

5111 to 5114, respectively, and struck out “and rate of tax” after “Eligibility” in item 5111.

1997—Pub. L. 105-34, title XIV, §1415(b)(3), Aug. 5, 1997, 111 Stat. 1047, struck out item 5115 “Sign required on premises”.

§ 5111. Eligibility

Any person using distilled spirits on which the tax has been determined, in the manufacture or production of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which are unfit for beverage purposes shall be eligible for drawback at the time when such distilled spirits are used in the manufacture of such products as provided for in this subpart.

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1345, §5131; amended Pub. L. 94-455, title XIX, §1905(a)(11), Oct. 4, 1976, 90 Stat. 1819; Pub. L. 100-203, title X, §10512(d), Dec. 22, 1987, 101 Stat. 1330-448; Pub. L. 103-465, title I, §136(b), Dec. 8, 1994, 108 Stat. 4841; renumbered §5111 and amended Pub. L. 109-59, title XI, §11125(a)(2), (b)(3)(A), (C), Aug. 10, 2005, 119 Stat. 1953, 1954.)

Editorial Notes

PRIOR PROVISIONS

A prior section 5111, added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1340; amended Pub. L. 94-455, title XIX, §1905(b)(3)(B), Oct. 4, 1976, 90 Stat. 1822; Pub. L. 100-203, title X, §10512(b), Dec. 22, 1987, 101 Stat. 1330-448, related to tax on wholesale dealers in liquors or beer, prior to repeal by Pub. L. 109-59, title XI, §11125(a)(1)(C), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior section 5111, act Aug. 16, 1954, ch. 736, 68A Stat. 618, related to tax on wholesale and retail dealers in liquors or beer, prior to the general revision of this chapter by Pub. L. 85-859.

AMENDMENTS

2005—Pub. L. 109-59, §11125(b)(3)(C), struck out “and rate of tax” after “Eligibility” in section catchline, struck out “(a) Eligibility for drawback” before “Any person”, and struck out subsec. (b). Text read as follows: “The special tax imposed by subsection (a) shall be \$500 per year.”

Pub. L. 109-59, §11125(b)(3)(A), renumbered section 5131 of this title as this section.

Subsec. (a). Pub. L. 109-59, §11125(a)(2), struck out “, on payment of a special tax per annum,” after “beverage purposes”.

1994—Subsec. (a). Pub. L. 103-465 substituted “flavoring extracts, or perfume” for “or flavoring extracts”.

1987—Subsec. (b). Pub. L. 100-203 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The special tax imposed by subsection (a) shall be graduated in amount as follows: (1) for total annual use not exceeding 25 proof gallons, \$25 a year; (2) for total annual use not exceeding 50 proof gallons, \$50 a year; (3) for total annual use of more than 50 proof gallons, \$100 a year.”

1976—Subsec. (a). Pub. L. 94-455 struck out “produced in a domestic registered distillery or industrial alcohol plant and withdrawn from bond, or using distilled spirits withdrawn from the bonded premises of a distilled spirits plant,” after “Any person using distilled spirits”.

Statutory Notes and Related Subsidiaries

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 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 1987 AMENDMENT

Pub. L. 100-203, title X, §10512(h), Dec. 22, 1987, 101 Stat. 1330-450, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting sections 5081, 5276, and 5731 of this title and amending this section and sections 5091, 5121, 5131, 5691, and 5801 of this title] shall take effect on January 1, 1988.

“(2) ALL TAXPAYERS TREATED AS COMMENCING IN BUSINESS ON JANUARY 1, 1988.—

“(A) IN GENERAL.—Any person engaged on January 1, 1988, in any trade or business which is subject to an occupational tax shall be treated for purposes of such tax as having 1st engaged in such trade or business on such date.

“(B) LIMITATION ON AMOUNT OF TAX.—In the case of a taxpayer who paid an occupational tax in respect of any premises for any taxable period which began before January 1, 1988, and includes such date, the amount of the occupational tax imposed by reason of subparagraph (A) in respect of such premises shall not exceed an amount equal to ½ the excess (if any) of—

“(i) the rate of such tax as in effect on January 1, 1988, over

“(ii) the rate of such tax as in effect on December 31, 1987.

“(C) OCCUPATIONAL TAX.—For purposes of this paragraph, the term ‘occupational tax’ means any tax imposed under part II of subchapter A of chapter 51, section 5276, section 5731, or section 5801 of the Internal Revenue Code of 1986 (as amended by this section).

“(D) DUE DATE OF TAX.—The amount of any tax required to be paid by reason of this paragraph shall be due on April 1, 1988.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by 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.

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.

§ 5112. Registration and regulation

Every person claiming drawback under this subpart shall register annually with the Secretary; keep such books and records as may be necessary to establish the fact that distilled spirits received by him and on which the tax has been determined were used in the manufacture or production of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which were unfit for use for beverage purposes; and be subject to such rules and regulations in relation thereto as the Secretary shall prescribe to secure the Treasury against frauds.

