

DESCRIPTION OF S. 1717
MISCELLANEOUS TAX PROVISIONS
RELATING TO DISTILLED SPIRITS

LISTED FOR A HEARING
BY THE
SUBCOMMITTEE ON TAXATION AND
DEBT MANAGEMENT
OF THE
COMMITTEE ON FINANCE
ON OCTOBER 14, 1977

PREPARED FOR THE USE OF THE
COMMITTEE ON FINANCE
BY THE STAFF OF THE
JOINT COMMITTEE ON TAXATION



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I. INTRODUCTION

The bill described in this pamphlet (S. 1717) has been scheduled by the Subcommittee on Taxation and Debt Management of the Committee on Finance for a hearing on October 14, 1977. The bill would amend miscellaneous tax provisions relating to distilled spirits.

In connection with this hearing, the staff of the Joint Committee on Taxation has prepared a description of the bill. The description indicates the present law treatment, the facts, the issue involved, an explanation of what the bill would do, the effective date of the bill, and the bill's revenue effect.

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II. DESCRIPTION OF THE BILL

S. 1717—Sen. Huddleston (and Sen. Ford)

Distilled Spirits

The bill consists of a series of technical and administrative provisions relating to the tax treatment of distilled spirits. The following is a description of each of the sections of the bill.

(1) Identification of distiller—gin and vodka

Present law—Under present law (sec. 5233(c) of the Code), no trademarks may be placed upon bottles of distilled spirits bottled in bond unless the name of the distiller or of the company in whose name the spirits are produced and warehoused also appears "conspicuously" on the bottle. This requirement extends to gin and vodka as well as to other forms of distilled spirits.

Issue.—Gin and vodka are produced from neutral spirits produced by grain processing plants. These neutral spirits are then purchased by the companies that process the gin and vodka itself. Since the ultimate manufacturers or processors of the gin or vodka are not the distillers or producers, they are foreclosed from placing their own trademarks on the bottles unless the names of the grain processing plants are also placed conspicuously on the bottles. Most gin and vodka bottled in bond is exported. The issue presented by the first section of the bill is whether it is so important that the foreign customer of the gin and vodka be shown, conspicuously, the name of the grain processing plant that produced the basic neutral spirits.

Explanation of the provision.—The bill would exclude gin and vodka bottled in bond for export from the requirement that, if the bottle is to carry a trademark, the name of the actual distiller or of the individual or company in whose name the spirits were produced and warehoused must also be on the bottle.

(2) Drawback of tax on exported spirits and wines previously imported

Present law.—Under present law, a drawback equal to the amount of the tax determined or paid on wines or distilled spirits that are exported is allowed if the wines or distilled spirits were manufactured or produced in the United States. (If the tax has been determined but not yet paid, the drawback takes the form of a book credit. If the tax determined has been paid, the drawback results in a repayment of the tax.)

If the operator of a customs manufacturing bonded warehouse reduces the proof of imported distilled spirits and bottles or packages them, he may then export those spirits and obtain a drawback on the U.S. tax (sec. 5523). However, if a domestic proprietor of a distilled

spirits plant imports distilled spirits and conducts the same operations and then exports them, he is not entitled to a drawback of the U.S. tax.

Similar distinctions operate with respect to wines.

Issue.—Whether it is appropriate to permit drawbacks of tax for exported spirits which (1) were domestically produced or (2) were first imported and then processed in a customs warehouse (as at present) but not to permit such drawbacks of tax where the exported spirits were first imported and then processed in a domestic distilled spirits plant.

Explanation of the provision.—Section 2 of the bill would enable distilled spirits or wines “bottled, or packaged in casks or other bulk containers” in the United States (after their import) to be exported with the benefit of drawback of the tax determined or paid on those distilled spirits or wines. The same benefit would continue to be extended to distilled spirits or wines manufactured or produced in the United States and subsequently exported. The same technical requirements regarding claims for drawback, stamps, notices, bonds, bills of lading, and other evidence indicating payment or determination of tax and exportation would be applicable to distilled spirits and wines bottled or packaged in the United States as are applicable to goods manufactured or produced in the United States.

(3) Return of tax-determined distilled spirits to bonded premises

Present law.—Present law (sec. 5215) allows distilled spirits (other than products to which any alcoholic ingredients other than tax-determined distilled spirits have been added) withdrawn from bond on payment or determination of tax to be returned to bonded premises for destruction, denaturing, redistilling, or mingling. For these cases, present law (sec. 5008(d)) allows the abatement, remittance, credit, or refund of the tax that has been paid or determined. All provisions of law applicable to distilled spirits in bond are also applicable to these distilled spirits returned to bond.

However, no return to bonded premises, with abatement, remittance, credit, or refund of the tax, is allowed for the purpose of storage. In fact, present law (sec. 5612) specifically forbids spirits on which the tax has been paid or determined to be stored in bonded premises, except for certain designated purposes which do not include storage pending exportation.

In addition, present law (sec. 5178(a)(4)(A)(ii)) allows distilled spirits to be treated as “bottled in bond” although they are actually bottled on bottling premises located outside bonded premises. Tax liability on those spirits is incurred when they are withdrawn from bond for bottling on the bottling premises.

In the case of such spirits actually bottled outside of bonded premises and then returned to bonded premises for storage pending exportation, as well as in the instance of spirits withdrawn from bond for storage pending exportation, a drawback of the tax is allowed when the spirits are actually exported (sec. 5062(b)). In the meantime, however, the working capital of the distilled spirits exporter has been tied up in tax payments or liabilities for spirits in storage pending exportation.

