld than is properly allowable under section 3402 and, at the time the statement was made, there was no reasonable basis for the statement, the individual shall pay a penalty of \$500 for the statement. There was a reasonable basis for a statement of the number of exemptions an individual claimed on a Form W-4 if the individual properly completed the Form W-4 by taking into account only allowable amounts for items which are allowable and by computing the number of exemptions in accordance with the instructions on the Form W-4. This penalty is in addition to any criminal penalty provided by law. This penalty may be assessed at any time after the statement is made, until the expiration of the applicable statute of limitations.

(b) *Deficiency procedures not to apply.* The civil penalty imposed by section 6682 may be assessed and collected without regard to the deficiency procedures provided by subchapter B of chapter 63 of the Code.

PART 31—EMPLOYMENT TAXES; APPLICABLE ON OR AFTER JANUARY 1, 1955

§ 31.6682-1 [Removed]

2. Section 31.6682-1 (relating to false information with respect to withholding allowances based on itemized deductions) is removed.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 7805

of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 23, 1982.

David G. Glickman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 82-23960 Filed 8-31-82; 6:45 am]

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Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-113; Ref: Notice No. 385]

Finger Lakes Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in the State of New York, to be named "Finger Lakes." This final rule was initiated as a result of a petition filed by the Finger Lakes Wine Growers Association. The final rule resulted from two notices of proposed rulemaking, Notice Nos. 356 and 385, published in the Federal Register on November 6, 1980 (45 FR 73694) and October 7, 1981 (46 FR 49597), and a public hearing held in Geneva, New York, on February 11, 1981. The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Finger Lakes as a viticultural area and its subsequent use as an appellation of origin in wine labeling and advertising will allow local wineries to better designate their specific grape-growing area and will enable consumers to better identify the wine they purchase.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Norman P. Blake, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin in wine labeling and advertising.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692), which added a new Part 9 to 27

CFR for the listing of approved viticultural areas. Section 9.11, Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features.

Section 4.25a(e)(2), Title 27 CFR, outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

ATF was petitioned by the Finger Lakes Wine Growers Association to establish a viticultural area in the State of New York, to be named "Finger Lakes." In response to this petition, ATF published a Notice of Proposed Rulemaking, No. 356, on November 6, 1980 (45 FR 73694), and a Notice of Hearing, No. 361, on December 15, 1980 (45 FR 82472) in the *Federal Register*.

The proposed Finger Lakes viticultural area included approximately 8,400 square miles which encompassed 14 adjoining counties in their entirety: Monroe, Wayne, Livingston, Ontario, Yates, Seneca, Cayuga, Onondaga, Steuben, Schuyler, Chemung, Tompkins, Tioga, and Cortland. The petitioner furnished information which documented the proposed area as the second largest grape-growing area in New York State, with over 14,000 acres of labrusca, French hybrid and vinifera grapes. The proposed 14-county area is the same area which was officially designated by the State of New York in 1967 as the "Finger Lakes Region."

In response to Notice No. 356, ATF received 16 comments, all but one of which supported the petition. During the public hearing held on February 11, 1981, in Geneva, New York, 10 witnesses presented testimony supporting the boundaries of the area as proposed. The witnesses based their testimony on (1) the historical significance of the name "Finger Lakes" as relating to the proposed 14 adjoining county area, (2) the general 140-150 day growing season around the Finger Lakes area, and (3) the possible consumer confusion that would occur if the boundaries were amended to other than those proposed.

ATF sought information from the witnesses as to (1) the 60-day difference in growing seasons within the proposed area, (2) the geographical and climatic features which primarily influence grape growing within the proposed area, (3) where, within the proposed area grape growing is commercially viable, and (4) why the entire 14-county area was proposed when over 95 percent of the grapes are grown in only six of the counties.

