

Sec.
5045. Cross references.

PRIOR PROVISIONS

A prior subpart C, comprising sections 5041 to 5045, related to wines, prior to the general revision of this chapter by Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1313.

AMENDMENTS

1997—Pub. L. 105-34, title XIV, §1416(b)(3), Aug. 5, 1997, 111 Stat. 1048, struck out “unmerchtable” before “wine” in item 5044.

§ 5041. Imposition and rate of tax

(a) Imposition

There is hereby imposed on all wines (including imitation, substandard, or artificial wine, and compounds sold as wine) having not in excess of 24 percent of alcohol by volume, in bond in, produced in, or imported into, the United States, taxes at the rates shown in subsection (b), such taxes to be determined as of the time of removal for consumption or sale. All wines containing more than 24 percent of alcohol by volume shall be classed as distilled spirits and taxed accordingly. Still wines shall include those wines containing not more than 0.392 gram of carbon dioxide per hundred milliliters of wine; except that the Secretary may by regulations prescribe such tolerances to this maximum limitation as may be reasonably necessary in good commercial practice.

(b) Rates of tax

(1) On still wines containing not more than 14 percent of alcohol by volume, \$1.07 per wine gallon;

(2) On still wines containing more than 14 percent and not exceeding 21 percent of alcohol by volume, \$1.57 per wine gallon;

(3) On still wines containing more than 21 percent and not exceeding 24 percent of alcohol by volume, \$3.15 per wine gallon;

(4) On champagne and other sparkling wines, \$3.40 per wine gallon;

(5) On artificially carbonated wines, \$3.30 per wine gallon; and

(6) On hard cider which 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 1 percent and less than 7 percent alcohol by volume, 22.6 cents per wine gallon.

(c) Credit for small domestic producers

(1) Allowance of credit

Except as provided in paragraph (2), in the case of a person who produces not more than 250,000 wine gallons of wine during the calendar year, there shall be allowed as a credit against any tax imposed by this title (other than chapters 2, 21, and 22) of 90 cents per wine gallon on the 1st 100,000 wine gallons of wine (other than wine described in subsection (b)(4)) which are removed during such year for consumption or sale and which have been produced at qualified facilities in the United States. In the case of wine described in subsection (b)(6), the preceding sentence shall be applied by substituting “5.6 cents” for “90 cents”.

(2) Reduction in credit

The credit allowable by paragraph (1) shall be reduced (but not below zero) by 1 percent for each 1,000 wine gallons of wine produced in excess of 150,000 wine gallons of wine during the calendar year.

(3) Time for determining and allowing credit

The credit allowable by paragraph (1)—

(A) shall be determined at the same time the tax is determined under subsection (a) of this section, and

(B) shall be allowable at the time any tax described in paragraph (1) is payable as if the credit allowable by this subsection constituted a reduction in the rate of such tax.

(4) Controlled groups

Rules similar to rules of section 5051(a)(2)(B) shall apply for purposes of this subsection.

(5) Denial of deduction

Any deduction under subtitle A with respect to any tax against which a credit is allowed under this subsection shall only be for the amount of such tax as reduced by such credit.

(6) Credit for transferee in bond

If—

(A) wine produced by any person would be eligible for any credit under paragraph (1) if removed by such person during the calendar year,

(B) wine produced by such person is removed during such calendar year by any other person (hereafter in this paragraph referred to as the “transferee”) to whom such wine was transferred in bond and who is liable for the tax imposed by this section with respect to such wine, and

(C) such producer holds title to such wine at the time of its removal and provides to the transferee such information as is necessary to properly determine the transferee’s credit under this paragraph,

then, the transferee (and not the producer) shall be allowed the credit under paragraph (1) which would be allowed to the producer if the wine removed by the transferee had been removed by the producer on that date.

(7) Regulations

The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations—

(A) to prevent the credit provided in this subsection from benefiting any person who produces more than 250,000 wine gallons of wine during a calendar year, and

(B) to assure proper reduction of such credit for persons producing more than 150,000 wine gallons of wine during a calendar year.

(d) Wine gallon

For the purpose of this chapter, the term “wine gallon” means a United States gallon of liquid measure equivalent to the volume of 231 cubic inches. On lesser quantities the tax shall be paid proportionately (fractions of less than one-tenth gallon being converted to the nearest one-tenth gallon, and five-hundredths gallon

being converted to the next full one-tenth gallon).

(e) Tolerances

Where the Secretary finds that the revenue will not be endangered thereby, he may by regulation prescribe tolerances (but not greater than ½ of 1 percent) for bottles and other containers, and, if such tolerances are prescribed, no assessment shall be made and no tax shall be collected for any excess in any case where the contents of a bottle or other container are within the limit of the applicable tolerance prescribed.

(f) Illegally produced wine

Notwithstanding subsection (a), any wine produced in the United States at any place other than the bonded premises provided for in this chapter shall (except as provided in section 5042 in the case of tax-free production) be subject to tax at the rate prescribed in subsection (b) at the time of production and whether or not removed for consumption or sale.

