

Subpart A—Alcohol

27 CFR 194.124: STAMPS FOR PASSENGER TRAINS, AIRCRAFT, AND VESSELS.

(Also 201.386, 240.670, 245.170, 252.92, 252.122, 252.142)

Conditions are set forth under which there is no liability for excise tax or for special tax as a retail dealer in liquors where liquors are served to passengers on aircraft engaged in international air service. ATF Ruling 76-12 is superseded.

ATF Rul. 80-13

The Bureau of Alcohol, Tobacco and Firearms has reexamined its position as set forth in ATF Ruling 76-12, 1976 ATF C.B. 83 regarding the liability under 26 U.S.C. Chapter 51 of an airline operator for excise (gallonage) tax or for special (occupational) tax as a retail dealer in liquors, as a result of serving liquor to passengers during those portions of international flights which are flown across the United States, including such portions of international flights where interim landings are made in the United States.

ATF Ruling 76-12 held that under 26 U.S.C. 5214 and 19 U.S.C. 1309 tax-free liquor could be used during domestic portions of international flights provided no passengers were permitted to board or depart the aircraft during interim stops. However, tax-free liquor could not be used on a domestic portion of an international flight if it involved any point-to-point

domestic passenger service. The ruling also held that special tax as a retail dealer was not incurred where the aircraft was eligible to sell tax-free liquor even if the liquor was being sold within the United States.

It has come to the Bureau's attention that under 19 U.S.C. 1309 the Customs Service has permitted the use of duty-free supplies for regularly scheduled international flights even when part of the route includes point-to-point domestic service. Consequently, the Bureau has reexamined its position with regard to tax-free liquors and special tax.

The provisions of this ruling are directed to aircraft engaged in international air service that use airspace over which the United States exercises sovereignty whether registered in the United States or in a foreign country. The liquors (including wine and beer) served to passengers within, or in flight over, United States territorial boundaries are those that have been withdrawn without payment of tax (including liquors withdrawn from bonded storage where such liquors are stored and removed in bond without payment of customs duty) or with benefit of drawback for lading on aircraft engaged in foreign trade or trade between the United States and any of its possessions. For the purpose of this ruling, all such liquor is included in the term "tax-free liquor."

Title 26 U.S.C. 5122 defines a retail dealer in liquors as a person who sells, or offers for sale, any distilled spirits,

wines, or beer to any person other than a dealer. 26 U.S.C. 5143 and 27 CFR 194.51 provide that a special tax must be paid at each place where distilled spirits, wines, or beer are sold or offered for sale. 27 CFR 194.22 provides that whether a person is engaged in a business of "selling or offering for sale" is determined by the facts in each case, but any course of selling or offering for sale, though to a restricted class of persons or without a view to profit, is within the meaning of the statute.

Section 309 of the Tariff Act of 1930, 19 U.S.C. 1309, permits distilled spirits, wines, and beer of foreign or domestic origin to be withdrawn free of duty and internal revenue tax or with benefit of drawback (tax-free liquor), for supplies of aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions. Corresponding provisions are contained in 26 U.S.C. 5214(a) (7), 5362(c) (3) and 5053(f).

Article 24(a) of the Convention on International Civil Aviation (commonly known as the Chicago Convention) 61 Stat. 1180 (1947), exempts aircraft stores "on board an aircraft of a contracting State on arrival in the territory of another contracting State and retained on board on leaving the territory of that State" from customs duty, inspection fees "or similar national or local duties and charges." Air Transport Agreements between the United States and other contracting States state essentially that food stores issued for immediate consumption aboard aircraft carrying passengers on "international air service exclusively" that are on board a foreign aircraft on arrival in the United States and retained on board on leaving the territory of the United States shall be exempt, on a basis of reciprocity, from

customs duties, inspection fees and other national duties and charges.

Item (1) of Customs Treasury Decision 66-99 (T.D. 66-99), 101 Treas. Dec. 298 (1966), interprets section 309(a) (1) (C) of the Tariff Act of 1930 to establish the types of flights on which duty-free supplies may be used. Under T.D. 66-99, aircraft on regularly scheduled flights to or from a foreign country are entitled to use duty-free jet fuel and other supplies (including liquors) for that part of the route which includes point-to-point domestic service.

