

Sec.	
[5009.	Repealed.]
5010.	Credit for wine content and for flavors content.
5011.	Income tax credit for average cost of carrying excise tax.

PRIOR PROVISIONS

A prior subpart A, comprising sections 5001 to 5012, related to tax on distilled spirits, prior to the general revision of this chapter by Pub. L. 85-859, title II, 201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

2005—Pub. L. 109-59, title XI, §11126(c), Aug. 10, 2005, 119 Stat. 1958, added item 5011.

1980—Pub. L. 96-598, §6(b), Dec. 24, 1980, 94 Stat. 3489, added item 5010.

1979—Pub. L. 96-39, title VIII, §807(b)(2), July 26, 1979, 93 Stat. 290, struck out item 5009 "Drawback".

§ 5001. Imposition, rate, and attachment of tax

(a) Rate of tax

(1) General

There is hereby imposed on all distilled spirits produced in or imported into the United States a tax at the rate of \$13.50 on each proof gallon and a proportionate tax at the like rate on all fractional parts of a proof gallon.

(2) Products containing distilled spirits

All products of distillation, by whatever name known, which contain distilled spirits, on which the tax imposed by law has not been paid, and any alcoholic ingredient added to such products, shall be considered and taxed as distilled spirits.

(3) Wines containing more than 24 percent alcohol by volume

Wines containing more than 24 percent of alcohol by volume shall be taxed as distilled spirits.

(4) Distilled spirits withdrawn free of tax

Any person who removes, sells, transports, or uses distilled spirits, withdrawn free of tax under section 5214(a) or section 7510, in violation of laws or regulations now or hereafter in force pertaining thereto, and all such distilled spirits shall be subject to all provisions of law relating to distilled spirits subject to tax, including those requiring payment of the tax thereon; and the person so removing, selling, transporting, or using the distilled spirits shall be required to pay such tax.

(5) Denatured distilled spirits or articles

Any person who produces, withdraws, sells, transports, or uses denatured distilled spirits or articles in violation of laws or regulations now or hereafter in force pertaining thereto, and all such denatured distilled spirits or articles shall be subject to all provisions of law pertaining to distilled spirits that are not denatured, including those requiring the payment of tax thereon; and the person so producing, withdrawing, selling, transporting, or using the denatured distilled spirits or articles shall be required to pay such tax.

(6) Fruit-flavor concentrates

If any volatile fruit-flavor concentrate (or any fruit mash or juice from which such con-

centrate is produced) containing one-half of 1 percent or more of alcohol by volume, which is manufactured free from tax under section 5511, is sold, transported, or used by any person in violation of the provisions of this chapter or regulations promulgated thereunder, such person and such concentrate, mash, or juice shall be subject to all provisions of this chapter pertaining to distilled spirits and wines, including those requiring the payment of tax thereon; and the person so selling, transporting, or using such concentrate, mash, or juice shall be required to pay such tax.

(7) Imported liqueurs and cordials

Imported liqueurs and cordials, or similar compounds, containing distilled spirits, shall be taxed as distilled spirits.

(8) Imported distilled spirits withdrawn for beverage purposes

There is hereby imposed on all imported distilled spirits withdrawn from customs custody under section 5232 without payment of the internal revenue tax, and thereafter withdrawn from bonded premises for beverage purposes, an additional tax equal to the duty which would have been paid had such spirits been imported for beverage purposes, less the duty previously paid thereon.

(9) Alcoholic compounds from Puerto Rico

Except as provided in section 5314, upon bay rum, or any article containing distilled spirits, brought from Puerto Rico into the United States for consumption or sale there is hereby imposed a tax on the spirits contained therein at the rate imposed on distilled spirits produced in the United States.

(b) Time of attachment on distilled spirits

The tax shall attach to distilled spirits as soon as this substance is in existence as such, whether it be subsequently separated as pure or impure spirits, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production or by any subsequent process.

(c) Reduced rate

(1) In general

In the case of a distilled spirits operation, the otherwise applicable tax rate under subsection (a)(1) shall be—

(A) \$2.70 per proof gallon on the first 100,000 proof gallons of distilled spirits, and

(B) \$13.34 per proof gallon on the first 22,130,000 of¹ proof gallons of distilled spirits to which subparagraph (A) does not apply,

which have been distilled or processed by such operation and removed during the calendar year for consumption or sale, or which have been imported by the importer into the United States during the calendar year but only if the importer is an electing importer under paragraph (3) and the proof gallons of distilled spirits have been assigned to the importer pursuant to such paragraph.

¹ So in original.

(2) Controlled groups**(A) In general**

In the case of a controlled group, the proof gallon quantities specified under subparagraphs (A) and (B) of paragraph (1) shall be applied to such group and apportioned among the members of such group in such manner as the Secretary or their delegate shall by regulations prescribe.