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1331; amended Pub. L. 86-75, §3(a)(5), June 30, 1959, 73 Stat. 157; Pub. L. 86-564, title II, §202(a)(7), June 30, 1960, 74 Stat. 290; Pub. L. 87-72, §3(a)(7), June 30, 1961, 75 Stat. 193; Pub. L. 87-508, §3(a)(6), June 28, 1962, 76 Stat. 114; Pub. L. 88-52, §3(a)(7), June 29, 1963, 77 Stat. 72; Pub. L. 88-348, §2(a)(7), June 30, 1964, 78 Stat. 237; Pub. L. 89-44, title V, §501(c), title VIII, §806(a), June 21, 1965, 79 Stat. 150, 162; Pub. L. 93-490, §6(a), Oct. 26, 1974, 88 Stat. 1468; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 100-647, title VI, §6101(a), Nov. 10, 1988, 102 Stat. 3710; Pub. L. 101-508, title XI, §11201(b)(1), (2), Nov. 5, 1990, 104 Stat. 1388-415, 1388-416; Pub. L. 104-188, title I, §1702(b)(5), Aug. 20, 1996, 110 Stat. 1868; Pub. L. 105-34, title IX, §908(a), (b), Aug. 5, 1997, 111 Stat. 876; Pub. L. 105-206, title VI, §6009(a), July 22, 1998, 112 Stat. 812.)

PRIOR PROVISIONS

A prior section 5041, acts Aug. 16, 1954, ch. 736, 68A Stat. 609; Mar. 30, 1955, ch. 18, §3(a)(7), 69 Stat. 14; Mar. 29, 1956, ch. 115, §3(a)(7), 70 Stat. 66; Mar. 29, 1957, Pub. L. 85-12, §3(a)(5), 71 Stat. 9; June 30, 1958, Pub. L. 85-475, §3(a)(5), 72 Stat. 259, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85-859.

AMENDMENTS

1998—Subsec. (b)(6). Pub. L. 105-206 inserted “which is a still wine” after “hard cider”.

1997—Subsec. (b)(6). Pub. L. 105-34, §908(a), added par. (6).

Subsec. (c)(1). Pub. L. 105-34, §908(b), inserted at end “In the case of wine described in subsection (b)(6), the preceding sentence shall be applied by substituting ‘5.6 cents’ for ‘90 cents’.”

1996—Subsec. (c)(6), (7). Pub. L. 104-188 added pars. (6) and (7) and struck out former par. (6) which read as follows:

“(6) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary to prevent the credit provided in this subsection from benefiting any person who produces more than 250,000 wine gallons of wine during a calendar year and to assure proper reduction of such credit for persons producing more than 150,000 wine gallons of wine during a calendar year.”

1990—Subsec. (b)(1). Pub. L. 101-508, §11201(b)(1)(A), substituted “\$1.07” for “17 cents”.

Subsec. (b)(2). Pub. L. 101-508, §11201(b)(1)(B), substituted “\$1.57” for “67 cents”.

Subsec. (b)(3). Pub. L. 101-508, §11201(b)(1)(C), substituted “\$3.15” for “\$2.25”.

Subsec. (b)(5). Pub. L. 101-508, §11201(b)(1)(D), substituted “\$3.30” for “\$2.40”.

Subsecs. (c) to (f). Pub. L. 101-508, §11201(b)(2), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.

1988—Subsecs. (d), (e). Pub. L. 100-647 added subsec. (d) and redesignated former subsec. (d) as (e).

1976—Subsec. (a). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1974—Subsec. (a). Pub. L. 93-490 substituted “0.392” for “0.277”.

1965—Subsec. (a). Pub. L. 89-44, §806(a), substituted “0.277” for “0.256”.

Subsec. (b). Pub. L. 89-44, §501(c)(1)–(5), struck out provisions at end of each par. setting out a specified reduced rate to be applied on and after July 1, 1965.

1964—Subsec. (b). Pub. L. 88-348 substituted “July 1, 1965” for “July 1, 1964” in five places.

1963—Subsec. (b). Pub. L. 88-52 substituted “July 1, 1964” for “July 1, 1963” in five places.

1962—Subsec. (b). Pub. L. 87-508 substituted “July 1, 1963” for “July 1, 1962” in five places.

1961—Subsec. (b). Pub. L. 87-72 substituted “July 1, 1962” for “July 1, 1961” in five places.

1960—Subsec. (b). Pub. L. 86-564 substituted “July 1, 1961” for “July 1, 1960” in five places.

1959—Subsec. (b). Pub. L. 86-75 substituted “July 1, 1960” for “July 1, 1959” in five places.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 908(c) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section] shall take effect on October 1, 1997.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective Jan. 1, 1991, see section 11201(d) of Pub. L. 101-508, set out as a note under section 5001 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6101(b) of Pub. L. 100-647 provided that: “The amendment made by subsection (a) [amending this section] shall apply to wine removed after December 31, 1988.”

