Calendar No. 2138

85TH CONGRESS, 2d Session | SENATE | REPORT No. 2090

EXCISE TAX TECHNICAL CHANGES ACT OF 1958

REPORT

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

TO ACCOMPANY

H. R. 7125

A BILL TO MAKE TECHNICAL CHANGES IN THE FEDERAL EXCISE TAX LAWS, AND FOR OTHER PURPOSES

JULY 31, 1958.—Ordered to be printed

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EXCISE TAX TECHNICAL CHANGES ACT OF 1958

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

REPORT

[To accompany H. R. 7125]

The Committee on Finance, to whom was referred the bill (H. R. 7125) to make technical changes in the Federal excise tax laws, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

I. GENERAL STATEMENT

As indicated by the House report, H. R. 7125 represents a major step in the comprehensive revision of the technical and administrative provisions of the Internal Revenue Code relating to Federal excise taxes.

Title I of the House bill contains the first overall technical revision of the general excise-tax provisions since 1932, the year when a great many of these provisions were adopted. In addition to numerous changes in virtually all classes of the miscellaneous excise taxes, the provisions relating to the communications and documentary stamp taxes, and the important credit and refund provisions have been entirely rewritten.

Title II of the House bill is concerned with the provisions of the code relating to the taxes on distilled spirits, wines, beer, tobacco products, and firearms. The bill provides a general technical revision of the distilled spirits provisions and also the occupational-tax provisions relating to wholesale and retail dealers in alcoholic beverages. The provisions relating to wines, beer, and tobacco products were generally revised at the time of the enactment of the 1954 Code. The bill, however, also makes certain limited changes in the case of these products.

As indicated by its title, the bill is primarily concerned with technical and administrative changes designed to correct excise-tax inequities and competitive disparities. The bill is not concerned with general questions of excise-tax rates or the desirability of adding or deleting entire tax categories.

Your committee, while retaining the great bulk of the House provisions with only minor changes, nevertheless has made certain substantive amendments. Some of these involve the deletion of provisions of the House bill which appear to need more study, and many of the remaining are designed to perfect the House provisions. The bill, as amended by your committee, is estimated to involve a revenue loss of about $39 million on an annual basis as contrasted to about $15 million under the House bill. However, because of a $57 million nonrecurring revenue loss item which has been deleted by your committee, it is not believed that the bill, as amended by your committee, should be viewed as involving any greater revenue loss, at least for some time in the future, than does the House bill.

The principal changes made by your committee in the House bill can be summarized as follows:

(*a*) *Exemption for nonprofit educational organizations*

The exemption provided by the House bill for nonprofit, operating schools and colleges in the case of the retailers, manufacturers, communications, and transportation of persons taxes is deleted.

(*b*) *Manufacturers excises*

(1) The provision which would provide for tax-free sales of automobile parts or accessories for repair or replacement parts for farm equipment is deleted.

(2) The proposed tax on tape and wire recorders, players, and recorder-players is deleted.

(3) The provision of the House bill permitting (for purposes of determining the tax base) the construction of a price in the case of sales to retailers, as well as sales to consumers, is broadened also to apply to sales to special dealers where the sales force for these dealers is provided by the manufacturer.

(4) The tax-free sales of mechanical pencils, fountain pens, and ballpoint pens for export is to be allowed only where the purchaser provides notice of intent to export or to resell for export at the time of the purchase from the manufacturer.

(5) In the case of the manufacturers tax on automobiles, trucks, buses, etc., refunds or credits of tax paid are to be allowed in the case of exports only where the initial purchase from the manufacturer was accompanied by a notice of intent to export or to resell for export.

(6) The House provision providing for refunds of the gasoline tax where the gasoline is lost in a major disaster, as declared by the President, is deleted.

(*c*) *Admissions and club dues*

(1) The exemption for admissions not in excess of 90 cents is revised to provide an exemption of the first dollar of any admission (whether or not the total charge is in excess of $1).

(2) An exemption is provided for most admissions where the proceeds inure exclusively to an organization organized and operated

exclusively to provide scholarships and fellowships for study above the secondary school level.

(3) The club dues exemption for swimming pools also is to include skating rinks.

(*d*) *Documentary stamp taxes*

(1) The 6 cents per share ceiling on the stock transfer tax is removed. However, the tax rate, provided by the House bill, of 4 cents per $100 of actual value, is continued.

(2) The provision of the House bill relating to transfers from surplus to capital is deleted and the provision of present law relating to recapitalizations is restored.

(3) Corporate reorganizations involving only a change in identity, form, or place of organization are not to result in the imposition of a documentary stamp tax.

(*e*) *Alcohol and tobacco taxes*

(1) The House provision instituting a weekly return system for tobacco products is deleted.

(2) The general effective date of the alcohol tax changes made by the bill is advanced from July 1, 1958, to July 1, 1959. The disaster loss provisions relating to losses of alcoholic products of Puerto Rican manufacture are made inapplicable since the Commonwealth of Puerto Rico has already afforded relief.

(3) A series of clarifying and technical amendments has been made to perfect the intent of title II of the bill relating to alcohol and tobacco taxes.

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II. REVENUE EFFECT

Table 1 shows that the provisions incorporated in H. R. 7125, The Excise Tax Technical Changes Act of 1958, as amended by your committee, are expected to result in a revenue loss of about $39.5 million. This estimate is for the first full year the bill is in effect. It does not take into account certain of the provisions in this bill which will affect budget receipts in 1 year only, nor does it include a continuing revenue loss of 3 to 5 million dollars which will not begin until the fiscal year 1960.

The features of the bill, as amended by your committee, which are expected to affect budget receipts in 1 year and 1 year only are the provision advancing the due date for the payment of the special occupational taxes in the case of alcoholic beverages, the provision treating radio receiving sets as nontaxable articles where they are incorporated in other articles and then sold for tax-free purposes, and the loss resulting from the allowance for transit time to bottling premises in the case of distilled spirits. The advance in the due date for the special occupational taxes is expected to result in a one-time revenue increase of 10 to 12 million dollars in the fiscal year 1959 and the other one-time losses referred to are expected to result in a one-time revenue loss of $1,220,000. The continuing revenue loss of 3 to 5 million dollars beginning in the fiscal year 1960 is attributable to the allowance of refunds or credits for processing and bottling losses in the case of distilled spirits.

Title I of the bill, which is concerned with retailers, manufacturers and other types of excises, is expected to decrease revenues in the first full year of operation by about $39,050,000. On the other hand, title II of the bill is expected to increase revenues by approximately $400,000 in the first full year of operation.

Some of the provisions contained in this bill, because of their relatively narrow scope, represent areas in which little or no statistical information is available. As a result, in making these estimates it was necessary to rely on value judgment. For example, with respect to several of the sections it is indicated that there will be a revenue loss or gain of less than $100,000. In some of these cases it has been possible to determine only that there will be a small revenue loss or gain, since no statistical base for the estimates is available.

Your committee believes the modest revenue loss of about $39 million involved in this bill, as amended by your committee, will be more than compensated for by the substantial increase in fairness, equity, and better administration resulting from this bill.

TABLE 1.—*Estimated revenue effect of H. R. 7125, excise tax technical changes bill of 1958*

[First full year effect where there is a continuing revenue loss (—) or gain (+)]

TITLE I. MISCELLANEOUS EXCISES

Sec. No.		Thousands
	RETAILERS EXCISE TAXES	
101.	Semiprecious stones	—(*)
102.	Certain clocks, cases, and movements	—(*)
103.	Luggage, etc	—(*)
104.	Sales of installment accounts	—(*)
	MANUFACTURERS EXCISE TAXES	
111.	Refrigerator components	—$1,000
112.	Electric, gas, and oil appliances	—250
113.	Radio and television components; record players; etc	+800
114.	Constructive sale price	[1] —3,000
115.	Sales of installment accounts	[2]
116.	Leases	[3] —1,000
117.	Use by manufacturer or importer considered sale	No effect
118.	Uniform system of exemptions; registration; etc	[4]
	TAXES ON FACILITIES AND SERVICES	
131.	Admissions	—21,000
132.	Club dues	—9,000
133.	Communications	—2,500
134.	Air-taxi transportation	—2,000
	DOCUMENTARY STAMP TAXES	
141.	Documentary stamp taxes	+150
	TAXES ON WAGERING; CERTAIN OCCUPATIONAL TAXES	
151.	Persons liable for tax on wagers	+(*)
152.	Occupational tax on coin-operated devices	+(*)
153.	Exemption from occupational tax on bowling alleys, billiard tables and pool tables	—(*)
	PROCEDURE AND ADMINISTRATION	
161.	Return by agents of retailers excise taxes	No effect
162.	Period for filing claim for floor stocks refund with respect to import tax on sugar	No effect
163.	Credits and refunds of certain taxes	—(*) [5]
164.	Quarterly refunds for nonhighway and local transit system uses of gasoline	[6]
165.	Statute of limitations for stamp taxes; redemption of stamps	No effect
	Total revenue effect for title I	—$39,000

See footnotes at end of table.

TABLE 1.—*Estimated revenue effect of H. R. 7125, excise tax technical changes bill of 1958*—Continued

TITLE II. ALCOHOL, TOBACCO, AND FIREARMS EXCISES

	Thousand
General revision in alcohol, tobacco, and firearm taxes	[7] +$500
Bonding period for distilled spirits	No effect
Refunds for alcoholic beverages and tobacco products lost in a disaster	—(*)
Refunds for losses of certain alcoholic beverages in 1951 and 1954 floods and hurricanes	([8])
Tax-free withdrawals of distilled spirits for pathological laboratories and certain nonprofit educational institutions	—(*)
Total revenue effect for title II	+$400
Total revenue effect for bill	—$38,600

*Less than $100,000. In computing the net total, an average amount of $50,000 was used for each asterisk.

[1] The amount shown is a rough approximation only, because of inadequate data.

[2] Included in estimate shown above for sec. 104.

[3] It is estimated that the cost of this provision as it applies to leases of trucks and truck trailers is $300,000. The estimated cost of applying the provision to other leased taxable items is tentative because of the lack of data.

[4] The estimate relating to the uniform exemption system generally is included under sec. 163.

[5] The bill provides that radio receiving sets incorporated in nontaxable articles are not to be considered as taxable under either existing or prior law in those cases where the articles are sold for export or to a State or local governmental unit. It is understood that amounts which this will make clearly nontaxable could represent $1 million of tax. However, since the tax status in this area is not clear under prior law, and also because in any case there would be only a one-time revenue loss, this is not included in the continuing revenue losses shown in this table.

[6] This provision is expected to result in a nonrecurring revenue loss of perhaps as much as $5,000,000. A revenue loss is expected as a result of refund payments being made 1 year earlier than at present.

[7] There are 4 significant revenue effects attributable to the revision of the alcohol, tobacco, etc., taxes. The $500,000 shown in the table is attributable to increased rates for the special occupational taxes and is a continuing gain first expected in the fiscal year 1959; an advance in the due date for these same taxes is expected to result in a one-time revenue gain of $10 million to $12 million in the fiscal year 1959; a 1-time revenue loss of $220,000 is expected as a result of allowing for transit time to the bottling premises before requiring payment of tax (now required immediately upon removal from warehouse bond), but this change will not become effective unless the Secretary institutes a return system for distilled spirits products, a change permitted but not required by both existing law and the bill; and a continuing revenue loss of $3 million to $5 million, beginning in the fiscal year 1960, is expected as a result of allowing credits or refunds for processing and bottling losses.

[8] This provision will result in a one-time loss of revenue but data are not available as to the extent of the loss.

III. EXPLANATION OF PROVISIONS OF TITLE I RELATING TO MISCELLANEOUS EXCISE TAXES

The general effective date for title I of the bill, as passed by the House and as agreed to by your committee, is set as the first day of the first calendar quarter which begins more than 60 days after the date on which the bill is enacted. It is believed necessary to provide an effective date this far beyond the date on which this bill is enacted to coincide with the quarterly reporting of most excise taxes and also to provide the Treasury Department and Internal Revenue Service with additional time for the issuance of interpretive and explanatory material.

PART I—RETAILERS EXCISE TAXES

SECTION 101. SEMIPRECIOUS STONES

Section 101 of the House bill has been accepted by your committee without change.

Section 4001 of the code imposes a 10-percent tax on jewelry and on certain other categories of related items when they are sold at retail. One class of items taxed under this section consists of "pearls, precious and semiprecious stones, and imitations thereof."

There has been considerable uncertainty over the tax status of these stones, particularly those sold in a rough or natural state to amateur lapidarists. The Internal Revenue Service has ruled that the tax does not apply to mineral substances not commonly and commercially known as precious or semiprecious stones, or to stones which are of an inferior quality and unsuitable for cutting and polishing into gems, when such stones are in their natural state or when they have been prepared as specimens for display purposes. A definitive listing of the stones that would be exempted under this ruling has not been prepared, however, nor has it been possible to clearly outline the circumstances under which stones would be regarded as being of "an inferior quality."

One test that has been utilized by the Service has been to determine whether a particular stone in question is of sufficient hardness on the Mohs' scale. This test has proved unsatisfactory because some stones in the rough state register varying degrees of hardness when different portions of them are tested. Another undesirable aspect of this test is the necessity for individually examining each stone.

All of these factors have created a considerable problem for the amateur lapidarists, those who supply them, and the Service. It was concluded that certainty could best be achieved by specifying the precious and semiprecious stones to be taxed and by excluding all others. The selection of the stones to be taxed is confined to those having a definite commercial value and to those most commonly sold at retail in a finished state, either as stones alone or in conjunction with mountings and settings.

Section 101 of the House bill, which has been agreed to by your committee, will tax the following stones, by whatever name called, whether real or synthetic:

- Amber
- Beryl of the following types:
  - Aquamarine
  - Emerald
  - Golden Beryl
  - Heliodor
  - Morganite
- Chrysoberyl of the following types:
  - Alexandrite
  - Cat's eye
  - Chrysolite
- Coral
- Corundum of the following types:
  - Ruby
  - Sapphire
- Diamond
- Feldspar of the following type:
  - Moonstone
- Garnet
- Jadeite (Jade)
- Jet
- Lapis Lazuli
- Nephrite (Jade)
- Opal
- Pearls (natural and cultured)
- Peridot
- Quartz of the following types:
  - Amethyst
  - Bloodstone
  - Citrine
  - Moss agate
  - Onyx
  - Sardonyx
  - Tiger-eye
- Spinel
- Topaz
- Tourmaline
- Turquoise
- Zircon

Any stone included in the taxable list will be subject to tax when sold at retail, even if sold in its rough or natural state. While in some instances a tax may be imposed on a particular stone of negligible gem quality because it is included in the list, it is expected that such instances will be rare. Stones not included in the list generally have little commercial value or appeal unless combined with mountings or settings. In such a case they would be taxable when sold at retail as articles "commonly or commercially known as jewelry."

The inclusion of the phrase "by whatever name called" is intended to eliminate any uncertainty that might otherwise exist as to whether a particular stone actually is one of those included in the list, but which, because of its geographical source or for marketing purposes, is called by a different name when sold at retail.

Section 101 of the House bill, as agreed to by your committee, also will substitute the words "whether real or synthetic" for the words "imitations thereof" in present law. This language is intended to confine the tax on nonnatural stones to those formed by synthesis and which have a molecular composition similar to a listed natural stone. Both a taxable synthetic stone and a nontaxable imitation stone would, of course, be subject to tax when sold at retail in the form of jewelry.

The revenue loss from this provision is expected to be negligible.

SECTION 102. CERTAIN CLOCKS, CASES, AND MOVEMENTS

Section 102 of the House bill has been accepted by your committee without change.

Another category of items subject to tax under section 4001 of the code at a 10 percent rate on their sale at retail consists of watches, clocks and cases and movements for watches and clocks. A question has arisen as to the applicability of the retail tax when such items are incorporated in other items subject to a manufacturers excise tax, such as radios or ranges. Another problem, that of computing the taxable price, has arisen in cases where clocks are incorporated in items which are not subject to manufacturers excise taxes, such as thermostats. A question related to this problem is that of the applicability of tax where clock movements (that is, clock mechanisms without faces) have been incorporated in items not subject to manufacturer's excise tax.

(*a*) *Clocks subject to manufacturers excise taxes*

The Internal Revenue Service has ruled that automobile clocks are subject to a manufacturer's excise tax as automotive parts or accessories when sold by the manufacturer, rather than being subject to the retail jewelry tax. With respect to clocks that have been combined with other items subject to a manufacturer's excise tax, such as clock radios, the Service has taken the position that the manufacturer of such an article is subject to a manufacturer's excise tax on his selling price for the entire combination, and that no retailers tax attaches to the clock portion when the article is sold at retail. The rules established by the Service in these instances appear to be both practical and rational.

To provide specific statutory authority for the present interpretation of the Service, section 102 of the House bill, which your committee has accepted without change, amends section 4003 of the code by adding a new subsection (c) entitled "Clocks Subject to Manufacturers Tax." This subsection provides that the retail excise tax imposed by section 4001 shall not apply to a clock or watch (or to a case or movement for a clock or watch) if a tax in respect of such clock, etc., was imposed under chapter 32 (relating to the manufacturers excise tax) by reason of its sale as a part or accessory (for example, an automobile clock) or by reason of its sale on or in connection with or with the sale of any article (for example a stove).

The exemption has application only with respect to clocks, watches, etc., actually taxed at the manufacturer level. If a clock, watch, etc., which has not been taxed at the manufacturer level is sold at retail in conjunction with the sale of an article subject to manufacturers tax (or is sold separately to replace a clock, etc., on an article

subject to manufacturer's tax), the retail tax will still be applicable to the selling price attributable to the clock, etc.

(*b*) *Clocks in control or regulatory devices*

At the present time, the Service holds no tax is applicable to movements for clocks and watches which are components or accessories of articles not subject to manufacturers excise taxes. However, exemption has not been granted where a complete clock is involved, that is, a combination of a movement with a face or dial capable of use for telling time. In such cases, it is necessary for the seller at retail to determine the portion of the retail price of the combined article attributable to the clock portion and for tax to be paid on such taxable portion. The need for this allocation has created considerable difficulty for sellers. Because of the difficulty in determining the taxable price in these cases and the relatively small amount of revenue involved, the House bill provides that clocks which are part of control or regulatory devices, such as thermostats, are not to be subject to tax. Your committee has accepted this change without amendment. This will provide treatment consistent with that already accorded clock movements in items not subject to manufacturers excise taxes.

As a result, section 4003 is further amended by adding a new subsection (d) entitled "Certain Parts of Control or Regulatory Devices." The subsection provides that the tax imposed by section 4001 shall not apply to a clock or watch (or to a case or movement for a clock or watch) if such clock, etc., is a part of a control or regulatory device (such as a thermostat) which is an article not taxable under chapter 32 (manufacturers' excises), or the control or regulatory device is part of an article not taxable under chapter 32. The subsection further provides that the tax imposed by section 4001 will not apply to a clock, etc., sold as a repair or replacement part for such a device.

The term "control or regulatory device" is not intended to include clocks which in themselves have control or regulatory features, such as electric clocks that can be used to turn on radios, coffeemakers, etc., or defrost refrigerators. The control or regulatory device must be the major item of the combination with the clock as a subsidiary item rather than vice versa.

(*c*) *Revenue effect*

The revenue loss under this provision is expected to be negligible.

SECTION 103. LUGGAGE TAX

Section 103 of the House bill has been accepted by your committee without change.

(*a*) *Substitution of specific listing for "basket clause"*

Under existing section 4031, a 10-percent tax is imposed on certain articles sold at retail, grouped generally under the heading "Luggage, Handbags, etc." This section lists 18 specific items and also "other cases, bags and kits (without regard to size, shape, construction, or material from which made) for use in carrying toilet articles or articles of wearing apparel." This general phrasing, commonly referred to as a "basket clause," results in the tax being imposed on articles not among the 18 specifically named, but which are considered as coming within the general language.

Because of the indefinite nature of this language, both retailers and the Internal Revenue Service have difficulty in determining whether a particular item is subject to tax. This is particularly true with articles having a possible or theoretical use for carrying toilet articles or wearing apparel but which also are suitable for use to an equal or greater degree for nontaxable purposes.

As a result, one retailer may regard an item as subject to tax because he stocks and sells it as luggage while another may regard the same article as nontaxable because he advertises it for nonluggage uses. If it is presumed that an article is not taxable without obtaining a ruling, and it is later determined by the Service that the article is subject to tax, the retailer is liable for tax on past sales even though his selling price made no provision for the tax.

To eliminate such uncertainties and to ease the administrative interpretive burden, the bill as passed by the House and as approved by your committee eliminates the "basket clause." Instead, the present list of 18 specific items has been expanded. All of the additional items, however, have been classified as taxable by the Service under present law (except as explained below).

The bill will tax the following-named articles, by whatever name called:

Bathing suit bags
Beach bags or kits
Billfolds
Briefcases
Brief bags
Camping bags
Card and pass cases
Collar cases
Cosmetic bags and kits
Dressing cases
Dufflebags
Furlough bags
Garment bags designed for use by travelers
Hatboxes designed for use by travelers
Haversacks
Key cases or containers
Knapsacks
Knitting or shopping bags (suitable for use as purses or handbags)
Makeup boxes
Manicure set cases
Memorandum pad cases (suitable for use as card or pass cases, billfolds, purses, or wallets)
Musette bags
Overnight bags
Pocketbooks
Purses and handbags
Ring binders, capable of closure on all sides
Salesmen's sample or display cases, bags, or trunks
Satchels
Shoe and slipper bags
Suitcases
Tie cases

Toilet kits and cases
Traveling bags
Trunks
Vanity bags or cases
Valises
Wallets
Wardrobe cases

The inclusion in the bill of the phrase "by whatever name called" is intended to prevent any problems arising over items clearly qualifying as listed taxable articles but called by another name for merchandising or other reasons. For example, a "billfold" marketed as a "money holder" would be subject to tax.

It is estimated that any revenue loss resulting from the exclusion from the listing of any items presently taxed will be negligible.

(*b*) *Briefcases and ring binders*

One of the 18 specifically named taxable items in present law is "briefcases made of leather or imitation leather." Ring binders capable of closure on all sides have been held by the Service to constitute briefcases and therefore are taxable, providing they are made of leather or imitation leather. As a result, these articles, when made of nonleather materials such as plastic, may or may not be held subject to tax, depending on whether they have been processed to resemble leather. This artificial distinction can result in price discrimination between competitive items. Moreover, the same distinction is not made for any of the other articles subject to the luggage tax. For example, purses or suitcases are subject to tax whether they are made of leather, plastic, fiber, or any other material. The bill as passed by the House and as approved by your committee, therefore, includes briefcases and ring binders capable of closure on all sides in the list of taxable articles without the restrictive phrase.

The revenue gain resulting from this change is estimated to be negligible.

(*c*) *Fittings or accessories*

Although the bill as passed by the House and as approved by your committee revises the listing of taxable articles subject to the luggage tax, it retains the phrase in present law that includes in the tax base of a taxable article "fittings or accessories therefor sold on or in connection with the sale thereof." The changes in the listing of taxable articles under section 4031 are not intended to disturb the existing rulings of the Service relating to the tax status of fittings or accessories for the articles which are subject to tax under the new provisions.

(*d*) *Revenue effect*

It is estimated that the changes made in the luggage, etc., tax will result in a negligible revenue loss.

SECTION 104. SALES OF INSTALLMENT ACCOUNTS BY RETAILERS

Section 104 of the House bill has been accepted by your committee without change.

Section 4053 of the code permits a retailer making a sale of a taxable article to report tax on payments as received rather than in full at the

time of sale if the sale is made under 1 of the following 3 conditions: a contract providing for payments in installments with reservation of title in the seller until a future date; a conditional sale; or a chattel mortgage arrangement providing for the payment of the price in installments. The law provides that the retailer is to pay the same proportion of the total tax with each payment as the payment is to the total charge for the article.

Although no specific provision is contained in present law as to the method for computing the tax due where installment accounts are sold or otherwise disposed of by the retailer prior to the payment of the total tax, the Internal Revenue Service has ruled that in such cases tax is due on the unpaid amount of the installment obligations at the time of the disposition. An exception to this rule exists in the case of a sale of installment accounts pursuant to bankruptcy or receivership proceedings. In such cases, it has been held that tax attaches only with respect to the amount actually realized on the disposition of the accounts.

It is believed that the present uncertainty in the statute with respect to the tax consequences of sales of installment accounts should be rectified. The amelioration provided by the present Service interpretation in connection with sales pursuant to bankruptcy or receivership proceedings is adopted, since this type of sale is not at the direction nor under the control of the retailer. With some modification, it is also believed that the Service's position with respect to sales in other than bankruptcy cases should be followed. Maintenance of liability for tax on the full amount of the original sales price is provided in such cases, since the customer receives no price or tax reduction as the result of the sale of his installment account. The retailer may sell the account at a discount, but this may reflect his need for funds rather than being an indication that the account will not be paid in full. Moreover, a retailer who sells on open account and is subsequently unable to collect is not relieved of liability for tax due.

Where a retailer sells an installment account and such account is subsequently returned to him, your committee agrees with the House that he should be able to receive credit or refund for the portion returned to him, subject to later adjustments in the event of subsequent recoveries by him. In this fashion, he would be placed in a position comparable to that in which he would have been if he had never sold the account.

In order to effectuate these changes, section 104 of the bill, as passed by the House and as approved by your committee, redesignates the existing provisions of section 4053 (which permits payment of tax on an installment basis in the case of designated installment type sales) as subsection (a) and adds new subsections (b) and (c) to section 4053 of the code.

Subsection (b) specifically provides that where installment accounts on which the tax is being computed and paid in installments by virtue of section 4053 (a) are sold or otherwise disposed of, tax shall not apply to subsequent installment payments on such accounts. Instead, there shall be paid at the time of sale or other disposition of the account an amount equal to the difference between the tax previously paid on such installment account and the total tax. An exception to the rule for computing the amount of tax on the disposition of installment accounts is made in cases where the sale is pursuant to the order

of, or subject to the approval of, a court of competent jurisdiction in a bankruptcy or insolvency proceeding. In such cases, the tax due on the sale is to be computed as mentioned in the prescribed manner but is not to exceed an amount computed by multiplying the amount for which the accounts were sold by the rate of tax in effect on the day on which the transactions giving rise to the installment accounts took place.

Where installment accounts which have been sold or otherwise disposed of are returned to the person who sold them under the agreement under which the accounts were sold, and the consideration is readjusted as provided in such agreement, section 163 of the bill adds a new paragraph (b) to section 6416 (b) to provide that the seller shall obtain a credit or refund of the part of the tax paid under section 4053 (b) (1) proportionate to the part of the consideration repaid or credited to the purchaser of the installment account. Under these circumstances the retailer (that is, the seller of the installment account) will have to continue to pay tax under the general rule in section 4053 (a) on any subsequent payments received by him on such returned accounts.

Provision is made in the new subsection (c) of section 4053 to limit the sum of the amounts of tax payable on installment payments to the total amount of tax due as computed at the applicable rate of tax in effect on the date on which the transaction giving rise to the installment account took place. This provision serves as a limitation on the tax where a retailer who sells his installment accounts and then has them returned to him receives a greater sum from the net sales price and the installments actually collected by him than he would have received if he had merely collected the original prescribed installments in full.

The provisions of the new subsections (b) and (c), and the new refund provision, can be illustrated by the following example: The X retail store offers for sale a watch, subject to a retailers excise tax at the rate of 10 percent, for $100 plus tax of $10, or $110. B decides to purchase the watch and pay for it in 10 installments. B pays $11 ($10 plus $1 tax) on January 2, 1959, and receives the watch. X receives additional payments of $11 each on February 2 and on March 2. X reports $1 of tax received on each of the 3 dates. On March 15 X sells the account to the Q finance company for $50. The tax which is due on the sale and must be paid by X is $7 (the difference between the total tax due of $10 and the tax already paid with respect to the article, that is, $3). Q collects 2 payments of $11 each on April 2 and May 2, and, of course, no tax is due with respect to those payments. On May 15, pursuant to the agreement entered into upon the sale of the installment account, Q exercises its option and returns the account to X who refunds to Q $15 of the purchase price. Under section 6416 (b) (5) X may claim a refund of $2.10 tax computed as follows:

$$\frac{15 \text{ (Amount refunded to Q)}}{50 \text{ (Amount paid by Q)}} \text{ of } \$7 \text{ (tax paid on sale of account)} = \$2.10.$$

X later collects from B three more payments of $11 each on the account. X must pay tax in the amount of $1 with respect to each of the first and second of these payments but (by reason of the limitation under

4053 (c)) need pay tax of only $0.10 with respect to the third payment since such amount will result in the total tax of $10 having been paid. No further tax payments need be made with respect to the sale of the watch to B. If X later sells the account to R for $5, no tax would be due on the sale inasmuch as the total tax has been paid.

It should be made clear that two ways of collecting delinquent accounts bring about somewhat different tax results. Some retailers sell groups of accounts on which collection prospects are relatively meager to companies that specialize in collecting accounts. Others retain title to the accounts and merely hire specialists on a commission basis to collect these accounts. Where the accounts are sold tax becomes due on the full unpaid balance of tax. Where title to the accounts is retained, however, the retailer becomes liable for tax only on the amounts collected by the collection agency from the consumer.

The revenue loss under this provision is expected to be negligible.

SECTION 105 OF THE HOUSE BILL, WHICH HAS BEEN OMITTED BY YOUR COMMITTEE—EXEMPTION FROM RETAILERS' EXCISE TAXES FOR NONPROFIT EDUCATIONAL ORGANIZATIONS

The House bill would have added a new section 4057 to the code to provide an exemption from the retailers' excise taxes for sales to nonprofit educational organizations for their exclusive use (an exemption was also provided for these organizations from the tax on the use of special fuels). The type of educational organization referred to is a nonprofit, operating school or college.

The report of the House committee indicated that this exemption was being added for these schools and colleges because similar exemptions already are available in the case of public schools. The exemption for public schools is, of course, available because of the general exemption from retailers' and certain other excise taxes with respect to the sale of articles to a State or local governmental unit.

Your committee has removed from the House bill this exemption from retailers' excise taxes for nonprofit educational organizations because it doubts the desirability of broadening the exemptions in the case of the retailers' excise taxes. Such exemptions not only complicate the administration of these taxes for the Internal Revenue Service, but also make their collection by retailers more difficult. Moreover, while it is true that State and local governmental agencies are exempt from such taxes, it appears doubtful that this represents a "competitive" discrimination against private schools, since private and public schools can hardly be considered as competing with each other.

The House report indicated that the exemption for nonprofit educational organizations under the retail excise taxes, together with similar exemptions provided under the manufacturers' excises and those on transportation and communication, was expected to result in an annual revenue loss of about $3 million. The deletion of these provisions by your committee will prevent this revenue loss.

PART II—MANUFACTURERS EXCISE TAXES

SECTION 111 OF THE HOUSE BILL, WHICH HAS BEEN OMITTED BY YOUR COMMITTEE—PARTS AND ACCESSORIES FOR FARM EQUIPMENT

The House bill would have provided an exemption for automobile parts and accessories (other than spark plugs and storage batteries) which are sold by the manufacturer, producer, or importer to a purchaser who certifies that the part or accessory is to be used by him as a repair or replacement part or accessory for farm equipment or is to be resold by him for such use. An exemption from the manufacturers' tax is also available where the manufacturer, producer, or importer himself used the part or accessory as a repair or replacement part for farm equipment. Under the House bill, for the sale to be free of tax in any case (except the ultimate sale to the farmer) a certification was required from the purchaser to the effect that the articles covered by the certificate were to be resold by him, either for farm-equipment repair or replacement parts or for resale for such use. Where this certification is received upon the sale by the manufacturer in good faith liability for tax on his part is extinguished.

