

sales receipts of such dealer for its most recent taxable year ending before October 1, 1985, does not exceed \$500,000.

“(5) CONTROLLED GROUPS.—

“(A) CONTROLLED GROUPS OF CORPORATIONS.—In the case of a controlled group—

“(i) the 500 wine gallon amount specified in paragraph (2),

“(ii) the \$300 amount specified in paragraph (3), and

“(iii) the \$500,000 amount specified in paragraph (4)(C)(iii).

shall be apportioned among the dealers who are component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term ‘controlled group’ has the meaning given to such term by subsection (a) of section 1563 of the Internal Revenue Code of 1986; except that for such purposes the phrase ‘more than 50 percent’ shall be substituted for the phrase ‘at least 80 percent’ each place it appears in such subsection.

“(B) NONINCORPORATED DEALERS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of subparagraph (A) shall apply to a group of dealers under common control where 1 or more of such dealers is not a corporation.

“(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5001 of the Internal Revenue Code of 1986 shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply in respect of the taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 5001.

“(7) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

“(A) DEALER.—The term ‘dealer’ means—

“(i) any wholesale dealer in liquors (as defined in section 5112(b) of the Internal Revenue Code of 1986), and

“(ii) any retail dealer in liquors (as defined in section 5122(a) of such Code).

“(B) DISTILLED SPIRITS.—The term ‘distilled spirits’ has the meaning given such term by section 5002(a)(8) of the Internal Revenue Code of 1986.

“(C) PERSON.—The term ‘person’ includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

“(D) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury or his delegate.

“(E) TREATMENT OF IMPORTED PERFUMES CONTAINING DISTILLED SPIRITS.—Any article described in section 5001(a)(3) of such Code shall be treated as distilled spirits; except that the tax imposed by paragraph (1) shall be imposed on a wine gallon basis in lieu of a proof gallon basis. To the extent provided in regulations prescribed by the Secretary, the preceding sentence shall not apply to any article held on October 1, 1985, on the premises of a retail establishment.

“(F) TREATMENT OF DISTILLED SPIRITS IN FOREIGN TRADE ZONES.—Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provision of law, distilled spirits which are located in a foreign trade zone on October 1, 1985, shall be subject to the tax imposed by paragraph (1) and shall be treated for purposes of this subsection as held on such date for sale if—

“(i) internal revenue taxes have been determined, or customs duties liquidated, with respect to such distilled spirits before such date pursuant to a request made under the first proviso of section 3(a) of such Act [19 U.S.C. 81c(a)], or

“(ii) such distilled spirits are held on such date under the supervision of customs pursuant to the second proviso of such section 3(a).

Under regulations prescribed by the Secretary, provisions similar to sections 5062 and 5064 of such Code

shall apply to distilled spirits with respect to which tax is imposed by paragraph (1) by reason of this subparagraph.”

§ 5002. Definitions

(a) In general

For purposes of this chapter—

(1) Distilled spirits plant

The term “distilled spirits plant” means an establishment which is qualified under subchapter B to perform any distilled spirits operation.

(2) Distilled spirits operation

The term “distilled spirits operation” means any operation for which qualification is required under subchapter B.

(3) Bonded premises

The term “bonded premises”, when used with respect to distilled spirits, means the premises of a distilled spirits plant, or part thereof, on which distilled spirits operations are authorized to be conducted.

(4) Distiller

The term “distiller” includes any person who—

(A) produces distilled spirits from any source or substance,

(B) brews or makes mash, wort, or wash fit for distillation or for the production of distilled spirits (other than the making or using of mash, wort, or wash in the authorized production of wine or beer, or the production of vinegar by fermentation),

(C) by any process separates alcoholic spirits from any fermented substance, or

(D) making or keeping mash, wort, or wash, has a still in his possession or use.

(5) Processor

(A) In general

The term “processor”, when used with respect to distilled spirits, means any person who—

(i) manufactures, mixes, or otherwise processes distilled spirits, or

(ii) manufactures any article.

(B) Rectifier, bottler, etc., included

The term “processor” includes (but is not limited to) a rectifier, bottler, and denaturer.

(6) Certain operations not treated as processing

In applying paragraph (5), there shall not be taken into account—

(A) Operations as distiller

Any process which is the operation of a distiller.

(B) Mixing of taxpaid spirits for immediate consumption

Any mixing (after determination of tax) of distilled spirits for immediate consumption.

(C) Use by apothecaries

Any process performed by an apothecary with respect to distilled spirits which such apothecary uses exclusively in the prepara-

tion or making up of medicines unfit for use for beverage purposes.

(7) Warehouseman

The term “warehouseman”, when used with respect to distilled spirits, means any person who stores bulk distilled spirits.

(8) Distilled spirits

The terms “distilled spirits”, “alcoholic spirits”, and “spirits” mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced).

(9) Bulk distilled spirits

The term “bulk distilled spirits” means distilled spirits in a container having a capacity in excess of 1 wine gallon.

