

105TH CONGRESS
1ST SESSION

S. 395

To amend the Internal Revenue Code of 1986 to simplify the method of payment of taxes on distilled spirits.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 1997

Mr. BREAU (for himself and Mr. BRYAN) introduced the following bill; which was referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to simplify the method of payment of taxes on distilled spirits.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Distilled Spirits Tax Payment Simplification Act of
6 1997”.

7 (b) REFERENCE TO 1986 CODE.—Except as other-
8 wise expressly provided, whenever an amendment or repeal
9 is expressed in terms of an amendment to, or repeal of,

1 a section or other provision, the reference shall be consid-
 2 ered to be made to a section or other provision of the In-
 3 ternal Revenue Code of 1986.

4 **SEC. 2. TRANSFER OF DISTILLED SPIRITS BETWEEN BOND-**
 5 **ED PREMISES.**

6 (a) IN GENERAL.—Section 5212 is amended to read
 7 as follows:

8 **“SEC. 5212. TRANSFER OF DISTILLED SPIRITS BETWEEN**
 9 **BONDED PREMISES.**

10 “Distilled spirits on which the internal revenue tax
 11 has not been paid as authorized by law may, under such
 12 regulations as the Secretary shall prescribe, be transferred
 13 in bond between bonded premises in any approved con-
 14 tainer. For the purposes of this chapter, except in the case
 15 of any transfer from a premise of a bonded dealer, the
 16 removal of distilled spirits for transfer in bond between
 17 bonded premises shall not be construed to be a withdrawal
 18 from bonded premises.”.

19 (b) CONFORMING AMENDMENT.—The first sentence
 20 of section 5232(a) (relating to transfer to distilled spirits
 21 plant without payment of tax) is amended to read as fol-
 22 lows: “Distilled spirits imported or brought into the Unit-
 23 ed States, under such regulations as the Secretary shall
 24 prescribe, may be withdrawn from customs custody and
 25 transferred to the bonded premises of a distilled spirits

1 plant without payment of the internal revenue tax imposed
 2 on such distilled spirits.”.

3 **SEC. 3. ESTABLISHMENT OF DISTILLED SPIRITS PLANT.**

4 Section 5171 (relating to establishment) is amend-
 5 ed—

6 (1) in subsection (a), by striking “or processor”
 7 and inserting “processor, or bonded dealer”;

8 (2) in subsection (b), by striking “or as both”
 9 and inserting “as a bonded dealer, or as any com-
 10 bination thereof”;

11 (3) in subsection (e)(1), by inserting “, bonded
 12 dealer,” before “processor”; and

13 (4) in subsection (e)(2), by inserting “bonded
 14 dealer,” before “or processor”.

15 **SEC. 4. DISTILLED SPIRITS PLANTS.**

16 Section 5178(a) (relating to location, construction,
 17 and arrangement) is amended by adding at the end the
 18 following:

19 “(5) BONDED DEALER OPERATIONS.—Any per-
 20 son establishing a distilled spirits plant to conduct
 21 operations as a bonded dealer may, as described in
 22 the application for registration—

23 “(A) store distilled spirits in any approved
 24 container on the bonded premises of such plant,
 25 and

1 “(B) under such regulations as the Sec-
 2 retary shall prescribe, store taxpaid distilled
 3 spirits, beer, and wine, and such other bev-
 4 erages and items (products) not subject to tax
 5 or regulation under this title on such bonded
 6 premises.”.

7 **SEC. 5. BONDED DEALERS.**

8 (a) DEFINITIONS.—Section 5002(a) (relating to defi-
 9 nitions) is amended by adding at the end the following:
 10 “(16) BONDED DEALER.—The term ‘bonded dealer’
 11 means any person who has elected under section 5011 to
 12 be treated as a bonded dealer.

13 “(17) CONTROL STATE ENTITY.—The term ‘control
 14 State entity’ means a State, a political subdivision of a
 15 State, or any instrumentality of such a State or political
 16 subdivision, in which only the State, political subdivision,
 17 or instrumentality is allowed under applicable law to per-
 18 form distilled spirit operations.”.

19 (b) ELECTION TO BE TREATED AS A BONDED DEAL-
 20 ER.—Subpart A of part I of subchapter A of chapter 51
 21 (relating to distilled spirits) is amended by adding at the
 22 end the following:

1 **“SEC. 5011. ELECTION TO BE TREATED AS BONDED DEAL-**
 2 **ER.**

3 “(a) ELECTION.—Any wholesale dealer or any control
 4 State entity may elect, at such time and in such manner
 5 as the Secretary shall prescribe, to be treated as a bonded
 6 dealer if such wholesale dealer or entity sells bottled dis-
 7 tilled spirits exclusively to a wholesale dealer in liquor, to
 8 an independent retail dealer subject to the limitation set
 9 forth in subsection (b), or to another bonded dealer.

