

CHAPTER 52—TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

AMENDMENTS

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AMENDMENTS

1997—Pub. L. 105-33, title IX, §9302(g)(3)(C), (h)(2)(D), Aug. 5, 1997, 111 Stat. 673, 674, amended chapter heading generally, substituting “TOBACCO PRODUCTS” for “CIGARS, CIGARETTES, SMOKELESS TOBACCO, PIPE TOBACCO,” and inserted “and importers” after “manufacturers” in item for subchapter B.

1988—Pub. L. 100-647, title V, §5061(c)(3), Nov. 10, 1988, 102 Stat. 3680, inserted “PIPE TOBACCO,” after “SMOKELESS TOBACCO,” in chapter heading.

1987—Pub. L. 100-203, title X, §10512(f)(2), Dec. 22, 1987, 101 Stat. 1330-449, added item for subchapter D and redesignated items for former subchapters D, E, and F as E, F, and G, respectively.

1986—Pub. L. 99-272, title XIII, §13202(b)(1), Apr. 7, 1986, 100 Stat. 311, inserted “SMOKELESS TOBACCO,” after “CIGARETTES,” in chapter heading.

1976—Pub. L. 94-455, title XXI, §2128(d)(2), Oct. 4, 1976, 90 Stat. 1921, substituted “manufacturers and importers” for “manufacturers” in item for subchapter D.

1965—Pub. L. 89-44, title V, §502(b)(1), (2), June 21, 1965, 79 Stat. 150, struck out “TOBACCO,” from chapter heading, reference to dealers in tobacco materials from heading of subchapter B, heading of subchapter D and redesignated subchapters E, F and G as D, E and F respectively, and struck out in heading of subchapter D (as redesignated) a reference to dealers in tobacco materials.

1958—Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1414, substituted “manufacturers of tobacco products and cigarette papers and tubes, export warehouse proprietors, and” for “manufacturers of articles and” in heading of subchapters B and E, “manufacturers and importers of tobacco products and cigarette papers and tubes and export warehouse proprietors” for “manufacturers of articles” in heading of subchapter C, and “Penalties and forfeitures” for “Fines, penalties and forfeitures” in heading of subchapter G.

Subchapter A—Definitions; Rate and Payment of Tax; Exemption From Tax; and Refund and Drawback of Tax

Sec.	
5701.	Rate of tax.
5702.	Definitions.
5703.	Liability for tax and method of payment.
5704.	Exemption from tax.
5705.	Credit, refund, or allowance of tax.
5706.	Drawback of tax.
[5707.	Repealed.]
5708.	Losses caused by disaster.

¹ Section numbers editorially supplied.

1965—Pub. L. 89-44, title V, §501(g), title VIII, §808(c)(2), June 21, 1965, 79 Stat. 150, 165, struck out item 5707 “Floor stocks refund on cigarettes” and inserted “Credit” before “refund” in item 5705.

1958—Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1414, added item 5708.

§ 5701. Rate of tax

(a) Cigars

On cigars, manufactured in or imported into the United States, there shall be imposed the following taxes:

(1) Small cigars

On cigars, weighing not more than 3 pounds per thousand, \$50.33 per thousand;

(2) Large cigars

On cigars weighing more than 3 pounds per thousand, a tax equal to 52.75 percent of the price for which sold but not more than 40.26 cents per cigar.

Cigars not exempt from tax under this chapter which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

(b) Cigarettes

On cigarettes, manufactured in or imported into the United States, there shall be imposed the following taxes:

(1) Small cigarettes

On cigarettes, weighing not more than 3 pounds per thousand, \$50.33 per thousand;

(2) Large cigarettes

On cigarettes, weighing more than 3 pounds per thousand, \$105.69 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.

(c) Cigarette papers

On cigarette papers, manufactured in or imported into the United States, there shall be imposed a tax of 3.15 cents for each 50 papers or fractional part thereof; except that, if cigarette papers measure more than 6½ inches in length, they shall be taxable at the rate prescribed, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper.

(d) Cigarette tubes

On cigarette tubes, manufactured in or imported into the United States, there shall be imposed a tax of 6.30 cents for each 50 tubes or fractional part thereof, except that if cigarette tubes measure more than 6½ inches in length, they shall be taxable at the rate prescribed, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube.

(e) Smokeless tobacco

On smokeless tobacco, manufactured¹ in or imported into the United States, there shall be imposed the following taxes:

¹ So in original. Probably should be “manufactured”.

(1) Snuff

On snuff, \$1.51 per pound and a proportionate tax at the like rate on all fractional parts of a pound.

(2) Chewing tobacco

On chewing tobacco, 50.33 cents per pound and a proportionate tax at the like rate on all fractional parts of a pound.

(f) Pipe tobacco

On pipe tobacco, manufactured in or imported into the United States, there shall be imposed a tax of \$2.8311 cents per pound (and a proportionate tax at the like rate on all fractional parts of a pound).

(g) Roll-your-own tobacco

On roll-your-own tobacco, manufactured in or imported into the United States, there shall be imposed a tax of \$24.78 per pound (and a proportionate tax at the like rate on all fractional parts of a pound).

(h) Imported tobacco products and cigarette papers and tubes

The taxes imposed by this section on tobacco products and cigarette papers and tubes imported into the United States shall be in addition to any import duties imposed on such articles, unless such import duties are imposed in lieu of internal revenue tax.

(Aug. 16, 1954, ch. 736, 68A Stat. 705; Mar. 30, 1955, ch. 18, §3(a)(9), 69 Stat. 14; Mar. 29, 1956, ch. 115, §3(a)(9), 70 Stat. 66; Pub. L. 85-12, §3(a)(7), Mar. 29, 1957, 71 Stat. 9; Pub. L. 85-475, §3(a)(7), June 30, 1958, 72 Stat. 259; Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1414; Pub. L. 86-75, §3(a)(7), June 30, 1959, 73 Stat. 157; Pub. L. 86-564, title II, §202(a)(9), June 30, 1960, 74 Stat. 290; Pub. L. 86-779, §1, Sept. 14, 1960, 74 Stat. 998; Pub. L. 87-72, §3(a)(9), June 30, 1961, 75 Stat. 193; Pub. L. 87-508, §3(a)(8), June 28, 1962, 76 Stat. 114; Pub. L. 88-52, §3(a)(9), June 29, 1963, 77 Stat. 72; Pub. L. 88-348, §2(a)(9), June 30, 1964, 78 Stat. 237; Pub. L. 89-44, title V, §§501(f), 502(a), June 21, 1965, 79 Stat. 150; Pub. L. 90-240, §4(a), Jan. 2, 1968, 81 Stat. 776; Pub. L. 94-455, title XIX, §1905(a)(24), title XXI, §2128(a), Oct. 4, 1976, 90 Stat. 1821, 1921; Pub. L. 97-248, title II, §283(a), Sept. 3, 1982, 96 Stat. 568; Pub. L. 99-272, title XIII, §13202(a), Apr. 7, 1986, 100 Stat. 311; Pub. L. 100-647, title V, §5061(a), Nov. 10, 1988, 102 Stat. 3679; Pub. L. 101-508, title XI, §11202(a)-(f), Nov. 5, 1990, 104 Stat. 1388-419; Pub. L. 105-33, title IX, §9302(a)-(g)(1), (h)(3), Aug. 5, 1997, 111 Stat. 671, 672, 674; Pub. L. 111-3, title VII, §701(a)-(g), Feb. 4, 2009, 123 Stat. 106, 107.)

AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111-3, §701(a)(1), substituted “\$50.33 per thousand” for “\$1.828 cents per thousand (\$1.594 cents per thousand on cigars removed during 2000 or 2001)”.

Subsec. (a)(2). Pub. L. 111-3, §701(a)(2), (3), substituted “52.75 percent” for “20.719 percent (18.063 percent on cigars removed during 2000 or 2001)” and “40.26 cents per cigar” for “\$48.75 per thousand (\$42.50 per thousand on cigars removed during 2000 or 2001)”.

Subsec. (b)(1). Pub. L. 111-3, §701(b)(1), substituted “\$50.33 per thousand” for “\$19.50 per thousand (\$17 per thousand on cigarettes removed during 2000 or 2001)”.

Subsec. (b)(2). Pub. L. 111-3, §701(b)(2), substituted “\$105.69 per thousand” for “\$40.95 per thousand (\$35.70

per thousand on cigarettes removed during 2000 or 2001)”.

Subsec. (c). Pub. L. 111-3, §701(c), substituted “3.15 cents” for “1.22 cents (1.06 cents on cigarette papers removed during 2000 or 2001)”.

Subsec. (d). Pub. L. 111-3, §701(d), substituted “6.30 cents” for “2.44 cents (2.13 cents on cigarette tubes removed during 2000 or 2001)”.

Subsec. (e)(1). Pub. L. 111-3, §701(e)(1), substituted “\$1.51” for “58.5 cents (51 cents on snuff removed during 2000 or 2001)”.

Subsec. (e)(2). Pub. L. 111-3, §701(e)(2), substituted “50.33 cents” for “19.5 cents (17 cents on chewing tobacco removed during 2000 or 2001)”.

Subsec. (f). Pub. L. 111-3, §701(f), substituted “\$2.8311 cents” for “\$1.0969 cents (95.67 cents on pipe tobacco removed during 2000 or 2001)”.

Subsec. (g). Pub. L. 111-3, §701(g), substituted “\$24.78” for “\$1.0969 cents (95.67 cents on roll-your-own tobacco removed during 2000 or 2001)”.

1997—Subsec. (a)(1). Pub. L. 105-33, §9302(b)(1), substituted “\$1.828 cents per thousand (\$1.594 cents per thousand on cigars removed during 2000 or 2001)” for “\$1.125 cents per thousand (93.75 cents per thousand on cigars removed during 1991 or 1992)”.

Subsec. (a)(2). Pub. L. 105-33, §9302(b)(2), substituted “equal to 20.719 percent (18.063 percent on cigars removed during 2000 or 2001) of the price for which sold but not more than \$48.75 per thousand (\$42.50 per thousand on cigars removed during 2000 or 2001).” for “equal to—

“(A) 10.625 percent of the price for which sold but not more than \$25 per thousand on cigars removed during 1991 or 1992, and

“(B) 12.75 percent of the price for which sold but not more than \$30 per thousand on cigars removed after 1992.”

Subsec. (b)(1). Pub. L. 105-33, §9302(a)(1), substituted “\$19.50 per thousand (\$17 per thousand on cigarettes removed during 2000 or 2001)” for “\$12 per thousand (\$10 per thousand on cigarettes removed during 1991 or 1992)”.

Subsec. (b)(2). Pub. L. 105-33, §9302(a)(2), substituted “\$40.95 per thousand (\$35.70 per thousand on cigarettes removed during 2000 or 2001)” for “\$25.20 per thousand (\$21 per thousand on cigarettes removed during 1991 or 1992)”.

Subsec. (c). Pub. L. 105-33, §9302(h)(3), substituted “On cigarette papers.” for “On each book or set of cigarette papers containing more than 25 papers.”

Pub. L. 105-33, §9302(c), substituted “1.22 cents (1.06 cents on cigarette papers removed during 2000 or 2001)” for “0.75 cent (0.625 cent on cigarette papers removed during 1991 or 1992)”.

Subsec. (d). Pub. L. 105-33, §9302(d), substituted “2.44 cents (2.13 cents on cigarette tubes removed during 2000 or 2001)” for “1.5 cents (1.25 cents on cigarette tubes removed during 1991 or 1992)”.

Subsec. (e)(1). Pub. L. 105-33, §9302(e)(1), substituted “58.5 cents (51 cents on snuff removed during 2000 or 2001)” for “36 cents (30 cents on snuff removed during 1991 or 1992)”.

Subsec. (e)(2). Pub. L. 105-33, §9302(e)(2), substituted “19.5 cents (17 cents on chewing tobacco removed during 2000 or 2001)” for “12 cents (10 cents on chewing tobacco removed during 1991 or 1992)”.

Subsec. (f). Pub. L. 105-33, §9302(f), substituted “\$1.0969 cents (95.67 cents on pipe tobacco removed during 2000 or 2001)” for “67.5 cents (56.25 cents on pipe tobacco removed during 1991 or 1992)”.

Subsecs. (g), (h). Pub. L. 105-33, §9302(g)(1), added subsec. (g) and redesignated former subsec. (g) as (h).

1990—Subsec. (a)(1). Pub. L. 101-508, §11202(a)(1), substituted “\$1.125 cents per thousand (93.75 cents per thousand on cigars removed during 1991 or 1992)” for “75 cents per thousand”.

Subsec. (a)(2). Pub. L. 101-508, §11202(a)(2), substituted “equal to—” and subpars. (A) and (B) for “equal to 8½ percent of the wholesale price, but not more than \$20 per thousand.”

Subsec. (b)(1). Pub. L. 101-508, §11202(b)(1), substituted “\$12 per thousand (\$10 per thousand on cigarettes removed during 1991 or 1992)” for “\$8 per thousand”.

Subsec. (b)(2). Pub. L. 101-508, §11202(b)(2), substituted “\$25.20 per thousand (\$21 per thousand on cigarettes removed during 1991 or 1992)” for “\$16.80 per thousand”.

Subsec. (c). Pub. L. 101-508, §11202(c), substituted “0.75 cent (0.625 cent on cigarette papers removed during 1991 or 1992)” for “½ cent”.

Subsec. (d). Pub. L. 101-508, §11202(d), substituted “1.5 cents (1.25 cents on cigarette tubes removed during 1991 or 1992)” for “1 cent”.

Subsec. (e)(1). Pub. L. 101-508, §11202(e)(1), substituted “36 cents (30 cents on snuff removed during 1991 or 1992)” for “24 cents”.

Subsec. (e)(2). Pub. L. 101-508, §11202(e)(2), substituted “12 cents (10 cents on chewing tobacco removed during 1991 or 1992)” for “8 cents”.

Subsec. (f). Pub. L. 101-508, §11202(f), substituted “67.5 cents (56.25 cents on pipe tobacco removed during 1991 or 1992)” for “45 cents”.

1988—Subsecs. (f), (g). Pub. L. 100-647 added subsec. (f) and redesignated former subsec. (f) as (g).

1986—Subsecs. (e), (f). Pub. L. 99-272 added subsec. (e) and redesignated former subsec. (e) as (f).

1982—Subsec. (b)(1). Pub. L. 97-248, §283(a)(1), substituted “\$8” for “\$4”.

