

1965—Pub. L. 89-44 struck out references to tobacco materials wherever appearing in heading and text.

1958—Pub. L. 85-859 substituted “tobacco products, cigarette papers and tubes” for “articles” wherever appearing.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-44 applicable on and after January 1, 1966, see section 701(d) of Pub. L. 89-44, set out as a note under section 5701 of this title.

##### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85-859, set out as an Effective Date note under section 5001 of this title.

### § 5754. Restriction on importation of previously exported tobacco products

#### (a) Export-labeled tobacco products

##### (1) In general

Tobacco products and cigarette papers and tubes manufactured in the United States and labeled for exportation under this chapter—

(A) may be transferred to or removed from the premises of a manufacturer or an export warehouse proprietor only if such articles are being transferred or removed without tax in accordance with section 5704;

(B) may be imported or brought into the United States, after their exportation, only if such articles either are eligible to be released from customs custody with the partial duty exemption provided in section 5704(d) or are returned to the original manufacturer of such article as provided in section 5704(c); and

(C) may not be sold or held for sale for domestic consumption in the United States unless such articles are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label.

##### (2) Alterations by persons other than original manufacturer

This section shall apply to articles labeled for export even if the packaging or the appearance of such packaging to the consumer of such articles has been modified or altered by a person other than the original manufacturer so as to remove or conceal or attempt to remove or conceal (including by the placement of a sticker over) any export label.

##### (3) Exports include shipments to Puerto Rico

For purposes of this section, section 5704(d), section 5761, and such other provisions as the Secretary may specify by regulations, references to exportation shall be treated as including a reference to shipment to the Commonwealth of Puerto Rico.

#### (b) Export label

For purposes of this section, an article is labeled for export or contains an export label if it bears the mark, label, or notice required under section 5704(b).

#### (c) Cross references

(1) For exception to this section for personal use, see section 5761(d).

(2) For civil penalties related to violations of this section, see section 5761(c).

(3) For a criminal penalty applicable to any violation of this section, see section 5762(b).

(4) For forfeiture provisions related to violations of this section, see section 5761(c).

(Added Pub. L. 105-33, title IX, §9302(h)(1)(E)(i), Aug. 5, 1997, 111 Stat. 673; amended Pub. L. 106-476, title IV, §4002(a), Nov. 9, 2000, 114 Stat. 2176; Pub. L. 109-432, div. C, title IV, §401(f)(2)(B), Dec. 20, 2006, 120 Stat. 3050.)

#### Editorial Notes

##### AMENDMENTS

2006—Subsec. (c)(1). Pub. L. 109-432 substituted “5761(d)” for “5761(c)”.

2000—Pub. L. 106-476 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

“(a) IN GENERAL.—Tobacco products and cigarette papers and tubes previously exported from the United States may be imported or brought into the United States only as provided in section 5704(d). For purposes of this section, section 5704(d), section 5761, and such other provisions as the Secretary may specify by regulations, references to exportation shall be treated as including a reference to shipment to the Commonwealth of Puerto Rico.

“(b) CROSS REFERENCE.—

“For penalty for the sale of tobacco products and cigarette papers and tubes in the United States which are labeled for export, see section 5761(c).”

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Dec. 20, 2006, see section 401(g) of Pub. L. 109-432, set out as a note under section 1681 of Title 19, Customs Duties.

##### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-476 effective 90 days after Nov. 9, 2000, see section 4002(d) of Pub. L. 106-476, set out as a note under section 5704 of this title.

##### EFFECTIVE DATE

Section applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105-33, set out as an Effective Date of 1997 Amendment note under section 5701 of this title.

#### Subchapter G—Penalties and Forfeitures

Sec. 5761.	Civil penalties.
5762.	Criminal penalties.
5763.	Forfeitures.

#### Editorial Notes

##### AMENDMENTS

1987—Pub. L. 100-203, title X, §10512(f)(1), Dec. 22, 1987, 101 Stat. 1330-449, redesignated subchapter F as G.

1965—Pub. L. 89-44, title V, §502(b)(7), June 21, 1965, 79 Stat. 151, redesignated subchapter G as F. Former subchapter F redesignated E.

1958—Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1425, substituted “Penalties and Forfeitures” for “Fines, Penalties, and Forfeitures” in subchapter heading.

