

SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT TRANSPORTATION EQUITY ACT: A
LEGACY FOR USERS

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Public Law 109-59
109th Congress

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TITLE XI--HIGHWAY REAUTHORIZATION AND EXCISE TAX SIMPLIFICATION

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Subtitle B--Excise Tax Reform and Simplification

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PART 4--TAXES RELATING TO ALCOHOL

SEC. 11125. REPEAL OF SPECIAL OCCUPATIONAL TAXES ON PRODUCERS AND
MARKETERS OF ALCOHOLIC BEVERAGES.

(a) Repeal of Occupational Taxes.--

(1) In general.--The following provisions of part II of subchapter A of chapter 51 (relating to occupational taxes) are hereby repealed:

(A) <<NOTE: 26 USC 5081.>> Subpart A (relating to

proprietors of distilled spirits plants, bonded wine cellars, etc.).

(B) <<NOTE: 26 USC 5091-5093. 26 USC 5111-5113, 5117. 26 USC 5121-5123.>> Subpart B (relating to brewer).

(C) Subpart D (relating to wholesale dealers) (other than sections 5114 and 5116).

(D) Subpart E (relating to retail dealers) (other than section 5124).

(E) <<NOTE: 26 USC 5141, 5147-5149.>> Subpart G (relating to general provisions) (other than sections 5142, 5143, 5145, and 5146).

(2) Nonbeverage domestic drawback.--Section 5131 is amended by striking ``, on payment of a special tax per annum,''.

(3) Industrial use of distilled spirits.--Section 5276 is hereby repealed.

(b) Conforming Amendments.--

(1)(A) The heading for part II of subchapter A of chapter 51 and the table of subparts for such part are amended to read as follows:

``PART II--MISCELLANEOUS PROVISIONS

``Subpart A. Manufacturers of stills.

``Subpart B. Nonbeverage domestic drawback claimants.

``Subpart C. Recordkeeping by dealers.

``Subpart D. Other provisions.''.

(B) The table of parts for such subchapter A is amended by striking the item relating to part II and inserting the following new item:

``Part II. Miscellaneous provisions.''.

(2) Subpart C of part II of such subchapter (relating to manufacturers of stills) is redesignated as subpart A.

(3)(A) Subpart F of such part II (relating to nonbeverage domestic drawback claimants) is redesignated as subpart B and sections 5131 through 5134 are redesignated as sections 5111 through 5114, respectively.

(B) The table of sections for such subpart B, as so redesignated, is amended--

(i) by redesignating the items relating to sections 5131 through 5134 as relating to sections 5111 through 5114, respectively, and

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(ii) by striking ``and rate of tax'' in the item relating to section 5111, as so redesignated.

(C) Section 5111, as redesignated by subparagraph (A), is amended--

(i) by striking ``and rate of tax'' in the section heading,

(ii) by striking the subsection heading for subsection (a), and

(iii) by striking subsection (b).

(4) Part II of subchapter A of chapter 51 is amended by adding after subpart B, as redesignated by paragraph (3), the following new subpart:

``Subpart C--Recordkeeping and Registration by Dealers

``Sec. 5121. Recordkeeping by wholesale dealers.

``Sec. 5122. Recordkeeping by retail dealers.

``Sec. 5123. Preservation and inspection of records, and entry of premises for inspection.

``Sec. 5124. Registration by dealers.''

(5)(A) Section 5114 (relating to records) is moved to subpart C of such part II and inserted after the table of sections for such subpart.

(B) Section 5114 is amended--

(i) by striking the section heading and inserting the following new heading:

``SEC. 5432. RECORDKEEPING BY WHOLESAL DEALERS.'';

and

(ii) by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

``(c) Wholesale Dealers.--For purposes of this part--

``(1) Wholesale dealer in liquors.--The term `wholesale dealer in liquors' means any dealer (other than a wholesale dealer in beer) who sells, or offers for sale, distilled spirits, wines, or beer, to another dealer.

``(2) Wholesale dealer in beer.--The term `wholesale dealer in beer' means any dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to another dealer.

``(3) Dealer.--The term `dealer' means any person who sells, or offers for sale, any distilled spirits, wines, or beer.

