



Bottling Taxpaid Wine in Growlers or Similar Containers for Consumption Off of the Premises

The filling of wine growlers or similar containers with taxpaid wine for consumption off of the premises is considered bottling or packing under the Internal Revenue Code of 1986, as amended (IRC), and any person who engages in this activity must first qualify as a taxpaid wine bottling house and also must comply with all requirements applicable to taxpaid wine bottling houses, including labeling and recordkeeping requirements under the IRC and the regulations in 27 CFR part 24.

TTB RULING 2014-3

BACKGROUND

A. Recent Interest in Wine Growlers

Recently, TTB has received inquiries from proprietors of wine premises and retailers about the sale of taxpaid wine in refillable containers known as "growlers." For example, TTB has received an inquiry about a State law that allows certain retailers to sell wine at retail in securely covered, refillable containers provided by the consumer for transporting the wine for consumption off of the licensed premises. In that State, empty growlers, which cannot have capacities of more than two gallons each, must be supplied by the consumer, but they may be purchased empty from the retailer and then filled onsite.

TTB has been asked whether the filling of growlers with taxpaid wine is permitted under Federal law. For purposes of this ruling, the term "growler" is used to describe any container that is designed to be securely covered and is intended to be filled (or refilled) with wine for purposes of off-premises consumption, as well as any similar container designed to facilitate the secure transportation of the wine for later consumption off of the premises.

It is TTB's position that the filling of growlers with taxpaid wine for the purpose of consumption off of the premises is an activity that may be conducted lawfully only by a qualified taxpaid wine bottling house. The Internal Revenue Code of 1986, as amended (IRC), regulates the bottling, rebottling, packing, and repacking of taxpaid wine by any person. Retailers and proprietors of wine premises are required by law to qualify as a taxpaid wine bottling house prior to conducting such operations.

B. Bottling of Taxpaid Wine under the Internal Revenue Code.

Section 5352 of the IRC ([26 U.S.C. 5352](#)) provides that any person who bottles, packages, or repackages taxpaid wine must first apply for and receive permission from TTB to operate as a “taxpaid wine bottling house.” Under § 24.10 of the TTB regulations ([27 CFR 24.10](#)), a bottler is a proprietor who fills wine into a bottle, which is defined in the same section as a container of four liters or less in capacity, regardless of the material from which it is made, used to store or remove wine. A packer is defined by § 24.10 as a proprietor who fills wine into a container larger than four liters. For purposes of the regulations and this ruling, the term “bottling” includes rebottling, and the term “packing” includes repacking, packaging and repackaging. (See, e.g., [27 CFR 24.102](#).)

Section 5352 of the IRC was enacted by Public Law 83–591 on August 16, 1954. The legislative history of this amendment explains that:

Under existing law [i.e., before this provision was enacted] the Government cannot supervise the bottling of taxpaid wines or require that such bottlers maintain records revealing the nature and extent of their operations. The lack of such control has led to administrative difficulties as well as frauds on the revenue and the consumer. This section will enable the Government to have consistent requirements regarding the bottling of wines regardless of whether the wines are bottled on bonded premises or after taxpayment. (S. Rep. No. 1622, 83rd Cong., 2d Sess. 527 (1954).)

Shortly after enactment of the law, our predecessor agency published a ruling explaining that liquor dealers, in their capacity as such, may not bottle or rebottle wine, but must instead qualify as taxpaid wine bottling houses, even if their bottling operations were infrequent and involved small quantities of wine. See Rev. Rul. 56–8, 1956–1 C.B. 749, incorporated into TD ATF–299, 55 FR 24974 (June 19, 1990).

The only situation in which a retailer may place taxpaid wine into other containers without qualifying as a taxpaid wine bottling house is when this activity occurs for purposes of consumption *on the premises of the retailer*. In these cases, the containers are not provided for the purpose of facilitating secure transportation of the wine off of the retail premises. Thus, the TTB regulations provide that the decanting of wine by caterers or other retail dealers for table or room service, banquets, or similar purposes is not considered bottling “if the decanters are not furnished for the purpose of carrying wine away from the area where served.” ([27 CFR 31.232](#).) This exception clearly would not apply to the filling of wine growlers for later consumption off of the premises. Similarly, in [ATF Ruling 73–21](#), 1973 ATF C.B. 77, our predecessor agency provided that retail dealers could fill taxpaid wine into containers other than decanters (such as wine casks or barrels, stainless steel tanks, dispensing devices, or coolers) for purposes of dispensing wine to consumers under certain limited circumstances. Among

other conditions, the wine had to be consumed on the premises where served. Again, this ruling would not apply to the filling of wine growlers for consumption off of the premises.

Accordingly, under the provisions of the IRC, retailers and proprietors of wine premises who wish to fill growlers with taxpaid wine for consumption off of the premises must first qualify as a taxpaid wine bottling house, regardless of whether the containers are provided by the consumer or the retailer or proprietor and regardless of whether the containers are filled before or after the sale occurs.

C. Requirements Applicable to Taxpaid Wine Bottling Houses

Only certain activities may be conducted on taxpaid wine bottling house premises. Section 5363 of the IRC (26 U.S.C. 5363) and § 24.102 of the TTB regulations ([27 CFR 24.102](#)) provide that a taxpaid wine bottling house, in addition to bottling, packing and removing taxpaid wine, may receive and store taxpaid wine, mix it with wine of the same kind, tax class and country of origin to facilitate handling, and recondition it. The blending of wines of different kinds, tax classes, or countries of origin prior to bottling or packing is not authorized on taxpaid wine bottling house premises, nor is the addition of other alcohol beverages or non-alcoholic beverages to the taxpaid wine prior to bottling or packing.