(B) Definition

For purposes of subparagraph (A), the term “controlled group” shall have the meaning given such term by subsection (a) of section 1563, except that “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears in such subsection.

(C) Rules for non-corporations

Under regulations prescribed by the Secretary, principles similar to the principles of subparagraphs (A) and (B) shall be applied to a group under common control where one or more of the persons is not a corporation.

(D) Single taxpayer

Pursuant to rules issued by the Secretary, two or more entities (whether or not under common control) that produce or process distilled spirits under a license, franchise, or other arrangement shall be treated as a single taxpayer for purposes of the application of this subsection.

(3) Reduced tax rate for foreign manufacturers and importers**(A) In general**

In the case of any proof gallons of distilled spirits which have been produced outside of the United States and imported into the United States, the rate of tax applicable under paragraph (1) (referred to in this paragraph as the “reduced tax rate”) may be assigned by the distilled spirits operation (provided that such operation makes an election described in subparagraph (B)(ii)) to any electing importer of such proof gallons pursuant to the requirements established by the Secretary under subparagraph (B).

(B) Assignment

The Secretary of the Treasury, after consultation with the Secretary of the Department of Homeland Security, shall, through such rules, regulations, and procedures as are determined appropriate, establish procedures for assignment of the reduced tax rate provided under this paragraph, which shall include—

(i) a limitation to ensure that the number of proof gallons of distilled spirits for which the reduced tax rate has been assigned by a distilled spirits operation—

(I) to any importer does not exceed the number of proof gallons produced by such operation during the calendar year which were imported into the United States by such importer, and

(II) to all importers does not exceed the 22,230,000 proof gallons of distilled spirits to which the reduced tax rate applies,

(ii) procedures that allow the election of a distilled spirits operation to assign and an importer to receive the reduced tax rate provided under this paragraph.

(iii) requirements that the distilled spirits operation provide any information as the Secretary determines necessary and appropriate for purposes of carrying out this paragraph, and

(iv) procedures that allow for revocation of eligibility of the distilled spirits operation and the importer for the reduced tax rate provided under this paragraph in the case of any erroneous or fraudulent information provided under clause (iii) which the Secretary deems to be material to qualifying for such reduced rate.

(C) Controlled group**(i) In general**

For purposes of this section, any importer making an election described in subparagraph (B)(ii) shall be deemed to be a member of the controlled group of the distilled spirits operation, as described under paragraph (2).

(ii) Apportionment

For purposes of this paragraph, in the case of a controlled group, rules similar to section 5051(a)(5)(B) shall apply.

(d) Cross reference

For provisions relating to the tax on shipments to the United States of taxable articles from Puerto Rico and the Virgin Islands, see section 7652.

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1314; amended Pub. L. 86-75, §3(a)(2), (3), June 30, 1959, 73 Stat. 157; Pub. L. 86-564, title II, §202(a)(4), (5), June 30, 1960, 74 Stat. 290; Pub. L. 87-72, §3(a)(4), (5), June 30, 1961, 75 Stat. 193; Pub. L. 87-508, §3(a)(3), (4), June 28, 1962, 76 Stat. 114; Pub. L. 88-52, §3(a)(4), (5), June 29, 1963, 77 Stat. 72; Pub. L. 88-348, §2(a)(4), (5), June 30, 1964, 78 Stat. 237; Pub. L. 89-44, title V, §501(a), June 21, 1965, 79 Stat. 150; Pub. L. 96-39, title VIII, §§802, 805(d), July 26, 1979, 93 Stat. 273, 278; Pub. L. 98-369, div. A, title I, §27(a)(1), July 18, 1984, 98 Stat. 507; Pub. L. 101-508, title XI, §11201(a)(1), Nov. 5, 1990, 104 Stat. 1388-415; Pub. L. 103-465, title I, §136(a), Dec. 8, 1994, 108 Stat. 4841; Pub. L. 115-97, title I, §13807(a), (c), Dec. 22, 2017, 131 Stat. 2176; Pub. L. 116-94, div. Q, title I, §144(g)(1), (2), Dec. 20, 2019, 133 Stat. 3235; Pub. L. 116-260, div. EE, title I, §§106(g)(1), 107(a)(1), 109(a), 110(c), Dec. 27, 2020, 134 Stat. 3044, 3045, 3049, 3050.)

