

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

on bonded premises in such cask or package; except that, under regulations prescribed by the Secretary, when the extent of any loss from causes other than theft or unauthorized voluntary destruction can be established by the proprietor to the satisfaction of the Secretary an allowance of the tax on the loss so established may be credited against the tax on the original quantity. If such tax is not paid on demand it shall be assessed and collected as other taxes are assessed and collected.

(2) Alternative method

Where there is evidence satisfactory to the Secretary that there has been access, other than is authorized by law, to the contents of casks or packages stored on bonded premises, and the extent of such access is such as to evidence a lack of due diligence or a failure to employ necessary and effective controls on the part of the proprietor, the Secretary (in lieu of requiring the casks or packages to which such access has been had to be withdrawn and tax paid on the original quantity of distilled spirits entered for deposit on bonded premises in such casks or packages as provided in paragraph (1)) may assess an amount equal to the tax on 5 proof gallons of distilled spirits at the prevailing rate on each of the total number of such casks or packages as determined by him.

(3) Application of subsection

The provisions of this subsection shall apply to distilled spirits which are filled into casks or packages, as authorized by law, after entry and deposit on bonded premises, whether by recasking, filling from storage tanks, consolidation of packages, or otherwise; and the quantity filled into such casks or packages shall be deemed to be the original quantity for the purpose of this subsection, in the case of loss from such casks or packages.

(c) Distilled spirits not bonded

(1) General

The tax on any distilled spirits, removed from the place where they were distilled and (except as otherwise provided by law) not deposited in storage on bonded premises of a distilled spirits plant, shall, at any time within the period of limitation provided in section 6501, when knowledge of such fact is obtained by the Secretary, be assessed on the distiller of such distilled spirits (or other person liable for the tax) and payment of such tax immediately demanded and, on the neglect or refusal of payment, the Secretary shall proceed to collect the same by distraint. This paragraph shall not exclude any other remedy or proceeding provided by law.

(2) Production at other than qualified plants

Except as otherwise provided by law, the tax on any distilled spirits produced in the United States at any place other than a qualified distilled spirits plant shall be due and payable immediately upon production.

(d) Unlawfully imported distilled spirits

Distilled spirits smuggled or brought into the United States unlawfully shall, for purposes of this chapter, be held to be imported into the

United States, and the internal revenue tax shall be due and payable at the time of such importation.

(e) Cross reference

For provisions relating to removal of distilled spirits from bonded premises on determination of tax, see section 5213.

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1320; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96-39, title VIII, §§804(a), 807(a)(4), July 26, 1979, 93 Stat. 274, 280.)

Editorial Notes

PRIOR PROVISIONS

A prior section 5006, acts Aug. 16, 1954, ch. 736, 68A Stat. 599; Sept. 2, 1958, Pub. L. 85-859, title II, §206(a), 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 subsecs. (a)(2)(A), (3) of this section were contained in prior sections 5007(e)(1) and 5232(a), act Aug. 16, 1954, ch. 736, 68A Stat. 600, 643, prior to the general revision of this chapter by Pub. L. 85-859.

AMENDMENTS

1979—Subsec. (a)(1). Pub. L. 96-39, §804(a), struck out “internal revenue” after “provided in this section, the” and “storage, gauging, and bottling” after “but not limited to”.

Subsec. (a)(2), (3). Pub. L. 96-39, §804(a), redesignated par. (3) as (2). Former par. (2), relating to distilled spirits entered for storage, was struck out.

Subsec. (b)(1). Pub. L. 96-39, §807(a)(4)(A), (B), substituted “on bonded premises” for “in storage in internal revenue bond” in two places and “; except” for “, notwithstanding that the time specified in any bond given for the withdrawal of the spirits entered in storage in such cask or package has not expired, except”.

Subsec. (b)(2), (3). Pub. L. 96-39, §807(a)(4)(B), substituted “on bonded premises” for “in storage in internal revenue bond”.

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

Statutory Notes and Related Subsidiaries

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.

APPLICATION OF 1972 AMENDMENTS TO PRIOR SECTIONS

Pub. L. 85-859, title II, §206(f), Sept. 2, 1958, 72 Stat. 1431, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided:

“(1) The amendments made by this section [amending this section and sections 5005, 5232, 5242, and 5243 of this title] shall apply with respect to:

“(A) distilled spirits which on the date of the enactment of this Act [Sept. 2, 1958] are in internal revenue bonded warehouses or are in transit to or between such warehouses, and in respect of which the 8-year bonding period has not expired before the date of enactment of this Act; and

“(B) distilled spirits which after the date of the enactment of this Act [Sept. 2, 1958] are entered for deposit in an internal revenue bonded warehouse.

