

Nov. 14, 1977, see section 7 of Pub. L. 95-176, set out as a note under section 5003 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89-44, title VIII, §805(g)(2), June 21, 1965, 79 Stat. 162, provided that: "The amendments made by subsections (b), (d), and (f) (other than paragraph (6)) [amending this section and sections 5025, 5083, 5223, and 5234 of this title], shall take effect on October 1, 1965."

§ 5005. Persons liable for tax

(a) General

The distiller or importer of distilled spirits shall be liable for the taxes imposed thereon by section 5001(a)(1).

(b) Domestic distilled spirits

(1) Liability of persons interested in distilling

Every proprietor or possessor of, and every person in any manner interested in the use of, any still, distilling apparatus, or distillery, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom.

(2) Exception

A person owning or having the right of control of not more than 10 percent of any class of stock of a corporate proprietor of a distilled spirits plant shall not be deemed to be a person liable for the tax for which such proprietor is liable under the provisions of paragraph (1). This exception shall not apply to an officer or director of such corporate proprietor.

(c) Proprietors of distilled spirits plants

(1) Bonded storage

Every person operating bonded premises of a distilled spirits plant shall be liable for the internal revenue tax on all distilled spirits while the distilled spirits are stored on such premises, and on all distilled spirits which are in transit to such premises (from the time of removal from the transferor's bonded premises) pursuant to application made by him. Such liability for the tax on distilled spirits shall continue until the distilled spirits are transferred or withdrawn from bonded premises as authorized by law, or until such liability for tax is relieved by reason of the provisions of section 5008(a). Nothing in this paragraph shall relieve any person from any liability imposed by subsection (a) or (b).

(2) Transfers in bond

When distilled spirits are transferred in bond in accordance with the provisions of section 5212, persons liable for the tax on such spirits under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall be relieved of such liability, if proprietors of transferring and receiving premises are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and all persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, have divested themselves of all interest in the spirits so transferred. Such relief from liability shall be effective from the time of removal from the transferor's bonded premises, or from the time of divestment of interest, whichever is later.

(d) Withdrawals free of tax

All persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall be relieved of such liability as to distilled spirits withdrawn free of tax under the provisions of section 5214(a)(1), (2), (3), (11), or (12), or under section 7510, at the time such spirits are so withdrawn from bonded premises.

(e) Withdrawals without payment of tax

(1) Liability for tax

Any person who withdraws distilled spirits from the bonded premises of a distilled spirits plant without payment of tax, as provided in section 5214(a)(4), (5), (6), (7), (8), (9), (10), or (13), shall be liable for the internal revenue tax on such distilled spirits, from the time of such withdrawal; and all persons liable for the tax on such distilled spirits under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall, at the time of such withdrawal, be relieved of any such liability on the distilled spirits so withdrawn if the person withdrawing such spirits and the person, or persons, liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and all persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, have divested themselves of all interest in the spirits so withdrawn.

(2) Relief from liability

All persons liable for the tax on distilled spirits under paragraph (1) of this subsection, or under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall be relieved of any such liability at the time, as the case may be, the distilled spirits are exported, deposited in a foreign-trade zone, used in the production of wine, used in the production of nonbeverage wine or wine products, deposited in customs bonded warehouses, laden as supplies upon, or used in the maintenance or repair of, certain vessels or aircraft, or used in certain research, development, or testing, as provided by law.

(f) Cross references

(1) For provisions requiring bond covering operations at, and withdrawals from, distilled spirits plants, see section 5173.

(2) For provisions relating to transfer of tax liability to redistiller in case of redistillation, see section 5223.

(3) For liability for tax on denatured distilled spirits, articles, and volatile fruit-flavor concentrates, see section 5001(a)(5) and (6).

(4) For liability for tax on distilled spirits withdrawn free of tax, see section 5001(a)(4).

(5) For liability of wine producer for unlawfully using wine spirits withdrawn for the production of wine, see section 5391.

(6) For provisions relating to transfer of tax liability for wine, see section 5043(a)(1)(A).

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1318; amended Pub. L. 94-455, title XIX, §1905(a)(1), Oct. 4, 1976, 90 Stat. 1818; Pub. L. 95-176, §4(b), (d), Nov. 14, 1977, 91 Stat. 1366; Pub.

L. 96-39, title VIII, §807(a)(3), July 26, 1979, 93 Stat. 280; Pub. L. 96-223, title II, §232(e)(2)(D), Apr. 2, 1980, 94 Stat. 280; Pub. L. 98-369, div. A, title IV, §455(b), July 18, 1984, 98 Stat. 823; Pub. L. 103-465, title I, §136(c)(2), Dec. 8, 1994, 108 Stat. 4841.)

Editorial Notes

PRIOR PROVISIONS

A prior section 5005, acts Aug. 16, 1954, ch. 736, 68A Stat. 599; Sept. 2, 1958, Pub. L. 85-859, title II, §206(d), 72 Stat. 1431, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85-859.

Provisions similar to those comprising subsec. (c)(1), (2) of this section were contained in prior sections 5194(f), 5217(a), and 5232(a), act Aug. 16, 1954, ch. 736, 68A Stat. 634, 641, 643, prior to the general revision of this chapter by Pub. L. 85-859.