10 “(b) LIMITATION IN CASE OF SALES TO RETAIL
 11 DEALERS.—

12 “(1) BY BONDED DEALER.—Any person, other
 13 than a control State entity, who is a bonded dealer
 14 shall not be considered as selling to an independent
 15 retail dealer if—

16 “(A) the bonded dealer has a greater than
 17 10 percent ownership interest in, or control of,
 18 the retail dealer;

19 “(B) the retail dealer has a greater than
 20 10 percent ownership interest in, or control of,
 21 the bonded dealer; or

22 “(C) any person has a greater than 10
 23 percent ownership interest in, or control of,
 24 both the bonded and retail dealer.

25 For purposes of this paragraph, ownership interest,
 26 not limited to stock ownership, shall be attributed to

1 other persons in the manner prescribed by section
2 318.

3 “(2) BY CONTROL STATE ENTITY.—In the case
4 of any control State entity, subsection (a) shall be
5 applied by substituting ‘retail dealer’ for ‘independ-
6 ent retail dealer’.

7 “(c) INVENTORY OWNED AT TIME OF ELECTION.—
8 Any bottled distilled spirits in the inventory of any person
9 electing under this section to be treated as a bonded dealer
10 shall, to the extent that the tax under this chapter has
11 been previously determined and paid at the time the elec-
12 tion becomes effective, not be subject to such additional
13 tax on such spirits as a result of the election being in ef-
14 fect.

15 “(d) REVOCATION OF ELECTION.—The election made
16 under this section may be revoked by the bonded dealer
17 at any time, but once revoked shall not be made again
18 without the consent of the Secretary. When the election
19 is revoked, the bonded dealer shall immediately withdraw
20 the distilled spirits on determination of tax in accordance
21 with a tax payment procedure established by the Sec-
22 retary.

23 “(e) EQUITABLE TREATMENT OF BONDED DEALERS
24 USING LIFO INVENTORY.—The Secretary shall provide
25 such rules as may be necessary to assure that taxpayers

1 using the last-in, first-out method of inventory valuation
 2 do not suffer a recapture of their LIFO reserve by reason
 3 of making the election under this section or by reason of
 4 operating a bonded wine cellar as permitted by section
 5 5351.

6 “(f) APPROVAL OF APPLICATION.—Any person sub-
 7 mitting an application under section 5171(c) and electing
 8 under this section to be treated as a bonded dealer shall
 9 be entitled to approval of such application to the same ex-
 10 tent such person would be entitled to approval of an appli-
 11 cation for a basic permit under section 104(a)(2) of the
 12 Federal Alcohol Administration Act (27 U.S.C 204(a)(2)),
 13 and shall be accorded notice and hearing as described in
 14 section 104(b) of such Act (27 U.S.C. 204(b)).”.

15 (c) CONFORMING AMENDMENT.—The tables of sec-
 16 tions of subpart A of part I of subchapter A of chapter
 17 51 is amended by adding at the end the following:

“Sec. 5011. Election to be treated as bonded dealer.”.

18 **SEC. 6. DETERMINATION OF TAX.**

19 The first sentence of section 5006(a)(1) (relating to
 20 requirements) is amended to read as follows: “Except as
 21 otherwise provided in this section, the tax on distilled spir-
 22 its shall be determined when the spirits are transferred
 23 from a distilled spirits plant to a bonded dealer or are
 24 withdrawn from bond.”.

1 **SEC. 7. LOSS OR DESTRUCTION OF DISTILLED SPIRITS.**

2 Section 5008 (relating to abatement, remission, re-
3 fund, and allowance for loss or destruction of distilled spir-
4 its) is amended—

5 (1) in subsections (a)(1)(A) and (a)(2), by in-
6 serting “bonded dealer,” after “distilled spirits
7 plant,” both places it appears;

8 (2) in subsection (c)(1), by striking “of a dis-
9 tilled spirits plant”; and

10 (3) in subsection (c)(2), by striking “distilled
11 spirits plant” and inserting “bonded premises”.

12 **SEC. 8. TIME FOR COLLECTING TAX ON DISTILLED SPIRITS.**

13 (a) IN GENERAL.—Section 5061(d) (relating to time
14 for collecting tax on distilled spirits, wines, and beer) is
15 amended by redesignating paragraph (5) as paragraph (6)
16 and by inserting after paragraph (4) the following:

17 “(5) ADVANCED PAYMENT OF DISTILLED SPIR-
18 ITS TAX.—Notwithstanding the preceding provisions
19 of this subsection, in the case of any tax imposed by
20 section 5001 with respect to a bonded dealer who
21 has an election in effect on September 20 of any
22 year, any payment of which would, but for this para-
23 graph, be due in October or November of that year,
24 such payment shall be made on such September 20.