As pointed out in the report of the House committee, present law already provides a credit or refund for tax paid for automobile parts or accessories sold for use as repair or replacement parts for farm equipment. The House report indicates, however, that few credits or refunds of tax under this provision have been claimed because of the difficulty of obtaining a certificate from the retailer that the part or accessory was used by him or resold by him for use for the exempt purpose.

Your committee has deleted this provision from the bill because it is not clear that the certification procedure required by the House bill for tax-free sales represents any substantial simplification of the certification procedure now required in the case of credits or refunds. Thus, if few credits or refunds of tax under the present provision are being claimed, it would appear that the tax-free sales under the proposed procedure might also be limited in number because of the complications involved. Moreover, since the tax involved in each of these articles usually is small, there is a substantial doubt as to whether the tax reduction under this tax-free-sale procedure would ultimately benefit the farmer.

The House report indicates that this provision will result in a negligible revenue loss. Your committee's action will prevent this loss.

SECTION 111. REFRIGERATOR COMPONENTS

(Sec. 112 of the House bill)

This section of the House bill has been accepted by your committee without change.

Section 4111 of present law imposes a tax on various types of refrigeration equipment, including refrigerator components. These are defined by section 4112 as—

> cabinets, compressors, condensers, condensing units, evaporators, expansion units, absorbers, and controls for, or

suitable for use as parts of or with, household-type refrigerators or quick-freeze units of the kind described in section 4111 except when sold as component parts of complete refrigerators, refrigerating or cooling apparatus, or quick-freeze units * * *.

The exemption and credit and refund provisions of present law provide tax-free status for these refrigerator components when they are sold for use or used in the manufacture of any article. Thus, the named components are taxed only when they are used or sold for use for replacement purposes. Your committee agrees with the House that the relatively small amount of revenue realized from the sale of these components is not sufficient to warrant the administrative expense and interpretive problems created by imposing this tax.

Accordingly, the bill, as passed by the House and as approved by your committee, eliminates refrigerator components from the articles taxed under section 4111.

It is estimated that this will result in an annual revenue loss of about $1 million.

SECTION 112. ELECTRIC, GAS AND OIL APPLIANCES

(Sec. 113 of the House bill)

This section of the House bill has been accepted by your committee without change.

(*a*) *Electric direct-motor-driven fans and air circulators*

Section 4121 of present law imposes a 5 percent tax on the manufacturer's sale of a variety of electric, gas, and oil appliances. All of the appliances listed are taxed only if they are of the household type, except electric direct-motor-driven fans and air circulators. This category is taxable unless the fan or air circulator is of the industrial type. Thus, the tax applies not only to these fans and air circulators of the household type, but also to those of the type used in stores, offices, restaurants, and similar places. In practice, however, it has been found that fans and air circulators commonly used in commercial establishments are also used extensively in industrial concerns. This has resulted in many interpretive problems and competitive discriminations. In contrast, present law taxes electric belt driven fans only if they are of the household type.

To eliminate these problems, the bill, as passed by the House and as approved by your committee, places electric direct-motor-driven fans and air circulators in the same category as the other taxable appliances, taxing them only if they are of the household type.

(*b*) *Electric floor polishers and waxers*

Electric floor polishers and waxers presently are included in the list of taxable appliances. Competitive vacuum-cleaner attachments used for the same purposes are not taxed, however, and, therefore, enjoy a price advantage.

To eliminate this disparity, the bill, as passed by the House and as approved by your committee, removes electric floor polishers and waxers from the list of taxable articles.

(c) *Gas and oil incinerator units and garbage-disposal units*

Electric garbage-disposal units are included in the list of taxable appliances under present law. This places them at a competitive disadvantage with gas and oil incinerators and garbage-disposal units, which currently are not subject to tax.

To remove this disparity in treatment, the bill, as passed by the House and as approved by your committee, adds electric, gas, and oil-incinerator units and gas and oil garbage-disposal units of the household types to the list of taxable articles.

(d) *Revenue effect*

It is anticipated that the changes made in the tax on electric, gas and oil appliances will have the overall effect of decreasing revenues by about $250,000 a year.

SECTION 113. RADIO AND TELEVISION COMPONENTS; RECORD PLAYERS; ETC.

(Sec. 114 of the House bill)

Present law imposes a 10-percent excise tax on the manufacturer's sale of radio receiving sets, television receiving sets, automobile radio and automobile television receiving sets, phonographs, combinations of the foregoing, radio and television components, and phonograph records. Except in the case of radio and television components and phonograph records, this tax applies, however, only to articles of the "entertainment type." The House bill adds certain articles to the taxable listing and modifies the types of articles subject to this tax. Your committee has accepted all but one of these changes.

(a) *Record players*

Section 4142 of present law defines the term "radio and television components" to mean among other things phonograph mechanisms which are suitable for use on, or in connection with, or as a component part of, any of the articles enumerated in section 4141, whether or not primarily adapted for such use. In 1953 the Internal Revenue Service published a ruling to the effect that record players, as such, were not subject to the tax on phonographs unless they were connected to an amplifying system with a speaker attachment. Nevertheless, the portion of the record player consisting of the turntable, pickup arm, and motor was subject to tax on the grounds that it constituted a phonograph mechanism, which is one of the items listed in the definition of radio or television component. But this was changed by Public Law 367, 84th Congress, which removed the tax on radio and television components when used in the manufacture of nontaxable items. This meant that the combination of a turntable, pickup arm, and motor, when used in a nontaxable record player, was eligible for tax exemption or credit.

Your committee agrees with the House that Congress in passing Public Law 367 did not intend to remove the tax previously imposed with respect to the major elements in a record player. In view of this, and also in view of the fact that record players are in direct competition with phonographs, section 113 (a) of the bill, as passed by the House and as agreed to by your committee, amends section

4142 by including "phonograph record players" in the definition of the term "radio and television components."

The bill includes phonograph record players in the category of radio and television components, rather than as a taxable end article listed specifically in section 4141, so they may be sold free of tax for use in the further manufacture of nontaxable sound systems, such as public address systems. This would not be possible if phonograph record players were included in the listing of taxable end products in section 4141.

(b) *Deletion of House provision which would impose a tax on tape and wire recorders, players, and recorder-players*

The House bill would amend section 4141 of the code to add to the base of the 10-percent tax on radios, television sets, phonographs, records, etc., "Tape and wire recorders, players, and recorder-players." Exemption would be provided for those tape and wire recorders where they are designed for certain commercial, industrial, or scientific uses.

The report of the House committee indicates that this tax on tape and wire recorders, players, and recorder-players was being imposed because these articles are in direct competition with phonographs and that, therefore, they should be subject to the same 10-percent manufacturers' tax.

Your committee has deleted this proposed tax because testimony before your committee has indicated that, as a result of recent events, tape and wire recorders should not at the present time be viewed as competitive with phonographs. It was stated that, because of the high development cost of a new, infant industry, combined with the present economic situation, over one-half of the tape-recorder manufacturers are continuing to lose money on these products sold in the consumer market. It was also pointed out that, until recently, the tape and wire-recorder industry could be considered as competitive with the phonographic industry because stereophonic sound had been adapted to tape recorders but not to phonographs. Quite recently, however, stereophonic records had been introduced by the phonograph and record industry and are being marketed at 40 percent of the price of stereophonic tapes of the same selections. In view of the status of the tape and wire recorders as a new and infant industry, combined with the loss of the advantage enjoyed by it with respect to stereophonic sound, your committee has concluded that these articles cannot at present be viewed as competitive with phonographs and that, as a result, it would be unwise to impose a tax on their sale under present conditions.

It should be clear that your committee's action in deleting the proposed tax on tape and wire recorders, etc., will not remove from tax any of these machines which fall within the classification of a business machine and presently are subject to the tax imposed by section 4191.

It is estimated that the House bill, as a result of imposing a tax with respect to these tape and wire recorders, etc., would have increased revenues by about $4 million. This increase in revenue will not be realized under your committee's action.

(c) *Articles of the entertainment type*

Present law in section 4141 of the code provides that radios, television sets (including auto radios and television sets), and phono-

graphs are taxable only if they are of the "entertainment type."

Both the Internal Revenue Service and taxpayers have had difficulty in determining what constitutes entertainment-type equipment, and, in fact, no satisfactory definition of the term "entertainment type" has been evolved. The principal, initial reason for limiting the tax on radios, television sets, phonographs, etc., to those of the entertainment type was the desire to exclude from tax that equipment which was of the communication, navigation, or detection type. Moreover, it is believed that the Service would have less difficulty in defining communication, detection, or navigation equipment, since at one time receivers of this type were free of tax when sold to the United States Government. Therefore, the bill, as passed by the House and as agreed to by your committee, removes the limitation in present law imposing the tax with respect to articles only of the entertainment type. As a substitute it adds an exemption for radios, television sets, phonographs, etc., which are communication, detection, or navigation equipment of the type used in commercial, marine, or military installations.

Section 113 (a) of the bill makes two amendments to accomplish the modification in tax treatment described above. First, it amends section 4141, the tax imposing section, to remove the sentence limiting the tax in the case of all the listed articles (except radio and television components and phonograph records) to those of the entertainment type. Second, in a new section 4143 (a), the bill provides in the case of radio receiving sets, automobile radio receiving sets, television receiving sets, automobile television receiving sets, phonographs, and combinations of any of the foregoing, that tax is not to apply to such articles which are communication, detection, or navigation equipment of the type used in commercial, marine, or military installations.

As previously indicated, the tax on receivers at one time (prior to September 1955) was not applicable to those sold to the United States Government if they were of the communication, navigation, or detection type used in commercial, marine, or military installations. This bill in effect restores this old exemption but extends it to such equipment when sold to any purchaser. Thus, equipment which previously was free of tax when sold to the United States Government will, under the new provision, be free of tax whether or not sold to the United States Government. The new exemption is not necessarily limited, however, to equipment previously exempt, since the type of equipment purchased by the United States Government will not necessarily be the same as that purchased by private industry.

(*d*) *Taxable radio and television components*

Public Law 367 of the 84th Congress amended section 4141, which imposes the tax on radio and television sets, phonographs, radio and television components, records, etc., to provide that except in the case of radio and television components and phonograph records the tax imposed by section 4141 is to apply only to articles of the "entertainment type." Section 4142, which defines radio and television components, was not changed by Public Law 367. This latter section provides that the term "radio and television components" means certain listed parts—

which are suitable for use on or in connection with, or as component parts of any of the articles enumerated in section 4141, whether or not primarily adapted for such use.

The sentence added to section 4141 by Public Law 367 appears to provide that radio and television components are taxable whether or not they are of the entertainment type, while the sentence in section 4142 defining these components appears to indicate that only those which are suitable for use on or in connection with entertainment type articles are taxable. The Service has interpreted the law on this point as providing that radio and television components are taxable if they are suitable for use with any radio or television set or phonograph. Your committee agrees with the House (without attempting to pass on the interpretation of the Service of existing law on this point) that in practice the present interpretation of the law reaches the wrong result. It also sees no reason for taxing components which are suitable for use only with nontaxable end articles.

To limit the tax on these components to those which are suitable for use with taxable radios, television sets, and phonographs, etc., section 113 (a) of the bill, as passed by the House and as agreed to by your committee, adds a new code section 4143 (b). This exempts radio and television components from tax if they are suitable for use only on or in connection with, or as a component part of, equipment exempt under section 4143 (a) (because it is communication, navigation, or detection equipment of a type used in commercial, marine, or military installations). The exemption makes it clear that the component must be suitable for use only in conjunction with an article of the specified exempt type. If the component is also usable with a taxable article, whether or not primarily adapted for such use, it will not qualify for the exemption.

(e) *Revenue effect*

It is estimated that, taking into account your committee's amendment to the House bill, the changes made with respect to the tax on radios, television sets and phonographs, etc., will result in an annual increase in revenue of approximately $800,000.

SECTION 114. CONSTRUCTIVE SALE PRICE FOR MANUFACTURERS EXCISE TAXES

(Sec. 115 of the House bill)

Section 4216 (b) of present law provides for a constructive sale price, as distinct from the actual sale price, as a base for the various ad valorem manufacturers excise taxes where an article is sold (1) at retail (i. e., to consumers), (2) on consignment, or (3) at less than the fair market price if the transaction is not at arm's length. The constructive sale price provided for under present law is the price for which such articles are sold in the ordinary course of trade, by manufacturers or producers of such articles, as determined by the Secretary or his delegate.

The above described provision generally results in a downward adjustment of price where articles are sold to the consumer, and an upward adjustment of price where they are sold in transactions which are not at arm's length for a price less than the fair market price.

This provision, to some extent, recognizes the desirability of imposing manufacturers excise taxes on a uniform base, even though various manufacturers may sell the same articles at different levels of distribution. In the case of two taxable articles ultimately sold to the consumer for the same price, exclusive of tax, the House report suggested there was no reason for imposing substantially different amounts of manufacturers tax merely because one manufacturer chooses to sell his article to a distributor, while the other sells his to a dealer. It was recognized, however, that there are significant administrative problems which make it difficult to achieve complete uniformity of base for purposes of the manufacturers excise taxes. For that reason no attempt was made in the House bill to fully achieve this goal. However, a series of rules were provided under which a constructive price may be used, not only in the case of sales to consumers but also in the case of sales by manufacturers to retailers. Where the conditions specified are met, the House bill in general provides for a downward adjustment to the level charged by manufacturers to wholesalers. In adopting this new constructive price rule the present rule was not removed; this, with modifications, is retained in the House bill.

Your committee is in full agreement with the House that substantially different amounts of manufacturers' excise tax should not be imposed with respect to the same type of items merely because one manufacturer chooses to sell his article to a retailer or consumer while the other sells his to a wholesaler. It also recognizes that there are significant administrative problems which make it difficult to achieve a uniform base for purposes of the manufacturers' excise taxes. Therefore, your committee has adopted the constructive price provisions of the House bill. However, it has expanded the application of the provision to apply also in the case of certain special dealers who do not in reality act as normal wholesale dealers.

(a) Where manufacturers sell to retailers or to both retailers and consumers

It has been indicated that the major difficulty in extending the present constructive price provision, applicable in the case of sales to consumers, to sales to retailers is that this would require the Internal Revenue Service either to construct, or to pass upon someone else's construction of, a price on which to base the tax for the article sold to retailers. Because of the large number of sales of this type, it has been stated that this would represent a substantial administrative burden. To avoid this problem, the bill limits the new constructive price provision in the case of sales to consumers and to retailers, to those cases where the same manufacturer, producer, or importer also regularly makes sales to wholesalers. Thus, a basis for constructing a price for the manufacturers sales to consumers and to retailers will be readily available.

The bill also limits the application of the new constructive price provision to those cases where sales to consumers and/or to retailers do not constitute the normal method of sales within the particular industry. This limitation on the application of the new constructive price provision appears desirable because there would seem to be no significant discrimination with respect to an industry where sales at retail and/or to retailers represent the major proportion of the volume sales in the industry.

The bill further limits the new constructive price provision for sales to consumers and to retailers to arm's-length transactions and also to cases where the manufacturer, producer, or importer is regularly selling the articles to consumers or to retailers. The first of these limitations is intended to prevent the new provision from nullifying the provision in present law requiring upward adjustments in price where an article is sold at other than through an arm's-length transaction and at less than fair market price. The latter limitation is designed to make the new constructive price provision inapplicable in the case of casual sales.

Where the above limitations are met, the bill provides that the constructive price is to be the lower of (1) the price at which an article is actually sold, or (2) the highest price at which such articles are sold by the particular manufacturer, producer, or importer to wholesale distributors.

(*b*) *Where a manufacturer sells also to special dealers*

Your committee has expanded the special rule provided by the House bill relating to the construction of a sales price in the case of sales to a consumer or to a retailer to also cover sales to a special dealer. In testimony before your committee its attention was called to the fact that in some cases in the electric, gas, and oil appliance industries sales are made to special dealers between the normal wholesale level and the retail-dealer level who in fact do little more than warehouse the appliances for the manufacturer, since the salesmen of the manufacturer are responsible for sales made by these special dealers to retailers. Because in these cases the manufacturer incurs the selling cost in such cases rather than the special dealer, the price at which the appliances are sold to these dealers is higher than the regularly established wholesale price at which the articles also are sold. In the absence of any provision to the contrary this would mean that the constructive price in the case of sales to retailers, as well as in the case of sales to consumers, could be cut back only to the price level at which sales are made to these special dealers rather than to the normal wholesale price. Your committee believes that it is discriminatory to deny the manufacturer the right to construct his sales price for sales to consumers, to retailers, and to these special dealers, on the same basis as is allowed in the case of other manufacturers not making sales to such special dealers. Moreover, it believes that this problem can be met without adding any significant administrative problems. Therefore, it has amended the special rule provided by the House bill to provide that where the four conditions are met in the case of sales to special dealers in the same manner as in the case of sales to consumers or to retailers, the sales price is to be constructed at the highest price for which the articles are sold to wholesale dealers other than special dealers, if this price is less than the price for which the article is actually sold. The term "special dealer" is defined as a distributor of taxable electrical, gas, and oil appliances (taxed under sec. 4121) who does not maintain a sales force to resell the appliances but who instead relies on the salesmen of the manufacturer (producer, or importer) of the appliances for their resale to retailers.

(c) *Technical description of constructive price provision discussed in (a) and (b) above*

The existing section 4216 (b) (with certain modifications described below) is designated as paragraph (1) by the bill and a new paragraph (2) is inserted for determining the constructive sales price, under the bill as amended by your committee, in the case of sales at retail to a retailer and to a special dealer.

The constructive sales price provision in the new paragraph (2) for sales at retail, to retailers or to special dealers is to apply only where all of the four following conditions are met:

(1) the manufacturer, producer, or importer regularly sells the article at retail, to retailers or to special dealers;

(2) the manufacturer, producer, or importer regularly sells the article to one or more wholesale distributors (other than special dealers) in arm's-length transactions and establishes that his wholesale prices in these cases are determined without regard to any tax benefit to be derived from the application of this constructive price provision;

(3) the normal method of sales for such article by manufacturers within the industry is to sell them otherwise than at retail, to retailers or to special dealers or a combination of these methods of sale; and

(4) the transaction with respect to which a constructive sales price is to be computed is one entered into at arm's length.

Where these four conditions are met, the price on which the manufacturers tax is to be based is to be computed at the actual selling price of the article or at the highest price for which such articles are sold by the manufacturer, producer, or importer to wholesale distributors (other than special dealers), whichever is lower.

The manner in which it is intended that the second of the limitations described above to work can be illustrated by the following example. Manufacturer A sells to regular wholesale distributors, to special dealers, to retailers and also at retail (that is, directly to consumers). If conditions (1), (3), and (4), as described above are met, this manufacturer in the case of his sales at retail, to retailers and to special dealers could use the new constructive price rule for his sales at retail, to retailers and to special dealers. This would be true even if his sales to regular wholesalers were limited to those made to one person provided these sales are made regularly and he establishes that the price he charged the wholesaler in this case was not determined with the view of obtaining a tax benefit because this base could be used in the case of his other sales.

The third limitation described above, that denying the benefit from the constructive price provision in those cases where the normal method of sales of an article by the manufacturers within an industry is to sell it at retail, to retailers, to special dealers, or to combinations of the foregoing is intended to deny the benefits of this provision where half or more of the volume of sales of the specific category of taxable items described in any of the various manufacturers ad valorem excise taxes is made at retail, to retailers and to special dealers. For this purpose, it is anticipated that the volume of sales at the different distribution levels would usually be determined by

the dollar volume of sales within the industry at the various distribution levels. This would be adjusted, however, for the variation in price attributable to the fact that the sales are made at different levels. In determining total sales within the industry not only would sales at retail, to retailers, to special dealers, and to wholesalers, be taken into account, but also sales to other manufacturers as well. It is anticipated that for purposes of this provision the term "industry" as applied to any article generally would include the specifically named articles subject to manufacturers excise tax. For example, the manufacturing of (1) automobile trucks, (2) automobile busses, (3) truck and bus trailers and semitrailers, (4) highway tractors, and (5) other taxable automobiles would each be considered as representing a separate industry.

In the case of a sale at retail where the conditions of paragraph (2) of section 4216 (b) are applicable, the constructive price provisions of this paragraph, rather than the present law constructive price provisions retained in paragraph (1) (as modified by this bill) are to apply to such sale. Thus, in such case, the constructive price for the sale at retail is to be computed on the actual sales price of the article, or the highest price at which such articles are sold by the manufacturer, producer, or importer to wholesale distributors (other than special dealers) whichever is lower, rather than on the basis of a constructive price consisting of the highest price for which such articles are sold to the wholesale distributors in the ordinary course of trade by manufacturers or producers of such articles, or the actual price of the article, whichever is lower.

(d) Where manufacturers sell to consumers

As indicated above, paragraph (1) of section 4216 (b) as it appears in the bill is the constructive price provision in existing law except for one modification.

In the case of a sale to consumers, existing law has generally been interpreted as requiring the constructive price to be determined by reference to the price for which such or similar articles are sold by manufacturers to retailers. Where a manufacturer sells not only to consumers but also to retailers at different prices, his constructive price is his highest sales price to retailers. If the manufacturer makes no sales to retailers but does sell to wholesale distributors, his constructive price for his sales at retail is his highest wholesale price.

To accord these sales to consumers a constructive price at the same distribution level as under the new special constructive price provision described above, the bill as amended by your committee provides that in the case of sales to consumers, the price at which such articles are sold in the ordinary course of trade or business is to be the lower of the following prices: (1) the price for which the article actually is sold or (2) the highest price for which the article is sold to wholesalers in the ordinary course of trade by manufacturers or producers. The substantive effect of this amendment is the same as that intended by the House bill although technical clarifying changes in the House provision have been made. This provision will not result in the establishment of a constructive price in any new cases, but rather will provide that where a constructive price is already required by existing law, the price generally will be established at the price to wholesalers, rather than at the price to retailers.

This amendment is provided for by adding a new sentence at the end of the first sentence in section 4216 (b) (1).

(e) *Revenue effect*

Information presently available is inadequate to form the basis for any specific estimate of the revenue loss which can be expected from the constructive sales price provisions described above. It appears unlikely, however, that the revenue loss will be large and a subjective evaluation suggests a revenue loss in the neighborhood of $3 million.

SECTION 115. SALES OF INSTALLMENT ACCOUNTS BY MANUFACTURERS

(Sec. 116 of the House bill)

Section 104 of the House bill adds a specific provision to the code providing a method for the computation of the tax due where installment accounts are sold or otherwise disposed of by a retailer prior to the payment of the total tax. In general, the rule is that tax is due on the unpaid amount of the installment obligations at the time of the sale or other disposition of the accounts. An exception to this rule is made in the case of installment accounts disposed of pursuant to bankruptcy and receivership proceedings. In such cases it is provided that the remaining tax shall not exceed that computed at the applicable rate with respect to the amount actually realized on the disposition of the accounts.

This section of the bill, as passed by the House and as agreed to by your committee, amends section 4216 by adding a new subsection (e) which provides similar treatment in the case of the sale of installment accounts by manufacturers subject to manufacturers excise tax. For a fuller description of this provision see the discussion with respect to section 104.

SECTION 116. LEASES OF CERTAIN ARTICLES SUBJECT TO MANUFACTURERS EXCISE TAXES

(Sec. 117 of the House bill)

This section of the House bill has been accepted by your committee without change.

Section 4217 of existing law stipulates that any lease, renewal or extension of a lease, or subsequent lease of an article subject to manufacturers excise tax by the manufacturer, producer, or importer of the article shall be considered a taxable sale of the article. Under this rule, if a manufacturer of a taxable article leased it on successive 1-year leases for a total of 10 years, he would be regarded as having made 10 taxable sales of the same article.

Except in the case of certain utility trailers, this concept is carried out in the statutory provisions (sec. 4216 (c)) that prescribe the measure and time for reporting the tax due with respect to leases. Since each lease is regarded as a separate sale, tax is imposed on the total amount to be paid under each lease agreement. Where payments under a lease are made in installments, present section 4216 (c) permits a proportionate amount of the total tax due on the lease to be reported on each payment as received.

Your committee agrees with the House that the tax imposed on leases and sales by a manufacturer should be as nearly equal as possible. Present law does not achieve this equitable balance (except for utility trailers). The total cumulative excise tax liabilities incurred during the marketable life of a durable article that is steadily leased by the manufacturer frequently will far exceed the one-time tax due when that manufacturer sells the same model article.

The present statutory rule for leases has created serious inequities and competitive discrimination. A manufacturer who both leases and sells certain taxable articles often incurs a higher total liability on the leases than he does on sales. In addition, if some of his customers buy the articles and enter into the business of leasing them, they will not have to pay tax on their entire lease receipts. Instead tax on the article will have been paid only on the sales price of the manufacturer.

If a manufacturer sells to a related company which then leases the article, tax is imposed not on the lease payments but on the manufacturer's sale price. A comparable tax base should be provided for manufacturers who carry on the leasing portion of their business operation themselves rather than through related entities.

Public Law 317 (84th Cong.) provided equality of tax treatment in the case of leases and sales of automotive utility trailers, by setting a limitation on the total tax to be reported for leases. This limit was the amount of tax computed, at the rate in effect on the date of the initial lease, on the fair market value of the trailer on the date of such lease. Your committee agrees with the House that a similar limitation should be accorded all articles subject to ad valorem manufacturers excise taxes with some modifications of the tax base, the method of reporting the tax, and the eligibility requirements. This has been accomplished by this section of the bill, as passed by the House and as agreed to by your committee, which revises section 4217 of the code and makes related changes.

(*a*) *Lease considered as sale*

The statutory definition of a lease in present section 4217, that a lease is to be considered a sale, is continued in section 4217 (a) under the bill, except for the references to section 4216 (d) of present law (relating to utility trailers). The latter section is repealed by section 116 with respect to initial leases of utility trailers made on or after the general effective date for title I.

(*b*) *Limitation on tax*

New subsection (b) of section 4217 provides a limitation on the amount of tax to be paid on the lease of any article subject to an ad valorem manufacturers excise tax. This subsection requires a payment of tax on each lease payment computed at the rate of tax in effect at the time the payment is received, but limits the aggregate of such tax payments to the "total tax."

The existing limitations for utility trailers permit the above installment method of paying the total tax but provide the alternative of paying the "total tax" in full at the time of the initial lease. No statutory provision for the latter alternative is included in the bill for two principal reasons. One is the probability that few taxpayers would wish to pay the tax, in effect, in advance. The other reason is

to prevent the possibility that taxpayers who paid tax in full before being required to do so would be precluded from obtaining a credit or refund in the event that the taxes imposed on some articles were eliminated by subsequent changes in the law.

(c) *Definition of total tax*

Virtually all leases are made to the users of the articles leased. If sales were made to such persons they would constitute sales "at retail." Your committee concurs with the House therefore, that the proper maximum or "total" tax in the case of leases should be the amount of tax that would be due if the article had been sold at retail. Since a manufacturer's sale at retail requires a constructive sales price, such leases will be subject to the rule of this type provided by section 114 of the bill. The effect of this rule usually will be to set a maximum tax based on the price not in excess of the highest price for which the particular articles are sold to wholesale distributors in the ordinary course of trade by manufacturers or producers thereof. If the first lease of an article on or after the effective date of the bill is not the initial lease of the article, the maximum tax will be based on the "fair market value" of the article at the time of the first lease subject to the provisions of the bill. This rule is adopted because the market value of a used article can vary greatly depending on a number of conditions, such as age and serviceable condition, as contrasted to the standard retail price of a new article.

While the maximum or "total" tax is to be computed by applying the tax rate in effect at the time of the first lease, the House and your committee desire to make it clear (under sec. 4217 (b)) that the tax to be paid on each lease payment should be computed by applying the tax rate in effect at the time of the payment. For example, if it were determined at the time of the initial lease of a new taxable article that the proper tax base was $1,000 and the tax rate in effect at that time was 10 percent, the "total" tax due would be $100. On lease payments of $50 a month the tax due on each payment would be 10 percent of the $50 or $5, so long as the 10 percent rate remained in effect. If, after $600 in these payments had been received and $60 tax paid thereon, the tax rate was reduced to 5 percent, the tax due on each subsequent monthly lease payment would be 5 percent of $50 or $2.50, until such time as a total of $100 tax had been reported. If, in this example, the tax were eliminated, instead of being reduced, after $600 in lease payments have been received, no tax would be due on subsequent lease payments, as there would be no tax rate to apply.

(d) *Lessor must also be engaged in selling*

The treatment provided by new section 4217 is to be extended only to manufacturers who, at the time of making current or prior leases of particular articles, are also engaged in the business of selling in arm's-length transactions the same type and model of article. Your committee agrees with the House that where manufacturers only lease particular types of taxable articles and do not also sell them, competitive inequalities do not exist to a degree sufficient to warrant the involved administrative burden of determining a proper tax base on new articles where no sales were made. The tax limitation treatment accorded utility trailers under section 4216 (d) of present law will continue to apply to trailers which are under lease at the time the bill becomes effective or which were leased prior to such time.

(e) *Sale before or after total tax becomes payable*

In order to prevent the imposition of excessive tax in the event an article is first leased and then sold before the total tax has become payable, the bill, as passed by the House and as agreed to by your committee, provides a special rule for computing tax on the sale. This rule imposes the tax on the sale at the lower of (1) a tax computed on the selling price at the rate in effect at the time of sale; or (2) the amount by which the "total" tax exceeds the aggregate tax imposed on the lease payments already received on the article. If an article is sold after enough lease payments have been received so that the total tax has become payable, it is stipulated that no further tax is to be imposed on the sale.

(f) *Transitional rules*

It is realized that the special provisions relating to leases will affect many taxable articles being leased by their manufacturers at the time this act becomes effective. To cover this situation the bill, as passed by the House and as agreed to by your committee, provides that such leases will be considered as having been entered into on the effective date of the bill and that the total tax shall be computed on the fair market value of the article involved on the effective date of the bill. It is further provided that the only lease payments involved will be those attributable to periods on and after such date.

(g) *Utility trailers*

Subsection (c) of this section provides that the new provisions of section 4217 shall not apply to any lease of an article if section 4216 (d) of present law, relating to leases of utility trailers, applied to any lease of the article before the effective date provided in section 1 (c) of the bill. Thus, once a lease of a utility trailer qualifies under 4216 (d), any subsequent lease thereof must also be treated under that section.

(h) *Revenue effect*

It is estimated that this provision will result in a revenue loss of approximately $1 million in the first full year of operation. About $300,000 of this is attributable to the leases of trucks and truck trailers. It is anticipated, however, that the revenue loss from this provision will gradually increase to levels above the $1 million as the limitations on the tax under this provision become effective with respect to more and more leases.

SECTION 117. USE BY MANUFACTURER OR IMPORTER CONSIDERED SALE

(Sec. 118 of the House bill)

Section 4218 of present law is in general designed to impose tax where the manufacturer of an article uses it himself, or uses it in the manufacture of another article, in the same manner as if he sold the article to another person for such use. Thus, the general rule is that the use of a taxable article by a manufacturer in the manufacture of another article results in the imposition of a tax with respect to the first article unless the second article is a taxable article (or would be if not sold for one of the specified tax-free purposes). As in the case of sales, an exception to this general rule is provided in the case of

automobile parts or accessories, refrigerator components, radio or television components, and camera lenses. In the case of these particular articles, no tax is imposed when they are used in (as also is true where they are sold for use in) the manufacture of, or as a component part of, any article whether taxable or nontaxable.

The bill, as passed by the House and as agreed to by your committee, rearranges this provision somewhat and also makes changes to conform this provision with changes made elsewhere. For example, the reference to refrigerator components is deleted since in section 111 of the bill the tax on these parts is removed.