In response to the questions, witnesses testified as follows: (1) The

143-day growing season generally defines the boundaries of commercial viability for grape growing. (2) The geographical features which influence grape growing are a combination of the moderating effect on the climate of the 11 Finger Lakes and the topography of the land near the lakes, which results in increased "air drainage" the farther one moves from Lake Ontario. (3) The older grape vineyards are generally in the immediate vicinity of the older and more established wineries for reasons of economy of transportation, while the newer vineyards and wineries are expanding away from the traditional grape-growing areas; the expansion of new wineries and vineyards was caused in part by the enactment of the Farm Winery Bill of 1976. (4) The entire 14-county area was proposed because of its historical and commercial significance as the established "Finger Lakes Region," which is one of the vacation regions established by the State of New York.

After evaluating the comments submitted and testimony presented, ATF concluded that the proposed boundaries did not clearly depict a distinct grape-growing area which contained geographic and climatic characteristics that would distinguish it viticulturally from surrounding areas. Therefore, ATF proposed amended boundaries in a notice of proposed rulemaking, Notice No. 385, published October 7, 1981, in the *Federal Register* (46 FR 49597). The proposed amended boundaries (1) encompass an area with a relatively uniform growing-season length and (2) include, and are proximate to, the 11 Finger Lakes. The amended boundaries reduced the petitioned area from 8,400 to less than 4,000 square miles.

Public Comment

In response to Notice No. 385, the only comment submitted was one from Stafford H. Krause, on behalf of the Finger Lakes Wine Growers Association. Mr. Krause also filed an amendment to that comment. The comment supported the boundaries proposed by ATF as being viticulturally distinct by reason of geographic and climatic conditions. However, the initial comment disagreed with ATF's boundaries on the basis that they were too limited and (1) had omitted certain vineyards to the north, near Lake Ontario, and (2) had not taken into account the climatic influence of Lake Ontario. The petitioner stated that the historic "Finger Lakes Region" boundaries are well known by the public, and a weighing of viticultural exactness against possible public

confusion should be considered. The amendment to the comment stated that while the Finger Lakes Wine Growers Association preferred the originally proposed boundaries, it did not oppose the amended boundaries.

Boundaries

In response to ATF's proposal to amend the petitioned boundaries, the commenter stated that the boundaries were too limited and may create consumer confusion because they differ from the historic and well known "Finger Lakes Region" boundaries.

In addition to the "Finger Lakes Region" for tourism purposes, the State of New York has established a Finger Lakes area with different boundaries for purposes of statistical reporting of grape production and usage. The New York State Department of Agriculture and Markets defines the "Finger Lakes Grape Region" as the area encompassing the five adjoining counties of Ontario, Yates, Seneca, Schuyler and Steuben. These counties are located in the south and central portion of the petitioned area. The other nine counties which were in the petitioned area are referred to as a portion of the "other western counties."

The petitioner's comment regarding the omission of certain vineyards to the north refers to a limited number of vineyards near Lake Ontario which grow and supply Niagara grapes to some of the wineries within the boundaries of the amended area. The area in which these vineyards are located has a growing season which is 20-30 days longer than the amended area. Due to its proximity to Lake Ontario, this area is influenced by geographic and climatic conditions of Lake Ontario, one of the Great Lakes, rather than the Finger Lakes.

Notwithstanding the significance of the northern vineyards near Lake Ontario or the Finger Lakes regional designations, as established by the State of New York for tourism and grape statistical reporting purposes, ATF has determined that the amended boundaries, as proposed in Notice No. 385 (46 FR 49597), outline a grape-growing area which is distinct from surrounding areas for purposes of wine labeling. A viticultural area must meet the requirement that it possess geographical features which distinguish it viticulturally from surrounding areas, as opposed to any other criteria utilized by the State of New York in determining the two different Finger Lakes regional designations. Therefore, the amended boundaries are adopted.

The exact boundaries of the Finger Lakes viticultural area and the appropriate U.S.G.S. maps used to determine the boundaries are listed in the final regulations of this document.

Evidence Relating to the Name "Finger Lakes"

The petitioner submitted evidence which documented the name "Finger Lakes" as referring to an area in west central New York State which contains, and derives its name from, 11 finger-shaped lakes. This area is recognized in many wine publications as having the most important vineyards for wine production in the eastern United States. The name is referred to in all major wine publications and books which describe and report on wineries and vineyards located in the eastern United States.