Proprietors of taxpaid wine bottling houses must also comply with various regulatory requirements, including, but not limited to, the following:

- Proprietors must maintain records in accordance with [27 CFR part 24, subpart O](#). In particular, [27 CFR 24.311](#) requires proprietors to keep records of taxpaid wine received, bottled or packed, and removed.
- Proprietors are responsible for measuring the contents of the container and ensuring an accurate fill level and alcohol content as required in [27 CFR 24.255](#).
- Pursuant to [27 CFR 24.257](#), proprietors must label each bottle or other container with certain information: the name and address of the premises where bottled or packed; the brand name (if different from the name of the premises); the alcohol content; the kind of wine and the net contents of the container. Proprietors are responsible for ensuring that the label accurately describes the wine being placed in the container, and for removing or completely covering any preexisting labels on containers that do not accurately describe the wine being placed in the container.

D. Reason for Different Treatment of Beer and Wine Growlers

The IRC requirements for wine growlers are not the same as the IRC requirements for beer growlers. As reflected in this ruling, the IRC has very specific requirements regarding the bottling of taxpaid wine. Section 5352 of the IRC requires *any person*

who bottles, packages, or repackages taxpaid wine to first apply for and receive permission to operate as a taxpaid wine bottling house. There is no analogous provision with respect to beer. As previously noted, section 5352 was enacted for the purpose of ensuring Federal regulation of the activity of bottling taxpaid wine in order to protect the revenue. The IRC has different rules with respect to the bottling of beer, wine, and distilled spirits, and the bottling of distilled spirits is subject to even more restrictive requirements under the IRC.

E. TTB's Policy on Wine Growlers Under the Federal Alcohol Administration Act and the Alcoholic Beverage Labeling Act

A growler that is filled in advance of sale is treated like any other bottle or container for purposes of compliance with all applicable requirements under the Federal Alcohol Administration Act (FAA Act), including the requirement that containers of wine be covered by a certificate of label approval or a certificate of exemption from label approval before the bottling of the wine and its subsequent removal from the taxpaid wine bottling house. See [27 U.S.C. 205\(e\)](#) and [27 CFR 24.258](#). Such containers are also subject to the labeling requirements of the Alcoholic Beverage Labeling Act of 1988 (ABLA), which requires the placement of a health warning statement on each container of alcoholic beverages manufactured, imported, or bottled for sale or distribution in the United States. See [27 U.S.C. 215](#) and [27 CFR 16.20](#).

However, if the taxpaid wine is first sold to the consumer and then placed into the growler in the presence of the consumer, the growler is not treated as a "bottle" under the FAA Act or a "container" under the ABLA, and thus it is not subject to the labeling requirements of those statutes. Under the FAA Act, a "bottle" is defined to include "any container, irrespective of the material from which made, for use for the sale of distilled spirits, wine, or malt beverages at retail." [27 U.S.C. 211 \(a\)\(8\)](#). Under the ABLA, the term "container" means "the innermost sealed container irrespective of the material from which made, in which an alcoholic beverage is placed by the bottler and in which such beverage is offered for sale to members of the general public." [27 U.S.C. 214\(5\)](#). Accordingly, it is TTB's position that when the taxpaid wine is sold to the consumer prior to being placed in the growler in the presence of the consumer, the growler is not a "bottle" under the FAA Act, because it was not used for the sale of wine at retail. Instead, the wine was sold to the consumer prior to being placed in the growler. Similarly, under those circumstances, the growler is not a "container" under the ABLA, because the wine was not being offered for sale in the growler. As mentioned earlier, this rationale does not apply to containers that are filled in advance of sale, which would be treated as containers and bottles subject to all applicable requirements of the FAA Act, the ABLA and the IRC.

Nonetheless, TTB strongly encourages the labeling of growlers in compliance with the FAA Act labeling regulations and with a health warning statement under the ABLA, in order to ensure that consumers are adequately informed about the product. As noted above, even wine growlers that are filled after the sale of the wine are still subject to all requirements under the IRC and 27 CFR part 24, including the labeling requirements.

Industry members should also note that individual State and local laws and regulations may also apply to the operations described in this guidance. Before filling “growlers” for consumption off of the premises, taxpaid wine bottling house proprietors should consult State and local authorities to ensure compliance with State and local requirements.

TTB DETERMINATION:

Held, the filling of growlers or similar containers with taxpaid wine for the purpose of consumption off of the premises is considered bottling or packing under the IRC and is an activity that may be conducted lawfully only by a qualified taxpaid wine bottling house. Such activity is subject to all of the provisions applicable to taxpaid wine bottling houses under the IRC and 27 CFR part 24, including the labeling and recordkeeping requirements in those regulations. These requirements apply regardless of whether the containers are provided by the consumer or the retailer/proprietor and regardless of whether the containers are filled before or after the sale occurs.

Held further, the labeling requirements of the FAA Act and ABLA do not apply to growlers or similar containers, provided that the taxpaid wine is sold to the consumer prior to being placed in the growler in the presence of the consumer. Consumers may furnish their own growler or may purchase it from the proprietor. However, any such containers that are filled in advance of the sale of the wine are subject to all applicable requirements of the FAA Act and ABLA, in addition to the requirements of the IRC.

Date signed: March 11, 2014

/s/

John J. Manfreda,

John J. Manfreda
Administrator

Alcohol and Tobacco Tax and Trade Bureau