

REFUND OF EXCISE TAX ON ALCOHOLIC BEVERAGES DESTROYED BY VANDALISM OR MALICIOUS MIS- CHIEF

AUGUST 11 (legislative day, MAY 17), 1978.—Ordered to be printed

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

REPORT

[To accompany H.R. 1920]

The Committee on Finance, to which was referred the bill (H.R. 1920) to amend section 5064 of the Internal Revenue Code of 1954 to provide for refund of tax on distilled spirits, wines, rectified products, and beer lost or rendered unmarketable due to fire, flood, casualty, or other disaster, or to breakage, destruction, or other damage (excluding theft) resulting from vandalism or malicious mischief while held for sale, having considered the same, reports favorably thereon with an amendment to the text, and an amendment to the title, and recommends that the bill as amended do pass.

I. SUMMARY

H.R. 1920 expands the definition of the circumstances under which a loss of distilled spirits, wines, rectified products, or beer held for sale gives rise to payments by the Treasury to those holding the products for sale of amounts equal to the excise taxes and customs duties earlier paid on these products. At present, the only recognized circumstance which can give rise to such payments is a Presidentially declared "major disaster." The bill provides for payments on account of losses resulting from fire, flood, casualty, or other disaster, or from damage (not including theft) resulting from vandalism or malicious mischief.

The committee amendment to the bill provides an exemption from the 10-percent manufacturers excise tax on sales of trailers and semi-trailers which are (1) suitable for use with "light-duty" towing vehicles and (2) designed to be used for farming purposes or for trans-

porting horses or livestock. The exemption also applies to sales of separate bodies and chassis for these trailers and semitrailers.

II. GENERAL STATEMENT

A. Repayment of Alcohol Taxes and Duties After Loss Due to Disaster or Damage (sec. 1 of the bill and sec. 5064 of the Code)

Present law

The excise taxes and customs duties on distilled spirits, wines, rectified products, and beer are paid or determined before these products enter marketing channels. If the products subsequently are lost, made unmarketable, or officially condemned while held for sale, amounts equal to the taxes and duties can be paid by the Treasury to wholesalers or retailers holding the products for sale only if the cause is a "major disaster" so declared by the President (sec. 5064 of the Internal Revenue Code).¹ Similar repayment rules apply to tobacco products lost in major disasters so declared by the President (sec. 5708).

Reasons for change

Prepaid excise taxes constitute a high proportion of the cost of alcoholic products, as compared with excise taxes on other products. The tax on the production of distilled spirits is \$10.50 per gallon; the beer tax generally is \$9 per barrel (equivalent to about 29 cents per gallon); and the wine tax ranges from 17 cents to \$3.40 per wine gallon (depending upon the type or alcoholic content of the wine).

Accordingly, if alcoholic products held for sale are destroyed after taxes and duties have been paid, a large portion of the loss will be attributable to prepaid taxes which cannot be passed on to consumers.

Under present law, the Treasury can make payments for such taxes and duties only if the cause of loss is a Presidentially declared "major disaster." The committee believes that there are certain circumstances which, while not constituting such a "major disaster," can likewise result in substantial losses of distilled spirits, wines, rectified products, or beer. The committee has concluded that losses of such products caused by fire, flood, casualty, or other disasters, or by vandalism or malicious mischief (not including theft), should be given the same treatment with respect to tax and duty repayments as is now accorded to losses of such products caused by Presidentially declared major disasters.

Explanation of provision

In general

The bill provides for payment (without interest) by the Treasury of amounts equal to the alcohol excise taxes and duties paid or determined

¹ In general, sec. 5064 does not cover losses which take place at the site of production. These losses are the subject of other sections of the Code. For example, section 5008 provides for abatement or refund of tax if distilled spirits are: (1) lost while in bond; (2) voluntarily destroyed while in bond; (3) voluntarily destroyed on bottling premises to which removed after payment or determination of tax; (4) lost (in a manner described in the law) after withdrawal from bond on payment or determination of tax and before removal from the bottling premises to which removed from bond; or (5) returned to the bonded premises of a distilled spirits plant for certain specified purposes after payment or determination of tax.

on distilled spirits, wines, rectified products, or beer held for sale but lost or ruin because of certain events if these events occurred in the United States. These events are: (1) fire, flood, casualty, or other disaster, or (2) breakage, destruction, or other damage (not including theft) resulting from vandalism or malicious mischief.

