

Sec.
4462. Definitions and special rules.

PRIOR PROVISIONS

A prior subchapter A (§§ 4451 to 4457), act Aug. 16, 1954, ch. 736, 68A Stat. 529, 530, related to tax on playing cards, prior to repeal by Pub. L. 89-44, title IV, § 402, June 21, 1965, 79 Stat. 148. Repeal of sections 4451 to 4457 applicable on and after June 22, 1965, see section 701(c)(2) of Pub. L. 89-44, set out in part as an Effective Date of 1965 Amendment note under section 4905 of this title.

§ 4461. Imposition of tax

(a) General rule

There is hereby imposed a tax on any port use.

(b) Amount of tax

The amount of the tax imposed by subsection (a) on any port use shall be an amount equal to 0.125 percent of the value of the commercial cargo involved.

(c) Liability and time of imposition of tax

(1) Liability

The tax imposed by subsection (a) shall be paid by—

- (A) in the case of cargo entering the United States, the importer, or
- (B) in any other case, the shipper.

(2) Time of imposition

Except as provided by regulations, the tax imposed by subsection (a) shall be imposed at the time of unloading.

(Added Pub. L. 99-662, title XIV, §1402(a), Nov. 17, 1986, 100 Stat. 4266; amended Pub. L. 101-508, title XI, §11214(a), Nov. 5, 1990, 104 Stat. 1388-436; Pub. L. 109-59, title XI, §11116(b), Aug. 10, 2005, 119 Stat. 1951.)

PRIOR PROVISIONS

For prior section 4461, see Prior Provisions note set out preceding section 4471 of this title.

AMENDMENTS

2005—Subsec. (c)(1). Pub. L. 109-59, §11116(b)(1), inserted “or” at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: “in the case of cargo to be exported from the United States, the exporter, or”.

Subsec. (c)(2). Pub. L. 109-59, §11116(b)(2), substituted “imposed” for “imposed—

“(A) in the case of cargo to be exported from the United States, at the time of loading, and

“(B) in any other case.”.

1990—Subsec. (b). Pub. L. 101-508 substituted “0.125 percent” for “0.04 percent”.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-59, title XI, §11116(c), Aug. 10, 2005, 119 Stat. 1951, provided that: “The amendments made by this section [amending this section and section 4462 of this title] shall take effect before, on, and after the date of the enactment of this Act [Aug. 10, 2005].”

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11214(b), Nov. 5, 1990, 104 Stat. 1388-436, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1991.”

EFFECTIVE DATE

Pub. L. 99-662, title XIV, §1402(c), Nov. 17, 1986, 100 Stat. 4269, provided that: “The amendments made by

this section [enacting this section and section 4462 of this title] shall take effect on April 1, 1987.”

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 99-662, title XIV, §1403(b), Nov. 17, 1986, 100 Stat. 4270, authorized to be appropriated to Department of the Treasury (from fees collected under section 58c(9), (10) of Title 19, Customs Duties) such sums as necessary to pay all expenses of administration incurred by such Department in administering this subchapter for periods to which such fees apply, prior to repeal by Pub. L. 103-182, title VI, §690(c)(8), Dec. 8, 1993, 107 Stat. 2223.

STUDY OF CARGO DIVERSION

Pub. L. 99-662, title XIV, §1407, Nov. 17, 1986, 100 Stat. 4272, as amended by Pub. L. 100-647, title II, §2002(c), Nov. 10, 1988, 102 Stat. 3597, provided that:

“(a) INITIAL STUDY.—The Secretary of the Treasury, in consultation with United States ports, the Secretary of the Army, the Secretary of Transportation, the United States Trade Representative and other appropriate Federal agencies, shall conduct a study to determine the impact of the port use tax imposed under section 4461(a) of the Internal Revenue Code of 1954 [now 1986] on potential diversions of cargo from particular United States ports to any port in a country contiguous to the United States. The report of the study shall be submitted to the Ways and Means Committee of the House of Representatives and the Committee on Finance of the United States Senate not later than December 1, 1988.

“(b) REVIEW.—The Secretary of the Treasury may, at any time, review and revise the findings of the study conducted pursuant to subsection (a) with respect to any United States port (or to any transaction or class of transactions at such port).

“(c) IMPLEMENTATION OF FINDINGS.—For purposes of section 4462(d)(2)(B) of the Internal Revenue Code of 1954 [now 1986], the findings of the study or review conducted pursuant to subsections (a) and (b) of this section shall be effective 60 days after notification to the ports concerned.”

§ 4462. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

(1) Port use

The term “port use” means—

- (A) the loading of commercial cargo on, or
- (B) the unloading of commercial cargo from,

a commercial vessel at a port.