Subsec. (b)(2). Pub. L. 97-248, §283(a)(2), substituted “\$16.80” for “\$8.40”.

1976—Subsec. (a). Pub. L. 94-455, §2128(a), substituted provisions setting a tax of 8½ percent of the wholesale price, but not more than \$20 per thousand, on cigars weighing more than 3 pounds per thousand for provisions setting the tax according to a graduated table running from \$2.50 per thousand for large cigars if removed to retail at not more than 2½ cents each to \$20 per thousand if removed to retail at more than 20 cents each, and struck out provisions that, in determining the retail price, for tax purposes, regard be had to the ordinary retail price of a single cigar in its principal market, exclusive of any State or local taxes imposed on cigars as a commodity, and that, for purposes of that determination, the amount of State or local tax excluded from the retail price be the actual tax imposed, except that, if the combined taxes resulted in a numerical figure ending in a fraction of a cent, the amount so excluded would be rounded to the next highest full cent unless such rounding would result in a tax lower than the tax which would be imposed in the absence of State or local tax.

Subsec. (e). Pub. L. 94-455, §1905(a)(24), inserted “, unless such import duties are imposed in lieu of internal revenue tax” after “such articles”.

1968—Subsec. (a). Pub. L. 90-240 provided that the amount of State and local tax excluded from the retail price be the actual tax imposed, except that, if the combined taxes result in a numerical figure ending in a fraction of a cent, the amount so excluded be rounded to the next highest full cent unless such rounding would result in a tax lower than the tax which would be imposed in the absence of State and local taxes.

1965—Pub. L. 89-44, §502(a), struck out subsec. (a) relating to tobacco and redesignated subsecs. (b) to (f) as subsecs. (a) to (e), respectively.

Subsec. (b)(1). Pub. L. 89-44, §501(f), removed the July 1, 1965, time limit for the \$4 per thousand rate as well as the provision for imposition of a \$3.50 rate on and after July 1, 1965.

1964—Subsec. (c)(1). Pub. L. 88-348 substituted “July 1, 1965” for “July 1, 1964” in two places.

1963—Subsec. (c)(1). Pub. L. 88-52 substituted “July 1, 1964” for “July 1, 1963” in two places.

1962—Subsec. (c)(1). Pub. L. 87-508 substituted “July 1, 1963” for “July 1, 1962” in two places.

1961—Subsec. (c)(1). Pub. L. 87-72 substituted “July 1, 1962” for “July 1, 1961” in two places.

1960—Subsec. (b). Pub. L. 86-779 substituted “imposed on cigars as a commodity” for “imposed on the retail sales of cigars”.

Subsec. (c)(1). Pub. L. 86-564 substituted “July 1, 1961” for “July 1, 1960” in two places.

1959—Subsec. (c)(1). Pub. L. 86-75 substituted “July 1, 1960” for “July 1, 1959” in two places.

1958—Subsec. (b). Pub. L. 85-859 provided that in determining the retail price, for tax purposes, regard shall be had to the ordinary retail price of a single cigar in its principal market, exclusive of any State or local taxes imposed on the retail sale of cigars, and required cigars not exempt from tax under this chapter which are removed but not intended for sale to be taxed at the same rate as similar cigars removed for sale.

Subsec. (c)(1). Pub. L. 85-475 substituted “July 1, 1959” for “July 1, 1958” in two places.

Subsec. (d). Pub. L. 85-859 substituted “On each book or set of cigarette papers containing more than 25 papers, manufactured in or imported into the United States, there shall be imposed” for “On cigarette papers, manufactured in or imported into the United States, there shall be imposed, on each package, book, or set containing more than 25 papers”.

Subsec. (f). Pub. L. 85-859 substituted “imposed by this section on tobacco products and cigarette papers and tubes imported into the United States” for “imposed on articles by this section”.

1957—Subsec. (c)(1). Pub. L. 85-12 substituted “July 1, 1958” for “April 1, 1957” in two places.

1956—Subsec. (c)(1). Act Mar. 29, 1956, substituted “April 1, 1957” for “April 1, 1956” in two places.

1955—Subsec. (c)(1). Act Mar. 30, 1955, substituted “April 1, 1956” for “April 1, 1955” in two places.

EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided, amendment by Pub. L. 111-3 effective Apr. 1, 2009, see section 3 of Pub. L. 111-3, set out as an Effective Date note under section 1396 of Title 42, The Public Health and Welfare.

Pub. L. 111-3, title VII, §701(i), Feb. 4, 2009, 123 Stat. 108, provided that: “The amendments made by this section [amending this section] shall apply to articles removed (as defined in section 5702(j) of the Internal Revenue Code of 1986) after March 31, 2009.”

EFFECTIVE DATE OF 1997 AMENDMENT

Section 9302(i) of Pub. L. 105-33 provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting section 5754 of this title and amending this section and sections 5702, 5704, 5712, 5713, 5721, 5722, and 5761 to 5763 of this title] shall apply to articles removed (as defined in section 5702(k) [now section 5702(j)] of the Internal Revenue Code of 1986, as amended by this section) after December 31, 1999.

“(2) TRANSITIONAL RULE.—Any person who—

“(A) on the date of the enactment of this Act [Aug. 5, 1997] is engaged in business as a manufacturer of roll-your-own tobacco or as an importer of tobacco products or cigarette papers and tubes, and

“(B) before January 1, 2000, submits an application under subchapter B of chapter 52 of such Code to engage in such business, may, notwithstanding such subchapter B, continue to engage in such business pending final action on such application. Pending such final action, all provisions of such chapter 52 shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit under such chapter 52 to engage in such business.”

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11202(h) of Pub. L. 101-508 provided that: “The amendments made by this section [amending this section and section 5702 of this title] shall apply with respect to articles removed after December 31, 1990.”

EFFECTIVE DATE OF 1988 AMENDMENT

Section 5061(d) of Pub. L. 100-647 provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 5702 of this title] shall apply to pipe tobacco removed (within the meaning of section 5702(k) [now section 5702(j)] of the 1986 Code) after December 31, 1988.

“(2) TRANSITIONAL RULE.—Any person who—

“(A) on the date of the enactment of this Act [Nov. 10, 1988], is engaged in business as a manufacturer of pipe tobacco, and

“(B) before January 1, 1989, submits an application under subchapter B of chapter 52 of the 1986 Code to engage in such business, may, notwithstanding such subchapter B, continue to engage in such business pending final action on such application. Pending such final action, all provisions of chapter 52 of the 1986 Code shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit to manufacture pipe tobacco under such chapter 52.”

EFFECTIVE DATE OF 1986 AMENDMENT

Section 13202(c) of Pub. L. 99-272, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 5702 of this title] shall apply to smokeless tobacco removed after June 30, 1986.

“(2) TRANSITIONAL RULE.—Any person who—

“(A) on the date of the enactment of this Act [Apr. 7, 1986], is engaged in business as a manufacturer of smokeless tobacco, and

“(B) before July 1, 1986, submits an application under subchapter B of chapter 52 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to engage in such business, may, notwithstanding such subchapter B, continue to engage in such business pending final action on such application. Pending such final action, all provisions of chapter 52 of such Code shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit to manufacture smokeless [sic] tobacco under such chapter 52.”

EFFECTIVE DATE OF 1982 AMENDMENT

Section 283(c) of Pub. L. 97-248, as amended by Pub. L. 99-107, § 2, Sept. 30, 1985, 99 Stat. 479; Pub. L. 99-155, § 2(a), Nov. 14, 1985, 99 Stat. 814; Pub. L. 99-181, § 1, Dec. 13, 1985, 99 Stat. 1172; Pub. L. 99-189, § 1, Dec. 18, 1985, 99 Stat. 1184; Pub. L. 99-201, § 1, Dec. 23, 1985, 99 Stat. 1665; Pub. L. 99-272, title XIII, § 13201(a), Apr. 7, 1986, 100 Stat. 311, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to cigarettes removed after December 31, 1982.”

[Pub. L. 99-272, title XIII, § 13201(b), Apr. 7, 1986, 100 Stat. 311, provided that: “For purposes of all Federal and State laws, the amendment made by subsection (a) [amending section 283(c) of Pub. L. 97-248, set out above] shall be treated as having taken effect on March 14, 1986.”]

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(24) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94-455, set out as a note under section 5005 of this title.

Section 2128(e) of Pub. L. 94-455 provided that: “The amendments made by this section [amending this section and sections 5702 and 5741 of this title] shall take effect on the first month which begins more than 90 days after the date of the enactment of this Act [Oct. 4, 1976].”

EFFECTIVE DATE OF 1968 AMENDMENT

Section 4(b) of Pub. L. 90-240 provided that: “The amendment made by subsection (a) [amending this section] shall apply to the removal of cigars on or after the first day of the first calendar quarter which begins more than 30 days after the date of the enactment of this Act [Jan. 2, 1968].”

EFFECTIVE DATE OF 1965 AMENDMENT

Section 701(d) of Pub. L. 89-44 provided that: “The amendments made by section 501 [repealing sections

5063 and 5707 of this title and provisions formerly set out below and amending this section and sections 5001, 5022, 5041, and 5051 of this title] shall apply on and after July 1, 1965. The amendments made by section 502 [striking out subchapter D of chapter 52 of this title and redesignating subchapters E, F, and G as subchapters D, E, and F respectively, and amending this section and sections 5702, 5704, 5711, 5741, 5753, 5762, and 5763 of this title] shall apply on and after January 1, 1966.”

EFFECTIVE DATE OF 1960 AMENDMENT

Section 2 of Pub. L. 86-779 provided that: “The amendment made by the first section of this Act [amending this section] shall apply with respect to cigars removed on or after the ninth day of the first month which begins after the date of the enactment of this Act [Sept. 14, 1960].”

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 a note under section 5001 of this title.

COORDINATION WITH TOBACCO INDUSTRY SETTLEMENT AGREEMENT

Section 9302(k) of Pub. L. 105-33, as added by Pub. L. 105-34, title XVI, § 1604(f)(3), Aug. 5, 1997, 111 Stat. 1099, which provided that the increase in excise taxes collected as a result of the amendments made by subsections (a), (e), and (g) of section 9302 of Pub. L. 105-33 (amending this section and section 5702 of this title) were to be credited against the total payments made by parties pursuant to Federal legislation implementing the tobacco industry settlement agreement of June 20, 1997, was repealed by Pub. L. 105-78, title V, § 519, Nov. 13, 1997, 111 Stat. 1519.

FLOOR STOCKS TAXES

Pub. L. 111-3, title VII, § 701(h), Feb. 4, 2009, 123 Stat. 107, provided that:

“(1) IMPOSITION OF TAX.—On tobacco products (other than cigars described in section 5701(a)(2) of the Internal Revenue Code of 1986) and cigarette papers and tubes manufactured in or imported into the United States which are removed before April 1, 2009, and held on such date for sale by any person, there is hereby imposed a tax in an amount equal to the excess of—

“(A) the tax which would be imposed under section 5701 of such Code on the article if the article had been removed on such date, over

“(B) the prior tax (if any) imposed under section 5701 of such Code on such article.

“(2) CREDIT AGAINST TAX.—Each person shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to \$500. Such credit shall not exceed the amount of taxes imposed by paragraph (1) on April 1, 2009, for which such person is liable.

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

“(A) LIABILITY FOR TAX.—A person holding tobacco products, cigarette papers, or cigarette tubes on April 1, 2009, 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 paid in such manner as the Secretary shall prescribe by regulations.

“(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before August 1, 2009.

“(4) ARTICLES IN FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (commonly known as the Foreign Trade Zone Act, 48 Stat. 998, 19 U.S.C. 81a et seq.) or any other provision of law, any article which is located in a foreign trade zone on April 1, 2009, shall be subject to the tax imposed by paragraph (1) if—

“(A) internal revenue taxes have been determined, or customs duties liquidated, with respect to such article before such date pursuant to a request made under the 1st proviso of section 3(a) of such Act [19 U.S.C. 81c(a)], or

“(B) such article is held on such date under the supervision of an officer of the United States Customs and Border Protection of the Department of Homeland Security pursuant to the 2d proviso of such section 3(a).

“(5) DEFINITIONS.—For purposes of this subsection—

“(A) IN GENERAL.—Any term used in this subsection which is also used in section 5702 of the Internal Revenue Code of 1986 shall have the same meaning as such term has in such section.

“(B) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury or the Secretary’s delegate.

“(6) CONTROLLED GROUPS.—Rules similar to the rules of section 5061(e)(3) of such Code shall apply for purposes of this subsection.

“(7) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5701 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 5701. The Secretary may treat any person who bore the ultimate burden of the tax imposed by paragraph (1) as the person to whom a credit or refund under such provisions may be allowed or made.”

Section 9302(j) of Pub. L. 105-33, as amended by Pub. L. 106-554, §1(a)(7) [title III, §315(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-643, provided that:

“(1) IMPOSITION OF TAX.—On cigarettes manufactured in or imported into the United States which are removed before any tax increase date, and held on such date for sale by any person, there is hereby imposed a tax in an amount equal to the excess of—

“(A) the tax which would be imposed under section 5701 of the Internal Revenue Code of 1986 on the article if the article had been removed on such date, over

“(B) the prior tax (if any) imposed under section 5701 of such Code on such article.

“(2) AUTHORITY TO EXEMPT CIGARETTES HELD IN VENDING MACHINES.—To the extent provided in regulations prescribed by the Secretary, no tax shall be imposed by paragraph (1) on cigarettes held for retail sale on any tax increase date, by any person in any vending machine. If the Secretary provides such a benefit with respect to any person, the Secretary may reduce the \$500 amount in paragraph (3) with respect to such person.

“(3) CREDIT AGAINST TAX.—Each person shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to \$500. Such credit shall not exceed the amount of taxes imposed by paragraph (1) on any tax increase date, for which such person is liable.

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

“(A) LIABILITY FOR TAX.—A person holding cigarettes on any tax increase date, 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 paid in such manner as the Secretary shall prescribe by regulations.

“(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before April 1 following any tax increase date.

“(5) ARTICLES IN FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) and any other provision of law, any article which is located in a foreign trade zone on any tax increase date, shall be subject to the tax imposed by paragraph (1) if—

“(A) internal revenue taxes have been determined, or customs duties liquidated, with respect to such article before such date pursuant to a request made under the 1st proviso of section 3(a) of such Act [19 U.S.C. 81c(a)], or

“(B) such article is held on such date under the supervision of a customs officer pursuant to the 2d proviso of such section 3(a).