Subsection (c) of section 4218 as revised by the bill continues a rule found in the present section 4218 (b) to the effect that where a manufacturer produces an automobile part or accessory, radio or television component, or camera lens and uses it, tax is to apply unless he uses it—

> as material in the manufacture or production of, or as a component part of, any other article to be manufactured or produced by him.

When reference is made to use "as material in the manufacture or production of, or as a component part of, any other article" this phrase includes articles intended for incorporation in another article but which are broken or rendered useless in the process of further manufacture. Thus, for example, the breaking of a radio tube in the process of manufacturing a radio receiving set does not result in the imposition of a tax with respect to the tube (see discussion of sec. 163 for refunds or credits in this area). However, if, for example, a manufacturer uses an automobile part to repair a truck which he is using in his plant, this use of the part is considered a taxable use.

SECTION 118. UNIFORM SYSTEM OF EXEMPTIONS, REGISTRATION, ETC.

(Sec. 119 of the House bill)

Present exemptions from manufacturers excise taxes are dealt with under several different sections of law and the applicable rules vary somewhat. For instance, the exemption for sales (or resales) for further manufacture is conditioned, under the regulations, upon the vendor and vendee, both having registered with their local district director of internal revenue. Each person qualifying is given a registration certificate containing a registration number. The Commissioner can cancel the certificate where he is satisfied that the registrant is not a bona fide manufacturer of taxable articles or a vendee making resales directly to such manufacturer, or that tax-free sales are being made for purposes not warranted by the law and regulations. No similar registration requirement exists for sales to State and local governments, sales for ships' supplies, or sales for export.

The House bill consolidates and revises the rules for exempt sales to provide a more nearly uniform system of exemptions (comparable adjustments are provided in the credit and refund provisions; see sec. 163 of the bill) to improve the operation of the manufacturer's excise tax system. Complete uniformity of rules for all categories of exempt sales, however, is not practicable because of differences in the pur-

pose of extending the various exemptions, and because of the difficulties that would arise from treating them exactly the same. Your committee has accepted the House provision with two substantive changes, although it has also made other minor technical and clarifying changes.

(*a*) *Tax-exempt sales*

The principal exemptions under the manufacturers excise taxes in present law relate to sales for further manufacture; for export; for use by State and local governments; and for use as supplies by vessels and aircraft engaged in foreign trade. Exemptions for these purposes are retained in the bill.

(*1*) *Deletion of House bill exemption for nonprofit educational organizations.*—As in the case of the retailers' excise taxes, the House bill would have added a new provision to the Code to provide an exemption from the manufacturers' excise taxes for sales to nonprofit educational organizations for their exclusive use. The type of educational organization referred to is a nonprofit, operating school or college.

The report of the House committee indicated that this exemption was being added for these schools and colleges because present law provides an exemption for public schools and colleges but not for similar private nonprofit institutions. The House report suggested that this was discriminatory.

Your committee has removed from the House bill this exemption from manufacturers' excise taxes for nonprofit educational organizations because it doubts the desirability of broadening the exemptions in the case of the manufacturers' excise taxes. Such exemptions not only complicate the administration of these taxes for the Internal Revenue Service but also make their collection by manufacturers more difficult. Moreover, while it is true that State and local governmental agencies are exempt from such taxes, it appears doubtful that this represents a "competitive" discrimination against private schools since private and public schools can hardly be considered as competing with each other.

Because of the deletion of the general exemption from manufacturers' excise taxes for nonprofit educational organizations, the special exemption in present law for sales of musical instruments to nonprofit educational institutions is restored. This exemption appears in the proposed new section 4221 (e) (3).

(*2*) *Intermediate dealers.*—Present law and regulations permit, but do not require, a manufacturer to make tax-free sales to intermediate purchasers, only if these purchasers buy for the purpose of selling for export or selling for use by their customers in further manufacture. Only one intermediate purchaser is permitted in the latter case, while in practice no limit has been imposed in the case of sales for export.

It is believed that the present rules with respect to intermediate purchasers generally are reasonable, except that it appears desirable to limit to one the number of intermediate purchasers allowed in the case of sales for export. Where more than one intermediate purchaser is involved in any exportation, credit or refund will be available, however, when the article has been exported.

Your committee agrees with the decision of the House against making provision for tax-free sales to intermediate dealers except as indicated above because many manufacturers have indicated that

there would be difficulty in obtaining proof of the final exempt sale (of the type required in the case of sales for export or further manufacture) if an intermediate tax-free sale is permitted.

As under present law, no manufacturer will be required to make a tax-free sale to an intermediate dealer even when permitted to do so. If a manufacturer elects to sell an article on a taxpaid basis as, for example, to a customer who indicates he is purchasing for resale for export, the credit or refund provisions will apply upon receipt from the customer of proof that the article has been exported. Thus vendor-manufacturers will be able to adjust their sales policies to meet their evaluation as to the most effective way to handle sales for export and further manufacture.

The new section 4221 (a) makes provision for tax-free sales to a purchaser for resale by him to a second purchaser for use by such second purchaser in further manufacture or for export by such second purchaser. In any event, a tax-free sale will be permitted only if such exportation or use is to occur before any other use.

(3) *Proof of export and of resale for further manufacture.*—Under the present regulations a manufacturer who sells to a dealer for resale to another manufacturer for use in further manufacture must, within 2 months from the time of his sale to the dealer, receive either an exemption certificate indicating that the dealer has resold to another manufacturer or a statement that the dealer has such an exemption certificate. Where the original manufacturer does not receive the proof within the required 2 months, he must report and pay the tax with respect to the sale, but if proof later becomes available credit or refund may be claimed. Similarly, in the case of sales for export to one or more intermediate dealers, proof of the export must be obtained within 6 months from the time of the sale or the manufacturer becomes liable for payment of the tax. However, a credit or refund may be claimed if the article is subsequently exported.

The new section 4221 (b) provides a uniform 6-month limitation on the suspension of tax payment provided in section 4221 (a) in cases where an article is sold free of tax for resale by the purchaser to a second purchaser for use by such second purchaser in further manufacture, or is sold free of tax for export or for resale by the purchaser to a second purchaser for export. In these cases, section 4221 (a) will cease to apply to the sale of the article unless within a 6-month period the manufacturer receives proof that the article has been exported or resold for use in further manufacture. If at the end of the 6-month period the manufacturer does not receive the required proof, he becomes liable for payment of the tax. The 6-month period is to begin on the date of the sale by the manufacturer (or, if earlier, on the date of shipment of the article by the manufacturer).

(4) *Extinguishment of liability.*—Under present law the tax result is not specified where a manufacturer accepts an exemption certificate in good faith, but which certificate turns out to be incorrect, whether by design or otherwise. Generally (except in the case of sales for further manufacture), the Service has held the manufacturer liable for tax in such cases.

The bill, as passed by the House and as agreed to by your committee, provides that where a manufacturer makes tax-free sales to a State or local government for use as supplies for vessels or aircraft or to another manufacturer for further manufacture, his liability for tax

will be extinguished on the sales if at the time of the sale he in good faith accepts a certification by the purchaser that the article will be used in accordance with the purpose for which exemption is granted. However, improper use by any person of the certification procedure will make such person subject to penalty provisions of existing law.

The new section 4221 (c) specifically provides for this "release from liability" not only where articles are sold free from tax under this section, but also in the case of any article sold free from tax under the provisions of sections 4063 (b) (tax-free sales of automobile or truck bodies to a manufacturer of automobiles or trucks), 4083 (tax-free sales of gasoline to a producer of gasoline), or 4093 (tax-free sales of lubricating oil to a manufacturer of lubricating oil), if, at the time of the sale, the manufacturer in good faith accepts a certification from the purchaser that the article will be used in accordance with the applicable provisions of law. Any sale to which section 4221 (b) applies is specifically excluded from the operation of subsection (c). Thus, for example, a manufacturer who sells an article (free of tax) to a purchaser for export by the purchaser cannot be relieved of the possibility of liability for tax by the provisions of subsection (c).

(5) *Tires, etc., sold in connection with other articles sold for specified tax-free purpose.*—Under the present law tires, inner tubes, automobile radios and automobile television sets may not be sold tax free for use in further manufacture. A special type of credit or refund is provided by law (sec. 6416 (c) of the code) where the tires, tubes, etc., are sold on or in connection with the taxable sale of an automobile, truck, etc., taxable under section 4061 (a) of the code. Where the automobile, truck, etc., is sold in a tax-free sale, for example to a State or local government, no credit or refund for the tax paid on the tires, tubes, etc., is provided by present law because the sale of the automobile, truck, etc., is not taxable. This rule prevents purchasers entitled to purchase tax-free from obtaining the full benefit of tax exemption on their purchases of an article containing tires, tubes, etc., as contrasted to cases where they purchase articles for which all parts can be purchased tax free for further manufacture.

Another anomaly with respect to tires, tubes, etc., has arisen as a result of the administrative treatment of sales for export. In these cases, the Service has held that the manufacturer of the automobile, truck, etc., is entitled to a credit or refund on tires and tubes sold on a vehicle sold for export, even though exportation constitutes a tax-free sale. In some cases, manufacturers of vehicles even have been permitted to buy tires and tubes tax free for incorporation on vehicles to be sold for export.

To correct these anomalies the bill, as passed by the House and as agreed to by your committee, permits manufacturers of tires, inner tubes, or automobiles radios or television receiving sets to sell them tax free to another manufacturer where the purchaser is to use the tires, etc., for sale on or in connection with the sale of another article manufactured by him, where such other article is (A) to be sold for export, (B) to a State or local government, or (C) for use as ships supplies. This will provide exemption from tax for tires, tubes, etc., as if they had been sold directly in an exempt type of sale.

Section 4221 (c) of the bill, as passed by the House and as agreed to by your committee, prescribes the rules for the tax-free sales of tires, tubes, and automobile receiving sets. The suspension of tax-

payment mentioned above will cease to apply unless within a 6-month period the manufacturer of such tire, etc., receives proof that the other article has been sold in a manner which will satisfy the requirements for tax-free sales of section 4221 (a) (2), (3), or (4) (and including in the case of sales for export, proof of export of such other article). The 6-month period (mentioned above) begins on the date of the sale by the manufacturer or, if earlier, on the date of the shipment by the manufacturer.

(*6*) *Sales of mechanical pencils and pens for export.*—Your committee has added a new subsection (f) to the proposed section 4221 to provide that taxable mechanical pencils, fountain pens and ballpoint pens (taxed under sec. 4201) may be sold by the manufacturer on a tax-free basis only after he has received notice of intent to export the pencils or pens. In the case of these articles, this is a substitute for the general registration provision described below. Testimony before your committee indicated that manufacturers of these articles feared that, in their case, provision for tax-free sales for export under a registration system without the requirement of notice to export at the time of the sale might lead to tax evasion through purchase of these pens or pencils under the registration system and then the resale of such articles in the domestic markets without payment of tax. To provide against such a possibility your committee's bill continues the present procedure in the case of these pens and pencils, requiring notice of intent to export before permitting tax-free sales.

(*b*) *Registration*

(*1*) *General rule.*—As previously indicated, a registry system has been established under present regulations for sales for further manufacture. It is not generally required for other exempt sales. Use of this type of system has advantages for taxpayers and the Service where sales for tax-exempt purposes are a regular feature of a given business. It provides the Service with notification of intent to engage in specified activities, while for manufacturers and their customers it may be integrated as part of the exemption certification procedure. Absence of a report of a valid certification number from a purchaser places a seller on notice that the purchaser has not complied with all necessary requirements for making a tax-free purchase.

The bill, as passed by the House and as agreed to by your committee, therefore, provides for a registration system to be used by sellers and buyers making tax-free sales and purchases of the type mentioned in (*a*) above. Both the seller and buyer will have to be registered. Registration can be revoked or suspended when necessary to protect the revenues or when a registered person has used the registration to avoid or postpone payment of the tax. Revocation or suspension will make it impossible to sell or purchase on a tax-free basis. It will not, however, operate to deny credit or refund where an article has been sold taxpaid and the original or subsequent sale meets the requirements for credit or refund as specified in section 6416 of the code. (See discussion of sec. 163 of the bill.)

Section 4222 (a) provides that section 4221 (the tax-free sales provisions) shall not apply (with certain exceptions provided in sec. 4222 (b)) to the sale of any article unless the manufacturer and the first purchaser (and the second purchaser, if permitted) are registered under this section. Registration under this section shall be made at

such time and in such manner and form and subject to such terms as the Secretary or his delegate may prescribe in the regulations.

Subsection (c) of the new section 4222 provides for a revocation or suspension of the registration privileges of any person by the Secretary or his delegate for either of two reasons. The first cause is that the person has used the registration to avoid the payment of tax imposed by chapter 32, or to postpone or in any manner interfere with the collection of such tax. The second cause is that such action is necessary to protect the revenue. The revocation or suspension under subsection (c) is in addition to any penalty provided by law for any act or failure to act.

Since the circumstances of individual cases will vary, the House and your committee do not intend to prescribe any particular method that the Secretary or his delegate must use to determine whether a revocation or suspension of a registration is warranted.

(*2*) *Extension of systems.*—It is further provided in the new section 4222 (d) that the registration system may, under regulations, be extended to certain special exempt sales provided for by law, namely: sales of gasoline and lubricating oil from one producer to another; sales of auto or truck bodies, or automobile parts and accessories to auto or truck manufacturers; and sales of firearms, pistols and revolvers, and ammunition to the Department of Defense.

(*3*) *Exceptions.*—Subsection (b) of new section 4222 provides several exceptions to the general rules relating to registration found in subsection (a) of this section.

The first exception (par. (1)) applies to purchases by any State or local government. In such a case the State or local government need not comply with the registration provisions of section 4222 (a) if such State or local government complies with the Secretary's regulations relating to the use of exemption certificates in lieu of registration.

The second exception (par. (2)) applies to the sale for export or for resale for export. Subject to regulations promulgated under this paragraph, the Secretary or his delegate may, in these situations, relieve the purchaser or second purchaser (or both) from the registration requirements.

The third exception (par. (3)) relieves from the registration requirements purchases and sales by the United States, but only to the extent provided by regulation.

A fourth exception (par. (4)) provides that the registration requirements are not to apply in the case of mechanical pencils, fountain pens, and ballpoint pens subject to the tax imposed by section 4201 sold by the manufacturer for export or for resale for export. This exception was added by your committee. As indicated above, your committee, in this case, substituted the requirement of notice of intent to export at the time of the manufacturer's sale, as provided under present law, for the registration system.

(c) *Special rules relating to further manufacture*

Under present law, if a manufacturer purchases articles tax free for further manufacture, either directly or through an intermediate dealer, he is deemed to be the manufacturer of the articles so purchased. If he subsequently diverts the article to a taxable use or sells it in a taxable sale, then he, and not the original manufacturer, is liable for

the tax. It is proposed that this rule be retained, as it has proved to be satisfactory to taxpayers and the Service.

A change is provided, however, in the basis upon which the statutory manufacturer is required to pay tax in such cases by the bill; both as passed by the House and as approved by your committee. Present law requires the tax to be paid on his selling price, or if he uses the article, tax is to be paid on the price for which the same or similar articles are sold in the ordinary course of trade by manufacturers, producers, or importers thereof. These rules are retained. But it is believed the statutory manufacturer should also be afforded an opportunity to use the original manufacturer's price as a base, since tax would have been levied on this (usually) lower base if the article had been sold tax paid in the first instance. For reasons of convenience, where there is an intermediate dealer, it is also provided that the selling price of the dealer to the statutory manufacturer will be available for use as the taxable base of the statutory manufacturer.

Subsection (a) of the new section 4223 provides that where an article is sold or resold to a manufacturer or producer free of tax (under sec. 4221 (a)) for use by him in further manufacture, the purchasing manufacturer is to be treated as the manufacturer or producer of the article. If, however, a manufacturer buys an article free of tax (under sec. 4221 (a) (1)) for resale to another manufacturer, he is not to be considered the statutory manufacturer, since he is acting in the capacity of an intermediate purchaser rather than a manufacturer.

In the case where the purchasing manufacturer sells or uses an article he bought tax free by virtue of section 4221 (a) and thereby incurs liability for tax under this chapter, if the tax is based on the price for which sold, subsection (d) of the new section 4223 provides him with several alternatives in computing the tax base for the article he sells. His first alternative base is the price for which the article was sold by him, or where tax results from his use of the article, the price referred to in section 4218 (d). If the above-mentioned manufacturer or producer so elects, he may use any of the following prices which he can establish to the satisfaction of the Secretary or his delegate: The price for which the article was sold to him; or the price for which the article was sold by the original manufacturer, producer, or importer of the article (i. e., the person who is the manufacturer without regard to this section).

A technical amendment made by your committee provides that this election, as to alternative tax bases for the purchasing manufacturer, is to be made in the return reporting the tax applicable to the sale or use of the article. This amendment by your committee also provides that such an election may not be revoked.

The determination of the price for which an article was sold is to be made under section 4216, which defines "price" for purposes of the manufacturer's excises. However, where a manufacturer uses as his base the price for which an article was sold to him or sold by the original manufacturer, no adjustment or readjustment is to be made in the price determined under section 4216 by reason of any discount, rebate, allowance, return or repossession of a container or covering or otherwise (but see discussion under sec. 163).

(*d*) *Exemption for articles taxable as jewelry*

Section 4224 (corresponding to sec. 4221 of the code prior to the amendments) provides that no manufacturers' excise tax shall be imposed under chapter 32 on any article taxable under section 4001 (jewelry tax). This exemption shall not apply, however, to any clock or watch, or to any case or movement for the above, sold as a part or accessory or sold on or in connection with or with the sale of any article. (See explanation of sec. 102 of this bill.)

(*e*) *Revenue effect*

With the deletion by your committee of the exemption provided by the House bill for certain nonprofit educational organizations, it is anticipated that the changes made in the system of uniform exemptions, registration, etc., will result in only a negligible revenue loss. The exemption from the manufacturers excise' taxes for the specified nonprofit educational organizations, together with similar exemptions from the retailers' taxes and those on transportation and communications, which would have been provided by the House bill, was expected to result in an annual revenue loss of about $3 million. The deletion of this exemption by your committee will prevent this revenue loss.

PART III—FACILITIES AND SERVICES

SECTION 131. ADMISSIONS

(*a*) *Exemption of first $1 paid for admission*

Under present law the general admissions tax applies only if the amount paid for admission is more than 90 cents (or in the case of a season ticket or subscription if the amount which would be charged for a single admission is more than 90 cents). This exemption for admissions of 90 cents or less was provided by Congress in 1956 (by Public Law 1010, 84th Cong.). At that time it was indicated that this exemption was required by the motion-picture industry and others because of the competition from the television industry. It was suggested that this increase in the exemption would better enable the entertainment industry to adjust their long-range plans to the new competitive situation. Your committee believes that this exemption has been of considerable aid to the motion-picture and other branches of the entertainment industry. Nevertheless, because this exemption is available only where the admission price is 90 cents or less, and hence where the price exceeds this amount, the tax is applicable not only to the amount above 90 cents but also with respect to the amount below that figure, present law has led to a discrimination as to those who because of their costs must charge more than 90 cents.

Your committee's bill removes this notch by providing that the exclusion is to apply not only where the charge is below the specified level but also where the charge is above the specified level. In addition to removing the notch in the general admissions tax rate, your committee has increased the exemption from 90 cents to $1 as a means of helping the entertainment industry to adjust to its new competitive position with television.

The bill as amended by your committee, therefore, provides that the general admissions tax of 1 cent for each 10 cents or major fraction

is to apply only to amounts in excess of $1 paid for admission. In the case of season tickets, the bill as amended by your committee provides that the admissions tax of 1 cent for each 10 cents or major fraction is to apply to an amount paid for a season ticket which exceeds $1 multiplied by the number of admissions provided by the season ticket.

Thus, in the case of single admissions where the charge is $1.10, the tax is to be 1 cent, whereas under present law the tax in such a case is 11 cents. In the case of season tickets, if the price paid for a season ticket is $11, and this entitles the holder to 10 admissions, the tax is to be determined by the following computation: The exemption is obtained by multiplying $1 by 10 (the number of admissions permitted). The $10 figure obtained in this manner is then subtracted from the $11, leaving a tax base of $1. With a tax of 1 cent for each 10 cents or major fraction, this will result in a tax of 10 cents. Under present law the tax in such a case would be $1.10.

The $1 exemption provided by your committee's action is available only in the case of general admissions taxable under paragraph (1) of section 4231. This exemption does not apply to taxes imposed by the other paragraphs of section 4231. Thus, it does not apply to the taxes imposed in the case of certain race tracks, the permanent use or lease of boxes or seats, sales outside of box office in excess of established price, sales by proprietors in excess of regular price, and cabarets.

It is estimated that this increase in the admissions tax exemption, together with removal of the notch in the present exemption, will result in a revenue loss of $21 million a year. The bulk of this loss is attributable to the removal of the notch.

(*b*) *Application of admissions tax outside the United States*

The tax on admissions (sec. 4231 of the Internal Revenue Code) is divided into 6 paragraphs: (1) general admissions, (2) admissions to horse and dog races, (3) permanent use or lease of boxes or seats, (4) sales outside of the box office in excess of the established price, (5) sales by proprietors or employees in excess of the regular price, and (6) cabarets. Liability for the tax under paragraphs (1) and (2) is on the person making payments for admission, and under paragraph (3) is on the lessee or holder of the box. The tax in these cases is collected from the person liable for the tax by the person receiving the payment. Under paragraphs (4) and (5), the person selling the tickets is the one liable for the tax. Similarly in the case of the cabaret tax (paragraph (6)) liability is on the person receiving the taxable payments; that is, payments for refreshment, service, merchandise, etc. The law does not indicate in the above cases, however, whether the admission or the payment, or both, must take place within the United States. This has created uncertainty as to liability for tax, especially in areas near the borders of the United States. There tickets may be purchased in the United States for events which are to take place outside the United States, and vice versa.

To resolve this uncertainty, the bill, as passed by the House and as agreed to by your committee, specifically provides that the tax covers only admissions or performances within the United States, but in such cases tax will be applicable whether payment was made in or outside the United States. Thus tax will be uniformly required on

all taxable events in the United States. Persons purchasing tickets inside the United States for events outside the United States will not have to pay a United States tax.

To insure an effective return of tax where liability is on the payor (general admissions, admissions to horse and dog races, and permanent use or lease of boxes or seats) and payment is made outside the United States, provision is made in the bill for liability to be shifted to the person who is to furnish the facility or service if the payment is made outside the United States and the tax is not collected from the payor.

Changing the liability for the tax in these cases should provide no additional burden on operators of taxable events in the United States. The regulations now require printing of the established price and tax on tickets to taxable events. Where tickets are sold in a foreign country for a domestic event, the proprietor would merely make certain that his agent or branch office sold them at a price reflecting tax, as in the case of sales at the box office.

In the case of (1) sales outside the box office in excess of the established price, (2) sales by proprietors or employees in excess of the regular price, and (3) the cabaret tax, it does not appear desirable to shift the liability to the person furnishing the facility or service in cases where payment is made outside the United States. In the case of these sales or events, present law imposes liability on the person selling the tickets or receiving taxable payments. The person furnishing the facility or service is not necessarily the same as, and may have no control over, the person selling the tickets or receiving taxable payments. Persons liable for tax under present law in these instances will continue to be liable for tax.

The changes suggested are carried out by section 131 (b) of the bill which amends section 4231 by adding at the end thereof a provision which expressly provides that the admissions taxes shall apply to amounts paid within or outside the United States, but only if the place of admission or performance is within the United States. Such section is further amended to provide that in the case of any payment outside the United States in respect of which tax is imposed by paragraphs (1), (2), or (3) of section 4231, the tax shall be collected by the person who is to furnish the facility or service and if he does not do so, he is to be liable for the payment of the tax.

(c) *Collection of cabaret tax on payments to concessionaires*

The cabaret tax base (sec. 4231 (6)) is—

> * * * all amounts paid for admission, refreshment, service, or merchandise, at any roof garden, cabaret, or other similar place * * *.

Since liability for tax is on the person receiving the designated payments, more than one person may be liable for tax and the filing of returns for a single establishment. This arises because it is common practice for a cabaret proprietor to sell or lease certain portions of his business as a concession.

Difficulty has been experienced in such cases in obtaining full and correct payment of tax from concessionaires. They are sometimes difficult to locate because they change operations relatively often and their records may be inadequate or they may keep none at all.

To provide a more uniform and adequate system of reporting for individual cabarets, the bill, as passed by the House and agreed to

by your committee, provides that all of the tax for 1 establishment is to be returned by 1 person. This is to be accomplished by having the concessionaire pay his tax liability to the proprietor, with the latter being responsible for collection from the concessionaire and subsequent remittal to the Government.

To effectuate this change, section 131 (c) of the bill amends section 4231 (6), relating to cabaret tax, to provide that if the person receiving taxable payments is a concessionaire, the tax imposed under paragraph (6) shall be paid by him and collected from him by the proprietor of the cabaret. Although the proprietor will not be personally liable for the tax, he will be responsible for the collection and return of the tax in the same manner as a person receiving taxable payments is responsible for collection and return of other collectible taxes. The concessionaire will remain responsible for the tax until paid to the Government.

(d) Application of cabaret tax to milk bars

For purposes of the cabaret tax imposed by section 4231 (6), a cabaret is defined by section 4232 (b) as including--

> * * * any room in any hotel, restaurant, hall, or other public place where music and dancing privileges or any other entertainment, except instrumental or mechanical music alone, are afforded the patrons in connection with the serving or selling of food, refreshment, or merchandise.

However, the term does not include a ballroom, dance hall, or similar place where the selling of food, refreshment, or merchandise is merely incidental.

While the furnishing of instrumental or mechanical music alone does not result in the imposition of the cabaret tax, provision for dancing, whether to live or mechanical music, together with the serving of food, etc., does result in the imposition of tax. As a result of this, the cabaret tax is applicable to the charges for food, refreshment, etc., at certain establishments, sometimes called "milk bars," catering to teenagers by selling light refreshments and providing space for dancing, usually to a jukebox. Since admission is not charged, and the selling of food or refreshment is not incidental, these establishments are not exempt from the cabaret tax as a dance hall, or similar place.

Your committee agrees with the House that the scope of the cabaret tax should be limited so that it does not apply to these "milk bars." Such establishments do not fall within the scope of the adult commercial entertainment normally associated with this tax. Rigid limitations must be set up, however, to make the exemption available only to the specific type of establishment just described.

This purpose is carried out by section 131 (d) of the bill which amends section 4232 (b), relating to the definition of "cabaret." The amendment provides that the term "roof garden, cabaret, or other similar place" does not include any place if (1) no beverage subject to tax under chapter 51 (distilled spirits, wines, and beer) is served or permitted to be consumed; (2) only light refreshment is served; (3) where space is provided for dancing, no charge is made for dancing; and (4) where music is provided or permitted, such music is either instrumental or other music which is supplied without charge to the owner, lessee, or operator of such place (or to any concessionaire), or is mechanical music. The amendment requires that all of the four con-

ditions enumerated be satisfied to exclude a place from the term "roof garden, cabaret, or other similar place."

One limitation prohibits exemption not only if alcoholic beverages are served but also if so-called "setups" are served. Even if alcoholic beverages or "setups" are not served, exemption is not available if customers are permitted to consume alcoholic beverages on the premises. Another limitation, that against making a charge for dancing, refers not only to a specific charge for dancing, but also to any special charge, however designated, that may be levied during a period when dancing is permitted. There is a further limitation, in that where live music is supplied it must be supplied without charge to both the patrons and the operator (or to any concessionaire). A charge for dancing does not, however, refer to reasonable payments made by patrons to operate a "juke box."

(*e*) *Admissions inuring to benefit of scholarship and fellowship funds*

Your committee has added a provision to the House bill providing an exemption for admissions inuring to a tax-exempt educational, charitable, or religious trust or organization (described in sec. 501 (c) (3) of the code) which is organized and operated exclusively to provide scholarships and fellowships for study above the secondary level of school. As is true in the case of most of the existing exemptions from the admissions tax, this exemption is not available in the case of admissions to athletic games or exhibitions; wrestling matches, prizefights, or boxing, sparring, or other pugilistic matches or exhibitions; carnivals, rodeos, or circuses in which professional performers or operators participate for compensation; or motion-picture exhibitions. It is intended that the exemption is to be available either where scholarships alone, or fellowships alone, are provided, or where both are provided.

Your committee has added this exemption because its attention was called to the fact that some organizations sponsor events to raise funds to provide scholarships and fellowships for study in colleges, in graduate schools, and in other institutions. Your committee believes that this constitutes a worthwhile purpose which should not be discouraged by the imposition of a tax.

It is anticipated that this provision will result in a negligible revenue loss.

(*f*) *Admissions to privately operated swimming pools, etc.*

Under present law (sec. 4233 (a) (4) of the code), exemption from general admissions tax is provided for admissions to swimming pools, bathing beaches, skating rinks, or other places providing facilities for physical exercise, if the facility is operated by the United States or a State or subdivision thereof, and the proceeds inure exclusively to the benefit of the political entity. For purposes of this exemption, the Internal Revenue Service has considered dancing a form of physical exercise.

While the general admissions tax exemption of the first $1 charged, which also is provided by this bill as amended by your committee, exempts a large proportion of admissions to privately operated swimming pools, skating rinks, etc., your committee agrees with the House that admissions to all these facilities should be treated alike. Operators of private facilities frequently are in competition with publicly operated facilities. Patrons of swimming pools, skating rinks, etc.,

may or may not have to pay a tax merely because of the type of ownership of the facility they patronize. It is, therefore, provided by the bill, as passed by the House and as agreed to by your committee, that admissions to these facilities, whether publicly or privately operated, are to be exempt from admissions tax. However, admissions for dancing are specifically mentioned as being subject to tax to reverse the present interpretation of the coverage of the term "physical exercise."

Section 4233 (a) (4) is thus amended by section 131 (f) of the bill to exempt admissions to all swimming pools, bathing beaches, skating rinks, or other places providing facilities for physical exercise (other than dancing).

(g) *Revenue effect*

It is estimated that the $1 exemption for admissions will result in a revenue loss of $21 million a year. The other changes made in the admissions tax by the House bill, as amended by your committee, are expected to result in a negligible revenue loss.

SECTION 132. CLUB DUES

(a) *Tax on life memberships*

Section 4241 of the code imposes a tax of 20 percent on any amount paid as dues or membership fees to any social, athletic, or sporting club or organization if the dues or fees of an active resident annual member are in excess of $10 per year. In the case of life memberships an annual tax is levied equivalent to the tax upon the amount paid by active resident annual members for dues or membership fees other than assessments. The tax on life memberships is due irrespective of the amount paid for the life membership. Thus, tax is due even though life membership was given as an honorary membership. Because the tax on life memberships is equal to the amount of tax paid by active resident annual members, life members generally have to pay an annual tax based upon the most expensive type of club membership.

As the tax on life memberships at the present time has no relationship to the amount paid for the life membership or the class of facilities available to the life member, it is felt that the basis of tax is unreasonable. It is believed that provision should be made so that taxation of life memberships is related more closely to the cost and privileges in individual cases. In accordance with this, it is provided in the bill as passed by the House and approved by your committee that life members are to have the alternative of paying a tax based on the tax paid by members having privileges most nearly comparable to those held by the particular life member, or of paying a one-time tax based upon the amount actually paid for the life membership. If no payment is made for the life membership, as in the case of an honorary membership, no tax will be due.

Section 132 (a) of the bill revises section 4241 (a) (3) of the code to make effective these suggested changes. Under subparagraph (A) of the revised section 4241 (a) (3), provision is made for a tax on life memberships in an amount equivalent to the tax imposed upon members (other than life members) having privileges most nearly comparable to those of the person holding the life membership. If such life member has only limited privileges for which other members

pay dues on a lesser amount than members having full privileges, the life member will be liable for tax on the smaller amount. The tax shall be paid at the time for the payment of dues or membership fees by members (other than life members) having privileges most nearly comparable to those of the person holding the life membership.

