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**CIDER INVESTMENT AND DEVELOPMENT THROUGH  
EXCISE TAX REDUCTION (CIDER) ACT**

APRIL 14, 2015.—Ordered to be printed

Mr. HATCH, from the Committee on Finance,  
submitted the following

**R E P O R T**

[To accompany S. 906]

The Committee on Finance, having considered an original bill, S. 906, to amend the Internal Revenue Code of 1986 to modify the types of wines taxed as hard cider, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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**I. LEGISLATIVE BACKGROUND**

The Committee on Finance, having considered S. 906, the “Cider Investment and Development through Excise Tax Reduction (CIDER) Act,” to amend the Internal Revenue Code of 1986 to modify the types of wines taxed as hard cider, reports favorably thereon without amendment and recommends that the bill do pass.

*Background and need for legislative action*

*Background.*—Based on a proposal recommended by Senator Schumer, and on S. 1531 (113th Congress) cosponsored by Senators Schumer, Leahy, Casey, Collins, Manchin, Merkley and Shaheen, the Committee on Finance marked up original legislation (a bill to amend the Internal Revenue Code of 1986 to modify the types of wines taxed as hard cider) on February 11, 2015, and, with a majority present, ordered the bill favorably reported.

*Need for legislative action.*—Still wine derived primarily from apples or pears, or from apple juice or pear juice concentrate and water with alcohol by volume of seven percent or more, and wine derived primarily from apples or pears, or from apple juice or pear juice concentrate and water containing more than 3.92 grams of carbon dioxide per liter or more are taxed at \$1.07 to \$3.15 and \$3.30 to \$3.40 per wine gallon respectively. An expanded definition of hard cider that would allow a higher carbonation level and a higher level of alcohol by volume and would include pear juice or pear juice concentrate and water in addition to apples and apple juice concentrate would encourage investment and development in the apple and pear hard cider markets.

In addition, it has been reported that many thousands of Medicare providers and suppliers have outstanding Federal employment and income tax liability, which contribute to the tax gap. The permissible percentage of payments to a Medicare provider subject to levy should be increased.

**II. EXPLANATION OF THE BILL****A. MODIFICATION OF DEFINITION OF HARD CIDER (SEC. 2 OF THE BILL AND SEC. 5041 OF THE CODE)****PRESENT LAW**

An excise tax is imposed on all distilled spirits, wine, and beer produced in, or imported into, the United States.<sup>1</sup> The tax liability legally comes into existence the moment the alcohol is produced or imported but payment of the tax is not required until a subsequent withdrawal or removal from the distillery, winery, brewery, or, in the case of an imported product, from customs custody or bond.<sup>2</sup>

<sup>1</sup>Secs. 5001 (distilled spirits), 5041 (wines), and 5051 (beer). Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the “Code”).

<sup>2</sup>Secs. 5006, 5043, and 5054. In general, proprietors of distilled spirit plants, proprietors of bonded wine cellars, brewers, and importers are liable for the tax.

Distilled spirits, wine, and beer produced or imported into the United States are taxed at the following rates per specified volumetric measure:

Item	Current tax rate
Distilled Spirits .....	\$13.50 per proof gallon <sup>3</sup>
Wine: <sup>4</sup>	
Still Wines:	
Not more than 14 percent alcohol .....	\$1.07 per wine gallon <sup>5</sup>
More than 14 percent but not more than 21 percent alcohol ..	\$1.57 per wine gallon
More than 21 percent but not more than 24 percent alcohol ..	\$3.15 per wine gallon
More than 24 percent alcohol .....	Taxed as distilled spirits <sup>6</sup> (\$13.50 per proof gallon)
Hard cider .....	\$0.226 per wine gallon
Sparkling Wines:	
Champagne and other naturally sparkling wines .....	\$3.40 per wine gallon
Artificially carbonated wines .....	\$3.30 per wine gallon
Beer <sup>7</sup> .....	\$18.00 per barrel <sup>8</sup>

Hard cider is a still wine derived primarily from apples or apple concentrate and water, containing no other fruit product, and containing at least one-half of one percent and less than seven percent alcohol by volume.<sup>9</sup> Still wines are wines containing not more than 0.392 grams of carbon dioxide per hundred milliliters of wine.

Other wines made from apples, apple concentrate or other fruit products are taxed at the rates applicable in accordance with the alcohol and carbon dioxide content of the wine.

#### REASONS FOR CHANGE

Still wine derived primarily from apples or pears, or from apple juice or pear juice concentrate and water with alcohol by volume of seven percent or more, and wine derived primarily from apples or pears, or from apple juice or pear juice concentrate and water containing more than 3.92 grams of carbon dioxide per liter or more are taxed at \$1.07 to \$3.15 and \$3.30 to \$3.40 per wine gallon respectively.

