

104TH CONGRESS
1ST SESSION

S. 1300

To amend the Internal Revenue Code of 1986 to simplify the method of payment of taxes on distilled spirits.

IN THE SENATE OF THE UNITED STATES

OCTOBER 10, 1995

Mr. BREAUX introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to simplify the method of payment of taxes on distilled spirits.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Distilled Spirits Tax Payment Simplification Act of
6 1995”.

7 (b) AMENDMENT OF 1986 CODE.—Except as other-
8 wise expressly provided, whenever an amendment or repeal
9 is expressed in terms of an amendment to, or repeal of,
10 a section or other provision, the reference shall be consid-

1 ered to be made to a section or other provision of the In-
2 ternal Revenue Code of 1986.

3 **SEC. 2. TRANSFER OF DISTILLED SPIRITS BETWEEN BOND-**
4 **ED PREMISES.**

5 (a) Section 5212 is amended to read as follows:

6 **“SEC. 5212. TRANSFER OF DISTILLED SPIRITS BETWEEN**
7 **BONDED PREMISES.**

8 “Distilled spirits on which the internal revenue tax
9 has not been paid as authorized by law may, under such
10 regulations as the Secretary shall prescribe, be transferred
11 in bond between bonded premises in any approved con-
12 tainer. For the purposes of this chapter, except in the case
13 of any transfer from a premise of a bonded dealer, the
14 removal of distilled spirits for transfer in bond between
15 bonded premises shall not be construed to be a withdrawal
16 from bonded premises.”

17 (b) The first sentence of section 5232 is amended to
18 read as follows:

19 “Distilled spirits imported or brought into the United
20 States, under such regulations as the Secretary shall pre-
21 scribe, may be withdrawn from customs custody and
22 transferred to the bonded premises of a distilled spirits
23 plant without payment of the internal revenue tax imposed
24 on such distilled spirits.”

1 **SEC. 3. ESTABLISHMENT OF DISTILLED SPIRITS PLANT.**

2 Section 5171 is amended by—

3 (1) striking from subsection (a) the phrase “or
4 processor” and inserting therein “processor, or
5 bonded dealer;” and

6 (2) deleting from subsection (b) the “or both.”
7 and inserting thereafter “as a bonded dealer, or as
8 any combination thereof.”

9 **SEC. 4. DISTILLED SPIRITS PLANTS.**

10 Section 5178(a) is amended by adding the following
11 new paragraph after paragraph (4) to read as follows:

12 “(5) BONDED DEALER OPERATIONS.—Any per-
13 son establishing a distilled spirits plant to conduct
14 operations as a bonded dealer may, as described in
15 the application for registration—

16 “(A) store distilled spirits in any approved
17 container on the bonded premises of such plant,
18 and

19 “(B) under such regulations as the Sec-
20 retary shall prescribe, store taxpaid distilled
21 spirits, beer and wine and such other beverages
22 and items (products) not subject to tax or regu-
23 lation under this title on such bonded prem-
24 ises.”

1 **SEC. 5. BONDED DEALERS.**

2 (a) Section 5002(a) is amended by inserting after
3 subsection (a)(15) the following new paragraphs:

4 “(16) **BONDED DEALER.**—The term ‘bonded dealer’
5 means any person who has elected under section 5011 to
6 be treated as a bonded dealer.

7 “(17) **CONTROL STATE ENTITY.**—The term ‘control
8 State entity’ means a State or a political subdivision of
9 a State in which only the State or a political subdivision
10 thereof is allowed under applicable law to perform distilled
11 spirit operations, or any instrumentality of such a State
12 or political subdivision.”

13 (b) Subpart A of part I of subchapter A of chapter
14 51 (relating to distilled spirits) is amended by adding at
15 the end thereof the following new section:

16 **“SEC. 5011. ELECTION TO BE TREATED AS BONDED**
17 **DEALER.**

18 “(a) **ELECTION.**—Any wholesale dealer, or any con-
19 trol State entity, may elect, at such time and in such man-
20 ner as the Secretary shall prescribe, to be treated as a
21 bonded dealer if such wholesale dealer or entity sells bot-
22 tled distilled spirits exclusively to a wholesale dealer in liq-
23 uor, to an independent retail dealer subject to the limita-
24 tion set forth in subsection (b), or to another bonded
25 dealer.