Issue.—Whether tax-determined distilled spirits ought to be returnable to bonded premises (with benefit of a tax credit or refund) in the plant where they were bottled or packaged if the return is for exportation or other purposes listed in sections 5214 (a) and 7510; and whether spirits that can be treated as bottled in bond although actually bottled outside of bond ought to be transferable (with tax credit or refund) to bonded premises for storage pending withdrawal for any purpose for which spirits actually bottled in bond may be stored.

Explanation of the provision.—Section 3 of the bill would permit tax-paid (or tax-determined) distilled spirits to be returned (with tax credit or refund) to an export storage facility in the bonded premises of the plant where they were bottled or packaged if the spirits are thus returned or transferred solely for storage pending withdrawal without payment of tax for the following purposes: exportation (under specified provisions of section 5214(a)(4)); as supplies for certain vessels or aircraft; for transfer to foreign-trade zones; for transfer (for storage pending exportation) to a customs bonded warehouse; or free of tax for use of the United States under section 7510 of the Code. In addition, the bill provides that spirits which may be treated as bottled in bond although actually bottled outside of bonded premises may be returned to the bonded premises of the same plant (with benefit of the tax credit or refund) for storage pending withdrawal for any purpose for which spirits that have in fact been bottled in bond may be withdrawn.

(4) *Withdrawal for transfer to customs bonded warehouse*

Present law.—Under present law (sec. 5214(a)(4)), distilled spirits may be withdrawn without payment of tax from the bonded premises of distilled spirits plants for exportation, but there is no comparable provision allowing withdrawal without payment of tax for transfer to customs bonded warehouses for storage pending exportation.

Issue.—Whether distilled spirits should be allowed to be withdrawn, without payment of tax, from bonded premises for transfer to customs bonded warehouses for storage pending exportation.

Explanation of the provision.—Section 4 of the bill would permit distilled spirits bottled in bond (under sec. 5233) or spirits returned to an export storage facility on the bonded premises where they were bottled or packaged for storage pending exportation, etc., under the proposed new section 5215(b) (see the explanation of sec. 3 of the bill, *supra*) to be transferred without payment of tax to a customs bonded warehouse for storage pending exportation. The spirits so transferred would be entered, stored, and accounted for under such regulations and bonds, to protect the revenue, as the Treasury Department may prescribe.

(5) *Withdrawal for scientific purposes*

Present law.—Present law (sec. 5214(a)(9)) permits distilled spirits to be withdrawn from the bonded premises of a distilled spirits plant free of tax for use as samples in making tests or laboratory analyses.

Issue.—Whether, and with what safeguards, distilled spirits should be able to be withdrawn from bonded premises for use in research, development, or testing (other than consumer testing) where tax has not been paid or determined.

Explanation of the provision.—Section 5 of the bill would permit distilled spirits to be withdrawn without payment of tax by a proprietor of bonded premises for use in research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials, or equipment relating to distilled spirits or distillery operations.

The withdrawals would be subject to such limitations and conditions as to quantities, use, and accountability as the Treasury Department may by regulations require for the protection of the revenue.

Because of the change of the nature of withdrawals under the provision from withdrawals “free of tax” to withdrawals “without payment of tax,” the tax may be reimposed in the case of abuses or certain losses prior to the permitted uses for which the spirits were withdrawn.

(6) *Mingling and blending*

Present law.—Under present law (sec. 5234(a)(2)), distilled spirits mingled on bonded premises must be returned to the same packages (barrels) from which removed, and the mingling must be for the purpose of further storage in bond.

Issue.—Whether the requirements relating to mingling and blending—that the mingled spirits be returned to the same barrels from which they were removed, and that the mingling be for the purpose of further storage in bond—should be eliminated as restrictions serving no significant tax or regulatory purpose and to permit greater flexibility in plant operations.

Explanation of the provision.—Section 6 of the bill would eliminate the clause in section 5234(a)(2) of the Code requiring that mingling on bonded premises be “for further storage in bond in as many as necessary of the same packages in which the spirits were stored before consolidation.”

(7) *Use of extracted oils of juniper berries and other aromatics in making gin*

Present law.—Present law (sec. 5025(b)) allows an exemption from the rectification tax (in general, this is a tax on redistilling, purifying, or refining distilled spirits, or mixing to achieve a different product) for the production of gin by redistillation of a pure spirit over juniper berries and other natural aromatics. This exemption is, therefore, confined to gins produced by the use of juniper berries or other natural aromatics themselves, and does not extend to use of their natural oils.

Issue.—Whether extracted oils of juniper berries and of other natural aromatics may be used in redistillation of gin.

Explanation of the provision.—Section 7 of the bill would permit an exemption from the rectification tax in the instance of gin produced by the redistillation of a pure spirit over the extracted oil of juniper berries and other natural aromatics.

Effective date

The amendments made by the bill would take effect on the first day of the first calendar month which begins more than 90 days after the bill's enactment.

Revenue effect

It is estimated that sections 3 and 4 of the bill would result in a one-time revenue loss of \$3 to \$5 million because persons withdrawing distilled spirits from bonded premises for bottling or packaging and subsequent return to an export storage facility on the bonded premises, and persons withdrawing spirits from bonded premises for transfer to a customs bonded warehouse for storage pending exportation, would no longer have their payments of tax on the distilled spirits tied up until evidence of export is received and the drawback claim is allowed.

The remaining changes proposed by the bill would have little revenue effect.

Prior Congressional action

In the 94th Congress the committee reported a similar bill (H.R. 3055), with amendments (S. Rept. 94-1347) on September 29, 1976, but that bill was not acted upon by the Senate because of lack of time before adjournment.

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