``(4) Presumption in case of sale of 20 wine gallons or more.--The sale, or offer for sale, of distilled spirits, wines, or beer, in quantities of 20 wine gallons or more to the same person at the same time, shall be presumptive evidence that the person making such sale, or offer for sale, is engaged in or

carrying on the business of a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be. Such presumption may be overcome by evidence satisfactorily showing that such sale, or offer for sale, was made to a person other than a dealer.''.
(C) Paragraph (3) of section 5121(d), as so redesignated, is amended by striking ``section 5146'' and inserting ``section 5123''.

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(6)(A) Section 5124 (relating to records) is moved to subpart C of part II of subchapter A of chapter 51 and inserted after section 5121.

(B) Section 5124 is amended--

(i) by striking the section heading and inserting the following new heading:

``SEC. 5122. RECORDKEEPING BY RETAIL DEALERS.'',

in (ii) <<NOTE: 26 USC 5122.>> by striking ``section 5146''

subsection (c) and inserting ``section 5123'', and

(c) (iii) <<NOTE: 26 USC 5122.>> by redesignating subsection

as subsection (d) and inserting after subsection (b) the following new subsection:

``(c) Retail Dealers.--For purposes of this section--

``(1) Retail dealer in liquors.--The term `retail dealer in liquors' means any dealer (other than a retail dealer in beer or a limited retail dealer) who sells, or offers for sale, distilled spirits, wines, or beer, to any person other than a dealer.

``(2) Retail dealer in beer.--The term `retail dealer in beer' means any dealer (other than a limited retail dealer) who sells, or offers for sale, beer, but not distilled spirits or wines, to any person other than a dealer.

``(3) Limited retail dealer.--The term `limited retail dealer' means any fraternal, civic, church, labor, charitable, benevolent, or ex-servicemen's organization making sales of distilled spirits, wine or beer on the occasion of any kind of entertainment, dance, picnic, bazaar, or festival held by it, or any person making sales of distilled spirits, wine or beer to the members, guests, or patrons of bona fide fairs, reunions, picnics, carnivals, or other similar outings, if such organization or person is not otherwise engaged in business as a dealer.

``(4) Dealer.--The term `dealer' has the meaning given such term by section 5121(c)(3).''.

(7) Section 5146 is moved to subpart C of part II of subchapter A of chapter 51, inserted after section 5122, and redesignated as section 5123.

(8) Subpart C of part II of subchapter A of chapter 51, as amended by paragraph (7), is amended by adding at the end the following new section:

``SEC. 5124. REGISTRATION BY DEALERS.

``Every dealer who is subject to the recordkeeping requirements under section 5121 or 5122 shall register with the Secretary such dealer's name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In the case of a firm or company, the names of the several persons constituting the same,

and the places of residence, shall be so registered.''.

(9) Section 7012 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

``(4) For provisions relating to registration by dealers in distilled spirits, wines, and beer, see section 5124.''.

(10) Part II of subchapter A of chapter 51 is amended by inserting after subpart C the following new subpart:

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``Subpart D--Other Provisions

``Sec. 5131. Packaging distilled spirits for industrial uses.

``Sec. 5132. Prohibited purchases by dealers.''.

(11) Section 5116 is moved to subpart D of part II of subchapter A of chapter 51, inserted after the table of sections, redesignated as section 5131, and amended by inserting ``(as defined in section 5121(c))'' after ``dealer'' in subsection (a).

(12) Subpart D of part II of subchapter A of chapter 51 is amended by adding at the end the following new section:

``SEC. 5132. PROHIBITED PURCHASES BY DEALERS.

``(a) In General.--Except as provided in regulations prescribed by the Secretary, it shall be unlawful for a dealer to purchase distilled spirits for resale from any person other than a wholesale dealer in liquors who is required to keep the records prescribed by section 5121.

``(b) Limited Retail Dealers.--A limited retail dealer may lawfully purchase distilled spirits for resale from a retail dealer in liquors.

``(c) Penalty and Forfeiture.--

``For penalty and forfeiture provisions applicable to violations of subsection (a), see sections 5687 and 7302.''.

(13) Subsection (b) of section 5002 is amended--

(A) by striking ``section 5112(a)'' and inserting ``section 5121(c)(3)'',

(B) by striking ``section 5112'' and inserting ``section 5121(c)'', and

(C) by striking ``section 5122'' and inserting ``section 5122(c)''.

