

§ 17.73

§ 17.73 Failure to register.

Except in the case of claims covering spirits used during the suspension period described in §17.21(b) when the special tax rate is zero, a person eligible for succession to the privileges of a taxpayer, in accordance with §§17.71 and 17.72, who fails to register the succession with TTB, as required by §17.71, shall pay a new special tax if a claim for drawback is filed on distilled spirits used by the successor during the tax year for which the original special tax was paid.

[T.D. ATF-379, 61 FR 31412, June 20, 1996, as amended by T.D. TTB-36, 70 FR 62242, Oct. 31, 2005]

§ 17.74 Certificates in lieu of lost stamps.

The provisions of §§17.71-73 apply to certificates issued in lieu of lost or destroyed special tax stamps.

§ 17.75 Formation of partnership or corporation.

If one or more persons who have filed a special tax return and paid any tax due form a partnership or corporation, as a separate legal entity, to take over the business of manufacturing nonbeverage products, the new firm or corporation shall file a new special tax return and pay a new special tax in order to be eligible to receive drawback. In the case of claims covering spirits used during the suspension period described in §17.21(b), the rate of special tax is zero.

[T.D. TTB-36, 70 FR 62242, Oct. 31, 2005]

§ 17.76 Addition or withdrawal of partners.

(a) *General partners.* When a business formed as a partnership, subject to the filing of a special tax return, admits one or more new general partners, the new partnership shall file a new special tax return and pay a new special tax in order to be eligible to receive drawback (in the case of claims covering spirits used during the suspension period described in §17.21(b), the rate of special tax is zero). Withdrawal of general partners is covered by §17.72(d).

(b) *Limited partners.* Changes in the membership of a limited partnership requiring amendment of the certificate

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but not dissolution of the partnership are not changes that incur liability to additional special tax or that require the filing of a new special tax return.

[T.D. TTB-36, 70 FR 62242, Oct. 31, 2005]

§ 17.77 Reincorporation.

When a new corporation is formed to take over and conduct the business of one or more corporations that have filed a special tax return and paid any tax due, the new corporation must file a new special tax return, pay special tax, and obtain a special tax stamp in its own name. However, in the case of spirits used during the suspension period described in §17.21(b) when no tax is due and no stamp is issued, only the filing of a new special tax return is required.

[T.D. TTB-36, 70 FR 62242, Oct. 31, 2005]

CHANGE IN NAME OR STYLE

§ 17.81 General.

A person who filed a special tax return and paid any tax due is not required to file a new special tax return or pay a new special tax by reason of a mere change in the trade name or style under which the business is conducted, nor by reason of a change in management which involves no change in the proprietorship of the business.

[T.D. ATF-379, 61 FR 31412, June 20, 1996, as amended by T.D. TTB-36, 70 FR 62242, Oct. 31, 2005]

§ 17.82 Change in capital stock.

A new special tax return and tax payment are not required by reason of a change of name or increase in the capital stock of a corporation, if the laws of the State of incorporation provide for such changes without creating a new corporation.

[T.D. ATF-379, 61 FR 31412, June 20, 1996, as amended by T.D. TTB-36, 70 FR 62242, Oct. 31, 2005]

§ 17.83 Sale of stock.

A new special tax return and tax payment are not required by reason of the sale or transfer of all or a controlling

interest in the capital stock of a corporation.

[T.D. ATF-379, 61 FR 31412, June 20, 1996, as amended by T.D. TTB-36, 70 FR 62242, Oct. 31, 2005]

REFUND OF SPECIAL TAX

§ 17.91 Absence of liability, refund of special tax.

The special tax paid may be refunded if it is established that the taxpayer did not file a claim for drawback for the period covered by the special tax stamp. If a claim for drawback is filed, the special tax may be refunded if no drawback is paid or allowed for the period covered by the stamp.

§ 17.92 Filing of refund claim.

Claim for refund of special tax must be filed on TTB Form 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes. The claim must set forth in detail sufficient reasons and supporting facts of the exact basis of the claim. The special tax stamp shall be attached to the claim.

(68A Stat. 791 (26 U.S.C. 6402))

[T.D. ATF-379, 61 FR 31412, June 20, 1996, as amended by T.D. ATF-436, 66 FR 5471, Jan. 19, 2001]

§ 17.93 Time limit for filing refund claim.

A claim for refund of special tax shall not be allowed unless filed within three years after the payment of the tax.

(68A Stat. 808 (26 U.S.C. 6511))

Subpart E—Bonds and Consents of Sureties

§ 17.101 General.

A bond shall be filed by each person claiming drawback on a monthly basis. Persons who claim drawback on a quarterly basis are not required to file bonds. Bonds shall be prepared and executed on TTB Form 5154.3, Bond for Drawback Under 26 U.S.C. 5131, in accordance with the provisions of this part and the instructions printed on the form. The bond requirement of this part shall be satisfied either by bonds obtained from authorized surety companies or by deposit of collateral security. Appropriate TTB officers are au-

thorized to approve all bonds and consents of surety required by this part.

§ 17.102 Amount of bond.

The bond shall be a continuing one, in an amount sufficient to cover the total drawback to be claimed on spirits used during any quarter. However, the amount of any bond shall not exceed \$200,000 nor be less than \$1,000.

§ 17.103 Bonds obtained from surety companies.

(a) The bond may be obtained from any surety company authorized by the Secretary of the Treasury to be a surety on Federal bonds. Surety companies so authorized are listed in the current revision of Department of the Treasury Circular 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies), and subject to such amendatory circulars as may be issued from time to time. Bonds obtained from surety companies are also governed by the provisions of 31 U.S.C. 9304, and 31 CFR part 223.

(b) A bond executed by two or more surety companies shall be the joint and several liability of the principal and the sureties; however, each surety company may limit its liability, in terms upon the face of the bond, to a definite, specified amount. This amount shall not exceed the limitations prescribed for each surety company by the Secretary, as stated in Department of the Treasury Circular 570. If the sureties limit their liability in this way, the total of the limited liabilities shall equal the required amount of the bond.

(c) Department of the Treasury Circular No. 570 is published in the FEDERAL REGISTER annually on the first workday in July. As they occur, interim revisions of the circular are published in the FEDERAL REGISTER. Copies of the circular may be obtained from: Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20227.

(Sec. 1, Pub. L. 97-258, 96 Stat. 1047 (31 U.S.C. 9304))

§ 17.104 Deposit of collateral.

Except as otherwise provided by law or regulations, bonds or notes of the