Held, flights on which liquor may be used free of duty under Customs T.D. 66-99, are also eligible to use tax-free liquor *i.e.*, liquor which has been laden without payment of, or with benefit of drawback of, the excise (gallonage) tax imposed by 26 U.S.C. Chapter 51. There is, however, no corresponding exemption from special tax liability as a retail dealer for domestic aircraft selling liquor to passengers. Therefore, special tax liability is incurred by operators of aircraft registered in the United States if liquors (tax paid or tax-free) are sold or offered for sale to passengers within, or in flight over, airspace over which the United States exercises sovereignty. However, the serving of alcoholic beverages in connection with complimentary meals, or offering them free to passengers without the meal, shall not be considered engaging in or carrying on the business or occupation of selling or offering for sale alcoholic beverages if the airline's tariffs, as filed with the Civil Aeronautics Board, do not include the price of the meals or the alcoholic beverages but remain the same regardless of whether the passenger accepts them and regardless of whether they are offered such meals or whether the alcoholic beverages are

only offered to passengers at meal time.

Held Further, aircraft registered with a foreign country may, in accordance with the Chicago Convention and other Air Transport Agreements between the United States and foreign countries, sell alcoholic beverages for immediate consumption aboard aircraft exclusively on international air service without incurring special tax as a retail dealer or excise tax on the liquors.

Under the authority contained in 26 U.S.C. 7805(b), this ruling will not be applied to special tax liability incurred by the sale of tax-free liquors prior to January 1, 1981.

ATF Ruling 76-12, 1976 ATF C.B. 83 is superseded.

27 CFR 201.386: AUTHORIZED WITHDRAWALS WITHOUT PAYMENT OF TAX

Excise tax liability is not incurred by serving distilled spirits on aircraft engaged in international air service. See ATF Rul. 80-13, page 17.

27 CFR 231.82: BOTTLING AND LABELING OPERATIONS

Clarification of fill requirements for the bottling of wine and definition of the term "lot of wine bottled" as it applies to the filling of wine. See ATF Rul. 80-14, below.

27 CFR 240.578: CONTENTS OF PACKAGES AND BOTTLES (Also 27 CFR 231.82)

Clarification of fill requirements for the bottling of wine and definition of the term "lot of wine bottled" as it applies to the filling of wine.

ATF Rul. 80-14

The Bureau of Alcohol, Tobacco and Firearms issues this ruling to clar-

ify the fill requirements prescribed for domestically bottled wine in 27 CFR 240.578 and 231.82 and also to define the term "lot of wine bottled" as it applies to the filling of wine in these regulatory sections.

27 CFR 240.578, concerning wine bottled in a bonded winery or bonded wine cellar, states, in pertinent part, that:

Bottles must be filled as nearly as possible to conform to the amount shown on the label or blown in the bottle to be contained therein, but in no event may the amount of wine contained in any bottle, due to lack of uniformity of the bottle, vary more than two percent from the amount stated to be contained therein; and further in such case there shall be substantially as many bottles overfilled as there are bottles underfilled for each lot of wine bottled.

27 CFR 231.82 provides substantially the same requirements for wine bottled in a taxpaid wine bottling house.

The regulations state very clearly that bottles must be filled as nearly as possible to conform to the net contents shown on the label or blown into the bottle. The Bureau realizes that a 100 percent fill is impossible to maintain for each bottle of wine filled. However, we expect proprietors to aim for an average fill of 100 percent in each lot of wine bottled. If in the course of conducting a fill test, a proprietor discovers that the fill is below 100 percent, e.g., 99 percent, he should adjust the fill to 100 percent, not to 101 percent. Conversely, if he were to discover that the fill exceeds 100 percent, e.g., 101 percent, he should adjust the fill to 100 percent, not to 99 percent. Adherence to this procedure should result in an average fill of 100 percent and substantially as many bottles be-