

moved before January 1, 1983, and held on such date for sale by any person, there shall be imposed the following taxes:

“(A) SMALL CIGARETTES.—On cigarettes, weighing not more than 3 pounds per thousand, \$4 per thousand;

“(B) LARGE CIGARETTES.—On cigarettes, weighing more than 3 pounds per thousand, \$8.40 per thousand; except that, if more than 6½ inches in length, they shall be taxable at the rate prescribed for cigarettes weighing not more than 3 pounds per thousand, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

“(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

“(A) LIABILITY FOR TAX.—A person holding cigarettes on January 1, 1983, to which any tax imposed by paragraph (1) applies shall be liable for such tax.

“(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be treated as a tax imposed under section 5701 and shall be due and payable on February 17, 1983 in the same manner as the tax imposed under such section is payable with respect to cigarettes removed on January 1, 1983.

“(3) CIGARETTE.—For purposes of this subsection, the term ‘cigarette’ shall have the meaning given to such term by subsection (b) of section 5702 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

“(4) EXCEPTION FOR RETAILERS.—The taxes imposed by paragraph (1) shall not apply to cigarettes in retail stocks held on January 1, 1983, at the place where intended to be sold at retail.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5702, 5703 of this title.

§ 5702. Definitions

When used in this chapter—

(a) Cigar

“Cigar” means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsection (b)(2)).

(b) Cigarette

“Cigarette” means—

(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1).

(c) Tobacco products

“Tobacco products” means cigars, cigarettes, smokeless tobacco, and pipe tobacco.

(d) Manufacturer of tobacco products

“Manufacturer of tobacco products” means any person who manufactures cigars, cigarettes, smokeless tobacco, or pipe tobacco, except that such term shall not include—

(1) a person who produces cigars, cigarettes, smokeless tobacco, or pipe tobacco solely for his own personal consumption or use; or

(2) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse.

(e) Cigarette paper

“Cigarette paper” means paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

(f) Cigarette papers

“Cigarette papers” means taxable books or sets of cigarette papers.

(g) Cigarette tube

“Cigarette tube” means cigarette paper made into a hollow cylinder for use in making cigarettes.

(h) Manufacturer of cigarette papers and tubes

“Manufacturer of cigarette papers and tubes” means any person who makes up cigarette paper into books or sets containing more than 25 papers each, or into tubes, except for his own personal use or consumption.

(i) Export warehouse

“Export warehouse” means a bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

(j) Export warehouse proprietor

“Export warehouse proprietor” means any person who operates an export warehouse.

(k) Removal or remove

“Removal” or “remove” means the removal of tobacco products or cigarette papers or tubes from the factory or from internal revenue bond, as the Secretary shall by regulation prescribe, or release from customs custody, and shall also include the smuggling or other unlawful importation of such articles into the United States.

(l) Importer

“Importer” means any person in the United States to whom nontaxpaid tobacco products or cigarette papers or tubes manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned; any person who removes cigars or cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse; and any person who smuggles or otherwise unlawfully brings tobacco products or cigarette papers or tubes into the United States.

(m) Determination of price on cigars

In determining price for purposes of section 5701(a)(2)—

(1) there shall be included any charge incident to placing the article in condition ready for use,

(2) there shall be excluded—

(A) the amount of the tax imposed by this chapter or section 7652, and

(B) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

(3) rules similar to the rules of section 4216(b) shall apply.

(n) Definitions relating to smokeless tobacco

(1) Smokeless tobacco

The term “smokeless tobacco” means any snuff or chewing tobacco.

(2) Snuff

The term “snuff” means any finely cut, ground, or powdered tobacco that is not intended to be smoked.

(3) Chewing tobacco

The term “chewing tobacco” means any leaf tobacco that is not intended to be smoked.

(o) Pipe tobacco

The term “pipe tobacco” means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

(Aug. 16, 1954, ch. 736, 68A Stat. 706; Sept. 2, 1958, Pub. L. 85-859, title II, §202, 72 Stat. 1415; June 21, 1965, Pub. L. 89-44, title V, §502(b)(3), title VIII, §808(a), 79 Stat. 151, 164; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1906(b)(13)(A), title XXI, §2128(b), 90 Stat. 1834, 1921; Apr. 7, 1986, Pub. L. 99-272, title XIII, §13202(b)(2)-(4), 100 Stat. 312; Nov. 10, 1988, Pub. L. 100-647, title V, §5061(b)-(c)(2), 102 Stat. 3679; Nov. 5, 1990, Pub. L. 101-508, title XI, §11202(g), 104 Stat. 1388-419.)

AMENDMENTS

1990—Subsec. (m). Pub. L. 101-508 substituted heading for one which read: “Wholesale price” and amended text generally. Prior to amendment, text read as follows: “‘Wholesale price’ means the manufacturer’s, or importer’s, suggested delivered price at which the cigars are to be sold to retailers, inclusive of the tax imposed by this chapter or section 7652, but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer’s or importer’s suggested delivered price to retailers is not adequately supported by bona fide arm’s length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Secretary.”