1 No penalty or interest shall be imposed for the pe-
 2 riod from such September 20 until the due date de-
 3 termined without regard to this paragraph to the ex-
 4 tent that tax due exceeds the tax which would have
 5 been due with respect to distilled spirits in the pre-
 6 ceding October and November had the election
 7 under section 5011 been in effect.”.

8 (b) CONFORMING AMENDMENT.—Section 5061(e)(1)
 9 (relating to payment by electronic fund transfer) is
 10 amended by inserting “or any bonded dealer,” after “re-
 11 spectively,”.

12 **SEC. 9. EXEMPTION FROM OCCUPATIONAL TAX NOT APPLI-**
 13 **CABLE.**

14 Section 5113(a) (relating to sales by proprietors of
 15 controlled premises) is amended by adding at the end the
 16 following: “This subsection shall not apply to a proprietor
 17 of a distilled spirits plant whose premises are used for op-
 18 erations of a bonded dealer.”.

19 **SEC. 10. CONFORMING AMENDMENTS.**

20 (1) Section 5003(3) is amended by striking
 21 “certain”.

22 (2) Section 5214 is amended by redesignating
 23 subsection (b) as subsection (c) and by inserting
 24 after subsection (a) the following:

1 “(b) EXCEPTION.—Paragraphs (1), (2), (3), (5),
 2 (10), (11), and (12) of subsection (a) shall not apply to
 3 distilled spirits withdrawn from premises used for oper-
 4 ations as a bonded dealer.”.

5 (3) Section 5215 is amended—

6 (A) in subsection (a), by striking “the
 7 bonded premises” and all that follows through
 8 the period and inserting “bonded premises.”;

9 (B) in the heading of subsection (b), by
 10 striking “A DISTILLED SPIRITS PLANT” and in-
 11 serting “BONDED PREMISES”; and

12 (C) in subsection (d), by striking “a dis-
 13 tilled spirits plant” and inserting “bonded
 14 premises”.

15 (4) Section 5362(b)(5) is amended by adding at
 16 the end the following: “The term does not mean
 17 premises used for operations as a bonded dealer.”.

18 (5) Section 5551(a) is amended by inserting
 19 “bonded dealer,” after “processor” both places it ap-
 20 pears.

21 (6) Subsections (a)(2) and (b) of section 5601
 22 are each amended by inserting “, bonded dealer,”
 23 before “or processor” .

1 (7) Paragraphs (3), (4), and (5) of section
2 5601(a) are each amended by inserting “bonded
3 dealer,” before “or processor” .

4 (8) Section 5602 is amended—

5 (A) by inserting “, warehouseman, proc-
6 essor, or bonded dealer” after “distiller”; and

7 (B) in the heading, by striking “**by dis-**
8 **tiller**”.

9 (9) Sections 5115, 5180, and 5681 are re-
10 pealed.

11 (10) The table of sections for part II of sub-
12 chapter A of chapter 51 is amended by striking the
13 item relating to section 5115.

14 (11) The table of sections for subchapter B of
15 chapter 51 is amended by striking the item relating
16 to section 5180.

17 (12) The item relating to section 5602 in the
18 table of sections for part I of subchapter J of chap-
19 ter 51 is amended by striking “by distiller”.

20 (13) The table of sections for part IV of sub-
21 chapter J of chapter 51 is amended by striking the
22 item relating to section 5681.

23 **SEC. 11. EFFECTIVE DATE.**

24 (a) IN GENERAL.—Except as provided in subsection

25 (b), the amendments made by this Act take effect on the

1 date which is 120 days after the date of enactment of this
2 Act.

3 (b) EXCEPTIONS.—

4 (1) ESTABLISHMENT OF DISTILLED SPIRITS
5 PLANT.—The amendments made by section 3 take
6 effect on the date of enactment of this Act.

7 (2) SPECIAL RULE.—Each wholesale dealer who is
8 required to file an application for registration under
9 section 5171(c) of the Internal Revenue Code of
10 1986 whose operations are required to be covered by
11 a basic permit under sections 103 and 104 of the
12 Federal Alcohol Administration Act (27 U.S.C. 203,
13 204) and who has received such basic permits as an
14 importer, wholesaler, or as both, and has obtained a
15 bond required under subchapter B of chapter 51 of
16 subtitle E of such Code before the close of the
17 fourth month following the date of enactment of this
18 Act, shall be qualified to operate bonded premises
19 until such time as the Secretary of the Treasury
20 takes final action on the application. Any control
21 State entity (as defined in section 5002(a)(17) of
22 such Code, as added by section 5(a)) that has ob-
23 tained a bond required under such subchapter shall
24 be qualified to operate bonded premises until such

1 time as the Secretary of the Treasury takes final ac-
2 tion on the application for registration under section
3 5171(c) of such Code.

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