EFFECTIVE DATE OF 1974 AMENDMENT

Section 6(b) of Pub. L. 93-490 provided that: “The amendment made by this section [amending this section] shall take effect on the first day of the first calendar month which begins more than 90 days after the date of enactment of this Act [Oct. 26, 1974].”

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 501(c) of Pub. L. 89-44 applicable on and after July 1, 1965, see section 701(d) of Pub. L. 89-44, set out as a note under section 5701 of this title.

Section 806(d)(1) of Pub. L. 89-44 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on July 1, 1965.”

EFFECTIVE DATE

Section effective July 1, 1959, see section 210(a)(1) of Pub. L. 85-859, set out as a note under section 5001 of this title.

FLOOR STOCKS TAXES ON DISTILLED SPIRITS, WINE,
AND BEER

Imposition of tax on wine, exception for small domestic producers, exception for certain small wholesale or retail dealers, credit against tax, liability for tax and method of payment, controlled groups, other laws applicable, and definitions, see section 11201(e) of Pub. L. 101-508, set out as a note under section 5001 of this title.

§ 5042. Exemption from tax

(a) Tax-free production

(1) Cider

Subject to regulations prescribed by the Secretary, the noneffervescent product of the normal alcoholic fermentation of apple juice only, which is produced at a place other than a bonded wine cellar and without the use of preservative methods or materials, and which is sold or offered for sale as cider and not as wine or as a substitute for wine, shall not be subject to tax as wine nor to the provisions of subchapter F.

(2) Wine for personal or family use

Subject to regulations prescribed by the Secretary—

(A) Exemption

Any adult may, without payment of tax, produce wine for personal or family use and not for sale.

(B) Limitation

The aggregate amount of wine exempt from tax under this paragraph with respect to any household shall not exceed—

- (i) 200 gallons per calendar year if there are 2 or more adults in such household, or
- (ii) 100 gallons per calendar year if there is only 1 adult in such household.

(C) Adults

For purposes of this paragraph, the term “adult” means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the household is situated at which wine may be sold to individuals, whichever is greater.

(3) Experimental wine

Subject to regulations prescribed by the Secretary, any scientific university, college of learning, or institution of scientific research may produce, receive, blend, treat, and store wine, without payment of tax, for experimental or research use but not for consumption (other than organoleptical tests) or sale, and may receive such wine spirits without payment of tax as may be necessary for such production.

(b) Cross references

(1) For provisions relating to exemption of tax on losses of wine (including losses by theft or authorized destruction), see section 5370.

(2) For provisions exempting from tax samples of wine, see section 5372.

(3) For provisions authorizing withdrawals of wine free of tax or without payment of tax, see section 5362.

(Added Pub. L. 85-859, title II, §201, Sept. 2, 1958, 72 Stat. 1331; amended Pub. L. 94-455, title XIX,

§ 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-458, § 2(a), Oct. 14, 1978, 92 Stat. 1255.)

PRIOR PROVISIONS

A prior section 5042, act Aug. 16, 1954, ch. 736, 68A Stat. 610, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85-859.

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-458 substituted in heading “Wine for personal or family use” for “Family wine” and in text provision permitting an adult to produce 200 gallons of wine per calendar year if there are 2 or more adults in the household or 100 gallons of wine per calendar year if there is one adult in the household for provision which permitted the duly registered head of any family to produce an amount of wine not exceeding 200 gallons of wine per annum.

1976—Subsec. (a)(1) to (3). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 2(c) of Pub. L. 95-458 provided that: “The amendments made by this section [amending this section and sections 5051, 5053, 5054, 5092, 5222, and 5674 of this title] shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [Oct. 14, 1978].”

§ 5043. Collection of taxes on wines

(a) Persons liable for payment

The taxes on wine provided for in this subpart shall be paid—

(1) Bonded wine cellars

In the case of wines removed from any bonded wine cellar, by the proprietor of such bonded wine cellar; except that—

(A) in the case of any transfer of wine in bond as authorized under the provisions of section 5362(b), the liability for payment of the tax shall become the liability of the transferee from the time of removal of the wine from the transferor’s premises, and the transferor shall thereupon be relieved of such liability; and

(B) in the case of any wine withdrawn by a person other than such proprietor without payment of tax as authorized under the provisions of section 5362(c), the liability for payment of the tax shall become the liability of such person from the time of the removal of the wine from the bonded wine cellar, and such proprietor shall thereupon be relieved of such liability.

(2) Foreign wine

In the case of foreign wines which are not transferred to a bonded wine cellar free of tax under section 5364, by the importer thereof.

(3) Other wines

Immediately, in the case of any wine produced, imported, received, removed, or possessed otherwise than as authorized by law, by any person producing, importing, receiving, removing, or possessing such wine; and all such persons shall be jointly and severally liable for such tax with each other as well as with any proprietor, transferee, or importer who may be liable for the tax under this subsection.