

(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.)

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”.

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 condi-

tion 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.)

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.

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, consignor, 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 such loss. In every case where it appears that the loss was by theft, the burden shall be upon the proprietor of the distilled spirits plant or other person responsible for the distilled spirits tax to establish to the satisfaction of the Secretary that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the proprietor of the distilled spirits plant, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them.

(3) Refund of tax

In any case where the tax would not be collectible by virtue of paragraph (1), but such

tax has been paid, the Secretary shall refund such tax.

(4) Limitations

Except as provided in paragraph (5), no tax shall be abated, remitted, credited, or refunded under this subsection where the loss occurred after the tax was determined (as provided in section 5006(a)). The abatement, remission, credit, or refund of taxes provided for by paragraphs (1) and (3) in the case of loss of distilled spirits by theft shall only be allowed to the extent that the claimant is not indemnified against or recompensed in respect of the tax for such loss.

(5) Applicability

The provisions of this subsection shall extend to and apply in respect of distilled spirits lost after the tax was determined and before completion of the physical removal of the distilled spirits from the bonded premises.

(b) Voluntary destruction

The proprietor of the distilled spirits plant or other persons liable for the tax imposed by this chapter or by section 7652 with respect to any distilled spirits in bond may voluntarily destroy such spirits, but only if such destruction is under such supervision and under such regulations as the Secretary may prescribe.

(c) Distilled spirits returned to bonded premises

(1) In general

Whenever any distilled spirits on which tax has been determined or paid are returned to the bonded premises of a distilled spirits plant under section 5215(a), the Secretary shall abate or (without interest) credit or refund the tax imposed under section 5001(a)(1) (or the tax equal to such tax imposed under section 7652) on the spirits so returned.

(2) Claim must be filed within 6 months of return of spirits

No allowance under paragraph (1) may be made unless claim therefor is filed within 6 months of the date of the return of the spirits. Such claim may be filed only by the proprietor of the distilled spirits plant to which the spirits were returned, and shall be filed in such form as the Secretary may by regulations prescribe.

(d) Distilled spirits withdrawn without payment of tax

The provisions of subsection (a) shall be applicable to loss of distilled spirits occurring during transportation from bonded premises of a distilled spirits plant to—

(1) the port of export, in case of withdrawal under section 5214(a)(4);

(2) the customs manufacturing bonded warehouse, in case of withdrawal under section 5214(a)(6);

(3) the vessel or aircraft, in case of withdrawal under section 5214(a)(7);

(4) the foreign-trade zone, in case of withdrawal under section 5214(a)(8); and

(5) the customs bonded warehouse in the case of withdrawal under sections 5066 and 5214(a)(9).

The provisions of subsection (a) shall be applicable to loss of distilled spirits withdrawn from