

**DESCRIPTION OF THE CHAIRMAN'S MARK OF
A PROPOSAL TO MODIFY THE EXCISE TAX ON CIDER**

Scheduled for Markup
by the
SENATE COMMITTEE ON FINANCE
on February 11, 2015

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The Senate Committee on Finance has scheduled a committee markup on February 11, 2015, of a proposal to modify the excise tax on cider. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the proposal.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Mark of a Proposal to Modify the Excise Tax on Cider* (JCX-22-15), February 9, 2015. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Modification of the Excise Tax on Cider

Present Law

An excise tax is imposed on all distilled spirits, wine, and beer produced in, or imported into, the United States.² The tax liability legally comes into existence the moment the alcohol is produced or imported but payment of the tax is not required until a subsequent withdrawal or removal from the distillery, winery, brewery, or, in the case of an imported product, from customs custody or bond.³

Distilled spirits, wine, and beer produced or imported into the United States are taxed at the following rates per specified volumetric measure:

Item	Current Tax Rate
Distilled Spirits	\$13.50 per proof gallon ⁴
Wine ⁵	
Still Wines	
Not more than 14 percent alcohol	\$1.07 per wine gallon ⁶
More than 14 percent but not more than 21 percent alcohol	\$1.57 per wine gallon
More than 21 percent but not more than 24 percent alcohol	\$3.15 per wine gallon
More than 24 percent alcohol	Taxed as distilled spirits ⁷ (\$13.50 per proof gallon)
Hard cider	\$0.226 per wine gallon

² Secs. 5001 (distilled spirits), 5041 (wines), and 5051 (beer). Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the “Code”).

³ Secs. 5006, 5043, and 5054. In general, proprietors of distilled spirit plants, proprietors of bonded wine cellars, brewers, and importers are liable for the tax.

⁴ A “proof gallon” is a U.S. liquid gallon of proof spirits, or the alcoholic equivalent thereof. Generally a proof gallon is a U.S. liquid gallon consisting of 50 percent alcohol. On lesser quantities, the tax is paid proportionately. Credits are allowed for wine content and flavors content of distilled spirits. Sec. 5010.

⁵ Small domestic wine producers (*i.e.*, those producing not more than 250,000 wine gallons in a calendar year) are allowed a credit of \$0.90 per wine gallon (\$0.056 per wine gallon in the case of hard cider) on the first 100,000 wine gallons (other than champagne and other sparkling wines) removed. The credit is reduced by one percent for each 1,000 wine gallons produced in excess of 150,000 wine gallons per calendar year.

⁶ A “wine gallon” is a U.S. gallon of liquid measure equivalent to the volume of 231 cubic inches. On lesser quantities, the tax is paid proportionately.

⁷ Sec. 5001(a)(4).

Item	Current Tax Rate
Sparkling Wines -- Champagne and other naturally sparkling wines Artificially carbonated wines	\$3.40 per wine gallon \$3.30 per wine gallon
Beer ⁸	\$18.00 per barrel ⁹

Hard cider is a still wine derived primarily from apples or apple concentrate and water, containing no other fruit product, and containing at least one-half of one percent and less than seven percent alcohol by volume.¹⁰ Still wines are wines containing not more than 0.392 grams of carbon dioxide per hundred milliliters of wine (or 3.92 grams of carbon dioxide per liter). Other wines made from apples, apple concentrate or other fruit products are taxed at the rates applicable in accordance with the alcohol and carbon dioxide content of the wine.

Description of Proposal

The proposal would amend the definition of hard cider to mean a wine with a carbonation level that does not exceed 6.4 grams per liter. Additionally, the proposal would expand the hard cider definition to include apples, apple juice concentrate, pears, or pear juice concentrate and water. The proposal would change the allowable alcohol content of cider to at least one-half of one percent and less than 8.5 percent alcohol by volume.

Effective Date

The proposal applies to articles removed after December 31, 2015.

⁸ A small domestic brewer (one who produces not more than 2 million barrels in a calendar year) is subject to a per barrel rate of \$7.00 on the first 60,000 barrels produced in that year.

