

106TH CONGRESS
1ST SESSION

S. 434

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

FEBRUARY 22, 1999

Mr. BREAU (for himself, Mr. BRYAN, Mr. DORGAN, and Mr. FRIST) introduced the following bill; which was read twice and 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 1999”.

7 (b) AMENDMENT OF 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,
10 a section or other provision, the reference shall be consid-

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

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

5 (a) Section 5212 is amended to read as follows:

6 **“SEC. 5212. TRANSFER OF DISTILLED SPIRITS BETWEEN**
 7 **BONDED PREMISES.**

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

17 (b) The first sentence of section 5232 is amended to
 18 read as follows:

19 “Distilled spirits imported or brought into the United
 20 States, under such regulations as the Secretary shall pre-
 21 scribe, may be withdrawn from customs custody and
 22 transferred to the bonded premises of a distilled spirits
 23 plant without payment of the internal revenue tax imposed
 24 on such distilled spirits.”

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

2 Section 5171 is amended by—

3 (1) striking from subsection (a) “or processor”

4 and inserting “processor, or bonded dealer”; and

5 (2) striking from subsection (b) “or both.” and

6 inserting “as a bonded dealer, or as any combination

7 thereof.”

8 **SEC. 4. DISTILLED SPIRITS PLANTS.**

9 Section 5178(a) is amended by adding the following
10 new paragraph after paragraph (4):

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

15 “(A) store distilled spirits in any approved
16 container on the bonded premises of such plant,
17 and

18 “(B) under such regulations as the Sec-
19 retary shall prescribe, store taxpaid distilled
20 spirits, beer and wine and such other beverages
21 and items (products) not subject to tax or regu-
22 lation under this title on such bonded prem-
23 ises.”

24 **SEC. 5. BONDED DEALERS.**

25 (a) Section 5002(a) is amended by inserting after
26 subsection (a)(15) the following new paragraphs:

1 “(16) BONDED DEALER.—The term ‘bonded
2 dealer’ means any person who has elected under sec-
3 tion 5011 to be treated as a bonded dealer.

4 “(17) CONTROL STATE ENTITY.—The term
5 ‘control State entity’ means a State or a political
6 subdivision of a State in which only the State or a
7 political subdivision thereof is allowed under applica-
8 ble law to perform distilled spirit operations, or any
9 instrumentality of such a State or political subdivi-
10 sion.”

11 (b) Subpart A of part I of subchapter A of chapter
12 51 (relating to distilled spirits) is amended by adding at
13 the end thereof the following new section:

14 **“SEC. 5011. ELECTION TO BE TREATED AS BONDED**
15 **DEALER.**

16 “(a) ELECTION.—Any wholesale dealer, or any con-
17 trol State entity, may elect, at such time and in such man-
18 ner as the Secretary shall prescribe, to be treated as a
19 bonded dealer if such wholesale dealer or entity sells bot-
20 tled distilled spirits exclusively to a wholesale dealer in liq-
21 uor, to an independent retail dealer subject to the limita-
22 tion set forth in subsection (b), or to another bonded deal-
23 er. Except in the case of a control State entity, this elec-
24 tion is not available to a retail dealer in liquor. This elec-
25 tion is not available to any person with gross receipts from

1 the sale of distilled spirits, in the 12-month period prior
2 to making such election, of less than \$5,000,000 (applying
3 the rules of section 5061(e)(3)).

4 “(b) SPECIAL RULES.—(1) Any person, other than
5 a control State entity, who is a bonded dealer shall not
6 be considered as selling to an independent retail dealer
7 if the bonded dealer has a greater than 10 percent owner-
8 ship interest in, or control of the retail dealer; the retail
9 dealer has a greater than 10 percent ownership interest
10 in, or control of the bonded dealer; or where any person
11 has a greater than 10 percent ownership interest in, or
12 control of both the bonded and retail dealer. For purposes
13 of this subparagraph, ownership interest, not limited to
14 stock ownership, shall be attributed to other persons in
15 the manner prescribed by section 318.

16 “(2) In the case of any control State entity, sub-
17 section (a) shall be applied without regard to the word
18 ‘independent’.

19 “(c) INVENTORY OWNED AT TIME OF ELECTION.—
20 Any bottled distilled spirits in the inventory of any person
21 electing under section 5011 to be treated as a bonded deal-
22 er shall, to the extent that the Federal excise tax pre-
23 viously has been determined and paid at the time the elec-
24 tion becomes effective, not be subject to additional Federal

1 excise tax on such spirits as a result of the election being
2 in effect.