(14) Subparagraph (A) of section 5010(c)(2) is amended by striking ``section 5134'' and inserting ``section 5114''.

(15) Subsection (d) of section 5052 is amended to read as follows:

``(d) Brewer.--For purposes of this chapter, the term `brewer' means any person who brews beer or produces beer for sale. Such term shall not include any person who produces only beer exempt from tax under section 5053(e).''.

(16) The text of section 5182 is amended to read as follows:

``For provisions requiring recordkeeping by wholesale liquor dealers, see section 5112, and by retail liquor dealers, see section 5122.''.

(17) Subsection (b) of section 5402 is amended by striking ``section 5092'' and inserting ``section 5052(d)''.

(18) Section 5671 is amended by striking ``or 5091''.

(19)(A) Part V of subchapter J of chapter 51 &&NOTE: 26 USC 5691.&& is hereby repealed.

(B) The table of parts for such subchapter J is amended by striking the item relating to part V.

(20)(A) Sections 5142, 5143, and 5145 are moved to subchapter D of chapter 52, inserted after section 5731, redesignated as sections 5732, 5733, and 5734, respectively, and amended by striking ``this part'' each place it appears and inserting ``this subchapter''.

(B) Section 5732, as redesignated by subparagraph (A), is amended by striking ``(except the tax imposed by section 5131)'' each place it appears.

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(C) Paragraph (2) of section 5733(c), as redesignated by subparagraph (A), is amended by striking ``liquors'' both places it appears and inserting ``tobacco products and cigarette papers and tubes''.

(D) The table of sections for subchapter D of chapter 52 is amended by adding at the end the following:

``Sec. 5732. Payment of tax.

``Sec. 5733. Provisions relating to liability for occupational taxes.

``Sec. 5734. Application of State laws.''

(E) Section 5731 is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(21) Subsection (c) of section 6071 is amended by striking ``section 5142'' and inserting ``section 5732''.

(22) Paragraph (1) of section 7652(g) is amended--

(A) by striking ``subpart F'' and inserting ``subpart B'', and

(B) by striking ``section 5131(a)'' and inserting ``section 5111''.

(c) <<NOTE: 26 USC 5002 note.>> Effective Date.--The amendments made

by this section shall take effect on July 1, 2008, but shall not apply to taxes imposed for periods before such date.

SEC. 11126. INCOME TAX CREDIT FOR DISTILLED SPIRITS WHOLESALERS AND FOR DISTILLED SPIRITS IN CONTROL STATE BAILMENT WAREHOUSES FOR COSTS OF CARRYING FEDERAL EXCISE TAXES ON BOTTLED DISTILLED SPIRITS.

(a) In General.--Subpart A of part I of subchapter A of chapter 51 (relating to gallonage and occupational taxes) is amended by adding at the end the following new section:

``SEC. 5011. INCOME TAX CREDIT FOR AVERAGE COST OF CARRYING EXCISE TAX.

``(a) In General.--For purposes of section 38, the amount of the distilled spirits credit for any taxable year is the amount equal to the product of--

``(1) in the case of--

``(A) any eligible wholesaler, the number of cases of bottled distilled spirits--

``(i) which were bottled in the United States, and

``(ii) which are purchased by such wholesaler during the taxable year directly from the bottler of such spirits, or

``(B) any person which is subject to section 5005 and which is not an eligible wholesaler, the number of cases of bottled distilled spirits which are stored in a

warehouse operated by, or on behalf of, a State or political subdivision thereof, or an agency of either, on which title has not passed on an unconditional sale basis, and

((2) the average tax-financing cost per case for the most recent calendar year ending before the beginning of such taxable year.

((b) Eligible Wholesaler.--For purposes of this section, the term 'eligible wholesaler' means any person which holds a permit under the Federal Alcohol Administration Act as a wholesaler of distilled spirits which is not a State or political subdivision thereof, or an agency of either.

((c) Average Tax-Financing Cost.--

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((1) In general.--For purposes of this section, the average tax-financing cost per case for any calendar year is the amount of interest which would accrue at the deemed financing rate during a 60-day period on an amount equal to the deemed Federal excise tax per case.