As under present law with respect to Presidentially declared major disasters, payment is not to be available for taxes, or taxes and duties, the loss of which was indemnified by insurance or otherwise. The bill does not change the provisions of present law (sec. 5064(d)) disallowing payments under this section with respect to Puerto Rican products brought into the United States.

\$250 "floor"

Present law does not impose any "floor" or minimum amount for which a claim for repayment of taxes, or taxes and duties, may be filed under the Presidentially declared major disaster provision. The bill imposes a \$250 floor on any claim arising from any single disaster or damage, other than one for which a claim would have been allowable under present law. The bill makes no change on this point with respect to claims that would have been allowable under present law.

The \$250 floor is to be applied separately to each disaster or damage event; the taxes or duties lost from a series of events are not to be aggregated or averaged. The \$250 floor is to be applied to the amount of the taxes, or taxes and duties, lost with respect to a single event, if not indemnified by insurance or otherwise. The floor is not to take into account any loss in excess of the tax and duty amount, even though the loss is attributable to the same event. If a claim for taxes or duties lost that is otherwise allowable amounts to at least \$250, then the entire claim is to be allowed; if the claim is for less than \$250, then no part of the claim is to be allowed.

Time for filing claim

The bill provides that no claim under this section is allowable unless it is filed within 6 months after the date of the loss, except that the case of a Presidentially declared major disaster, the claim period is not to expire before the day which is 6 months after the date on which the President determined the disaster occurred.

Effective date

The provision applies to disasters (or other specified causes of loss) occurring on or after the first day of the first calendar month which begins more than 90 days after the date of the bill's enactment.

Revenue effect

The provision is estimated to reduce revenues by about \$500,000 annually, beginning with fiscal year 1979.

B. Exemption From Excise Tax for Farm, Horse, or Livestock Trailers and Semitrailers (sec. 2 of the bill and sec. 4063 of the Code)

Present law

Under present law, a manufacturers excise tax of 10 percent is imposed on sales of chassis and bodies of trucks, buses, highway tractors,

or their related trailers and semitrailers by a manufacturer, producer, or importer of such an article (sec. 4061(a) of the Internal Revenue Code of 1954).²

Present law provides an exclusion from the tax in the case of sales of chassis and bodies of light-duty trucks, buses, truck trailers, and semitrailers (Sec. 4061(a)(2)).³ To be eligible for this exclusion, the chassis or body of the truck trailer or semitrailer must be "suitable for use" with a trailer or semitrailer having a gross vehicle weight of 10,000 pounds or less, determined in accordance with Treasury Department regulations (sec. 4061(a)(2)).⁴ Furthermore, in order to be exempt, the truck trailer or semitrailer itself must be suitable for use with a towing vehicle having a gross vehicle weight of 10,000 pounds or less (sec. 4061(a)(2)).

Reasons for change

The committee understands that the present requirement for exemption from the manufacturers excise tax for trailers having gross vehicle weights of 10,000 pounds or less is administered by the Internal Revenue Service in a manner which imposes unrealistically low limits in the case of trailers designed to be used for farming purposes, or designed to be used for transporting horses or livestock. Under the Treasury Regulations, the primary determinant of gross vehicle weight frequently is the maximum load carrying capability of the axles.⁵ The committee understands that manufacturers of farming trailers, and of trailers designed to be used for transporting horses or livestock, often use axles produced for use as components of recreational vehicles or mobile homes, because these axles generally are readily available at reasonable prices. However, because of the particular conditions generally dealt with in the recreational vehicle and mobile home industries, axles designed for use as components of such vehicles often may be rated at more than 10,000 pounds. Nevertheless,

²The tax is scheduled to be reduced to 5 percent on Oct. 1, 1979. Revenues from this tax go to the Highway Trust Fund (through Sept. 30, 1979).

