

How The New Federal Tax Law Impacts the Wine Industry

*A Brief Summary of the New Wine Import
Tax Credit Under the Tax Cuts and Jobs Act*



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On December 22, 2017, the President signed into law the *Tax Cuts and Jobs Act*, which included the *Craft Beverage Modernization and Tax Reform Act* (“Tax Law”). The new Tax Law contains an important federal excise tax (“FET”) credit for wine importers that may have alluded many industry members. Although the regulatory framework is still being developed, it is imperative for wine importers to begin developing a corporate strategy to anticipate the best way to capitalize on the tax credit. With millions of dollars at stake for imported wine, understanding the implications for the tax credit could enable wine importers to reinvest their FET savings for new capital expenditures, brand ambassador and sales force training, or marketing and promotional campaigns to support new brands.

The Tax Law makes extensive changes to the Internal Revenue Code (“IRC”), including provisions related to alcohol that are administered by the U.S. Alcohol and Tobacco Tax and Trade Bureau (“TTB”). For the purposes of imported wine, the laws governing the imposition and rate of taxes were amended, resulting in significant changes for the tax treatment of foreign wines that are imported into the United States. Under the Tax Law, the current FET rates on wine products will be reduced based on a tiered production threshold that will enable the authorized importer to obtain favorable tax treatment on the importation of the qualifying products. While the actual FET for wine depends on the product’s alcohol by volume and carbonation levels, the following chart illustrates the general reduction in FET liability:

FET Reduction Based on Wine Gallonage Under the New Tax Law	
<i>FET Rate Reduction</i>	<i>Gallonage Threshold</i>
\$1.00	First 30,000 wine gallons
\$0.90	For wine gallons between 30,001 and 130,000 (<i>i.e.</i> , the first 100,000 wine gallons to which the \$1.00 reduced rate does not apply)
\$0.535	For wine gallons between 130,001 and 750,000 (<i>i.e.</i> , the remaining 620,000 wine gallons to which the \$0.90 reduced rate does not apply)

It is important to note that this is a temporary tax cut, so the new FET treatment for imported wines only applies to products imported and removed from the bonded premises after December 31, 2017 (*i.e.*, starting January 1, 2018), but does not apply to wine removed after December 31, 2019 (*i.e.*, on January 1, 2020). Therefore, the reduced tax rates are effective for calendar years 2018 and 2019, so all wine imported and removed on January 1, 2020 and beyond would be taxed at the standard rates.

Essentially, the Tax Law amends the IRC to allow a “credit against any tax imposed [under the IRC for up to 750,000 wine gallons . . .] which are imported by the importer into the United States during the calendar year but only if the importer is an electing importer . . . and the wine gallons of wine have been assigned to the importer” (“Tax Credit”).¹ The Tax Credit allowance belongs to the foreign producer, so the foreign producer must designate the importer and then assign the specified wine gallonage that will be imported to enable the importer to claim the Tax Credit.² Thus, in order to claim the Tax Credit, the importing company must be: (i) designated by the foreign producer as the electing importer to receive the Tax Credit, and (ii) the wine gallons that are subject to the Tax Credit must be assigned and allocated to the electing importer.

These statutory changes went into effect on January 1, 2018, although implementing rules and regulations to determine the process for claiming the Tax Credit have not been finalized. TTB is responsible for creating rules for foreign producers to: (i) elect the designated importer to receive the Tax Credit, and (ii) assign the wine gallonage subject to the Tax Credit to the electing importer, in order to ensure that there is no fraud or abuse in the tax accounting and that only a maximum of 750,000 wine gallons are eligible for the Tax Credit. Interestingly, the law requires the TTB to write the regulations, but U.S. Customs and Border Protection (“CBP”) is responsible for collecting the FET on imported alcohol beverage products. Accordingly, the TTB and CBP will be working together to establish the regulatory structure and develop procedures for handling the Tax Credit through CBP’s current Automated Commercial Environment (ACE) system.

On June 27, 2018, CBP issued an industry guidance to update the international trade community about the results of the agency’s current collaboration with TTB to implement the Tax Law with respect to the Tax Credit procedure.³ For the time being, importers will be required to continue to pay the full FET rate until a refund procedure is established. To that end, CBP is considering amending the relevant federal regulation governing refunds to facilitate that process, which will apply retroactively.⁴ In the meantime, in order to preserve any rights for relief through the appropriate protest and refund mechanism, importers must be able to substantiate their eligibility for the Tax Credit. CBP recommends that importers diligently prepare and preserve certain documentation to evidence that the foreign producer has affirmatively designated the importer and has assigned its authorized allotment of the Tax Credit to the importer.

Although refunds will be processed no earlier than January 15, 2019, the Tax Law has the potential for immense savings as it significantly reduces FET liability. Therefore, it is critical to understand how the law currently works, track the rulemaking process, and monitor the creation and implementation of new TTB and CBP guidance documents and enforcement procedures. Consulting with competent alcohol beverage, tax, and customs attorneys can help industry members navigate through these international trade uncertainties and maximize FET savings for imported wine.

For more information about how the *Tax Cuts and Jobs Act* may impact your operations, please do not hesitate to contact GrayRobinson’s [Nationwide Alcohol Industry Team](#) at (866) 382-5132 or via e-mail at beveragelaw@gray-robinson.com.

¹ 26 U.S.C. § 5041(c)(8)(A).

² *Id.* § 5041(c)(9)(A)–(B).

³ U.S. Customs and Border Protection, CSMS #18-000403, *Implementing the Craft Beverage Modernization and Tax Reform Act of 2017* (June 27, 2018).

⁴ *See* 27 C.F.R. § 24.36.

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