((2) Deemed financing rate.--For purposes of paragraph (1), the deemed financing rate for any calendar year is the average of the corporate overpayment rates under paragraph (1) of section 6621(a) (determined without regard to the last sentence of such paragraph) for calendar quarters of such year.

((3) Deemed federal excise tax per case.--For purposes of paragraph (1), the deemed Federal excise tax per case is \$25.68.

((d) Other Definitions and Special Rules.--For purposes of this section--

((1) Case.--The term 'case' means 12 80-proof 750-milliliter bottles.

((2) Number of cases in lot.--The number of cases in any lot of distilled spirits shall be determined by dividing the number of liters in such lot by 9.''

(b) Credit Treated as Part of General Business Credit.--Section 38(b) (relating to current year business credit) is amended by striking 'plus'' at the end of paragraph (18), by striking the period at the end of paragraph (19), and inserting ', plus'', and by adding at the end the following new paragraph:

((20) the distilled spirits credit determined under section 5011(a).''.

(c) Conforming Amendment.--The table of sections for subpart A of part I of subchapter A of chapter 51 is amended by adding at the end the following new item:

'Sec. 5011. Income tax credit for average cost of carrying excise tax.''

(d) <<NOTE: 26 USC 38 note.>> Effective Date.--The amendments made by this section shall apply to taxable years beginning after September 30, 2005.

SEC. 11127. QUARTERLY EXCISE TAX FILING FOR SMALL ALCOHOL EXCISE TAXPAYERS.

(a) In General.--Subsection (d) of section 5061 (relating to time for collecting tax on distilled spirits, wines, and beer) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6),

respectively, and by inserting after paragraph (3) the following new paragraph:

``(4) Taxpayers liable for taxes of not more than \$50,000.--

``(A) In general.--In the case of any taxpayer who reasonably expects to be liable for not more than \$50,000 in taxes imposed with respect to distilled spirits, wines, and beer under subparts A, C, and D and section 7652 for the calendar year and who was liable for not more than \$50,000 in such taxes in the preceding calendar year, the last day for the payment of tax on withdrawals, removals, and entries (and articles brought into the United States from Puerto Rico) under bond for deferred payment shall be the 14th day after the last day of the calendar quarter during which the action giving rise to the imposition of such tax occurs.

limit

``(B) <<NOTE: Deadline.>> No application after exceeded.--Subparagraph (A) shall not apply to any taxpayer for any

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portion of the calendar year following the first date on which the aggregate amount of tax due under subparts A, C, and D and section 7652 from such taxpayer during such calendar year exceeds \$50,000, and any tax under such subparts which has not been paid on such date shall be due on the 14th day after the last day of the semimonthly period in which such date occurs.

``(C) Calendar quarter.--For purposes of this paragraph, the term 'calendar quarter' means the three-month period ending on March 31, June 30, September 30, or December 31.''.

(b) Conforming Amendment.--Section 5061(d)(6), as redesignated by subsection (a), is amended by striking 'paragraph (4)'' and inserting 'paragraph (5)''.

(c) <<NOTE: 26 USC 5061 note.>> Effective Date.--The amendments made by this section shall apply with respect to quarterly periods beginning on and after January 1, 2006.

PART 5--SPORT EXCISE TAXES

SEC. 11131. CUSTOM GUNSMITHS.

(a) Small Manufacturers Exempt From Firearms Excise Tax.--Section 4182 (relating to exemptions) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

``(c) Small Manufacturers, Etc.--

``(1) In general.--The tax imposed by section 4181 shall not apply to any pistol, revolver, or firearm described in such section if manufactured, produced, or imported by a person who manufactures, produces, and imports less than an aggregate of 50 of such articles during the calendar year.

``(2) Controlled groups.--All persons treated as a single employer for purposes of subsection (a) or (b) of section 52 shall be treated as one person for purposes of paragraph (1).''.

(b) <<NOTE: 26 USC 4182 note.>> Effective Date.--

(1) In general.--The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after September 30, 2005.

(2) No inference.--Nothing in the amendments made by this section shall be construed to create any inference with respect to the proper tax treatment of any sales before the effective date of such amendments.

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