The Committee believes that in order to encourage investment and development in the apple and pear hard cider markets, it is appropriate to expand the definition of hard cider to allow a higher carbonation level and a higher level of alcohol by volume and to include pear juice or pear juice concentrate and water in addition to apples and apple juice concentrate and water.

<sup>3</sup>A "proof gallon" is a U.S. liquid gallon of proof spirits, or the alcoholic equivalent thereof. Generally a proof gallon is a U.S. liquid gallon consisting of 50 percent alcohol. On lesser quantities, the tax is paid proportionately. Credits are allowed for wine content and flavors content of distilled spirits. Sec. 5010.

<sup>4</sup>Small domestic wine producers (*i.e.*, those producing not more than 250,000 wine gallons in a calendar year) are allowed a credit of \$0.90 per wine gallon (\$0.056 per wine gallon in the case of hard cider) on the first 100,000 wine gallons (other than champagne and other sparkling wines) removed. The credit is reduced by one percent for each 1,000 wine gallons produced in excess of 150,000 wine gallons per calendar year.

<sup>5</sup>A "wine gallon" is a U.S. gallon of liquid measure equivalent to the volume of 231 cubic inches. On lesser quantities, the tax is paid proportionately.

<sup>6</sup>Sec. 5001(a)(4).

<sup>7</sup>A small domestic brewer (one who produces not more than 2 million barrels in a calendar year) is subject to a per barrel rate of \$7.00 on the first 60,000 barrels produced in that year.

<sup>8</sup>A "barrel" contains not more than 31 gallons, each gallon equivalent to the volume of 231 cubic inches. On lesser quantities, the tax is paid proportionately.

<sup>9</sup>Sec. 5041(b)(6).

## EXPLANATION OF PROVISION

The provision would amend the definition of hard cider to mean a wine with a carbonation level that does not exceed 0.64 grams of carbon dioxide per hundred milliliters of wine. Additionally, the provision would expand the hard cider definition to include pears, or pear juice concentrate in addition to apples and apple juice concentrate and water. Under the provision, the Secretary may, by regulation, prescribe tolerance to the limitation as may be reasonably necessary in good commercial practice. The provision would change the allowable alcohol content of cider to at least one-half of one percent and less than 8.5 percent alcohol by volume.

## EFFECTIVE DATE

The provision applies to articles removed after December 31, 2015.

B. INCREASE CONTINUOUS LEVY AUTHORITY ON PAYMENTS TO  
MEDICARE PROVIDERS AND SUPPLIERS

## PRESENT LAW

*In general*

Levy is the administrative authority of the IRS to seize a taxpayer's property, or rights to property, to pay the taxpayer's tax liability.<sup>10</sup> Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,<sup>11</sup> the property is not exempt from levy,<sup>12</sup> and the IRS has provided both notice of intention to levy<sup>13</sup> and notice of the right to an administrative hearing (the notice is referred to as a "collections due process notice" or "CDP notice" and the hearing is referred to as the "CDP hearing")<sup>14</sup> at least 30 days before the levy is made. A levy on salary or wages generally is continuously in effect until released.<sup>15</sup> A Federal tax lien arises automatically when: (1) a tax assessment has been made; (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment; and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.<sup>16</sup>

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable when determining whether assessment of tax without following the normal deficiency procedures is permitted.<sup>17</sup>

The CDP notice (and pre-levy CDP hearing) is not required if: (1) the Secretary finds that collection would be jeopardized by delay; (2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund; (3) the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment

<sup>10</sup> Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.

<sup>11</sup> *Ibid.*

<sup>12</sup> Sec. 6334.

<sup>13</sup> Sec. 6331(d).

<sup>14</sup> Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.

<sup>15</sup> Secs. 6331(e) and 6343.

<sup>16</sup> Sec. 6321.

<sup>17</sup> Secs. 6331(d)(3) and 6861.

taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served; or (4) the Secretary has served a Federal contractor levy. In each of these four cases, however, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy.<sup>18</sup>

*Federal payment levy program*

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997<sup>19</sup> authorized the establishment of the Federal Payment Levy Program (“FPLP”), which allows the IRS to continuously levy up to 15 percent of certain “specified payments” by the Federal government if the payees are delinquent on their tax obligations. With respect to payments to vendors of goods, services, or property sold or leased to the Federal government, the continuous levy may be up to 100 percent of each payment.<sup>20</sup> For payments to Medicare providers and suppliers, the levy is up to 15 percent for payments made within 180 days after December 19, 2014. For payments made after that date, the levy is up to 30 percent.<sup>21</sup>

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by Treasury’s Bureau of Fiscal Service (“BFS”), such as certain Social Security benefit and Federal wage records. When these records match, the delinquent taxpayer is provided both the notice of intention to levy and the CDP notice. If the taxpayer does not respond after 30 days, the IRS can instruct BFS to levy the taxpayer’s Federal payments. Subsequent payments are continuously levied until such time that the tax debt is paid or the IRS releases the levy.

