

nancial institution designated by the tobacco quota holder or producer of quota tobacco. The Secretary shall make information available to tobacco quota holders and producers of quota tobacco regarding their ability to elect to have the Secretary make payments directly to a financial institution under this subsection so that they may obtain a lump sum or other payment. (Pub. L. 108-357, title VI, §624, Oct. 22, 2004, 118 Stat. 1528.)

REFERENCES IN TEXT

The Department of Agriculture Reorganization Act of 1994, referred to in subsec. (c), is title II of Pub. L. 103-354, Oct. 13, 1994, 108 Stat. 3209. Subtitle H of the Act is classified principally to subchapter VIII (§6991 et seq.) of chapter 98 of this title. For complete classification of this Act to the Code, see Tables.

This title, referred to in subsec. (d), means title VI of Pub. L. 108-357, which enacted this chapter, amended sections 609, 1282, 1301, 1303, 1314h, 1361, 1371, 1373, 1375, 1378, 1379, 1428, 1433c-1, and 1441 of this title and section 714c of Title 15, Commerce and Trade, repealed sections 511r, 515 to 515k, 625, 1311 to 1314, 1314-1, 1314b, 1314b-1, 1314b-2, 1314c to 1314j, 1315, 1316, 1445, 1445-1, and 1445-2 of this title, enacted provisions set out as notes under sections 515 and 518 of this title, and repealed provisions set out as a note under section 1314c of this title. For complete classification of title VI to the Code, see Short Title note set out under section 518 of this title and Tables.

EFFECTIVE DATE

Section applicable to the 2005 and subsequent crops of tobacco, see section 643 of Pub. L. 108-357, set out as a note under section 518 of this title.

§ 518d. Use of assessments as source of funds for payments

(a) Definitions

In this section:

(1) Base period

The term “base period”¹ means the one-year period ending the June 30 before the beginning of a fiscal year.

(2) Gross domestic volume

The term “gross domestic volume” means the volume of tobacco products—

(A) removed (as defined by section 5702 of title 26); and

(B) not exempt from tax under chapter 52 of title 26 at the time of their removal under that chapter or the Harmonized Tariff Schedule of the United States.

(3) Market share

The term “market share” means the share of each manufacturer or importer of a class of tobacco product (expressed as a decimal to the fourth place) of the total volume of domestic sales of the class of tobacco product during the base period for a fiscal year for an assessment under this section.

(b) Quarterly assessments

(1) Imposition of assessment

The Secretary, acting through the Commodity Credit Corporation, shall impose quarterly assessments during each of fiscal years 2005

through 2014, calculated in accordance with this section, on each tobacco product manufacturer and tobacco product importer that sells tobacco products in domestic commerce in the United States during that fiscal year.

(2) Amounts

Beginning with the calendar quarter ending on December 31 of each of fiscal years 2005 through 2014, the assessment payments over each four-calendar quarter period shall be sufficient to cover—

(A) the contract payments made under sections 518a and 518b of this title during that period; and

(B) other expenditures from the Tobacco Trust Fund made during the base quarter periods corresponding to the four calendar quarters of that period.

(3) Deposit

Assessments collected under this section shall be deposited in the Tobacco Trust Fund.

(c) Assessments for classes of tobacco products

(1) Initial allocation

The percentage of the total amount required by subsection (b) to be assessed against, and paid by, the manufacturers and importers of each class of tobacco product in fiscal year 2005 shall be as follows:

(A) For cigarette manufacturers and importers, 96.331 percent.

(B) For cigar manufacturers and importers, 2.783 percent.

(C) For snuff manufacturers and importers, 0.539 percent.

(D) For roll-your-own tobacco manufacturers and importers, 0.171 percent.

(E) For chewing tobacco manufacturers and importers, 0.111 percent.

(F) For pipe tobacco manufacturers and importers, 0.066 percent.

(2) Subsequent allocations

For subsequent fiscal years, the Secretary shall periodically adjust the percentage of the total amount required under subsection (b) to be assessed against, and paid by, the manufacturers and importers of each class of tobacco product specified in paragraph (1) to reflect changes in the share of gross domestic volume held by that class of tobacco product.