Under subparagraph (B) of section 4241 (a) (3) as amended by the bill, a life member may elect to pay only one tax of 20 percent of the amount paid for the life membership. Once having paid such tax, no additional tax liability will be incurred with respect to the amount paid for the life membership. The election to pay only one tax shall be made not later than the day on which the first amount is paid for the life membership. Any election made to be taxed under subparagraph (B) shall be irrevocable.

It is expressly provided that no tax under subparagraphs (A) and (B) shall be payable on any life membership for which no charge is made to any person. Therefore, honorary memberships will not be subject to tax.

If a life member pays for privileges in addition to those provided by his life membership he will be liable for tax on any amount paid for such additional privileges in the same manner and to the same extent as other members. Such tax will be in addition to the tax payable on life memberships as such.

The first sentence in section 132 (d) (1) specifies the effective date provisions of the changes made by section 132 where the life member elects to pay tax under subparagraph (A). The revised basis of tax shall apply only with respect to amounts paid on or after the effective date specified in section 1 (c) of the bill.

If the life member elects to pay tax only on the amount paid for the life membership as provided by subparagraph (B), the alternative method of payment is available for amounts paid on and after the effective date specified in section 1 (c) of this bill. In order to provide a transitional grace period for making the election to pay tax under subparagraph (B) with respect to life memberships purchased before the effective date of the bill and shortly thereafter, it is provided that for purposes of subparagraph (B) all amounts paid at any time before the date which is 6 months after such effective date shall be treated as paid on such date. Thus, a person who already has a life membership or who purchases one within 6 months after the effective date of the bill has up to 6 months after the effective date thereof to make this election. Where the election is made to pay tax under the provisions of subparagraph (B), no credit is allowed for any tax imposed on a life membership for any period before the effective date of the bill.

The provisions of this amendment may be illustrated by the following examples:

(1) Assume that A on January 1, 1957, purchased a life membership in an athletic organization for which he paid $1,000. For the years 1957 and 1958 A paid a tax of $15—the same amount of tax paid by an active resident annual member. Assume further, that the effective date of the act is January 1, 1959. A will pay in 1959 an annual tax in the same amount as that paid by members (other than life members) having privileges most nearly comparable to that of A unless A within the first 6 months of 1959 elects under section 4241 (a) (3) (B) to pay a single tax on the amount paid for the life member-

ship. In such case the tax would be $200 (20 percent of $1,000) with no credit for tax imposed for any period prior to 1959. If A fails to elect to pay tax under subparagraph (B) within the time limitation provided therefor, he is precluded from paying tax otherwise than under subparagraph (A).

(2) Assume that B purchased a life membership on May 1, 1959, and that the effective date of the bill is January 1, 1959. B will pay an annual tax under subparagraph (A) unless he elects to pay tax under subparagraph (B). B's payment on May 1 shall be treated as having been made on June 30—the last day of the 6-month period—and B has until June 30 to elect to pay the tax under subparagraph (B). Assume further that B purchased a life membership in another organization in 1960. In such case B, in order to pay the single tax under subparagraph (B), must elect to do so on the day of his first payment for the life membership, since that day is after the day which is 6 months after the effective date of the bill.

(3) Assume that an athletic organization awarded a life membership to C. If no charge was made to any person for the life membership awarded to C, no tax is payable under section 4241 (a) (3), as amended, on such life membership. However, where the life membership is purchased by one person and given to another, tax is payable under section 4231 (a) (3) inasmuch as a charge was made for the life membership. The person holding the life membership shall be the person entitled to make the election provided in section 4231 (a) (3) (B).

(4) Assume that D is granted a life membership by an athletic organization upon concluding 40 consecutive years as an active resident member. In such case D will not be considered as holding a life membership for which a charge was made. However, if the life membership granted D is such that he does not receive privileges for all the facilities of the club, and in any particular year he decides to pay for the right to use facilities beyond those granted under his life membership, D will be liable for tax on the payments for the additional facilities in the same manner as any other members paying for such facilities.

(*b*) *Assessments paid for capital improvements; nonprofit swimming or skating facilities*

(*1*) *Assessments for capital improvements.*—The tax on club dues is imposed on amounts utilized by a club to purchase capital facilities or equipment as well as amounts used for operating expenses. This result is assured by section 4242 which defines "dues" as including "* * * any assessment, irrespective of the purpose for which made * * *." In addition, "initiation fees" are defined as including "* * * any payment, contribution, or loan required as a condition precedent to membership, * * *."

The construction of facilities for a social, athletic, or sporting club often represents a very heavy initial expense relative to the annual upkeep. Such expense is often particularly burdensome in situations where an existing organization finds it necessary to reconstruct facilities which have become obsolete or worn out. Another such situation occurs when there is need for replacement of facilities lost by casualty, fire, flood, etc., and the insurance proceeds are inadequate to cover the new costs. The bill, as passed by the House and as agreed to by your committee, provides that assessments for constructing such facilities are to be exempt from the tax on club dues.

However, charges which go to the upkeep and operation of social, athletic, or sporting clubs continue to be taxable.

The new subsection (b) of section 4243 exempts from the club dues tax any assessment paid for the construction or reconstruction of any social, athletic, or sporting facility (or for the construction or reconstruction of any capital addition to, or capital improvement of, any such facility). Pursuant to the first sentence of section 132 (d) (2) of the bill, the exemption granted by the new subsection (b) shall have application only with respect to assessments paid on or after the effective date specified in section 1 (c) of this bill for construction or reconstruction begun on or after such effective date.

Since the exemption is applicable only to assessments for construction, or reconstruction, of a facility, amounts used for the purchase of land will not be exempt from tax. Similarly, the use of funds for the purchase of existing facilities will not be tax exempt. Exemption will be available for the construction or reconstruction of buildings as well as various outdoor facilities, such as tennis courts, swimming pools, and golf courses. Mere upkeep and repairs do not constitute construction or reconstruction.

(*2*) *Nonprofit swimming or skating facilities.*—A recent development that has become of considerable importance in the field of social and athletic clubs has been the growth of nonprofit swimming clubs. Such clubs generally are created by a group of individuals in a particular neighborhood coming together and subscribing enough initial capital to buy land and build a swimming pool and then paying annual dues for the upkeep of the pool and lifeguard service. Such swimming clubs provide a healthy form of recreation for the children of the members and often avoid the need for additional use of tax moneys to provide such recreational facilities.

In view of the recreational value for the children of the members arising from the operation of such facilities, your committee agrees with the House that dues and initiation fees paid to such organizations should be exempt from tax. It also concurs in the limitations imposed by the House bill which limit the exemption to organizations which meet the recreational needs of children, and which limit the exemption to facilities which are not a part of, or connected with, other organizations. If the latter condition were not imposed, it would be possible to separate the swimming facilities of, say, a country club, which it is intended should continue to be taxable, and obtain tax exemption on such part of the overall total of the country club facilities.

Your committee has, however, broadened the exemption provided by the House bill so that it applies not only to swimming clubs but to skating clubs as well. This includes both ice-skating and roller-skating clubs. These clubs, however, will have to meet the same conditions as the swimming-pool clubs.

Section 132 (b) of the bill, as amended by your committee, adds a new subsection (c) to section 4243, relating to exemption from the club dues tax imposed by section 4241. The new subsection (c) provides that, under regulations provided by the Secretary or his delegate, there shall be exempted from the provisions of section 4241 all amounts paid as dues or fees to any club or other organization organized and operated primarily for the purpose of providing swimming or skating facilities for its members, if no part of the net earnings of

such organization inures to the benefit of any private stockholder or individual. This exemption will have application in the case of the above-described organizations if it is established to the satisfaction of the Secretary or his delegate that all four of the requirements listed as prerequisites to the exemption have been met. The four requirements are: (1) children will be permitted to use the swimming or skating facilities, on the basis of their own membership or the membership of adults; (2) no beverage subject to tax under chapter 51 (distilled spirits, wines, and beer) will be served or permitted to be consumed on any premises under the control of such organization; (3) no dining facilities (other than facilities for light refreshment), and no dancing facilities, will be provided on any premises under the control of such organization; and (4) such organization is not controlled by, or under common control with, any other organization.

The second and third requirements described above (those with respect to alcoholic beverages, dining facilities, and dancing facilities) refer not only to the premises of the swimming or skating facilities as such but also cover premises controlled by organizations running the swimming or skating facilities. Thus exemption will not be available for amounts paid as dues to a swimming or skating club if such organization also indirectly operates a dining room adjacent to the swimming pool or skating rink under different corporate charter. The fourth restriction in the previous paragraph prevents exemption where there may be the opposite of the situation just mentioned, that is, if an organization maintaining dining and dancing facilities controls another organization which operates a swimming pool or skating rink or if both such organizations are under common control.

Pursuant to the second sentence of section 132 (d) (2) of the bill, the exemption granted by new subsection (c) shall apply only with respect to amounts (including assessments for construction or reconstruction) paid on or after the effective date specified in section 1 (c) of the bill. For purposes of this exemption, it is immaterial whether the construction and reconstruction is begun before, on, or after such effective date.

(c) *Effective dates*

Section 132 (d) of the bill prescribes the effective dates of the amendments made by subsections (a) and (b) of section 132 of the bill. The effect of these provisions are set forth in the portion of this report dealing with those subsections.

(d) *Revenue effect*

It is estimated that the changes made by the House bill, as amended by your committee, in the taxes on club dues will result in a revenue loss of approximately $9 million a year. This is primarily attributable to the exemptions provided for assessments paid for capital improvements.

SECTION 133. COMMUNICATIONS TAX

Section 133 of the House bill has been accepted by your committee without change.

(a) *Changes in definitions and classifications*

The taxes on communications services have become somewhat obsolete in their operations because of technological changes in the in-

dustry in recent years. A revamping of the terminology and definition of the taxable types of service is provided in the bill, as passed by the House and as agreed to by your committee, to bring the law into conformity with the different types of services actually provided. Such a change would help resolve problems of the industry and the Internal Revenue Service in trying to coordinate today's types of services with the wording of the existing statute. In general this revision is accomplished in the bill by making the following changes: (*a*) redesignating "local telephone service" as "general telephone service"; (*b*) redesignating "long-distance telephone service" as "toll telephone service"; (*c*) retaining "telegraph service" without change; (*d*) redesignating "leased wire, teletypewriter or talking circuit special service" as "teletypewriter exchange service" and "wire mileage service"; and (*e*) retaining "wire and equipment service". As under present law, the rate would remain at 10 percent for all services except wire and equipment service which will continue to be taxed at 8 percent. The process of reclassification would involve certain changes in base which are explained subsequently.

(*1*) *General telephone service.*—General telephone service is defined in section 4252 (a) as meaning any telephone or radio telephone service furnished in connection with any fixed or mobile telephone or radio telephone station which may be connected (directly or indirectly) to an exchange operated by a person engaged in the business of furnishing communication service, if by means of such connection communication may be established with any other fixed or mobile telephone or radio telephone station. Such service includes, without limiting it, the use of any private branch exchange (and any fixed or mobile telephone or radio telephone station connected, directly or indirectly, with such an exchange), and any tie line or extension line. The definition excludes any service which is toll telephone service or wire and equipment service.

The definition of "general telephone service" looks to the capabilities of the existing physical facilities of any telephone or radiotelephone service. The amendment clearly includes as general telephone service that service which may be connected (directly or indirectly) to an exchange operated by a person engaged in the business of furnishing service as a communications common carrier. If the existing facilities may be so connected, it is immaterial that the practice of the subscriber is not to make such connections, or that the person engaged in the business of furnishing communication service denies permission to the subscriber to make such connections. In addition, general telephone service includes local telephone service and foreign-exchange service.

The amendment resolves the difficulty under present law that confronts common carriers, telephone or telegraph companies, or radio broadcasting stations or networks. These types of businesses are exempt from the wire mileage service tax but not from the general telephone service tax. See explanation of section 4253 (f) below. The difficulty arises over the determination of what classification of communication services these businesses subscribe to. The amendment defines general telephone service so as to preclude further difficulty. There are two major problems in this area. First, common carriers, etc., do not receive exemption under present law when their private leased wires for oral communication are entirely within a

local telephone area, such service being classified as general telephone service. The area that general telephone service covers is constantly expanding to void this exemption to common carriers, etc. The definition of general telephone service, as drafted, excludes leased wires from general telephone service because such wires cannot be connected, directly or indirectly, with general telephone service. Second, the definition of "general telephone service" will resolve an ambiguous point under present law as concerns taxability of services that may be, but generally are not, connected to a general telephone service. General telephone service will include that part of the communication services subscribed to by the common carrier, etc. (such as any private branch exchange and any fixed or mobile telephone or radio telephone station connected, directly or indirectly, with such an exchange and any tieline or extension line (including an off-premise extension line)) which may be connected with general telephone service. For example, if a common carrier has callboxes placed throughout an area to be used in the conduct of its business and the callboxes of the common carrier may be connected, directly or indirectly, with general telephone service, the common carrier has general telephone service taxable as such on all service that may be so connected. Such service is not wire mileage service that would exempt the common carrier from tax. It is immaterial that the practice of the common carrier is not to make such connections with the general telephone service or that the person engaged in the business of furnishing communication service denies permission to make such connections. If the existing facilities may be connected directly or indirectly with general telephone service, such fact is sufficient to result in the imposition of tax on such service.

The amendment further provides for an exclusion from general telephone service any service which is toll telephone service. Therefore, any telephone or radio telephone service for which there is a toll charge is not within the definition of general telephone service. Likewise, wire and equipment service is expressly excluded from such definition.

(2) *Toll telephone service.*—Section 4252 (b) defines "toll telephone service" as a telephone or radio telephone message or conversation for which there is a toll charge and the charge is paid within the United States. Present law (long-distance telephone service) includes service for which a toll charge of more than 24 cents is made. The amendment eliminates the charge limitation and provides that if any toll charge is made and is paid within the United States, the service is toll telephone service. Since news services (sec. 4253 (b)) are exempted from all tax except general telephone service, such news services will benefit from the amendment by gaining an exemption from tax on toll charges of less than 25 cents.

(3) *Telegraph service.*—"Telegraph service" is defined as a telegraph, cable, or radio dispatch or message for which the charge is paid within the United States. This is present law.

(4) *Teletypewriter exchange service.*—Section 4252 (d) defines "teletypewriter exchange service" as any service where a teletypewriter (or similar device) may be connected (directly or indirectly) to an exchange operated by a person engaged in the business of furnishing communications service, if by means of such connection communication may be established with any other teletypewriter (or similar device). This definition is similar in operation to general telephone

service but is restricted to the service provided by a teletypewriter or similar device. Where any teletypewriter is connected with another teletypewriter without the use of an exchange, the service constitutes wire mileage service (private-line teletypewriter) described in section 4252 (e).

Exemption under present law for common carriers, etc., has been eliminated in the case of teletypewriter exchange service. (See discussion of sec. 4253 (f).)

(5) *Wire mileage service.*—Section 4252 (e) defines "wire mileage service" as any telephone or radio telephone service, and any other wire or radio circuit service, not included in any other subsection of this section; except that such term does not include service used exclusively in furnishing wire and equipment service. Present law groups such service in the category of "leased wire, teletypewriter or talking circuit special service." Since teletypewriter exchange service has been removed to a separate category, the remaining services have been termed "wire mileage service" due to several changes made by the amendment.

A service that falls both into wire mileage service and another service will be taxed under such other service. Generally, wire mileage service is that communication service which cannot be connected, directly or indirectly, to an exchange operated by a person engaged in the business of furnishing communication service. Wire mileage service as defined excludes service used exclusively in furnishing wire and equipment service. Therefore, tax that would otherwise be imposed by section 4252 (e) upon such wire mileage service will be obtained indirectly as the charge therefor is reflected in the taxable charge for wire and equipment service.

Wire mileage service will include all leased wires whether or not within the general telephone area. The effect of this change upon common carriers, etc., has been indicated in the explanation of general telephone service. (See also explanation of sec. 4252 (f).)

For exemption from the tax on wire mileage service in the case of installation charges, terminal facilities, or certain interior communication systems, see the explanation in section 4253 (g), (h), and (i), respectively.

(6) *Wire and equipment services.*—Section 4252 (f) defines "wire and equipment service" as including stock quotation and information services, burglar alarm or fire alarm services, and all other similar services (whether or not oral transmission is involved). Such term does not include teletypewriter exchange service. The phrase "all other similar services" includes new innovations in the wire and equipment field. This is in accordance with the interpretation of such phrase under present law. Sections 4253 (g) and 4253 (i) have been added to exempt from the tax on wire and equipment service amounts paid with respect to installation charges and certain interior communication systems.

(b) *Existing exemptions*

Section 4253 (a) through (f) relates to the exemptions under present law. The bill, as passed by the House and as agreed to by your committee, conforms these subsections to the amendments made with respect to the various taxable services defined in section 4252. They are referred to below only in the three cases where substantive amendments are made in these exemptions.

(1) *Certain coin-operated service.*—Section 4253 (a) under present law provides that no tax shall be imposed with respect to general telephone service paid for by inserting coins in coin-operated telephones. This subsection has been expanded so as to provide that no tax shall be imposed with respect to toll telephone service and telegraph service paid for by inserting coins in coin-operated telephones if the charge for such service is less than 25 cents. A similar result is obtained under present law, since tax in these cases is computed to the nearest multiple of 5 cents.

There is retained the exception that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or periodic charge shall be subject to the tax. For example, if a subscriber guarantees a minimum deposit of 20 cents per day, and if at the end of a 60-day period it is determined that only $9.75 has been deposited in the coinbox, the tax is based upon any periodic service charge plus the guaranteed amount of $12, rather than the $9.75 deposited in the coinbox. If at the end of a subsequent 60-day period it is determined that $14.50 has been deposited in the coinbox; the tax is based upon any periodic service charge plus the guaranteed amount of $12. Therefore, the tax is $1.20 for each of the two 60-day periods in the above illustrations (assuming that there is a 10-percent rate of tax and no periodic service charge).

(2) *For items otherwise taxed.*—Section 4253 (e) provides that only one payment of tax shall be required with respect to toll telephone service, telegraph service, or teletypewriter exchange service, notwithstanding the fact that the lines or stations of one or more persons are used in furnishing such service. This is present law with respect to toll telephone service and telegraph service. Teletypewriter exchange service has been added to this section to assure imposition of only one tax where teletypewriter service is provided by the use of the lines or stations of two or more companies.

(3) *Special wire service in company business.*—Section 4253 (f) of present law provides that no tax shall be imposed under section 4251 on the amount paid for so much of the service described in section 4252 (d), relating to leased wire, teletypewriter or talking circuit special service, and section 4252 (e), relating to wire and equipment service as is utilized in the conduct, by a common carrier or a telephone or telegraph company or radio broadcasting station or network, of its business as such. The amendment to section 4253 (f) exempts from tax wire mileage service and wire and equipment service when used by these companies for the purposes prescribed. Teletypewriter exchange service is no longer within this exemption since it was removed to a separate category. Your committee agrees with the House that this exemption for teletypewriter exchange service should be removed because this service is competitive with telephone and telegraph service which do not have this exemption.

(c) *Installation charges*

Present law provides an exemption for the installation of any instrument, pole, switchboard, etc., in the case of general telephone service. Moreover, installation charges are not a factor in the case of toll telephone service and telegraph service since the tax is on the charges for messages. Installation charges are taxed, however, in the case of the wire mileage tax and wire and equipment service tax.

The tax in the latter two cases is discriminatory against these two types of services.

Section 4253 (g) in the bill, as passed by the House and as agreed to by your committee, removes this discrimination by exempting from all taxes imposed under section 4251 so much of any amount paid for the installation of any instrument, wire, pole, switchboard, apparatus, or equipment as is properly attributable to such installation.

(d) Terminal facilities in the case of wire mileage

The bill, as passed by the House and as agreed to by your committee, provides that no tax is to be imposed on the amount paid for wire mileage service attributable to any sending or receiving devices which are station terminal equipment. This exemption is provided because it is possible to obtain terminal facilities from one party and lease the wires from another. This situation results in a different amount of tax for similar situations dependent upon the arrangement for the terminal equipment and wires.

Section 4253 (h) in the bill removes this problem by adding a new exemption from tax imposed by section 4251 on so much of any amount paid for wire mileage service as is paid for, and properly attributable to, the use of any sending or receiving set or device which is station terminal equipment.

(e) Interior communication systems

The bill, as passed by the House and as agreed to by your committee, provides that no tax is to be imposed on service which otherwise would be taxed as wire mileage or wire and equipment service if such service is rendered through the use of equipment which is solely on the premises of the subscriber. This exemption will remove from tax fire alarm and burglar alarm services which are wired only to give an alarm on the subscriber's premises. Under present law such systems are taxable when the service is provided for a fee. However, business concerns may buy these facilities and provide their own service, in which case no tax is collected.

Section 4253 (i) in the bill meets this problem by adding a new exemption relating to interior communication systems. The exemption provides for excluding from tax any amount paid for wire mileage service or wire and equipment service, if such service is rendered through the use of an interior communication system.

"Interior communication system" means, any system (1) no part of which is situated off the premises of the subscriber, and which may not be connected (directly or indirectly) with any communication system any part of which is situated off the premises of the subscriber, or (2) which is situated exclusively in a vehicle of the subscriber. The system may not be connected (directly or indirectly—such as through switching or otherwise) with any communication system any part of which is upon property other than that of the subscriber. The term also includes any interior communication system which is situated exclusively in a vehicle of the subscriber if it is not connected with a communications system.

(f) Computation of tax

The bill, as passed by the House and as agreed to by your committee, in general will permit the communication agency collecting the tax on general telephone service, toll telephone service, or telegraph serv-

ice to make the tax computations on whatever basis the bill is rendered, whether by totals by groups of items, or on specific items associated for billing purposes.

In the communications excise tax provisions of the 1939 Code a sentence appearing both in the provision imposing the local telephone service tax and in the provision imposing the long-distance telephone service tax provided that these taxes should be computed on the basis of the total charges included in a bill, and not based on the charge for each item in the bill. These two sentences were replaced by a single sentence in a separate provision in the 1954 Code in such manner that the requirement for a single tax computation now appears to extend to all items included in a bill, including, for example, both local and toll telephone service charges.

Section 4254 (a) is concerned with the method of computation of tax in such cases if a bill is rendered to the taxpayer for general telephone service, toll telephone service, or telegraph service. The tax with respect to such services shall be based on the sum of all charges for such services included in the bill; except that if the person who renders the bill groups individual items for purposes of rendering the bill and computing the tax, then the amount on which the tax with respect to each such group shall be based shall be the sum of all items within that group, and the tax on remaining items not included in any such group shall be based on the charge of each item separately.

(g) Effective date for communication taxes

Section 133 (b) of the bill, as passed by the House and as agreed to by your committee, provides that the effective date prescribed in section 1 (c) of the bill will apply in general with respect to amounts paid with respect to the communication taxes on or after such effective date. However, amounts paid pursuant to bills rendered before the effective date prescribed in section 1 (c) of this bill shall not be subject to the amendments made by section 133 (a). In the case of amounts paid pursuant to bills rendered on or after such date for services for which no previous bill was rendered, such amendments shall apply except with respect to such services as were rendered more than 2 months before such date. In the case of services rendered more than 2 months before such date the provisions of subchapter B of chapter 33 of the code in effect at the time such services were rendered shall apply to the amounts paid for such services.

(h) Revenue effect

It is estimated that the changes made by your committee in the excise taxes on amounts paid for communications will result in an annual revenue loss of approximately $2.5 million.

SECTION 134. AIR TAXI TRANSPORTATION

Section 134 of the House bill has been accepted by your committee without change.

Under section 4263 (b) of present law, an exemption from the tax on the transportation of persons is provided for "transportation by motor vehicles having a passenger seating capacity of less than 10 adult passengers, including the driver, except when such vehicle is operated on an established line." Air transportation is not included in the exemption language.

The Civil Aeronautics Board has recognized a specific category of air transportation, known as the "air taxi." Included in this class are aircraft under 12,500 pounds gross takeoff weight. The capacity of this class generally is 2 to 5 passengers, comparable to the average automobile taxi.

To provide equality of treatment for the two types of taxi transportation and to remove an unwarranted burden on this new, small industry, section 134 of the bill, as passed by the House and as agreed to by your committee, adds a new subsection (f) to section 4263 of the code that will exempt air transportation of the "taxi" type from the tax on the transportation of persons. This exemption is limited to aircraft having a gross takeoff weight of less than 12,500 pounds and having a passenger seating capacity of less than 10 adult passengers, including the pilot. The exemption will not be extended, however, to such aircraft operated on an established line. The exemption is available both for conventional type aircraft and for helicopters, providing they qualify under the statutory rules.

It is estimated that this added exemption will result in a revenue loss of approximately $2 million.

SECTION 135 OF THE HOUSE BILL, WHICH HAS BEEN OMITTED BY YOUR COMMITTEE—EXEMPTION FROM THE TAX ON THE TRANSPORTATION OF PROPERTY—FERRYBOATS

Section 135 of the House bill would have exempted from the tax on the transportation of property certain transportation by a ferryboat. Since the House considered H. R. 7125, however, the tax on the transportation of property has been repealed by the Tax Rate Extension Act of 1958. Therefore, your committee has deleted this section of the House bill.

SECTION 136 OF THE HOUSE BILL, WHICH HAS BEEN OMITTED BY YOUR COMMITTEE—EXEMPTION FROM THE TAX ON THE TRANSPORTATION OF OIL BY PIPELINE

Section 136 of the House bill would have exempted from the tax on the transportation of oil by pipeline movements between certain refinery, bulk plant, terminal, or gasoline plant "premises." Since the House considered H. R. 7125, however, the tax on the transportation of oil by pipeline has been repealed by the Tax Rate Extension Act of 1958. Therefore, your committee has deleted this section of the House bill.

SECTION 137 OF THE HOUSE BILL, WHICH HAS BEEN OMITTED BY YOUR COMMITTEE—EXEMPTION FROM COMMUNICATIONS AND TRANSPORTATION TAXES FOR NONPROFIT EDUCATIONAL ORGANIZATIONS

In line with the exemptions provided by the House bill in the case of retailers' and manufacturers' excise taxes where sales were made to certain nonprofit educational institutions, the House bill would also

have provided an exemption from the communications tax and from the tax on the transportation of persons (as well as property) in the case of services or facilities furnished to a nonprofit educational organization. Such organizations included nonprofit operating schools and colleges.

As in the case of the retailers' and manufacturers' taxes, your committee has deleted these exemptions from the taxes on communications and transportation of persons since it doubts the desirability of broadening the exemptions in the case of these taxes. The exemption in the case of the tax on the transportation of property also is deleted since this tax was repealed by the Tax Rate Extension Act of 1958.

PART IV—DOCUMENTARY STAMP TAXES

SECTION 141. DOCUMENTARY STAMP TAXES

Extensive modifications have been made by the House bill in the documentary stamp taxes contained in chapter 34 of present law. Your committee has accepted all but two of the substantive changes. The 2 exceptions are the 6-cent ceiling in the case of the stock transfer tax and the change in the tax treatment of recapitalizations. In addition, however, your committee has provided exemptions from the documentary stamp taxes in the case of limited types of corporate reorganizations. Your committee has also made a clarifying change with respect to the definition of corporation for the purposes of the documentary stamp taxes. The discussion below is limited to the substantive changes made in the House bill and under your committee's action and therefore does not include all of the sections of the documentary stamp taxes which appear in the bill.

(*a*) *Imposition of tax on the original issuance of stock*

Under present law the stamp tax imposed on the original issue of stock is at the rate of 11 cents per $100 (or fraction thereof) of the par or face value of each certificate (or shares where no certificate is issued). Where the stock has no par value, the tax is 11 cents on each $100 (or fraction thereof) of the actual value of each certificate (or shares where no certificate is issued), except that if the actual value is less than $100 per share, the tax is 3 cents on each $20 (or fraction thereof) of the actual value of each certificate (or shares where no certificate is issued).

Basing the stock issuance tax on a par value basis has resulted in artificial and unrealistic distinctions in the tax imposed with respect to different stock. Par value has no real economic meaning and frequently can be adjusted so that only a very small amount of stock issuance tax will be incurred. The present arrangement tends to discriminate against stocks of relatively low market value since these stocks are likely to have as high a par value as higher-price stocks. Moreover, the present method of taxing no par stock on its actual value has meant, in general, that no par stock is subject to a much heavier issuance tax than stock, of equal or greater actual value, which has been arbitrarily assigned a low par value.

To correct these inequities and to adopt a realistic method of taxing the issuance of stock, the new section 4301 provided in the bill, as passed by the House and as agreed to by your committee, imposes a tax of 10 cents on each $100 (or major fraction thereof) of the actual

value of the certificates (or shares where no certificates are issued), without regard to whether the shares or certificates of stock represent par value, or no par value, stock.

Another change from the present method of taxing the issuance of stock provided by the House bill has also been agreed to by your committee. Under present law, the tax is imposed on a "per person" basis, i. e., the tax on each issuance of stock is computed separately. This method usually gives rise to a higher amount of tax than that which would have been obtained had all the issuances of a particular period been computed together. This extra amount of tax obtained by separate computations is known as "breakage." Your committee agrees with the House that the imposition of tax on this "breakage" method is unfair, because the cases where the tax is relatively higher under this method of collection do not depend on any extra value received by the corporation or the shareholder.

To correct this situation, the new section 4301 provides that the computation of the stock-issuance tax shall be based on the total of all certificates or shares issued by a corporation on a particular day.

The liability of a subscriber under the dual liability provision of new section 4384 shall extend only to that portion of the total tax for any one day that the total actual value of the shares or certificates issued to him (or for his benefit) in that day bears to the total actual value of the shares or certificates issued by the corporation in such day. For example, if a total of 100 shares of stock having a total actual value of $1,800 are issued in one day by a corporation, the tax would be $1.80. If A were issued in that day 10 shares having a total value of $180, his liability for tax would be 18 cents.

(*b*) *Recapitalizations*

Present law (sec. 4302) provides that, in the case of a recapitalization, the issuance tax imposed by section 4301 is to be that portion of the tax computed with respect to all shares or certificates issued in the recapitalization that the amount dedicated as capital for the first time bears to the total par value (or actual value, if no par stock) of the shares or certificates issued. Under present law, an amount "dedicated as capital for the first time" includes a transfer from earned surplus.

In the proposed new section 4302 of the House bill, the present provision is revised to (1) substitute for the phrase "in the case of a recapitalization" the phrase "in the case of a transfer from any surplus account to capital"; (2) change the present proportionate method of taxing shares or certificates issued in connection with transfers to capital to a tax based generally on the total increase in capital; and (3) in general, excludes "earned surpluses" from the tax base.

While there appears to be much merit in taxing only amounts contributed by stockholders which have remained untaxed at the time of the contribution and which are subsequently added to capital account, your committee believes that this proposal should be passed over for the present and that, for the time being, the recapitalization provision of present law should be retained. This is recommended because, as worded in the House bill, a transfer from surplus to capital would make it necessary to review previous years' transactions of the corporation. This may involve an analysis covering many years and, in some cases, may go back to the initial organization of the corpora-

tion. This appears to be an unreasonable burden for taxpayers and, also, presents a difficult auditing problem for the Internal Revenue Service. As a result, your committee has restored the provision relating to recapitalization in existing law, modifying it only to the extent necessary to take into account the change in method of computing the issuance tax from par value to actual value.

It is not anticipated that this change will have any revenue effect.