### § 5761. Civil penalties

#### (a) Omitting things required or doing things forbidden

Whoever willfully omits, neglects, or refuses to comply with any duty imposed upon him by

this chapter, or to do, or cause to be done, any of the things required by this chapter, or does anything prohibited by this chapter, shall in addition to any other penalty provided in this title, be liable to a penalty of \$1,000, to be recovered, with costs of suit, in a civil action, except where a penalty under subsection (b) or (c) or under section 6651 or 6653 or part II of subchapter A of chapter 68 may be collected from such person by assessment.

**(b) Failure to pay tax**

Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this title, be liable to a penalty of 5 percent of the tax due but unpaid.

**(c) Sale of tobacco products and cigarette papers and tubes for export**

Except as provided in subsections (b) and (d) of section 5704—

(1) every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation under this chapter,

(2) every person who sells or receives such relanded tobacco products or cigarette papers or tubes, and

(3) every person who aids or abets in such selling, relanding, or receiving,

shall, in addition to the tax and any other penalty provided in this title, be liable for a penalty equal to the greater of \$1,000 or 5 times the amount of the tax imposed by this chapter. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States shall be forfeited to the United States and destroyed. All vessels, vehicles, and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States. This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity.

**(d) Personal use quantities**

**(1) In general**

No quantity of tobacco products other than the quantity referred to in paragraph (2) may be relanded or received as a personal use quantity.

**(2) Exception for personal use quantity**

Subsection (c) and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States, and such person may voluntarily relinquish to the Secretary at the time of entry any excess of such quantity without incurring the penalty under subsection (c).

**(3) Special rule for delivery sales**

**(A) In general**

Paragraph (2) shall not apply to any tobacco product sold in connection with a delivery sale.

**(B) Delivery sale**

For purposes of subparagraph (A), the term “delivery sale” means any sale of a tobacco product to a consumer if—

(i) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mail, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made, or

(ii) the tobacco product is delivered by use of a common carrier, private delivery service, or the mail, or the seller is not in the physical presence of the buyer when the buyer obtains personal possession of the tobacco product.

**(e) Applicability of section 6665**

The penalties imposed by subsections (b) and (c) shall be assessed, collected, and paid in the same manner as taxes, as provided in section 6665(a).

**(f) Cross references**

**For penalty for failure to make deposits or for overstatement of deposits, see section 6656.**

(Aug. 16, 1954, ch. 736, 68A Stat. 717; Pub. L. 85-859, title II, §202, Sept. 2, 1958, 72 Stat. 1425; Pub. L. 97-34, title VII, §§722(a)(3), 724(b)(5), Aug. 13, 1981, 95 Stat. 342, 345; Pub. L. 97-448, title I, §107(b), Jan. 12, 1983, 96 Stat. 2391; Pub. L. 98-369, div. A, title VII, §714(h)(2), July 18, 1984, 98 Stat. 962; Pub. L. 101-239, title VII, §7721(c)(4), (5), Dec. 19, 1989, 103 Stat. 2399; Pub. L. 105-33, title IX, §9302(h)(1)(B)-(D), Aug. 5, 1997, 111 Stat. 673; Pub. L. 106-476, title IV, §§4002(c), 4003(a), Nov. 9, 2000, 114 Stat. 2177; Pub. L. 106-554, §1(a)(7) [title III, §315(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-644; Pub. L. 109-432, div. C, title IV, §401(f)(1), (2)(A), Dec. 20, 2006, 120 Stat. 3049, 3050.)

**Editorial Notes**

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsecs. (c) and (d)(2), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109-432, §401(f)(2)(A), struck out at end “This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States, and such person may voluntarily relinquish to the Secretary at the time of entry any excess of such quantity without incurring the penalty under this subsection. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity.”

Subsecs. (d) to (f). Pub. L. 109-432, §401(f)(1), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

2000—Subsec. (c). Pub. L. 106-554 inserted at end “This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States, and such person may voluntarily relinquish to the Secretary at the time of entry any excess of such quantity without incurring the penalty under this subsection. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity.”

Pub. L. 106-476, §4003(a), inserted at end “This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity.”

Pub. L. 106-476, §4002(c), which directed amendment of the last sentence of subsec. (c) by substituting “the jurisdiction of the United States shall be forfeited to the United States and destroyed. All vessels, vehicles, and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States.” for “the jurisdiction of the United States” and all that followed through the end period, was executed by making the substitution for “the jurisdiction of the United States, and all vessels, vehicles, and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States.” in the second sentence of subsec. (c) to reflect the probable intent of Congress and the intervening retroactive amendments by Pub. L. 106-476, §4003(a), and Pub. L. 106-554. See above.

