

TaxNewsFlash

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TTB guidance: Updated FAQs regarding craft beverage modernization and tax reform

The U.S. Treasury Department's Alcohol and Tobacco Tax and Trade Bureau (TTB) today announced new guidance in the form of updated "frequently asked questions" (FAQs) regarding craft beverage modernization and tax reform provisions.

The updated FAQs (full text provided at the end of this report) address:

- The circumstances when bottled distilled spirits may be transferred in bond
- The addition of water to distilled spirits transferred in bond for appropriate proof during bottling
- Changes, effective January 2022, to the type of processing activities that qualify for reduced tax rates for distilled spirits

Read more on the [TTB website](#).

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

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TR-D10: Under what circumstances are transfers of distilled spirits in bond allowed?

A proprietor of a distilled spirits plant (DSP) may transfer bulk distilled spirits, whether beverage or industrial, in bond without payment of tax to another distilled spirits plant (DSP) under 26 U.S.C. 5212. Please see [FAQ TR-D3](#) regarding requirements for such transfers.

As of January 1, 2021, under 26 U.S.C. 5212, bottled beverage distilled spirits may be transferred in bond without payment of tax only:

- between DSPs belonging to the same person or members of a controlled group, or

- if the distilled spirits are transferred in bond from the DSP who distilled or processed the spirits ("transferor") to another DSP ("transferee") for bottling or storage and returned to the transferor for removal, but only if the transferor retained title during the entire period between such distillation, or processing, and removal.

A proprietor of a DSP may transfer bottled industrial distilled spirits in bond to another DSP.

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TR-D11: When distilled spirits are transferred in bond from the person who distilled or processed such distilled spirits ("transferor") to another person ("transferee") for bottling or storage of such distilled spirits for subsequent return under bond to the transferor for removal, may the transferee conduct any operations other than bottling or storage with respect to such distilled spirits before returning the distilled spirits in bond to the transferor?

In the normal process of bottling the spirits, the transferee in this scenario may add water to the distilled spirits as necessary to ensure appropriate label proof during bottling. The amount of water added may not be so much that the addition of such water would change the class or type (as set forth in 27 CFR 5.35) of the distilled spirit. Other than storage and bottling (including the addition of water as previously described), the transferee is not permitted to conduct any other operations on the distilled spirits prior to returning the distilled spirits in bond to the transferor under 26 U.S.C. 5212. Adding water for other purposes - for example, to reconstitute concentrate - is not "storage" or "bottling" activity. Transferees who conduct other operations on the distilled spirits are not permitted to return the distilled spirits in bond to the transferor.

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TR-D12: What domestic activities constitute "processing" for the purpose of determining eligibility for the reduced distilled spirits tax rates provided in 26 U.S.C. 5001?

Reduced tax rates are allowed on distilled spirits that are distilled or processed by a DSP and removed by a DSP during the calendar year. A DSP is considered a processor of distilled spirits if it "manufactures, mixes, or otherwise processes distilled spirits" or "manufactures any article." See 26 U.S.C. 5002(a)(5)(A). "The term 'processor' includes (but is not limited to) a rectifier, bottler, or denaturer." See 26 U.S.C. 5002(a)(5)(B). For distilled spirits removed after December 31, 2021, "[a] distilled spirit shall not be treated as processed [for reduced rate purposes] unless a process described in [26 U.S.C. 5002(a)(5)(A)] (other than bottling) is performed with respect to such distilled spirit." See 26 U.S.C. 5001(c)(5).

For purposes of the reduced rates, a DSP is considered a processor of distilled spirits if it:

- manufactures distilled spirits,
- mixes distilled spirits with materials including flavors, wines, water (except that the addition of water during the normal process of bottling for the purpose of ensuring label proof does not constitute "processing" for reduced rate purposes), or other distilled spirits of any type, and/or
- otherwise physically changes the distilled spirits inside the container, including filtering distilled spirits to remove material from those distilled spirits.

Processing does not include changing the marks or labels on distilled spirits containers or repacking containers of distilled spirits without physically changing the distilled spirits inside the containers.

Note: Eligibility for the reduced tax rates or new tax credits may be limited by application of [the single taxpayer or controlled group rules](#).

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