

TREASURY DECISIONS — I

Subpart A — ALCOHOL

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

Implementation of Public Law 105-34, Section 1417, Related to the Use of Additional Ameliorating Material in Certain Wines

27 CFR Parts 4 and 24

T.D. ATF-458

RIN 1512-AB78

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule implements one of the provisions of the Taxpayer Relief Act of 1997. In accordance with the law, ATF is amending the regulations to extend the amelioration and sweetening limitations so that wines made exclusively from any fruit (excluding grapes) or berry with a fixed acid content of 20 or more parts per thousand are entitled to a volume of up to 60 percent ameliorating material. To provide agreement with the IRC, the regulations are changed to raise the maximum limit on alcohol content derived from fermentation from 13 percent to 14 percent in ameliorated fruit (excluding grape) and citrus wines.

DATES: These regulations are retroactive to April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, Regulations Division, 111 W. Huron Street, Room 219, Buffalo, New York 14202-2301, (716 551-4048).

SUPPLEMENTARY INFORMATION:

Background

This final rule implements one of the provisions of the Taxpayer Relief Act of 1997, Public Law 105-34 (“the Act”). Section 1417 of the Act amended section 5384(b)(2)(D) of the Internal Revenue Code of 1986 by striking “loganberries, currants, or gooseberries,” and inserting “any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction to such fruit or berry).” Section 5384 relates to wines other than grape wines.

Previous Regulation for Amelioration of Fruit and Berries

Before enactment of the Act, the amelioration and sweetening limitations of 26 U.S.C. 5384 (b)(2)(D) could only be used for wines produced exclusively from loganberries, currants, or gooseberries. For wine produced exclusively from loganberries, currants, or gooseberries, the volume of ameliorating material added to juice or wine may not have exceeded 60 percent of the total volume of ameliorated juice or wine (calculated exclusive of pulp). If the starting fixed acid level was or exceeded 12.5 grams per liter, a maximum of 1,500 gallons of ameliorating material may have been added to each 1,000 gallons of wine or juice.

Section 1417 of Public Law 105-34 now extends the amelioration and sweetening limitations so that wines made from any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry) is entitled to a volume of up to 60 percent ameliorating material. These provisions do not apply to grape wine, only to fruit or berry wine.

T.D. ATF-403 and Notice No. 868

On September 13, 1999, ATF issued a temporary rule, T. D. ATF-403 (64 FR 50252), to implement section 1417 of Public Law 105-34. In accordance with the law, the regulations were amended to extend the amelioration and sweetening limitations so that a wine made from any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry) is entitled to a volume of up to 60 percent ameliorating material. These provisions do not apply to grape wine, only to fruit or berry wine. On the same day, ATF also issued Notice No. 868 (64 FR 50265) inviting comments on the temporary rule.

Comment Received in Response to Notice No. 868

ATF received one letter of comment, from E. & J. Gallo Winery (Gallo), in response to Notice No. 868. Gallo’s comments addressed four separate issues raised by the rulemaking, issues discussed in detail below.

- Gallo noted that in the temporary regulations at 27 CFR 4.21(e), ATF deleted the reference to the maximum ameliorating limit of 35% for other fruit (those having a normal acidity of less than 20 parts or more per thousand). Gallo pointed out that Public Law 105-34 did not change this limit and its deletion from the regulation could cause confusion. Upon reviewing this section of the

regulations, we concur that the deletion of this reference to the 35 percent limit is unnecessary and could be confusing. Accordingly, the phrase “and in the case of other fruit wines, not more than 35 percent” will be added back to Sec. 4.21(e).

- In its second point, Gallo commented that Sec. 4.21(d), the standard of identity for citrus wines, should be amended to reflect the new amelioration and sweetening limits granted by Public Law 105- 34. The law amended section 5384(b)(2)(D) of the IRC by striking “loganberries, currants, or gooseberries,” and inserting “any fruit or berry with a natural fixed acid of 20 parts per thousand or more (before any correction to such fruit or berry).” We note that Sec. 4.21(d) states that citrus wines may be ameliorated and sweetened in accordance with section 5384 of the IRC. Also, while section 5383 of the IRC contains separate amelioration and sweetening provisions for grape wines, the IRC does not contain separate provisions for citrus wines. We therefore agree with Gallo that the new amelioration and sweetening limits apply to citrus wines. Accordingly, Sec. 4.21(d) is being amended so that citrus wines with a fixed acid content of 20 parts or more per thousand are entitled to a volume of up to 60 percent ameliorating material.

- In its review of Notice 868, Gallo also noted an inconsistency between the regulation of amelioration in 26 U.S.C. 5384(a) and part 4. 26 U.S.C. 5384(a), states “To natural wine made from berries or fruit other than grapes, pure dry sugar or liquid sugar may be added to the juice in the fermenter, or to the wine after fermentation; but only if such wine has not more than 14 percent alcohol by volume after complete fermentation, or after complete fermentation and sweetening * * *” Gallo contrasted this with Sec. 4.21(d)(1)(i) and (e)(1)(i), the standards of identity for citrus and fruit wines respectively, which both state “* * * but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13% alcohol by volume * * *”.