(2) Port

(A) In general

The term “port” means any channel or harbor (or component thereof) in the United States, which—

- (i) is not an inland waterway, and
- (ii) is open to public navigation.

(B) Exception for certain facilities

The term “port” does not include any channel or harbor with respect to which no Federal funds have been used since 1977 for construction, maintenance, or operation, or which was deauthorized by Federal law before 1985.

(C) Special rule for Columbia River

The term “port” shall include the channels of the Columbia River in the States of Oregon and Washington only up to the downstream side of Bonneville lock and dam.

(3) Commercial cargo**(A) In general**

The term “commercial cargo” means any cargo transported on a commercial vessel, including passengers transported for compensation or hire.

(B) Certain items not included

The term “commercial cargo” does not include—

- (i) bunker fuel, ship’s stores, sea stores, or the legitimate equipment necessary to the operation of a vessel, or
- (ii) fish or other aquatic animal life caught and not previously landed on shore.

(4) Commercial vessel**(A) In general**

The term “commercial vessel” means any vessel used—

- (i) in transporting cargo by water for compensation or hire, or
- (ii) in transporting cargo by water in the business of the owner, lessee, or operator of the vessel.

(B) Exclusion of ferries**(i) In general**

The term “commercial vessel” does not include any ferry engaged primarily in the ferrying of passengers (including their vehicles) between points within the United States, or between the United States and contiguous countries.

(ii) Ferry

The term “ferry” means any vessel which arrives in the United States on a regular schedule during its operating season at intervals of at least once each business day.

(5) Value**(A) In general**

The term “value” means, except as provided in regulations, the value of any commercial cargo as determined by standard commercial documentation.

(B) Transportation of passengers

In the case of the transportation of passengers for hire, the term “value” means the actual charge paid for such service or the prevailing charge for comparable service if no actual charge is paid.

(b) Special rule for Alaska, Hawaii, and possessions**(1) In general**

No tax shall be imposed under section 4461(a) with respect to—

(A) cargo loaded on a vessel in a port in the United States mainland for transportation to Alaska, Hawaii, or any possession of the United States for ultimate use or consumption in Alaska, Hawaii, or any possession of the United States,

(B) cargo loaded on a vessel in Alaska, Hawaii, or any possession of the United States for transportation to the United States mainland, Alaska, Hawaii, or such a posses-

sion for ultimate use or consumption in the United States mainland, Alaska, Hawaii, or such a possession,

(C) the unloading of cargo described in subparagraph (A) or (B) in Alaska, Hawaii, or any possession of the United States, or in the United States mainland, respectively, or

(D) cargo loaded on a vessel in Alaska, Hawaii, or a possession of the United States and unloaded in the State or possession in which loaded, or passengers transported on United States flag vessels operating solely within the State waters of Alaska or Hawaii and adjacent international waters.

(2) Cargo does not include crude oil with respect to Alaska

For purposes of this subsection, the term “cargo” does not include crude oil with respect to Alaska.

(3) United States mainland

For purposes of this subsection, the term “United States mainland” means the continental United States (not including Alaska).

(c) Coordination of tax where transportation subject to tax imposed by section 4042

No tax shall be imposed under this subchapter with respect to the loading or unloading of any cargo on or from a vessel if any fuel of such vessel has been (or will be) subject to the tax imposed by section 4042 (relating to tax on fuel used in commercial transportation on inland waterways).

(d) Nonapplicability of tax to exports

The tax imposed by section 4461(a) shall not apply to any port use with respect to any commercial cargo to be exported from the United States.

(e) Exemption for United States

No tax shall be imposed under this subchapter on the United States or any agency or instrumentality thereof.

(f) Extension of provisions of law applicable to customs duty**(1) In general**

Except to the extent otherwise provided in regulations, all administrative and enforcement provisions of customs laws and regulations shall apply in respect of the tax imposed by this subchapter (and in respect of persons liable therefor) as if such tax were a customs duty. For purposes of the preceding sentence, any penalty expressed in terms of a relationship to the amount of the duty shall be treated as not less than the amount which bears a similar relationship to the value of the cargo.

(2) Jurisdiction of courts and agencies

For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, the tax imposed by this subchapter shall be treated as if such tax were a customs duty.

(3) Administrative provisions applicable to tax law not to apply

The tax imposed by this subchapter shall not be treated as a tax for purposes of subtitle F

or any other provision of law relating to the administration and enforcement of internal revenue taxes.