AMENDMENT OF SUBSECTION (c)

Pub. L. 116-260, div. EE, title I, §107(a)(1), (3), Dec. 27, 2020, 134 Stat. 3045, 3046, provided that, applicable to distilled spirits brought into the United States and removed after Dec. 31, 2022, subsection (c) of this section is amended by adding at the end the following new paragraph:

(4) Refunds in lieu of reduced rates for foreign production removed after December 31, 2022

(A) In general

In the case of any proof gallons of distilled spirits which have been produced outside the United States and imported into the United

States, if such proof gallons of distilled spirits are removed after December 31, 2022—

- (i) paragraph (1) shall not apply, and
- (ii) the amount determined under subparagraph (B) shall be allowed as a refund, determined for periods not less frequently than quarterly, to the importer in the same manner as if such amount were an overpayment of tax imposed by this section.

(B) Amount of refund

The amount determined under this subparagraph with respect to any importer for any period is an amount equal to the sum of—

- (i) the excess (if any) of—
 - (I) the amount of tax imposed under this subpart on proof gallons of distilled spirits referred to in subparagraph (A) which were removed during such period, over
 - (II) the amount of tax which would have been imposed under this subpart on such proof gallons of distilled spirits if this section were applied without regard to this paragraph, plus
- (ii) the amount of interest which would be allowed and paid on an overpayment of tax at the overpayment rate established under section 6621(a)(1) (without regard to the second sentence thereof) were such rate applied to the excess (if any) determined under clause (i) for the number of days in the filing period for which the refund under this paragraph is being determined.

(C) Application of rules related to elections and assignments

Subparagraph (A)(ii) shall apply only if the importer is an electing importer under paragraph (3) and the proof gallons of distilled spirits have been assigned to the importer pursuant to such paragraph.

(D) Rules for refunds within 90 days

For purposes of refunds allowed under this paragraph, section 6611(e) shall be applied by substituting “90 days” for “45 days” each place it appears.

See 2020 Amendment note below.

Pub. L. 116-260, div. EE, title I, § 109, Dec. 27, 2020, 134 Stat. 3049, provided that, applicable to distilled spirits removed after Dec. 31, 2021, subsection (c) of this section is amended by adding at the end the following:

(5) Processed distilled spirits

A distilled spirit shall not be treated as processed for purposes of this subsection unless a process described in section 5002(a)(5)(A) (other than bottling) is performed with respect to such distilled spirit.

See 2020 Amendment note below.

PRIOR PROVISIONS

A prior section 5001, acts Aug. 16, 1954, ch. 736, 68A Stat. 595; Mar. 30, 1955, ch. 18, §3(a)(4), (5), 69 Stat. 14; Mar. 29, 1956, ch. 115, §3(a)(4), (5), 70 Stat. 66; Mar. 29, 1957, Pub. L. 85-12, §3(a)(2), (3), 71 Stat. 9; June 30, 1958, Pub. L. 85-475, §3(a)(2), (3), 72 Stat. 259, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85-859. See section 5061(d) of this title.

AMENDMENTS

2020—Subsec. (c). Pub. L. 116-260, §106(g)(1)(A), substituted “Reduced rate” for “Temporary reduced rate” in heading.

Subsec. (c)(2)(D). Pub. L. 116-260, §110(c), substituted “under a license” for “marketed under a similar brand, license” and inserted “or process” after “that produce”.

Subsec. (c)(3)(B). Pub. L. 116-260, §106(g)(1)(B), substituted “The Secretary of the Treasury, after consultation with the Secretary of the Department of Homeland Security,” for “The Secretary” in introductory provisions.

Subsec. (c)(4). Pub. L. 116-260, §107(a)(1), added par. (4).

Pub. L. 116-260, §106(g)(1)(C), struck out par. (4). Text read as follows: “This subsection shall not apply to distilled spirits removed after December 31, 2020.”

Subsec. (c)(5). Pub. L. 116-260, §109(a), added par. (5). 2019—Subsec. (c). Pub. L. 116-94, §144(g)(2), substituted “Temporary reduced rate” for “Reduced rate for 2018 and 2019” in heading.

Subsec. (c)(4). Pub. L. 116-94, §144(g)(1), substituted “December 31, 2020” for “December 31, 2019”.

2017—Subsec. (c). Pub. L. 115-97, §13807(a), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 115-97, §13807(c)(1), inserted “but only if the importer is an electing importer under paragraph (3) and the proof gallons of distilled spirits have been assigned to the importer pursuant to such paragraph” after “into the United States during the calendar year”.

Subsec. (c)(3), (4). Pub. L. 115-97, §13807(c)(2), added par. (3) and redesignated former par. (3) as (4).

Subsec. (d). Pub. L. 115-97, §13807(a), redesignated subsec. (c) as (d).

1994—Subsec. (a)(3) to (10). Pub. L. 103-465 redesignated pars. (4) to (10) as (3) to (9), respectively, and struck out former par. (3), “Imported perfumes containing distilled spirits”, which read as follows: “There is hereby imposed on all perfumes imported into the United States containing distilled spirits a tax of \$13.50 per wine gallon, and a proportionate tax at a like rate on all fractional parts of such wine gallon.”