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1345, §5132; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 103-465, title I, §136(b), Dec. 8, 1994, 108 Stat. 4841; renumbered §5112, Pub. L. 109-59, title XI, §11125(b)(3)(A), Aug. 10, 2005, 119 Stat. 1953.)

Editorial Notes**PRIOR PROVISIONS**

A prior section 5112, added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1340, defined “dealer”, “wholesale dealer in liquors”, and “wholesale dealer in beer”, prior to repeal by Pub. L. 109-59, title XI, §11125(a)(1)(C), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior section 5112, act Aug. 16, 1954, ch. 736, 68A Stat. 618, contained definitions of wholesale dealers, prior to the general revision of this chapter by Pub. L. 85-859.

AMENDMENTS

2005—Pub. L. 109-59 renumbered section 5132 of this title as this section.

1994—Pub. L. 103-465 substituted “flavoring extracts, or perfume” for “or flavoring extracts”.

1976—Pub. L. 94-455 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.

§ 5113. Investigation of claims

For the purpose of ascertaining the correctness of any claim filed under this subpart, the Secretary is authorized to examine any books, papers, records, or memoranda bearing upon the matters required to be alleged in the claim, to require the attendance of the person filing the claim or of any officer or employee of such person or the attendance of any other person having knowledge in the premises, to take testimony with reference to any matter covered by the claim, and to administer oaths to any person giving such testimony.

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1346, §5133; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; renumbered §5113, Pub. L. 109-59, title XI, §11125(b)(3)(A), Aug. 10, 2005, 119 Stat. 1953.)

Editorial Notes**PRIOR PROVISIONS**

A prior section 5113, added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1340; amended Pub. L. 87-863, §4(b), Oct. 23, 1962, 76 Stat. 1142; Pub. L. 94-455, title XIX, §§1905(a)(7), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1819, 1834; Pub. L. 100-647, title II, §2004(t)(2), (4), Nov. 10, 1988, 102 Stat. 3609, 3610, related to exemptions from tax, prior to repeal by Pub. L. 109-59, title XI, §11125(a)(1)(C), (c), Aug. 10, 2005, 119 Stat. 1953, 1957, effective July 1, 2008, but inapplicable to taxes imposed for periods before such date.

Another prior section 5113, act Aug. 16, 1954, ch. 736, 68A Stat. 619, related to exemptions from tax, prior to the general revision of this chapter by Pub. L. 85-859.

AMENDMENTS

2005—Pub. L. 109-59 renumbered section 5133 of this title as this section.

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

§ 5114. Drawback**(a) Rate of drawback**

In the case of distilled spirits on which the tax has been paid or determined, and which have

been used as provided in this subpart, a drawback shall be allowed on each proof gallon at a rate of \$1 less than the rate at which the distilled spirits tax has been paid or determined.

(b) Claims

Such drawback shall be due and payable quarterly upon filing of a proper claim with the Secretary; except that, where any person entitled to such drawback shall elect in writing to file monthly claims therefor, such drawback shall be due and payable monthly upon filing of a proper claim with the Secretary. The Secretary may require persons electing to file monthly drawback claims to file with him a bond or other security in such amount and with such conditions as he shall by regulations prescribe. Any such election may be revoked on filing of notice thereof with the Secretary. No claim under this subpart shall be allowed unless filed with the Secretary within the 6 months next succeeding the quarter in which the distilled spirits covered by the claim were used as provided in this subpart.

(c) Allowance of drawback even where certain requirements not met**(1) In general**

No claim for drawback under this section shall be denied in the case of a failure to comply with any requirement imposed under this subpart or any rule or regulation issued thereunder upon the claimant’s establishing to the satisfaction of the Secretary that distilled spirits on which the tax has been paid or determined were in fact used in the manufacture or production of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which were unfit for beverage purposes.

(2) Penalty**(A) In general**

In the case of a failure to comply with any requirement imposed under this subpart or any rule or regulation issued thereunder, the claimant shall be liable for a penalty of \$1,000 for each failure to comply unless it is shown that the failure to comply was due to reasonable cause.

(B) Penalty may not exceed amount of claim

The aggregate amount of the penalties imposed under subparagraph (A) for failures described in paragraph (1) in respect of any claim shall not exceed the amount of such claim (determined without regard to subparagraph (A)).

(3) Penalty treated as tax

The penalty imposed by paragraph (2) shall be assessed, collected, and paid in the same manner as taxes, as provided in section 6665(a).

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1346, §5134; amended Pub. L. 90-615, §2(a), Oct. 21, 1968, 82 Stat. 1210; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title IV, §452, July 18, 1984, 98 Stat. 819; Pub. L. 103-465, title I, §136(b), Dec. 8, 1994, 108 Stat. 4841; Pub. L. 104-188, title I, §1704(t)(12), Aug. 20, 1996, 110 Stat. 1888; renumbered §5114, Pub. L. 109-59, title XI, §11125(b)(3)(A), Aug. 10, 2005, 119 Stat. 1953.)