



INDUSTRY CIRCULAR

**DEPARTMENT OF
THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms
Washington, D.C. 20226**

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ALLOWANCE OF CLAIMS FOR TAX AND DUTY
UNDER 26 U.S.C. 5064 (LOSSES OF ALCOHOLIC
BEVERAGES FROM CASUALTY, DISASTER,
VANDALISM OR MALICIOUS MISCHIEF)

To proprietors of distilled spirits plants, breweries,
taxpaid wine bottling houses, bonded wine cellars;
liquor dealers; and others concerned:

Purpose. The purpose of this circular is to inform
you of a forthcoming ATF ruling concerning the opera-
tion of the clause "indemnified by any valid claim of
insurance or otherwise", in connection with Government
allowance of claims filed under 26 U.S.C. 5064. The
ATF ruling will read as follows:

"The Bureau of Alcohol, Tobacco and Firearms has
been requested to explain the meaning of the clause
'indemnified by any valid claim of insurance or other-
wise' set forth in 26 U.S.C. 5064.

"Section 5064 provides that under certain
conditions, the Secretary shall pay to the owner of
distilled spirits, wines, or beer an amount of money
equal to the Internal Revenue taxes and customs duties
paid on such products if they are lost as a result of
disaster, vandalism or malicious mischief.

"One of the conditions governing such payment is
that the claimant must not have been 'indemnified by
any valid claim of insurance or otherwise' with
respect to the tax, or tax and duty, on the distilled
spirits, wines, or beer covered by the claim (26
U.S.C. 5064(b)(1)(B)(i)). The phrase 'indemnified by
any valid claim of insurance or otherwise' also appears
in 27 CFR 170.304 and 170.307, regulations promulgated
under section 5064. ATF has taken the position in
Industry Circular 79-18 that 'indemnified' in this case
means 'secured against loss.' This includes not only
the owner's insurance, but indemnification from any
source; most commonly, a common carrier.

"When a claimant is indemnified for the total amount of lost tax and duty, 26 U.S.C. 5064 does not provide for payment to cover any portion of such lost tax and duty. The owner has been 'indemnified by a valid claim of insurance or otherwise.'

"A different situation exists if the loss of tax and duty is not totally covered by an insurance policy or a shipping contract. If the amount of coverage is insufficient to cover the total amount of tax and duty lost, Section 5064 permits approval of a claim only for the difference between the total amount of tax and duty lost and the amount of tax and duty covered under an insurance policy or a shipping contract. The reason for the insufficient coverage is immaterial, as long as the coverage is insufficient in accordance with the terms of the policy or contract. The terms of the policy or contract determine the amount of coverage.

"Insurance companies or common carriers that deny payment for lost tax and duty solely on the ground that the provisions of section 5064 requires such payment are advised that the terms of an insurance policy or shipping contract establish whether the owner is indemnified.

"Similarly, the owner of damaged or lost alcoholic beverages who simply reduces insurance coverage in anticipation of reimbursement under section 5064 of an amount of money equal to the tax and duty on damaged or lost merchandise, without changing the terms of the insurance policy to exclude coverage for tax and duty, is cautioned that the terms of the insurance policy will establish whether the owner is indemnified.

"The following example illustrates the operation of the indemnity clause of section 5064 when the owner of alcoholic beverages is partially indemnified for lost tax and duty:

Assume a claimant were to suffer a loss of goods and property worth \$80,000 in a fire, with \$10,000 of the loss attributable to the tax and duty on alcoholic beverages rendered unsalable by the fire. The \$80,000 loss includes alcoholic beverages, building, fixtures, and other personal property. If tax and duty on alcoholic beverages is covered under the terms of the policy, the provisions of section 5064 contemplate allocation of one-eighth (\$10,000 is one-eighth of \$80,000) of the total

reimbursement under the policy for tax and duty and permits allowance of a claim only for the difference between the total amount of tax and duty lost and the insurance payment for tax and duty. Assuming further that the insurance company reimburses (for whatever reason, but according to the terms of the policy) a total amount of \$56,000, a claimant is indemnified for tax and duty in the amount of \$7,000 (one-eighth of \$56,000) and payment under section 5064 will be limited to \$3,000 - the difference between the total amount of tax and duty lost (\$10,000) and the pro rata amount which the claimant was paid under the terms of the policy (\$7,000). Of course, if - under the terms of the policy - the insurance company was not liable for any tax and duty on alcoholic beverages, the provisions of section 5064 would permit allowance of a claim for the full \$10,000 tax and duty.

"The same principles apply where alcoholic beverages are lost or destroyed while in transit and the common carrier agreement provides indemnification (in full or in part) for the goods being conveyed.

"Held, the indemnity provisions of section 5064 provide for the payment of claims for lost tax and duty only to the extent that the claimant was not secured against such loss by insurance or otherwise. Where a claimant is indemnified for a portion of lost tax and duty, the amount of tax and duty allowable under section 5064 must be determined on a pro rata basis, as set out above."

Inquiries. Inquiries concerning this circular should refer to its number and be addressed to the Assistant Director, Regulatory Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

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