

prising this section, prior to the general revision of this chapter by Pub. L. 85-859.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-206 substituted “removed from a bonded wine cellar” for “produced in the United States” in introductory provisions.

1997—Pub. L. 105-34, §1416(b)(2), struck out “unmerchutable” after “tax on” in section catchline.

Subsec. (a). Pub. L. 105-34, §1416(a), struck out “as unmerchutable” after “to bond” in introductory provisions.

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

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XIV, §1416(c), Aug. 5, 1997, 111 Stat. 1048, provided that: “The amendments made by this section [amending this section and section 5361 of this title] shall take effect on the 1st day of the 1st calendar quarter that begins at least 180 days after the date of the enactment of this Act [Aug. 5, 1997].”

§ 5045. Cross references

For provisions relating to the establishment and operation of wineries, see subchapter F, and for penalties pertaining to wine, see subchapter J.

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1333.)

PRIOR PROVISIONS

A prior section 5045, act Aug. 16, 1954, ch. 736, 68A Stat. 611, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85-859.

SUBPART D—BEER

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5051.	Imposition and rate of tax.
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PRIOR PROVISIONS

A prior subpart D, comprising sections 5051 to 5057 of this title, related to beer, prior to the general revision of this chapter by Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

§ 5051. Imposition and rate of tax

(a) Rate of tax

(1) In general

(A) Imposition of tax

A tax is hereby imposed on all beer brewed or produced, and removed for consumption or sale, within the United States, or imported into the United States. Except as provided in paragraph (2), the rate of such tax shall be—

(i) \$16 on the first 6,000,000 barrels of beer—

(I) brewed by the brewer and removed during the calendar year for consumption or sale, or

(II) imported by the importer into the United States during the calendar year but only if the importer is an electing importer under paragraph (4) and the barrels have been assigned to the importer pursuant to such paragraph, and

(ii) \$18 on any barrels of beer to which clause (i) does not apply.

(B) Barrel

For purposes of this section, a barrel shall contain not more than 31 gallons of beer, and any tax imposed under this section shall be applied at a like rate for any other quantity or for fractional parts of a barrel.

(2) Reduced rate for certain domestic production

(A) \$3.50 a barrel rate

In the case of a brewer who produces not more than 2,000,000 barrels of beer during the calendar year, the per barrel rate of the tax imposed by this section shall be \$3.50 on the first 60,000 barrels of beer which are removed in such year for consumption or sale and which have been brewed or produced by such brewer at qualified breweries in the United States.

(B) Regulations

The Secretary may prescribe such regulations as may be necessary to prevent the reduced rates provided in this paragraph from benefiting any person who produces more than 2,000,000 barrels of beer during a calendar year.

(3) Tolerances

Where the Secretary or his delegate finds that the revenue will not be endangered thereby, he may by regulations prescribe tolerances for barrels and fractional parts of barrels, and, if such tolerances are prescribed, no assessment shall be made and no tax shall be collected for any excess in any case where the contents of a barrel or a fractional part of a barrel are within the limit of the applicable tolerance prescribed.

(4) Reduced tax rate for foreign manufacturers and importers

(A) In general

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

(B) Assignment

The Secretary, 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 barrels of beer for which the reduced tax rate has been assigned by a brewer—

(I) to any importer does not exceed the number of barrels of beer brewed or produced by such brewer during the calendar year which were imported into the United States by such importer, and

(II) to all importers does not exceed the 6,000,000 barrels to which the reduced tax rate applies,

(ii) procedures that allow the election of a brewer to assign and an importer to receive the reduced tax rate provided under this paragraph,

(iii) requirements that the brewer 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 brewer 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

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 brewer, as described under paragraph (5).

(5) Controlled group and single taxpayer rules

(A) In general

Except as provided in subparagraph (B), in the case of a controlled group, the 6,000,000 barrel quantity specified in paragraph (1)(A)(i) and the 2,000,000 barrel quantity specified in paragraph (2)(A) shall be applied to the controlled group, and the 6,000,000 barrel quantity specified in paragraph (1)(A)(i) and the 60,000 barrel quantity specified in paragraph (2)(A) shall be apportioned among the brewers who are members of such group in such manner as the Secretary or their delegate shall by regulations prescribe. For purposes of the preceding sentence, the term “controlled group” has the meaning assigned to it by subsection (a) of section 1563, except that for such purposes the phrase “more than 50 percent” shall be substituted for the phrase “at least 80 percent” in each place it appears in such subsection. Under regulations prescribed by the Secretary, principles similar to the principles of the preceding two sentences shall be applied to a group of brewers under common control where one or more of the brewers is not a corporation.

