

gins 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

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a 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.

#### TRANSITIONAL RULES RELATING TO DETERMINATION AND PAYMENT OF TAX

Pub. L. 96-39, title VIII, § 808, July 26, 1979, 93 Stat. 291, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) LIABILITY FOR PAYMENT OF TAX.—Except as otherwise provided in this section, the tax on all distilled spirits which have been withdrawn from bond on determination of tax and on which tax has not been paid by the close of December 31, 1979, shall become due on January 1, 1980, and shall be payable in accordance with section 5061 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

“(b) TREATMENT OF CONTROLLED STOCK AND BULK WINE.—

“(1) ELECTION WITH RESPECT TO CONTROLLED STOCK.—The proprietor of a distilled spirits plant may elect to convert any distilled spirits or wine which on January 1, 1980, is controlled stock.

“(2) ELECTION WITH RESPECT TO WINE.—The proprietor of a distilled spirits plant may elect to convert any bulk wine which on January 1, 1980, is on the premises of a distilled spirits plant.

“(3) EFFECT OF ELECTION.—If an election under paragraph (1) or (2) is in effect with respect to any controlled stock or wine—

“(A) any distilled spirits, wine, or rectification tax previously paid or determined on such controlled stock or wine shall be abated or (without interest) credited or refunded under such regulations as the Secretary shall prescribe, and

“(B) such controlled stock or wine shall be treated as distilled spirits or wine on which tax has not been paid or determined.

“(4) MAKING OF ELECTIONS.—The elections under this subsection shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

“(c) TAXPAID STOCK.—

“(1) TAXPAID STOCK MAY REMAIN ON BONDED PREMISES DURING 1980.—Section 5612(a) of the Internal Revenue Code of 1986 (relating to forfeiture of taxpaid distilled spirits remaining on bonded premises) shall not apply during 1980.

“(2) SEPARATION OF TAXPAID STOCK.—All distilled spirits and wine on which tax has been paid and which are on the bonded premises of a distilled spirits plant shall be physically separated from other distilled spirits and wine. Such separation shall be by the use of separate tanks, rooms, or buildings, or by partitioning, or by such other methods as the Secretary finds will distinguish such distilled spirits and wine from other distilled spirits and wine on the bonded premises of the distilled spirits plant.

“(d) RETURN OF DISTILLED SPIRITS PRODUCTS CONTAINING TAXPAID WINE.—With respect to distilled spirits returned to the bonded premises of distilled spirits plants during 1980, section 5008(c)(1) of the Internal Revenue Code of 1986 (relating to refunds for distilled spirits re-

turned to bonded premises) shall be treated as including a reference to section 5041 of such Code.

“(e) RETURN OF DISTILLED SPIRITS PRODUCTS CONTAINING OTHER ALCOHOLIC INGREDIENTS.—With respect to distilled spirits to which alcoholic ingredients other than distilled spirits have been added and which have been withdrawn from a distilled spirits plant before January 1, 1980, section 5215(a) of the Internal Revenue Code of 1986 shall apply only if such spirits are returned to the distilled spirits plant from which withdrawn.

“(f) SECRETARY DEFINED.—For purposes of this section, the term ‘Secretary’ means the Secretary of the Treasury or his delegate.”

#### § 5062. Refund and drawback in case of exportation

##### (a) Refund

Under such regulations as the Secretary may prescribe, the amount of any internal revenue tax erroneously or illegally collected in respect to exported articles may be refunded to the exporter of the article, instead of to the manufacturer, if the manufacturer waives any claim for the amount so to be refunded.

##### (b) Drawback

On the exportation of distilled spirits or wines manufactured, produced, bottled, or packaged in casks or other bulk containers in the United States on which an internal revenue tax has been paid or determined, and which are contained in any cask or other bulk container, or in bottles packed in cases or other containers, there shall be allowed, under regulations prescribed by the Secretary, a drawback equal in amount to the tax found to have been paid or determined on such distilled spirits or wines. In the case of distilled spirits, the preceding sentence shall not apply unless the claim for drawback is filed by the bottler or packager of the spirits and unless such spirits have been marked, especially for export, under regulations prescribed by the Secretary. The Secretary is authorized to prescribe regulations governing the determination and payment or crediting of drawback of internal revenue tax on spirits and wines eligible for drawback under this subsection, including the requirements of such notices, bonds, bills of lading, and other evidence indicating payment or determination of tax and exportation as shall be deemed necessary.

##### (c) Exportation of imported liquors

###### (1) Allowance of tax

Upon the exportation of imported distilled spirits, wines, and beer upon which the duties and internal revenue taxes have been paid or determined incident to their importation into the United States, and which have been found after entry to be unmerchantable or not to conform to sample or specifications, and which have been returned to customs custody, the Secretary shall, under such regulations as he shall prescribe, refund, remit, abate, or credit, without interest, to the importer thereof, the full amount of the internal revenue taxes paid or determined with respect to such distilled spirits, wines, or beer.

