

1976—Pub. L. 94-455 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.

§ 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.)

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.)

PRIOR PROVISIONS

A prior section 5114 was renumbered section 5432 of this title.

Another prior section 5114, act Aug. 16, 1954, ch. 736, 68A Stat. 619, related to recordkeeping by wholesale dealers, prior to the general revision of this chapter by Pub. L. 85-859.

A prior section 5115, added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1342; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to requirement that a sign be posted on premises where liquor is sold and penalty for noncompliance, prior to repeal by Pub. L. 105-34, title XIV, §1415(a), Aug. 5, 1997, 111 Stat. 1047.

Another prior section 5115, act Aug. 16, 1954, ch. 736, 68A Stat. 620, related to making and stamping packages filled on premises of wholesale dealers, prior to the general revision of this chapter by Pub. L. 85-859.

A prior section 5116 was renumbered section 5131 of this title.

Another prior section 5116, act Aug. 16, 1954, ch. 736, 68A Stat. 620, related to packaging of distilled spirits for industrial uses, prior to the general revision of this chapter by Pub. L. 85-859.

A prior section 5117, added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1343; amended Pub. L. 94-455, title XIX, § 1905(a)(8), Oct. 4, 1976, 90 Stat. 1819; Pub. L. 108-357, title II, § 246(b), Oct. 22, 2004, 118 Stat. 1448, related to prohibited purchases by wholesale dealers in liquors, 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.

AMENDMENTS

2005—Pub. L. 109-59 renumbered section 5134 of this title as this section.

1996—Subsec. (c)(3). Pub. L. 104-188 substituted “section 6665(a)” for “section 6662(a)”.

1994—Subsec. (c)(1). Pub. L. 103-465 substituted “flavoring extracts, or perfume” for “or flavoring extracts”.

1984—Subsec. (c). Pub. L. 98-369 added subsec. (c).

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

1968—Subsec. (b). Pub. L. 90-615 substituted “6 months” for “3 months” in last sentence.

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 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to products manufactured or produced after Oct. 31, 1984, see section 456(d) of Pub. L. 98-369, set out as an Effective Date note under section 5101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90-615, § 2(b), Oct. 21, 1968, 82 Stat. 1210, provided that: “The amendment made by subsection (a) [amending this section] shall apply to claims filed on or after the date of the enactment of this Act [Oct. 21, 1968].”

SUBPART C—RECORDKEEPING AND REGISTRATION BY DEALERS

Sec.

- 5121. Recordkeeping by wholesale dealers.
- 5122. Recordkeeping by retail dealers.
- 5123. Preservation and inspection of records, and entry of premises for inspection.
- 5124. Registration by dealers.

PRIOR PROVISIONS

A prior subpart C was redesignated subpart A of this part.

Another prior subpart C, consisting of sections 5101 to 5106, related to manufacturers of stills, prior to the general revision of this subpart by Pub. L. 98-369, div. A, title IV, § 451(a), July 18, 1984, 98 Stat. 818.

Another prior subpart C, consisting of sections 5101 to 5106, related to manufacturers of stills, prior to the general revision of this chapter by Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

2005—Pub. L. 109-59, title XI, § 11125(b)(4), Aug. 10, 2005, 119 Stat. 1954, added subpart heading and items 5121 to 5124.

§ 5121. Recordkeeping by wholesale dealers

(a) Requirements

(1) Distilled spirits

Every wholesale dealer in liquors who sells distilled spirits to other dealers shall keep

daily a record of distilled spirits received and disposed of by him, in such form and at such place and containing such information, and shall submit correct summaries of such records to the Secretary at such time and in such form and manner, as the Secretary shall by regulations prescribe. Such dealer shall also submit correct extracts from or copies of such records, at such time and in such form and manner as the Secretary may by regulations prescribe; however, the Secretary may on application by such dealer, in accordance with such regulations, relieve him from this requirement until further notice, whenever the Secretary deems that the submission of such extracts or copies serves no useful purpose in law enforcement or in protection of the revenue.

(2) Wines and beer

Every wholesale dealer in liquors and every wholesale dealer in beer shall provide and keep, at such place as the Secretary shall by regulations prescribe, a record in book form of all wines and beer received, showing the quantities thereof and from whom and the dates received, or shall keep all invoices of, and bills for, all wines and beer received.

(b) Exemption of States, political subdivisions, etc.

The provision of subsection (a) shall not apply to a State, to a political subdivision of a State, to the District of Columbia, or to liquor stores operated by any of them, if they maintain and make available for inspection by internal revenue officers such records as will enable such officers to trace all distilled spirits, wines, and beer received, and all distilled spirits disposed of by them. Such States, subdivisions, District, or liquor stores shall, upon the request of the Secretary, furnish him such transcripts, summaries and copies of their records with respect to distilled spirits as he shall require.

(c) Wholesale dealers

For purposes of this part—

(1) Wholesale dealer in liquors

The term “wholesale dealer in liquors” means any dealer (other than a wholesale dealer in beer) who sells, or offers for sale, distilled spirits, wines, or beer, to another dealer.

(2) Wholesale dealer in beer

The term “wholesale dealer in beer” means any dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to another dealer.

(3) Dealer

The term “dealer” means any person who sells, or offers for sale, any distilled spirits, wines, or beer.

(4) Presumption in case of sale of 20 wine gallons or more

The sale, or offer for sale, of distilled spirits, wines, or beer, in quantities of 20 wine gallons or more to the same person at the same time, shall be presumptive evidence that the person making such sale, or offer for sale, is engaged in or carrying on the business of a wholesale