(c) *Exemptions, tax on original issuance of stock*

(1) *Pooled pension, profit-sharing, and stock bonus funds.*—Section 4303 (a) of present law exempts from the tax imposed by section 4301 the issue of shares or certificates of a common trust fund. (This provision is continued in new section 4303 (a) without material change.) Under present law this exemption for common trust funds has not been available to pooled pension, profit-sharing, and stock bonus trust funds. The Board of Governors of the Federal Reserve System, which regulates the pooled investment funds, has indicated in its regulations that these funds do not qualify as common trust funds because the investment of each participating trust is not limited to $100,000, the limit which the Board has generally set for qualification under the present common trust fund provision. Thus, such pooled pension, etc., trust funds do not qualify for the stamp tax exemption under present law.

Pooled pension, etc., trust funds are being used at this time principally because they permit relatively small pension, profit-sharing, and stock-bonus plans to secure the advantages of diversified investment through the pooling of their assets with those of other similar trusts.

Section 4303 (b), added by the bill, as passed by the House and as agreed to by your committee, provides an exemption from the stock issuance tax for the issuance of shares or certificates of a fund maintained by a bank exclusively for the collective investment and reinvestment of assets of pension, etc., trusts qualifying under section 401 of the code. Under this subsection, the issue of any share or certificate by a bank holding a fund consisting of assets of such qualifying trusts will be exempt from the stock issuance tax regardless of the capacity in which the bank holds such pooled assets. Therefore, for example, an exemption would be allowed for all issuances of shares or certificates in such a fund maintained by a bank which is the trustee or cotrustee of one or more of the qualifying trusts, trustee or cotrustee of a part of the fund which constitutes a master trust consisting of the assets of other qualified trusts, and also an agent for a trustee or cotrustee of additional qualified trusts for purposes of holding and investing the assets of such trusts.

(2) *Contracts to purchase stock on installment basis.*—Present law, section 4315, provides an exemption, from the issuance tax on certificates of indebtedness for instruments under the terms of which the obligee is required to make payment in installments subject to limitations as to the payment in any year. No similar exemption exists in the case of contracts to purchase stock on an installment basis. As a result, contracts to purchase stock on an installment basis have been held subject to the stock issuance tax, even though the purchase of the stock itself under such a contract is also subject to the stock transfer tax.

Section 4303 (c), added by the bill, as passed by the House and as agreed to by your committee, exempts from taxation under section 4301 the issuance of shares or certificates of stock by a corporation pursuant to an installment purchase agreement. The exemption will apply only if the agreement provides (*a*) that the periodic payments received from the purchaser will be used, as received by the corporation, solely for the purpose of acquiring shares or certificates of stock of one or more other specified corporations and in specified percentages, and (*b*) that the corporation is obligated to transfer to the purchaser all such shares or certificates (and cannot distribute cash in lieu of stock) so acquired on or before the termination of the agreement. Exemption will not be denied solely because the agreement provides that the corporation may retain any amount insufficient to buy a full share of stock.

The new subsection (c) also extends the exemption to shares or certificates issued by the corporation to a transferee or other successor in interest of the party to the installment purchase agreement if the foregoing conditions are met.

(*d*) *Imposition of tax on transfer of capital stock*

Section 4321 of present law, relating to the imposition of tax on sales or transfers of capital stock and similar interests, imposes a tax on each sale or transfer of shares or certificates of stock issued by a corporation, and on the rights to subscribe for or receive such shares or certificates. The tax is imposed at the rate of 5 cents on each $100 (or fraction thereof) of the aggregate par or face value of the certificates transferred (or shares where no certificate is issued), and at the rate of 5 cents per share in the case of a transfer of no-par-value stock. In the case of a sale of par-value or no-par-value stock for $20 or more per share, the rate of tax is 6 cents rather than 5 cents.

As pointed out above under section 4301, the use of par value as a tax base has proved artificial and inequitable in the case of the issuance tax. It was also pointed out that there were an ever increasing number of instances where the tax was minimized by issuing stock with low par values. These problems also exist in the case of the transfer tax. Therefore, new section 4321 of the House bill adopts as the tax base the actual value of the stock transferred. The tax is imposed at the rate of 4 cents on each $100 or major fraction thereof of the actual value of the certificates transferred (or of the shares where no certificate is sold or transferred), without regard to whether the shares or certificates represent par-value or no-par-value stock. (For purposes of computing the tax, a major fraction is an amount in excess of $50 but less than $100.) Your committee has agreed to this revision of the stock-transfer tax.

Your committee has eliminated the ceiling provided by the House bill with respect to this stock-transfer tax. The House bill provides that in no case is the tax to exceed 6 cents a share. This has the effect of limiting the application of the actual-value test to stock selling for $150 or less. Stock selling for more than that as a result of this limitation is taxed on a "per share" basis. Your committee has deleted this "per share" limitation because it was strongly opposed by the Treasury Department. Your committee has retained, however, the House bill, the minimum tax of 4 cents with respect to any single transfer of one or more shares of stock.

(e) Exemptions, tax on transfer of capital stock

Section 4322 (a) of existing law contains four exemptions from the tax on the transfer of stock imposed by section 4321. Two of these exemptions are retained in this section and two are transferred to new section 4344 without material change.

Section 4322 (b), added by the bill, as passed by the House and as agreed to by your committee, provides a new exemption for certain odd-lot sales. At the present time a tax is imposed when an odd-lot dealer purchases either a "round" lot (100 shares or the unit of trading on an exchange) or an "odd" lot of stock in the open market. This tax is imposed on the sale of the round or the odd lot to the dealer. A second tax is imposed at the time this dealer sells an odd lot of stock. This second tax is customarily passed on to the person buying the odd lot. Where a purchaser buys a round lot on the market rather than making a purchase through an odd-lot dealer, there is no second tax. Your committee agrees with the House that this second tax represents discrimination against purchasers of small numbers of shares.

To correct this inequity, the new section 4322 (b) exempts from the tax imposed by section 4321 any odd-lot sale of shares or certificates of stock or stock rights by an odd-lot dealer, if the shares, certificates, or rights are delivered or transferred to a broker pursuant to an order of a customer of such broker for such shares, certificates, or rights. Actual physical delivery or transfer of shares, etc., need not occur as a prerequisite to application of the exemption of subsection (b), so long as the total effect of the transaction is a sale to a customer of a broker. Thus if an odd-lot dealer executes odd-lot purchase and sale orders in a particular security for a broker during a given day and only the "day's net balance" in such security is physically delivered or transferred, all of the sales which contributed to such net balance qualify as exempt transactions under subsection (b) (1).

The determination of an odd-lot sale is to be governed by the rules of the securities exchange of which the odd-lot dealer making the sale is a member. An odd-lot dealer is defined as any person who is a member of a securities exchange which is registered with the Securities and Exchange Commission as a national securities exchange, and who is registered under the rules of such exchange as an odd-lot dealer or as a specialist.

(f) Exemptions, return of securities transferred as collateral

Present law in section 4341 (1) provides an exemption for transfers of stock or certificates of indebtedness which had been deposited as collateral security for money loaned (if the security is not sold). However, this section is silent as to the tax consequences when the collateral is returned to the borrower of the money upon repayment of the loan. In this respect this provision differs from the exemption provided in section 4341 (2), relating to delivery to a trustee or public officer as a performance security, where a specific exemption is provided for the return of the stock or certificate of indebtedness. The regulations on the collateral security provision exempt the return of the stock or certificate of indebtedness from the transfer taxes. Section 4341 (1) as amended by the bill, as passed by the House and as agreed to by your committee, specifically provides that the return of stock or certificate of indebtedness deposited as collateral security is to be exempt from the transfer taxes.

(g) Exemptions, certain other transfers

(1) Extension of certain stock exemptions to certificates of indebtedness.—Under present law, section 4322 (a) (1), transfers or deliveries of shares or certificates of stock or stock rights as a loan or as a return of a loan are exempted from the tax on the transfer of stock. However, there is no equivalent provision in present law for transfers or deliveries of certificates of indebtedness as a loan or as a return of a loan. Similarly, section 4322 (a) (4) exempts transfers of worthless shares or certificates of stock by executors and administrators to heirs, legatees, or distributees, but there is no equivalent exemption in such cases for certificates of indebtedness.

To correct these inconsistencies subsections (a) and (b) of section 4344, provided by the bill, as passed by the House and as agreed to by your committee, extend the two present stock transfer tax exemptions to cover certificates of indebtedness.

(2) Revocable trusts.—At the present time, if the creator of a revocable trust abolishes the trust and creates another virtually identical revocable trust, a transfer tax is incurred on the transfer of stocks and certificates of indebtedness from the old trust to the new trust, despite the fact that there has been no real economic change in his position. However, if the creator of the trust amends the trust rather than abolishing it and creating another, no transfer tax is presently imposed.

To correct this inconsistency new subsection (c) of section 4344 provided by the bill, as passed by the House and as agreed to by your committee, provides that the taxes imposed by sections 4321 and 4331 shall not apply to any delivery or transfer of shares or certificates of stock, stock rights, or certificates of indebtedness from one revocable trust to another revocable trust if the grantor of both trusts is the same person and the grantor, at the time of the delivery or transfer, is deemed under the provisions of section 676 of the code to be the owner of both of the trusts. In the event there is more than one grantor, such grantors shall be deemed to be the same person only if they are all treated under section 676 as owners in the same relative proportions of both trusts.

(h) Exemption certificates

Section 4344 of present law requires that an exemption certificate accompany the delivery or transfer of instruments, otherwise the exemptions provided by present sections 4322 (a) (1), (2) or (3), 4332 (a), 4341 (2), 4342, or 4343 (a) will not be available. The certificate must set forth such facts as the Secretary or his delegate may prescribe by regulations.

Under present law the requirement of a certificate is mandatory in the above instances. In order to add flexibility to this provision, section 4345, provided in the bill, as passed by the House and as agreed to by your committee, in effect permits the Secretary or his delegate to remove by regulations the necessity of providing a certificate where a certificate is not deemed necessary or appropriate.

Under present law a certificate is not required in the case of (1) certain transfers by executors and administrators of worthless stock, which are exempted by section 4322 (a) (4) of present law, (2) instruments providing for the purchase of bonds in installments, which instruments are exempted by section 4332 (b) of present law, and (3) transfers of stocks and bonds as collateral for money, which transfers are exempted by section 4341 (1) of present law.

To prevent possible abuse, the bill extends the requirement of a certificate to cover transfers of stocks and obligations as collateral security for money loaned. As a result, section 4345, as provided in the bill, generally requires the certificate in the case of all exemptions except (A) transfers of worthless stocks (and now worthless obligations) by administrators and executors to heirs, legatees, and distributees, which transfers are exempted by new section 4344 (b), and (B) instruments providing for the purchase of bonds in installments, which instruments are exempt both under present and new section 4332 (b).

(*i*) *Payment of tax through national securities exchanges without the use of stamps*

The regulations provide that the member of a national securities exchange may appoint the clearinghouse of the exchange as his agent for the purpose of affixing the stamps required on his stock and bond transactions. The member-broker is required to file a daily report with the clearinghouse showing the total tax payable on all his transactions (whether or not through that exchange). He must also maintain detailed books of all his transactions showing the tax payable. The clearinghouse, on behalf of the brokers, purchases and affixes to a summary sheet (covering all of the reports it receives from brokers) sufficient stamps to cover all of the transactions of the reporting brokers. The brokers indicate by a stamped endorsement on the stock certificates, or accompanying memoranda of sales, that the transfer taxes have been paid through the clearinghouse.

While this method of tax payment in the case of national security exchange members has been generally approved, it still contains a useless step, namely, the purchase and cancellation of tax stamps. This method requires the daily purchase of stamps in large amounts, the individual canceling of these stamps, and their storage in safekeeping for several years awaiting audit.

In the interest of simplifying administration and taxpayer compliance, section 4353, as added by the bill, as passed by the House and as agreed to by your committee, provides for the payment, under certain circumstances, of the transfer taxes without the use of stamps. More specifically, this section provides that whenever a member of a securities exchange (which is registered with the Securities and Exchange Commission as a national securities exchange) appoints such exchange, or a clearinghouse for such exchange, as his agent for the purpose of paying any transfer tax, then the exchange, or the clearinghouse, may, under regulations prescribed by the Secretary or his delegate, pay such taxes without the use of stamps. However, for purposes of applying the provisions of the code, any such tax payable by the exchange, or the clearinghouse, shall be deemed to be tax payable by stamp, and any such tax paid without the use of stamps shall be deemed to have been paid by stamp.

(*j*) *Exemptions from tax on the conveyance of real property*

Under present law no express exemption from the conveyance tax is provided in the case of real estate transferred to or from a State or local government. An Internal Revenue Service ruling, however, provides that a State or local government is not subject to the documentary stamp tax on conveyances of real estate if it acts in its "governmental" capacity in transferring real property to, or acquiring

real property from, a private purchaser. In such cases, the private party remains solely liable for the tax.

Your committee agrees with the House that it is not feasible or practical to draw a distinction between the situation where, on the one hand, a State or local government acts in a "governmental" capacity and, on the other hand, the situation where it acts in its "proprietary" capacity. Accordingly, subsection (b) of section 4362 provides that no State, Territory, or political subdivision, or the District of Columbia, shall be liable for the tax imposed by section 4361, regardless of the capacity in which it acts. As under present law, any nonexempt party to the transaction will be liable for the tax. Consequently, new subsection (b) provides that the affixing of stamps to such a document by an exempt governmental body shall not constitute payment of the tax, and the tax may nevertheless be collected by assessment from any other party who, pursuant to the dual liability provisions of section 4384, as amended, may be liable for the tax.

(*k*) *Exemption for corporate reorganizations involving a mere change in identity, etc.*

Your committee has amended the proposed code section 4382 provided by the House bill to add a new exemption in the case of corporate reorganizations where the change is a mere change in identity, form, or place of organization, however effected. Such corporate reorganizations, along with certain other types of reorganizations, presently are free of income tax. Reorganizations involving a mere change in identity, form, or place of organization, represent merely a formalistic change and do not involve any shifts in ownership. For that reason, your committee has excluded such reorganizations from the issuance and transfer taxes on stocks and certificates of indebtedness as well as from the tax on the conveyance of real property.

(*l*) *Certain changes in partnerships*

Section 4352 of present law deals with the application of the taxes on the transfer of stocks and certificates of indebtedness in the case of a transfer of an interest in a partnership which owns any of these instruments. In such a case, the tax imposed is the proportion of the tax computed on all the taxable instruments that (1) the transferred interest in the partnership bears (2) to the total interests in the partnership. This section of current law follows the "aggregate" approach for partnerships, that is, a partner whose interest is transferred, or otherwise disposed of, is treated as transferring or disposing of his pro rata share of the underlying assets of the partnership.

In the case of the transfer of an interest in a partnership owning real property, there is no specific section of present law dealing with the consequences of the tax imposed by section 4361 on transfers of real property. Thus there is a question as to whether tax is presently imposed where there is merely a change of interests in the partnership and no change in legal title of real property. Not to impose a tax in such a case to a substantial degree follows the "entity" approach for partnerships.

The "entity" approach is generally more practicable and is less likely to cause inequities and to lead to frequent calculations of tax resulting from minor changes in a partnership. Moreover, the

"entity" approach is used as the standard rule in the income tax provisions of present law.

It is the purpose of the new section 4383 which is provided in the bill, as passed by the House and as agreed to by your committee, to adopt, generally, the "entity" approach to partnerships and to apply this approach to partnerships owning stocks, certificates of indebtedness, and real property. Section 4383 is coordinated with the income-tax provisions contained in section 708 of the code for determining (1) whether there has been a sufficient change in a partnership to justify the imposition of a tax and (2) to what extent there has been a change.

More particularly, new section 4383 (a) provides that no tax shall be imposed under sections 4321, 4331, or 4361, by reason of the transfer of an interest in a partnership or otherwise (1) if the partnership is considered as continuing within the meaning of section 708, and (2) if a continuing partnership continues to hold the shares, certificates of indebtedness, or real property. To the extent that a continuing partnership does not continue to hold such property, section 4383 (a) will not apply.

Where there is a termination of a partnership within the meaning of section 708, subsection (b) of new section 4383 treats the partnership being terminated as having transferred all stock, certificates of indebtedness, and real property held by the partnership. Real property is taxed on the basis of its fair market value, exclusive of the value of any lien or encumbrance on the property. Consequently, once there has been a "termination" of the partnership within the meaning of section 708, the taxes apply with respect to all of the assets in the partnership subject to documentary stamp tax.

However, the new subsection (b) also provides that not more than one tax shall be imposed under sections 4321, 4331, or 4361, "by reason of" a termination. Thus, where there is an actual or deemed distribution of partnership assets to the partners on the termination of a partnership, and, as part of the termination, a transfer of such assets to a new partnership, section 4383 (b) provides that not more than one tax will be imposed on the transfers of the stock, certificates of indebtedness, or real property distributed and then transferred to the new partnership. The transfer to the new partnership in this case is made "by reason of" the termination of the old partnership. This is not to mean that two stamp taxes may not arise out of a partnership termination—where, for example, a partnership is terminated under section 708, and individual partners C and D receive in their own right stock worth $10,000. Later they transfer this stock to a new partnership CD. On the termination itself the transfer tax imposed by sections 4321, 4331, and 4361 will apply to the taxable assets in the partnership. A second transfer tax is imposed on the retransfer of the stock to the new partnership. Here there was no concurrent agreement to retransfer the stock to another partnership.

The operation of new section 4383 may be illustrated by the following examples based on existing partnership provisions of section 708.

(1) Partners A and B each have a 30-percent interest in partnership ABCD. Partners C and D each have a 20-percent interest. Partnership ABCD owns 100 shares of common stock of X corporation having a total actual value of $10,000 and 100 shares of preferred stock of X corporation having a total actual value of $5,000. The partnership is dissolved but partners A and B continue to operate

the business under the partnership AB. Partners C and D establish a new partnership CD. As part of the dissolution 50 shares of X common stock held by old partnership ABCD is transferred to partnership CD, and the remaining shares of preferred and common are held by the AB partnership. Partnership AB is a continuing partnership under section 4383 (a) within the meaning of section 708 (b) (2) (B). Partnership CD, however, is not a continuing partnership. In this latter case there has been an actual transfer of stock having an actual value of $5,000 to a noncontinuing partnership, and a tax of $2 is imposed.

If CD had received cash instead of stock, and the stock had remained in AB, no tax would be imposed, since the stock would be held by a continuing partnership.

(2) Partner A has a 70-percent interest in partnership ABCD, and partners B, C, and D each have a 10-percent interest. ABCD owns 100 shares of X company common stock having an actual value of $10,000. By agreement A sells his 70-percent interest in the partnership to E, and as part of the same agreement C and D elect not to continue as partners. Instead they agree to accept, in liquidation of their interests, 25 shares each of the X stock of a total value for the 50 shares of $5,000. B and E continue to operate under partnership BE.

As a result of the sale of A's 70 percent interest there has been a termination under section 4383 (b) within the meaning of section 708 (b) (1) (B). There has also been an actual transfer of 50 shares of stock worth $5,000 to C and D who are noncontinuing partners. However, by virtue of section 4383 (b) (2) only one tax may be imposed by reason of the liquidation. The total tax on this transaction will be $4.

(3) If in example (2), C and D had not withdrawn at the time A sold his interest but later in a separate transaction received 50 shares of stock in liquidation of their interest (and not as a result of the concurrent agreement), an additional tax would be imposed.

(4) If, in example (2), C and D transfer the stock to new partnership CD, and this is not done pursuant to the concurrent agreement, an additional tax would be imposed.

(5) Partner A has an 80-percent interest in partnership ABC. ABC owns 100 shares of X corporation having a total actual value of $10,000. Partner A withdraws from the business receiving all the stock in liquidation of his interest in the partnership. There has been an actual transfer of stock worth $10,000 to partner A who is not a continuing partner within the meaning of sections 4383 (a) and 708. Therefore, a tax of $4 is imposed.

(6) If, in example (5), partner A had received $10,000 in cash (and partnership BC had retained the stock) there would be no tax, since the stock is held by a continuing partnership.

(7) A, B and C are partners each having a one-third interest in partnership ABC. A sells his interest to D in January of 1959. B sells his interest to E in June of the same year. There is deemed to be a termination of the BCD partnership in June and a transfer of all the BCD stock, certificates of indebtedness, and real property held by BCD at that time to the partnership CDE.

It is only upon the sale of the second interest of one-third in June that there is a partnership termination under section 708, namely,

the termination of partnership BCD, not that of ABC. Former partner A is not liable for transfer taxes arising out of the section 708 termination of partnership BCD.

Section 141 (b) of the bill provides that in applying the provisions of amended section 4383, only those changes in the partnership occurring on or after the general effective date of the bill specified in section 1 (c) of this bill shall be taken into consideration in determining whether a partnership is deemed to be a continuing partnership or a terminated partnership within the meaning of section 708 of the code.

(*m*) *Revenue effect*

The changes made by the House, and also the modifications made by your committee, in the documentary stamp taxes involve both increases and decreases. It is anticipated, however, that there will be a net gain of about $150,000.

PART V—TAXES ON WAGERING; CERTAIN OCCUPATIONAL TAXES

SECTION 151. PERSONS LIABLE FOR TAX ON WAGERS

Section 4401 (a) of present law imposes a 10-percent excise tax on wagers. Section 4401 (c) of present law provides, generally, that any person engaged in the business of "accepting wagers" shall be liable for the payment of this tax on the amount of all wagers placed with him. A person is considered to be in the business of accepting wagers only (1) if he is engaged as a principal who, in accepting wagers, does so on his own account; or (2) if he assumes the risk of profit or loss.

Administrative difficulties have been experienced in cases involving so-called "runners." A "runner" (agent) receives wagers from players and also pays off wagers to winning players. He does not act as principal, nor does he assume the risk of profit or loss. Therefore under present law he is not liable for the 10-percent excise tax on wagers, but only for the $50 occupational tax imposed by section 4411. In many cases the 10-percent tax is evaded because the "runner" either refuses to name, or is unable to name, the person (principal) for whom he is accepting wagers. In spite of the fact that present section 4412 requires all persons who receive wagers "for or on behalf of any person" liable for the 10-percent tax to register the name of the principal, the failure of the "runner" to comply with this provision does not now make the "runner" liable for the 10-percent tax on wagers.

To overcome this problem, section 151 (a) of the bill, as passed by the House and as agreed to by your committee, amends section 4401 (c) of the code to provide that a person required to register under section 4412 by reason of having received wagers for another, but who fails to disclose the name and place of residence of his principal as required, shall become liable for the 10-percent tax on all wagers received by him.

In providing this amendment, it is the intention of both the House and your committee that a subsequent compliance with section 4412 will not relieve the "runner" of his liability and duty to pay any tax which was due or became due at a time when he had not complied, or did not comply, with the provisions of section 4412. Nor will the fact that a "runner" may incur liability for the tax imposed by section 4401 with respect to certain wagers in any manner relieve the principal

of his liability under that section with respect to such wagers. It is the intent of the House and your committee that in any case where the "runner" has failed to register as required by section 4412, both the "runner" and the principal shall be liable for the tax imposed by section 4401 (a) until that tax is paid. Furthermore, payment of the tax imposed by section 4401 (a) by the runner shall in no way relieve him of any penalty for failure to register in accordance with the provisions of section 4412.

Section 151 (b) of the bill provides that the amendment made by section 151 (a) shall apply to wagers received after the date of the enactment of the bill.

It is estimated that the revenue gain from this provision will be negligible.

SECTION 152. OCCUPATIONAL TAX ON COIN-OPERATED DEVICES

Section 4461 of present law requires a special annual tax to be paid by every person who maintains for use, or permits the use of, in any place or premises occupied by him, a coin-operated amusement or gaming device. Under section 4462 of present law, the term "coin-operated amusement or gaming device" is defined as (1) any amusement or music machine, or certain types of vending machines, operated by means of the insertion of a coin, token, or similar object, and (2) any so-called "slot" machine which operates by means of the insertion of a coin, token, or similar object, and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive cash, premiums, merchandise, or tokens.

In recent years there has been introduced a type of amusement or gaming device which would be of the taxable type but for the fact that it is operated without the insertion of a coin, token, or similar object, although the patron pays for the privilege of operating the device. While the occupational tax is avoided on such machines, it is the position of the Internal Revenue Service that in the case of gaming devices the person receiving the money wagered is subject to the occupational tax on wagering imposed by section 4411 of present law, and that amounts paid to operate non-coin-operated machines are subject to the tax on wagers imposed by section 4401 of present law.

To eliminate this area of avoidance and also to put coin-operated and non-coin-operated machines on the same footing section 152 of the bill, as passed by the House and as agreed to by your committee:

(1) amends section 4462 of present law to extend the definition of "coin-operated amusement or gaming devices" to include similar machines not operated by coin, and

(2) amends section 4402 (2) of present law to extend the exemption from the wagering tax, imposed by section 4401, to include amounts paid to operate non-coin-operated amusement and gaming devices.

The amendments made by section 152 shall take effect on the effective date specified in section 1 (c) of the bill. As the result of an amendment made by your committee in the case of the year beginning July 1, 1958, where the trade or business on which tax is imposed under

section 4461 was commenced before the effective date provided by section 1 (c) of the bill the tax imposed for such year solely by reason of the amendment made by section (a)—

(1) shall be the amount reckoned proportionately from such effective date through June 30, 1959, and

(2) shall be due on, and payable on or before, the last day of the month the first day of which is such effective date.

For example, if this bill is enacted on August 19, 1958, the effective date of the bill will be January 1, 1959. Thus, assume that a store owner, X, is engaged, on January 1, 1959, in a trade or business on which the tax imposed by paragraph (2) of section 4461 for the year beginning July 1, 1958, was imposed for such year solely by reason of the amendment made by subsection (a) of section 152. X's tax, reckoned for the period beginning January 1, 1958, on such gaming device, will be six-twelfths of $250, or $125. The tax will be due on January 31, 1959, and payable on or before that date.

It is estimated that the revenue gain from this provision will be negligible.

SECTION 153. EXEMPTION FROM OCCUPATIONAL TAX ON BOWLING ALLEYS, BILLIARD TABLES, AND POOL TABLES

Under section 4471 of present law, the occupational tax on bowling alleys and pool and billiard tables is $20 per year per alley or table. This tax is computed with respect to the year beginning July 1. With two exceptions, this tax applies to all alleys or tables not in private homes. One of the exemptions relates to billiard and pool tables in a hospital if no "charge" is made for the use of the tables. The other exemption relates to bowling alleys and billiard and pool tables maintained exclusively for the use of members of the Armed Forces on property owned, reserved, or used by the United States, if no charge is made for the use of the alleys or tables.

Your committee agrees with the House that tables and alleys operated by certain other nonprofit organizations without charges to the users have an equal basis for exemption.

Section 153 (a) of the bill, as passed by the House and as agreed to by your committee, amends section 4473, relating to exemptions from the tax, by adding a new paragraph (3) which exempts from the tax any bowling alley, billiard table, or pool table (1) operated by, and located on the premises of, a nonprofit organization, no part of the net earnings of which inures to the benefit of any private shareholders or individuals, or (2) operated by an agency or instrumentality of the United States, but only if, in either case, no charge is made for the use of such alley or table.

The Internal Revenue Service has ruled that there has been a "charge" where a payment is made directly to the pinboy for services where such a payment is required of the user. The change in the law made in this provision does not disturb this ruling.

Section 153 (b) of the House bill provided that the amendment made by section 153 (a) was to apply with respect to periods after June 30, 1958. Your committee has advanced this date to June 30, 1959.

It is estimated that the revenue loss from this provision will be negligible.

PART VI—PROCEDURE AND ADMINISTRATION

SECTION 161. RETURNS OF RETAILERS EXCISE TAXES BY SUPPLIERS

(*a*) *Retailers taxes*

Under present law there is no specific authority permitting anyone to act as agent for a retailer in filing returns with respect to retail taxes. The lack of such authority has generally restricted the Secretary in developing an effective method for collecting retail taxes. However, the Internal Revenue Service has in practice permitted the supplier for house-to-house salesmen to pay any retail taxes due, if the supplier waives the right to claim any refund on the grounds that he is not the "taxpayer."

In order to provide more flexibility in collecting retail taxes, section 161 of the House bill amends section 6011 (relating to the general requirement of a return, statement, or list) by adding a new subsection (c). Paragraph (1) of subsection (c) sets forth a general rule giving the Secretary or his delegate broad discretionary authority to enter into an agreement with a supplier for filing returns and paying any retailers excise tax imposed under chapter 31 of the code (except those on special fuels) on behalf of the person who would otherwise be required to return and pay the tax. The supplier in such case is to be liable for filing the return and paying the tax so long as the agreement remains in effect. Except as provided in the regulations, all provisions of law (including penalties) applicable with respect to the retailer in returning and paying the tax shall apply to a supplier entering into such an agreement. In addition, the person initially required to return and pay such tax shall also remain subject to all provisions of law applicable to such person, unless the regulations provide otherwise. However, only one tax will be collected with respect to any sale. Your committee has accepted this House provision.

Paragraph (2) of new subsection (c) in the House bill, provides a special limitation on the agreement authority of the Secretary or his delegate in the case of certain house-to-house salesmen and their suppliers. Specifically, the limitations apply in the case of sales by house-to-house salesmen of articles subject to tax under chapter 31 (other than special fuels) which articles are supplied by a manufacturer or distributor, if such manufacturer or distributor establishes the retail list price at which such articles are to be sold. In such a case, the Secretary or his delegate shall not, as a condition precedent to the agreement, require (1) that the house-to-house salesmen execute powers of attorney making such manufacturer or distributor an agent for the return and payment of the tax, or (2) that the manufacturer or distributor make separate returns for each such salesmen, or (3) that the manufacturer or distributor assume any liability for the tax on articles supplied by any person other than himself. Your committee also has accepted this provision.

(*b*) *Deletion of House provision relating to tax on transportation of property*

The House bill also provided that in the case of the tax on the transportation of property, the Secretary or his delegate could enter into agreements with persons making payments on this tax providing

that they, rather than the shipper, would return and pay the tax on the transportation of property. The repeal of the tax on the transportation of property by the Tax Rate Extension Act of 1958 makes this amendment unnecessary.

(c) *Revenue effect*

It is anticipated that this provision will have no revenue effect.

SECTION 162. PERIOD FOR FILING CLAIM FOR FLOOR STOCK REFUND WITH RESPECT TO THE IMPORT TAX ON SUGAR

This section of the House bill has been accepted by your committee without change.

Section 4501 (b) of present law imposes a tax on manufactured sugar imported into the United States and on imported products composed in chief value of manufactured sugar. Section 4501 (c) provides that this tax will not apply to sugar imported after June 30, 1961. Under section 6412 (d) of present law a floor stock refund is provided for tax paid inventories on hand on June 30, 1961. This section contains no limitation on the time in which a claim for floor-stock refund may be filed. In order to provide such a time limitation on filing refund claims, section 162 (a) of the bill, as passed by the House and as agreed to by your committee, amends section 6412 (d) to provide that claims for refund must be filed with the Secretary or his delegate on or before September 30, 1961.

Section 162 (b) of the bill, as passed by the House and as agreed to by your committee, amends section 4501 (c) of present law by removing the last sentence of that section. The repealed sentence duplicated the provisions of section 6412 (d) of present law.

It is anticipated that this provision will have no revenue effect.

SECTION 163. CREDITS OR REFUNDS OF CERTAIN TAXES

Section 163 of the bill contains those provisions added by the House bill which relate to credits or refunds. Apart from technical conforming changes, your committee has agreed to the House provisions with three changes. This section of the bill is devoted principally to a revision of subsections of code section 6416, relating to credits or refunds with respect to taxes on sales or services. It also makes amendments to the code sections 6415, 6420, and 6421. In addition, it contains certain refund or credit provisions relating to radio receiving sets and radio and television components which provisions are not made a part of the code. Many of the changes made in section 163 are closely related to changes made in other sections of the code which have been previously discussed. The changes made here are especially closely interrelated with the changes made in developing a uniform system of tax-free sales (sec. 118). Moreover, the changes made represent an attempt to develop a more uniform and reasonable system of refunds or credits for excise taxes. The changes made by your committee are concerned with a deletion of the reference to the repealed tax on the transportation of oil by pipeline, the removal of a refund or credit provision which under the House provision would

be applicable in the case of certain sales to nonprofit educational organizations, and the addition of a special refund or credit provision relating to the export of automobiles, etc.