###### (2) Destruction in lieu of exportation

At the option of the importer, such imported distilled spirits, wines, and beer, after return

to customs custody, may be destroyed under customs supervision and the importer thereof granted relief in the same manner and to the same extent as provided in this subsection upon exportation.

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1336; amended Pub. L. 88-539, §1, Aug. 31, 1964, 78 Stat. 746; Pub. L. 89-44, title VIII, §805(f)(6), June 21, 1965, 79 Stat. 161; Pub. L. 90-630, §2(a), Oct. 22, 1968, 82 Stat. 1328; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-176, §1, Nov. 14, 1977, 91 Stat. 1363; Pub. L. 98-369, div. A, title IV, §454(c)(1), July 18, 1984, 98 Stat. 820.)

#### PRIOR PROVISIONS

A prior section 5062, act Aug. 16, 1954, ch. 736, 68A Stat. 614, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85-859.

#### AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 substituted “have been marked” for “have been stamped or restamped, and marked”.

1977—Subsec. (b). Pub. L. 95-176 substituted in first sentence “manufactured, produced, bottled, or packaged in casks or other bulk containers” and “other bulk container” for “manufactured or produced” and “package” and in last sentence “spirits and wines eligible for drawback under this subsection, including the requirements” for “domestic distilled spirits and wines, including the requirement”.

1976—Subsecs. (a), (b), (c)(1). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

1968—Subsec. (b). Pub. L. 90-630 permitted, under Treasury regulations, drawback of the tax where the stamping, restamping, or marking is done after the spirits have been removed from the original bottling plant.

1965—Subsec. (c)(1). Pub. L. 89-44 struck out “within six months of their release therefrom” after “customs custody”.

1964—Subsec. (c). Pub. L. 88-539 added subsec. (c).

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 1, 1985, see section 456(b) of Pub. L. 98-369, set out as an Effective Date note under section 5101 of this title.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-176 effective on first day of first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95-176, set out as a note under section 5003 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-630 applicable only to articles exported on or after first day of first calendar month which begins more than 90 days after Oct. 22, 1968, see section 4 of Pub. L. 90-630, set out as a note under section 5008 of this title.

#### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 effective July 1, 1965, see section 805(g)(1) of Pub. L. 89-44, set out as a note under section 5008 of this title.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88-539, §2, Aug. 31, 1964, 78 Stat. 746, provided that: “The amendment made by the first section of this Act [amending this section] shall apply with respect to articles exported or destroyed after the date of the enactment of this Act [Aug. 31, 1964].”

### **[§ 5063. Repealed. Pub. L. 89-44, title V, §501(e), June 21, 1965, 79 Stat. 150]**

Section, Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1336; Pub. L. 86-75, §3(b)(1), June 30, 1959, 73 Stat. 157; Pub. L. 86-564, title II, §202(b)(1), June 30, 1960, 74 Stat. 290; Pub. L. 87-72, §3(b)(1), June 30, 1961, 75 Stat. 193; Pub. L. 87-508, §3(b)(1), June 28, 1962, 76 Stat. 114; Pub. L. 88-52, §3(b)(1)(A), June 29, 1963, 77 Stat. 72; Pub. L. 88-348, §2(b)(1)(A), June 30, 1964, 78 Stat. 237, made provision for floor stocks refunds on distilled spirits, wines, cordials, and beer and set out limitations on the eligibility for such refunds or credits.

A prior section 5063, act Aug. 16, 1954, ch. 736, 68A Stat. 615, consisted of provisions similar to those comprising section 5063, prior to the general revision of this chapter by Pub. L. 85-859.

#### 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.

### **§ 5064. Losses resulting from disaster, vandalism, or malicious mischief**

#### **(a) Payments**

The Secretary, under such regulations as he may prescribe, shall pay (without interest) an amount equal to the amount of the internal revenue taxes paid or determined and customs duties paid on distilled spirits, wines, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of—

- (1) fire, flood, casualty, or other disaster, or
- (2) breakage, destruction, or other damage (but not including theft) resulting from vandalism or malicious mischief,

if such disaster or damage occurred in the United States and if such distilled spirits, wines, or beer were held and intended for sale at the time of such disaster or other damage. The payments provided for in this section shall be made to the person holding such distilled spirits, wines, or beer for sale at the time of such disaster or other damage.

#### **(b) Claims**

##### **(1) Period for making claim; proof**

No claim shall be allowed under this section unless—

- (A) filed within 6 months after the date on which such distilled spirits, wines, or beer were lost, rendered unmarketable, or condemned by a duly authorized official, and
- (B) the claimant furnishes proof satisfactory to the Secretary that the claimant—

- (i) was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the distilled spirits, wines, or beer covered by the claim; and

- (ii) is entitled to payment under this section.

##### **(2) Minimum claim**

Except as provided in paragraph (3)(A), no claim of less than \$250 shall be allowed under this section with respect to any disaster or other damage (as the case may be).

##### **(3) Special rules for major disasters**

If the President has determined under the Robert T. Stafford Disaster Relief and Emer-