

## How Industry Members Can Prepare for Alcohol Theft

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While there has always been theft in the alcohol industry, there has been a significant uptick in large-scale larceny in recent months. Because of this reality, alcohol industry members should take steps to prepare for missing product. Below are some ideas to consider.

- **Ensure you have adequate insurance coverage:** While reviewing your insurance policy is not always top of mind, you should understand what coverage you have and the steps you must take in the event of theft. Many policies have timelines in which theft must be reported and requirements about what steps must be taken to report a claim. Understanding these policy elements will help ensure you do not miss the chance to make a future claim.
- **Review your contractual obligations:** Agreements with carriers, shipping companies, storage facilities, third-party manufacturers or other business partners often, or should, have clauses related to each party's obligations in the event of theft of product. Carefully review facility operation provisions and indemnification clauses to understand each party's responsibilities in the event of theft, especially if a theft is potentially the result of a party's negligence or willful misconduct. When negotiating new agreements with a vendor that may store or handle product, ensure the party has sufficient security measures and protocols in place to prevent theft. Some industry members may look for protections and facility security beyond what federal or state regulators look for in order to issue a license to store or handle alcohol.
- **Create an internal policy and training program:** Having a clear protocol for employees to follow in the event of a theft will ensure your business doesn't unintentionally jeopardize its ability to file an insurance claim or to obtain taxes back on lost goods. Because time is typically of the essence, it is crucial that your employees know how to respond to theft.
- **Understand if you can retrieve taxes back for product that has been stolen:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) will not pay claims for stolen product if insurance covers excise tax or if you have indemnification from other parties. Alcohol losses due to theft are also not eligible as a disaster claim. However, relief can still be sought if the industry member can demonstrate to the TTB that the loss was not due to fraud or negligence by the member or its agents or employees. The conditions that must be met to determine if a tax refund can be sought, and the process for seeking a claim for remission of tax liability, can be found here:

- Distillers: 26 USC § 5008; 27 CFR § 19.263; 27 CFR § 70.413
- Brewers: 26 USC § 5056; 27 CFR § 25.282; 27 CFR § 70.413
- Wineries: 26 USC § 5370; 27 CFR § 24.265; 27 CFR § 70.413

Due to the sizable uptick of theft, we encourage industry members to ensure not only that their current insurance coverage and contractual obligations provide adequate protection but also that losses caused by theft are front and center when securing new insurance policies, updating existing coverage or entering into new agreements.

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