3 “(d) REVOCATION OF ELECTION.—The election made
4 under this section may be revoked by the bonded dealer
5 at any time, but once revoked shall not be made again
6 without the consent of the Secretary. When the election
7 is revoked, the bonded dealer shall immediately withdraw
8 the distilled spirits on determination of tax in accordance
9 with a tax payment procedure established by the Sec-
10 retary.

11 “(e) EQUITABLE TREATMENT OF BONDED DEALERS
12 USING LIFO INVENTORY.—The Secretary shall provide
13 such rules as may be necessary to assure that taxpayers
14 using the last-in first-out method of inventory valuation
15 do not suffer a recapture of their LIFO reserve by reason
16 of making the election under section 5011 or by reason
17 of operating a bonded wine cellar as permitted by section
18 5351.

19 “(f) APPROVAL OF APPLICATION.—Any person sub-
20 mitting an application under section 5171(c) and electing
21 under this section to be treated as a bonded dealer shall
22 be entitled to approval of such application to the same ex-
23 tent they would be entitled to approval of an application
24 for a basic permit under section 204(a)(2) of title 27 of
25 the United States Code (the Federal Alcohol Administra-

tion Act) and shall be accorded notice and hearing as described in section 204(b) of such title 27.”

(c) CONFORMING AMENDMENT.—The table of sections of subpart A of part I of subchapter A of chapter 51 and the table of contents of subtitle E are amended by adding at the appropriate places:

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

SEC. 6. DETERMINATION OF TAX.

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

SEC. 7. LOSS OR DESTRUCTION OF DISTILLED SPIRITS.

(a) Subsections (a)(1)(A) and (a)(2) of section 5008 are amended by inserting “bonded dealer,” after “distilled spirits plant,”.

(b) Subsection (c)(1) of section 5008 is amended by striking “of a distilled spirits plant under section 5215(a)” and inserting “but only for destruction, denaturation, re-distillation, reconditioning, or rebottling”.

(c) Subsection (c)(2) of section 5008 is amended by striking “distilled spirits plant” and inserting “bonded premises”.

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

2 (a) Section 5061(d) is amended by redesignating
3 paragraph (5) as paragraph (6) and by inserting after
4 paragraph (4) the following new paragraph:

5 “(5) **ADVANCED PAYMENT OF DISTILLED SPIRITS TAX.**—Notwithstanding the preceding provisions
6 of this subsection, in the case of any tax imposed by
7 section 5001 with respect to a bonded dealer who
8 has an election in effect on September 20 of any
9 year, any payment of which would, but for this para-
10 graph, be due in October or November of that year,
11 shall be made on such September 20. No penalty or
12 interest shall be imposed for the period from such
13 September 20 until the due date determined without
14 regard to this paragraph to the extent that tax due
15 exceeds the tax which would have been due with re-
16 spect to distilled spirits in the preceding October and
17 November had the election under section 5011 been
18 in effect.”

19
20 (b) Section 5061(e)(1) is amended by inserting “or
21 any bonded dealer,” after “respectively,”.

22 **SEC. 9. EXEMPTION FROM OCCUPATIONAL TAX NOT APPLI-**
23 **CABLE.**

24 Section 5113(a) is amended by adding after the last
25 sentence the following new sentence: “This exemption
26 shall not apply to a proprietor of a distilled spirits plant

1 whose premises are used for operations of a bonded deal-
 2 er.”

3 **SEC. 10. TECHNICAL, CONFORMING, AND CLERICAL**
 4 **AMENDMENTS.**

5 (a) TECHNICAL AND CONFORMING AMENDMENTS.—

6 (1) Section 5003(3) is amended by striking
 7 “certain”.

8 (2) Section 5214 is amended by redesignating
 9 subsection (b) as subsection (c) and inserting after
 10 subsection (a) the following new subsection:

11 “(b) EXCEPTION.—Subsections (a) (1), (2), (3), (5),
 12 (10), (11), and (12) of this section shall not apply to dis-
 13 tilled spirits withdrawn from premises used for operations
 14 as a bonded dealer.”

15 (3) Section 5215(a) is amended by striking all
 16 that follows “bonded premises” and inserting a pe-
 17 riod.

