

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1905(a)(2) 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.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91-659 effective on first day of first calendar month which begins more than 90 days after Jan. 8, 1971, see section 6 of Pub. L. 91-659, set out as an Effective Date note under section 5066 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90-630, § 4, Oct. 22, 1968, 82 Stat. 1329, provided that:

“(a) For purposes of subsection (b), the effective date of this Act is the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [Oct. 22, 1968].

“(b) The amendments made by the first section of this Act [amending this section] shall apply only to losses sustained on or after such effective date. The amendments made by section 2 [amending section 5062 of this title and section 1313 of Title 19, Customs Duties] shall apply only to articles exported on or after such effective date. The amendments made by section 3 [amending section 5232 of this title] shall apply only to withdrawals from customs custody on or after such effective date.”

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89-44, title VIII, § 805(g)(1), June 21, 1965, 79 Stat. 162, provided that: “The amendments made by subsections (a), (c), (e), and (f)(6) [amending this section and sections 5062, 5215, and 5608 of this title] shall take effect on July 1, 1965.”

DISTILLED SPIRITS RETURNED TO BONDED PREMISES OF DISTILLED SPIRITS PLANT DURING 1980

Subsec. (c)(1) of this section to be treated as including a reference to section 5041 of this title with respect to distilled spirits returned to the bonded premises of distilled spirits plants during 1980, see section 808(d) of Pub. L. 96-39, set out as a note under section 5061 of this title.

[§ 5009. Repealed. Pub. L. 96-39, title VIII, § 807(a)(7), July 26, 1979, 93 Stat. 281]

Section, added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1327; amended Pub. L. 94-455, title XIX, §§ 1905(a)(3), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1818, 1834, related to drawback on exportation of distilled spirits in casks or packages.

A prior section 5009, act Aug. 16, 1954, ch. 736, 68A Stat. 603, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85-859. See sections 5205(c)(1), (f), (i)(4) and 5206(c) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1980, see section 810 of Pub. L. 96-39, set out as an Effective Date of 1979 Amendment note under section 5001 of this title.

§ 5010. Credit for wine content and for flavors content**(a) Allowance of credit****(1) Wine content**

On each proof gallon of the wine content of distilled spirits, there shall be allowed a credit against the tax imposed by section 5001 (or 7652) equal to the excess of—

(A) \$13.50, over

(B) the rate of tax which would be imposed on the wine under section 5041(b) but for its removal to bonded premises.

(2) Flavors content

On each proof gallon of the flavors content of distilled spirits, there shall be allowed a credit against the tax imposed by section 5001 (or 7652) equal to \$13.50.

(3) Fractional part of proof gallon

In the case of any fractional part of a proof gallon of the wine content, or of the flavors content, of distilled spirits, a proportionate credit shall be allowed.

(b) Time for determining and allowing credit**(1) In general**

The credit allowable by subsection (a)—

(A) shall be determined at the same time the tax is determined under section 5006 (or 7652) on the distilled spirits containing the wine or flavors, and

(B) shall be allowable at the time the tax imposed by section 5001 (or 7652) on such distilled spirits is payable as if the credit allowable by this section constituted a reduction in the rate of tax.

(2) Determination of content in the case of imports

For purposes of this section, the wine content, and the flavors content, of imported distilled spirits shall be established by such chemical analysis, certification, or other methods as may be set forth in regulations prescribed by the Secretary.

(c) Definitions

For purposes of this section—

(1) Wine content**(A) In general**

The term “wine content” means alcohol derived from wine.

(B) Wine

The term “wine”—

(i) means wine on which tax would be imposed by paragraph (1), (2), or (3) of section 5041(b) but for its removal to bonded premises, and

(ii) does not include any substance which has been subject to distillation at a distilled spirits plant after receipt in bond.

(2) Flavors content**(A) In general**

Except as provided in subparagraph (B), the term “flavors content” means alcohol derived from flavors of a type for which drawback is allowable under section 5114.

(B) Exceptions

The term “flavors content” does not include—

(i) alcohol derived from flavors made at a distilled spirits plant,

(ii) alcohol derived from flavors distilled at a distilled spirits plant, and

(iii) in the case of any distilled spirits product, alcohol derived from flavors to the extent such alcohol exceeds (on a proof

gallon basis) 2½ percent of the finished product.

(Added Pub. L. 96-598, §6(a), Dec. 24, 1980, 94 Stat. 3488; amended Pub. L. 98-369, div. A, title I, §27(a)(2), July 18, 1984, 98 Stat. 507; Pub. L. 100-647, title V, §5063(a), Nov. 10, 1988, 102 Stat. 3681; Pub. L. 101-508, title XI, §11201(a)(2), Nov. 5, 1990, 104 Stat. 1388-415; Pub. L. 109-59, title XI, §11125(b)(14), Aug. 10, 2005, 119 Stat. 1956.)

