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The return with remittance is forwarded pursuant to the instructions printed on the return. For the purpose of complying with this section, the term "forwarding" means deposit in the United States mail properly addressed to TTB.

(b) *Electronic fund transfer.* When the proprietor is required by § 24.272 to deliver payment of tax by electronic fund transfer, the proprietor shall prepay the tax before any wine can be removed for consumption or sale by:

(1) Completing the Excise Tax Return and by mailing it, as instructed on the form, to TTB and

(2) Directing the proprietor's financial institution to effect an electronic fund transfer. (August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391, as amended (26 U.S.C. 6301, 6311, 6302))

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[T.D. ATF-299, 55 FR 24989, June 19, 1990, as amended by T.D. ATF-338, 58 FR 19064, Apr. 12, 1993]

§ 24.276 Prepayment of tax; proprietor in default.

When the proprietor fails to forward a payment for wine excise tax due by presentment of a check or money order, or when the proprietor is otherwise in default of payment of the tax, no wine may be removed for consumption or sale until the tax has been paid for the period of the default and until the appropriate TTB officer finds the revenue will not be jeopardized by the late payment of the tax. Any remittance made during the period of the default will be in cash, or will be in the form of a certified, cashier's, or treasurer's check drawn on any financial institution incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or in the form of a money order, as provided in 27 CFR 70.61 (payment by check or money order) or in the form of an electronic fund transfer. (August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as

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amended, 391 as amended (26 U.S.C. 6301, 6311, 6302))

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§ 24.277 Date of mailing or delivering of returns.

(a) When the proprietor sends the Excise Tax Return, TTB F 5000.24, with or without remittance, by United States mail, the official postmark of the United States Postal Service stamped on the cover of the envelope in which the return was mailed is considered the date of delivery of the tax return and, if accompanied, the date of delivery of the remittance. When the postmark on the cover is illegible, it is the proprietor's responsibility to prove when the postmark was made.

(b) When the proprietor sends the tax return by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, is treated at the date of delivery of the tax return and, if accompanied, the date of delivery of the remittance. (August 16, 1954, ch. 736, 68A Stat. 775, as amended, 777, as amended, 391, as amended (26 U.S.C. 6301, 6311, 6302))

(Approved by the Office of Management and Budget under control numbers 1512-0467 and 1512-0492)

§ 24.278 Tax credit for certain small domestic producers.

(a) *General.* A person who produces not more than 250,000 gallons of wine during the calendar year may take a credit against any tax imposed by Title 26 of the United States Code (other than Chapters 2, 21, and 22), in an amount computed in accordance with paragraph (d) of this section, on the first 100,000 gallons of wine (other than champagne and other sparkling wine) removed during that year for consumption or sale. This credit applies only to wine that has been produced at a qualified bonded wine premises in the United States. The small domestic wine producer tax credit is available

only to eligible proprietors engaged in the business of producing wine. A proprietor who has a basic permit to produce wine but does not produce wine during a calendar year may not take the small producer wine tax credit on wine removed during that calendar year. A proprietor who has obtained a new wine producer basic permit may not take the small producer wine tax credit on wine removed until the proprietor has produced wine. "Production" of wine includes those activities described in paragraph (e)(1) of this section.

(b) *Special rules relating to eligibility for wine credit*—(1) *Controlled groups.* For purposes of this section and § 24.279, the term "person" includes a controlled group of corporations, as defined in 26 U.S.C. 1563(a), except that the phrase "more than 50 percent" must be substituted for the phrase "at least 80 percent" wherever it appears. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups that include partnerships and/or sole proprietorships. Production and removals of all members of a controlled group are treated as if they were the production and removals of a single taxpayer for the purpose of determining what credit a person may use.

(2) *Credit for transferees in bond.* A person other than the eligible small producer (hereafter in this paragraph referred to as the "transferee") may take the credit under paragraph (a) of this section that would be allowed to that producer if the wine removed by the transferee had been removed by the producer on that date, under the following conditions:

(i) Wine produced by any person would be eligible for any credit under this section if removed by that person during the calendar year;

(ii) Wine produced by that person is removed during that calendar year by the transferee to whom that wine was transferred in bond and who is liable for the tax imposed by 26 U.S.C. 5041 with respect to that wine;

(iii) That producer holds title to that wine at the time of its removal and provides to the transferee such information as is necessary to properly de-

termine the transferee's credit under this paragraph; and

(iv) At the time of taxable removal, the producer provides to the transferee, in writing (each retaining a copy with the record of taxpaid removal from bond pursuant to § 24.310), the following information:

(A) The names of the producer and transferee;

(B) The quantity and tax class of the wines to be shipped;

(C) The date of removal from bond for consumption or sale;

(D) A confirmation that the producer is eligible for credit, with the credit rate to which the wines are entitled; and

(E) A confirmation that the subject shipment is within the first 100,000 gallons of eligible wine removed by (or on behalf of) the producer for the calendar year.