(3) Effect of insufficient amounts

If the Secretary determines that the assessment imposed under subsection (b) will result in insufficient amounts to carry out this subchapter during a fiscal year, the Secretary shall assess such additional amounts as the Secretary determines to be necessary to carry out this subchapter during that fiscal year. The additional amount shall be allocated to manufacturers and importers of each class of tobacco product specified in paragraph (1) in the same manner and based on the same percentages applicable under paragraph (1) or (2) for that fiscal year.

(d) Notification and timing of assessments

(1) Notification of assessments

The Secretary shall provide each manufacturer or importer subject to an assessment

¹ So in original.

under subsection (b) with written notice setting forth the amount to be assessed against the manufacturer or importer for each quarterly payment period. The notice for a quarterly period shall be provided not later than 30 days before the date payment is due under paragraph (3).

(2) Content

The notice shall include the following information with respect to the quarterly period used by the Secretary in calculating the amount:

(A) The total combined assessment for all manufacturers and importers of tobacco products.

(B) The total assessment with respect to the class of tobacco products manufactured or imported by the manufacturer or importer.

(C) Any adjustments to the percentage allocations among the classes of tobacco products made pursuant to paragraph (2) or (3) of subsection (c).

(D) The volume of gross sales of the applicable class of tobacco product treated as made by the manufacturer or importer for purposes of calculating the manufacturer's or importer's market share under subsection (f).

(E) The total volume of gross sales of the applicable class of tobacco product that the Secretary treated as made by all manufacturers and importers for purposes of calculating the manufacturer's or importer's market share under subsection (f).

(F) The manufacturer's or importer's market share of the applicable class of tobacco product, as determined by the Secretary under subsection (f).

(G) The market share, as determined by the Secretary under subsection (f), of each other manufacturer and importer, for each applicable class of tobacco product.

(3) Timing of assessment payments

(A) Collection date

Assessments shall be collected at the end of each calendar year quarter, except that the Secretary shall ensure that the final assessment due under this section is collected not later than September 30, 2014.

(B) Base period quarter

The assessment for a calendar year quarter shall correspond to the base period quarter that ended at the end of the preceding calendar year quarter.

(e) Allocation of assessment within each class of tobacco product

(1) Pro rata basis

The assessment for each class of tobacco product specified in subsection (c)(1) shall be allocated on a pro rata basis among manufacturers and importers based on each manufacturer's or importer's share of gross domestic volume.

(2) Limitation

No manufacturer or importer shall be required to pay an assessment that is based on

a share that is in excess of the manufacturer's or importer's share of domestic volume.

(f) Allocation of total assessments by market share

The amount of the assessment for each class of tobacco product specified in subsection (c)(1) to be paid by each manufacturer or importer of that class of tobacco product shall be determined for each quarterly payment period by multiplying—

(1) the market share of the manufacturer or importer, as calculated with respect to that payment period, of the class of tobacco product; by

(2) the total amount of the assessment for that quarterly payment period under subsection (c), for the class of tobacco product.

(g) Determination of volume of domestic sales

(1) In general

The calculation of the volume of domestic sales of a class of tobacco product by a manufacturer or importer, and by all manufacturers and importers as a group, shall be made by the Secretary based on information provided by the manufacturers and importers pursuant to subsection (h), as well as any other relevant information provided to or obtained by the Secretary.

(2) Gross domestic volume

The volume of domestic sales shall be calculated based on gross domestic volume.

(3) Measurement

For purposes of the calculations under this subsection and the certifications under subsection (h) by the Secretary, the volumes of domestic sales shall be measured by—

(A) in the case of cigarettes and cigars, the number of cigarettes and cigars; and

(B) in the case of the other classes of tobacco products specified in subsection (c)(1), in terms of number of pounds, or fraction thereof, of those products.

(h) Measurement of volume of domestic sales

(1) Submission of information

Each manufacturer and importer of tobacco products shall submit to the Secretary a certified copy of each of the returns or forms described by paragraph (2) that are required to be filed with a Federal agency on the same date that those returns or forms are filed, or required to be filed, with the agency.