1997—Subsec. (a). Pub. L. 105-33, §9302(h)(1)(C), substituted “subsection (b) or (c)” for “subsection (b)”.

Subsec. (c). Pub. L. 105-33, §9302(h)(1)(B), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105-33, §9302(h)(1)(D), substituted “The penalties imposed by subsections (b) and (c)” for “The penalty imposed by subsection (b)”.

Pub. L. 105-33, §9302(h)(1)(B), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 105-33, §9302(h)(1)(B), redesignated subsec. (d) as (e).

1989—Subsec. (a). Pub. L. 101-239, §7721(c)(4), inserted “or part II of subchapter A of chapter 68” after “or 6653”.

Subsec. (c). Pub. L. 101-239, §7721(c)(5), substituted “6665” for “6662” in heading and “6665(a)” for “6662(a)” in text.

1984—Subsec. (c). Pub. L. 98-369 substituted “section 6662” for “section 6660” in heading and “section 6662(a)” for “section 6660(a)” in text.

1983—Subsec. (c). Pub. L. 97-448 substituted “section 6660” for “section 6659” in heading, and substituted “section 6660(a)” for “section 6659(a)” in text.

1981—Subsec. (c). Pub. L. 97-34, §724(b)(5), added subsec. (c). Former subsec. (c), which related to applicability of section 6656 to failure to make deposit of taxes imposed under subchapter A on the prescribed date and imposition of penalty, was struck out.

Subsec. (d). Pub. L. 97-34, §§722(a)(3), 724(b)(5), added subsec. (d). Former subsec. (d), which related to applicability of section 6660 and penalties imposed by subsections (b) and (c) to be assessed, collected, and paid in the manner as taxes provided in section 6660(a), was struck out. See subsec. (c).

1958—Subsec. (a). Pub. L. 85-859 struck out reference to section 6652 of this title.

Subsec. (b). Pub. L. 85-859 substituted provisions relating to failure to pay tax for provisions which made persons willfully failing to pay a tax liable, in addition to any other penalty provided in this title, to a penalty of the amount of the tax evaded, or not paid.

Subsec. (c). Pub. L. 85-859 substituted provisions relating to failure to make deposit of taxes for provisions

which authorized a penalty of 5 percent of the tax due but unpaid where a person failed to pay tax at the time prescribed, and required the penalties to be added to the tax and assessed and collected at the same time, in the same manner, and as a part of the tax.

Subsec. (d). Pub. L. 85-859 added subsec. (d). Similar provisions were formerly contained in subsec. (c) of this section.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 applicable with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after Dec. 20, 2006, see section 401(g) of Pub. L. 109-432, set out as a note under section 1681 of Title 19, Customs Duties.

##### EFFECTIVE DATE OF 2000 AMENDMENTS

Amendment by Pub. L. 106-554 effective as if included in section 9302 of the Balanced Budget Act of 1997, Pub. L. 105-33, see section 1(a)(7) [title III, §315(b)] of Pub. L. 106-554, set out as a note under section 5702 of this title.

Amendment by section 4002 of Pub. L. 106-476 effective 90 days after Nov. 9, 2000, see section 4002(d) of Pub. L. 106-476, set out as a note under section 5704 of this title.

Pub. L. 106-476, title IV, §4003(b), Nov. 9, 2000, 114 Stat. 2178, provided that: “The amendment made by this section [amending this section] shall take effect as if included in section 9302 of the Balanced Budget Act of 1997 [Pub. L. 105-33].”

##### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105-33, set out as a note under section 5701 of this title.

##### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101-239, set out as a note under section 461 of this title.

##### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

##### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

##### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 722(a)(3) of Pub. L. 97-34 applicable to returns filed after Dec. 31, 1981, see section 722(a)(4) of Pub. L. 97-34, set out as a note under section 5684 of this title.

Amendment by section 724(b)(5) of Pub. L. 97-34 applicable to returns filed after Aug. 13, 1981, see section 724(c) of Pub. L. 97-34, set out as a note under section 6656 of this title.

##### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85-859, set out as an Effective Date note under section 5001 of this title.