18 (4) Section 5362(b)(5) is amended by adding at
 19 the end the following new sentence: “This term will
 20 not apply to premises used for operations as a bond-
 21 ed dealer.”.

22 (5) Section 5551(a) is amended by inserting
 23 “bonded dealer,” after “processor,” each place it ap-
 24 pears.

1 (6) Section 5601(a) (2), (3), (4), (5), and (b)
 2 are amended by inserting “, bonded dealer” before
 3 “or processor” each place it appears.

4 (7) Section 5602 is amended by inserting “,
 5 warehouseman, processor, or bonded dealer” after
 6 “distiller”.

7 (8) Sections 5115, 5180, and 5681 are re-
 8 pealed.

9 (b) CLERICAL AMENDMENTS.—

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

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

16 (3) The table of sections for part IV of sub-
 17 chapter J of chapter 51 is amended by striking the
 18 item relating to section 5681.

19 **SEC. 11. REGISTRATION FEES.**

20 (a) GENERAL RULE.—The Director of the Bureau of
 21 Alcohol, Tobacco, and Firearms shall, in accordance with
 22 this section, assess and collect registration fees from the
 23 bonded dealers. Except as provided in subsection (c), the
 24 amount of the fees for any year shall be established by
 25 the Director so that the aggregate amount estimate to be

1 collected for the year equals the Director's estimate of the
2 increased costs of compliance activities of the Bureau re-
3 sulting from enactment of this Act.

4 (b) PERSONS SUBJECT TO FEE.—Fees shall be paid
5 in a manner prescribed by the Director by the bonded
6 dealer.

7 (c) AMOUNT AND TIMING OF FEES.—Fees shall be
8 paid annually and shall not exceed \$5,000 per bonded
9 premise, except that in the first year that an election
10 under section 5011(a) takes effect, an additional amount,
11 not to exceed \$3,000, shall be paid by each bonded dealer.

12 (d) DEPOSIT AND CREDIT.—The moneys received
13 during any fiscal year from fees described in subsection
14 (a) shall be deposited as an offsetting collection in, and
15 credited to, the account providing appropriations to con-
16 duct the regulatory activities of the Government resulting
17 from enactment of this Act.

18 (e) LIMITATION.—The aggregate amount of fees as-
19 sessed and collected under this section may not exceed in
20 any fiscal year the aggregate amount of any net increased
21 costs of regulatory activity referred to in subsection (a).

22 **SEC. 12. COOPERATIVE AGREEMENTS.**

23 (a) STUDY.—The Secretary of the Treasury shall
24 study and report to Congress concerning possible adminis-
25 trative efficiencies which could inure to the benefit of the

1 Federal Government of cooperative agreements with
2 States regarding the collection of distilled spirits excise
3 taxes. Such study shall include, but not be limited to, pos-
4 sible benefits of the standardization of forms and collec-
5 tion procedures and shall be submitted 1 year after the
6 date of the enactment of this Act.

7 (b) COOPERATIVE AGREEMENT.—The Secretary of
8 the Treasury is authorized to enter into such cooperative
9 agreements with States which the Secretary deems will in-
10 crease the efficient collection of distilled spirits excise
11 taxes.

12 **SEC. 13. EFFECTIVE DATE.**

13 (a) Except as provided in subsection (b) the provi-
14 sions of this Act shall take effect at the beginning of the
15 first calendar quarter that begins after one hundred and
16 twenty days following enactment.

17 (b)(1) The amendments made by section 3 of this Act
18 shall take effect on the date of enactment of this Act, and

19 (2) Each wholesale dealer who is required to file an
20 application for registration under section 5171(c) whose
21 operations are required to be covered by a basic permit
22 under the Federal Alcohol Administration Act (27 U.S.C.
23 203 and 204) and who has received such basic permits
24 as an importer, wholesaler, or as both, and has obtained

1 a bond required under this subchapter shall be qualified
2 beginning on the later of—

3 (A) the first day of the first calendar quarter
4 that begins at least 8 months after the date of en-
5 actment, or

6 (B) the first day of the first calendar quarter
7 that begins at least 9 months after the application
8 is filed,

9 to operate bonded premises until such time as the Sec-
10 retary takes final action on the application. Any control
11 State entity that has obtained a bond required under this
12 subchapter shall be qualified to operate bonded premises
13 until such time as the Secretary takes final action on the
14 application for registration under section 5171(c).

○