⁹ A “barrel” contains not more than 31 gallons, each gallon equivalent to the volume of 231 cubic inches. On lesser quantities, the tax is paid proportionately.

¹⁰ Sec. 5041(b)(6).

B. Estimated Revenue Effect

Fiscal Years [Millions of Dollars]												
<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2015-20</u>	<u>2015-25</u>
---	-1	-1	-1	-1	-1	-1	-1	-2	-2	-2	-5	-12

NOTE: Details do not add to totals due to rounding.

[1] Loss of less than \$500,000.

C. Increase Continuous Levy Authority on Payments to Medicare Providers and Suppliers

Present Law

In general

Levy is the administrative authority of the IRS to seize a taxpayer's property, or rights to property, to pay the taxpayer's tax liability.¹¹ Generally, the IRS is entitled to seize a taxpayer's property by levy if a Federal tax lien has attached to such property,¹² the property is not exempt from levy,¹³ and the IRS has provided both notice of intention to levy¹⁴ and notice of the right to an administrative hearing (the notice is referred to as a "collections due process notice" or "CDP notice" and the hearing is referred to as the "CDP hearing")¹⁵ at least 30 days before the levy is made. A levy on salary or wages generally is continuously in effect until released.¹⁶ A Federal tax lien arises automatically when: (1) a tax assessment has been made; (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment; and (3) the taxpayer has failed to pay the amount assessed within 10 days after the notice and demand.¹⁷

The notice of intent to levy is not required if the Secretary finds that collection would be jeopardized by delay. The standard for determining whether jeopardy exists is similar to the standard applicable when determining whether assessment of tax without following the normal deficiency procedures is permitted.¹⁸

The CDP notice (and pre-levy CDP hearing) is not required if: (1) the Secretary finds that collection would be jeopardized by delay; (2) the Secretary has served a levy on a State to collect a Federal tax liability from a State tax refund; (3) the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served; or (4) the Secretary has served a Federal contractor levy. In each of these four cases,

¹¹ Sec. 6331(a). Levy specifically refers to the legal process by which the IRS orders a third party to turn over property in its possession that belongs to the delinquent taxpayer named in a notice of levy.

¹² *Ibid.*

¹³ Sec. 6334.

¹⁴ Sec. 6331(d).

¹⁵ Sec. 6330. The notice and the hearing are referred to collectively as the CDP requirements.

¹⁶ Secs. 6331(e) and 6343.

¹⁷ Sec. 6321.

¹⁸ Secs. 6331(d)(3) and 6861.

however, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy.¹⁹

Federal payment levy program

To help the IRS collect taxes more effectively, the Taxpayer Relief Act of 1997²⁰ authorized the establishment of the Federal Payment Levy Program (“FPLP”), which allows the IRS to continuously levy up to 15 percent of certain “specified payments” by the Federal government if the payees are delinquent on their tax obligations. With respect to payments to vendors of goods, services, or property sold or leased to the Federal government, the continuous levy may be up to 100 percent of each payment.²¹ For payments to Medicare providers and suppliers, the levy is up to 15 percent for payments made within 180 days after December 19, 2014. For payments made after that date, the levy is up to 30 percent.²²

Under FPLP, the IRS matches its accounts receivable records with Federal payment records maintained by Treasury’s Bureau of Fiscal Service (“BFS”), such as certain Social Security benefit and Federal wage records. When these records match, the delinquent taxpayer is provided both the notice of intention to levy and the CDP notice. If the taxpayer does not respond after 30 days, the IRS can instruct BFS to levy the taxpayer’s Federal payments. Subsequent payments are continuously levied until such time that the tax debt is paid or the IRS releases the levy.

Description of Proposal

The proposal provides that the present limitation of 30 percent of certain specified payments be increased by an amount sufficient to offset the estimated revenue loss of the provision described in Part A, above.

Effective Date

The proposal is effective for payments made after 180 days after the date of enactment.

¹⁹ Sec. 6330(f).

²⁰ Pub. L. No. 105-34.

²¹ Sec. 6331(h)(3).

²² Pub. L. No. 113-295, Division B.