1 “(b) SPECIAL RULES.—(1) Any person, other than
2 a control State entity, who is a bonded dealer shall not
3 be considered as selling to an independent retail dealer
4 if the bonded dealer has a greater than 10 percent owner-
5 ship interest in, or control of the retail dealer; the retail
6 dealer has a greater than 10 percent ownership interest
7 in, or control of the bonded dealer; or where any person
8 has a greater than 10 percent ownership interest in, or
9 control of both the bonded and retail dealer. For purposes
10 of this subparagraph, ownership interest, not limited to
11 stock ownership, shall be attributed to other persons in
12 the manner prescribed by section 318.

13 “(2) In the case of any control State entity, sub-
14 section (a) shall be applied without regard to the word
15 ‘independent’”.

16 “(c) INVENTORY OWNED AT TIME OF ELECTION.—
17 Any bottled distilled spirits in the inventory of any person
18 electing under section 5011 to be treated as a bonded deal-
19 er shall, to the extent that the Federal excise tax pre-
20 viously has been determined and paid at the time the elec-
21 tion becomes effective, not be subject to additional Federal
22 excise tax on such spirits as a result of the election being
23 in effect.

24 “(d) REVOCATION OF ELECTION.—The election made
25 under this section may be revoked by the bonded dealer

1 at any time, but once revoked shall not be made again
2 without the consent of the Secretary. When the election
3 is revoked, the bonded dealer shall immediately withdraw
4 the distilled spirits on determination of tax in accordance
5 with a tax payment procedure established by the Sec-
6 retary.

7 “(e) **EQUITABLE TREATMENT OF BONDED DEALERS**
8 **USING LIFO INVENTORY.**—The Secretary shall provide
9 such rules as may be necessary to assure that taxpayers
10 using the last-in first-out method of inventory valuation
11 do not suffer a recapture of their LIFO reserve by reason
12 of making the election under section 5011 or by reason
13 of operating a bonded wine cellar as permitted by section
14 5351.

15 “(f) **APPROVAL OF APPLICATION.**—Any person sub-
16 mitting an application under section 5171(c) and electing
17 under this section to be treated as a bonded dealer shall
18 be entitled to approval of such application to the same ex-
19 tent they would be entitled to approval of an application
20 for a basic permit under section 204(a)(2) of title 27 of
21 the United States Code (the Federal Alcohol Administra-
22 tion Act) and shall be accorded notice and hearing as de-
23 scribed in section 204(b) of such title 27.”

24 (c) **CONFORMING AMENDMENT.**—The tables of sec-
25 tions of subpart A of part I of subchapter A of chapter

1 51 and the table of contents of subtitle E are amended
 2 by adding at the appropriate places:

“Sec. 5011. Election To Be Treated As Bonded Dealer.”

3 **SEC. 6. DETERMINATION OF TAX.**

4 Section 5006 is amended by amending the first sen-
 5 tence of subsection (a)(1) to read as follows: “Except as
 6 otherwise provided in this section, the tax on distilled spir-
 7 its shall be determined when the spirits are transferred
 8 from a distilled spirits plant to a bonded dealer or are
 9 withdrawn from bond.”

10 **SEC. 7. LOSS OR DESTRUCTION OF DISTILLED SPIRITS.**

11 (a) Subsections (a)(1)(A) and (a)(2) of section 5008
 12 are amended by adding “bonded dealer,” immediately
 13 after “distilled spirits plant”.

14 (b) Subsection (c)(1) of section 5008 is amended by
 15 striking the words “of a distilled spirits plant”.

16 (c) Subsection (c)(2) of section 5008 is amended by
 17 striking the words “distilled spirits plant” and inserting
 18 in lieu thereof the words “bonded premises”.