(a) *Conditions to allowances*

Section 6416 (a) of present law contains three conditions, one of which must be met by the person who paid the tax, before a refund or credit of a tax may be made. These conditions apply in whole or in part with respect to the cabaret tax, retailers excise taxes, and manufacturers excise taxes. These conditions do not apply, however, in the case of the use taxes with respect to special fuels imposed by section 4041 (a) (2) or (b) (2), to refunds or credits for price adjustments, nor to taxpaid articles used for further manufacture. The three conditions, one of which must be met, are:

(A) A showing that the burden of the tax was not included in the price of the article or service or that the tax was not collected from the purchaser;

(B) A showing that the tax had been repaid to the purchaser (in the case of retailers excises) or to the ultimate purchaser or ultimate seller (in the case of manufacturers excise taxes); or

(C) The filing of the written consent of the purchaser, ultimate purchaser, or ultimate seller, as the case may be, to the allowance of the credit or refund.

The purpose of these conditions is to insure that any credit or refund made will inure to the benefit of the person who actually bore the burden of the tax involved.

The basic conditions for the allowance of a credit or refund provided by present law are left unchanged by the House bill. Changes have been made, however, as to the application of these conditions in the case of the cabaret tax. In addition, specific provision is made for the application of these conditions in the case of stocks of dealers. Certain other changes also are made to conform with changes made elsewhere in the bill. These are described briefly below. In addition, the House bill contained a revision of these conditions as they relate to the tax on the transportation of oil by pipeline. Your committee has deleted all references to this tax since it has been repealed by the Tax Rate Extension Act of 1958.

(1) *Application of conditions to cabaret tax.*—Under present law the first of the three conditions set forth above clearly applies in the case of the cabaret tax. The Internal Revenue Service has held, however, that the second and third conditions do not apply in the case of this tax because the references in the second limitation are only to the retailers and manufacturers taxes. For purposes of uniformity, and also on the basis of equity, it would appear that all three alternatives should be available in the case of the cabaret tax.

The House bill, therefore, revises section 6416 (a) so the second and third, as well as the first of the three conditions, will be available as alternatives to the first condition in the case of the cabaret tax. This is provided for in the bill by an amendment to section 6416 (a) so that in paragraph (1) (B) (iii) specific reference is made to the cabaret tax in connection with the second condition referred to above. Similarly, in paragraph (1) (D), it is indicated that taxes referred to in paragraph (1) (B) (iii) can qualify under the condition providing for the filing of written consent.

(2) *Credits or refunds with respect to stocks of dealers.*—Under present law questions have arisen where stocks are still in the hands of dealers as to whether it is possible to allow a credit or refund of manufacturers excise taxes since in such cases there as yet has been no "ultimate purchaser" as is required in the case of the second and third limitations described above.

The bill, as passed by the House and as agreed to by your committee, makes it clear that under certain conditions a dealer is to be deemed the "ultimate purchaser" and, therefore, the manufacturer is to be eligible for a credit or refund where any one of the conditions of allowance can be met. Specifically, the bill provides in code section 6416 (a) (3) (C) that the term "ultimate purchaser" includes a wholesaler, jobber, distributor, or retailer who holds such article for sale on the 15th day after the date it is determined by the Secretary that an article is not taxable. However, this special rule applies only if the claim for credit or refund is filed on or before the day for filing the return with respect to manufacturers excise taxes for the first tax return period beginning more than 60 days after the determination that the tax was not due. This special rule becomes applicable only with respect to a determination made by the Secretary or his delegate in a particular case or with respect to a particular group, class, or type of article.

(3) *Other changes.*—In addition to the changes described above, the bill, as passed by the House and as approved by your committee, also makes other changes in section 6416, apart from rearrangement, which are required in order to conform with changes made elsewhere in the bill. Thus, the special rule provided in section 6416 (a) (3) (A) is intended to conform with the change made elsewhere in this bill with respect to collections from concessionaires in the case of a cabaret tax (see discussion under sec. 131 (c)). This new rule in paragraph (3) (A) provides that even if the cabaret tax is collected by the proprietor of the roof garden, cabaret, or other similar place, it is to be treated as if it had been paid by the concessionaire. This qualifies the concessionaire, rather than the proprietor who actually paid the tax to the Government, as the proper person to claim refund or credit of any overpayment collected from the concessionaire and paid to the Government.

The special rule in the new paragraph (3) (B) is a conforming amendment related to the amendment to section 6011 made by section 161 of the bill. This section authorizes the Secretary or his delegate to enter into an agreement with a supplier of retailers whereby the supplier will be liable for the retailers excise tax. This new rule provides that any retailers tax paid by a supplier, pursuant to such an agreement, may be treated as having been paid by either the supplier or the retailer.

Section 6416 (a) has also been amended to make the provisions of this section applicable to the taxes imposed by paragraphs (4) and (5) of section 4231, relating to the admissions tax with respect to sales outside of the box office in excess of the established price and sales by proprietors in excess of the regular price.

The special rule in the new paragraph (3) (D) relates to the third condition referred to above (namely, the filing of the written consent of the ultimate vendor). In the case of overpayments relating to tires, inner tubes or automobile radio or television sets sold on or in

connection with other articles (such as an automobile), this rule provides that the term "ultimate vendor" means the ultimate vendor of the "other article" (that is, usually the dealer who sells the automobile). This rule relates to overpayments referred to in paragraph (2) (E), (3) (C) or (D), or (4) of section 6416 (b) as it appears in this bill.

(*b*) *Price readjustments*

Section 6416 (b) of present law, and also of this subsection as it appears in this bill, sets forth a number of special cases in which tax payments are to be considered as overpayments and, therefore, eligible for credits or refunds.

Paragraph (1) of this subsection, in the case of both present law and the subsection as amended by this bill, relates to cases where price readjustments are considered overpayments of tax. The bill, as passed by the House and approved by your committee makes only one substantive change in this paragraph. It is provided that this price readjustment provision generally is not to apply where a second manufacturer initially purchased an article on a tax-free basis and then subsequently paid tax with respect to the article by reference either to the price he paid for the article or the price charged by the original manufacturer (see the discussion with respect to the new sec. 4223 (b) (2)). The benefit of this price readjustment provision will not be denied a second manufacturer in such a situation, however, if he computes the tax upon his own sales price rather than by reference to either of the other two prices referred to above. Also, the benefits of the price readjustment provision are to be available, irrespective of what price was used by the second manufacturer in computing the tax, with respect to that part of the tax which is proportionate to part of the price repaid or credited to the customer if by reason of the return or repossession of the article.

(*c*) *Specified uses and resales where tax payments are considered overpayments*

Cases where tax payments are considered overpayments as a result of specified uses and resales, under both present law and the bill, appear in paragraph (2) of section 6416 (b). In connection with the new subsection (b) as it appears in this bill, the House and your committee desire to make it clear that this subsection is to apply only with respect to articles where the exportation or use referred to in the applicable paragraphs of this subsection occurs before any other use, or, in the case of a sale or resale, where the use referred to occurs before any other use. With the exception of the specified uses and resales relating to tires, inner tubes and automobile radios and television sets, which are discussed immediately below, the material presented here indicates the changes made in subsection (b) (2) by the bill.

(1) *Exports.*—Under present law a tax-free sale may be made, or subsequently a credit or refund may be claimed, only where there was knowledge at the time of the original sale that the article was being purchased for export. This interpretation has been adopted by the Internal Revenue Service because the tax exemption section in the case of exports specified that "* * * no tax shall be imposed under this chapter upon the sale of any article for export * * *." Thus, the position has been taken that a sale is not for export unless there

was knowledge at the time the sale was made that the article was to be exported. This advance knowledge requirement has represented a serious hardship for many dealers who may export quantities of goods but do not know at the time they make their purchases that the sales will be made abroad. In such cases under present law these dealers who do not know of their foreign sales in advance have to buy tax-paid (and receive no benefit from a credit or refund) on their export sales.

The new subparagraph (A) in section 6416 (b) (2) provides for a credit or refund with respect to the exportation by any person of tax-paid articles. Under this provision it is immaterial whether the article was intended to be exported at the time of its sale by the original manufacturer. However, an exception to this rule is provided by your committee in the case of the export of automobiles, etc., by the manufacturer, producer, or importer as is indicated under heading (g) below.

(2) *Deletion of House provision for credit or refund for nonprofit educational organizations.*—The House bill provided exemptions from retailers' and manufacturers' excise taxes for nonprofit schools and colleges. It also provided similar exemptions in the case of the excises on communications and transportation. As indicated previously, your committee has deleted these exemptions.

In conformity with the exemptions provided with respect to the various excise taxes for these nonprofit educational organizations, the House bill provided for a credit or refund with respect to manufacturers' or special fuel taxes paid in the case of articles sold to these nonprofit educational organizations for their exclusive use. Your committee, because it deleted the exemption for these nonprofit educational organizations in the case of the manufacturers' excise taxes, also is deleting the refund or credit provision applicable to manufacturers' excise taxes under the House bill where taxes have been paid in the case of articles sold or resold to these organizations for their exclusive use.

(3) *Leaf springs, coils, timers, and tire chains.*—Present law provides a credit or refund for automotive parts or accessories used or resold for use as repair or replacement parts or accessories for farm equipment (except automobiles and trucks). However, under present law, this credit or refund is not available in the case of spark plugs, storage batteries, leaf springs, coils, timers, or tire chains. However, there seems to be no need to deny the tax relief today in the case of the leaf springs, coils, timers, and tire chains. The types of these items which generally are suitable for use with farm equipment are not suitable for (or readily adaptable to) use with automobiles or trucks. Thus, items purchased for farm equipment for which credit or refund has been claimed are not likely to be used for automobiles or trucks rather than for farm equipment. Therefore, the bill, as passed by the House and as agreed to by your committee, denies the credit or refund for automotive parts or accessories used or resold for farm equipment only in the case of spark plugs and storage batteries. Thus, subparagraph (J) of section 6416 (b) (2) as it appears in the bill has application to all articles taxable under section 4061 (b) except spark plugs and storage batteries.

(4) *Credits or refunds where a second manufacturer has purchased from a dealer.*—Where the manufacturer of an article sells it tax-paid to a dealer and he in turn sells it to a second manufacturer, present

law makes provision for a credit or refund to the second manufacturer if he uses the article in the manufacture of another taxable article (or in certain cases in the manufacture of any other article).

Your committee agrees with the House that credit or refund should be available through the first manufacturer where there are one or more intervening dealers. Thus, it has provided in subparagraph (D) of section 6416 (b) (2) for credits or refunds in the case of taxpaid articles resold (that is, sold by anyone except the original manufacturer) to a manufacturer or producer for use by him as material in the manufacture of, or as a component part of, another taxable article (or in certain cases for use as material in the manufacture of, or as a component of, any article). Since section 6416 (b) (2) treats the taxpayer as the person to whom the credit or refund is to be made, this means that in the case described in subparagraph (D) the refund or credit would be made to the original manufacturer and he would in turn pass the benefits of the credit or refund down through the dealer to the second manufacturer.

Making the credit or refund to the original manufacturer appears desirable where there are intervening dealers since in such cases it may be impossible to determine the price on which the tax was paid except by tracing the transaction back in this manner. Where there is no intervening dealer, as under present law, the credit or refund is made directly to the second manufacturer since in this case the tax base was generally his purchase price and, therefore, this information was readily available to him. The credit or refund under subparagraph (D), where there are intervening dealers, has application even though at the time of the sale by the original manufacturer there was no intent on the part of the dealer to resell the article to a second manufacturer for further manufacture.

(*d*) *Tires, tubes, or auto radios or television sets used on or in connection with other articles*

(*1*) *Sales for tax-free purpose.*—Where tires, inner tubes, or automobile radio or television receiving sets are sold on, or in connection with, vehicles taxable under section 4061 (a) of the code, section 6416 (c) of present law allows a credit against the tax imposed by section 4061 (a), based on the purchase price of the tires, tubes, or receiving sets. Thus it would appear that where no tax is imposed with respect to the automobile or truck, for example, where it is exported or sold to a State or local governmental unit, no credit could be claimed with respect to the tax on the tires, tubes, or auto radio or television sets sold with such a car. However, where tires are mounted on an automobile which is exported, the Internal Revenue Service has held that a credit or refund is available not only for the tax paid with respect to the automobile, but also with respect to the tax paid on the tires. On the other hand, in the case of tires mounted on cars sold to State or local governments, the regulations preclude the allowance of a refund or credit for the tire tax. Your committee agrees with the House that this difference in treatment between sales to States and sales for export should be eliminated.

To meet this problem the bill, as passed by the House and as agreed to by your committee, provides that where tires, tubes, and auto radios and television sets are sold on or in connection with articles (such as automobiles or trucks, but not limited to these items) which are sold for export, to State or local governmental units, or for supplies

for vessels, refunds or credits are to be allowed in the same manner as in the case of the other articles. This will remove the present inconsistent treatment between exports and sales to governmental units, and will provide the same treatment for these articles as is presently available for other articles subject to manufacturer's excises where they are ultimately sold for one of these tax-free purposes.

The bill effectuates this change by the following additions to section 6416 (b):

A. The new subparagraph (E) in section 6416 (b) (2) provides for a credit or refund where the tire, tube, or auto radio or television set manufacturer sells to the manufacturer of the "other article" through one or more intervening dealers,

B. Subparagraph (C) of section 6416 (b) (3) provides for a credit or refund where the tire, tube or automobile radio or television set manufacturer sells directly to the manufacturer of the "other article",

C. Paragraph (4) of section 6416 (b) provides for a refund or credit where the manufacturer of the tire, tube, or auto radio or television set is also the manufacturer of the "other article".

Refunds or credits are available in the cases described above only if the "other article" is exported, sold to a State or local government for the exclusive use of a State or local government, or is used or sold for use as supplies for vessels or aircraft.

(2) *Sales for use in connection with articles other than automobiles or trucks.*—The general credit or refund provisions in the case of sales for further manufacture are not available under present law in the case of tires, inner tubes and automobile radio or television receiving sets. Instead a special crediting device has been provided in section 6416 (c). This credit is available only where these articles are sold on or in connection with the sale of an automobile, truck, etc., taxable under section 4061 (a). The credit allowed against the automobile or truck tax in this case is equal to an amount determined by multiplying the appropriate tax rate applicable to automobiles or trucks (presently 10 percent) by the manufacturer's purchase price for the tires, tubes or automobile radio or television receiving sets. This special crediting device is used because the taxes on the tires, etc., generally have been different from, and generally higher than, the taxes on automobiles and trucks. Thus to allow tax-free purchases of these articles for incorporation in an automobile or truck would have meant the articles used in this manner would have been taxed by a different "net" rate than similar articles not added to new cars or trucks.

The present crediting device for these articles, however, has created certain problems. One of these arises from the fact that the credit is limited to the specified articles only when they are sold on or in connection with automobiles or trucks. Thus, the credit is not available, for example, in the case of a tire or tube mounted on an article classified as an automobile part or accessory, such as a so-called trailer dolly. Similarly, a credit is not available in the case of taxable tires used on power lawn mowers subject to the 5 percent electric, gas, and oil appliance tax.

To eliminate this double tax the bill, as passed by the House and as agreed to by your committee, amends section 6416 (c) so that the credit provided by this subsection with respect to tires, inner tubes,

and automobile radios and television receiving sets which are sold on or in connection with articles subject to any manufacturer's excise tax are to be eligible for the credit in section 6416 (c). The method prescribed in present law for computing the amount of the credit is continued in the new subsection (c). In addition a new provision provides that only one credit of tax is allowed under this subsection with respect to a particular article and that such credit is to be allowed only with respect to the first sale on or in connection with, or with, the sale of another article on which a manufacturer's excise tax is imposed.

(e) Articles broken or rendered useless in manufacture of another article

In connection with the discussion of section 4218, it was indicated that the phrase used "as material in the manufacture or production of or as a component part of any article" is intended to include articles intended for incorporation in another article that are broken or rendered useless in the process of further manufacture. This statement was included because there has been confusion as to whether a tax on use occurs where a manufacturer produces or purchases a taxable article and then breaks it or renders it useless in the process of further manufacture. To correlate with this, the bill, as passed by the House and as agreed to by your committee, adds a sentence at the end of section 6416 (b) (3) to provide that for purposes of subparagraphs (A) and (B) of that paragraph, which constitute the general provisions relating to use for further manufacture, an article is to be treated as having been used as a component part of another article if, had the article not been broken or rendered useless in the manufacture or production of such other article, it would have been so used.

(f) Return of certain installment accounts

Sections 104 and 115 of the bill provide that where a retailer or manufacturer sells installment accounts, any retailers or manufacturers tax not previously paid must be paid at that time (with a special provision for accounts sold in a bankruptcy or insolvency proceeding). However, frequently under the agreement under which the accounts are sold by the manufacturer or retailer, part or all of the installment accounts so sold may be returned to him. In such a case the proposed paragraph (5) of section 6416 (b) provides that the manufacturer or retailer may obtain a credit or refund of the part of the tax previously paid (under sec. 4053 (b) (1) or sec. 4216 (c) (1)) proportionate to the part of the consideration repaid or credited to the purchaser of the installment account in accordance with the agreement. The effect of this provision is illustrated in the explanation of section 104 of this report.

(g) Automobiles, etc., sold for export

Your committee has added a provision to section 163 of the House bill, providing that refunds or credits are to be available where passenger automobiles, trucks, buses, etc. (articles taxed under sec. 4061 (a)), are exported only if the article was sold by the manufacturer, producer, or importer for export after he received notice of the intent of the purchaser to export the article or to sell it for export. Thus, in this case, the "advance notice" requirement of existing law is retained by your committee's action. This has been urged by the automobile manufacturers on the grounds that it is only by this "advance notice" that they can be sure an automobile which is to be exported is prop-

erly equipped for driving in the foreign country to which it is to be exported.

(*h*) *Effective date for the new code section 6416 (b)*

Section 163 (b) of the bill, as passed by the House and as agreed to by your committee, provides an effective date for section 6416 (b) of the code as amended by this bill. Under this effective date provision, the provisions of the new section 6416 (b) are to apply only with respect to articles exported, sold, or resold, as the case may be, on or after the effective date specified in section 1 (c) of this bill. Therefore, in determining whether any exportation, sale, or resale of an article which occurs on or after the effective date of this bill, gives rise to an overpayment of tax, the determination is to be made under the provisions of the amended section 6416 (b). The provisions of present law control in the case of a sale or resale made prior to the effective date specified in section 1 (c) of this bill even though the article sold or resold is, for example, used in further manufacture after that date.

(*i*) *Accounting procedures*

At present the regulations generally require a claim for credit or refund to be supported by evidence showing the name and address of the person who paid the tax, the date of the payment, the amount of the tax, and that the article was used for a tax-free purpose. Specific identification of each product becomes very difficult where a person has obtained large quantities of substantially the same type of product from different manufacturers. In such cases it becomes virtually impossible to determine from which of several manufacturers specific products were purchased or precisely when they were purchased.

To overcome this problem the bill, as passed by the House and as agreed to by your committee, provides that, as a substitute for the specific identification required by present law, taxpayers are to be permitted, in identifying purchases from various manufacturers, to use the FIFO method of inventory accounting (that is, first-in-first-out), or the LIFO method (that is, last-in-first-out), or any other consistent method approved by the Secretary or his delegate. This is provided by a new subsection added to section 6416 by the bill.

(*j*) *Meaning of terms and technical amendments*

The bill, as passed by the House and as agreed to by your committee, adds a new subsection to section 6416 providing that for purposes of the credit and refund provisions contained in section 6416, any terms used in that section are to have the same meaning as when used in chapter 31, 32, or 33 (relating to retailers, manufacturers, and the facilities and services taxes) whichever is appropriate for the case in question.

The bill also provides for an amendment to section 6415 (a), relating to credits or refunds to persons who collected certain taxes. In section 131 (b) of this bill an amendment is made to section 4231 to provide that in the case of payments outside of the United States certain admissions taxes are to be collected by the person furnishing the facility or service, and if he does not do so he is liable for the tax. The taxes referred to are those on general admissions, admissions to horse and dog races, and permanent use or lease of boxes and seats.

The amendment made to section 6415 (a) provides that for purposes of this section the person who paid for the admission or for the use of the box or seat in such cases is to be considered the person from whom the tax was collected. This insures that such person will receive the benefit of any credit or refund.

Amendments are also made to section 6420 (c) (3) (A) and section 6421 (i) as the result of the redesignation of various subparagraphs of paragraph (2) of section 6416 (b).

(k) Certain radio receiving sets and radio and television components

Public Law 367 of the 84th Congress provided that no tax was to be imposed on the sale or use of radio or television components (as well as certain other specified articles) used as material in the manufacture of, or incorporated in, any other article (whether or not taxable), such as a radio transmitter. Before the passage of that law there had been controversy as to whether or not radio and television components or radio receiving sets were taxable when incorporated in nontaxable articles and then sold for export or to State or local governmental units.

The bill, as passed by the House and as agreed to by your committee, clarifies the tax status in this case by providing that if a radio receiving set, an automobile receiving set, or a radio or television component was (before any other use) used as a component part in the manufacture of another article which was (before any other use) exported, or sold to a State or local government (for the exclusive use of a State or local government) then any manufacturers' excise tax which has been paid on the set or component under the provisions of the Internal Revenue Code of 1954 (or the corresponding provisions of prior revenue law) is to be deemed to have been an overpayment, by the manufacturer, producer, or importer of such other article, at the time paid. The amendment further provides that for a credit or refund to be allowed, or made, the manufacturer, producer, or importer of the "other article" must establish to the satisfaction of the Secretary of the Treasury or his delegate that—

(1) He did not include the amount of the tax in the price of such other article and that he has not collected the amount of the tax from the purchaser of such other article;

(2) The amount of the tax has been repaid to the ultimate purchaser of such other article; or

(3) He has obtained the written consent of such ultimate purchaser to the allowance of the credit or the making of the refund.

No interest is to be allowed or paid in respect of any amount deemed to be an overpayment under this provision. Also, the provisions of subchapter B of chapter 66 of the 1954 code (relating to limitations on credit or refund), or the corresponding provisions of prior revenue law, as the case may be, are to be applicable in the case of any amount deemed to be an overpayment of tax within the meaning of section 163 (c). Although this provision by its terms relates only to credits or refunds, your committee intends that persons who have not paid this tax will not be required to do so if upon payment they would be eligible for credit or refund.

Under present law credit or refund may not be allowed where a radio receiving set (as distinguished from a component) is incorporated in a nontaxable article sold for one of the specified tax-free purposes.

The bill makes it clear that credits or refunds are to be allowed in such cases by amending section 6416 (b) to provide that refunds or credits will be allowed where a radio receiving set or automobile receiving set is used as a component part of any "other article" and this "other article" is exported, sold to a State or local governmental unit for its exclusive use, or sold or used as supplies for vessels or aircraft. The addition of a new subparagraph (D) to subsection (b) (3) accomplishes this purpose where the sale is made directly from the radio receiving set manufacturer to the manufacturer of the other part; subparagraph (E) of subsection (b) (2) accomplishes this result where there are 1 or more intervening dealers between these 2 manufacturers, and paragraph (4) of subsection (b) (in subpar. (A) (ii), (B) and in the following material) accomplishes this result where the 2 manufacturers are the same person.

(l) Revenue effect of section 163 of bill

Apart from subsection (e), it is anticipated that section 163 will result in only a negligible revenue loss. In the case of subsection (e) (described immediately above under the heading (*k*)) it is understood that amounts outstanding might reduce tax revenues for 1 year by as much as $1 million. However, it is not clear under existing law that this is an amount which would be collected. Refunds and credits for nonprofit, operating schools and colleges which are not allowed by your committee's action but were by the House bill are considered with other estimates.

SECTION 164. PAYMENTS WITH RESPECT TO GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES OR BY LOCAL TRANSIT SYSTEMS

Present law provides that 1 cent of the present 3-cent tax applicable in the case of gasoline applies only in the case of highway use (and then only in the case of use by other than local transit systems). However, present law provides for the initial payment of this extra 1 cent tax by the nonhighway user (or by a local transit system) and then makes provision for the filing of claims for credits or refunds on an annual basis.

The bill as passed by the House and agreed to by your committee provides that refund or credit claims may be filed with respect to any quarter in which the amount payable to a person amounts to $1,000 or more with respect to gasoline used by him in that quarter. Provision is made for the filing of this claim in the calendar quarter following the quarter for which the claim is filed. This amendment applies with respect to claims, the last day for the filing of which occurs after the effective date specified in section (1) (c) of the bill. The effective date under section 1 (c) is the first day of the first calendar quarter which begins more than 60 days after the date on which this bill is enacted.

The House added this provision and it has been agreed to by your committee on the grounds that where a tax ultimately does not have to be paid because of use for nonhighway purposes (or in local transit systems) it seems unfair to permit a credit or refund only on an annual basis. Although this may be justified on administrative grounds

where the amount of the claim is relatively small, it is believed that this is not the case where the amount involved in a quarter is $1,000 or more.

SECTION 165 OF THE HOUSE BILL WHICH HAS BEEN OMITTED BY YOUR COMMITTEE—GASOLINE LOST IN A DISASTER

The House bill provides that the tax with respect to gasoline lost, destroyed or rendered unmarketable by reason of a major disaster, as declared by the President, is to be refunded to the holder of the gasoline. Your committee has deleted this provision from the House bill because it believes that it would be an unfortunate precedent to provide a tax refund with respect to excise taxes generally where the taxpaid product is lost either as a result of a catastrophe or as a result of normal attrition. While the House provision would have applied only in the case of major disasters declared by the President, it would have constituted a precedent for these other types of losses. Except where the excise tax represents a very large proportion of the total cost of a product, as is true in the case of the taxes on alcoholic beverages and tobacco products, your committee sees no reason for distinguishing tax losses in the case of fire, flood, theft, breakage, etc., from the losses represented by the cost of the products themselves where these events occur. Moreover, if tax refunds of this type were to be granted for excise taxes generally, a substantial administrative problem would be raised in the policing of claims of this type which might be made.

It is estimated that the removal of this provision will prevent a negligible revenue loss.

SECTION 165. STATUTE OF LIMITATIONS FOR STAMP TAXES; REDEMPTION OF STAMPS

(Sec. 166 of the House bill)

This section of the House bill has been accepted by your committee without change.

Section 6501 of present law provides that if a tax is payable by stamp, assessment must be made within 3 years "after such tax became due." Section 6511 (a), on the other hand, provides that a claim for a credit or refund of an overpayment of a tax required to be paid by stamp is to be filed within 3 years "from the time the tax was paid."

There appears to be no reason for the use of two different rules in the case of assessments and claims for refund or credit. Moreover, commencing the period in the case of assessments with the due date of the tax appears to be overgenerous. The nonpayment of a stamp tax is approximately the equivalent of not filing a return, and where no return has been filed the statute does not commence running in the case of these taxes. To remove this advantage for stamp taxes, and to equate the statute of limitations in the case of claims and assessments, section 165 (a) of the bill, as passed by the House and as

agreed to by your committee, amends section 6501 (a) to provide that the period of limitations is to commence running in the case of assessments from the time any part of the stamp tax is paid rather than from the time the tax became due. Thus, where no stamp tax is paid, the statute will remain open indefinitely; where a tax is paid, even though inadequate, the period of limitations will run from that date.

Section 6805 of present law provides that the Secretary or his delegate may redeem stamps (1) which have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or (2) for which the owner may have no use, or (3) which through mistake may have been improperly or unnecessarily used, or (4) where the rates or duties have in any manner been wrongfully collected. A claim for the redemption of stamps under this section must be presented within 3 years after the purchase of the stamps from the Government.

This period of limitations in section 6805 with respect to the redemption of stamps, to the extent it relates to used stamps, appears to be in conflict with the period of limitations provided by section 6511 for claims for credits or refunds of stamp taxes. Section 6805, as noted above, provides that the period is to begin running with the purchase of the stamps, while under section 6511 the period commences running as of the date the tax is paid or the stamps are affixed. To remove this conflict the bill, as passed by the House and as agreed to by your committee, in section 165 (b) amends section 6805 (a) by striking out the third and fourth categories for which redemption can be made, i. e., those where the stamp has been improperly or unnecessarily used, and where the rates or duties have been wrongfully collected. This makes it clear that sections 6402 and 6511 (a), rather than section 6805, have application in these cases. The bill in section 165 (c) also revises subsection (c) of section 6805, which provides the redemption period of 3 years from date of purchase, to make it applicable only to unused stamps.

The amendments made by this section have no revenue effect.

IV. EXPLANATION OF PROVISIONS OF TITLE II RELATING TO ALCOHOL, TOBACCO, AND CERTAIN OTHER EXCISE TAXES

PART I—GENERAL EXPLANATION OF TITLE II

Title II of both the House and your committee's bill relates to the internal-revenue laws dealing with distilled spirits, wines, beer, tobacco products, and firearms. It also makes related changes in Subtitle F: Procedure and Administration. Your committee basically adopted the provisions of title II as contained in the House bill.

Your committee did, however, make a major change in title II of the House bill in that it struck out the requirement that the Treasury Department institute, not later than August 4, 1958, a return system for the payment of the tax by manufacturers of tobacco products. The effect of this change is to restore the provision of existing law which leaves to the Secretary or his delegate discretion to institute a return system by regulations and to prescribe the period for which the return is to be made and the time when the return is to be filed.

Your committee also advanced the effective date of the general revision of chapter 51 from July 1, 1958, to July 1, 1959, since the 1958 effective date in the House bill was based on the assumption that the bill would be enacted in 1957. Changes in dates were also made by your committee to reflect the enactment of the Tax Rate Extension Act of 1958 (Public Law 85–475, approved June 30, 1958).

In addition, your committee adopted certain clarifying amendments, and amendments to perfect the intent of title II of the bill. Each of these changes is fully discussed in the detailed discussion of the technical provisions of title II of the bill, and the more significant of these changes are discussed under the subject headings which follow.

Your committee also made certain changes with respect to the applicability of the disaster-loss provisions to products of Puerto Rican manufacture brought into the United States and subsequently lost by reason of disaster. The effect of these changes is to make the disaster-relief provisions inapplicable in such cases, since the Commonwealth of Puerto Rico has already afforded relief for such losses.

Your committee also clarified the scope and application of the provisions of chapter 51 which enable industrial distilled spirits, denatured distilled spirits, and articles produced therefrom to be brought into the United States from Puerto Rico and the Virgin Islands free of tax for disposal under the same conditions that like spirits, denatured spirits, and articles produced or manufactured in the United States can be used free of tax.

(a) Distilled spirits

(1) General.—The bill as passed by the House and approved by your committee makes a general revision of the distilled spirits provisions of chapter 51. It also makes limited changes in that chapter in respect to occupational taxes, wines, and beer.

The need for further revision of the provisions of the Internal Revenue Code relating to distilled spirits was recognized by Congress at the time of the passage of the Internal Revenue Code of 1954.

In general, the purposes of the changes relating to distilled spirits are to modernize the laws and to provide greater uniformity in the provisions relating to production, warehousing, processing, removal, and use of all types of distilled spirits. Additional purposes are to facilitate utilization of plants and equipment for national emergency purposes, to eliminate artificial statutory distinctions between similar operations, and to establish a more efficient system of liquor-tax administration.