1988—Subsec. (c). Pub. L. 100-647, §5061(c)(1), inserted reference to pipe tobacco.

Subsec. (d). Pub. L. 100-647, §5061(c)(2), inserted reference to pipe tobacco in introductory provisions and in par. (1).

Subsec. (o). Pub. L. 100-647, §5061(b), added subsec. (o).

1986—Subsec. (c). Pub. L. 99-272, §13202(b)(2), inserted reference to smokeless tobacco.

Subsec. (d). Pub. L. 99-272, §13202(b)(3), inserted references to smokeless tobacco.

Subsec. (n). Pub. L. 99-272, §13202(b)(4), added subsec. (n).

1976—Subsec. (k). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (m). Pub. L. 94-455, §2128(b), added subsec. (m).

1965—Subsec. (a). Pub. L. 89-44, §§502(b)(3)(A), 808(a), redesignated subsec. (b) as (a), repealed former subsec. (a) which related to manufactured tobacco and, in subsec. (a) as so redesignated, allowed the use of any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsec. (b)(2) as a wrapper in addition to the leaf tobacco previously allowed.

Subsec. (b). Pub. L. 89-44, §§502(b)(3)(A), 808(a), redesignated subsec. (c) as (b) and permitted the use, as a wrapper for cigarettes in addition to paper and substances other than tobacco as previously allowed, any substance containing tobacco, which, because of the finished product’s appearance, tobacco type, labeling, and packaging, is likely to be offered to or purchased

by consumers as cigarettes. Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 89-44, §502(b)(3)(A), (B), redesignated subsec. (d) as (c) and struck out reference to manufactured tobacco. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 89-44, §502(b)(3)(A), (C), redesignated subsec. (e) as (d), and simplified the definition of manufacturer of tobacco products to include only persons who manufacture cigars or cigarettes and reduced the area of excluded activities so as to exclude only persons producing cigars and cigarettes solely for their own personal use and proprietors of customs bonded manufacturing warehouses with respect to the operation of such warehouses. Former subsec. (d) redesignated (c).

Subsecs. (e) to (k). Pub. L. 89-44, §502(b)(3)(A) redesignated subsecs. (f) to (k) and (n) as (e) to (j) and (k), respectively. Former subsec. (e) redesignated (d).

Subsec. (l). Pub. L. 89-44, §502(b)(3)(A), redesignated subsec. (o) as (l) and repealed former subsec. (l) which related to tobacco materials.

Subsec. (m). Pub. L. 89-44, §502(b)(3)(A), repealed subsec. (m) which related to tobacco dealers.

Subsecs. (n), (o). Pub. L. 89-44, §502(b)(3)(A), redesignated subsec. (n) and (o) as (k) and (l), respectively.

1958—Subsec. (a). Pub. L. 85-859 inserted the term “for removal, or merely removed”.

Subsecs. (b) to (d). Pub. L. 85-859 redesignated subsecs. (c), (d), and (f) as (b), (c), and (d), respectively. Former subsecs. (b), (c), and (d) redesignated (e), (b), and (c), respectively.

Subsec. (e). Pub. L. 85-859 consolidated the definitions “manufacturer of tobacco” and “manufacturer of cigars and cigarettes”, inserted the phrase “for removal, or merely removes”, excluded from the definition a proprietor of a customs bonded manufacturing warehouse with respect to the operation of the warehouse, and required bona fide associations of farmers or growers to maintain records of leaf tobacco.

Subsec. (f). Pub. L. 85-859 redesignated subsec. (g) as (f) and former subsec. (f) as (d).

Subsec. (g). Pub. L. 85-859 added subsec. (g) and redesignated former subsec. (g) as (f).

Subsec. (i). Pub. L. 85-859 substituted “into books or sets containing more than 25 papers each, or into tubes” for “into packages, books, sets, or tubes”.

Subsec. (j). Pub. L. 85-859 substituted provisions defining “export warehouse” for provisions which defined “article” as manufactured tobacco, cigars, cigarettes, and cigarette papers and tubes.

Subsec. (k). Pub. L. 85-859 added subsec. (k) and redesignated former subsec. (k) as (l).

Subsec. (l). Pub. L. 85-859 redesignated former subsec. (k) as (l) and substituted “other than manufactured tobacco, cigars, and cigarettes” for “in process, leaf tobacco, and tobacco scraps, cuttings, clippings, siftings, dust, stems, and waste”. Former subsec. (l) redesignated (m).