1990—Subsec. (a)(1), (3). Pub. L. 101-508 substituted “\$13.50” for “\$12.50”.

1984—Subsec. (a)(1), (3). Pub. L. 98-369 substituted “\$12.50” for “\$10.50”.

1979—Subsec. (a)(1). Pub. L. 96-39, §802, struck out “in bond or” after “distilled spirits” and “or wine gallon when below proof” after “each proof gallon” and substituted “a tax” for “an internal revenue tax” and “proof gallon” for “such proof or wine gallon”.

Subsec. (a)(2). Pub. L. 96-39, §805(d), inserted “, and any alcoholic ingredient added to such products” after “has not been paid”.

1965—Subsec. (a)(1). Pub. L. 89-44 struck out last sentence which provided that the rate of tax imposed by par. (1) would be \$9 on and after July 1, 1965.

Subsec. (a)(3). Pub. L. 89-44 struck out last sentence which provided that the rate of tax imposed by par. (3) would be \$9 on and after July 1, 1965.

1964—Subsec. (a)(1). Pub. L. 88-348 substituted “July 1, 1965” for “July 1, 1964”.

Subsec. (a)(3). Pub. L. 88-348 substituted “July 1, 1965” for “July 1, 1964”.

1963—Subsec. (a)(1). Pub. L. 88-52, §3(a)(4), substituted “July 1, 1964” for “July 1, 1963”.

Subsec. (a)(3). Pub. L. 88-52, §3(a)(5), substituted “July 1, 1964” for “July 1, 1963”.

1962—Subsec. (a)(1). Pub. L. 87-508, §3(a)(3), substituted “July 1, 1963” for “July 1, 1962”.

Subsec. (a)(3). Pub. L. 87-508, §3(a)(4), substituted “July 1, 1963” for “July 1, 1962”.

1961—Subsec. (a)(1). Pub. L. 87-72, §3(a)(4), substituted “July 1, 1962” for “July 1, 1961”.

Subsec. (a)(3). Pub. L. 87-72, §3(a)(5), substituted “July 1, 1962” for “July 1, 1961”.

1960—Subsec. (a)(1). Pub. L. 86-564, §202(a)(4), substituted “July 1, 1961” for “July 1, 1960”.

Subsec. (a)(3). Pub. L. 86-564, §202(a)(5), substituted “July 1, 1961” for “July 1, 1960”.

1959—Subsec. (a)(1). Pub. L. 86-75, §3(a)(2), substituted “July 1, 1960” for “July 1, 1959”.

Subsec. (a)(3). Pub. L. 86-75, §3(a)(3), substituted “July 1, 1960” for “July 1, 1959”.

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-260, div. EE, title I, §106(g)(2), Dec. 27, 2020, 134 Stat. 3045, provided that: “The amendments made by this subsection [amending this section] shall apply to distilled spirits removed after December 31, 2020.”

Pub. L. 116-260, div. EE, title I, §107(a)(3), Dec. 27, 2020, 134 Stat. 3046, provided that: “The amendments made by this subsection [amending this section and section 7652 of this title] shall apply to distilled spirits brought into the United States and removed after December 31, 2022.”

Pub. L. 116-260, div. EE, title I, §109(b), Dec. 27, 2020, 134 Stat. 3049, provided that: “The amendment made by this section [amending this section] shall apply to distilled spirits removed after December 31, 2021.”

Pub. L. 116-260, div. EE, title I, §110(d), Dec. 27, 2020, 134 Stat. 3050, provided that: “The amendments made by this section [amending this section and section 5051 of this title] shall apply to beer, wine, and distilled spirits removed after December 31, 2020.”

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116-94, div. Q, title I, §144(g)(3), Dec. 20, 2019, 133 Stat. 3235, provided that: “The amendments made by this subsection [amending this section] shall apply to distilled spirits removed after December 31, 2019.”

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-97, title I, §13807(d), Dec. 22, 2017, 131 Stat. 2177, provided that: “The amendments made by this section [amending this section and section 7652 of this title] shall apply to distilled spirits removed after December 31, 2017.”

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-465, title I, §136(d), Dec. 8, 1994, 108 Stat. 4842, provided that: “The amendments made by this section [amending this section and sections 5002, 5005, 5007, 5061, 5131, 5132, 5134, and 7652 of this title] shall take effect on January 1, 1995.”

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11201(d), Nov. 5, 1990, 104 Stat. 1388-417, provided that: “The amendments made by this section [amending this section and sections 5010, 5041, 5051, and 5061 of this title] shall take effect on January 1, 1991.”

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, §27(d), July 18, 1984, 98 Stat. 509, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 5010 of this title and enacting provisions set out as a note under this section] shall take effect on October 1, 1985.