³The 7-percent manufacturers excise tax on automobiles, etc., was repealed by the Revenue Act of 1971 (Pub. L. 92-178). Since many persons use smaller trucks, etc., as passenger vehicles, sales of light-duty trucks, trailers, and semitrailers also were excluded from the 10-percent truck excise tax by the 1971 act.

⁴"Gross vehicle weight" is defined as the maximum total weight of a loaded vehicle (Treas. Regs. § 48.4061(a)-1(f)(3)(i)). The maximum total weight of a loaded vehicle is the gross vehicle weight rating of the manufactured article as specified or established by the manufacturer, unless such a rating is unreasonable in light of the particular facts and circumstances. Generally, a manufacturer must specify or establish a weight rating for each chassis, body or vehicle sold by it if the item requires no significant post-manufacture modification (Treas. Regs. § 48.4061(a)-1(f)(3)(ii)).

The manufacturer's gross vehicle weight rating must take into account the strength of the chassis frame, the axle capability (capacity and placement), and the spring, brake, rim, and tire capacities. The lowest weight rating component ordinarily is determinative of the gross vehicle weight (Treas. Regs. § 48.4061(a)-1(f)(3)(v)). The total of the axle ratings is the sum of the maximum load-carrying capability of the axles and, in the case of a trailer or semitrailer, the weight that is to be borne by the vehicle used in combination with the trailer or semitrailer for which gross vehicle weight is determined (Treas. Regs. § 48.4061(a)-1(f)(3)(vi)).

⁵ See note 4, *supra*.

in the case of trailers designed to be used for farming purposes or for transporting horses or livestock, those same axles would be used only in carrying loads of 10,000 pounds or less. Accordingly, the committee has concluded that such items should be eligible for the light-duty truck exemption.

Before the Revenue Act of 1971, which repealed the tax on automobiles and their trailers and semitrailers, the automobile tax rate applied to "trailers and semitrailers * * * suitable for use in connection with passenger automobiles." (Sec. 4061(a)(2)(B).) The IRS ruled that "one-horse and two-horse trailers are considered to be suitable for use in connection with passenger automobiles, inasmuch as they possess actual and practical fitness for such use." Three-horse and four-horse trailers were "concluded to be primarily designed for highway use in combination with taxable trucks." Rev. Rul. 68-584, 1968-2 CB 492.

The committee, therefore, has decided to exempt trailers designed to be used for farming purposes or for transporting horses or livestock from the 10-percent manufacturers excise tax where such trailers are suitable for use with light-duty towing vehicles.

Explanation of provision

Under the bill, an exemption is provided from the 10-percent manufacturers excise tax for certain trailers or semitrailers which are designed to be used for farming purposes or for transporting horses or livestock. The bill, in effect, eliminates the present law requirement for exemption that a trailer or semitrailer designed for such purposes have a gross vehicle weight of 10,000 pounds or less. However, the bill retains the present law limitations on the size of such a trailer or semitrailer—that it be suitable for use with a light-duty vehicle having a gross vehicle weight of 10,000 pounds or less. If a body or chassis is sold separately, then it must be suitable for use with such a trailer or semitrailer in order to qualify under the exemption.

The bill does not affect the separate 8-percent manufacturers excise tax on truck parts and accessories (sec. 4061(b)).

To avoid creating competitive disadvantages which might arise because of the relative sizes of dealers' inventories, and in conformity with prior practices in excise tax legislation, the bill provides for floor stocks refunds or credits (without interest) with respect to all articles exempted by the bill that are in dealers' inventories on the day after the date of enactment. These floor stocks refunds (or credits) are to be available with respect to exempted trailers or semitrailers (and their chassis and bodies), sold by the manufacturer, producer, or importer on or before the date of enactment which have not been used, but are intended for sale by the dealer.