(10) Proof spirits

The term “proof spirits” means that liquid which contains one-half its volume of ethyl alcohol of a specific gravity of 0.7939 at 60 degrees Fahrenheit (referring to water at 60 degrees Fahrenheit as unity).

(11) Proof gallon

The term “proof gallon” means a United States gallon of proof spirits, or the alcoholic equivalent thereof.

(12) Container

The term “container”, when used with respect to distilled spirits, means any receptacle, vessel, or form of package, bottle, tank, or pipeline used, or capable of use, for holding, storing, transferring, or conveying distilled spirits.

(13) Approved container

The term “approved container”, when used with respect to distilled spirits, means a container the use of which is authorized by regulations prescribed by the Secretary.

(14) Article

Unless another meaning is distinctly expressed or manifestly intended, the term “article” means any substance in the manufacture of which denatured distilled spirits are used.

(15) Export

The terms “export”, “exported”, and “exportation” include shipments to a possession of the United States.

(b) Cross references

(1) For definition of manufacturer of stills, see section 5102.

(2) For definition of dealer, see section 5121(c)(3).

(3) For definitions of wholesale dealers, see section 5121(c).

(4) For definitions of retail dealers, see section 5122(c).

(5) For definitions of general application to this title, see chapter 79.

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1315; amended Pub. L. 89-44, title VIII, §807(a), June 21, 1965, 79 Stat. 164; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 96-39, title VIII, §805(e), July 26, 1979, 93 Stat. 278; Pub. L. 103-465, title I,

§136(c)(1), Dec. 8, 1994, 108 Stat. 4841; Pub. L. 109-59, title XI, §11125(b)(13), Aug. 10, 2005, 119 Stat. 1956.)

Editorial Notes

PRIOR PROVISIONS

A prior section 5002, act Aug. 16, 1954, ch. 736, 68A Stat. 597, 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. (a)(6), (9), and (11) of this section were contained in prior sections 5213(a)(1) and 5319(1), (2), and (7), act Aug. 16, 1954, ch. 736, 68A Stat. 639, 661, prior to the general revision of this chapter by Pub. L. 85-859.

AMENDMENTS

2005—Subsec. (b)(2). Pub. L. 109-59, §11125(b)(13)(A), substituted “section 5121(c)(3)” for “section 5112(a)”.

Subsec. (b)(3). Pub. L. 109-59, §11125(b)(13)(B), substituted “section 5121(c)” for “section 5112”.

Subsec. (b)(4). Pub. L. 109-59, §11125(b)(13)(C), substituted “section 5122(c)” for “section 5122”.

1994—Subsec. (b)(1) to (6). Pub. L. 103-465 redesignated pars. (2) to (6) as (1) to (5), respectively, and struck out former par. (1) which provided a cross reference to section 5041(c) of this title for definition of “wine gallon”.

1979—Subsec. (a)(1). Pub. L. 96-39 substituted “distilled spirits operation” for “operation, or any combination of operations, for which qualification is required under such subchapter”.

Subsec. (a)(2), (3). Pub. L. 96-39 added par. (2) and redesignated former par. (2) as (3). Former par. (3), defining “bottling premises”, was struck out.

Subsec. (a)(4). Pub. L. 96-39 redesignated par. (5) as (4). Former par. (4), defining “bonded warehouseman”, was struck out.

Subsec. (a)(5) to (7). Pub. L. 96-39 added pars. (5) to (7) and redesignated former pars. (5) to (7) as (4), (8), and (10), respectively.

Subsec. (a)(8). Pub. L. 96-39 redesignated former par. (6) as (8). Former par. (8) redesignated (11).

Subsec. (a)(9). Pub. L. 96-39 added par. (9) and redesignated par. (9) as (12).

Subsec. (a)(10) to (15). Pub. L. 96-39 redesignated former pars. (7) to (12) as (10) to (15), respectively.

Subsec. (b). Pub. L. 95-39 struck out par. (2) which provided for a cross reference to section 5082 for a definition of rectifier and redesignated pars. (3) to (7) as (2) to (6), respectively.

1976—Subsec. (a)(10). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1965—Subsec. (a). Pub. L. 89-44 added par. (12).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-59, title XI, §11125(c), Aug. 10, 2005, 119 Stat. 1957, provided that: “The amendments made by this section [see Tables for classification] shall take effect on July 1, 2008, but shall not apply to taxes imposed for periods before such date.”

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 1965 AMENDMENT

Pub. L. 89-44, title VIII, §807(c), June 21, 1965, 79 Stat. 164, provided that: “The amendments made by sub-

sections (a) and (b) [amending this section and section 5053 of this title] shall take effect on July 1, 1965.”

§ 5003. Cross references to exemptions, etc.

(1) For provisions authorizing the withdrawal of distilled spirits free of tax for use by Federal or State agencies, see sections 5214(a)(2) and 5313.

(2) For provisions authorizing the withdrawal of distilled spirits free of tax by nonprofit educational organizations, scientific universities or colleges of learning, laboratories, hospitals, blood banks, sanitariums, and charitable clinics, see section 5214(a)(3).

