

PERMITTING REFUND OR CREDIT TO BREWERS OF TAXES PAID ON BEER LOST IN BOTTLING OPERA- TIONS

JUNE 16 (legislative day, JUNE 15), 1948.—Ordered to be printed

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

REPORT

[To accompany H. R. 6808]

The Committee on Finance, to whom was referred the bill (H. R. 6808) to permit refund or credit to brewers of taxes paid on beer lost in bottling operations, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

This bill allows brewers a refund or credit against tax for fermented malt liquors lost through breakage or leakage during filling, capping, pasteurizing, or labeling. The refund or credit during any month would be limited to 2½ percent of the tax paid during the month.

Losses by brewers in bottling operations range from about one-half of 1 percent to over 5 percent. Under present law tax is paid on this lost beer or other fermented liquor and no refund is allowed.

The report of the Committee on Ways and Means of the House of Representatives is as follows:

EFFECT OF THE BILL

The bill would amend section 3154 of the Internal Revenue Code (which at present provides refunds and credits with respect to internal revenue taxes paid on unsalable fermented malt liquor that is destroyed or returned to the brewery for use as brewing material) to provide for refund or credit of tax paid on beer, lager beer, ale, porter, or other similar fermented malt liquor lost in the bottling house through breakage or leakage, or in the process of filling, capping, pasteurizing, or labeling. The maximum refund or credit for such loss could not exceed 2½ percent of the tax paid by a brewer on the fermented malt liquor removed by him during any calendar month from his brewery to his bottling house. Claims for credit or refund would be allowed under section 3154 (b) of the code, as amended, only if filed within 90 days after the close of the month within which loss, destruction, or return to the brewery for use as brewing material occurs. Claims with respect to tax paid on unsalable fermented malt liquor are not allowable under existing law unless filed within 90 days after the date of destruction or return to the brewery of the unsalable liquor.

Technical amendments redesignating subsection (a) of section 3154 as paragraph (1) of such subsection, and redesignating the clauses of such subsection would be made.

The bill would be applicable with respect to fermented malt liquor lost after the 1st day of the month of enactment.

GENERAL STATEMENT

Existing law recognizes the injustice of retaining the tax imposed upon fermented malt liquor "brewed or manufactured and sold, or removed for consumption or sale," in the event sale is rendered impossible by reason of the bad condition of the liquor. Your committee believes that the same principle should be applied if sale of the tax-paid liquor is prevented by reason of loss in the bottling house through breakage or leakage, or in the process of filling, capping, pasteurizing, or labeling. Many States already provide similar relief to brewers.

Fermented malt liquor is in the usual course removed from the brewery to a brewery bottling house by pipe line, and the quantity so removed is measured by meter in gallons and accounted for in barrels of 31 gallons each. Internal revenue tax of \$8 per barrel is paid at the time of such removal. The possible bottling production from a barrel of 31 gallons is 13.77 (plus) cases of 24 12-ounce bottles. According to a survey made by the Bureau of Internal Revenue in 1938, the average actual yield for the entire country was found to be 13.44 cases per barrel. The average loss, therefore, was 0.33 case per barrel or 2.39 percent, which is believed to be at least the current average bottling loss.

The testimony of representatives of the Treasury Department and of the industry before your committee in 1940 and on June 2, 1948, agreed that many brewers have bottling losses greatly in excess of 2½ percent—with some having losses greater than 5 percent. In fact, use of speedier bottling equipment and automatic pasteurization equipment has resulted in substantial increase in bottling-house losses.

Provision for a maximum limitation upon refund or credit of 2½ percent of the tax paid by a brewer on fermented malt liquor removed from the brewery during the calendar month would, in general, allow full recovery of taxes only upon average or less-than-average bottling losses. The taxpayer would be required to prove to the satisfaction of the Commissioner the amount of such loss; that the fermented malt liquor was fully tax-paid; and that no refund or credit has been made or allowed, with respect to the liquor so claimed to have been lost, because of destruction or return to the brewery for nonsalability. The 2½ percent maximum limitation upon credits and refunds would apply separately with regard to each bottling house operated in connection with a brewery.

The revision of section 3154 (b) of the Internal Revenue Code would correlate the time for filing claim for refund or credit because of nonsalability with the time proposed for filing claim for refund or credit because of loss in the bottling house. Taxpayers would, thus, be concerned with only one statute of limitations, whatever might be the basis for filing of the claim for refund or credit under section 3154.

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, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

"INTERNAL REVENUE CODE

"SEC. 3154. REFUNDS AND CREDITS.

"[(a) ALLOWANCE.—] (a) *ALLOWANCE.—*

"(1) *UNSALEABLE PRODUCTS.—*The Commissioner shall make refund, or in lieu thereof, if he so elects, allow credit to a brewer in the amount of tax paid by such brewer on any beer, lager beer, ale, porter, or other similar fermented malt liquor manufactured by such brewer which has become unsalable by reason of its condition, upon the filing of a claim therefor by the brewer and proof by him to the satisfaction of the Commissioner that such beer, lager beer, ale, porter, or other similar fermented malt liquor [(1)] (A) was fully tax-paid, [(2)] (B) was lawfully removed from his brewery to his bottling house on or after March 22, 1933, [(3)] (C) never was removed from such bottling house, except in the process of destruction or for return to the brewery, [(4)] (D) had become unsalable without fraud, connivance, or collusion on his part, and [(5)] (E) was destroyed by him

in such bottling house in the presence of a representative of the Bureau of Internal Revenue, or was returned from such bottling house to the brewery in which made for use therein as brewing material.

"(2) *Loss.*—The Commissioner shall make refund, or in lieu thereof, if he so elects, allow credit to a brewer in the amount of tax paid by such brewer on any beer, lager beer, ale, porter, or other similar fermented malt liquor manufactured by such brewer which was lost in his bottling house through breakage or leakage or in the process of filling, capping, pasteurizing, or labeling, upon the filing of a claim therefor by the brewer and proof by him to the satisfaction of the Commissioner that such beer, lager beer, ale, porter, or other similar fermented malt liquor was fully tax-paid and that no refund or credit was made or allowed therefor under paragraph (1) to this subsection. Refund or credit under this paragraph for such loss during any calendar month shall not exceed an amount equal to 2½ per centum of the tax paid by him on all beer, lager beer, ale, porter, or other similar fermented malt liquor removed by him during such calendar month from his brewery to his bottling house.

"(b) **TIME FOR FILING CLAIM.**—No [such] claim under the provisions of subsection (a) shall be allowed unless filed within ninety days after the close of the month within which such destruction or return to the brewery for use as brewing material, [or, in the case of any beer, lager beer, ale, porter, or other similar fermented malt liquor so destroyed or returned before June 26, 1936, within ninety days after such date.] or loss, occurred."