“(2) ELECTRONIC TRANSFER PROVISIONS.—The amendments made by subsection (c) [amending sections 5061 and 5703 of this title] shall apply to taxes required to be paid on or after September 30, 1984.”

EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96-39, title VIII, §810, July 26, 1979, 93 Stat. 292, provided that: “The amendments made by this title [amending this section and sections 5002 to 5008, 5043, 5061, 5064, 5066, 5116, 5171 to 5173, 5175 to 5178, 5180, 5181, 5201 to 5205, 5207, 5211 to 5215, 5221 to 5223, 5231, 5232, 5235, 5241, 5273, 5291, 5301, 5352, 5361 to 5363, 5365, 5381, 5391, 5551, 5601, 5604, 5610, 5612, 5615, 5663, 5681, 5682, and 5691 of this title, repealing sections 5009, 5021 to 5026,

5081 to 5084, 5174, 5233, 5234, 5251, 5252, 5364, and 5521 to 5523 of this title, and enacting provisions set out as notes under sections 1, 5061, 5171, and 5173 of this title] shall take effect on January 1, 1980.”

EFFECTIVE DATE OF 1965 AMENDMENT

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

EFFECTIVE DATE

Pub. L. 85-859, title II, §210(a)(1), Sept. 2, 1958, 72 Stat. 1435, provided that: “The amendments made by sections 201 and 205 [amending this chapter and repealing acts Mar. 3, 1877, 114, 19 Stat. 393, and Oct. 18, 1888, ch. 1194, 25 Stat. 560] shall take effect on July 1, 1959, except that any provision having the effect of a provision contained in such amendments may be made effective at an earlier date by the promulgation of regulations by the Secretary or his delegate to effectuate such provision, in which case the effective date shall be that prescribed in such regulations. The amendments made by paragraphs (17) and (18) of section 204 [amending section 7652 of this title] shall take effect on July 1, 1959. Except as provided in section 206(f), all other provisions of this title [enacting sections 5849, 5854, 5855, and 7608 of this title, amending chapter 52 of this title and sections 5801, 5811, 5814, 5821, 5843, 5848, 5851, 6071, 6207, 6422, 7214, 7272, 7301, 7324 to 7326, 7609, and 7655 of this title, and repealing former section 5854 of this title] shall take effect on the day following the date of the enactment of this Act [Sept. 2, 1958].”

SHORT TITLE

Pub. L. 85-859, §1(a), Sept. 2, 1958, 72 Stat. 1275, provided that: “This Act [see Tables for classification] may be cited as the ‘Excise Tax Technical Changes Act of 1958’.”

REGULATIONS

Pub. L. 116-260, div. EE, title I, §107(f), Dec. 27, 2020, 134 Stat. 3048, provided that: “The Secretary of the Treasury (or the Secretary’s delegate within the Department of the Treasury) shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section [enacting section 6038E of this title, amending this section and sections 5041, 5051, and 7652 of this title, and enacting provisions set out as notes under this section and sections 5041, 5051, and 6038E of this title], including regulations to require foreign producers to provide information necessary to enforce the volume limitations under sections 5001(c), 5041(c), and 5051(a) of such Code.”

SAVINGS PROVISION

Pub. L. 85-859, title II, §210(b), Sept. 2, 1958, 72 Stat. 1435, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment of any provision of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by this title [enacting sections 5849, 5854, 5855, and 7608 of this title, amending this chapter, chapter 52 of this title and sections 5801, 5811, 5814, 5821, 5843, 5848, 5851, 6071, 6207, 6422, 7214, 7272, 7301, 7324 to 7326, 7609, 7652, and 7655 of this title, and enacting provisions set out as notes under this section and sections 5006, 5025, 5064, 5175, 5304, and 5601 of this title] shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before such amendment; but all rights and liabilities under such code prior to such amendment shall continue, and may be enforced in the same manner, as if such amendment had not been made.”

REFERENCES TO OTHER PROVISIONS OF LAW

Pub. L. 85-859, title II, §210(d), Sept. 2, 1958, 72 Stat. 1435, provided that: “For the purpose of applying any provision of this title [see Savings Provision note above] to any occurrence on or after the effective date

of such provision, any reference in this title to another provision thereof shall also be deemed to be a reference to the corresponding provision of prior law, when consistent with the purpose of the provision to be applied.”

REPEAL OF ACTS MAR. 3, 1877 AND OCT. 18, 1888

Pub. L. 85-859, title II, §205, Sept. 2, 1958, 72 Stat. 1430, repealed acts March 3, 1877, ch. 114, 19 Stat. 393 and Oct. 18, 1888, ch. 1194, 25 Stat. 560, which related to production and warehousing of fruit brandy, and are covered by this chapter. For effective date of repeal, see section 210(a)(1) of Pub. L. 85-859, set out as an Effective Date note above.