PRIOR PROVISIONS

A prior section 5010, act Aug. 16, 1954, ch. 736, 68A Stat. 603, related to miscellaneous stamp provisions, prior to the general revision of this chapter by Pub. L. 85-859.

AMENDMENTS

2005—Subsec. (c)(2)(A). Pub. L. 109-59 substituted “section 5114” for “section 5134”.

1990—Subsec. (a)(1), (2). Pub. L. 101-508 substituted “\$13.50” for “\$12.50”.

1988—Subsec. (c)(2)(B). Pub. L. 100-647 added cl. (ii) and redesignated former cl. (ii) as (iii).

1984—Subsec. (a)(1), (2). Pub. L. 98-369 substituted “\$12.50” for “\$10.50”.

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 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective Jan. 1, 1991, see section 11201(d) of Pub. L. 101-508, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title V, §5063(b), Nov. 10, 1988, 102 Stat. 3681, provided that: “The amendments made by this section [amending this section] shall apply with respect to distilled spirits withdrawn from bond after the date of the enactment of this Act [Nov. 10, 1988].”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Oct. 1, 1985, see section 27(d)(1) of Pub. L. 98-369, set out as a note under section 5001 of this title.

EFFECTIVE DATE

Pub. L. 96-598, §6(c), Dec. 24, 1980, 94 Stat. 3489, provided that: “The amendments made by subsections (a) and (b) [enacting this section] shall take effect on January 1, 1980.”

§ 5011. Income tax credit for average cost of carrying excise tax

(a) In general

For purposes of section 38, the amount of the distilled spirits credit for any taxable year is the amount equal to the product of—

(1) in the case of—

(A) any eligible wholesaler, the number of cases of bottled distilled spirits—

(i) which were bottled in the United States, and

(ii) which are purchased by such wholesaler during the taxable year directly from the bottler of such spirits, or

(B) any person which is subject to section 5005 and which is not an eligible wholesaler, the number of cases of bottled distilled spirits which are stored in a warehouse operated

by, or on behalf of, a State or political subdivision thereof, or an agency of either, on which title has not passed on an unconditional sale basis, and

(2) the average tax-financing cost per case for the most recent calendar year ending before the beginning of such taxable year.

(b) Eligible wholesaler

For purposes of this section, the term “eligible wholesaler” means any person which holds a permit under the Federal Alcohol Administration Act as a wholesaler of distilled spirits which is not a State or political subdivision thereof, or an agency of either.

(c) Average tax-financing cost

(1) In general

For purposes of this section, the average tax-financing cost per case for any calendar year is the amount of interest which would accrue at the deemed financing rate during a 60-day period on an amount equal to the deemed Federal excise tax per case.

(2) Deemed financing rate

For purposes of paragraph (1), the deemed financing rate for any calendar year is the average of the corporate overpayment rates under paragraph (1) of section 6621(a) (determined without regard to the last sentence of such paragraph) for calendar quarters of such year.

(3) Deemed Federal excise tax per case

For purposes of paragraph (1), the deemed Federal excise tax per case is \$25.68.

(d) Other definitions and special rules

For purposes of this section—

(1) Case

The term “case” means 12 80-proof 750-milliliter bottles.

(2) Number of cases in lot

The number of cases in any lot of distilled spirits shall be determined by dividing the number of liters in such lot by 9.

(Added Pub. L. 109-59, title XI, §11126(a), Aug. 10, 2005, 119 Stat. 1957.)

REFERENCES IN TEXT

The Federal Alcohol Administration Act, referred to in subsec. (b), is act Aug. 29, 1935, ch. 814, 49 Stat. 977, as amended, which is classified generally to subchapter I (§201 et seq.) of chapter 8 of Title 27, Intoxicating Liquors. For complete classification of this Act to the Code, see section 201 of Title 27 and Tables.

PRIOR PROVISIONS

A prior section 5011, act Aug. 16, 1954, ch. 736, 68A Stat. 604, related to abatement, remission, refund and allowance for loss or destruction of distilled spirits, prior to the general revision of this chapter by Pub. L. 85-859.

A prior section 5012, act Aug. 16, 1954, ch. 736, 68A Stat. 605, related to drawback on exportation of distilled spirits, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section applicable to taxable years beginning after Sept. 30, 2005, see section 11126(d) of Pub. L. 109-59, set out as an Effective Date of 2005 Amendments note under section 38 of this title.