“(6) DEFINITIONS.—For purposes of this subsection—

“(A) IN GENERAL.—Terms used in this subsection which are also used in section 5702 of the Internal

Revenue Code of 1986 shall have the respective meanings such terms have in such section, as amended by this Act.

“(B) TAX INCREASE DATE.—The term ‘tax increase date’ means January 1, 2000, and January 1, 2002.

“(C) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury or the Secretary’s delegate.

“(7) CONTROLLED GROUPS.—Rules similar to the rules of section 5061(e)(3) of such Code shall apply for purposes of this subsection.

“(8) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5701 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 5701. The Secretary may treat any person who bore the ultimate burden of the tax imposed by paragraph (1) as the person to whom a credit or refund under such provisions may be allowed or made.”

Section 11202(i) of Pub. L. 101-508 provided that:

“(1) IMPOSITION OF TAX.—On cigarettes manufactured in or imported into the United States which are removed before any tax-increase date 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, \$2 per thousand.

“(B) LARGE CIGARETTES.—On cigarettes weighing more than 3 pounds per thousand, \$4.20 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) EXCEPTION FOR CERTAIN AMOUNTS OF CIGARETTES.—

“(A) IN GENERAL.—No tax shall be imposed by paragraph (1) on cigarettes held on any tax-increase date by any person if—

“(i) the aggregate number of cigarettes held by such person on such date does not exceed 30,000, and

“(ii) such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this subparagraph.

For purposes of this subparagraph, in the case of cigarettes measuring more than 6½ inches in length, each 2¾ inches (or fraction thereof) of the length of each shall be counted as one cigarette.

“(B) AUTHORITY TO EXEMPT CIGARETTES HELD IN VENDING MACHINES.—To the extent provided in regulations prescribed by the Secretary, no tax shall be imposed by paragraph (1) on cigarettes held for retail sale on any tax-increase date by any person in any vending machine. If the Secretary provides such a benefit with respect to any person, the Secretary may reduce the 30,000 amount in subparagraph (A) and the \$60 amount in paragraph (3) with respect to such person.

“(3) CREDIT AGAINST TAX.—Each person shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to \$60. Such credit shall not exceed the amount of taxes imposed by paragraph (1) for which such person is liable.

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

“(A) LIABILITY FOR TAX.—A person holding cigarettes on any tax-increase date 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 paid in such manner as the Secretary shall prescribe by regulations.

“(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before the 1st June 30 following the tax-increase date.

“(5) DEFINITIONS.—For purposes of this subsection—

“(A) TAX-INCREASE DATE.—The term ‘tax-increase date’ means January 1, 1991, and January 1, 1993.

“(B) OTHER DEFINITIONS.—Terms used in this subsection which are also used in section 5702 of the Internal Revenue Code of 1986 shall have the respective meanings such terms have in such section.

“(C) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury or his delegate.

“(6) CONTROLLED GROUPS.—Rules similar to the rules of section 11201(e)(6) [Pub. L. 101-508, set out in a note under section 5001 of this title] shall apply for purposes of this subsection.

“(7) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5701 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 5701.”

Section 5061(e) of Pub. L. 100-647 provided that:

“(1) IMPOSITION OF TAX.—On pipe tobacco manufactured in or imported into the United States which is removed before January 1, 1989, and held on such date for sale by any person, there is hereby imposed a tax of 45 cents per pound (and a proportionate tax at the like rate on all fractional parts of a pound).

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

“(A) LIABILITY FOR TAX.—A person holding pipe tobacco on January 1, 1989, to which the 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 by section 5701 of the 1986 Code and shall be due and payable on February 14, 1989, in the same manner as the tax imposed by such section is payable with respect to pipe tobacco removed on or after January 1, 1989.

“(C) TREATMENT OF PIPE TOBACCO IN FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provision of law, pipe tobacco which is located in a foreign trade zone on January 1, 1989, shall be subject to the tax imposed by paragraph (1) and shall be treated for purposes of this subsection as held on such date for sale if—

“(i) internal revenue taxes have been determined, or customs duties liquidated, with respect to such pipe tobacco before such date pursuant to a request made under the first proviso of section 3(a) of such Act [19 U.S.C. 81c(a)], or

“(ii) such pipe tobacco is held on such date under the supervision of a customs officer pursuant to the second proviso of such section 3(a).

“Under regulations prescribed by the Secretary of the Treasury or his delegate, provisions similar to sections 5706 and 5708 of the 1986 Code shall apply to pipe tobacco with respect to which tax is imposed by paragraph (1) by reason of this subparagraph.

“(3) PIPE TOBACCO.—For purposes of this subsection, the term ‘pipe tobacco’ shall have the meaning given to such term by subsection (o) [now subsection (n)] of section 5702 of the 1986 Code.

“(4) EXCEPTION WHERE LIABILITY DOES NOT EXCEED \$1,000.—No tax shall be imposed by paragraph (1) on any person if the tax which would but for this paragraph be imposed on such person does not exceed \$1,000. For purposes of the preceding sentence, all persons who are treated as a single taxpayer under section 5061(e)(3) of the 1986 Code shall be treated as 1 person.”

Section 283(b) of Pub. L. 97-248, as amended by Pub. L. 97-448, title III, §306(a)(14), Jan. 12, 1983, 96 Stat. 2405; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IMPOSITION OF TAX.—On cigarettes manufactured in or imported into the United States which are removed 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.”

§ 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, pipe tobacco, and roll-your-own tobacco.

(d) Manufacturer of tobacco products

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

(1) a person who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the person’s own personal consumption or use, and

(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 tube

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

(g) Manufacturer of cigarette papers and tubes

“Manufacturer of cigarette papers and tubes” means any person who manufactures cigarette

paper, or makes up cigarette paper into tubes, except for his own personal use or consumption.

(h) Export warehouse

“Export warehouse” means a bonded internal revenue warehouse for the storage of tobacco products or cigarette papers or tubes or any processed tobacco, 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.

(i) Export warehouse proprietor

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

(j) Removal or remove

“Removal” or “remove” means the removal of tobacco products or cigarette papers or tubes, or any processed tobacco, from the factory or from internal revenue bond under section 5704, 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.

(k) Importer

“Importer” means any person in the United States to whom nontaxpaid tobacco products or cigarette papers or tubes, or any processed tobacco, 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, or any processed tobacco, into the United States.

(l) 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.

(m) 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.

(n) 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.

(o) Roll-your-own tobacco

The term “roll-your-own 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 for making cigarettes or cigars, or for use as wrappers thereof.

(p) Manufacturer of processed tobacco

(1) In general

The term “manufacturer of processed tobacco” means any person who processes any tobacco other than tobacco products.

(2) Processed tobacco

The processing of tobacco shall not include the farming or growing of tobacco or the handling of tobacco solely for sale, shipment, or delivery to a manufacturer of tobacco products or processed tobacco.

(Aug. 16, 1954, ch. 736, 68A Stat. 706; Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1415; Pub. L. 89-44, title V, §502(b)(3), title VIII, §808(a), June 21, 1965, 79 Stat. 151, 164; Pub. L. 94-455, title XIX, §1906(b)(13)(A), title XXI, §2128(b), Oct. 4, 1976, 90 Stat. 1834, 1921; Pub. L. 99-272, title XIII, §13202(b)(2)-(4), Apr. 7, 1986, 100 Stat. 312; Pub. L. 100-647, title V, §5061(b)-(c)(2), Nov. 10, 1988, 102 Stat. 3679; Pub. L. 101-508, title XI, §11202(g), Nov. 5, 1990, 104 Stat. 1388-419; Pub. L. 105-33, title IX, §9302(g)(2)-(3)(B), (h)(4), Aug. 5, 1997, 111 Stat. 672, 674; Pub. L. 106-554, §1(a)(7) [title III, §315(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-644; Pub. L. 111-3, title VII, §702(a)(4), (5), (d)(1), Feb. 4, 2009, 123 Stat. 108, 110.)

AMENDMENTS

2009—Subsec. (h). Pub. L. 111-3, §702(a)(5)(A), substituted “tobacco products or cigarette papers or tubes or any processed tobacco” for “tobacco products and cigarette papers and tubes”.

Subsec. (j). Pub. L. 111-3, §702(a)(5)(B), inserted “, or any processed tobacco,” after “tobacco products or cigarette papers or tubes”.

Subsec. (k). Pub. L. 111-3, §702(a)(5)(B), which directed insertion of “, or any processed tobacco,” after “tobacco products or cigarette papers or tubes”, was executed by making the insertion after “tobacco products or cigarette papers or tubes” both places it appeared to reflect the probable intent of Congress.

Subsec. (o). Pub. L. 111-3, §702(d)(1), inserted “or cigars, or for use as wrappers thereof” before period.

Subsec. (p). Pub. L. 111-3, §702(a)(4), added subsec. (p). 2000—Subsec. (f). Pub. L. 106-554, §1(a)(7) [title III, §315(a)(2)(B)], redesignated subsec. (g) as (f) and struck out former subsec. (f), which defined “cigarette papers”.

Subsec. (g). Pub. L. 106-554, §1(a)(7) [title III, §315(a)(2)(B)], redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 106-554, §1(a)(7) [title III, §315(a)(2)(B)], redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

Pub. L. 106-554, §1(a)(7) [title III, §315(a)(2)(A)], amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: “‘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.”

Subsecs. (i) to (p). Pub. L. 106-554, §1(a)(7) [title III, §315(a)(2)(B)], redesignated subsecs. (i) to (p) as (h) to (o), respectively.

1997—Subsec. (c). Pub. L. 105-33, §9302(g)(3)(A), substituted “pipe tobacco, and roll-your-own tobacco” for “and pipe tobacco”.

Subsec. (d). Pub. L. 105-33, §9302(g)(3)(B)(i), substituted “pipe tobacco, or roll-your-own tobacco” for “or pipe tobacco” in introductory provisions.

Subsec. (d)(1). Pub. L. 105-33, §9302(g)(3)(B)(ii), added par. (1) and struck out former par. (1) which read as follows: “a person who produces cigars, cigarettes, smokeless tobacco, or pipe tobacco solely for his own personal consumption or use; or”.

Subsec. (k). Pub. L. 105-33, §9302(h)(4), inserted “under section 5704” after “internal revenue bond”.

Subsec. (p). Pub. L. 105-33, §9302(g)(2), added subsec. (p).

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 2009 AMENDMENT

Except as otherwise provided, amendment by Pub. L. 111-3 effective Apr. 1, 2009, see section 3 of Pub. L. 111-3, set out as an Effective Date note under section 1396 of Title 42, The Public Health and Welfare.

Pub. L. 111-3, title VII, §702(a)(6), Feb. 4, 2009, 123 Stat. 109, provided that: “The amendments made by this subsection [amending this section and sections

5712, 5713, 5721, 5722, 5723, and 5741 of this title] shall take effect on April 1, 2009.”

Pub. L. 111-3, title VII, §702(d)(2), Feb. 4, 2009, 123 Stat. 110, provided that: “The amendment made by this subsection [amending this section] shall apply to articles removed (as defined in section 5702(j) of the Internal Revenue Code of 1986) after March 31, 2009.”

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, §1(a)(7) [title III, §315(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-644, provided that: “The amendments made by this section [amending this section, section 5761 of this title, and provisions set out as a note under section 5701 of this title] shall take effect as if included in section 9302 of the Balanced Budget Act of 1997 [Pub. L. 105-33].”

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 applicable to articles removed, as defined in subsec. (k) of this section, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105-33, set out as a note under section 5701 of this title.

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 satisfaction of the Secretary to be destined for export.

(C) Tobacco products and cigarette papers and tubes brought into the United States from Puerto Rico

In the case of tobacco products and cigarette papers and tubes which are brought into the United States from Puerto Rico, 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 brought into the United States.

(D) Special rule for tax due in September**(i) In general**

Notwithstanding the preceding provisions of this paragraph, the taxes on tobacco products and cigarette papers and tubes for the period beginning on September 16 and ending on September 26 shall be paid not later than September 29.

(ii) Safe harbor

The requirement of clause (i) shall be treated as met if the amount paid not later than September 29 is not less than $\frac{1}{15}$ of the taxes on tobacco products and cigarette papers and tubes for the period beginning on September 1 and ending on September 15.

(iii) Taxpayers not required to use electronic funds transfer

In the case of payments not required to be made by electronic funds transfer, clauses (i) and (ii) shall be applied by substituting "September 25" for "September 26", "September 28" for "September 29", and " $\frac{2}{3}$ " for " $\frac{1}{15}$ ".

(E) Special rule where due date falls on Saturday, Sunday, or holiday

Notwithstanding section 7503, if, but for this subparagraph, the due date under this paragraph would fall on a Saturday, Sunday, or a legal holiday (as defined in section 7503), such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday (or the immediately following day where the due date described in subparagraph (D) falls on a Sunday).

(F) Special rule for unlawfully manufactured tobacco products

In the case of any tobacco products, cigarette paper, or cigarette tubes manufactured in the United States at any place other than the premises of a manufacturer of tobacco products, cigarette paper, or cigarette tubes that has filed the bond and obtained the permit required under this chapter, tax shall be due and payable immediately upon manufacture.

(3) Payment by electronic fund transfer

Any person who in any 12-month period, ending December 31, was liable for a gross amount equal to or exceeding \$5,000,000 in taxes imposed on tobacco products and cigarette papers and tubes by section 5701 (or 7652) shall pay such taxes during the succeeding calendar year by electronic fund transfer (as defined in section 5061(e)(2)) to a Federal Reserve Bank. Rules similar to the rules of section 5061(e)(3) shall apply to the \$5,000,000 amount specified in the preceding sentence.

(c) Use of government depositaries

The Secretary may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed by this chapter, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, time, and condition under which the receipt of such tax by such banks and trust companies is to be treated as payment for tax purposes.

(d) Assessment

Whenever any tax required to be paid by this chapter is not paid in full at the time required for such payment, it shall be the duty of the Secretary, subject to the limitations prescribed in section 6501, on proof satisfactory to him, to determine the amount of tax which has been omitted to be paid, and to make an assessment therefor against the person liable for the tax. The tax so assessed shall be in addition to the penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error, no such assessment shall be made until and after the person liable for the tax has been afforded reasonable notice and opportunity to show cause, in writing, against such assessment.

