

## EXCLUDING PETROLEUM STILLs FROM THE REQUIRE- MENT OF REGISTRATION

JUNE 21, 1940.—Ordered to be printed

Mr. CONNALLY, from the Committee on Finance, submitted the following

### REPORT

[To accompany H. R. 6207]

The Committee on Finance, to whom was referred the bill (H. R. 6207) amending section 2810 (a), Internal Revenue Code, to exclude petroleum stills from the requirement of registration, having considered the same, report it back favorably without amendment and recommend that the bill do pass.

The purpose of the bill is fully explained in the report of the House Committee on Ways and Means, which is attached hereto and made a part of this report.

[H. Rept. No. 2403, 76th Cong., 3d sess.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 6207) amending section 2810 (a), Internal Revenue Code, to exclude petroleum stills from the requirement of registration, having considered the same, report it back to the House without amendment and recommend that the bill do pass.

#### GENERAL STATEMENT

The act of July 20, 1868 (Stat. L., vol. 15, pp. 125-126), provides that every person owning or having in possession a still shall register the same with the Treasury Department. It provides a penalty for failure to do so.

This is part of the Liquor Regulation Code and obviously Congress did not have the oil business in mind when it was passed. In 1939, as a result of the ruling in the case of *Czarnecki v. United States* (95 F. (2d) 32), decided in 1938, in which it was held that the use of stills was immaterial, the Treasury Department issued a ruling that the requirement of the registration of stills applied to stills for the refining of crude petroleum or petroleum products.

This bill is to clarify the situation thus created and to exempt petroleum stills from registration.

No money or taxes is involved. The present situation is a nuisance, both to the oil industry and to the Treasury Department, which has issued a report on the bill interposing no objection to its enactment.

The letter of the Treasury Department is as follows:

TREASURY DEPARTMENT,  
Washington, July 17, 1939.

Hon. ROBERT L. DOUGHTON,  
Chairman, Committee on Ways and Means,  
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of May 8, 1939, previously acknowledged, requesting my recommendations or comments with respect to bill H. R. 6207, Seventy-sixth Congress, first session, to amend section 2810 (a), Internal Revenue Code, to exclude petroleum stills from the requirement of registration.

Section 2810 (a), Internal Revenue Code, now reads:

"(a) REQUIREMENT.—Every person having in his possession or custody; or under his control, any still or distilling apparatus set up, shall register the same with the collector of the district in which it is, by subscribing and filing with him duplicate statements, in writing, setting forth the particular place where such still or distilling apparatus is set up, the kind of still and its cubic contents, the owner thereof, his place of residence, and the purpose for which said still or distilling apparatus has been or is intended to be used; one of which statements shall be retained and preserved by the collector, and the other transmitted by him to the Commissioner. Stills and distilling apparatus shall be registered immediately upon their being set up.

"Every still or distilling apparatus not so registered, together with all personal property in the possession or custody, or under the control of used person, and found in the building, or in any yard or enclosure connected with the building in which the same may be set up, shall be forfeited.

"And every person having in his possession or custody, or under his control any still or distilling apparatus set up which is not so registered, shall pay a penalty of \$500, and shall be fined not less than \$100, nor more than \$1,000, and imprisoned for not less than one month, nor more than two years."

The bill proposes to amend the above section by adding at the end thereof the following paragraph:

"Stills and distilling apparatus set up at refineries for the refining of crude petroleum or the production of petroleum products and not used in the manufacture of distilled spirits are not required to be registered under this section."

Section 2810 (a), Internal Revenue Code, is identical with section 3258, Revised Statutes, and is derived from section 5 of the act of July 20, 1868, as amended by the act of December 24, 1872 (17 Stat. 401, 402). The Treasury Department has construed this legislation to mean that every person having in his possession, custody, or under his control, any still or distilling apparatus, set up, shall register same, with the exception of retorts for the production of wood alcohol and glass laboratory stills of trivial capacity. Paragraph 10 of Treasury Decision 4821, approved June 27, 1938 (copy enclosed), exempts from registration stills, worms, or condensers, for use other than in the distillation of spirits, set up on vessels operated by the Navy Department, the War Department, or the Coast Guard.

By virtue of section 5 of the Liquor Enforcement Act of 1936, now section 3170, Internal Revenue Code, and Treasury Decisions 4662 and 4885 (copies enclosed), the registration of stills is required to be made with the district supervisors of the Alcohol Tax Unit and no longer with the collectors of internal revenue (see *Fleischer v. United States* (1937), 302 U. S. 218; and *Whitcombe v. United States* (C. C. A. N. J., 1937), 90 F. (2d) 290, certiorari denied, 302 U. S. 759).

The construction placed by the Department upon the early statute (1868) requiring registration of stills was based largely upon the belief that all stills are capable of being used for the distillation of taxable spirits, and that effective procedure to safeguard the revenue should include a requirement that all stills or distilling apparatus, set up, must be registered with the proper internal-revenue official.

Illicit stills are discovered and destroyed, almost daily, by internal-revenue officers despite the fact that such stills have not been registered. This shows that the requirement as to registration, while it might be of slight help in connection with collecting so-called deficiency tax incurred rarely by legitimate distillers, does not afford any appreciable protection from illicit distillers. Registrations on file in the supervisor's office of stills by legitimate producers of distilled spirits are not informative to revenue officials as to illicit stills and therefore are of no practical value in locating illicit distilleries. Registration of a still for the manufacture of products other than distilled spirits does not prevent the still from being used for producing spirits. If such illegal use is made of the still, the

mere fact that it was registered would not be of any assistance in detecting the violation.

