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Temporary relief for producers claiming the wine production credit under new tax law

The U.S. Treasury Department's Alcohol and Tobacco Tax and Trade Bureau (TTB) announced that for a limited time, "producing wineries" can determine and pay the federal excise tax, on removal from bond, on such wine of their production that is stored "untaxpaid" at a bonded wine cellar as if the wine had been removed from the producing winery's bonded premises.

New tax law provisions affecting wine

The **TTB announcement** notes that certain changes in the new tax law (Pub. L. No. 115-97) enacted on December 22, 2017, related to the taxation of alcohol and were effective January 1, 2018.

The new tax law changes provide for:

- New tax credits for wine
- Suspension through the end of calendar year 2019, of the previous tax credit for wine
- Suspension of provisions that allowed for a transfer of tax credits

The new tax law did not provide for a transfer of the new tax credits that apply to wine removed in 2018 and 2019. As a result, for calendar years 2018 and 2019, any wine that is removed by a "wine premises" that did not produce the wine is not eligible for the new tax credits.

During calendar years 2018 and 2019, a winery can only apply the new tax credits to wine produced by the winery. During this time, if the wine is being held at premises that did not produce the wine, the "producing wine premises" can bring the wine back to its premises and remove the wine as "taxpaid" from its premises in order to apply the new tax credits to the wine. Otherwise, a bonded wine cellar or other wine premises that removes wine that it did not produce must pay excise tax on the wine at the applicable tax rate—without application of credits that would otherwise be available to the producing wine premises.

Alternate procedure

The TTB announcement authorizes an alternate procedure, applicable for a limited period of time, by which the wine producer may tax-determine and tax-pay the wine without physically returning the wine to its premises.

Under the alternate procedure, through June 30, 2018, wine producers will be allowed to tax-determine and tax-pay wine of their production stored untaxpaid at a bonded wine cellar without the wine producer being required to physically receive its wine back "in bond." The alternate procedure allows such wine producers to "receive" their wine "in bond" solely through documentation and reporting.

KPMG observation

After the new tax law was enacted, there was uncertainty in the industry as to whether the new statutory language changed the rules related to claiming the wine producer credit. The TTB announcement clearly states that the provisions allowing for the transfer of tax credits have been suspended for 2018 and 2019. Therefore, the credit may only be claimed by the wine producer. Although the alternate procedure announced by TTB provides temporary relief from the strict rules for wine removed under bond from the production facility, the fact remains that only the wine producer is eligible to claim the credit under the new statute. Producers need to evaluate their current practices involving transfers in bond to a bonded wine cellar or other wine premises to determine that they are following appropriate procedures to claim the credit in 2018 and 2019.

For more information, contact a tax professional with KPMG's Excise Tax Practice group:

Deborah Gordon | +1 (202) 533 5965 | dkgordon@kpmg.com

Taylor Cortright | +1 (202) 533 6188 | tcortright@kpmg.com

Direct comments, including requests for subscriptions, to Washington National Tax. For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.