(Aug. 16, 1954, ch. 736, 68A Stat. 707; Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1417; Pub. L. 94-455, title XIX, §§1905(a)(25), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1821, 1834; Pub. L. 97-448, title III, §308(a), Jan. 12, 1983, 96 Stat. 2407; Pub. L. 98-369, div. A, title I, §27(c)(2), July 18, 1984, 98 Stat. 509; Pub. L. 99-509, title VIII, §8011(a)(1), Oct. 21, 1986, 100 Stat. 1951; Pub. L. 99-514, title XVIII, §1801(c)(2), Oct. 22, 1986, 100 Stat. 2786; Pub. L. 100-647, title II, §2003(b)(1)(C), (D), Nov. 10, 1988, 102 Stat. 3598; Pub. L. 103-465, title VII, §712(c), Dec. 8, 1994, 108 Stat. 5000; Pub. L. 111-3, title VII, §702(e)(1), Feb. 4, 2009, 123 Stat. 110.)

AMENDMENTS

2009—Subsec. (b)(2)(F). Pub. L. 111-3 added subpar. (F).

1994—Subsec. (b)(2)(D). Pub. L. 103-465, § 712(c)(1), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (b)(2)(E). Pub. L. 103-465, § 712(c), redesignated subpar. (D) as (E), substituted “due date” for “14th day” in heading, and inserted “(or the immediately following day where the due date described in subparagraph (D) falls on a Sunday)” before period at end.

1988—Subsec. (b)(2)(B)(i), (ii), (C). Pub. L. 100-647 substituted “the 14th day after the last day of the semi-monthly period during which” for “the 14th day after the date on which”.

1986—Subsec. (b)(2). Pub. L. 99-509 amended par. (2) generally. Prior to amendment par. (2), time for making of return and payment of taxes, read as follows: “In the case of tobacco products and cigarette papers and tubes removed after December 31, 1982, under bond for deferred payment of tax, the last day for filing a return and paying any tax due for each return period shall be the last day of the first succeeding return period plus 10 days.”

Subsec. (b)(3). Pub. L. 99-514 inserted last sentence.

1984—Subsec. (b)(3). Pub. L. 98-369 added par. (3).

1983—Subsec. (b). Pub. L. 97-448 designated existing provisions as par. (1), struck out provisions that the Secretary prescribe the time for making a return and the time for the payment of taxes and that the Secretary prescribe by regulations the conditions for the filing of additional bonds, and added par. (2).

1976—Subsec. (a). Pub. L. 94-455, § 1905(a)(25)(A), directed that all provisions of chapter 52 applicable to tobacco products and cigarette papers and tubes in bond 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.

Subsec. (b). Pub. L. 94-455, §§ 1905(a)(25)(B), 1906(b)(13)(A), struck out provisions which had authorized payment of taxes by stamp until regulations could be promulgated to provide for payment by return and struck out “or his delegate” after “Secretary” in three places.

Subsec. (c). Pub. L. 94-455, §§ 1905(a)(25)(C), 1906(b)(13)(A), redesignated subsec. (d) as (c) and struck out “or his delegate” after “Secretary”. Former subsec. (c), relating to the use of stamps as evidence of the payment of taxes, was struck out.

Subsecs. (d), (e). Pub. L. 94-455, §§ 1905(a)(25)(C), 1906(b)(13)(A), redesignated subsec. (e) as (d) and struck out “or his delegate” after “Secretary”. Former subsec. (d) redesignated (c).

1958—Subsec. (a)(1). Pub. L. 85-859 designated part of first sentence of subsec. (a) as par. (1) thereof and redesignated the remainder of subsec. (a) as (b).

Subsec. (a)(2). Pub. L. 85-859 added par. (2).

Subsec. (b). Pub. L. 85-859 designated former subsec. (a), with exception of part of the first sentence, as subsec. (b) and substituted “tobacco products and cigarette papers and tubes” for “articles”, and inserted provisions relating to postponements, and to payment of the 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 the tax. Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 85-859 designated former subsec. (b) as (c) and substituted “If the Secretary or his delegate shall by regulation provide for the payment of tax by return and require the use of” for “If the Secretary or his delegate shall, by regulation, require the use”, and “tobacco products” for “articles”. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 85-859 redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 85-859 designated former subsec. (d) as (e) and permitted assessments in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-3, title VII, § 702(e)(2), Feb. 4, 2009, 123 Stat. 110, provided that: “The amendment made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [Feb. 4, 2009].”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective Jan. 1, 1995, see section 712(e) of Pub. L. 103-465, set out as a note under section 5061 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective as if included in the amendments made by section 8011 of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99-509, see section 2003(b)(2) of Pub. L. 100-647, set out as a note under section 5061 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Amendment by Pub. L. 99-509 applicable to removals during semimonthly periods ending on or after Dec. 31, 1986, except as otherwise provided, see section 8011(c) of Pub. L. 99-509, set out as a note under section 5061 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxes required to be paid on or after Sept. 30, 1984, see section 27(d)(2) of Pub. L. 98-369, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 308(b) of Pub. L. 97-448 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to tobacco products and cigarette papers and tubes removed after December 31, 1982.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(25) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94-455, set out as a note under section 5005 of this title.

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.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 5704. Exemption from tax**(a) Tobacco products furnished for employee use or experimental purposes**

Tobacco products may be furnished by a manufacturer of such products, without payment of tax, for use or consumption by employees or for experimental purposes, in such quantities, and in such manner as the Secretary shall by regulation prescribe.

(b) Tobacco products and cigarette papers and tubes transferred or removed in bond from domestic factories and export warehouses

A manufacturer or export warehouse proprietor may transfer tobacco products and cigarette papers and tubes, without payment of tax, to the bonded premises of another manufacturer or export warehouse proprietor, or remove such articles, without payment of tax, for 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; and manufacturers may similarly remove such articles for use of the United States; in accordance with such regulations and under such bonds as the Secretary shall prescribe. Tobacco products and cigarette papers and tubes may not be transferred or removed under this subsection unless such products or papers and tubes bear such marks, labels, or notices as the Secretary shall by regulations prescribe.

(c) Tobacco products and cigarette papers and tubes released in bond from customs custody

Tobacco products and cigarette papers and tubes, imported or brought into the United States, may be released from customs custody, without payment of tax, for delivery to the proprietor of an export warehouse, or to a manufacturer of tobacco products or cigarette papers and tubes if such articles are not put up in packages, in accordance with such regulations and under such bond as the Secretary shall prescribe.

(d) Tobacco products and cigarette papers and tubes exported and returned

Tobacco products and cigarette papers and tubes classifiable under item 804.00 of title I of the Tariff Act of 1930 (relating to duty on certain articles previously exported and returned) may be released from customs custody, without payment of that part of the duty attributable to the internal revenue tax for delivery to the original manufacturer of such tobacco products or cigarette papers and tubes or to the proprietor of an export warehouse authorized by such manufacturer to receive such articles, in accordance with such regulations and under such bond as the Secretary shall prescribe. Upon such release such products, papers, and tubes shall be subject to this chapter as if they had not been exported or otherwise removed from internal-revenue bond.

(Aug. 16, 1954, ch. 736, 68A Stat. 708; Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1418; Pub. L. 88-342, §1(b), June 30, 1964, 78 Stat. 234; Pub. L. 89-44, title V, §502(b)(4), June 21, 1965, 79 Stat. 151; Pub. L. 94-455, title XIX, §§1905(a)(26), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1821, 1834; Pub. L. 99-509, title VIII, §8011(a)(2), Oct. 21, 1986, 100 Stat. 1952; Pub. L. 101-239, title VII, §7508(a), Dec. 19, 1989, 103 Stat. 2370; Pub. L. 105-33, title IX, §9302(h)(1)(A), Aug. 5, 1997, 111 Stat. 673; Pub. L. 106-476, title IV, §4002(b), Nov. 9, 2000, 114 Stat. 2177.)

REFERENCES IN TEXT

Item 804.00 of title I of the Tariff Act of 1930, referred to in subsec. (d), was classified to item 804.00 of the

Tariff Schedules of the United States. The Tariff Schedules of the United States were replaced by the Harmonized Tariff Schedule of the United States. The Harmonized Tariff Schedule of the United States is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

2000—Subsec. (d). Pub. L. 106-476 substituted “the original manufacturer of such” for “a manufacturer of” and inserted “authorized by such manufacturer to receive such articles” after “proprietor of an export warehouse”.

1997—Subsec. (b). Pub. L. 105-33 inserted at end “Tobacco products and cigarette papers and tubes may not be transferred or removed under this subsection unless such products or papers and tubes bear such marks, labels, or notices as the Secretary shall by regulations prescribe.”

1989—Subsec. (c). Pub. L. 101-239 inserted “or to a manufacturer of tobacco products or cigarette papers and tubes if such articles are not put up in packages,” after “export warehouse.”

1986—Subsec. (c). Pub. L. 99-509 struck out “to a manufacturer of tobacco products or cigarette papers and tubes or” after “for delivery”.

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

Subsecs. (c), (d). Pub. L. 94-455, §§1905(a)(26), 1906(b)(13)(A), inserted “or to the proprietor of an export warehouse” after “to a manufacturer of tobacco products or cigarette papers and tubes” and struck out “or his delegate” after “Secretary”.

1965—Subsec. (c). Pub. L. 89-44, §502(b)(4), redesignated subsec. (d) as (c), struck out all references to tobacco materials, and repealed former subsec. (c) which related to tobacco materials shipped or delivered in bond.

Subsecs. (d), (e). Pub. L. 89-44, §502(b)(4)(A), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

1964—Subsec. (e). Pub. L. 88-342 added subsec. (e). 1958—Subsec. (b). Pub. L. 85-859 included transfers by export warehouse proprietors, and substituted “tobacco products and cigarette papers and tubes” for “articles”, before “without payment of tax”.

Subsec. (c). Pub. L. 85-859 authorized shipments without payment of tax of tobacco stems and waste only, to any person for use by him as fertilizer or insecticide or in the production of fertilizer, insecticide, or nicotine.

Subsec. (d). Pub. L. 85-859 substituted “tobacco products, cigarette papers and tubes” for “articles” wherever appearing, and struck out provisions which related to delivery to bonded premises of manufacturers and dealers.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-476, title IV, §4002(d), Nov. 9, 2000, 114 Stat. 2177, provided that: “The amendments made by this section [amending this section and sections 5754 and 5761 of this title] shall take effect 90 days after the date of the enactment of this Act [Nov 9, 2000].”

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105-33, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7508(b) of Pub. L. 101-239 provided that: “The amendment made by subsection (a) [amending this section] shall apply to articles imported or brought into the United States after the date of the enactment of this Act [Dec. 19, 1989].”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-509 applicable to articles imported, entered for warehousing, or brought into the

United States or a foreign trade zone after Dec. 15, 1986, see section 8011(c) of Pub. L. 99-509, set out as a note under section 5061 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(26) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94-455, set out as a note under section 5005 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

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

EFFECTIVE DATE OF 1964 AMENDMENT

Section 2 of Pub. L. 88-342 provided that the amendment made by section 2 of Pub. L. 88-342 shall apply with respect to articles entered, or withdrawn from warehouse, for consumption after June 30, 1964.

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.

REPORT

Pub. L. 106-476, title I, §4002(e), Nov. 9, 2000, 114 Stat. 2177, provided that: "The Secretary of the Treasury shall report to Congress on the impact of requiring export warehouses to be authorized by the original manufacturer to receive relanded export-labeled cigarettes."

§ 5705. Credit, refund, or allowance of tax

(a) Credit or refund

Credit or refund of any tax imposed by this chapter or section 7652 shall be allowed or made (without interest) to the manufacturer, importer, or export warehouse proprietor, on proof satisfactory to the Secretary that the claimant manufacturer, importer, or export warehouse proprietor has paid the tax on tobacco products and cigarette papers and tubes withdrawn by him from the market; or on such articles lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession of ownership of the claimant.

(b) Allowance

If the tax has not yet been paid on tobacco products and cigarette papers and tubes provided to have been withdrawn from the market or lost or destroyed as aforesaid, relief from the tax on such articles may be extended upon the filing of a claim for allowance therefor in accordance with such regulations as the Secretary shall prescribe.

(c) Limitation

Any claim for credit or refund of tax under this section shall be filed within 6 months after the date of the withdrawal from the market, loss, or destruction of the articles to which the claim relates, and shall be in such form and contain such information as the Secretary shall by regulations prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 709; Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1419; Pub. L. 89-44, title VIII, §808(b)(1), (2), (c)(1), June 21, 1965, 79 Stat. 164, 165; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94-455 struck out "or his delegate" after "Secretary" wherever appearing.

1965—Pub. L. 89-44, §808(c)(1), struck out "Refund or" and inserted in lieu thereof "Credit, refund, or" in section catchline.

Subsec. (a). Pub. L. 89-44, §808(b)(1), substituted "Credit or refund" for "Refund" in heading and struck out "Refund of any tax imposed by this chapter shall be made", replacing it with "Credit or refund of any tax imposed by this chapter or section 7652 shall be allowed or made".

Subsec. (c). Pub. L. 89-44, §808(b)(2), inserted "credit or" before "refund".

1958—Subsec. (a). Pub. L. 85-859 authorized refunds to export warehouse proprietors, provided for refunds to be made without interest, and eliminated provisions which authorized refunds where the tax has been paid in error.

Subsec. (b). Pub. L. 85-859 permitted relief where a tax has not yet been paid on tobacco products and cigarette papers and tubes proved to have been withdrawn from the market.

Subsec. (c). Pub. L. 85-859 substituted "under this section shall be filed within 6 months after the date of the withdrawal from the market, loss, or destruction of the articles to which the claim relates" for "imposed by this chapter shall be filed within 3 years of the date of payment of tax".

EFFECTIVE DATE OF 1965 AMENDMENT

Section 808(d)(2) of Pub. L. 89-44 provided that: "The amendments made by subsections (b)(1), (2), and (c) [amending this section] shall take effect on October 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.

§ 5706. Drawback of tax

There shall be an allowance of drawback of tax paid on tobacco products and cigarette papers and tubes, when shipped from the United States, in accordance with such regulations and upon the filing of such bond as the Secretary shall prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 709; Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1419; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94-455 struck out "or his delegate" after "Secretary".

1958—Pub. L. 85-859 substituted "tobacco products and cigarette papers and tubes" for "articles".

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.