(B) Foreign manufacturers and importers

For purposes of paragraph (4), in the case of a controlled group, the 6,000,000 barrel quantity specified in paragraph (1)(A)(i) shall be applied to the controlled group and apportioned among the 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 such term under subparagraph (A). Under regulations prescribed by the Secretary, principles similar to the principles of the preceding two sentences shall be applied to a group of brewers under common control where one or more of the brewers is not a corporation.

(C) Single taxpayer

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

(b) Assessment on materials used in production in case of fraud

Nothing contained in this subpart or subchapter G shall be construed to authorize an assessment on the quantity of materials used in producing or purchased for the purpose of producing beer, nor shall the quantity of materials so used or purchased be evidence, for the purpose of taxation, of the quantity of beer produced; but the tax on all beer shall be paid as provided in section 5054, and not otherwise; except that this subsection shall not apply to cases of fraud, and nothing in this subsection shall have the effect to change the rules of law respecting evidence in any prosecution or suit.

(c) Illegally produced beer

The production of any beer at any place in the United States shall be subject to tax at the rate prescribed in subsection (a) and such tax shall be due and payable as provided in section 5054(a)(3) unless—

- (1) such beer is produced in a brewery qualified under the provisions of subchapter G, or
- (2) such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1333; amended Pub. L. 86-75, §3(a)(6), June 30, 1959, 73 Stat. 157; Pub. L. 86-564, title II, §202(a)(8), June 30, 1960, 74 Stat. 290; Pub. L. 87-72, §3(a)(8), June 30, 1961, 75 Stat. 193; Pub. L. 87-508, §3(a)(7), June 28, 1962, 76 Stat. 114; Pub. L. 88-52, §3(a)(8), June 29, 1963, 77 Stat. 72; Pub. L. 88-348, §2(a)(8), June 30, 1964, 78 Stat. 237; Pub. L. 89-44, title V, §501(d), June 21, 1965, 79 Stat. 150; Pub. L. 94-529, §1, Oct. 17, 1976, 90 Stat. 2485; Pub. L. 95-458, §2(b)(2)(A), Oct. 14, 1978, 92 Stat. 1256; Pub. L. 101-508, title XI, §11201(c), Nov. 5, 1990, 104 Stat. 1388-416; Pub. L. 115-97, title I, §13802(a)-(d), Dec. 22, 2017, 131 Stat. 2170, 2171; Pub. L. 116-94, div. Q, title I, §144(b)(1), Dec. 20, 2019, 133 Stat. 3234; Pub. L. 116-260, div. EE, title I, §§106(b)(1)-(4), 107(b)(1), 110(a), Dec. 27, 2020, 134 Stat. 3042, 3046, 3049.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 116-260, div. EE, title I, §107(b)(1), (2), Dec. 27, 2020, 134 Stat. 3046, 3047, provided that, applicable to beer removed after Dec. 31, 2022, subsection (a) of this section is amended by adding at the end the following new paragraph:

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

(A) *In general*

In the case of any barrels of beer which have been produced outside the United States and imported into the United States, if such barrels of beer are removed after December 31, 2022—

- (i) *paragraph (1)(A)(i) 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) *excess (if any) of—*
 - (I) *the amount of tax imposed under this section on barrels of beer referred to in subparagraph (A) which were removed during such period, over*
 - (II) *the amount of tax which would have been imposed under this section on such barrels of beer 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 (4) and the barrels of beer 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.

PRIOR PROVISIONS

A prior section 5051, act Aug. 16, 1954, ch. 736, 68A Stat. 611, as amended by acts Mar. 30, 1955, ch. 18, §3(a)(8), 69 Stat. 14; Mar. 29, 1956, ch. 115, §3(a)(8), 70 Stat. 66; Mar. 29, 1957, Pub. L. 85-12, §3(a)(6), 71 Stat. 9; June 30, 1958, Pub. L. 85-475, §3(a)(6), 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.