19 **SEC. 8. TIME FOR COLLECTING TAX ON DISTILLED SPIRITS.**

20 (a) In section 5061(d) redesignate paragraph (5) as
 21 paragraph (6) and insert after paragraph (4) the following
 22 new paragraph:

23 “(5) **ADVANCED PAYMENT OF DISTILLED SPIR-**
 24 **ITS TAX.**—Notwithstanding the preceding provisions
 25 of this subsection, in the case of any tax imposed by

1 section 5001 with respect to a bonded dealer who
 2 has an election in effect on September 20 of any
 3 year, any payment of which would, but for this para-
 4 graph, be due in October or November of that year,
 5 shall be made on such September 20. No penalty or
 6 interest shall be imposed for the period from such
 7 September 20 until the due date determined without
 8 regard to this paragraph to the extent that tax due
 9 exceeds the tax which would have been due with re-
 10 spect to distilled spirits in the preceding October and
 11 November had the election under section 5011 been
 12 in effect.”

13 (b) Section 5061(e) is amended by inserting in para-
 14 graph (1) the words “or any bonded dealer,” immediately
 15 after “respectively,”.

16 **SEC. 9. EXEMPTION FROM OCCUPATIONAL TAX NOT APPLI-**
 17 **CABLE.**

18 Section 5113(a) is amended by adding immediately
 19 after the last sentence the following new sentence to read
 20 as follows: “This exemption shall not apply to a proprietor
 21 of a distilled spirits plant whose premises are used for op-
 22 erations of a bonded dealer.”

23 **SEC. 10. TECHNICAL, CONFORMING AND CLERICAL AMEND-**
 24 **MENTS.**

25 (a) TECHNICAL AND CONFORMING AMENDMENTS.—

1 (1) Section 5003(3) is amended to delete the
2 term “certain” from the sentence.

3 (2) Section 5214 is amended by redesignating
4 subsection (b) as (c) and inserting a new subsection
5 (b) to read as follows:

6 “(b) EXCEPTION.—Subsections (a) (1), (2), (3), (5),
7 (10), (11), and (12) of this section shall not apply to dis-
8 tilled spirits withdrawn from premises used for operations
9 as a bonded dealer.”

10 (3) Section 5215(a) is amended by inserting a
11 period after the word “plant” and striking the words
12 “but only for destruction, denaturation,
13 redistillation, reconditioning, or rebottling:”.

14 (4) Section 5362(b)(5) is amended by adding
15 the following sentence to read as follows: “This term
16 will not apply to premises used for operations as a
17 bonded dealer.”.

18 (5) Section 5551(a) is amended by inserting
19 after the term “processor” at each place it appears
20 the phrase “bonded dealer,”.

21 (6) Section 5601(a) (2), (3), (4), (5), and (b)
22 are amended by inserting “, bonded dealer” imme-
23 diately before the word “processor” at each place it
24 appears.

1 (7) Section 5602 is amended by inserting “,
2 warehouseman, processor, or bonded dealer” imme-
3 diately after the word “distiller”.

4 (8) Section 5115, 5180, and 5681 are repealed.

5 (b) CLERICAL AMENDMENTS.—

6 (1) The table of sections for part II of sub-
7 chapter A of chapter 51 is amended by striking out
8 the item relating to section 5115.

9 (2) The table of sections for subchapter B of
10 chapter 51 is amended by striking out the item re-
11 lating to section 5180.

12 (3) The table of sections for part IV of sub-
13 chapter J of chapter 51 is amended by striking out
14 the item relating to section 5681.

15 **SEC. 11. EFFECTIVE DATE.**

16 (a) Except as provided in subsection (b) the provi-
17 sions of this Act shall take effect one hundred and twenty
18 days following enactment.

19 (b)(1) The amendments made by section 3 of this Act
20 shall take effect on the date of enactment of this Act, and

21 (2) Each wholesale dealer who is required to file an
22 application for registration under section 5171(c) whose
23 operations are required to be covered by a basic permit
24 under the Federal Alcohol Administration Act (27 U.S.C.
25 203 and 204) and who has received such basic permits

1 as an importer, wholesaler, or as both, and has obtained
2 a bond required under this subchapter before the close of
3 the fourth month following enactment of this Act, shall
4 be qualified to operate bonded premises until such time
5 as the Secretary takes final action on the application. Any
6 control State entity that has obtained a bond required
7 under this subchapter shall be qualified to operate bonded
8 premises until such time as the Secretary takes final ac-
9 tion on the application for registration under section
10 5171(c).

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