[§ 5707. Repealed. Pub. L. 89-44, title V, §501(g), June 21, 1965, 79 Stat. 150]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 709; Mar. 30, 1955, ch. 18, §3(b)(3), 69 Stat. 15; Mar. 29, 1956, ch. 115, §3(b)(3), 70 Stat. 67; Mar. 29, 1957, Pub. L. 85-12, §3(b)(3), 71 Stat. 10; June 30, 1958, Pub. L. 85-475, §3(b)(3), 72 Stat. 259; Sept. 2, 1958, Pub. L. 85-859, title II, §202, 72 Stat. 1419; June 30, 1959, Pub. L. 86-75, §3(b)(2), 73 Stat. 158; June 30, 1960, Pub. L. 86-564, title II, §202(b)(2), 74 Stat. 291; June 30, 1961, Pub. L. 87-72, §3(b)(2), 75 Stat. 193; June 28, 1962, Pub. L. 87-508, §3(b)(2), 76 Stat. 114; June

29, 1963, Pub. L. 88-52, §3(b)(1)(B), 77 Stat. 72; June 30, 1964, Pub. L. 88-348, §2(b)(1)(B), 78 Stat. 237, made provision for floor stocks refunds on cigarettes, set limitations on eligibility for credit or refunds, and made applicable existing penalty and administrative procedures.

EFFECTIVE DATE OF REPEAL

Repeal applicable on and after July 1, 1965, see section 701(d) of Pub. L. 89-44, set out as an Effective Date of 1965 Amendment note under section 5701 of this title.

§ 5708. Losses caused by disaster

(a) Authorization

Where the President has determined under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, that a "major disaster" as defined in such Act has occurred in any part of the United States, the Secretary shall pay (without interest) an amount equal to the amount of the internal revenue taxes paid or determined and customs duties paid on tobacco products and cigarette papers and tubes removed, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of such disaster occurring in such part of the United States on and after the effective date of this section, if such tobacco products or cigarette papers or tubes were held and intended for sale at the time of such disaster. The payments authorized by this section shall be made to the person holding such tobacco products or cigarette papers or tubes for sale at the time of the disaster.

(b) Claims

No claim shall be allowed under this section unless—

(1) filed within 6 months after the date on which the President makes the determination that the disaster referred to in subsection (a) has occurred; and

(2) the claimant furnishes proof to the satisfaction of the Secretary that—

(A) he was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the tobacco products or cigarette papers or tubes covered by the claim, and

(B) he is entitled to payment under this section.

Claims under this section shall be filed under such regulations as the Secretary shall prescribe.

(c) Destruction of tobacco products or cigarette papers or tubes

Before the Secretary makes payment under this section in respect of the tax, or tax and duty, on the tobacco products or cigarette papers or tubes condemned by a duly authorized official or rendered unmarketable, such tobacco products or cigarette papers or tubes shall be destroyed under such supervision as the Secretary may prescribe, unless such tobacco products or cigarette papers or tubes were previously destroyed under supervision satisfactory to the Secretary.

(d) Other laws applicable

All provisions of law, including penalties, applicable in respect of internal revenue taxes on

tobacco products and cigarette papers and tubes shall, insofar as applicable and not inconsistent with this section, be applied in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of such taxes.

(Added Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1420; amended Pub. L. 91-606, title III, §301(j), Dec. 31, 1970, 84 Stat. 1759; Pub. L. 93-288, title VII, §702(j), formerly title VI, §602(j), May 22, 1974, 88 Stat. 164, renumbered title VII, §702(j), Pub. L. 103-337, div. C, title XXXIV, §3411(a)(1), (2), Oct. 5, 1994, 108 Stat. 3100; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 100-707, title I, §109(l), Nov. 23, 1988, 102 Stat. 4709; Pub. L. 108-311, title IV, §408(a)(7)(E), Oct. 4, 2004, 118 Stat. 1191.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (a), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-311 inserted "Robert T. Stafford" before "Disaster Relief and Emergency Assistance Act".

1988—Subsec. (a). Pub. L. 100-707 substituted "and Emergency Assistance Act" for "Act of 1974".

1976—Pub. L. 94-455 struck out "or his delegate" after "Secretary" wherever appearing.

1974—Subsec. (a). Pub. L. 93-288 substituted "Disaster Relief Act of 1974" for "Disaster Relief Act of 1970".

1970—Subsec. (a). Pub. L. 91-606 substituted "Disaster Relief Act of 1970" for "Act of September 30, 1950 (42 U.S.C. 1855)".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-288 effective Apr. 1, 1974, see section 605 of Pub. L. 93-288, formerly set out as an Effective Date note under section 5121 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-606 effective Dec. 31, 1970, see section 304 of Pub. L. 91-606, set out as a note under section 165 of this title.

EFFECTIVE DATE

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

LOSSES OF TOBACCO PRODUCTS CAUSED BY DISASTER

Section 209 of Pub. L. 85-859 authorized payments, without interest, of amounts equal to internal revenue taxes and customs duties paid by persons suffering a major disaster, pursuant to former act Sept. 30, 1950, ch. 1125, 64 Stat. 1109, for disasters occurring in the United States after Dec. 31, 1954, and before Sept. 2, 1958, in respect to tobacco products and cigarette papers and tubes; specified persons to whom the payments would be made and the procedure for allowance of claims; required the destruction of such tobacco products and cigarette papers and tubes under supervision; and made other laws applicable to such payments insofar as not inconsistent with section 209 of Pub. L. 85-859.

**Subchapter B—Qualification Requirements for
Manufacturers and Importers of Tobacco
Products and Cigarette Papers and Tubes,
and Export Warehouse Proprietors**

Sec.	
5711.	Bond.
5712.	Application for permit.
5713.	Permit.

AMENDMENTS

1997—Pub. L. 105-33, title IX, §9302(h)(2)(C), Aug. 5, 1997, 111 Stat. 674, inserted “and Importers” after “Manufacturers” in subchapter heading.

1965—Pub. L. 89-44, title V, §502(b)(5), June 21, 1965, 79 Stat. 151, struck out reference to dealers in tobacco materials from subchapter heading.

§ 5711. Bond

(a) When required

Every person, before commencing business as a manufacturer of tobacco products or cigarette papers and tubes, or as an export warehouse proprietor, shall file such bond, conditioned upon compliance with this chapter and regulations issued thereunder, in such form, amount, and manner as the Secretary shall by regulation prescribe. A new or additional bond may be required whenever the Secretary considers such action necessary for the protection of the revenue.

(b) Approval or disapproval

No person shall engage in such business until he receives notice of approval of such bond. A bond may be disapproved, upon notice to the principal on the bond, if the Secretary determines that the bond is not adequate to protect the revenue.

(c) Cancellation

Any bond filed hereunder may be canceled, upon notice to the principal on the bond, whenever the Secretary determines that the bond no longer adequately protects the revenue.

(Aug. 16, 1954, ch. 736, 68A Stat. 711; Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1421; Pub. L. 89-44, title V, §502(b)(6), June 21, 1965, 79 Stat. 151; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

1965—Subsec. (a). Pub. L. 89-44 struck out reference to dealers in tobacco materials.

1958—Subsec. (a). Pub. L. 85-859 included export warehouse proprietors, and substituted “manufacturer of tobacco products or cigarette papers and tubes” for “manufacturer of articles”.

EFFECTIVE DATE OF 1965 AMENDMENT

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

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.

TRANSITIONAL RULE

Pub. L. 111-3, title VII, §702(g), Feb. 4, 2009, 123 Stat. 111, provided that: “Any person who—

“(1) on April 1, 2009[,] is engaged in business as a manufacturer of processed tobacco or as an importer of processed tobacco, and

“(2) before the end of the 90-day period beginning on such date, submits an application under subchapter B of chapter 52 of such Code [this subchapter] to engage in such business, may, notwithstanding such subchapter B, continue to engage in such business pending final action on such application. Pending such final action, all provisions of such chapter 52 [this chapter] shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit under such chapter 52 to engage in such business.”

§ 5712. Application for permit

Every person, before commencing business as a manufacturer or importer of tobacco products or processed tobacco or as an export warehouse proprietor, and at such other time as the Secretary shall by regulation prescribe, shall make application for the permit provided for in section 5713. The application shall be in such form as the Secretary shall prescribe and shall set forth, truthfully and accurately, the information called for on the form. Such application may be rejected and the permit denied if the Secretary, after notice and opportunity for hearing, find that—

(1) the premises on which it is proposed to conduct the business are not adequate to protect the revenue;

(2) the activity proposed to be carried out at such premises does not meet such minimum capacity or activity requirements as the Secretary may prescribe,¹ or

(3) such person (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner)—

(A) is, by reason of his business experience, financial standing, or trade connections or by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with this chapter,

(B) has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, or

(C) has failed to disclose any material information required or made any material false statement in the application therefor.

(Aug. 16, 1954, ch. 736, 68A Stat. 712; Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1421; Pub. L. 94-455, title XIX, §§1905(a)(27), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1821, 1834; Pub. L. 105-33, title IX, §9302(h)(2)(A), (5), Aug. 5, 1997, 111 Stat. 674; Pub. L. 111-3, title VII, §702(a)(1)(A), (b)(1), Feb. 4, 2009, 123 Stat. 108, 109.)

AMENDMENTS

2009—Pub. L. 111-3, §702(a)(1)(A), inserted “or processed tobacco” after “tobacco products” in introductory provisions.

¹ So in original. The comma probably should be a semicolon.

Par. (3). Pub. L. 111-3, §702(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “such person (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner) is, by reason of his business experience, financial standing, or trade connections, not likely to maintain operations in compliance with this chapter, or has failed to disclose any material information required or made any material false statement in the application therefor.”

1997—Pub. L. 105-33, §9302(h)(5), struck out “or” at end of par. (1), added par. (2), and redesignated former par. (2) as (3).

Pub. L. 105-33, §9302(h)(2)(A), inserted “or importer” after “manufacturer” in introductory provisions.

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” and struck out provision that no person subject to this section, who was lawfully engaged in business on the date of the enactment of the Excise Tax Technical Changes Act of 1958, be denied the right to carry on that business pending reasonable opportunity to make applications for permit and final action thereon.

1958—Pub. L. 85-859 included export warehouse proprietors, and excluded dealers in tobacco materials.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 702(a)(1)(A) of Pub. L. 111-3 effective Apr. 1, 2009, see section 702(a)(6) of Pub. L. 111-3, set out as a note under section 5702 of this title.

Pub. L. 111-3, title VII, §702(b)(3), Feb. 4, 2009, 123 Stat. 110, provided that: “The amendments made by this subsection [amending this section and section 5713 of this title] shall take effect on the date of the enactment of this Act [Feb. 4, 2009].”

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105-33, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(27) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94-455, set out as a note under section 5005 of this title.

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.

§ 5713. Permit

(a) Issuance

A person shall not engage in business as a manufacturer or importer of tobacco products or processed tobacco or as an export warehouse proprietor without a permit to engage in such business. Such permit, conditioned upon compliance with this chapter and regulations issued thereunder, shall be issued in such form and in such manner as the Secretary shall by regulation prescribe, to every person properly qualified under sections 5711 and 5712. A new permit may be required at such other time as the Secretary shall by regulation prescribe.

(b) Suspension or revocation

(1) Show cause hearing

If the Secretary has reason to believe that any person holding a permit—

(A) has not in good faith complied with this chapter, or with any other provision of this title involving intent to defraud,

(B) has violated the conditions of such permit,

(C) has failed to disclose any material information required or made any material false statement in the application for such permit,

(D) has failed to maintain his premises in such manner as to protect the revenue,

(E) is, by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with this chapter, or

(F) has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes,

the Secretary shall issue an order, stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked.

(2) Action following hearing

If, after hearing, the Secretary finds that such person has not shown cause why his permit should not be suspended or revoked, such permit shall be suspended for such period as the Secretary deems proper or shall be revoked.

(Aug. 16, 1954, ch. 736, 68A Stat. 712; Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1421; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105-33, title IX, §9302(h)(2)(A), Aug. 5, 1997, 111 Stat. 674; Pub. L. 111-3, title VII, §702(a)(1)(B), (b)(2), Feb. 4, 2009, 123 Stat. 108, 109.)

AMENDMENTS

2009—Subsec. (a). Pub. L. 111-3, §702(a)(1)(B), inserted “or processed tobacco” after “tobacco products”.

Subsec. (b). Pub. L. 111-3, §702(b)(2), amended subsec. (b) generally. Prior to amendment, text read as follows: “If the Secretary has reason to believe that any person holding a permit has not in good faith complied with this chapter, or with any other provision of this title involving intent to defraud, or has violated the conditions of such permit, or has failed to disclose any material information required or made any material false statement in the application for such permit, or has failed to maintain his premises in such manner as to protect the revenue, the Secretary shall issue an order, stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked. If, after hearing, the Secretary finds that such person has not in good faith complied with this chapter or with any other provision of this title involving intent to defraud, has violated the conditions of such permit, has failed to disclose any material information required or made any material false statement in the application therefor, or has failed to maintain his premises in such manner as to protect the revenue, such permit shall be suspended for such period as the Secretary deems proper or shall be revoked.”

1997—Subsec. (a). Pub. L. 105-33 inserted “or importer” after “manufacturer”.

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

1958—Subsec. (a). Pub. L. 85-859 substituted “manufacturer of tobacco products” for “manufacturer of articles”, included export warehouse proprietors, and struck out provisions which related to dealers in tobacco materials.

Subsecs. (b), (c). Pub. L. 85-859 redesignated subsec. (c) as (b) and struck out former subsec. (b) that required permits to be posted.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 702(b)(2) of Pub. L. 111-3 effective Feb. 4, 2009, see section 702(b)(3) of Pub. L. 111-3, set out as a note under section 5712 of this title.

Amendment by section 702(a)(1)(B) of Pub. L. 111-3 effective Apr. 1, 2009, see section 702(a)(6) of Pub. L. 111-3, set out as a note under section 5702 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105-33, set out as a note under section 5701 of this title.

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.

Subchapter C—Operations by Manufacturers and Importers of Tobacco Products and Cigarette Papers and Tubes and Export Warehouse Proprietors

Sec.	
5721.	Inventories.
5722.	Reports.
5723.	Packages, marks, labels, and notices.

AMENDMENTS

1976—Pub. L. 94-455, title XIX, §1905(b)(7)(D), Oct. 4, 1976, 90 Stat. 1823, substituted “and notices” for “notices, and stamps” in item 5723.