AMENDMENTS

2020—Subsec. (a)(1). Pub. L. 116-260, §106(b)(1), amended par. (1) generally. Prior to amendment, par. (1) consisted of subpars. (A) to (D) relating to imposition of tax on beer, rate of such tax, special rule for beer removed between Dec. 31, 2017, and Jan. 1, 2021, and size of a barrel, respectively.

Subsec. (a)(1)(A)(i)(II). Pub. L. 116-260, §106(b)(3)(A), inserted “but only if the importer is an electing im-

porter under paragraph (4) and the barrels have been assigned to the importer pursuant to such paragraph” after “during the calendar year”.

Subsec. (a)(2)(A). Pub. L. 116-260, §106(b)(2), inserted “\$3.50 a barrel” before “rate” in heading and substituted “\$3.50” for “\$7 (\$3.50 in the case of beer removed after December 31, 2017, and before January 1, 2021)” in text.

Subsec. (a)(4)(A). Pub. L. 116-260, §106(b)(3)(B)(i), substituted “paragraph (1)(A)” for “paragraph (1)(C)”.

Subsec. (a)(4)(B). Pub. L. 116-260, §106(b)(3)(B)(ii), substituted “The Secretary, after consultation with the Secretary of the Department of Homeland Security,” for “The Secretary” in introductory provisions.

Subsec. (a)(5). Pub. L. 116-260, §106(b)(4), substituted “paragraph (1)(A)(i)” for “paragraph (1)(C)(i)” wherever appearing.

Subsec. (a)(5)(C). Pub. L. 116-260, §110(a), substituted “under a license” for “marketed under a similar brand, license”.

Subsec. (a)(6). Pub. L. 116-260, §107(b)(1), added par. (6).

2019—Subsec. (a)(1)(C), (2)(A). Pub. L. 116-94 substituted “January 1, 2021” for “January 1, 2020” in introductory provisions of subsec. (a)(1)(C) and in subsec. (a)(2)(A).

2017—Subsec. (a)(1). Pub. L. 115-97, §13802(a), amended par. (1) generally. Prior to amendment, text read as follows: “A tax is hereby imposed on all beer brewed or produced, and removed for consumption or sale, within the United States, or imported into the United States. Except as provided in paragraph (2), the rate of such tax shall be \$18 for every barrel containing not more than 31 gallons and at a like rate for any other quantity or for fractional parts of a barrel.”

Subsec. (a)(1)(C)(i)(II). Pub. L. 115-97, §13802(c)(1), inserted “but only if the importer is an electing importer under paragraph (4) and the barrels have been assigned to the importer pursuant to such paragraph” after “during the calendar year”.

Subsec. (a)(2)(A). Pub. L. 115-97, §13802(b), in heading, struck out “\$7 a barrel” before “rate” and in text, inserted “(\$3.50 in the case of beer removed after December 31, 2017, and before January 1, 2020)” after “\$7”.

Subsec. (a)(2)(B), (C). Pub. L. 115-97, §13802(d)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B) which related to application of barrel quantity to controlled groups.

Subsec. (a)(4). Pub. L. 115-97, §13802(c)(2), added par. (4).

Subsec. (a)(5). Pub. L. 115-97, §13802(d)(2), added par. (5).

1990—Subsec. (a)(1). Pub. L. 101-508, §11201(c)(1), substituted “\$18” for “\$9”.

Subsec. (a)(2)(C). Pub. L. 101-508, §11201(c)(2), added subpar. (C).

1978—Subsec. (c). Pub. L. 95-458 added subsec. (c).

1976—Subsec. (a). Pub. L. 94-529 reduced the excise tax on beer for small brewers to \$7 per barrel on the first 60,000 barrels produced in the United States and removed for sale or consumption or sale during the calendar year, the reduced rate to be applicable only to brewers producing no more than 2 million barrels of beer in a calendar year, and inserted provision that if several brewers are members of a controlled group, the 2-million barrel limit is to be applied to the controlled group and the 60,000-barrel limit is to be apportioned among the members of the controlled group in accordance with Treasury Department regulations promulgated by the Secretary or his delegate.