ATF believes that sufficient evidence has been submitted which establishes the historical and current use of the name "Finger Lakes" as applying to a grape-growing area which is locally and nationally recognized as representing the area surrounding the 11 Finger Lakes.

Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), a viticultural area should possess geographical features which distinguish it viticulturally from surrounding areas. Information was submitted with the petition and testimony was presented at the public hearing distinguishing the Finger Lakes area, as amended, from surrounding areas due to climatic conditions and geographical features associated with its proximity to the 11 finger-shaped lakes.

The petition contained information which listed the area around the 11 lakes as having an average 143-day growing season. In addition, the testimony at the public hearing indicated that the 143-day growing season represented the boundary for commercially viable grape growing. Immediately to the northeast of the amended boundaries, the growing season rapidly expands to 170-180 days, while just to the southwest the growing season diminishes to 110-120 days.

The petition, and testimony presented at the public hearing, pointed out the temperature moderating effect of the 11 lakes as being one of the most influential factors for grape growing in the area. The "lake effect" creates less severe temperature extremes in winter and summer. The testimony also addressed the topography of the land near the Finger Lakes and the resultant increased "air drainage" surrounding

the lakes the greater the distance from Lake Ontario.

ATF has concluded that three of the factors relied upon by the petitioner, specifically the length of the growing season, the moderating effect of the Finger Lakes on the climate, and the "air drainage" effect of the Finger Lakes topography, do not support the boundaries originally proposed. Rather, the evidence indicates that while these factors are significant, they distinguish a smaller area (within the area originally proposed) from the surrounding area. The proper boundaries for defining the viticultural area are closer to the Finger Lakes than those originally proposed.

Therefore, ATF has adopted the amended boundaries (1) which encompass an area with a relatively uniform growing season length and (2) which include, and are approximate to, the 11 Finger Lakes.

Regulatory Flexibility Act

The second notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that if promulgated as a final rule, it will not have a significant economic impact on a substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 604) for a final regulatory flexibility analysis shall not apply to this final rule.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 issued February 17, 1981, because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Miscellaneous

ATF is approving the Finger Lakes area as being viticulturally distinct from surrounding areas. By approving the area, ATF is allowing wine producers to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only be substantiated by consumer acceptance of Finger Lakes wines.

Drafting Information

The principal author of this document is Norman P. Blake, Specialist, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1 The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.34 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.34 Finger Lakes.

Par. 2. Subpart C is amended by adding § 9.34 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.34 Finger Lakes.

(a) *Name.* The name of the viticultural area described in this section is "Finger Lakes."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Finger Lakes viticultural area are four U.S.G.S. maps scaled 1:250,000. They are entitled:

- (1) "ROCHESTER", Location Diagram NK 18-1, 1961;
- (2) "UTICA", Location Diagram NK 18-2, 1962;
- (3) "ELMIRA", Location Diagram NK 18-4, 1968; and
- (4) "BUFFALO", Location Diagram NK 17-6 (30-L), 1962.

(c) *Boundaries.* The boundaries of the Finger Lakes viticultural area, based on landmarks and points of reference found on the approved maps, are as follows: Starting at the most northwest point, the intersection of the Erie Canal and the north/south Conrail line south of the City of Rochester, east along the course of the Erie Canal approximately 56 miles (45 miles due east) to the intersection of New York State Highway 89 (NY-89); south on NY-89 four miles to the intersection of highway US-20; east on US-20 for 36 miles to the intersection of Interstate 81 (I-81); south along I-81 for

ten miles to NY-281; continuing south on NY-281 for 20 miles around the western city limits of Cortland where NY-281 becomes NY-13; continuing southwest on NY-13 (through the cities of Dryden and Ithaca) approximately 36 miles to the intersection of NY-224; from this point continue due west one mile to the southern boundary of Schuyler County, continuing west along this county line 20 miles to the community of Meads Creek; north along the Schuyler-Steuben county line four miles to the major east/west power line; west along the power line for eight miles to the intersection of NY-17 (four miles southeast of the community of Bath); northwest on NY-17 approximately nine miles to the intersection of I-390; northwest along I-390 for 21 miles to the intersection of NY-36; north two miles through the community of Dansville to NY-63; northwest on NY-63 approximately 18 miles to the intersection of NY-39, just south of Genesco; north on NY-39 nine miles to the intersection where the west and north/south Conrail lines meet at the community of Avon; north along the north/south Conrail line for 15 miles to the beginning point at the intersection of the Erie Canal.