REASONS FOR CHANGE

It has been reported that many thousands of Medicare providers and suppliers have outstanding Federal employment and income tax liability, which contribute to the tax gap. Consequently, the Committee believes that it is appropriate to increase the permissible percentage of payments to a Medicare provider subject to levy.

EXPLANATION OF PROVISION

The provision provides that the present limitation of 30 percent of certain specified payments be increased by an amount sufficient to offset the estimated revenue loss of the provision described in Part A, above.

EFFECTIVE DATE

The provision is effective for payments made after 180 days after the date of enactment.

<sup>18</sup> Sec. 6330(f).

<sup>19</sup> Pub. L. No. 105–34.

<sup>20</sup> Sec. 6331(h)(3).

<sup>21</sup> Pub. L. No. 113–295, Division B.

**III. BUDGET EFFECTS OF THE BILL**

**A. COMMITTEE ESTIMATES**

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the estimated budget effects of the revenue provision of the “Cider Investment and Development through Excise Tax Reduction (CIDER) Act” as reported.

The provision is estimated to have the following effect on Federal fiscal year budget receipts for the period 2015–2025.

**ESTIMATED BUDGET EFFECTS OF  
THE "CIDER INVESTMENT AND DEVELOPMENT THROUGH EXCISE TAX REDUCTION (CIDER) ACT,"  
AS REPORTED BY THE COMMITTEE ON FINANCE**

Fiscal Years 2015 - 2025

*[Millions of Dollars]*

Provision	Effective	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2015-20	2015-25
1. Modification of Definition of Hard Cider.....	ara 12/31/15	---	-1	-1	-1	-1	-1	-1	-1	-2	-2	-2	-5	-12
2. Increase Continuous Levy Authority to 35% on Payments to Medicare Providers and Suppliers.....	pma 180da DOE	---	6	6	6	7	7	7	7	7	7	7	32	67
<b>NET TOTAL .....</b>		---	5	5	5	6	6	6	6	5	5	5	27	55

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. The date of enactment is assumed to be April 1, 2015.

Legend for "Effective" column:

ara = articles removed after  
DOE = date of enactment

pma = payments made after  
180da = 180 days after

## B. BUDGET AUTHORITY AND TAX EXPENDITURES

### *Budget authority*

In compliance with section 308(a)(1) of the Congressional Budget and Impoundment Control Act of 1974 (“Budget Act”),<sup>22</sup> the Committee states that no provisions of the bill as reported involve new or increased budget authority.

### *Tax expenditures*

In compliance with section 308(a)(1) of the Budget Act, the Committee states that the provisions of the bill have a negligible effect on tax expenditures (see revenue table in part A., above).

## C. CONSULTATION WITH CONGRESSIONAL BUDGET OFFICE

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office has not submitted a statement on the bill. The letter from the Congressional Budget Office will be provided separately.

## IV. VOTES OF THE COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that, with a majority present, the “Cider Investment and Development through Excise Tax Reduction (CIDER) Act,” was ordered favorably reported by voice vote on February 11, 2015.

## V. REGULATORY IMPACT AND OTHER MATTERS

### A. REGULATORY IMPACT

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the bill.

#### *Impact on individuals and businesses, personal privacy and paperwork*

The bill modifies the types of wines taxed as hard cider. It also increases the IRS’s continuous levy authority on payments to Medicare providers and suppliers. The provisions of the bill are not expected to impose additional administrative requirements or regulatory burdens on individuals or businesses.

The provisions of the bill do not impact personal privacy.

### B. UNFUNDED MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the tax provisions of the reported bill do not contain Federal private sector mandates or Federal intergovernmental mandates on State, local, or tribal governments within the meaning of Public Law 104–4, the Unfunded Mandates Reform Act of 1995.

<sup>22</sup>Pub. L. No. 93–344.

### C. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (“IRS Reform Act”) requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses. The staff of the Joint Committee on Taxation has determined that there are no provisions that are of widespread applicability to individuals or small businesses.

### **VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED**

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).