Subsec. (m). Pub. L. 85-859 redesignated former subsec. (l) as (m) and included within the definition persons who receive tobacco materials, other than stems and waste, for use in the production of fertilizer, insecticide, or nicotine, required associations of farmers or growers of tobacco to maintain records of all leaf tobacco acquired or received and sold or otherwise disposed of, and excluded from the definition persons who buy leaf tobacco without taking physical possession of the tobacco and qualified manufacturers of tobacco products. Former subsec. (m) redesignated (n).

Subsec. (n). Pub. L. 85-859 redesignated former subsec. (m) as (n) and substituted “tobacco products or cigarette papers or tubes” for “articles”. Former subsec. (n) redesignated (o).

Subsec. (o). Pub. L. 85-859 redesignated former subsec. (n) as (o) and substituted “tobacco products or cigarette papers or tubes” for “articles” in two places, and inserted provisions to include within the definition persons who remove cigars or cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable with respect to articles removed after Dec. 31, 1990, see section 11202(h) of Pub. L. 101-508, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 applicable to pipe tobacco removed, within the meaning of subsec. (k) of this section, after Dec. 31, 1988, with transition rule, see section 5061(d) of Pub. L. 100-647, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 applicable to smokeless tobacco removed after June 30, 1986, see section 13202(c) of Pub. L. 99-272, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2128(b) of Pub. L. 94-455 effective on first month which begins more than 90 days after Oct. 4, 1976, see section 2128(e) of Pub. L. 94-455, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 502(b)(3) of Pub. L. 89-44 applicable on and after Jan. 1, 1966, see section 701(d) of Pub. L. 89-44, set out as a note under section 5701 of this title.

Section 808(d)(1) of Pub. L. 89-44 provided that: "The amendments made by subsections (a) and (b)(3) [amending this section and section 7652 of this title] shall take effect on July 1, 1965."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85-859, set out as an Effective Date note under section 5001 of this title.

§ 5703. Liability for tax and method of payment**(a) Liability for tax****(1) Original liability**

The manufacturer or importer of tobacco products and cigarette papers and tubes shall be liable for the taxes imposed thereon by section 5701.

(2) Transfer of liability

When tobacco products and cigarette papers and tubes are transferred, without payment of tax, pursuant to section 5704, the liability for tax shall be transferred in accordance with the provisions of this paragraph. When tobacco products and cigarette papers and tubes are transferred between the bonded premises of manufacturers and export warehouse proprietors, the transferee shall become liable for the tax upon receipt by him of such articles, and the transferor shall thereupon be relieved of his liability for such tax. When tobacco products and cigarette papers and tubes are released in bond from customs custody for transfer to the bonded premises of a manufacturer of tobacco products or cigarette papers and tubes, the transferee shall become liable for the tax on such articles upon release from customs custody, and the importer shall thereupon be relieved of his liability for such tax. All provisions of this chapter applicable to tobacco products and cigarette papers and tubes in bond shall be applicable to such articles returned to bond upon withdrawal from

the market or returned to bond after previous removal for a tax-exempt purpose.

(b) Method of payment of tax**(1) In general**

The taxes imposed by section 5701 shall be determined at the time of removal of the tobacco products and cigarette papers and tubes. Such taxes shall be paid on the basis of return. The Secretary shall, by regulations, prescribe the period or the event for which such return shall be made and the information to be furnished on such return. Any postponement under this subsection of the payment of taxes determined at the time of removal shall be conditioned upon the filing of such additional bonds, and upon compliance with such requirements, as the Secretary may prescribe for the protection of the revenue. The Secretary may, by regulations, require payment of tax on the basis of a return prior to removal of the tobacco products and cigarette papers and tubes where a person defaults in the postponed payment of tax on the basis of a return under this subsection or regulations prescribed thereunder. All administrative and penalty provisions of this title, insofar as applicable, shall apply to any tax imposed by section 5701.

(2) Time for payment of taxes**(A) In general**

Except as otherwise provided in this paragraph, in the case of taxes on tobacco products and cigarette papers and tubes removed during any semimonthly period under bond for deferred payment of tax, the last day for payment of such taxes shall be the 14th day after the last day of such semimonthly period.

(B) Imported articles

In the case of tobacco products and cigarette papers and tubes which are imported into the United States—

(i) In general

The last day for payment of tax shall be the 14th day after the last day of the semimonthly period during which the article is entered into the customs territory of the United States.

(ii) Special rule for entry for warehousing

Except as provided in clause (iv), in the case of an entry for warehousing, the last day for payment of tax shall not be later than the 14th day after the last day of the semimonthly period during which the article is removed from the 1st such warehouse.

(iii) Foreign trade zones

Except as provided in clause (iv) and in regulations prescribed by the Secretary, articles brought into a foreign trade zone shall, notwithstanding any other provision of law, be treated for purposes of this subsection as if such zone were a single customs warehouse.

(iv) Exception for articles destined for export

Clauses (ii) and (iii) shall not apply to any article which is shown to the satisfac-