In effectuating these purposes, the responsibility of proprietors for the proper conduct and control of their operations has been recognized. It has also been recognized that qualified proprietors of distilled spirits plants should be free to conduct their operations and to utilize their facilities in an efficient and businesslike manner, subject only to such controls as are reasonably necessary to protect the Government's interests.

(2) *Distilled spirits plants.*—The bill as passed by the House and approved by your committee eliminates the present legal concepts under which nine completely separate establishments are necessary to perform the activities relating to the production, storage, denaturation, processing, and bottling of distilled spirits, and provides for a single functional distilled spirits plant. Operations performed prior to payment or determination of the distilled-spirits tax will be conducted on "bonded premises," and operations relating to the rectification or bottling of distilled spirits on which the tax has been paid or determined will be conducted on "bottling premises." The proprietors of distilled spirits plants will be authorized to perform only the specific function or combination of functions which they qualify to perform.

The single distilled spirits plant will eliminate the artificial distinctions which now exist between similar types of functions, and permit substantial simplification in qualifying requirements and operating procedures.

The concept of the single distilled spirits plant as embodied in the bill, will permit more efficient utilization of existing facilities, the modernization of such facilities, or the construction of new facilities on a more efficient functional basis. Also, the bill as passed by the House recognizes the practical necessity of providing for the continuance of existing facilities, even though their location, construction, or arrangement may not comply in all respects with the provisions of this bill. Your committee has adopted the House provisions but has revised the House bill to make it clear that the scope of these provisions is sufficiently broad to provide authority for the continuance of existing methods of operation in existing facilities, if the revenue will not be jeopardized by such operations.

(3) *Bonding period.*—The bill as passed by the House provides for the extension of the bonding period for distilled spirits from the present 8 years to 20 years, and for limited commingling in an internal-revenue bonded warehouse of distilled spirits of different ages, with the product taking the age of the youngest spirits mingled, for purposes of determining the expiration of the bonding period.

Your committee, after consideration of testimony submitted at the public hearings and of the information made available to the com-

mittee, retained the basic features of the House bill which extend the bonding period as to future production and also make the bonding-period extension effective on the date of enactment as to existing stocks in internal-revenue bonded warehouses or in transit between such warehouses. Your committee made a clarifying change which would make it clear that the new 20-year bonding period will not apply where the 8-year bonding period has expired before the date of enactment of this act.

Your committee believes that application of the new 20-year bonding period to existing stocks (which have not reached the 8-year limitation) is desirable in view of the fact that the existing stocks of older whiskies in bond are substantially in excess of current market requirements, and that forced liquidation of these stocks would materially disrupt orderly marketing practices.

Your committee also adopted another amendment designed to perfect the intent of the bill with respect to the application of the bonding period to denatured distilled spirits and distilled spirits of 190° or more of proof, neither of which for commercial reasons is stored in bond for extended periods. These exceptions are consistent with exceptions in existing law for industrial alcohol and are merely intended to simplify accounting and record-keeping requirements.

(*4*) *Allowances, refunds, and credits.*—The bill as passed by the House contains certain provisions for refund or credit of tax on distilled spirits found to be unsuitable for the purpose for which they were withdrawn, if the distilled spirits are destroyed under supervision, or, in specified cases, returned to bonded premises and reprocessed. The bill as passed by the House also provides for refunds or credits of the tax (within certain limitations) for losses incurred incident to rectifying and bottling of distilled spirits after payment or determination of tax. These provisions are adopted by your committee. However, in connection with bottling and rectifying losses, your committee has added to the House bill a specific statute of limitations, comparable to others provided in chapter 51, with respect to the filing of claims for such refunds or credits.

(*5*) *Bond and lien provisions.*—The bill as passed by the House and approved by your committee continues the lien for the distilled spirits tax on the property of the distiller, but provides, in the case of a distilled spirits plant producing distilled spirits, that the premises subject to lien shall include not only the entire bonded premises of such plant, but, in the case of buildings which are located in part on bonded premises, shall include the entirety of such buildings and the land on which such buildings are situated. Under existing law it has not been possible to utilize any building, or part thereof, if located on distillery premises, for operations performed after payment or determination of the distilled-spirits tax. Under this change a much greater, and more efficient, utilization of facilities will be possible.

The bill as passed by the House and approved by your committee makes major changes relating to distillers' bonds by (A) elimination of the statutory requirement that a new bond be given on the 1st day of May of each year, and (B) inclusion of provision for the posting of an indemnity bond at the discretion of the distiller in the amount of the appraised value of the premises subject to lien, not to exceed a maximum sum of $300,000. The first change gives regulatory discretion in setting the term of a distiller's bond and in

providing for its renewal. The second change enables the distiller, on the posting of such an indemnity bond, to free himself from the Government's statutory lien on his property and permits the voluntary encumbrance of such property by the distiller during the term of such bond. Under existing law no voluntary encumbrance is authorized.

The bill as passed by the House and approved by your committee provides for a combined operations bond which will enable one bond to be given to cover all operations of a particular distilled spirits plant and provides further for a blanket bond, when the same person (including, in the case of corporations, controlled or wholly owned subsidiaries) operates more than one distilled spirits plant within a geographical area designated by regulations. The total amount of the blanket bond will be available for the satisfaction of any liability incurred at any one of the plants covered under the terms and conditions of such bond.

The bill as passed by the House and approved by your committee provides, in the case of withdrawals without payment of tax for export by proprietors of bonded premises of distilled spirits plants, that the qualifying bond of the proprietor will cover the withdrawals. In the case of withdrawal without payment of tax for export by persons other than the proprietor of bonded premises of a distilled spirits plant, a separate export bond, in a penal sum to be prescribed by regulations, will continue to be required.

The bill as passed by the House and approved by your committee permits the extension of the privilege of withdrawing distilled spirits on determination of tax (but without taxpayment at the time of withdrawal from bonded premises), to rectifiers and bottlers who make application for such privilege, assume liability for payment of the tax, and post a withdrawal bond.

(6) *Liability for tax and time of payment.*—The bill as passed by the House and approved by your committee clarifies the liability for payment of the tax on distilled spirits (A) by specifically imposing on the proprietor of bonded premises liability for payment of the tax on all distilled spirits stored on such premises, or in transit thereto; (B) by specifically imposing on the person who withdraws distilled spirits from the bonded premises of a distilled spirits plant on determination of the tax (and the giving of withdrawal bond) liability for tax on the spirits so withdrawn; and (C) by specifically imposing on the person withdrawing distilled spirits for export, etc., on the giving of proper bond, liability for the tax on the spirits so withdrawn. In the case of such transfers or withdrawals the distiller and other persons interested in distilling will be relieved of liability under certain specified conditions pertaining to divestment of interest in the spirits and absence of proprietary relationship.

The bill as passed by the House and approved by your committee provides, in the case of distilled spirits withdrawn from bonded premises on determination of tax and posting of a withdrawal bond, that, in fixing the time for filing the return and the time for payment of the tax by the bottler, regulations will make allowance for transportation time for the movement of distilled spirits from bonded premises to bottling premises, not to exceed such maximum periods as regulations prescribe.

(7) *Permits.*—The bill as passed by the House and approved by your committee continues the permit requirements for persons who procure or use distilled spirits free of tax (including specially denatured distilled spirits), who deal in or recover specially denatured distilled spirits, or recover completely denatured distilled spirits. Existing law also requires permits of persons transporting alcohol (including specially denatured alcohol). The bill eliminates these transportation permits since they no longer serve a useful purpose.

Under existing law, all alcohol permits are issued on an annual basis, with no provision made for suspension of such permits. The bill eliminates the requirement for annual issuance and provides that permits, unless sooner terminated by the terms of the permit, shall continue in effect until suspended or revoked, or until voluntarily surrendered.

The provisions relating to the disapproval of applications for permits and the suspension or revocation of permits are substantially revised for purposes of clarification and of making them more consistent with the provisions of the Administrative Procedure Act and the comparable provisions of the Federal Alcohol Administration Act.

(8) *Miscellaneous.*—(A) The bill, as passed by the House and as agreed to by your committee, provides permanent authority for the conduct of pilot operations in distilled spirits plants for the purpose of facilitating and testing improved methods of governmental supervision necessary for the protection of the revenue, similar to the temporary authority (now expired) contained in the Internal Revenue Code of 1954.

(B) The bill as passed by the House and approved by your committee restates and clarifies the provisions of law applicable to the production of vinegar by the vaporizing process.

(C) The bill as passed by the House permits the denaturation of rum in Puerto Rico or the Virgin Islands for shipment to the United States. Existing law provides for the denaturation of alcohol only for such shipment.

Your committee, while generally adopting the provisions of the House bill relating to the applicability in Puerto Rico and the Virgin Islands of the provisions of chapter 51 which enable distilled spirits for authori ed tax-free purposes, denatured distilled spirits and articles made therefrom, to be brought into the United States free of tax for disposal under the same conditions as like spirits, denatured spirits, and articles produced or manufactured in the United States, has restated and revised these provisions. The purpose of the revision is to clarify the scope and application of the provisions and to improve the administrative features.

(D) The bill as passed by the House and approved by your committee makes changes with regard to the privilege of use of taxfree distilled spirits, by extending such use to blood banks, and by liberalizing such use at hospitals and sanitariums in making analyses or tests.

(E) The bill as passed by the House and approved by your committee broadens the exemptions relating to distilled spirits in connection with research by universities or institutions of scientific research and provides for special experimental plants.

(F) The bill as passed by the House and approved by your committee extends the provisions which authorize the withdrawal of

alcohol under permit, free of tax, to certain nonprofit educational organizations. The privilege is now accorded to public schools.

(G) The bill as passed by the House and approved by your committee substantially revises and clarifies the enforcement and penalty provisions of chapter 51.

(*b*) *Wine*

The provisions of the internal revenue laws relating to wine were generally revised through the enactment of the Internal Revenue Code of 1954. This bill as passed by the House and approved by your committee does, however, make certain limited changes with respect to wine, the most important of which are as follows:

(1) It revises the definition of "own production," when used with reference to wine in a bonded wine cellar, to cover multiple plant operations and affiliated persons located within the same State, to permit more efficient operations.

(2) It provides for a slight increase in the amount of dry sugar which may be used in fermenting wines from low-sugar fruits, such as apples, and clarifies the manner in which such sugar may be added.

(3) It clarifies the distinction between still wines and effervescent wines (carbonated wines, champagne, and other sparkling wines) to clearly permit the addition to, or retention in, still wines of such small quantities of carbon dioxide as will not result in the production of an effervescent wine. It also more specifically prohibits the misrepresentation of a still wine as an effervescent wine or a substitute therefor.

(4) It provides for a combined bond for a distilled spirits plant and an adjacent bonded wine cellar.

(5) It provides for refund of tax on unmerchantable still wine returned to a bonded wine cellar, comparable to existing provisions relating to effervescent wine.

(6) It eliminates the restriction in existing law which operates to prevent the production of volatile fruit-flavor concentrates on bonded wine cellar premises.

(*c*) *Beer*

The provisions of the internal revenue laws relating to beer were generally revised through the enactment of the Internal Revenue Code of 1954. The bill as passed by the House and approved by your committee does, however, make certain limited changes with respect to beer, the most important of which are as follows:

(1) It eliminates specific statutory sizes for barrels and kegs, and provides that the tax shall apply to the actual quantity of beer in any container, with provision for tolerances to be prescribed by regulations.

(2) It provides that undelivered beer returned to the brewery on the day of its removal will not be considered as "removed for consumption or sale."

(3) It provides that beer removed from the market may be returned to the brewery or destroyed under supervision, and permits an adjustment of tax liability with respect to such beer.

(4) It extends the provisions relating to the transfer of beer between breweries, to provide that beer may be transferred

between breweries owned by different corporations, if the controlling interest in each such corporation is owned by the same person or persons.

(5) It eliminates the mandatory requirement that brewers' records be retained for at least 2 years, and provides authority to prescribe periods of retention of such records by regulations.

(6) It includes in the definition of a "brewer" any person who brews or produces beer. This change makes it clear that any person who produces beer must qualify as a brewer.

(*d*) *Occupational taxes*

The bill as passed by the House and approved by your committee, contains a general revision of the provisions relating to wholesale and retail dealers in liquors (distilled spirits, wines, and beer), and wholesale and retail dealers in beer, to make them more nearly conform to present-day understanding of the functions performed by the persons engaged in these businesses. Definitions of these dealers are revised. Also, changes are made in the rates of tax to offset the revenue effect of the revised definitions, as well as the effect of certain changes in exemptions from tax.

It provides that no person is to be engaged in, or carry on, any trade or business subject to special tax under chapter 51 until he has paid the special tax therefor. Thus such special taxes will be paid on or before commencing business, advancing the general payment of special taxes under chapter 51 from the month of July to the month of June. The change in payment date will be applicable as of July 1, 1959.

It provides a uniform rule relating to the exemption of proprietors of distilled spirits plants, bonded wine cellars, and breweries, from payment of special taxes as dealers, whereas existing law provides a multiplicity of rules.

It extends to sales of wine the provisions of existing law which grant the seller exemption from additional special tax in case of sales of beer made at a purchasing dealer's place of business.

(*e*) *Tobacco*

The Internal Revenue Code of 1954, which generally revised the provisions of internal-revenue laws relating to tobacco products, provided authority for the Treasury Department to institute a system of taxpayment on the basis of returns. Such a system has been instituted for cigars on an optional basis, covering periods of 1 day. No return system has yet been instituted for cigarettes or manufactured tobacco. The bill as passed by the House required that a return system be instituted for manufacturers of tobacco products, with a prescribed period of not less than 7 days, the first such period to begin not later than August 4, 1958.

Your committee struck the mandatory return provisions of the House bill. The effect of this change is to restore the provision of existing law which leaves to the Secretary or his delegate discretion whether or not to institute a return system by regulations, and to prescribe the period for which the return is to be made and the time when the return is to be filed. The provision contained in the House bill would have resulted in a nonrecurring revenue lag of $57 million.

The bill as passed by the House and approved by your committee

makes certain other changes with respect to tobacco products, the most important of which are:

(1) It removes manufacturers of cigarette papers and tubes from the scope of the permit system applicable to manufacturers of tobacco products and export warehouse proprietors, as well as certain other control requirements, but not from the requirements for bonds.

(2) It similarly eliminates dealers in tobacco materials from such permit system, but not from the requirements for bonds.

(3) It exempts persons buying and selling leaf tobacco on the floors of auction warehouses from the definition of "dealer in tobacco materials," and thereby from the statutory requirements relative to such dealers.

(4) It requires a tobacco grower's association to maintain records to enable the Government to assure itself that the association is bona fide and entitled to exemption from the requirements relating to dealers in tobacco materials.

(5) It substantially revises and clarifies the penalty provisions.

Your committee has combined the definitions of "manufacturer of tobacco" and "manufacturer of cigars and cigarettes" into a single definition "manufacturer of tobacco products," and has made other clarifying changes in the section dealing with tobacco definitions.

(*f*) *Firearms*

(1) The bill as passed by the House and approved by your committee eliminates the requirement that taxpayers transferring firearms also transfer documents to show all previous transfers of the firearm and taxpayments therefor. The Internal Revenue Service maintains a complete record of all lawful transfers of firearms, and of all payments of transfer tax.

(2) The bill as passed by the House and approved by your committee provides a uniform tax of $200 on the making of a firearm in lieu of the rate in existing law of either $1 or $200, depending on the nature of the firearm. Persons normally engaged in the business of manufacturing firearms are covered by exemptions contained in existing law.

(3) The bill as passed by the House and approved by your committee specifically defines possession of an unregistered firearm (machinegun, etc.) to be an unlawful act.

Your committee has made a technical change which would make it clear that carriers used to transport firearms involved in violations of chapter 53 are subject to forfeiture under the customs laws.

(*g*) *Procedure and administration*

(1) The bill as passed by the House and approved by your committee revises the provisions of section 7324 of the code, relating to the disposition of seized property which is likely to perish or become greatly reduced in value by keeping, or which cannot be kept without great expense, to make them applicable to property seized under section 7302 (property used in violation of internal revenue laws) as well as section 7301 (property subject to tax).

(2) The bill as passed by the House and approved by your committee increases from $1,000 to $2,500 the limitation on the value of seized personal property subject to forfeiture which may be disposed of administratively. This change conforms this limitation to comparable provisions of the customs laws.

(3) The bill as passed by the House and approved by your committee provides specific authority for the destruction of forfeited or abandoned coin-operated gaming devices, such as slot machines.

(*h*) *Disaster losses*

(1) The bill as passed by the House and adopted by your committee provides relief in respect of tax for beer lost by reason of the floods of 1951 or hurricanes of 1954, with payment to be made to the producer or dealer who possessed the beer at the time of the loss, or who replaced beer lost by a dealer.

(2) The bill as passed by the House and adopted by your committee provides retroactive relief with respect to distilled spirits, wines, beer, and tobacco products lost or destroyed by reason of a major disaster, as declared by the President, occurring after December 31, 1954, and before enactment of the bill, with payment to be made (i) to the possessor, (ii) to the producer, importer, or wholesale dealer who replaced for the possessor the lost or destroyed articles, or (iii) to a producer or manufacturer who extended credit to a wholesale dealer who replaced destroyed or lost articles to the possessor of such articles.

(3) The bill as passed by the House provided for refund or credit in the case of distilled spirits and wines of Puerto Rican manufacture lost in the hurricanes of 1954 after shipment to the United States, and for refund or credit in the case of distilled spirits, wines, and beer of Puerto Rican manufacture lost in disasters in the United States after December 31, 1954. Your committee has amended the bill as passed by the House to make these refund and credit provisions inapplicable in respect of products of Puerto Rican manufacture. This change was made because, since the bill was reported by the House Committee on Ways and Means, the Commonwealth of Puerto Rico enacted legislation authorizing the Secretary of the Treasury of Puerto Rico to make refunds with respect to such Puerto Rican products.

(4) The bill as passed by the House and adopted by your committee provides prospectively for credits or refunds to the producer or manufacturer or wholesale or retail dealer who possesses distilled spirits, wine, beer, or tobacco products at the time of their loss or destruction by reason of disaster.

Under the bill as passed by the House these provisions were applicable to such products whether produced in the United States, imported, or brought into the United States from Puerto Rico. Your committee adopts these provisions, but, in view of the provisions already made by the Commonwealth of Puerto Rico in respect of Puerto Rican products, revised these provisions to make them inapplicable to products of Puerto Rico brought into the United States.

Part II. Detailed Discussion of the Technical Provisions of Title II[1]

Sec. 201. Amendment of Chapter 51 of the Internal Revenue Code of 1954

Chapter 51—Distilled Spirits, Wines, and Beer

SUBCHAPTER A—GALLONAGE AND OCCUPATIONAL TAXES

Part I—Gallonage Taxes

SUBPART A—DISTILLED SPIRITS

Section 5001. Imposition, rate, and attachment of tax

This section is identical with code section 5001 as contained in the House bill, except that the date "July 1, 1958" has been stricken each place it appears and the date "July 1, 1959" has been inserted in lieu thereof in order to conform to section 3 of the Tax Rate Extension Act of 1958 (Public Law 85–475, approved June 30, 1958).

Subsection (a), "Rate of tax":

Paragraph (1), "General": This paragraph is existing law (*sec. 5001 (a) (1)*).

Paragraph (2), "Products containing distilled spirits": This paragraph is existing law (*sec. 5001 (a) (2)*), with the exception that the words "or alcohol" in the clause "which contain distilled spirits or alcohol" have been deleted since the term "distilled spirits" is defined in section 5002 (a) (6) (A) as including alcohol.

Paragraph (3), "Imported perfumes containing distilled spirits": This paragraph is existing law (*sec. 5001 (a) (3)*).

Paragraph (4), "Wines containing more than 24 percent alcohol by volume": This paragraph is existing law (*sec. 5001 (a) (5)*), except that a conforming change is made by deleting the adjective "absolute" in the term "absolute alcohol." This deletion conforms the language of this paragraph to the language relative to the rates of tax on still wine containing not more than 24 percent of alcohol by volume.

Paragraph (5), "Distilled spirits withdrawn free of tax": This paragraph is a new provision. It extends to all distilled spirits withdrawn free of tax (other than denatured distilled spirits) provisions similar to those provided by existing law (*sec. 5001 (a) (6)*) for denatured distilled spirits. It provides that all provisions of law relating to distilled spirits subject to tax shall apply in the case of distilled spirits withdrawn free of tax and removed, sold, transported, or used in violation of laws or regulations now or hereafter in force, and that the person so removing, selling, transporting, or using the distilled spirits shall be required to pay the tax. The primary purpose of this

[1] Section numbers referred to in this part of the report are those of the proposed amendments to the 1954 Code, rather than of the bill, unless otherwise identified. References to sections of existing law are italicized in the text of the detailed discussion. Where reference is made to regulations under existing law (1954 I. R. C.), only the specific sections construed or applied by the regulations have been cited. General authority for the issuance of regulations (sec. 7805 I. R. C., 1954) is applicable to the entire title.

provision is to prevent the diversion or unauthorized use of distilled spirits withdrawn free of tax.

Paragraph (6), "Denatured distilled spirits or articles": This paragraph is existing law (*sec. 5001 (a) (6)*) except that the more inclusive term "distilled spirits" has been substituted for the terms "alcohol" and "rum."

Paragraph (7), "Fruit-flavor concentrates": This paragraph is existing law (*sec. 5001 (a) (7)*).

Paragraph (8), "Imported liqueurs and cordials": This paragraph is existing law (*sec. 5001 (a) (9)*).

Paragraph (9), "Imported distilled spirits withdrawn for beverage purposes": This paragraph is derived from section *5001 (a) (8)* of existing law, which provides that alcohol imported for nonbeverage purposes and transferred from customs custody to industrial alcohol plants or industrial alcohol bonded warehouses and later withdrawn for beverage purposes shall be subject to an additional tax equal to the duty which would have been paid had such alcohol been imported for beverage purposes, less the duty already paid thereon. This paragraph is applicable to all imported distilled spirits withdrawn from customs custody for transfer to the bonded premises of a distilled spirits plant under the provisions of section 5232 and later withdrawn for beverage purposes; it continues to provide that such spirits shall be subject to an additional tax equal to the duty which would have been paid had such spirits been imported for beverage purposes, less the duty previously paid thereon.

Paragraph (10), "Alcoholic compounds from Puerto Rico": This paragraph is existing law (*sec. 5001 (a) (4) (A)*).

Subsection (b), "Time of attachment on distilled spirits": This subsection is existing law (*sec. 5001 (b)*) except that the terms "spirits," "alcohol," and "alcoholic spirits" have been deleted, since they are included in the defined term "distilled spirits."

Subsection (c), *"Cross reference"*.

Section 5002. Definitions

This section is identical with code section 5002 as contained in the House bill.

Subsection (a), "Definitions":

Paragraph (1), "Distilled spirits plant": The term "distilled spirits plant" is a new term and is specifically defined as an establishment qualified under the internal revenue laws to perform any one or any combination of the operations for which qualification is required under subchapter B. Existing law provides for nine separate establishments to perform the activities relating to the production, storage, denaturation, rectification, and bottling of the various types of distilled spirits (i. e. registered distilleries, fruit distilleries, industrial alcohol plants, internal revenue bonded warehouses, industrial alcohol bonded warehouses, industrial alcohol denaturing plants, distillery denaturing bonded warehouses, rectifying plants, and tax-paid bottling houses). The single distilled spirits plant permits the elimination of the artificial distinctions contained in existing law between similar types of functions and makes possible substantial simplification in qualifying requirements and operating

procedures and in general makes possible a more efficient system of tax administration. The elimination of the necessity for separate establishments to perform the functions referred to will facilitate the use of plants and equipment for national emergency purposes and make possible more efficient utilization of facilities by proprietors.

Paragraph (2). "Bonded premises": The term "bonded premises is a new term which is applicable to the premises of a distilled spirits plant, or part thereof, on which operations relating to production, storage, denaturation, or bottling of distilled spirits, prior to payment or determination of tax, are authorized to be conducted. The distilling and warehousing functions (including denaturation and bottling in bond) now performed in establishments separately qualified as registered distilleries, fruit distilleries, industrial alcohol plants, internal revenue bonded warehouses, industrial alcohol bonded warehouses, industrial alcohol denaturing plants, or distillery denaturing bonded warehouses would be performed on the bonded premises. (For provisions relating to authority to denature, see section 5241.)

Paragraph (3), "Bottling premises": The term "bottling premises" is a new term which is applicable to the premises of a distilled spirits plant, or part thereof, on which operations, relating to the rectification or bottling of distilled spirits or wines on which the distilled spirits tax has been paid or determined, are authorized to be conducted. The rectification or bottling functions, as the case may be, performed under existing law in rectifying plants and taxpaid bottling houses, would be performed on bottling premises.

Paragraph (4), "Bonded warehouseman": The term "bonded warehouseman" is a new term and is defined to mean the proprietor of a distilled spirits plant who is authorized to store distilled spirits after entry for deposit in storage and prior to payment or determination of the internal revenue tax. This term is the basis for qualification and bonding requirements with regard to the functions performed after entry for deposit of distilled spirits in storage and prior to payment or determination of the tax (or withdrawal of distilled spirits from bonded premises without payment of tax or free of tax as provided in section 5214 or 7510).

Paragraph (5), "Distiller": This paragraph is derived from existing law (*sec. 5002(a)*). For technical reasons the text has been divided into 4 subparagraphs.

Subparagraph (A): This subparagraph is existing law.

Subparagraph (B): This subparagraph is existing law with clarifying changes made in the text. The insertion of the word "distilled" in the term "distilled spirits" is a technical change conforming to the definition of distilled spirits.

The parenthetical clause "except a person making or using such material in the authorized production of wine or beer, or the production of vinegar by fermentation" has been added for the purpose of expressly exempting from the definition of a distiller, authorized brewers or wine makers, or producers of vinegar by fermentation. Such persons have not been held to be distillers under existing law.

Subparagraph (C): This subparagraph is existing law with the exception that the words "of evaporization" have been deleted, thereby making this provision clearly applicable to every person who by any process separates alcoholic spirits from any fermented substance.

Subparagraph (D): This subparagraph is existing law.

Paragraph (6), "Distilled spirits":

Subparagraph (A), "General definition": This definition is a clarifying restatement of existing law (*secs. 5002 (b) (1) and 5319 (1)*) without change in substantive effect. The term "ethanol" is substituted for the phrase "hydrated oxide of ethyl" as more modern terminology. The words "which is commonly produced by the fermentation of grain, starch, molasses, or sugar" are deleted, and the words "from whatever source or by whatever process produced" substituted therefor, since this definition is applicable regardless of the nature of the material used or the method of production employed. The words "and shall include whisky, brandy, rum, gin and vodka" are added to this definition as illustrative of commonly known types of distilled spirits; however, this definition is intended to be construed in its broadest sense, without regard to the process of production or the name by which the product is known.

Subparagraph (B), "Products of rectification": This subparagraph is existing law (*secs. 5002 (b) (2) and 5213 (a) (1)*), insofar as it applies to section 5291 (a), except for the conforming change in section numbers. The application of this definition to *section 5008 (b)* of existing law is omitted since it is not intended that products such as rectified wines be stamped in the same manner as distilled spirits. This omission is not intended to imply any restriction of the application of section 5205 (a) (2) to rectified distilled spirits.

Paragraph (7), "Proof spirits": This paragraph is a clarifying restatement of existing law (*sec. 5002 (c)*) without substantive change.

Paragraph (8), "Proof gallon": This paragraph is a clarifying restatement of existing law (*sec. 5002 (d)*) without substantive change.

Paragraph (9), "Container": This paragraph is derived from existing law (*sec. 5319 (2)*) which is applicable only with respect to industrial alcohol. The definition is extended to be applicable with respect to all types of distilled spirits. The word "bottle" has been added to the list of containers, the word "pipeline" has been substituted for the word "conduit," and the word "shipping" has been changed to the word "conveying," for the purpose of clarifying and broadening this definition.

Paragraph (10), "Approved container": "Approved container" is a newly defined term which means a container for distilled spirits, the use of which is authorized by regulations prescribed by the Secretary or his delegate. In many instances under existing law, specific containers are prescribed by statute for use under particular circumstances. These specific statutory restrictions have given rise to administrative difficulties and have

made necessary the amendment of the statutes from time to time as new types of containers were developed. The definition of "approved container" will facilitate the prescribing by regulations of such approved containers for particular uses as conditions warrant.

Paragraph (11), "Articles": This paragraph is existing law (*sec. 5319 (7)*) except that the more inclusive term "distilled spirits" has been substituted for "alcohol" and "rum," and the phrase "unless another meaning is distinctly expressed or manifestly intended" has been added to clarify the application of this definition.

Subsection (b), "Cross references".

Section 5003. Cross references to exemptions, etc.

This section corresponds to code section 5003 of the House bill and is a cross reference section only. Cross reference (2) has been made more descriptive of the provisions to which it refers.

Section 5004. Lien for tax

This section is identical with code section 5004 as contained in the House bill.

Subsection (a), "Distilled spirits subject to lien":

Paragraph (1), "General": This paragraph is derived from existing law (*sec. 5004 (a)\(1) and (b)*). Because of the elimination of distinctions between registered distilleries producing distilled spirits and industrial alcohol plants procuring distilled spirits designated as alcohol, it is necessary to combine the provisions as to the lien on distilled spirits and the lien on alcohol. (The term "alcohol" is included in the defined term "distilled spirits.")

Paragraph (2), "Exceptions": This paragraph is new.

Subparagraph (A): This subparagraph provides that the lien on distilled spirits shall terminate when the distilled spirits are withdrawn from bonded premises on determination of tax. On such withdrawal, the authorized person making the withdrawal is made liable for the payment of tax (sec. 5005 (c) (3)) and his withdrawal bond secures payment of such tax (sec. 5174). It is impractical to continue the lien on the spirits in such cases since the tax determined spirits may be mingled with distilled spirits on which the tax has already been paid, or such spirits may be entered into distribution channels under the same conditions as taxpaid distilled spirits.

Subparagraphs (B) and (C): Subparagraphs (B) and (C) are for the purpose of clarifying that the lien on distilled spirits terminates when the spirits are no longer in a taxable status. Subparagraph (B) applies to the instances where distilled spirits cease to be in a taxable status at the time of their withdrawal from the bonded premises of a distilled spirits plant. Such withdrawals are termed "free of tax." Subparagraph (C) is applicable to withdrawals from bonded premises "without payment of tax," in which case the liability for tax and the lien continue until the completion of the transaction for which the withdrawal was made, such as exportation, deposit in a foreign-trade zone, etc., as authorized by law.

Subsection (b), "Other property subject to lien":

Paragraph (1), "General": This paragraph is derived from existing law (*sec. 5004 (a) (1) and (b)*). Under existing law (*sec. 5004 (a) (1)*) the producing distiller's premises remain subject to lien for the tax on the distilled spirits produced thereon until such tax is paid. This has produced an inequitable situation in cases where the distiller divests himself of his ownership of the distilled spirits and the distilled spirits are transferred to the bonded premises of another proprietor. The 1954 Code provided authority under which the distilled spirits tax might be collected on the basis of a return, and the distilled spirits withdrawn from bond on the posting of a withdrawal bond to secure payment of the tax, thereby making the distiller's position more inequitable with respect to the lien. In order to correct these inequities, this paragraph terminates the lien on the distilling premises (and on other property subject to lien) when the distiller and other persons liable for the tax under section 5005 (a) or (b) have been relieved of liability for such tax by reason of the provisions of section 5005 (c) (2), (c) (3), (d), or (e) relating to transfers in bond, withdrawals on determination of tax, withdrawals free of tax, and withdrawals without payment of tax, respectively.