(c) *Time for determining and allowing credit.* The credit referred to in paragraph (a) of this section will be determined at the same time as the tax is determined under 26 U.S.C. 5041(a), and will be allowable at the time any tax described in paragraph (a) of this section is payable. The credit allowable by this section is treated as if it constitutes a reduction in the rate of the tax.

(d) *Computation of credit.* The credit which may be taken on the first 100,000 gallons of wine (other than champagne and other sparkling wine) removed for consumption or sale by an eligible person during a calendar year is computed as follows:

(1) For persons who produce 150,000 gallons or less of wine during the calendar year, the credit is \$0.90 per gallon for wine (\$0.056 for hard cider);

(2) For persons who produce more than 150,000 gallons but not more than 250,000 gallons during the calendar year, the credit is reduced by 1 percent for every 1,000 gallons produced in excess of 150,000 gallons. For example, the credit that would be taken by a person who produced 160,500 gallons of wine and hard cider during a calendar year would be reduced by 10 percent, for a net credit against the tax of \$0.81 per gallon for wine or \$0.0504 for hard cider, as long as the wine or hard cider was among the first 100,000 gallons removed

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for consumption or sale during the calendar year.

(e) *Definitions*—(1) *Production*. For purposes of determining if a person's production of wine is within the 250,000 gallon limit, production includes, in addition to wine produced by fermentation, any increase in the volume of wine due to the winery operations of amelioration, wine spirits addition, sweetening, or production of formula wine. Production of champagne and other sparkling wines is included for purposes of determining whether total production of a winery exceeds 250,000 gallons. Production includes all wine produced at qualified bonded wine premises within the United States and wine produced outside the United States by the same person.

(2) *Removals*. For purposes of determining if a person's removals are within the 100,000 gallon limit, removals include wine that the person removed from all qualified bonded wine premises within the United States. Wine removed by a transferee in bond under paragraph (b)(2) of this section must be counted against the 100,000 gallon limit of the small producer who owns that wine, and not against the limit of the transferee in bond if the transferee is also a small producer. Champagne and other sparkling wines, which are not eligible for credit, do not count as removals against the 100,000 gallon limit.

(f) *Preparation of tax return*. A person who is eligible for the credit must show the amount of wine tax before credit on the Excise Tax Return, TTB F 5000.24, and must enter the quantity of wine subject to the credit and the applicable credit rate as the explanation for an adjusting entry in Schedule B of the return for each tax period. Where a person does not use the credit authorized by this section to directly reduce the rate of Federal excise tax on wine, that person must report on TTB F 5000.24 where the credit will be, or has been, applied. Where a transferee in bond takes credit on behalf of one or more small producers, the transferee must show in Schedule B of the return the name of each producer, each producer's credit rate, and the total credit taken on behalf of each producer during the tax return period.

(g) *Denial of deduction*. Pursuant to 26 U.S.C. 5041(c)(5), any deduction under 26 U.S.C. subtitle A with respect to any tax against which the credit is allowed under paragraph (a) of this section must only be for the amount of the tax as reduced by the credit.

(h) *Exception to credit*. The appropriate TTB officer will deny any tax credit taken under paragraph (a) of this section where it is determined that the allowance of the credit would benefit a person who would otherwise fail to qualify for the use of the credit.

(26 U.S.C. 5041(c).)

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[T.D. TTB-64, 72 FR 65454, Nov. 21, 2007]

§ 24.279 Tax adjustments related to wine credit.

(a) *Increasing adjustments*. Persons who produce more wine than the amount used in computation of the credit, or who lose eligibility by not producing during a calendar year, must make increasing tax adjustments. Where an increasing adjustment to a person's tax return is necessary as a result of an incorrect credit rate claimed pursuant to § 24.278, that person must make the adjustment on the Excise Tax Return, TTB F 5000.24, no later than the return period in which production (or the production of the controlled group of which the person is a member) exceeds the amount used in computation of the credit. If the adjustment is due to failure to produce, the person must make the adjustment no later than the last return period of the calendar year. The adjustment is the difference between the credit taken for prior return periods in that year and the appropriate credit for those return periods. The person must make tax adjustments for all bonded wine premises where excess credits were taken against tax that year, and must include interest payable. In the case of a person who continued to deduct credit after reaching the 100,000 gallon maximum during the calendar year, that person must make an adjustment in the full amount of excess credit taken and must include interest payable under 26 U.S.C. 6601 from the date on which the excess credit was taken.