(2) Returns and forms

The returns and forms described by this paragraph are those returns and forms that relate to—

(A) the removal of tobacco products into domestic commerce (as defined by section 5702 of title 26); and

(B) the payment of the taxes imposed under chapter² 52 of title 26, including AFT Form 5000.24 and United States Customs Form 7501 under currently applicable regulations.

²So in original. Probably should be "chapter".

(3) Effect of failure to provide required information

Any person that knowingly fails to provide information required under this subsection or that provides false information under this subsection shall be subject to the penalties described in section 1003 of title 18. The Secretary may also assess against the person a civil penalty in an amount not to exceed two percent of the value of the kind of tobacco products manufactured or imported by the person during the fiscal year in which the violation occurred, as determined by the Secretary.

(i) Challenge to assessment**(1) Appeal to Secretary**

A manufacturer or importer subject to this section may contest an assessment imposed on the manufacturer or importer under this section by notifying the Secretary, not later than 30 business days after receiving the assessment notification required by subsection (d), that the manufacturer or importer intends to contest the assessment.

(2) Information

Not later than 180 days after October 22, 2004, the Secretary shall establish by regulation a procedure under which a manufacturer or importer contesting an assessment under this subsection may present information to the Secretary to demonstrate that the assessment applicable to the manufacturer or importer is incorrect. In challenging the assessment, the manufacturer or importer may use any information that is available, including third party data on industry or individual company sales volumes.

(3) Revision

If a manufacturer or importer establishes that the initial determination of the amount of an assessment is incorrect, the Secretary shall revise the amount of the assessment so that the manufacturer or importer is required to pay only the amount correctly determined.

(4) Time for review

Not later than 30 days after receiving notice from a manufacturer or importer under paragraph (1), the Secretary shall—

(A) decide whether the information provided to the Secretary under paragraph (2), and any other information that the Secretary determines is appropriate, is sufficient to establish that the original assessment was incorrect; and

(B) make any revisions necessary to ensure that each manufacturer and importer pays only its correct pro rata share of total gross domestic volume from all sources.

(5) Immediate payment of undisputed amounts

The regulations promulgated by the Secretary under paragraph (2) shall provide for the immediate payment by a manufacturer or importer challenging an assessment of that portion of the assessment that is not in dispute. The manufacturer and importer may place into escrow, in accordance with such regulations, only the portion of the assess-

ment being challenged in good faith pending final determination of the claim.

(j) Judicial review**(1) In general**

Any manufacturer or importer aggrieved by a determination of the Secretary with respect to the amount of any assessment may seek review of the determination in the United States District Court for the District of Columbia or for the district in which the manufacturer or importer resides or has its principal place of business at any time following exhaustion of the administrative remedies available under subsection (i).

(2) Time limits

Administrative remedies shall be deemed exhausted if no decision by the Secretary is made within the time limits established under subsection (i)(4).

(3) Excessive assessments

The court shall restrain collection of the excessive portion of any assessment or order a refund of excessive assessments already paid, along with interest calculated at the rate prescribed in section 3717 of title 31, if it finds that the Secretary's determination is not supported by a preponderance of the information available to the Secretary.

(k) Termination date

The authority provided by this section to impose assessments terminates on September 30, 2014.

(Pub. L. 108-357, title VI, §625, Oct. 22, 2004, 118 Stat. 1529.)

REFERENCES IN TEXT

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

EFFECTIVE DATE

Section applicable to the 2005 and subsequent crops of tobacco, see section 643 of Pub. L. 108-357, set out as a note under section 518 of this title.

§ 518e. Tobacco Trust Fund**(a) Establishment**

There is established in the Commodity Credit Corporation a revolving trust fund, to be known as the "Tobacco Trust Fund", which shall be used in carrying out this subchapter. The Tobacco Trust Fund shall consist of the following:

(1) Assessments collected under section 518d of this title.

(2) Such amounts as are necessary from the Commodity Credit Corporation.

(3) Any interest earned on investment of amounts in the Tobacco Trust Fund under subsection (c).

(b) Expenditures**(1) Authorized expenditures**

Subject to paragraph (2), and notwithstanding any other provision of law, the Secretary shall use amounts in the Tobacco Trust Fund, in such amounts as the Secretary determines are necessary—