ADMINISTRATION OF REFUNDS

Pub. L. 116-260, div. EE, title I, §107(e), Dec. 27, 2020, 134 Stat. 3048, provided that: “The Secretary of the Treasury (or the Secretary’s delegate within the Department of the Treasury) shall implement and administer sections 5001(c)(4), 5041(c)(7), and 5051(a)(6) of the Internal Revenue Code of 1986, as added by this Act [div. EE of Pub. L. 116-260], in coordination with the United States Customs and Border Protection of the Department of Homeland Security.”

FLOOR STOCKS TAXES ON DISTILLED SPIRITS, WINE,
AND BEER

Pub. L. 101-508, title XI, §11201(e), Nov. 5, 1990, 104 Stat. 1388-417, provided that:

“(1) IMPOSITION OF TAX.—

“(A) IN GENERAL.—In the case of any tax-increased article—

“(i) on which tax was determined under part I of subchapter A of chapter 51 of the Internal Revenue Code of 1986 or section 7652 of such Code before January 1, 1991, and

“(ii) which is held on such date for sale by any person,

there shall be imposed a tax at the applicable rate on each such article.

“(B) APPLICABLE RATE.—For purposes of subparagraph (A), the applicable rate is—

“(i) \$1 per proof gallon in the case of distilled spirits,

“(ii) \$0.90 per wine gallon in the case of wine described in paragraph (1), (2), (3), or (5) of section 5041(b) of such Code, and

“(iii) \$9 per barrel in the case of beer.

In the case of a fraction of a gallon or barrel, the tax imposed by subparagraph (A) shall be the same fraction as the amount of such tax imposed on a whole gallon or barrel.

“(C) TAX-INCREASED ARTICLE.—For purposes of this subsection, the term ‘tax-increased article’ means distilled spirits, wine described in paragraph (1), (2), (3), or (5) of section 5041(b) of such Code, and beer.

“(2) EXCEPTION FOR SMALL DOMESTIC PRODUCERS.—

“(A) In the case of wine held by the producer thereof on January 1, 1991, if a credit would have been allowable under section 5041(c) of such Code (as added by this section) on such wine had the amendments made by subsection (b) [amending sections 5041 and 5061 of this title] applied to all wine removed during 1990 and had the wine so held been removed for consumption on December 31, 1990, the tax imposed by paragraph (1) on such wine shall be reduced by the credit which would have been so allowable.

“(B) In the case of beer held by the producer thereof on January 1, 1991, if the rate of the tax imposed by section 5051 of such Code would have been determined under subsection (a)(2) thereof had the beer so held been removed for consumption on December 31, 1990, the tax imposed by paragraph (1) on such beer shall not apply.

“(C) For purposes of this paragraph, an article shall not be treated as held by the producer if title thereto had at any time been transferred to any other person.

“(3) EXCEPTION FOR CERTAIN SMALL WHOLESALE OR RETAIL DEALERS.—No tax shall be imposed by paragraph

(1) on tax-increased articles held on January 1, 1991, by any dealer if—

“(A) the aggregate liquid volume of tax-increased articles held by such dealer on such date does not exceed 500 wine gallons, and

“(B) such dealer 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 paragraph.

“(4) CREDIT AGAINST TAX.—Each dealer shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to—

“(A) \$240 to the extent such taxes are attributable to distilled spirits,

“(B) \$270 to the extent such taxes are attributable to wine, and

“(C) \$87 to the extent such taxes are attributable to beer.

Such credit shall not exceed the amount of taxes imposed by paragraph (1) with respect to distilled spirits, wine, or beer, as the case may be, for which the dealer is liable.

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

“(A) LIABILITY FOR TAX.—A person holding any tax-increased article on January 1, 1991, 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 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 June 30, 1991.

“(6) CONTROLLED GROUPS.—

“(A) CORPORATIONS.—In the case of a controlled group—

“(i) the 500 wine gallon amount specified in paragraph (3), and

“(ii) the \$240, \$270, and \$87 amounts specified in paragraph (4),

shall be apportioned among the dealers who are component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term ‘controlled group’ has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase ‘more than 50 percent’ shall be substituted for the phrase ‘at least 80 percent’ each place it appears in such subsection.

“(B) NONINCORPORATED DEALERS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of subparagraph (A) shall apply to a group of dealers under common control where 1 or more of such dealers is not a corporation.

“(7) OTHER LAWS APPLICABLE.—

“(A) IN GENERAL.—All provisions of law, including penalties, applicable to the comparable excise tax with respect to any tax-increased article 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 the comparable excise tax.

“(B) COMPARABLE EXCISE TAX.—For purposes of subparagraph (A), the term ‘comparable excise tax’ means—

“(i) the tax imposed by section 5001 of such Code in the case of distilled spirits,

“(ii) the tax imposed by section 5041 of such Code in the case of wine, and

“(iii) the tax imposed by section 5051 of such Code in the case of beer.