Regarding stills and distilling apparatus designed for refining crude petroleum or for the production of petroleum products, it may be stated that such stills are generally unsuitable from a practical standpoint for the manufacture of distilled spirits due to their very large size, high cost, and special construction. On account of their large size and weight it is extremely difficult to remove and install them, and impossible to hide them. Moreover, being constructed of very heavy iron and steel, reinforced to resist unusually high pressure and temperatures, the installation of such petroleum stills and their operation for the purpose of producing taxable spirits (alcohol, whisky, rum, brandy, and gin) would not be feasible or commercially profitable. The confronting conditions and the difficulties to be surmounted would, it seems, eliminate all incentive to convert such a refinery into an illicit distillery.

Modern petroleum stills, while varying in general design, are so constructed as to produce gasoline at a distillation point of at least 275° F., naphtha 450°, gas oil 525°, and various byproducts from the residuum 575°. Considerable variation upward in these distillation points occurs in the more recent designs of petroleum stills in use at large refining plants. The approximate temperature figures given show that the distillation points required in the manufacture of these petroleum products are so very much higher than required in the production of alcohol and alcoholic spirits as to render these modern petroleum stills unsuitable for the commercial production of taxable spirits, unless altered or manipulated at great cost.

As is well known, the distillation point required to produce alcohol and alcoholic spirits is below 212° F., the boiling point of water. The distillation point of absolute alcohol is 172° F., while other alcoholic spirits such as whisky, rum, brandy, and gin range between 172° F. and 212° F.

While stills actually designed and well suited for the production of alcohol and alcoholic spirits are of such construction as to render them entirely unsuited for the manufacture of petroleum products, nevertheless there is always a possibility that by alteration and manipulation of petroleum stills (an expensive venture) they might be rendered more or less capable of use in the production of taxable spirits.

In weighing the possibilities and probabilities involved, it may be said that while a petroleum still might possibly be constructed and operated so as to produce either petroleum products or taxable spirits, there is hardly any probability that it would be so constructed, or used in a refinery actually established for the manufacture of gasoline, naphtha, kerosene, gas oil, and other recognized petroleum products.

Production of taxable spirits at any established refinery by the illegal use of any still, whether registered or not, would subject the entire plant, including personal property therein, to forfeiture, and the illicit operators to fine and imprisonment. Section 3281, Revised Statutes (sec. 2833, Internal Revenue Code). See also section 3251, Revised Statutes (sec. 2800 (d), (e) (1), Internal Revenue Code), which makes every person having a proprietary interest or who is in any manner interested, in the use of the still or distillery liable jointly and severally for the taxes imposed on the distilled spirits produced thereat.

Mere possession of a still set-up, without its being used for the distillation of spirits, does not give rise to distilled-spirits tax, notwithstanding the penalties imposed by section 2810 (a), Internal Revenue Code, for setting it up without registration. If, however, a person makes or keeps mash fit for distillation and also possesses or uses a still he is a "distiller" under section 3247, Revised Statutes (sec. 2809 (a), Internal Revenue Code), and becomes liable to distilled-spirits tax under section 3248, Revised Statutes (sec. 2800 (c), Internal Revenue Code).

Thus it will be seen that if petroleum refineries are relieved of the requirement to register their stills to be used exclusively for refining crude petroleum and the production of petroleum products, and they should incur distilled spirits tax as "distillers" without complying with such internal-revenue laws as will remain applicable, they would still be subject to penalties and forfeitures more drastic than are now imposed by section 2810 (a), Internal Revenue Code.

In view of the above, it appears that requiring registration of stills and distilling apparatus set up at established refineries for use exclusively for refining crude petroleum and the production of petroleum products will serve no useful purpose in safeguarding the internal-revenue tax on distilled spirits. The Department, therefore, interposes no objection to amending section 2810 (a), Internal Revenue Code, so as to exempt these petroleum stills from the requirement of registration, as proposed in bill H. R. 6207.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Very truly yours,

HERBERT E. GASTON,  
*Acting Secretary of the Treasury.*

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows. (New matter is printed in italics, existing law in which no change is proposed is shown in roman.)

SECTION 2810 (A) OF THE INTERNAL-REVENUE CODE

SEC. 2810. REGISTRY OF STILLS. (a) REQUIREMENT.—Every person having in his possession or custody, or under his control, any still or distilling apparatus set up, shall register the same with the collector of the district in which it is, by subscribing and filing with him, duplicate statements, in writing, setting forth the particular place where such still or distilling apparatus is set up, the kind of still and its cubic contents, the owner thereof, his place of residence, and the purpose for which said still or distilling apparatus has been or is intended to be used; one of which statements shall be retained and preserved by the collector, and the other transmitted by him to the Commissioner. Stills and distilling apparatus shall be registered immediately upon their being set up.

Every still or distilling apparatus not so registered, together with all personal property in the possession or custody, or under the control of such person, and found in the building, or in any yard or enclosure connected with the building in which the same may be set up, shall be forfeited.

And every person having in his possession or custody, or under his control, any still or distilling apparatus set up which is not so registered, shall pay a penalty of \$500, and shall be fined not less than \$100, nor more than \$1,000, and imprisoned for not less than one month, nor more than two years.

*Stills and distilling apparatus set up at refineries for the refining of crude petroleum or the production of petroleum products and not used in the manufacture of distilled spirits are not required to be registered under this section.*

