



# TaxNewsFlash

## United States

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### **TTB guidance: Excise tax, transfers of beer between breweries not of same ownership**

The U.S. Treasury Department's Alcohol and Tobacco Tax and Trade Bureau (TTB) this week issued a "procedure" as guidance reflecting changes to the excise tax rules for transfers of beer between breweries "not of the same ownership."

[TTB Procedure No. 2018-1](#) is intended to implement changes made to Code section 5414 by the new tax law (Pub. L. No. 115-97, enacted December 22, 2017).

#### **Background**

The new tax law amended section 5414 to allow more situations when beer may be transferred tax-free under bond. Under the new law, brewers may transfer beer from one brewer to another when:

- The breweries are owned by the same person (prior law).
- One brewery owns a controlling interest in the other (new).
- The same person(s) have a controlling interest in both breweries (new).
- The proprietors of the transferring and receiving premises are independent of each other, and the transferor has divested itself of all interest in the transferred beer and the transferee has accepted responsibility for the payment of tax (new).

#### **TTB guidance**

TTB Procedure No. 2018-1 provides brewers with guidance regarding the transfer of beer, without payment of tax, from one brewery to another brewery not of the same ownership.

As noted in the guidance, existing TTB regulations address transfers of beer between breweries of the same ownership without payment of tax—but not the new law's rules

for transfers of beer between breweries not of the same ownership. The TTB release explains that because of the length of time required to amend the regulations and the fact that the recent statutory changes are effective for a two-year period, TTB issued this guidance to apply the same requirements currently prescribed by regulation for transfers of beer between breweries of the same ownership to transfers of beer between breweries not of the same ownership.

This TTB guidance also addresses the effect of transfers of beer between breweries not of the same ownership on the applicability of the reduced beer excise tax rates included in the new tax law.

TTB Procedure No. 2018-1 describes:

- The procedure for transferring beer between breweries including:
  - The record of beer transferred (such as transfer document information, reconsignment of beer, the return of beer, and disposition of the invoice)
  - The rules for preparation of records and reports
  - Bond coverage
  - The kinds or types of containers
  - Rules for determining the quantity transferred
- Application of the reduced rates of tax for beer transferred between brewers not of the same ownership including:
  - When reduced rates apply (transfers of domestically produced beer in bulk or packaged beer)
- Records for substantiating the tax rate and losses in transit
- Storage
- Marks, brands, and labeling requirements

## **Effective date**

The TTB guidance explains that the new law measures relate to the transfer of beer between breweries not of the same ownership with an effective date through December 31, 2019.

Brewers that transferred beer on or after January 1, 2018, but prior to the issuance of the TTB guidance (July 17, 2018), may vary from the specific requirements discussed in TTB Procedure No. 2018-1 for the beer transferred prior to the issuance of the TTB guidance, provided that they have records sufficient to substantiate, to the satisfaction of TTB, any transfers made without payment of tax and any tax rate applied to beer received from another brewery and removed for consumption or sale.

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

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