The credits or refunds for these floor stocks must be claimed by the manufacturer, producer, or importer before the first day of the 10th calendar month beginning after the day after the date of enactment of the bill, based upon requests submitted to it from the dealer before the first day of the 7th calendar month beginning after the day after the date of enactment. Also, on or before the first day of the 10th calendar month beginning after the day after the date of enactment, the manufacturer, producer, or importer must have reimbursed the dealer for the tax or obtained the dealer's written consent to the refund or credit.

In addition, the manufacturer, producer, or importer must have in its possession evidence of the inventories on which the credit or refund is claimed (to the extent required by Treasury regulations).

An article is considered "held by a dealer", for these purposes, if title to the article has passed to the dealer (even if delivery has not been made). However, the article will not be considered "held by a dealer" unless title to the article or possession of the article has never been transferred to a nondealer for purposes of consumption. The term "dealer" is defined to include a wholesaler, jobber, distributor or retailer.

Effective date

The exemptions made by the provision apply with respect to articles sold on or after the day after the bill's enactment.

Revenue effect

The provision is estimated to reduce budget receipts by less than \$2 million per year, beginning with fiscal year 1979. These revenues would otherwise go into the Highway Trust Fund (through September 30, 1979). If the bill becomes public law within the current fiscal year, it could also reduce 1978 budget receipts by a negligible amount.

III. COST OF CARRYING OUT THE BILL AND VOTE OF THE COMMITTEE IN REPORTING H.R. 1920, AS AMENDED

Revenue cost

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs incurred in carrying out H.R. 1920, as reported by the committee. The committee estimates that this bill will result in a decrease in budget receipts of less than \$2.5 million per year, beginning in fiscal year 1979.

The Treasury Department agrees with this statement.

Vote of the Committee

In compliance with section 133 of the Legislative Reorganization Act of 1946, the following statement is made relative to the vote by the committee on the motion to report the bill, H.R. 1920, as amended by the committee, was ordered reported by a voice vote.

IV. REGULATORY IMPACT OF THE BILL AS REPORTED AND OTHER MATTERS TO BE DISCUSSED UNDER SENATE RULES

Regulatory Impact

Pursuant to Rule XXIX of the Standing Rules of the Senate, as amended by S. Res. 4 (February 4, 1977), the committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of H.R. 1920, as reported by the committee.

A. Numbers of individuals and businesses who would be regulated.—The provisions of the bill affect persons holding distilled spirits,

wines, rectified products, or beer for sale, and also manufacturers, producers, and importers of trailers and semitrailers which are (1) suitable for use with "light-duty" towing vehicles and (2) designed to be used for farming purposes or for transporting horses or livestock.

B. Economic impact of regulation on individuals, consumers, and businesses affected.—The provisions of the bill provide for payments by the Treasury, in the case of loss due to certain disasters or damage, to persons holding distilled spirits, wines, rectified products, or beer for sale, equal to the excise taxes and customs duties earlier paid on these products; and also provide an exemption from the 10-percent manufacturers excise tax on sales of trailers and semitrailers which are (1) suitable for use with "light-duty" towing vehicles and (2) designed to be used for farming purposes or for transporting horses or livestock.

C. Impact on personal privacy.—The bill makes no changes in those provisions of Federal law relating to the personal privacy of taxpayers.

D. Determination of the amount of paperwork.—The provisions of the bill will involve some additional paperwork for persons filing claims for payments from the Treasury with respect to losses of distilled spirits, wines, rectified products, or beer held for sale, caused by certain disasters or damage, and for manufacturers, producers, or importers of trailers exempted from manufacturers excise tax by the bill who claim floor stocks refunds (or credits) with respect to such trailers that are in dealers' inventories on the day after the date of enactment of the bill.

Consultation with Congressional Budget Office on Budget Estimates

In accordance with section 403 of the Budget Act, the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates (as shown in part III of this report) and agrees with the methodology used and the resulting dollar estimates for those items.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the committee, it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of Rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill, as reported).