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

“(A) IN GENERAL.—Terms used in this subsection which are also used in subchapter A of chapter 51 of such Code shall have the respective meanings such terms have in such part.

“(B) PERSON.—The term ‘person’ includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

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

“(9) TREATMENT OF IMPORTED PERFUMES CONTAINING DISTILLED SPIRITS.—For purposes of this subsection, any article described in section 5001(a)(3) of such Code shall be treated as distilled spirits; except that the tax imposed by paragraph (1) shall be imposed on a wine gallon basis in lieu of a proof gallon basis. To the extent provided by regulations prescribed by the Secretary, the preceding sentence shall not apply to any article held on January 1, 1991, on the premises of a retail establishment.”

FLOOR STOCKS TAX TREATMENT OF ARTICLES IN FOREIGN TRADE ZONES

Pub. L. 101-508, title XI, §11218, Nov. 5, 1990, 104 Stat. 1388-438, provided that: “Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provision of law, any article which is located in a foreign trade zone on the effective date of any increase in tax under the amendments made by this part or part I [part I (§§11201-11203) or part II (§§11211-11218) of subtitle B of title XI of Pub. L. 101-508, see Tables for classification] shall be subject to floor stocks taxes imposed by such parts if—

“(1) 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

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

FLOOR STOCKS TAXES ON DISTILLED SPIRITS

Pub. L. 98-369, div. A, title I, §27(b), July 18, 1984, 98 Stat. 507, as amended by Pub. L. 99-514, §2, title XVIII, §1801(c)(3), Oct. 22, 1986, 100 Stat. 2095, 2786, provided that:

“(1) IMPOSITION OF TAX.—On distilled spirits on which tax was imposed under section 5001 or 7652 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] before October 1, 1985, and which were held on such date for sale by any person, there shall be imposed a tax at the rate of \$2.00 for each proof gallon and a proportionate tax at the like rate on all fractional parts of a proof gallon.

“(2) EXCEPTION FOR CERTAIN SMALL WHOLESALE OR RETAIL DEALERS.—No tax shall be imposed by paragraph (1) on distilled spirits held on October 1, 1985, by any dealer if—

“(A) the aggregate liquid volume of distilled spirits held by such dealer on such date does not exceed 500 wine gallons, and

“(B) such dealer 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 paragraph.

“(3) CREDIT AGAINST TAX.—Each dealer shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to \$800. Such credit shall not exceed the amount of taxes imposed by paragraph (1) for which the dealer is liable.

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

“(A) LIABILITY FOR TAX.—A person holding distilled spirits on October 1, 1985, 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 paid in such manner as the Secretary shall by regulations prescribe.

“(C) TIME FOR PAYMENT.—

“(i) IN GENERAL.—Except as provided in clause (ii), the tax imposed by paragraph (1) shall be paid on or before April 1, 1986.

“(ii) INSTALLMENT PAYMENT OF TAX IN CASE OF SMALL OR MIDDLE-SIZED DEALERS.—In the case of any small or middle-sized dealer, the tax imposed by paragraph (1) may be paid in 3 equal installments due as follows:

“(I) The first installment shall be paid on or before April 1, 1986.

“(II) The second installment shall be paid on or before July 1, 1986.

“(III) The third installment shall be paid on or before October 1, 1986.

If the taxpayer does not pay any installment under this clause on or before the date prescribed for its payment, the whole of the unpaid tax shall be paid upon notice and demand from the Secretary.

“(iii) SMALL OR MIDDLE-SIZED DEALER.—For purposes of clause (ii), the term ‘small or middle-sized dealer’ means any dealer if the aggregate gross sales receipts of such dealer for its most recent taxable year ending before October 1, 1985, does not exceed \$500,000.

“(5) CONTROLLED GROUPS.—

“(A) CONTROLLED GROUPS OF CORPORATIONS.—In the case of a controlled group—

“(i) the 500 wine gallon amount specified in paragraph (2),

“(ii) the \$800 amount specified in paragraph (3), and

“(iii) the \$500,000 amount specified in paragraph (4)(C)(iii).

shall be apportioned among the dealers who are component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term ‘controlled group’ has the meaning given to such term by subsection (a) of section 1563 of the Internal Revenue Code of 1986; except that for such purposes the phrase ‘more than 50 percent’ shall be substituted for the phrase ‘at least 80 percent’ each place it appears in such subsection.

“(B) NONINCORPORATED DEALERS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of subparagraph (A) shall apply to a group of dealers under common control where 1 or more of such dealers is not a corporation.

“(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5001 of the Internal Revenue Code of 1986 shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply in respect of the taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 5001.