1958—Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1422, substituted “Manufacturers and Importers of Tobacco Products and Cigarette Papers and Tubes and Export Warehouse Proprietors” for “Manufacturers of Articles” in heading of subchapter and inserted “marks,” in item 5723.

§ 5721. Inventories

Every manufacturer or importer of tobacco products, processed tobacco, or cigarette papers and tubes, and every export warehouse proprietor, shall make a true and accurate inventory at the time of commencing business, at the time of concluding business, and at such other times, in such manner and form, and to include such items, as the Secretary shall by regulation prescribe. Such inventories shall be subject to verification by any internal revenue officer.

(Aug. 16, 1954, ch. 736, 68A Stat. 713; Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1422; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105-33, title IX, §9302(h)(2)(A), Aug. 5, 1997, 111 Stat. 674; Pub. L. 111-3, title VII, §702(a)(2)(A), Feb. 4, 2009, 123 Stat. 108.)

AMENDMENTS

2009—Pub. L. 111-3 inserted “, processed tobacco,” after “tobacco products”.

1997—Pub. L. 105-33 inserted “or importer” after “manufacturer”.

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1958—Pub. L. 85-859 substituted “manufacturer of tobacco products or cigarette papers and tubes” for “manufacturer of articles” and “internal revenue officer” for “revenue officer”, and inserted provisions to include export warehouse proprietors.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-3 effective Apr. 1, 2009, see section 702(a)(6) of Pub. L. 111-3, set out as a note under section 5702 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105-33, set out as a note under section 5701 of this title.

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.

§ 5722. Reports

Every manufacturer or importer of tobacco products, processed tobacco, or cigarette papers and tubes, and every export warehouse proprietor, shall make reports containing such information, in such form, at such times, and for such periods as the Secretary shall by regulation prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 713; Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1422; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105-33, title IX, §9302(h)(2)(A), Aug. 5, 1997, 111 Stat. 674; Pub. L. 111-3, title VII, §702(a)(2)(B), Feb. 4, 2009, 123 Stat. 108.)

AMENDMENTS

2009—Pub. L. 111-3 inserted “, processed tobacco,” after “tobacco products”.

1997—Pub. L. 105-33 inserted “or importer” after “manufacturer”.

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1958—Pub. L. 85-859 substituted “manufacturer of tobacco products or cigarette papers and tubes, and every export warehouse proprietor” for “manufacturer of articles”.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-3 effective Apr. 1, 2009, see section 702(a)(6) of Pub. L. 111-3, set out as a note under section 5702 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105-33, set out as a note under section 5701 of this title.

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.

§ 5723. Packages, marks, labels, and notices

(a) Packages

All tobacco products, processed tobacco, and cigarette papers and tubes shall, before removal, be put up in such packages as the Secretary shall by regulation prescribe.

(b) Marks, labels, and notices

Every package of tobacco products, processed tobacco, or cigarette papers or tubes shall, before removal, bear the marks, labels, and notices

if any, that the Secretary by regulation prescribes.

(c) Lottery features

No certificate, coupon, or other device purporting to be or to represent a ticket, chance, share, or an interest in, or dependent on, the event of a lottery shall be contained in, attached to, or stamped, marked, written, or printed on any package of tobacco products, processed tobacco, or cigarette papers or tubes.

(d) Indecent or immoral material prohibited

No indecent or immoral picture, print, or representation shall be contained in, attached to, or stamped, marked, written, or printed on any package of tobacco products, processed tobacco, or cigarette papers or tubes.

(e) Exceptions

Tobacco products furnished by manufacturers of such products for use or consumption by their employees, or for experimental purposes, and tobacco products, processed tobacco, and cigarette papers and tubes transferred to the bonded premises of another manufacturer or export warehouse proprietor or released in bond from customs custody for deliver to a manufacturer of tobacco products, processed tobacco, or cigarette papers and tubes, may be exempted from subsection (a) and (b) in accordance with such regulations as the Secretary shall prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 713; Pub. L. 85-859, title II, § 202, Sept. 2, 1958, 72 Stat. 1422; Pub. L. 94-455, title XIX, §§ 1905(a)(28), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1821, 1834; Pub. L. 111-3, title VII, § 702(a)(2)(C), Feb. 4, 2009, 123 Stat. 108.)

AMENDMENTS

2009—Pub. L. 111-3 inserted “, processed tobacco,” after “tobacco products” wherever appearing.

1976—Pub. L. 94-455, § 1905(a)(28)(A), substituted “and notices” for “notices, and stamps” in section catchline.

Subsecs. (a), (e). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (b). Pub. L. 94-455, §§ 1905(a)(28)(B), 1906(b)(13)(A), struck out references to stamps in heading and in text and struck out “or his delegate” after “Secretary”.

1958—Subsec. (a). Pub. L. 85-859 substituted “Packages” for “Packages, labels, notices, and stamps” in heading, and substituted “All tobacco products and cigarette papers and tubes shall, before removal, be put up in such packages as” for “All articles shall, before removal, be put up in packages having such labels, notices, and stamps as” in text.

Subsec. (b). Pub. L. 85-859 added subsec. (b) and redesignated former subsec. (b) as (c).

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

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

Subsec. (e). Pub. L. 85-859 redesignated former subsec. (d) as (e), and permitted exemption of tobacco products and cigarette papers and tubes transferred to the bonded premises of another manufacturer or export warehouse proprietor or released in bond from customs custody for delivery to a manufacturer of tobacco products or cigarette papers and tubes, and eliminated provisions which authorized exemption of articles removed

for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, and so shipped.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-3 effective Apr. 1, 2009, see section 702(a)(6) of Pub. L. 111-3, set out as a note under section 5702 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(28) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94-455, set out as a note under section 5005 of this title.

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.

Subchapter D—Occupational Tax

Sec.	
5731.	Imposition and rate of tax.
5732.	Payment of tax.
5733.	Provisions relating to liability for occupational taxes.
5734.	Application of State laws.

PRIOR PROVISIONS

A prior subchapter D, relating to records of manufacturers and importers of tobacco products, etc., was redesignated subchapter E by Pub. L. 100-203, title X, § 10512(f)(1), Dec. 22, 1987, 101 Stat. 1330-449.

Another prior subchapter D, which consisted of sections 5731 and 5732 of this title, was repealed by Pub. L. 89-44, title V, § 502(b)(7), June 21, 1965, 79 Stat. 151, applicable on and after Jan. 1, 1966.

AMENDMENTS

2005—Pub. L. 109-59, title XI, § 11125(b)(20)(D), Aug. 10, 2005, 119 Stat. 1957, added items 5732 to 5734.

§ 5731. Imposition and rate of tax

(a) General rule

Every person engaged in business as—

- (1) a manufacturer of tobacco products,
- (2) a manufacturer of cigarette papers and tubes, or
- (3) an export warehouse proprietor,

shall pay a tax of \$1,000 per year in respect of each premises at which such business is carried on.

(b) Reduced rates for small proprietors

(1) In general

Subsection (a) shall be applied by substituting “\$500” for “\$1,000” with respect to any taxpayer the gross receipts of which (for the most recent taxable year ending before the 1st day of the taxable period to which the tax imposed by subsection (a) relates) are less than \$500,000.

(2) Controlled group rules

All persons treated as 1 taxpayer under section 5061(e)(3) shall be treated as 1 taxpayer for purposes of paragraph (1).

(3) Certain rules to apply

For purposes of paragraph (1), rules similar to the rules of subparagraphs (B) and (C) of section 448(c)(3) shall apply.

(c) Penalty for failure to register

Any person engaged in a business referred to in subsection (a) who willfully fails to pay the

tax imposed by subsection (a) shall be fined not more than \$5,000, or imprisoned not more than 2 years, or both, for each such offense.

(Added Pub. L. 100-203, title X, §10512(f)(1), Dec. 22, 1987, 101 Stat. 1330-449; amended Pub. L. 109-59, title XI, §11125(b)(20)(E), Aug. 10, 2005, 119 Stat. 1957.)

PRIOR PROVISIONS

A prior section 5731, acts Aug. 16, 1954, ch. 736, 68A Stat. 714; Sept. 2, 1958, Pub. L. 85-859, title II, §202, 72 Stat. 1423, restricted shipment and delivery of tobacco materials to shipment and delivery pursuant to regulations, prior to repeal by Pub. L. 89-44, title V, §502(b)(7), title VII, §701(d), June 21, 1965, 79 Stat. 151, 157, applicable on and after Jan. 1, 1966.

AMENDMENTS

2005—Subsecs. (c), (d). Pub. L. 109-59 redesignated subsec. (d) as (c) and struck out former subsec. (c). Text read as follows: “Rules similar to the rules of subpart G of part II of subchapter A of chapter 51 shall apply for purposes of this section.”

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109-59, set out as a note under section 5002 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1988, see section 10512(h) of Pub. L. 100-203, set out as an Effective Date of 1987 Amendment note under section 5111 of this title.

§ 5732. Payment of tax

(a) Condition precedent to carrying on business

No person shall be engaged in or carry on any trade or business subject to tax under this subchapter until he has paid the special tax therefor.

(b) Computation

All special taxes under this subchapter shall be imposed as of on the first day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for 1 year, and in the latter case it shall be reckoned proportionately, from the first day of the month in which the liability to a special tax commenced, to and including the 30th day of June following.

(c) How paid

(1) Payment by return

The special taxes imposed by this subchapter shall be paid on the basis of a return under such regulations as the Secretary shall prescribe.

(2) Stamp denoting payment of tax

After receiving a properly executed return and remittance of any special tax imposed by this subchapter, the Secretary shall issue to the taxpayer an appropriate stamp as a receipt denoting payment of the tax. This paragraph shall not apply in the case of a return covering liability for a past period.

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1346, §5142; amended Pub. L. 94-455, title XIX, §1905(a)(12), Oct. 4, 1976, 90 Stat. 1820; renumbered §5732 and amended Pub. L. 109-59, title

XI, §11125(b)(20)(A), (B), Aug. 10, 2005, 119 Stat. 1956; Pub. L. 110-172, §11(a)(32), Dec. 29, 2007, 121 Stat. 2487.)

PRIOR PROVISIONS

A prior section 5732, acts Aug. 16, 1954, ch. 736, 68A Stat. 714; Sept. 2, 1958, Pub. L. 85-859, title II, §202, 72 Stat. 1423, required that a dealer in tobacco materials make a statement of shipments and deliveries or give an inventory upon demand, prior to repeal by Pub. L. 89-44, title V, §502(b)(7), title VII, §701(d), June 21, 1965, 79 Stat. 151, 157, applicable on and after Jan. 1, 1966.

AMENDMENTS

2007—Subsec. (c)(2). Pub. L. 110-172, which directed amendment of section 5732 of this title, as redesignated by Pub. L. 109-59, §11125(b)(20)(A), by substituting “this subchapter” for “this subpart” in subsec. (c)(2) effective Dec. 29, 2007, was executed to this section to reflect the probable intent of Congress even though the redesignation of section 5142 of this title as this section was not effective until July 1, 2008. See 2005 Amendment and Effective Date of 2005 Amendment notes below.

2005—Pub. L. 109-59, §11125(b)(20)(A), renumbered section 5142 of this title as this section and transferred section to this subchapter.

Subsecs. (a), (b). Pub. L. 109-59, §11125(b)(20)(B), struck out “(except the tax imposed by section 5131)” before “until he has paid” in subsec. (a) and before “shall be imposed” in subsec. (b).

Pub. L. 109-59, §11125(b)(20)(A), substituted “this subchapter” for “this part”.

Subsec. (c)(1). Pub. L. 109-59, §11125(b)(20)(A), substituted “this subchapter” for “this part”.

1976—Subsec. (c). Pub. L. 94-455 substituted provisions under which the special taxes would be paid on the basis of a return for provisions under which the special taxes were paid by stamps denoting the tax.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109-59, set out as a note under section 5002 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94-455, set out as a note under section 5005 of this title.

§ 5733. Provisions relating to liability for occupational taxes

(a) Partners

Any number of persons doing business in partnership at any one place shall be required to pay but one special tax.

(b) Different businesses of same ownership and location

Whenever more than one of the pursuits or occupations described in this subchapter are carried on in the same place by the same person at the same time, except as otherwise provided in this subchapter, the tax shall be paid for each according to the rates severally prescribed.

(c) Businesses in more than one location

(1) Liability for tax

The payment of a special tax imposed by this subchapter shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the register kept in the office of the official in charge of the internal revenue district.

(2) Storage

Nothing contained in paragraph (1) shall require a special tax for the storage of tobacco products and cigarette papers and tubes at a location other than the place where tobacco products and cigarette papers and tubes are sold or offered for sale.

(3) Definition of place

The term “place” as used in this section means the entire office, plant or area of the business in any one location under the same proprietorship; and passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises, shall not be deemed sufficient separation to require additional special tax, if the various divisions are otherwise contiguous.

(d) Death or change of location

Certain persons, other than the person who has paid the special tax under this subchapter for the carrying on of any business at any place, may secure the right to carry on, without incurring additional special tax, the same business at the same place for the remainder of the taxable period for which the special tax was paid. The persons who may secure such right are:

- (1) the surviving spouse or child, or executor or administrator or other legal representative, of a deceased taxpayer;
- (2) a husband or wife succeeding to the business of his or her living spouse;
- (3) a receiver or trustee in bankruptcy, or an assignee for benefit of creditors; and
- (4) the partner or partners remaining after death or withdrawal of a member of a partnership.

When any person moves to any place other than the place for which special tax was paid for the carrying on of any business, he may secure the right to carry on, without incurring additional special tax, the same business at his new location for the remainder of the taxable period for which the special tax was paid. To secure the right to carry on the business without incurring additional special tax, the successor, or the person relocating his business, must register the succession or relocation with the Secretary in accordance with regulations prescribed by the Secretary.

(e) Federal agencies or instrumentalities

Any tax imposed by this subchapter shall apply to any agency or instrumentality of the United States unless such agency or instrumentality is granted by statute a specific exemption from such tax.

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1347, §5143; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; renumbered §5733 and amended Pub. L. 109-59, title XI, §11125(b)(20)(A), (C), Aug. 10, 2005, 119 Stat. 1956, 1957.)

AMENDMENTS

2005—Pub. L. 109-59, §11125(b)(20)(A), renumbered section 5143 of this title as this section, transferred section to this subchapter, and substituted “this subchapter” for “this part” wherever appearing.

Subsec. (c)(2). Pub. L. 109-59, §11125(b)(20)(C), substituted “tobacco products and cigarette papers and tubes” for “liquors” in two places.