AMENDMENTS

1994—Subsec. (f)(3). Pub. L. 103-465, §136(c)(2)(A), substituted “section 5001(a)(5) and (6)” for “section 5001(a)(6) and (7)”.

Subsec. (f)(4). Pub. L. 103-465, §136(c)(2)(B), substituted “section 5001(a)(4)” for “section 5001(a)(5)”.

1984—Subsec. (e)(1). Pub. L. 98-369, §455(b)(1), substituted “(10), or (13)” for “or (10)”.

Subsec. (e)(2). Pub. L. 98-369, §455(b)(2), inserted “used in the production of nonbeverage wine or wine products.”.

1980—Subsec. (d). Pub. L. 96-223 substituted “(11), or (12),” for “or (11)”.

1979—Subsec. (c)(3). Pub. L. 96-39, §807(a)(3)(A), struck out par. (3) which related to liability for taxes with regard to withdrawals of distilled spirits from the bonded premises of a distilled spirits plant.

Subsec. (d). Pub. L. 96-39, §807(a)(3)(B), substituted “(3), or (11)” for “or (3)”.

Subsec. (f)(1). Pub. L. 96-39, §807(a)(3)(C), substituted “requiring bond covering operations at, and withdrawals from, distilled spirits plants” for “conditioning warehousing bonds on the payment of the tax” and “5173” for “5173(c)”.

Subsec. (f)(6). Pub. L. 96-39, §807(a)(3)(D), added par. (6).

1977—Subsec. (d). Pub. L. 95-176, §4(d)(1), struck out reference to par. (9) of section 5214(a).

Subsec. (e)(1). Pub. L. 95-176, §4(d)(2), inserted reference to pars. (9) and (10) of section 5214(a).

Subsec. (e)(2). Pub. L. 95-176, §4(b), substituted “customs bonded warehouses” for “customs manufacturing bonded warehouses” and provided for relief from liability for tax on distilled spirits used in certain research, development, or testing.

1976—Subsec. (c)(2). Pub. L. 94-455 substituted “Such relief from liability shall be effective from the time of removal from the transferor’s bonded premises, or from the time of divestment of interest, whichever is later.” for “Such liability for the tax on distilled spirits shall continue until the distilled spirits are transferred or withdrawn from bonded premises as authorized by law, or until such liability for tax is relieved by reason of the provisions of section 5008(a). Nothing in this paragraph shall relieve any person from any liability imposed by subsection (a) or (b).”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective Jan. 1, 1995, see section 136(d) of Pub. L. 103-465, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, see section 456(c) of Pub. L. 98-369, set out as an Effective Date note under section 5101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-223 effective on first day of first calendar month beginning more than 60 days after Apr. 2, 1980, see section 232(h)(3) of Pub. L. 96-223, set out as an Effective Date note under section 5181 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-39 effective Jan. 1, 1980, see section 810 of Pub. L. 96-39, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XIX, §1905(d), Oct. 4, 1976, 90 Stat. 1824, provided that: “The amendments made by this section [amending this section and sections 5007 to 5009, 5025, 5026, 5043, 5054, 5061, 5105, 5111, 5113, 5114, 5117, 5121, 5122, 5131, 5142, 5148, 5171, 5174, 5177, 5179, 5214, 5222, 5232 to 5234, 5272, 5314, 5362, 5368, 5392, 5505, 5551, 5601, 5662, 5685, 5701, 5703, 5704, 5712, 5723, 5751, 5752, 5762, and 5763 of this title and repealing sections 5104, 5144, 5315, 5676, and 5689 of this title] shall take effect on the first day of the first month which begins more than 90 days after the date of the enactment of this Act [Oct. 4, 1976].”

§ 5006. Determination of tax

(a) Requirements

(1) In general

Except as otherwise provided in this section, the tax on distilled spirits shall be determined when the spirits are withdrawn from bond. Such tax shall be determined by such means as the Secretary shall by regulations prescribe, and with the use of such devices and apparatus (including but not limited to tanks and pipelines) as the Secretary may require. The tax on distilled spirits withdrawn from the bonded premises of a distilled spirits plant shall be determined upon completion of the gauge for determination of tax and before withdrawal from bonded premises, under such regulations as the Secretary shall prescribe.

(2) Distilled spirits not accounted for

If the Secretary finds that the distiller has not accounted for all the distilled spirits produced by him, he shall, from all the evidence he can obtain, determine what quantity of distilled spirits was actually produced by such distiller, and an assessment shall be made for the difference between the quantity reported and the quantity shown to have been actually produced at the rate of tax imposed by law for every proof gallon.

(b) Taxable loss

(1) On original quantity

Where there is evidence satisfactory to the Secretary that there has been any loss of distilled spirits from any cask or other package deposited on bonded premises, other than a loss which by reason of section 5008(a) is not taxable, the Secretary may require the withdrawal from bonded premises of such distilled spirits, and direct the officer designated by him to collect the tax accrued on the original quantity of distilled spirits entered for deposit