“(7) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

“(A) DEALER.—The term ‘dealer’ means—

“(i) any wholesale dealer in liquors (as defined in section 5112(b) of the Internal Revenue Code of 1986), and

“(ii) any retail dealer in liquors (as defined in section 5122(a) of such Code).

“(B) DISTILLED SPIRITS.—The term ‘distilled spirits’ has the meaning given such term by section 5002(a)(8) of the Internal Revenue Code of 1986.

“(C) PERSON.—The term ‘person’ includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

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

“(E) TREATMENT OF IMPORTED PERFUMES CONTAINING DISTILLED SPIRITS.—Any article described in section 5001(a)(3) of such Code shall be treated as distilled spirits; except that the tax imposed by paragraph (1) shall be imposed on a wine gallon basis in lieu of a proof gallon basis. To the extent provided in regulations prescribed by the Secretary, the preceding sentence shall not apply to any article held on October 1, 1985, on the premises of a retail establishment.

“(F) TREATMENT OF DISTILLED SPIRITS 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, distilled spirits which are located in a foreign trade zone on October 1, 1985, 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 distilled spirits 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 distilled spirits are held on such date under the supervision of customs pursuant to the second proviso of such section 3(a).

Under regulations prescribed by the Secretary, provisions similar to sections 5062 and 5064 of such Code shall apply to distilled spirits with respect to which tax is imposed by paragraph (1) by reason of this subparagraph.”

§ 5002. Definitions

(a) In general

For purposes of this chapter—

(1) Distilled spirits plant

The term “distilled spirits plant” means an establishment which is qualified under subchapter B to perform any distilled spirits operation.

(2) Distilled spirits operation

The term “distilled spirits operation” means any operation for which qualification is required under subchapter B.

(3) Bonded premises

The term “bonded premises”, when used with respect to distilled spirits, means the premises of a distilled spirits plant, or part thereof, on which distilled spirits operations are authorized to be conducted.

(4) Distiller

The term “distiller” includes any person who—

(A) produces distilled spirits from any source or substance,

(B) brews or makes mash, wort, or wash fit for distillation or for the production of distilled spirits (other than the making or using of mash, wort, or wash in the authorized production of wine or beer, or the production of vinegar by fermentation),

(C) by any process separates alcoholic spirits from any fermented substance, or

(D) making or keeping mash, wort, or wash, has a still in his possession or use.

(5) Processor

(A) In general

The term “processor”, when used with respect to distilled spirits, means any person who—

(i) manufactures, mixes, or otherwise processes distilled spirits, or

(ii) manufactures any article.

(B) Rectifier, bottler, etc., included

The term “processor” includes (but is not limited to) a rectifier, bottler, and denaturer.

(6) Certain operations not treated as processing

In applying paragraph (5), there shall not be taken into account—

(A) Operations as distiller

Any process which is the operation of a distiller.

(B) Mixing of taxpaid spirits for immediate consumption

Any mixing (after determination of tax) of distilled spirits for immediate consumption.

(C) Use by apothecaries

Any process performed by an apothecary with respect to distilled spirits which such apothecary uses exclusively in the preparation or making up of medicines unfit for use for beverage purposes.

(7) Warehouseman

The term “warehouseman”, when used with respect to distilled spirits, means any person who stores bulk distilled spirits.

(8) Distilled spirits

The terms “distilled spirits”, “alcoholic spirits”, and “spirits” mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced).

(9) Bulk distilled spirits

The term “bulk distilled spirits” means distilled spirits in a container having a capacity in excess of 1 wine gallon.

(10) Proof spirits

The term “proof spirits” means that liquid which contains one-half its volume of ethyl alcohol of a specific gravity of 0.7939 at 60 degrees Fahrenheit (referring to water at 60 degrees Fahrenheit as unity).

(11) Proof gallon

The term “proof gallon” means a United States gallon of proof spirits, or the alcoholic equivalent thereof.

(12) Container

The term “container”, when used with respect to distilled spirits, means any receptacle, vessel, or form of package, bottle, tank, or pipeline used, or capable of use, for holding, storing, transferring, or conveying distilled spirits.

(13) Approved container

The term “approved container”, when used with respect to distilled spirits, means a container the use of which is authorized by regulations prescribed by the Secretary.

(14) Article

Unless another meaning is distinctly expressed or manifestly intended, the term “article” means any substance in the manufacture of which denatured distilled spirits are used.

(15) Export

The terms “export”, “exported”, and “exportation” include shipments to a possession of the United States.

(b) Cross references

(1) For definition of manufacturer of stills, see section 5102.

(2) For definition of dealer, see section 5121(c)(3).

(3) For definitions of wholesale dealers, see section 5121(c).

(4) For definitions of retail dealers, see section 5122(c).