Signed: July 22, 1982.

Stephen E. Higgins,
Acting Director.

Approved: August 20, 1982.

David Q. Bates,
Deputy Assistant Secretary (Operations).

[FR Doc. 82-23958 Filed 8-31-82; 8:45 am]
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27 CFR Part 9

[T.D. ATF-112; Ref: Notice No. 392]

Livermore Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a Viticultural area in Alameda County, California, to be known as "Livermore Valley." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Livermore Valley as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries in the area to better designate where their wines come from and will enable consumers to better identify the wines from this area.

EFFECTIVE DATE: October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Robert L. White, Research and Regulations Branch, Bureau of Alcohol,

Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Fifteen Livermore Valley vintners and growers petitioned ATF to establish a viticultural area in Alameda County, California, to be named "Livermore Valley."

In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 392, in the Federal Register on October 30, 1981 (46 FR 53688), proposing the establishment of the Livermore Valley viticultural area.

Comments

One comment was received during the comment period. The comment was from one of the wineries located in the Livermore Valley area. The commenter stated that he fully supported the Livermore Valley viticultural area petition. ATF has received no information from any source indicating opposition to the petition.

Evidence of the Name

The name of the area, Livermore Valley, was well documented by the petitioner. After evaluating the petition and the comment received, ATF believes that the Livermore Valley viticultural area has a unique historical identity and that the name "Livermore Valley" is the most appropriate name for the area.

Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), a viticultural area should possess geographical features which distinguish the viticultural features of the area from surrounding areas.

The petition shows that Livermore Valley is one of the coastal intermountain valleys that surround the San Francisco Bay depression. The valley floor is approximately 15 miles long and 10 miles wide. Starting in the east, the watershed area of Livermore Valley is bounded by the Altamont Hills and Crane Ridge, to the south by Cedar Mountain Ridge and Rocky Ridge, in the west by the Pleasanton Ridge, and in the north by the Black Hills. The valley's geographic location is generally the area covered by the political boundaries of Murray and Pleasanton townships.

Livermore Valley has a moderate coastal climate which is conducive to the growing of grapes, especially the sauterne type grapes and several premium red varieties. The moderate climate is a result of its proximity to the San Francisco Bay and the Pacific Ocean. The cool marine winds and the morning fog are important factors in temperature control during the growing season and in keeping the area relatively frost free during the early spring. The wine grapes grown in Livermore Valley thrive on the cool nights and warmer days. The greatest part of the vineyard acreage is in region III as classified by the University of California at Davis system of heat summation by degree-days. A small portion of the area within Livermore Valley is classified as region II.

The main soil type is the Yolo-Pleasanton associations with the Livermore gravelly and very gravelly series being prominent in the southern portion of the valley.

The elevation where the vineyards are cultivated starts at 650-800 feet above sea level and slopes toward the valley floor to about 450 feet above sea level.

The main streams in the valley are the Arroyo Mocho, Arroyo Del Valle, and the Arroyo Las Positas which are formed by the watershed run-off of the previously named ridges. The drainage pattern is well developed with the streams flowing in a westerly direction. These streams converge about one mile west of the town of Pleasanton and form the Arroyo de la Laguna. This stream in turn joins Alameda Creek and empties into San Francisco Bay.

The average rainfall is 14.45 inches. The rain falls mainly during the winter and early spring. There is little or no precipitation during the summer months.

With the large increase in population in the Livermore Valley over the past twenty years, the water table has been lowered to a point where the vines no longer are able to depend on a constant water supply from that source. Since the completion of the Del Valle Dam and the