1976—Subsec. (d)(4). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109-59, set out as a note under section 5002 of this title.

§ 5734. Application of State laws

The payment of any tax imposed by this subchapter for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on such trade or business within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1348, §5145; renumbered §5734 and amended Pub. L. 109-59, title XI, §11125(b)(20)(A), Aug. 10, 2005, 119 Stat. 1956.)

AMENDMENTS

2005—Pub. L. 109-59 renumbered section 5145 of this title as this section, transferred section to this subchapter, and substituted “this subchapter” for “this part” in text.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-59 effective July 1, 2008, but inapplicable to taxes imposed for periods before such date, see section 11125(c) of Pub. L. 109-59, set out as a note under section 5002 of this title.

Subchapter E—Records of Manufacturers and Importers of Tobacco Products and Cigarette Papers and Tubes, and Export Warehouse Proprietors

Sec.
5741. Records to be maintained.

AMENDMENTS

1987—Pub. L. 100-203, title X, §10512(f)(1), Dec. 22, 1987, 101 Stat. 1330-449, redesignated subchapter D as E.

1976—Pub. L. 94-455, title XXI, §2128(d)(1), Oct. 4, 1976, 90 Stat. 1921, inserted “and Importers” in subchapter heading.

1965—Pub. L. 89-44, title V, §502(b)(7), (8), June 21, 1965, 79 Stat. 151, struck out former subchapter D, consisting of §§5731 and 5732 relating to operations by dealers in tobacco materials, redesignated subchapter E as D and, in heading for subchapter D, as redesignated, struck out reference to dealers in tobacco materials.

1958—Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1423, substituted “Manufacturers of Tobacco Products and Cigarette Papers and Tubes, Export Warehouse proprietors, and” for “Manufacturers of Articles and” in heading of subchapter.

§ 5741. Records to be maintained

Every manufacturer of tobacco products, processed tobacco, or cigarette papers and tubes, every importer, and every export warehouse proprietor shall keep such records in such manner as the Secretary shall by regulation prescribe. The records required under this section shall be available for inspection by any internal revenue officer during business hours.

(Aug. 16, 1954, ch. 736, 68A Stat. 715; Pub. L. 85-859, title II, § 202, Sept. 2, 1958, 72 Stat. 1423; Pub. L. 89-44, title V, § 502(b)(9), June 21, 1965, 79 Stat. 151; Pub. L. 94-455, title XXI, § 2128(c), Oct. 4, 1976, 90 Stat. 1921; Pub. L. 111-3, title VII, § 702(a)(3), Feb. 4, 2009, 123 Stat. 108.)

AMENDMENTS

2009—Pub. L. 111-3 inserted “, processed tobacco,” after “tobacco products”.

1976—Pub. L. 94-455 inserted reference to importers, struck out “or his delegate” after “Secretary”, and provided that the required records be available for inspection by any internal revenue officer during business hours.

1965—Pub. L. 89-44 struck out reference to every dealer in tobacco materials.

1958—Pub. L. 85-859 substituted “tobacco products or cigarette papers and tubes, every warehouse proprietor, and every dealer” for “articles and dealer”, and “such manner” for “such form”.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-3 effective Apr. 1, 2009, see section 702(a)(6) of Pub. L. 111-3, set out as a note under section 5702 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

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

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.

Subchapter F—General Provisions

Sec.	
5751.	Purchase, receipt, possession, or sale of tobacco products and cigarette papers and tubes, after removal.
5752.	Restrictions relating to marks, labels, notices, and packages.
5753.	Disposal of forfeited, condemned, and abandoned tobacco products, and cigarette papers and tubes.
5754.	Restriction on importation of previously exported tobacco products.

AMENDMENTS

1997—Pub. L. 105-33, title IX, § 9302(h)(1)(E)(ii), Aug. 5, 1997, 111 Stat. 674, added item 5754.

1987—Pub. L. 100-203, title X, § 10512(f)(1), Dec. 22, 1987, 101 Stat. 1330-449, redesignated subchapter E as F.

1976—Pub. L. 94-455, title XIX, § 1905(b)(7)(B)(iii), Oct. 4, 1976, 90 Stat. 1823, substituted “and packages” for “stamps, and packages” in item 5752.

1965—Pub. L. 89-44, title V, § 502(b)(7), (10), June 21, 1965, 79 Stat. 151, 152, redesignated subchapter F as E and, in the table of sections for subchapter E as so redesignated, struck out reference to tobacco materials in item 5753. Former subchapter E redesignated D.

1958—Pub. L. 85-859, title II, § 202, Sept. 2, 1958, 72 Stat. 1423, substituted “sale of tobacco products and cigarette papers and tubes, after removal” for “sale of articles, after removal not exempt from tax” in item 5751, included marks and notices in item 5752, and substituted “tobacco products, cigarette papers and tubes, and” for “articles and” in item 5753.

§ 5751. Purchase, receipt, possession, or sale of tobacco products and cigarette papers and tubes, after removal

(a) Restriction

No person shall—

(1) with intent to defraud the United States, purchase, receive, possess, offer for sale, or sell or otherwise dispose of, after removal, any tobacco products or cigarette papers or tubes—

(A) upon which the tax has not been paid or determined in the manner and at the time prescribed by this chapter or regulations thereunder; or

(B) which, after removal without payment of tax pursuant to section 5704, have been diverted from the applicable purpose or use specified in that section; or

(2) with intent to defraud the United States, purchase, receive, possess, offer for sale, or sell or otherwise dispose of, after removal, any tobacco products or cigarette papers or tubes, which are not put up in packages as required under section 5723 or which are put up in packages not bearing the marks, labels, and notices, as required under such section; or

(3) otherwise than with intent to defraud the United States, purchase, receive, possess, offer for sale, or sell or otherwise dispose of, after removal, any tobacco products or cigarette papers or tubes, which are not put up in packages as required under section 5723 or which are put up in packages not bearing the marks, labels, and notices, as required under such section. This paragraph shall not prevent the sale or delivery of tobacco products or cigarette papers or tubes directly to consumers from proper packages, nor apply to such articles when so sold or delivered.

(b) Liability to tax

Any person who possesses tobacco products or cigarette papers or tubes in violation of subsection (a)(1) or (a)(2) shall be liable for a tax equal to the tax on such articles.

(Aug. 16, 1954, ch. 736, 68A Stat. 716; Pub. L. 85-859, title II, § 202, Sept. 2, 1958, 72 Stat. 1424; Pub. L. 94-455, title XIX, § 1905(b)(7)(A), Oct. 4, 1976, 90 Stat. 1823.)

AMENDMENTS

1976—Subsec. (a)(2), (3). Pub. L. 94-455 substituted “and notices” for “notices, and stamps”.

1958—Pub. L. 85-859 substituted “tobacco products and cigarette papers and tubes, after removal” for “articles, after removal, not exempt from tax” in section catchline.

Subsec. (a) amended generally by Pub. L. 85-859, which included within the restrictions, purchase, receipt, possession, offer for sale, or sale of other disposition of tobacco products or cigarette papers or tubes, after removal, upon which the tax has not been paid or determined, or which after removal without payment of tax have been diverted from the applicable purpose or use specified in section 5704, and to provide that par. (3) shall not prevent the delivery of tobacco products or cigarette papers or tubes directly to consumers from proper packages, nor apply to such articles when so delivered.

Subsec. (b). Pub. L. 85-859 substituted “tobacco products or cigarette papers or tubes in violation of subsection (a)(1) or (a)(2) shall be liable for a tax equal to the tax on such articles” or “articles in violation of subsection (a) of this section, shall incur liability to the tax thereon in addition to the penalties prescribed elsewhere in this title”.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct.

4, 1976, see section 1905(d) of Pub. L. 94-455, set out as a note under section 5005 of this title.

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.

§ 5752. Restrictions relating to marks, labels, notices, and packages

No person shall, with intent to defraud the United States, destroy, obliterate, or detach any mark, label, or notice prescribed or authorized, by this chapter or regulations thereunder, to appear on, or be affixed to, any package of tobacco products or cigarette papers or tubes, before such package is emptied.

(Aug. 16, 1954, ch. 736, 68A Stat. 716; Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1424; Pub. L. 94-455, title XIX, §1905(b)(7)(B)(i), Oct. 4, 1976, 90 Stat. 1823.)

AMENDMENTS

1976—Pub. L. 94-455 struck out reference to stamps in the section catchline and in the text and struck out provisions which had enumerated violations involving the misuse of tax stamps.

1958—Pub. L. 85-859 included marks and notices in the catchline, limited the penalties to cases where there is intent to defraud the United States, and prohibited the destruction, obliteration, or detachment of any mark, label, notice or stamp before a package of tobacco products or cigarette papers or tubes is emptied.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94-455, set out as a note under section 5005 of this title.

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.

§ 5753. Disposal of forfeited, condemned, and abandoned tobacco products, and cigarette papers and tubes

If it appears that any forfeited, condemned, or abandoned tobacco products, or cigarette papers and tubes, when offered for sale, will not bring a price equal to the tax due and payable thereon, and the expenses incident to the sale thereof, such articles shall not be sold for consumption in the United States but shall be disposed of in accordance with such regulations as the Secretary shall prescribe.

(Aug. 16, 1954, ch. 736, 68A Stat. 716; Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1425; Pub. L. 89-44, title V, §502(b)(11), June 21, 1965, 79 Stat. 152; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1965—Pub. L. 89-44 struck out references to tobacco materials wherever appearing in heading and text.

1958—Pub. L. 85-859 substituted “tobacco products, cigarette papers and tubes” for “articles” wherever appearing.

EFFECTIVE DATE OF 1965 AMENDMENT

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

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.

§ 5754. Restriction on importation of previously exported tobacco products

(a) Export-labeled tobacco products

(1) In general

Tobacco products and cigarette papers and tubes manufactured in the United States and labeled for exportation under this chapter—

(A) may be transferred to or removed from the premises of a manufacturer or an export warehouse proprietor only if such articles are being transferred or removed without tax in accordance with section 5704;

(B) may be imported or brought into the United States, after their exportation, only if such articles either are eligible to be released from customs custody with the partial duty exemption provided in section 5704(d) or are returned to the original manufacturer of such article as provided in section 5704(c); and

(C) may not be sold or held for sale for domestic consumption in the United States unless such articles are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label.

(2) Alterations by persons other than original manufacturer

This section shall apply to articles labeled for export even if the packaging or the appearance of such packaging to the consumer of such articles has been modified or altered by a person other than the original manufacturer so as to remove or conceal or attempt to remove or conceal (including by the placement of a sticker over) any export label.

(3) Exports include shipments to Puerto Rico

For purposes of this section, section 5704(d), section 5761, and such other provisions as the Secretary may specify by regulations, references to exportation shall be treated as including a reference to shipment to the Commonwealth of Puerto Rico.

(b) Export label

For purposes of this section, an article is labeled for export or contains an export label if it bears the mark, label, or notice required under section 5704(b).

(c) Cross references

(1) For exception to this section for personal use, see section 5761(d).

(2) For civil penalties related to violations of this section, see section 5761(c).

(3) For a criminal penalty applicable to any violation of this section, see section 5762(b).

(4) For forfeiture provisions related to violations of this section, see section 5761(e).

(Added Pub. L. 105-33, title IX, §9302(h)(1)(E)(i), Aug. 5, 1997, 111 Stat. 673; amended Pub. L. 106-476, title IV, §4002(a), Nov. 9, 2000, 114 Stat. 2176; Pub. L. 109-432, div. C, title IV, §401(f)(2)(B), Dec. 20, 2006, 120 Stat. 3050.)

AMENDMENTS

2006—Subsec. (c)(1). Pub. L. 109-432 substituted “5761(d)” for “5761(c)”.

2000—Pub. L. 106-476 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

“(a) IN GENERAL.—Tobacco products and cigarette papers and tubes previously exported from the United States may be imported or brought into the United States only as provided in section 5704(d). For purposes of this section, section 5704(d), section 5761, and such other provisions as the Secretary may specify by regulations, references to exportation shall be treated as including a reference to shipment to the Commonwealth of Puerto Rico.

“(b) CROSS REFERENCE.—

“For penalty for the sale of tobacco products and cigarette papers and tubes in the United States which are labeled for export, see section 5761(c).”

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Dec. 20, 2006, see section 401(g) of Pub. L. 109-432, set out as a note under section 1681 of Title 19, Customs Duties.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-476 effective 90 days after Nov. 9, 2000, see section 4002(d) of Pub. L. 106-476, set out as a note under section 5704 of this title.

EFFECTIVE DATE

Section applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105-33, set out as an Effective Date of 1997 Amendment note under section 5701 of this title.

Subchapter G—Penalties and Forfeitures

Sec.	
5761.	Civil penalties.
5762.	Criminal penalties.
5763.	Forfeitures.

AMENDMENTS

1987—Pub. L. 100-203, title X, §10512(f)(1), Dec. 22, 1987, 101 Stat. 1330-449, redesignated subchapter F as G.

1965—Pub. L. 89-44, title V, §502(b)(7), June 21, 1965, 79 Stat. 151, redesignated subchapter G as F. Former subchapter F redesignated E.

1958—Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1425, substituted “Penalties and Forfeitures” for “Fines, Penalties, and Forfeitures” in subchapter heading.

§ 5761. Civil penalties

(a) Omitting things required or doing things forbidden

Whoever willfully omits, neglects, or refuses to comply with any duty imposed upon him by this chapter, or to do, or cause to be done, any of the things required by this chapter, or does anything prohibited by this chapter, shall in addition to any other penalty provided in this title, be liable to a penalty of \$1,000, to be recovered, with costs of suit, in a civil action, except where a penalty under subsection (b) or (c) or under section 6651 or 6653 or part II of subchapter A of chapter 68 may be collected from such person by assessment.

(b) Failure to pay tax

Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this title, be liable to a penalty of 5 percent of the tax due but unpaid.

(c) Sale of tobacco products and cigarette papers and tubes for export

Except as provided in subsections (b) and (d) of section 5704—

(1) every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation under this chapter,

(2) every person who sells or receives such relanded tobacco products or cigarette papers or tubes, and

(3) every person who aids or abets in such selling, relanding, or receiving,

shall, in addition to the tax and any other penalty provided in this title, be liable for a penalty equal to the greater of \$1,000 or 5 times the amount of the tax imposed by this chapter. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States shall be forfeited to the United States and destroyed. All vessels, vehicles, and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States. This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity.