**§ 5762. Criminal penalties****(a) Fraudulent offenses**

Whoever, with intent to defraud the United States—

**(1) Engaging in business unlawfully**

Engages in business as a manufacturer or importer of tobacco products or cigarette papers and tubes, or as an export warehouse proprietor, without filing the bond and obtaining the permit where required by this chapter or regulations thereunder; or

**(2) Failing to furnish information or furnishing false information**

Fails to keep or make any record, return, report, or inventory, or keeps or makes any false or fraudulent record, return, report, or inventory, required by this chapter or regulations thereunder; or

**(3) Refusing to pay or evading tax**

Refuses to pay any tax imposed by this chapter, or attempts in any manner to evade or defeat the tax or the payment thereof; or

**(4) Removing tobacco products or cigarette papers or tubes unlawfully**

Removes, contrary to this chapter or regulations thereunder, any tobacco products or cigarette papers or tubes subject to tax under this chapter; or

**(5) Purchasing, receiving, possessing, or selling tobacco products or cigarette papers or tubes unlawfully**

Violates any provision of section 5751(a)(1) or (a)(2); or

**(6) Destroying, obliterating, or detaching marks, labels, or notices before packages are emptied**

Violates any provision of section 5752;

shall, for each such offense, be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

**(b) Other offenses**

Whoever, otherwise than as provided in subsection (a), violates any provision of this chapter, or of regulations prescribed thereunder, shall, for each such offense, be fined not more than \$1,000, or imprisoned not more than 1 year, or both.

(Aug. 16, 1954, ch. 736, 68A Stat. 717; Pub. L. 85-859, title II, § 202, Sept. 2, 1958, 72 Stat. 1425; Pub. L. 89-44, title V, § 502(b)(12), June 21, 1965, 79 Stat. 152; Pub. L. 94-455, title XIX, § 1905(b)(7)(B)(ii), Oct. 4, 1976, 90 Stat. 1823; Pub. L. 105-33, title IX, § 9302(h)(2)(A), Aug. 5, 1997, 111 Stat. 674.)

**Editorial Notes****AMENDMENTS**

1997—Subsec. (a)(1). Pub. L. 105-33 inserted “or importer” after “manufacturer”.

1976—Subsec. (a)(6). Pub. L. 94-455 redesignated par. (7) as (6), and in par. (6) as so redesignated substituted “or notices” for “notices, or stamps” and “section 5752:” for “section 5752(a); or”. Former par. (6), relating to the affixing of improper stamps, was struck out.

Subsec. (a)(7). Pub. L. 94-455 redesignated par. (7) as (6).

Subsec. (a)(8) to (11). Pub. L. 94-455 struck out pars. (8) to (11) which related to emptying packages without destroying stamps, possessing emptied packages bearing stamps, refilling packages bearing stamps, and detaching stamps or possessing used stamps.

1965—Subsec. (a)(1). Pub. L. 89-44, § 502(b)(12)(A), struck out reference to a dealer in tobacco materials.

Subsec. (a)(2). Pub. L. 89-44, § 502(b)(12)(B), struck out reference to statements.

1958—Subsec. (a). Pub. L. 85-859 included export warehouse proprietors in par. (1), struck out provisions in pars. (6) and (9) to (11) which related to labels and notices, and added pars. (7) and (8).

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE OF 1997 AMENDMENT**

Amendment by Pub. L. 105-33 applicable to articles removed, as defined in section 5702(j) of this title, after Dec. 31, 1999, with transition rule, see section 9302(i) of Pub. L. 105-33, set out as a note under section 5701 of this title.

**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 OF 1965 AMENDMENT**

Amendment by Pub. L. 89-44 applicable on and after January 1, 1966, see section 701(d) of Pub. L. 89-44, set out as a note under section 5701 of this title.

**EFFECTIVE DATE OF 1958 AMENDMENT**

Amendment by Pub. L. 85-859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85-859, set out as an Effective Date note under section 5001 of this title.

**§ 5763. Forfeitures****(a) Tobacco products and cigarette papers and tubes unlawfully possessed****(1) Tobacco products and cigarette papers and tubes possessed with intent to defraud**

All tobacco products and cigarette papers and tubes which, after removal, are possessed with intent to defraud the United States shall be forfeited to the United States.

**(2) Tobacco products and cigarette papers and tubes not property packaged**

All tobacco products and cigarette papers and tubes not in packages as required under section 5723 or which are in packages not bearing the marks, labels, and notices, as required under such section, which, after removal, are possessed otherwise than with intent to defraud the United States, shall be forfeited to the United States. This paragraph shall not apply to tobacco products or cigarette papers or tubes sold or delivered directly to consumers from proper packages.

**(b) Personal property of qualified manufacturers, qualified importers, and export warehouse proprietors, acting with intent to defraud**

All tobacco products and cigarette papers and tubes, packages, machinery, fixtures, equipment, and all other materials and personal property on the premises of any qualified manufacturer or importer of tobacco products or ciga-