

Sec.	
5762.	Criminal penalties.
5763.	Forfeitures.

AMENDMENTS

1987—Pub. L. 100-203, title X, § 10512(f)(1), Dec. 22, 1987, 101 Stat. 1330-449, redesignated subchapter F as G.

1965—Pub. L. 89-44, title V, § 502(b)(7), June 21, 1965, 79 Stat. 151, redesignated subchapter G as F. Former subchapter F redesignated E.

1958—Pub. L. 85-859, title II, § 202, Sept. 2, 1958, 72 Stat. 1425, substituted “Penalties and Forfeitures” for “Fines, Penalties, and Forfeitures” in subchapter heading.

§ 5761. Civil penalties**(a) Omitting things required or doing things forbidden**

Whoever willfully omits, neglects, or refuses to comply with any duty imposed upon him by this chapter, or to do, or cause to be done, any of the things required by this chapter, or does anything prohibited by this chapter, shall in addition to any other penalty provided in this title, be liable to a penalty of \$1,000, to be recovered, with costs of suit, in a civil action, except where a penalty under subsection (b) or (c) or under section 6651 or 6653 or part II of subchapter A of chapter 68 may be collected from such person by assessment.

(b) Failure to pay tax

Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this title, be liable to a penalty of 5 percent of the tax due but unpaid.

(c) Sale of tobacco products and cigarette papers and tubes for export

Except as provided in subsections (b) and (d) of section 5704—

(1) every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation under this chapter,

(2) every person who sells or receives such relanded tobacco products or cigarette papers or tubes, and

(3) every person who aids or abets in such selling, relanding, or receiving,

shall, in addition to the tax and any other penalty provided in this title, be liable for a penalty equal to the greater of \$1,000 or 5 times the amount of the tax imposed by this chapter. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States shall be forfeited to the United States and destroyed. All vessels, vehicles, and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States. This subsection and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under subchapter IV of chapter 98 of the Harmonized Tariff Schedule of the United States. No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity.

(d) Personal use quantities**(1) In general**

No quantity of tobacco products other than the quantity referred to in paragraph (2) may be relanded or received as a personal use quantity.

(2) Exception for personal use quantity

Subsection (c) and section 5754 shall not apply to any person who relands or receives tobacco products in the quantity allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the United States, and such person may voluntarily relinquish to the Secretary at the time of entry any excess of such quantity without incurring the penalty under subsection (c).

(3) Special rule for delivery sales**(A) In general**

Paragraph (2) shall not apply to any tobacco product sold in connection with a delivery sale.

(B) Delivery sale

For purposes of subparagraph (A), the term “delivery sale” means any sale of a tobacco product to a consumer if—

(i) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mail, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made, or

(ii) the tobacco product is delivered by use of a common carrier, private delivery service, or the mail, or the seller is not in the physical presence of the buyer when the buyer obtains personal possession of the tobacco product.

(e) Applicability of section 6665

The penalties imposed by subsections (b) and (c) shall be assessed, collected, and paid in the same manner as taxes, as provided in section 6665(a).

(f) Cross references

For penalty for failure to make deposits or for overstatement of deposits, see section 6656.

(Aug. 16, 1954, ch. 736, 68A Stat. 717; Pub. L. 85-859, title II, § 202, Sept. 2, 1958, 72 Stat. 1425; Pub. L. 97-34, title VII, §§ 722(a)(3), 724(b)(5), Aug. 13, 1981, 95 Stat. 342, 345; Pub. L. 97-448, title I, § 107(b), Jan. 12, 1983, 96 Stat. 2391; Pub. L. 98-369, div. A, title VII, § 714(h)(2), July 18, 1984, 98 Stat. 962; Pub. L. 101-239, title VII, § 7721(c)(4), (5), Dec. 19, 1989, 103 Stat. 2399; Pub. L. 105-33, title IX, § 9302(h)(1)(B)-(D), Aug. 5, 1997, 111 Stat. 673; Pub. L. 106-476, title IV, §§ 4002(c), 4003(a), Nov. 9, 2000, 114 Stat. 2177; Pub. L. 106-554, § 1(a)(7) [title III, § 315(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-644; Pub. L. 109-432, div. C, title IV, § 401(f)(1), (2)(A), Dec. 20, 2006, 120 Stat. 3049, 3050.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsecs. (c) and (d)(2), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.