“(2) If the 8 years from the date of original entry of any distilled spirits for deposit in internal revenue bonded warehouses expires at any time during the 10-day period which begins on the date of the enactment of this Act [Sept. 2, 1958], the amendments made by this section shall apply with respect to such spirits if (and

only if) before the close of such 10-day period there is filed with the Secretary of the Treasury or his delegate either—

“(A) a consent of surety which changes (for periods on and after the date of the enactment of this Act) the condition based on the withdrawal of spirits from the internal revenue bonded warehouse within 8 years from the date of original entry for deposit to a condition based on the withdrawal of spirits from the internal revenue bonded warehouse within 20 years from the date of original entry for deposit, or

“(B) a bond which applies to periods on and after the date of the enactment of this Act and which satisfies the requirements of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by this section, and is conditioned on the withdrawal of spirits from the internal revenue bonded warehouse within 20 years from the date of original entry for deposit.”

§ 5007. Collection of tax on distilled spirits

(a) Tax on distilled spirits removed from bonded premises

The tax on domestic distilled spirits and on distilled spirits removed from customs custody under section 5232 shall be paid in accordance with section 5061.

(b) Collection of tax on imported distilled spirits

The internal revenue tax imposed by section 5001(a)(1) and (2) upon imported distilled spirits shall be collected by the Secretary and deposited as internal revenue collections, under such regulations as the Secretary may prescribe. Section 5688 shall be applicable to the disposition of imported spirits.

(c) Cross references

(1) For authority of the Secretary to make determinations and assessments of internal revenue taxes and penalties, see section 6201(a).

(2) For authority to assess tax on distilled spirits not bonded, see section 5006(c).

(3) For provisions relating to payment of tax, under certain conditions, on distilled spirits withdrawn free of tax, denatured distilled spirits, articles, and volatile fruit-flavor concentrates, see section 5001(a)(4), (5), and (6).

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1322; amended Pub. L. 94-455, title XIX, §§1905(b)(2)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1822, 1834; Pub. L. 96-39, title VIII, §807(a)(5), July 26, 1979, 93 Stat. 280; Pub. L. 103-465, title I, §136(c)(3), (4), Dec. 8, 1994, 108 Stat. 4841, 4842.)

Editorial Notes

PRIOR PROVISIONS

A prior section 5007, act Aug. 16, 1954, ch. 736, 68A Stat. 600, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85-859.

Prior section 5007(c) related to “payment of tax on alcoholic compounds from Puerto Rico and Virgin Islands”. See section 7652 of this title.

Prior section 5007(e)(1) related to “assessment for deficiencies in production and excess of materials used” and “requirement”. See sections 5004(b)(1) and 5006(a)(3) of this title.

Prior section 5007(e)(2) related to “relief from assessment for deficiencies in production and excess of materials used” and is obsolete.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-465, §136(c)(3), amended subsec. (b) generally, striking out provisions relating

to collection and deposit as internal revenue collections of taxes on imported perfumes containing distilled spirits.

Subsec. (c)(3). Pub. L. 103-465, §136(c)(4), substituted “section 5001(a)(4), (5), and (6)” for “section 5001(a)(5), (6), and (7)”.

1979—Subsec. (a). Pub. L. 96-39 struck out “(1) General” before “The tax on domestic” and par. (2) which related to distilled spirits withdrawn to bottling premises under withdrawal bond.

1976—Subsec. (a)(2). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (b)(1). Pub. L. 94-455, §§1905(b)(2)(A), 1906(b)(13)(A), struck out second sentence “Such tax shall be in addition to any customs duty imposed under the Tariff Act of 1930 (46 Stat. 590; 19 U.S.C., chapter 4), or any subsequent act.” and “or his delegate” after “Secretary” wherever appearing.

Subsecs. (b)(2), (c)(1). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing.

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 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 1976 AMENDMENT

Amendment by section 1905(b)(2)(A) of Pub. L. 94-455 effective on first day of first month which begins more than 90 days after Oct. 4, 1976, see section 1905(d) of Pub. L. 94-455, set out as a note under section 5005 of this title.

§ 5008. Abatement, remission, refund, and allowance for loss or destruction of distilled spirits

(a) Distilled spirits lost or destroyed in bond

(1) Extent of loss allowance

No tax shall be collected in respect of distilled spirits lost or destroyed while in bond, except that such tax shall be collected—

(A) Theft

In the case of loss by theft, unless the Secretary finds that the theft occurred without connivance, collusion, fraud, or negligence on the part of the proprietor of the distilled spirits plant, owner, consignee, consignee, bailee, or carrier, or the employees or agents of any of them;

(B) Voluntary destruction

In the case of voluntary destruction, unless such destruction is carried out as provided in subsection (b); and

(C) Unexplained shortage

In the case of an unexplained shortage of bottled distilled spirits.

(2) Proof of loss

In any case in which distilled spirits are lost or destroyed, whether by theft or otherwise, the Secretary may require the proprietor of the distilled spirits plant or other person liable for the tax to file a claim for relief from the tax and submit proof as to the cause of