



April 23, 2020

Via eMail (mary.ryan@ttb.gov)

Mary Ryan
Acting Administrator
Alcohol and Tobacco Tax and Trade Bureau
1310 G Street N.W.
Washington, DC 20005

Re: Expediting Drawback Claims in Light of the COVID-19 Pandemic

Dear Acting Administrator Ryan,

On behalf of the undersigned organizations that collectively represent multiple tiers of the beer industry, we write to ask the Alcohol and Tobacco Tax and Trade Bureau (“TTB”) to take the steps outlined below in order to accelerate the drawback of federal excise taxes paid on beer that must be destroyed due to the COVID-19 pandemic. We recognize and appreciate TTB’s tireless efforts to mitigate the impact of the pandemic on the tens of thousands of businesses we collectively represent, and believe that the modest request below will further assist small businesses survive through the current business downturn brought on by the pandemic.

Under the Internal Revenue Code, the voluntary destruction of beer on or off a brewery premises gives rise to a claim for drawback of the federal excise tax paid on the destroyed beer. *See* 25 U.S.C. § 5056(a). TTB regulations implementing this statutory right to drawback appear at 27 C.F.R. Part 25, Subpart N, and notably require that the brewer:

1. File a written notice of intent to destroy with TTB prior to any destruction taking place, 27 C.F.R. § 25.222;¹ and
2. Wait no less than twelve (12) days for TTB’s response to the notice of intent before actually destroying the beer, *id.* at §§ 25.222(b) & 25.223(a).

Neither of these requirements appear in the statutory authorization for drawback, and therefore may be varied by TTB in the appropriate circumstances. *See* 27 C.F.R. 25.52. We believe the COVID-19 pandemic presents TTB with the appropriate circumstances to waive adherence to the prior notification and waiting period requirements in order to give brewers and their wholesaler and retailer partners flexibility in removing unmerchantable beer from the market without

¹ A separate regulation does not require a notice unless required by TTB where the destroyed beer was produced by a tavern on brewery (i.e., a brewpub) and was taxpaid but never removed from the brewery premises. *See* 27 C.F.R. § 25.225.

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jeopardizing the statutory entitlement to drawback. Under the varied procedures, brewers would prepare a notice with the information required under Section 25.222(c) of the regulations, but it would submit that notice to TTB in connection with any claim for drawback. Moreover, the brewer would not be required to wait twelve days before proceeding with the destruction or instructing a third party (such as a wholesaler) to destroy the beer. Should TTB later discover that a brewer abused this variance by submitting false claims or diverting beer reported as destroyed back into the market, it would retain its full enforcement authority under both the Internal Revenue Code and the Federal Alcohol Administration Act.

While a streamlined notice process would speed the destruction of beer and provide the industry with greater flexibility, it would do little to ease the financial strain of the pandemic if not coupled with an expedited system for processing drawback claims. Under the Internal Revenue Code and TTB regulations, the voluntary destruction of taxpaid beer entitles a brewer to a refund in taxes paid or an adjustment to offset tax liabilities on the brewer's next excise tax return. *See* 26 U.S.C. § 5056(a); 27 C.F.R. § 25.224. While an adjustment ordinarily provides a speedy way for a brewer to effectively receive the drawback to which it is entitled, brewers are not paying excise tax in the current pandemic. *See TTB Industry Circular 2020-2* (March 31, 2020). Waiting for excise tax payments to resume will not assist those brewers – estimated to number in the thousands – that might not survive the extended shutdowns mandated to slow the spread of the COVID-19 virus.²

In order to provide meaningful assistance to the industry, then, we ask that TTB ensure that it deploy its resources in a way that greatly expedites the processing and payment of drawback claims.³ Given the current economic downturn, we expect that TTB has seen a substantial decrease in the filing of new brewer's notices, basic permit applications, winery registrations, and a host of other submissions. Similarly, the 90-day delay in excise tax payment announced in *Industry Circular 2020-2* likely will temporarily free up resources by eliminating thousands of tax return filings. We recognize and appreciate that TTB already has re-deployed resources to address other pressing matters arising from the COVID-19 crises. We hope, however, that TTB can find the resources necessary to expedite the payment of drawback claims to brewers and thereby reduce payment times from a matter of months to a matter of days. Prompt receipt of drawback checks could mean the difference between survival and bankruptcy for many struggling businesses.

We appreciate all that TTB already has done to assist the industry in these difficult times and applaud the speed with which TTB has acted in response to the pandemic. We hope the request above can soon become part of TTB's vigorous mitigation efforts and stand ready and willing to discuss this issue further with you at your request.

² A survey of Brewers Association members conducted in early April 2020 concluded that as many as 4,300 brewers could close if the shutdown in on-premise businesses were to last three months.

³ Claims would remain governed by the provisions of 27 C.F.R. Part 25, Subpart T. *See also* 27 C.F.R. § 70.413(c). We appreciate TTB's recommendation that taxpayers submit drawback claims electronically to help speed processing. *See* <https://www.ttb.gov/images/newsletters/archives/2020/ttb-newsletter03302020sp.html> (last visited April 16, 2020).

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Sincerely,

A handwritten signature in cursive script, appearing to read "Jim McGreevy".

Jim McGreevy, Beer Institute

A handwritten signature in cursive script, appearing to read "Bob Pease".

Bob Pease, Brewers Association

A handwritten signature in cursive script, appearing to read "Craig Purser".

Craig Purser, National Beer Wholesalers Association