(d) Personal use quantities

(1) In general

No quantity of tobacco products other than the quantity referred to in paragraph (2) may be relanded or received as a personal use quantity.

(2) Exception for personal use quantity

Subsection (c) and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States, and such person may voluntarily relinquish to the Secretary at the time of entry any excess of such quantity without incurring the penalty under subsection (c).

(3) Special rule for delivery sales

(A) In general

Paragraph (2) shall not apply to any tobacco product sold in connection with a delivery sale.

(B) Delivery sale

For purposes of subparagraph (A), the term “delivery sale” means any sale of a tobacco product to a consumer if—

(i) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mail, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made, or

(ii) the tobacco product is delivered by use of a common carrier, private delivery

service, or the mail, or the seller is not in the physical presence of the buyer when the buyer obtains personal possession of the tobacco product.

(e) Applicability of section 6665

The penalties imposed by subsections (b) and (c) shall be assessed, collected, and paid in the same manner as taxes, as provided in section 6665(a).

(f) Cross references

For penalty for failure to make deposits or for overstatement of deposits, see section 6656.

(Aug. 16, 1954, ch. 736, 68A Stat. 717; Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1425; Pub. L. 97-34, title VII, §§722(a)(3), 724(b)(5), Aug. 13, 1981, 95 Stat. 342, 345; Pub. L. 97-448, title I, §107(b), Jan. 12, 1983, 96 Stat. 2391; Pub. L. 98-369, div. A, title VII, §714(h)(2), July 18, 1984, 98 Stat. 962; Pub. L. 101-239, title VII, §7721(c)(4), (5), Dec. 19, 1989, 103 Stat. 2399; Pub. L. 105-33, title IX, §9302(h)(1)(B)-(D), Aug. 5, 1997, 111 Stat. 673; Pub. L. 106-476, title IV, §§4002(c), 4003(a), Nov. 9, 2000, 114 Stat. 2177; Pub. L. 106-554, §1(a)(7) [title III, §315(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-644; Pub. L. 109-432, div. C, title IV, §401(f)(1), (2)(A), Dec. 20, 2006, 120 Stat. 3049, 3050.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subssecs. (c) and (d)(2), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109-432, §401(f)(2)(A), struck out at end “This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States, and such person may voluntarily relinquish to the Secretary at the time of entry any excess of such quantity without incurring the penalty under this subsection. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity.”

Subsecs. (d) to (f). Pub. L. 109-432, §401(f)(1), added subsec. (d) and redesignated former subssecs. (d) and (e) as (e) and (f), respectively.

2000—Subsec. (c). Pub. L. 106-554 inserted at end “This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States, and such person may voluntarily relinquish to the Secretary at the time of entry any excess of such quantity without incurring the penalty under this subsection. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity.”

Pub. L. 106-476, §4003(a), inserted at end “This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity.”

Pub. L. 106-476, §4002(c), which directed amendment of the last sentence of subsec. (c) by substituting “the jurisdiction of the United States shall be forfeited to the United States and destroyed. All vessels, vehicles,

and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States.” for “the jurisdiction of the United States” and all that followed through the end period, was executed by making the substitution for “the jurisdiction of the United States, and all vessels, vehicles, and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States.” in the second sentence of subsec. (c) to reflect the probable intent of Congress and the intervening retroactive amendments by Pub. L. 106-476, §4003(a), and Pub. L. 106-554. See above.

1997—Subsec. (a). Pub. L. 105-33, §9302(h)(1)(C), substituted “subsection (b) or (c)” for “subsection (b)”.

Subsec. (c). Pub. L. 105-33, §9302(h)(1)(B), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105-33, §9302(h)(1)(D), substituted “The penalties imposed by subsections (b) and (c)” for “The penalty imposed by subsection (b)”.

Pub. L. 105-33, §9302(h)(1)(B), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 105-33, §9302(h)(1)(B), redesignated subsec. (d) as (e).

1989—Subsec. (a). Pub. L. 101-239, §7721(c)(4), inserted “or part II of subchapter A of chapter 68” after “or 6653”.

Subsec. (c). Pub. L. 101-239, §7721(c)(5), substituted “6665” for “6662” in heading and “6665(a)” for “6662(a)” in text.

1984—Subsec. (c). Pub. L. 98-369 substituted “section 6662” for “section 6660” in heading and “section 6662(a)” for “section 6660(a)” in text.

1983—Subsec. (c). Pub. L. 97-448 substituted “section 6660” for “section 6659” in heading, and substituted “section 6660(a)” for “section 6659(a)” in text.

1981—Subsec. (c). Pub. L. 97-34, §724(b)(5), added subsec. (c). Former subsec. (c), which related to applicability of section 6656 to failure to make deposit of taxes imposed under subchapter A on the prescribed date and imposition of penalty, was struck out.

Subsec. (d). Pub. L. 97-34, §§722(a)(3), 724(b)(5), added subsec. (d). Former subsec. (d), which related to applicability of section 6660 and penalties imposed by subsections (b) and (c) to be assessed, collected, and paid in the manner as taxes provided in section 6660(a), was struck out. See subsec. (c).

1958—Subsec. (a). Pub. L. 85-859 struck out reference to section 6652 of this title.

Subsec. (b). Pub. L. 85-859 substituted provisions relating to failure to pay tax for provisions which made persons willfully failing to pay a tax liable, in addition to any other penalty provided in this title, to a penalty of the amount of the tax evaded, or not paid.

Subsec. (c). Pub. L. 85-859 substituted provisions relating to failure to make deposit of taxes for provisions which authorized a penalty of 5 percent of the tax due but unpaid where a person failed to pay tax at the time prescribed, and required the penalties to be added to the tax and assessed and collected at the same time, in the same manner, and as a part of the tax.

Subsec. (d). Pub. L. 85-859 added subsec. (d). Similar provisions were formerly contained in subsec. (c) of this section.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Dec. 20, 2006, see section 401(g) of Pub. L. 109-432, set out as a note under section 1681 of Title 19, Customs Duties.

EFFECTIVE DATE OF 2000 AMENDMENTS

Amendment by Pub. L. 106-554 effective as if included in section 9302 of the Balanced Budget Act of 1997, Pub. L. 105-33, see section 1(a)(7) [title III, §315(b)] of Pub. L. 106-554, set out as a note under section 5702 of this title.

Amendment by section 4002 of Pub. L. 106-476 effective 90 days after Nov. 9, 2000, see section 4002(d) of Pub.

L. 106-476, set out as a note under section 5704 of this title.

Pub. L. 106-476, title IV, §4003(b), Nov. 9, 2000, 114 Stat. 2178, provided that: "The amendment made by this section [amending this section] shall take effect as if included in section 9302 of the Balanced Budget Act of 1997 [Pub. L. 105-33]."

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105-33, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101-239, set out as a note under section 461 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 722(a)(3) of Pub. L. 97-34 applicable to returns filed after Dec. 31, 1981, see section 722(a)(4) of Pub. L. 97-34, set out as a note under section 5684 of this title.

Amendment by section 724(b)(5) of Pub. L. 97-34 applicable to returns filed after Aug. 13, 1981, see section 724(c) of Pub. L. 97-34, set out as a note under section 6656 of this title.

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.

§ 5762. Criminal penalties

(a) Fraudulent offenses

Whoever, with intent to defraud the United States—

(1) Engaging in business unlawfully

Engages in business as a manufacturer or importer of tobacco products or cigarette papers and tubes, or as an export warehouse proprietor, without filing the bond and obtaining the permit where required by this chapter or regulations thereunder; or

(2) Failing to furnish information or furnishing false information

Fails to keep or make any record, return, report, or inventory, or keeps or makes any false or fraudulent record, return, report, or inventory, required by this chapter or regulations thereunder; or

(3) Refusing to pay or evading tax

Refuses to pay any tax imposed by this chapter, or attempts in any manner to evade or defeat the tax or the payment thereof; or

(4) Removing tobacco products or cigarette papers or tubes unlawfully

Removes, contrary to this chapter or regulations thereunder, any tobacco products or cigarette papers or tubes subject to tax under this chapter; or

(5) Purchasing, receiving, possessing, or selling tobacco products or cigarette papers or tubes unlawfully

Violates any provision of section 5751(a)(1) or (a)(2); or

(6) Destroying, obliterating, or detaching marks, labels, or notices before packages are emptied

Violates any provision of section 5752;

shall, for each such offense, be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

(b) Other offenses

Whoever, otherwise than as provided in subsection (a), violates any provision of this chapter, or of regulations prescribed thereunder, shall, for each such offense, be fined not more than \$1,000, or imprisoned not more than 1 year, or both.

(Aug. 16, 1954, ch. 736, 68A Stat. 717; Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1425; Pub. L. 89-44, title V, §502(b)(12), June 21, 1965, 79 Stat. 152; Pub. L. 94-455, title XIX, §1905(b)(7)(B)(ii), Oct. 4, 1976, 90 Stat. 1823; Pub. L. 105-33, title IX, §9302(h)(2)(A), Aug. 5, 1997, 111 Stat. 674.)

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105-33 inserted "or importer" after "manufacturer".

1976—Subsec. (a)(6). Pub. L. 94-455 redesignated par. (7) as (6), and in par. (6) as so redesignated substituted "or notices" for "notices, or stamps" and "section 5752;" for "section 5752(a); or". Former par. (6), relating to the affixing of improper stamps, was struck out.

Subsec. (a)(7). Pub. L. 94-455 redesignated par. (7) as (6).

Subsec. (a)(8) to (11). Pub. L. 94-455 struck out pars. (8) to (11) which related to emptying packages without destroying stamps, possessing emptied packages bearing stamps, refilling packages bearing stamps, and detaching stamps or possessing used stamps.

1965—Subsec. (a)(1). Pub. L. 89-44, §502(b)(12)(A), struck out reference to a dealer in tobacco materials.

Subsec. (a)(2). Pub. L. 89-44, §502(b)(12)(B), struck out reference to statements.

1958—Subsec. (a). Pub. L. 85-859 included export warehouse proprietors in par. (1), struck out provisions in pars. (6) and (9) to (11) which related to labels and notices, and added pars. (7) and (8).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105-33, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94-455, set out as a note under section 5005 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

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

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.

§ 5763. Forfeitures

(a) Tobacco products and cigarette papers and tubes unlawfully possessed

(1) Tobacco products and cigarette papers and tubes possessed with intent to defraud

All tobacco products and cigarette papers and tubes which, after removal, are possessed with intent to defraud the United States shall be forfeited to the United States.

(2) Tobacco products and cigarette papers and tubes not property packaged

All tobacco products and cigarette papers and tubes not in packages as required under section 5723 or which are in packages not bearing the marks, labels, and notices, as required under such section, which, after removal, are possessed otherwise than with intent to defraud the United States, shall be forfeited to the United States. This paragraph shall not apply to tobacco products or cigarette papers or tubes sold or delivered directly to consumers from proper packages.

(b) Personal property of qualified manufacturers, qualified importers, and export warehouse proprietors, acting with intent to defraud

All tobacco products and cigarette papers and tubes, packages, machinery, fixtures, equipment, and all other materials and personal property on the premises of any qualified manufacturer or importer of tobacco products or cigarette papers and tubes, or export warehouse proprietor, who, with intent to defraud the United States, fails to keep or make any record, return, report, or inventory, or keeps or makes any false or fraudulent record, return, report, or inventory, required by this chapter; or refuses to pay any tax imposed by this chapter, or attempts in any manner to evade or defeat the tax or the payment thereof; or removes, contrary to any provision of this chapter, any article subject to tax under this chapter, shall be forfeited to the United States.

(c) Real and personal property of illicit operators

All tobacco products, cigarette papers and tubes, machinery, fixtures, equipment, and other materials and personal property on the premises of any person engaged in business as a manufacturer or importer of tobacco products or cigarette papers and tubes, or export warehouse proprietor, without filing the bond or obtaining the permit, as required by this chapter, together with all his right, title, and interest in the building in which such business is conducted, and the lot or tract of ground on which the building is located, shall be forfeited to the United States.

(d) General

All property intended for use in violating the provisions of this chapter, or regulations thereunder, or which has been so used, shall be for-

feited to the United States as provided in section 7302.

(Aug. 16, 1954, ch. 736, 68A Stat. 718; Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1426; Pub. L. 89-44, title V, §502(b)(13), June 21, 1965, 79 Stat. 152; Pub. L. 94-455, title XIX, §1905(b)(7)(C), Oct. 4, 1976, 90 Stat. 1823; Pub. L. 105-33, title IX, §9302(h)(2)(A), (B), Aug. 5, 1997, 111 Stat. 674.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105-33 inserted “qualified importers,” after “manufacturers,” in heading and “or importer” after “manufacturer” in text.

Subsec. (c). Pub. L. 105-33, §9302(h)(2)(A), inserted “or importer” after “manufacturer”.

1976—Subsec. (a)(2). Pub. L. 94-455, §1905(b)(7)(C)(i), substituted “and notices” for “notices, and stamps”.

Subsec. (b). Pub. L. 94-455, §1905(b)(7)(C)(ii), struck out “internal revenue stamps,” after “packages.”

1965—Subsec. (b). Pub. L. 89-44, §502(b)(13)(A), struck out references to tobacco materials, dealers in tobacco materials, and statements.

Subsec. (c). Pub. L. 89-44, §502(b)(13)(B), struck out references to tobacco materials and dealers in tobacco materials.

1958—Subsec. (a). Pub. L. 85-859 substituted “tobacco products and cigarette papers and tubes” for “articles” wherever appearing and inserted provisions making par. (2) inapplicable to tobacco products or cigarette papers for tubes delivered directly to consumers from proper packages.

Subsecs. (b), (c). Pub. L. 85-859 included property of export warehouse proprietors.

Subsec. (d). Pub. L. 85-859 included property intended for use, or used, in violating regulations under this chapter.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105-33, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94-455, set out as a note under section 5005 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-859 effective on 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.

CHAPTER 53—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

Subchapter	Sec. ¹
A. Taxes	5801
B. General provisions and exemptions	5841
C. Prohibited acts	5861
D. Penalties and forfeitures	5871

PRIOR PROVISIONS

A prior chapter 53, act Aug. 16, 1954, ch. 736, 68A Stat. 721, was generally revised by Pub. L. 90-618, title II, §201, Oct. 22, 1968, 82 Stat. 1227. The analysis reflects changes:

¹ Section numbers editorially supplied.