(g) Special rules

Except as provided by regulations—

(1) Tax imposed only once

Only 1 tax shall be imposed under section 4461(a) with respect to the loading on and unloading from, or the unloading from and the loading on, the same vessel of the same cargo.

(2) Exception for intraport movements

Under regulations, no tax shall be imposed under section 4461(a) on the mere movement of cargo within a port.

(3) Relay cargo

Only 1 tax shall be imposed under section 4461(a) on cargo (moving under a single bill of lading) which is unloaded from one vessel and loaded onto another vessel at any port in the United States for relay to or from any port in Alaska, Hawaii, or any possession of the United States. For purposes of this paragraph, the term “cargo” does not include any item not treated as cargo under subsection (b)(2).

(h) Exemption for humanitarian and development assistance cargos

No tax shall be imposed under this subchapter on any nonprofit organization or cooperative for cargo which is owned or financed by such nonprofit organization or cooperative and which is certified by the United States Customs Service as intended for use in humanitarian or development assistance overseas.

(i) Regulations

The Secretary may prescribe such additional regulations as may be necessary to carry out the purposes of this subchapter including, but not limited to, regulations—

- (1) providing for the manner and method of payment and collection of the tax imposed by this subchapter,
- (2) providing for the posting of bonds to secure payment of such tax,
- (3) exempting any transaction or class of transactions from such tax where the collection of such tax is not administratively practical, and
- (4) providing for the remittance or mitigation of penalties and the settlement or compromise of claims.

(Added Pub. L. 99-662, title XIV, §1402(a), Nov. 17, 1986, 100 Stat. 4266; amended Pub. L. 100-647, title II, §2002(b), title VI, §§6109(a), 6110(a), Nov. 10, 1988, 102 Stat. 3597, 3712; Pub. L. 104-188, title I, §1704(i)(1), Aug. 20, 1996, 110 Stat. 1881; Pub. L. 109-59, title XI, §11116(a), Aug. 10, 2005, 119 Stat. 1950.)

PRIOR PROVISIONS

For prior section 4462, see Prior Provisions note set out preceding section 4471 of this title.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109-59 amended heading and text of subsec. (d) generally, substituting provisions relating to nonapplicability of tax imposed by section 4461(a) to exports for provisions relating to nonappli-

cability of tax imposed by section 4461(a) to bonded commercial cargo entering the United States for transportation and direct exportation to a foreign country and inapplicability of this provision to certain cargo exported to Canada or Mexico.

1996—Subsec. (b)(1)(D). Pub. L. 104-188 inserted before period at end “, or passengers transported on United States flag vessels operating solely within the State waters of Alaska or Hawaii and adjacent international waters”.

1988—Subsec. (b)(1)(B). Pub. L. 100-647, §2002(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “cargo loaded on a vessel in Alaska, Hawaii, or any possession of the United States for transportation to the United States mainland for ultimate use or consumption in the United States mainland.”.

Subsec. (g)(3). Pub. L. 100-647, §6110(a), added par. (3). Subsecs. (h), (i). Pub. L. 100-647, §6109(a), added subsec. (h) and redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-59 effective before, on, and after Aug. 10, 2005, see section 11116(c) of Pub. L. 109-59, set out as a note under section 4461 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, §1704(i)(2), Aug. 20, 1996, 110 Stat. 1881, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 1402(a) of the Harbor Maintenance Revenue Act of 1986 [Pub. L. 99-662, title XIV].”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 2002(b) of Pub. L. 100-647 effective as if included in the provision of the Harbor Maintenance Revenue Act of 1986, Pub. L. 99-662, title XIV, to which it relates, see section 2002(d) of Pub. L. 100-647, set out as a note under section 4042 of this title.

Pub. L. 100-647, title VI, §6109(b), Nov. 10, 1988, 102 Stat. 3712, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on April 1, 1987.”

Pub. L. 100-647, title VI, §6110(b), Nov. 10, 1988, 102 Stat. 3713, provided that: “The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988].”

EFFECTIVE DATE

Section effective Apr. 1, 1987, see section 1402(c) of Pub. L. 99-662, set out as a note under section 4461 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Subchapter B—Transportation by Water

- Sec. 4471. Imposition of tax.
- 4472. Definitions.

PRIOR PROVISIONS

A prior subchapter B, consisted of sections 4461 to 4464 of this title, prior to repeal by Pub. L. 95-600, title V, §521(b), Nov. 6, 1978, 92 Stat. 2884, applicable with respect to years beginning after June 30, 1980.

Section 4461, acts Aug. 16, 1954, ch. 736, 68A Stat. 531; Sept. 21, 1959, Pub. L. 86-344, §6(a), 73 Stat. 620; June 21,