1965—Subsec. (a). Pub. L. 89-44 struck out sentence providing for the imposition on and after July 1, 1965, of a tax of \$8 in lieu of the tax imposed by the section.

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

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

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

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

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

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

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-260, div. EE, title I, §106(b)(5), Dec. 27, 2020, 134 Stat. 3042, provided that: “The amendments made by this subsection [amending this section] shall apply to beer removed after December 31, 2020.”

Pub. L. 116-260, div. EE, title I, §107(b)(2), Dec. 27, 2020, 134 Stat. 3047, provided that: “The amendment made by this subsection [amending this section] shall apply to beer removed after December 31, 2022.”

Amendment by section 110(a) of Pub. L. 116-260 applicable to beer, wine, and distilled spirits removed after Dec. 31, 2020, see section 110(d) of div. EE of Pub. L. 116-260, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116-94, div. Q, title I, §144(b)(2), Dec. 20, 2019, 133 Stat. 3235, provided that: “The amendments made by this subsection [amending this section] shall apply to beer removed after December 31, 2019.”

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-97, title I, §13802(e), Dec. 22, 2017, 131 Stat. 2172, provided that: “The amendments made by this section [amending this section] shall apply to beer removed after December 31, 2017.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective Jan. 1, 1991, see section 11201(d) of Pub. L. 101-508, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-458 effective on first day of first calendar month beginning more than 90 days after Oct. 14, 1978, see section 2(c) of Pub. L. 95-458, set out as a note under section 5042 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-529, §2, Oct. 17, 1976, 90 Stat. 2486, provided that: “The amendment made by the first section of this Act [amending this section] shall take effect on the first day of the first calendar year which begins after the date of the enactment of this Act [Oct. 17, 1976].”

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

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.

FLOOR STOCKS TAXES ON DISTILLED SPIRITS, WINE, AND BEER

Imposition of tax on beer, exception for small domestic producers, exception for certain small wholesale or retail dealers, credit against tax, liability for tax and method of payment, controlled groups, other laws applicable, and definitions, see section 11201(e) of Pub. L. 101-508, set out as a note under section 5001 of this title.

§ 5052. Definitions

(a) Beer

For purposes of this chapter (except when used with reference to distilling or distilling material) the term beer means beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent

or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.

(b) Gallon

For purposes of this subpart, the term gallon means the liquid measure containing 231 cubic inches.

(c) Removed for consumption of sale

Except as provided for in the case of removal of beer without payment of tax, the term “removed for consumption or sale”, for the purposes of this subpart means—

(1) Sale of beer

The sale and transfer of possession of beer for consumption at the brewery; or

(2) Removals

Any removal of beer from the brewery.

(d) Brewer

For purposes of this chapter, the term “brewer” means any person who brews beer or produces beer for sale. Such term shall not include any person who produces only beer exempt from tax under section 5053(e).

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1333; amended Pub. L. 91-673, §1(b), Jan. 12, 1971, 84 Stat. 2056; Pub. L. 109-59, title XI, §11125(b)(15), Aug. 10, 2005, 119 Stat. 1956.)

PRIOR PROVISIONS

A prior section 5052, act Aug. 16, 1954, ch. 736, 68A Stat. 612, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85-859.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109-59 amended subsec. (d) generally. Prior to amendment, text read as follows: “For definition of brewer, see section 5092.”

1971—Subsec. (c)(2). Pub. L. 91-673 struck out proviso that removal of beer shall not include beer returned to the brewery on the same day such beer is removed from the brewery.

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 1971 AMENDMENT

Amendment by Pub. L. 91-673 effective on first day of first calendar month which begins more than 90 days after Jan. 12, 1971, see section 5 of Pub. L. 91-673, set out as a note under section 5056 of this title.

§ 5053. Exemptions

(a) Removals for export

Beer may be removed from the brewery, without payment of tax, for export, in such containers and under such regulations, and on the giving of such notices, entries, and bonds and other security, as the Secretary may by regulations prescribe.

(b) Removals when unfit for beverage use

When beer has become sour or damaged, so as to be incapable of use as such, a brewer may remove the same from his brewery without payment of tax, for manufacturing purposes, under