A review of the legislative history of section 5384 revealed that its current limitation of 14 percent is the result of Public Law 90-619 of 1968. Prior to this amendment, section 5384 read as follows: “* * * but only if such wine has less than 14 percent alcohol by volume after complete fermentation, or after complete fermentation and sweetening * * *”. In contrast, the limitation of 13 percent in Sec. 4.21 was in place prior to 1968 and was not changed to agree with the amendments implemented by Public Law 90-619.

ATF agrees that part 4 should be corrected to be consistent with section 5384 of the IRC. We are therefore amending Sec. 4.21(d)(1)(i) and (e)(1)(i) by raising the maximum limit on alcohol content derived from fermentation from 13 percent to 14 percent in ameliorated wines.

- In its final point, Gallo commented that the temporary regulations at Sec. 24.178(b)(4) contain an apparent error. The words “or wine” were omitted in the following sentence, with the omission shown in italics: “For wine produced from any fruit (excluding grapes) or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry), the volume of ameliorating material added to juice or wine may not exceed 60 percent of the total volume of ameliorated juice or wine (calculated exclusive of pulp).” As this omission was indeed a typographical error, the words “or wine” will be added back to Sec. 24.178(b)(4).

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The rule merely conforms the regulations to changes in the law made by the Taxpayer Relief Act of 1997. Also, this regulation will not impose any recordkeeping or reporting requirements. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Administrative Procedure Act

The effective date limitation in 5 U.S.C. 553(d) does not apply to this Treasury Decision as it merely implements a section of the law which was effective April 1, 1998, and it does not differ substantively from the temporary rule (T.D. ATF-403) published September 13, 1999.

Drafting Information

The principal author of this document is Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade Practices, Wine.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Vinegar, Warehouses, Wine.

Authority and Issuance

Accordingly, Chapter I of title 27, Code of Federal Regulations is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

Par. 2. Section 4.21 is amended by revising the provisos in paragraphs (d)(1)(i) and (e)(1)(i) to read as follows:

§ 4.21 The standards of identity.

* * * * *

(d) Class 4; citrus wine.

(1)(i) * * * *Provided*, That a domestic product may be ameliorated or sweetened in accordance with the provisions of 26 U.S.C. 5384 and any product other than domestic may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 percent, or in the case of products produced from citrus fruit having a normal acidity of 20 parts or more per thousand, not more than 60 percent, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 14 percent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or a total solids content or more than 22 grams per 100 cubic centimeters.

* * * * *

(e) Class 5: fruit wine.

(1)(i) * * * *Provided*, That a domestic product may be ameliorated or sweetened in accordance with the provisions of 26 U.S.C. 5384 and any product other than domestic may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of dry sugar and water solution as will increase the volume of the resulting product, in the case of wines produced from any fruit or berry other than grapes, having a normal acidity of 20 parts or more per thousand, not more than 60 percent, and in the case of other fruit wines, not more than 35%, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 14 percent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or a total solids content of more than 22 grams per 100 cubic centimeters.

* * * * *

Par. 3. Section 4.22 is amended by revising the proviso in paragraph (b)(5) to read as follows:

§ 4.22 Blends, cellar treatment, alteration of class or type.

* * * * *

(b) * * *

(5) * * * *Provided*, That the class or type thereof shall not be deemed to be altered where such wine (other than grape wine) is derived from fruit, or other agricultural products, having a high normal acidity, if the total solids content is not more than 22 grams per 100 cubic centimeters, and the content of natural acid is not less than 7.5 parts per thousand and where such wine is derived exclusively from fruit, or other agricultural products, the normal acidity of which is 20 parts or more per thousand, if the volume of the resulting product has been increased not more than 60 percent by the addition of sugar and water solution, for the sole purpose of correcting natural deficiencies due to such acidity, and (except in the case of such wine when produced from fruit or berries other than grapes) there is stated as part of the class and type designation the phrase "Made with over 35 percent sugar solution."

PART 24—WINE

Paragraph 1. The authority citation for 27 CFR Part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111-5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364- 5373, 5381-5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 24.178 is amended by revising paragraphs (b)(3) and (b)(4) to read as follows:

§ 24.178 Amelioration.

* * * * *

(b) * * *

(3) For all wine, except for wine described in paragraph (b)(4) of this section, the volume of ameliorating material added to juice or wine may not exceed 35 percent of the total volume of ameliorated juice or wine (calculated exclusive of pulp). Where the starting fixed acid level is or exceeds 7.69 grams per liter, a maximum of 538.4 gallons of ameliorating material may be added to each 1,000 gallons of wine or juice.

(4) For wine produced from any fruit (excluding grapes) or berry with a natural fixed acid of 20 parts per thousand or more (before any correction of such fruit or berry), the volume of ameliorating material added to juice or wine may not exceed 60 percent of the total volume of ameliorated juice or wine (calculated exclusive of pulp). If the starting fixed acid level is or exceeds 12.5 grams per liter, a maximum of 1,500 gallons of ameliorating material may be added to each 1,000 gallons of wine or juice. (26 U.S.C. 5383, 5384).

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Signed: June 14, 2001

Bradley A. Buckles,
Director

Approved: June 28, 2001

Timothy E. Skud,
Acting Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement)

(Filed with the Office of the Federal Register on 7-18-01 at 8:45 a.m. as FR Doc. No. 01-17936; published in the Federal Register on 7-19-01 at 66 FR 37576.)