(3) For provisions authorizing the withdrawal of certain imported distilled spirits from customs custody without payment of tax, see section 5232.

(4) For provisions authorizing the withdrawal of denatured distilled spirits free of tax, see section 5214(a)(1).

(5) For provisions exempting from tax distilled spirits for use in production of vinegar by the vaporizing process, see section 5505(j).

(6) For provisions relating to the withdrawal of wine spirits without payment of tax for use in the production of wine, see section 5373.

(7) For provisions exempting from tax volatile fruit-flavor concentrates, see section 5511.

(8) For provisions authorizing the withdrawal of distilled spirits from bonded premises without payment of tax for export, see section 5214(a)(4).

(9) For provisions authorizing withdrawal of distilled spirits without payment of tax to customs bonded warehouses for export, see section 5214(a)(9).

(10) For provisions relating to withdrawal of distilled spirits without payment of tax as supplies for certain vessels and aircraft, see 19 U.S.C. 1309.

(11) For provisions authorizing regulations for withdrawal of distilled spirits for use of United States free of tax, see section 7510.

(12) For provisions relating to withdrawal of distilled spirits without payment of tax to foreign-trade zones, see 19 U.S.C. 81c.

(13) For provisions relating to exemption from tax of taxable articles going into the possessions of the United States, see section 7653(b).

(14) For provisions authorizing the withdrawal of distilled spirits without payment of tax for use in certain research, development, or testing, see section 5214(a)(10).

(15) For provisions authorizing the withdrawal of distilled spirits without payment of tax for transfer to manufacturing bonded warehouses for manufacturing for export, see section 5214(a)(6).

(16) For provisions authorizing the withdrawal of articles from the bonded premises of a distilled spirits plant free of tax when contained in an article, see section 5214(a)(11).

(17) For provisions relating to allowance for certain losses in bond, see section 5008(a).

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1316; amended Pub. L. 95-176, §§3(c), 4(f), Nov. 14, 1977, 91 Stat. 1365, 1366; Pub. L. 96-39, title VIII, §807(a)(1), July 26, 1979, 93 Stat. 280.)

Editorial Notes

PRIOR PROVISIONS

A prior section 5003, act Aug. 16, 1954, ch. 736, 68A Stat. 597, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85-859.

AMENDMENTS

1979—Par. (9). Pub. L. 96-39, §807(a)(1)(A), struck out “section 5522(a) and” before “section 5214(a)(9)”.

Pars. (15) to (17). Pub. L. 96-39, §807(a)(1)(B), added pars. (15) and (16) and redesignated former par. (15) as (17).

1977—Par. (9). Pub. L. 95-176, §3(c), struck out “manufacturing” after “customs” and inserted reference to section 5214(a)(9).

Par. (14). Pub. L. 95-176, §4(f), substituted “withdrawal of distilled spirits without payment of tax for use in certain research, development, or testing, see section 5214(a)(10)” for “removal of samples free of tax for making tests or laboratory analyses, see section 5214(a)(9)”.

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.

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-176, §7, Nov. 14, 1977, 91 Stat. 1367, provided that: “The amendments made by this Act [amending this section and sections 5004, 5005, 5008, 5025, 5062, 5066, 5175, 5178, 5205, 5207, 5214, 5215, and 5234 of this title] shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [Nov. 14, 1977].”

§ 5004. Lien for tax

(a) Distilled spirits subject to lien

(1) General

The tax imposed by section 5001(a)(1) shall be a first lien on the distilled spirits from the time the spirits are in existence as such until the tax is paid.

(2) Exceptions

The lien imposed by paragraph (1), or any similar lien imposed on the spirits under prior provisions of internal revenue law, shall terminate in the case of distilled spirits produced on premises qualified under internal revenue law for the production of distilled spirits when such distilled spirits are—

(A) withdrawn from bonded premises on determination of tax; or

(B) withdrawn from bonded premises free of tax under provisions of section 5214(a)(1), (2), (3), (11), or (12), or section 7510; or

(C) exported, deposited in a foreign-trade zone, used in the production of wine, laden as supplies upon, or used in the maintenance or repair of, certain vessels or aircraft, deposited in a customs bonded warehouse, or used in certain research, development, or testing, as provided by law.

(b) Cross reference

For provisions relating to extinguishing of lien in case of redistillation, see section 5223(e).

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1317; amended Pub. L. 89-44, title VIII, §805(f)(1), June 21, 1965, 79 Stat. 161; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-176, §4(c), Nov. 14, 1977, 91 Stat. 1366; Pub. L. 96-39, title VIII, §807(a)(2), July 26, 1979, 93 Stat. 280; Pub. L. 96-223, title II, §232(e)(2)(C), Apr. 2, 1980, 94 Stat. 280.)

Editorial Notes

PRIOR PROVISIONS

A prior section 5004, act Aug. 16, 1954, ch. 736, 68A Stat. 598, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85-859.