Another major change in existing law in this paragraph is the inclusion of a provision that, in the case of a distilled spirits plant producing distilled spirits, the premises subject to lien shall comprise the bonded premises of such plant, any building containing any part of the bonded premises, and the land on which such building is situated, all as described in the application for registration of such plant. Under existing law the "premises subject to lien" and "bonded premises" of a distillery are coextensive. This has the effect of prohibiting the storage, rectification, or bottling of distilled spirits, after payment or determination of the tax on such spirits, on any premises subject to lien, since only spirits on which the tax has not been paid or determined may be moved into or remain on bonded premises. For example, if the proprietor of a distillery desires to store distilled spirits in bond in a portion of a building subject to lien, he may not use any part of the building for the storage or processing of distilled spirits on which the tax has been paid or determined. Such diversity of operations within the same internal revenue bonded warehouse building is permitted under existing law only where such building is not located on distillery premises subject to lien. This paragraph will permit greater freedom in the use of portions of a distilled spirits plant as bonded premises coexistent with the use of other portions of the plant for other purposes. If, for example, the proprietor of the distilled spirits plant producing distilled spirits desires to establish as a part of his bonded premises a floor of a multistoried building and to reserve the remainder of the building for other purposes, he may be permitted to do so under this paragraph. In such case the lien will apply against the entire building (without regard to the confines of the bonded premises) and to the land on which such building is situated.

It is not intended that the term "building" as used in the penultimate sentence of this paragraph be construed to extend the lien to premises not heretofore considered to be part of a

building to which the lien applies. For example, a bonded wine cellar separated from a distilled spirits plant by a vertical common wall would not be considered to be in the same building as the distilled spirits plant and therefore would not be subject to the lien on the distilled spirits plant. It is also not intended that this paragraph be construed to make the lien applicable to premises not otherwise subject to lien, merely because of the passage of pipelines over such premises.

Paragraph (2), "Exception during term of bond": This paragraph is existing law (*sec. 5004 (a) (2)*) except that the word "given" has been substituted for the word "taken" and the reference "section 5173 (b) (1) (C)" has been substituted for the reference "section 5177 (b) (3)," as conforming changes. However, under existing law the bond required under *section 5177 (a) (3)* is in an amount equal to the appraised value of the property subject to lien. This requirement of existing law is changed in section 5173 (b) (1) (C) to provide for bonds in the appraised value of the property subject to lien but not to exceed the sum of $300,000.

Paragraph (3), "Extinguishment of lien": This paragraph is derived from *section 5004 (a) (3)* of existing law and makes provision for the extinguishment, under the conditions of subparagraphs (A) or (B), of any lien under paragraph (1), or any similar lien imposed on the property described in paragraph (1) under prior provisions of internal revenue law.

Subparagraph (A): This subparagraph is existing law relating to the extinguishment of the lien on the land and buildings of a registered distillery with two exceptions: First, provision is made for relief from the lien when persons liable for the tax by reason of the production of the spirits have been relieved of liability by reason of the provisions of section 5005 (c) (2), (c) (3), (d), or (e), and, second, the provisions for extinguishment of the lien are extended to all of the property described in paragraph (1).

Subparagraph (B): This is a new provision which provides that an indemnity bond given under the provisions of section 5173 (b) (1) (C) may be further conditioned to stand in lieu of any lien which has arisen under paragraph (1), or any similar lien imposed on the property described in paragraph (1) under prior provisions of internal revenue law, and to indemnify the United States for the payment of all taxes and penalties which otherwise could be asserted against such property by reason of such lien or liens. This provision will enable the proprietor of a distilled spirits plant to clear the title to his property insofar as the statutory lien is concerned on the posting and acceptance of a properly conditioned indemnity bond in the appraised value of the property, but not to exceed $300,000. This indemnity bond is in addition to, and not in lieu of, the qualification bonds covering the operation of distilled spirits plants and the withdrawal bonds covering the withdrawal of distilled spirits on determination of tax.

Paragraph (4), "Certificate of discharge": This paragraph is existing law (*sec. 5004 (a) (4)*) except that the words "the prop-

erty subject to lien under paragraph (1)" are substituted for the words "any such land or buildings" for the purpose of making the certificate of discharge coextensive with the property subject to lien.

Subsection (c), "Cross reference".

Section 5005. Persons liable for tax

This section corresponds to code section 5005 as contained in the House bill, and is the same as that section, except for changes in subsection (c) (2).

Subsection (a), "General": This subsection continues the liability provided by existing law (*sec. 5005 (a) and (c)*) of the distiller or importer for the tax imposed by section 5001 (a) (1).

Subsection (b), "Domestic distilled spirits":

Paragraph (1), "Liability of persons interested in distilling": This paragraph is existing law (*sec. 5005 (b)*). Since "alcohol" is included within the term "distilled spirits," the provisions of existing law (*sec. 5005 (c)*) specifically relating to alcohol are omitted.

Paragraph (2), "Exception": This is a new provision. Under existing law every proprietor or possessor of, and every person in any manner interested in the use of, any still, distilling apparatus, or distillery, is jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom.

This paragraph provides an exception from such liability in the case of persons owning, or having the right of control of, not more than 10 percent of any class of stock of a corporate proprietor of a distilled spirits plant. The exception does not apply to officers or directors of such corporate proprietors. This exception would prevent the recovery of tax from the personal assets of such small stockholders and is also necessary to clarify the status of transactions between corporate proprietors where the same individual may have a nominal stock interest in two or more corporations concerned in any one transaction.

Subsection (c), "Proprietors of distilled spirits plants":

Paragraph (1), "Bonded storage": Under existing law (*sec. 5232 (a)*) the bonds required in the case of internal revenue bonded warehouses are conditioned on payment of the tax on the withdrawal of distilled spirits from the warehouse although the distiller of the spirits remains specifically liable under the statute (*sec. 5005 (a) (1)*) for the payment of the tax. In the case of alcohol, existing law (*sec. 5005 (c)*) provides that proprietors of industrial alcohol plants and alcohol bonded warehouses shall be jointly and severally liable for any and all taxes on any and all alcohol produced thereat or stored therein. Under the provisions of existing law (*secs. 5194 (f) and 5217 (a)*) relating to transfers for redistillation and to national emergency transfers the liability becomes the liability of the consignee on removal of the spirits from the consignor's premises.

This paragraph makes uniform provisions as to the liability of persons operating bonded premises of distilled spirits plants. It provides that such persons shall be liable for the internal revenue tax on all distilled spirits while the distilled spirits are stored on such premises, and on all distilled spirits which are in transit to

such premises (from the time of removal from the transferor's bonded premises). It also provides that such liability for the tax on distilled spirits shall continue until the distilled spirits are transferred or withdrawn from the bonded premises as authorized by law, or until such liability for tax is relieved by reason of the provisions of section 5008 (a).

Paragraph (2), "Transfers in bond": Under existing law the distiller and other persons interested in distilling are liable for the tax on distilled spirits until such tax is paid (with certain exceptions (*sec. 5217 (a)*) in the case of national emergency transfers), or until the spirits become free of tax. This paragraph provides certain conditions under which the distiller or other persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, may be relieved from liability in the case of transfers in bond between distilled spirits plants. This paragraph removes the inequitable situation contained in existing law whereby the distiller and persons interested in distilling are in effect required to underwrite the payment of the tax, even though they have divested themselves of ownership of the spirits and the spirits have been transferred to unaffiliated persons qualified under internal revenue laws to receive such spirits. The relieving of a distiller and other persons interested in distilling from liability in the case of such transfers would apply to both past and future transactions when all of the conditions for such relief are met.

Where the transfers are transactions which do not meet the conditions for relief, the distiller and other persons interested in distilling would not be relieved of liability, but would be jointly and severally liable with the proprietor of the bonded premises of the distilled spirits plant to which the distilled spirits are transferred.

Your committee has amended this paragraph to make it clear that its provisions will not have retroactive effect as to distilled spirits upon which the tax has been paid or determined prior to July 1, 1959.

Paragraph (3), "Withdrawals on determination of tax":

Subparagraph (A): This subparagraph is a new provision which specifically imposes on any person, who withdraws distilled spirits from the bonded premises of a distilled spirits plant on determination of the tax and on the giving of a withdrawal bond, liability for payment of the internal revenue tax on the distilled spirits so withdrawn, from the time of such withdrawal. This provision enables a rectifier or bottler of distilled spirits to become the taxpayer and to obtain the benefit of any deferred period for payment of the tax prescribed under the provisions of section 5061.

Subparagraph (B): This subparagraph is a new provision which affords relief from liability to the distiller and other persons interested in distilling, if the person withdrawing the distilled spirits on determination of tax, and the person, or persons, liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and if all persons so liable for the tax have divested themselves of

all interest in the spirits so withdrawn. Under existing law, the distiller and other persons interested in distilling are liable for the tax on spirits which are withdrawn on determination of tax, even though they have divested themselves of the ownership and possession of the spirits and the distilled spirits are withdrawn by the proprietor of an internal revenue bonded warehouse who is in no way affiliated with the distiller. This condition is considered to be inequitable since the distiller has no means of exercising control in such cases.

In cases where the conditions for relief from liability have not been met, the distiller or other persons interested in distilling will continue to be jointly and severally liable for the payment of the tax with the person who withdraws the distilled spirits on determination of tax.

Subsection (d), "Withdrawals free of tax": This is a new provision which specifically relieves the person, or persons, liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, of liability for payment of the distilled spirits tax as to spirits withdrawn free of tax, as provided by law, at the time such spirits are so withdrawn from bonded premises. While existing law contains no such specific provision, it has been administratively and judicially construed to this effect.

Subsection (e), "Withdrawals without payment of tax":

Paragraph (1), "Liability for tax": This is a new provision which applies to withdrawals without payment of tax the same principle as is applied in the case of withdrawals on determination of tax (see subsec. (c) (3)). This provision places liability for the tax on any person who withdraws distilled spirits from the bonded premises of a distilled spirits plant without payment of tax as provided by law, as for example, for exportation, or for use in the production of wine. This paragraph also relieves from liability the person, or persons, liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, if the person withdrawing such distilled spirits and the persons so liable for the tax are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and if all persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, have divested themselves of all interest in the spirits so withdrawn. If the distiller or other persons interested in distilling have not met the conditions for relief, they will be jointly and severally liable for the tax with the person who withdrew the distilled spirits.

Paragraph (2), "Relief from liability": This is a new provision which specifically relieves all persons liable for the tax on distilled spirits by reason of the provisions of paragraph 1 or by reason of the provisions of subsection (a) or (b), or under any similar prior provisions of internal revenue law, from such liability at the time, as the case may be, the distilled spirits are exported, deposited in a foreign-trade zone, used in the production of wine, deposited in a customs manufacturing bonded warehouse, or laden as supplies upon, or used in the maintenance or repair of,

certain vessels or aircraft, as provided by law. While existing law contains no such specific provision, it has been construed to this effect.

Subsection (f), "Cross references".

Section 5006. Determination of tax

This section corresponds to code section 5006 as contained in the House bill, except as amended in the following respects by your committee. The language of paragraphs (1) and (2) of subsection (a) has been rearranged for purposes of clarification. Also, the provisions relating to mingling, as contained in section 5173 (c) (1) (A) in the House bill, have been incorporated in subsection (a), for purposes of more orderly presentation, and have been revised to provide for more flexibility in administration. Specific exceptions to the bonding period limitation have been provided in subsection (a) for distilled spirits of 190° or more of proof and denatured distilled spirits, neither of which, for commercial reasons, is stored in bond for extended periods.

The term "determined" used in this section and elsewhere in this chapter with respect to the tax on distilled spirits is used in instances where the tax is determined and paid at the time the spirits are withdrawn from bond, as well as in instances where the amount of the tax to be paid is computed and fixed at the time the spirits are withdrawn from bond (upon the giving of withdrawal bond), with payment to be made by return after such withdrawal pursuant to regulations prescribed under section 5061 (a).

Subsection (a), "Requirements":

Paragraph (1), "General": This paragraph corresponds to paragraph (1) of the House bill, and is a clarifying restatement of existing law (*secs. 5006 (a) (1) and (2)*). Your committee has inserted the last sentence in order to make it clear that the tax on distilled spirits which are on bonded premises is to be determined upon completion of the gauge for determination of tax, and before the distilled spirits are removed from bonded premises.

Paragraph (2), "Distilled spirits entered for storage": This paragraph is derived from existing law (*secs. 5006 (a) (2) and 5232 (a)*) which provides that the tax on distilled spirits entered for deposit in internal revenue bonded warehouses shall be determined at the time the same are withdrawn therefrom and within 8 years from the time of original entry for deposit therein (with certain exceptions for distilled spirits which were 8 years of age or older on July 26, 1936). Under existing law and regulations, the 8-year bonding period is not applicable to alcohol stored in industrial alcohol bonded warehouses. This paragraph extends the bonding period to 20 years, thus permitting additional postponement of the time for payment. It continues the exception in existing law for distilled spirits which were 8 years of age or older on July 26, 1936. While the House bill made the bonding period limitation applicable to alcohol, your committee has provided a specific exception therefrom in the case of denatured distilled spirits and of distilled spirits of 190° or more of proof, thus continuing the existing exception for alcohol and applying it to all like spirits. This exception is intended to simplify accounting for such spirits, which, for commercial reasons, are not stored in bond for extended periods.

The House bill contained provisions relating to the withdrawal of mingled distilled spirits in both this paragraph and section 5173 (c) (1) (A). Your committee has consolidated and restated these provisions to provide for more flexibility in administration, but has retained the restriction that, in the application of these provisions, no more spirits will remain in bond than would have been the case had such mingling not occurred. These provisions are not intended to contravene the provisions of code section 5234 (a) (2) in the bill, relating to the application of the bonding period to distilled spirits consolidated for further storage in bond in packages.

Paragraph (3), "Distilled spirits not accounted for": This paragraph is existing law (*sec. 5007 (e) (1)*).

Subsection (b), "Taxable loss":

Paragraph (1), "On original quantity": This paragraph is a clarifying restatement of existing law (*sec. 5006 (b)*), except that it provides that in cases where the Secretary or his delegate requires payment on the original quantity of spirits entered for deposit in storage because of loss by theft or unauthorized voluntary destruction, and the extent of any loss of such spirits from causes other than theft or unauthorized voluntary destruction can be established by the proprietor to the satisfaction of the Secretary or his delegate, an allowance of the tax as to the loss so established may be credited against the tax as to the original quantity.

Paragraph (2), "Alternative method": This paragraph is new. It provides an alternative to the collection of tax on the original quantity, where there is evidence satisfactory to the Secretary or his delegate that there has been access, other than as authorized by law, subsequent to entry for deposit in storage in internal revenue bond, to the contents of the casks or packages stored on bonded premises, and the extent of such access is such as to evidence a lack of due diligence or a failure to employ necessary and effective controls on the part of the proprietor. In such cases the Secretary or his delegate may, in lieu of requiring specific casks or packages to be withdrawn and taxpaid on the original quantity of distilled spirits entered for deposit in storage in internal revenue bond in such casks or packages, assess an amount equal to the tax on 5 proof gallons of distilled spirits at the prevailing rate for each of the total number of casks or packages to which the Secretary or his delegate determines access has been had other than as authorized by law. This provision affords an additional aid to the protection and collection of the revenue, particularly where it is impracticable to determine the quantity illegally removed from such casks or packages.

Paragraph (3), "Application of subsection": This paragraph provides that in the case of packages which are filled from storage tanks or recasked or refilled in internal revenue bond as authorized by law, the quantity in such casks or packages immediately subsequent to such filling, recasking, or refilling, will be treated as the original quantity for the purpose of this subsection. This change is necessary due to the provisions of other sections of this chapter which permit the filling of casks or packages from tanks on bonded premises and which authorize, under certain conditions, the refilling or recasking of packages.

Subsection (c), "Distilled spirits not bonded":

Paragraph (1), "General": This paragraph, except for minor technical and clarifying changes which do not change the substantive effect, is existing law (*sec. 5006 (c)*).

Paragraph (2), "Production at other than qualified plants": This paragraph specifically provides that the tax on any distilled spirits produced in the United States at any place other than a qualified distilled spirits plant shall, except as otherwise provided by law, be due and payable immediately upon production. This provision is consistent with long-standing construction of the statutes.

Subsection (d), "Unlawfully imported distilled spirits": This subsection is existing law (*sec. 5006 (d)*).

Subsection (e), "Cross reference".

Section 5007. Collection of tax on distilled spirits

This section is identical with code section 5007 as contained in the House bill.

Subsection (a), "Tax on distilled spirits removed from bonded premises":

Paragraph (1), "General": This paragraph is derived from subsection (a) (relating to distilled spirits) and (d) (relating to alcohol) of *section 5007* of existing law without substantive change.

Paragraph (2), "Distilled spirits withdrawn to bottling premises under withdrawal bond": This paragraph is a new provision, which provides that, in the case of distilled spirits withdrawn from bonded premises on determination of the tax and posting of a withdrawal bond, the Secretary or his delegate shall, in fixing the time for filing the return and the time for payment of the tax, make allowance for the period of transportation of the distilled spirits from the bonded premises to the bottling premises, not to exceed such maximum periods as he may by regulations prescribe. The purpose of this provision is to afford equitable treatment for proprietors engaged in rectifying and bottling operations whose premises are not located in the vicinity of the bonded premises from which the spirits are withdrawn. In integrated operations the distilled spirits are customarily withdrawn from the bonded premises and transferred by pipeline to the bottling premises for rectifying or bottling. This provision will serve to place all proprietors of bottling premises on a comparable basis as far as time of payment of the tax is concerned. Under this paragraph, regulations could provide that in such cases the time for filing return and paying the tax may be extended from the day of withdrawal from the bonded premises to the day of receipt at the bottling premises or to a day falling at the end of a given period, such as 21 days, whichever occurred first.

Subsection (b), "Collection of tax on imported distilled spirits and perfumes containing distilled spirits": This subsection is existing law (*sec. 5007 (b)*).

Subsection (c), "Cross references".

Section 5008. Abatement, remission, refund, and allowance for loss or destruction of distilled spirits

This section corresponds to code section 5008 as contained in the House bill.

The section is a restatement of existing law (*sec. 5011*) revised to provide certain additional relief from the distilled spirits tax under prescribed terms and conditions. The most significant change is the extension of relief from the tax with respect to distilled spirits lost after withdrawal from bond and prior to the completion of bottling and casing for removal from the bottling premises. The specific changes are discussed under the subsections in which they appear.

Subsection (a), "Distilled spirits lost or destroyed in bond":

Paragraph (1), "Extent of loss allowance", and paragraph (2) "Proof of loss", correspond to the provisions of existing law (*sec. 5011 (a) (1) and (2)*) relating to distilled spirits lost or destroyed in bond. The specific provisions of *section 5011 (c)* of existing law relating to loss or destruction of alcohol are omitted, since "alcohol" is included within the definition of the term "distilled spirits." The term "proprietor of a distilled spirits plant" has been inserted in these paragraphs in lieu of the words "distiller and warehouseman". This change conforms to changes in nomenclature elsewhere in this chapter. The term "or agents" has been added in two instances for clarification and conformity with corresponding provisions of this chapter, relating to wine. The word "responsible" has been changed to "liable" for clarification.

Paragraph (3), "Refund of tax": This paragraph is existing law (*sec. 5011 (a) (3)*).

Paragraph (4), "Limitations": This paragraph is a clarifying restatement of existing law (*secs. 5011 (a) (3) and (a) (4)*), except that it provides that the limitations shall not apply under the conditions set forth in paragraph (5). Your committee has deleted certain redundant language from this paragraph, since the provisions of paragraph (5) govern the extent of the applicability of this subsection to losses occurring after determination of tax, including instances where the losses occur after the expiration of the statutory bonding period.

Paragraph (5), "Applicability": This paragraph is new. It extends the loss provisions of this subsection to distilled spirits on which the tax has been determined but which have not been physically removed from bonded premises. However, it specifically provides that this extension of the loss provisions is not applicable where the loss occurred after the expiration of the statutory bonding period, unless the loss occurred in the course of physical removal of the spirits immediately subsequent to such time. In order to avoid any area of ambiguity in the applicability of the provisions of this subsection and of subsection (c), this paragraph provides that allowance for loss may not be made under this subsection if the loss is allowable under the provisions of subsection (c), or would be allowable under those provisions except for the limitations prescribed under paragraph (3) thereof. It is recognized that the applicability of subsection (c) is subject to the provisions of paragraph (c) (5).

Subsection (b), "Voluntary destruction":

Paragraph (1), "Distilled spirits in bond": This paragraph is existing law (*sec. 5011 (b)*) except for the substitution of the term "proprietor of a distilled spirits plant" for the terms "distiller" and "warehouseman." These are conforming changes in nomenclature. The word "responsible" has been changed to "liable" for clarification.

Paragraph (2), "Distilled spirits withdrawn for rectification or bottling": *Section 5011* of existing law provides for destruction of distilled spirits in bond under Government supervision and for the allowance of the tax on the distilled spirits so destroyed. This paragraph is a new provision which provides that distilled spirits which are withdrawn for rectification or bottling and are, before the completion of packaging for removal from the bottling premises, found by the proprietor who withdrew such spirits to be unsuitable for the purpose for which intended to be used may, on application and after gauge, be destroyed under supervision. The tax on the quantity of the spirits so destroyed will be abated, remitted, or without interest, credited or refunded, to the proprietor of the distilled spirits plant who withdrew the distilled spirits on payment or determination of the tax.

In the case of the authorized destruction under this paragraph of a product which had been subjected to any process of rectification, the allowance of any claim for tax would be only on the quantity of distilled spirits, contained in such product, which had been withdrawn from bond by the proprietor of bottling premises on payment or determination of tax and would exclude allowance in respect to other alcoholic ingredients of such rectified products.

Your committee has changed the date "July 1, 1958" to "July 1, 1959" in conformity with the advancement of the effective date of the general revision of chapter 51, as provided by your committee.

Subsection (c), "Loss of distilled spirits withdrawn from bond for rectification or bottling": This subsection is new. Existing law (*secs. 5004 (a) (1) and 5006 (a) (1)*) provides that the tax shall attach to distilled spirits when they come into existence as such, and makes provision for the payment or determination of such tax (in the case of legally-produced distilled spirits) when the distilled spirits are withdrawn from bond. Existing law (*sec. 5011 (a) (1)*) also makes allowance for the tax on the distilled spirits lost (other than by culpable theft or unauthorized voluntary destruction) before the distilled spirits are withdrawn from bond. Under these provisions a person who bottles distilled spirits in bond does not pay tax on the distilled spirits lost incident to the bottling and casing operations.

However, there is no provision in existing law for the allowance of tax on distilled spirits lost after payment or determination of tax and before the completion of bottling, casing, or other packaging (either with or without rectification); therefore, the quantity of distilled spirits which a person who bottles distilled spirits after payment or determination of tax has available for sale is generally less than the quantity on which the tax is paid.

This subsection provides, with certain specified limitations, for the allowance of the distilled spirits tax on losses normally incident to rectifying and bottling operations.

Paragraph (1), "General": This paragraph provides for the allowance of the distilled spirits tax on losses of distilled spirits occurring after payment or determination of tax and before the completion of the bottling and casing or other packaging of such distilled spirits for removal from the bottling premises, under such regulations as the Secretary or his delegate may prescribe, and within certain limitations imposed by this subsection. The allowances may, as regulations prescribe, be made by abatement, remission, or refund, or by the crediting of such allowances on the bottler's tax returns.

The provision that the allowance shall be made to the proprietor of the distilled spirits plant who withdrew the distilled spirits on payment or determination of tax is intended (except as provided in paragraphs (4) and (5)) to restrict the allowances to the taxpayer.

The allowances provided under subparagraph (A) for losses occurring by reason of accident are applicable only to losses occurring while the distilled spirits are being removed from bond to the bottling premises of the distilled spirits plant for which they were withdrawn from bond (internal revenue bond or customs bond). In the instance of losses by reason of flood, fire, or other disaster, the allowances are applicable to losses occurring while the distilled spirits are being removed from bond to the bottling premises of the distilled spirits plant for which they were withdrawn from bond (internal revenue bond or customs bond), or while they are at such distilled spirits plant prior to the completion of their packaging, or bottling and casing, for removal.

The allowances provided under subparagraph (B) are applicable to losses occurring while the distilled spirits are being removed from bond to the bottling premises of the distilled spirits plant for which they were withdrawn from bond (internal revenue bond or customs bond), or while they are at such distilled spirits plant, prior to the completion of their packaging, or bottling and casing, for removal.

Paragraph (2), "Limitation": This paragraph prescribes limitations on abatement, remission, credit, or refund of taxes under paragraph (1).

The first limitation (subpar. (A)) is similar to a limitation in subsection (a) (4) relating to allowance for loss in the case of distilled spirits lost or destroyed in bond. Under this subparagraph, no allowance may be made if the taxpayer is indemnified or recompensed for the tax.

The second limitation (subpar. (B)) provides that allowance for loss occurring by reason of, and incident to, authorized rectifying, packaging, bottling, or casing operations (including loss by leakage or evaporation occurring during removal from bond to the bottling premises and during storage on bottling premises pending rectification or bottling) shall not be in excess of the maximum loss allowances established under the provisions of paragraph (3).

Your committee has added subparagraph (C) which provides a specific statute of limitations, comparable to others provided in chapter 51 under similar conditions, with respect to losses under subsection 5008 (c). In case of losses by accident or disaster

covered by paragraph (1) (A), the period is 6 months from the date of such loss. In case of losses occurring by reason of, and incident to, the operations described in paragraph (1) (B), the period is 6 months from the close of the fiscal year in which the loss occurred.

This paragraph also provides authority for the Secretary or his delegate to prescribe by regulations the means or methods by which the losses within the meaning of subparagraph (B) of paragraph (1) shall be determined, and the times at which such determination shall be made.

Paragraph (3), "Maximum loss allowances":

Subparagraph (A): This subparagraph fixes the maximum loss allowance where all of the alcoholic ingredients used in distilled spirits products during the fiscal year were distilled spirits withdrawn from bond (internal revenue bond or customs bond) by the proprietor of the bottling premises, for removal to such premises.

This subparagraph also provides that no more than the net loss will be allowable.

A schedule of limitations on allowable losses is provided in order to facilitate the maintenance of protection against the possibility of excess allowances without imposing an expensive custodial type of supervision over rectifying and bottling operations after payment or determination of tax. The schedule of maximum allowable losses is based on historical losses as reported by plant proprietors to the Internal Revenue Service, and recognizes the fact that the percentage of losses, generally, is greater for small operations than for larger ones. The schedule is designed to allow the total net losses of most of the plants in each size bracket and a large proportion of the losses of all plants. Provisions are made, however, for increases in the schedule when found consistent with protection of the revenue and justifiable on the basis of actual losses, and for decreases if found necessary for revenue protection.

Subparagraph (B): This subparagraph provides a rule for determining the amount of loss allowable under paragraph (1) (B) when alcoholic ingredients other than distilled spirits withdrawn from bond by the proprietor of the bottling premises on payment or determination of tax for removal to such premises are used in distilled spirits products. The purpose of this provision is to prevent excessive allowance of loss when such other alcoholic ingredients are used in distilled spirits products, by reducing the loss otherwise allowable in a ratio equal to the ratio of the total proof gallons of such other alcoholic ingredients to the total proof gallons of all alcoholic ingredients used in such distilled spirits products.

Subparagraph (C): This subparagraph defines the terms "completions" and "fiscal year," as used in this subsection.

Subparagraph (D): This subparagraph provides that the Secretary or his delegate may, under such regulations as he may prescribe, make tentative allowances for losses provided for in paragraph (1) (B). Under this subsection losses are

computed on the fiscal year basis and this subparagraph will enable the tentative allowance of losses for lesser periods, subject to adjustment at the end of the fiscal year. Your committee has revised the language of this subparagraph to make it clear that the Secretary or his delegate may prescribe conditions with respect to the tentative allowance for losses, as provided therein; as, for example, the conditioning of withdrawal bonds given under section 5174 on the reimbursement of the United States in respect of any amount which may be tentatively allowed in excess of the amount allowable for the fiscal year.

Subparagraph (E): This subparagraph provides that the loss allowable to any proprietor of a distilled spirits plant under paragraph (1) (B) shall not exceed the quantity which would be allowed by a tentative estimates schedule constructed in accordance with paragraph (3) (D) for the portion of the fiscal year that such proprietor was qualified to operate such plant. This provision limits the amount of allowance in the case of persons qualified to operate for less than the entire fiscal year to an amount proportionate to that which would have been allowed if the proprietor had operated for the full fiscal year at the rate of loss and the rate of completions prevailing in his operation during the period that he was qualified.

Subparagraph (F): This subparagraph provides for the allowance, in addition to the losses allowed in paragraphs (1) (A) and (1) (B), of the actual determined losses incurred in closed systems in the manufacture of gin and vodka where produced in a manner similar to that authorized on bonded premises. Such losses are readily determinable from the quantities of spirits used in, and recovered from, the processing of gin and vodka. The allowance for actual losses under this subparagraph is also restricted to spirits withdrawn from bond on payment or determination of tax by the proprietor of the bottling premises.

Paragraph (4), "Eligible proprietors":

Subparagraph (A): This subparagraph defines the term "proprietor" as used in this subsection and in subsection (b) (2) with respect to corporate proprietors. For the purpose of this definition, the term "subsidiary" is intended to mean a corporation of which at least 51 percent of the voting shares is owned by the parent corporation, and the term "affiliate" is intended to include only proprietary or ownership affiliations where there is common ownership control. The corporations making application to be treated as one proprietor for the purposes of this subsection and subsection (b) (2) must comply with such conditions as the Secretary or his delegate may by regulations prescribe.

Subparagraph (B): This subparagraph makes applicable the provisions of this subsection and subsection (b) (2) to the proprietor of bottling premises who makes application for the withdrawal of distilled spirits from bond on payment of tax, and provides that distilled spirits withdrawn, pursuant to such application, to the bottling premises of such pro-

prietor shall be within the applicability of this subsection and subsection (b) (2). This provision is necessary to effectuate the provisions of this subsection and subsection (b) (2) with respect to distilled spirits on which the tax is paid on withdrawal from bond, and is not intended to limit the eligibility of proprietors who withdraw distilled spirits from bond on determination of tax, under a withdrawal bond given pursuant to section 5174 (a).

Paragraph (5), "Applicability": This paragraph, as it appeared in the House bill, would have made the provisions of the subsection effective on August 1, 1958. Your committee has amended the paragraph to provide that the subsection shall take effect on July 1, 1959, concurrently with the general revision of chapter 51, the effective date of which has been advanced by your committee from July 1, 1958, to July 1, 1959.

Subsection (d), "Distilled spirits returned to bonded premises":

Paragraph (1), "Allowance of tax": This paragraph is new. Under the provisions of section 5215, distilled spirits may, under certain specified conditions, be returned to the bonded premises of a distilled spirits plant subsequent to determination of tax if such spirits have been found to be unsuitable for the purpose for which they were intended to be used. This subsection provides authority for the Secretary or his delegate to make allowance for the tax on the distilled spirits which are returned to bonded premises under section 5215, since such spirits again become subject to the tax when returned to bonded premises. The quantity of distilled spirits for which allowance is provided under this paragraph is the actual quantity of distilled spirits returned to the bonded premises.

Your committee has changed the date "July 1, 1958" to "July 1, 1959" in conformity with the advancement of the effective date of the general revision of chapter 51, as provided by your committee.

Paragraph (2), "Limitation": This paragraph is new and contains the limitation on the time for filing of the claim under this subsection and requires that such claim be filed by the proprietor of the distilled spirits plant to which the distilled spirits are returned.

Subsection (e), "Samples for use by the United States": This subsection is a new provision. It is necessary for internal revenue officers from time to time to take samples of distilled spirits from the premises of a distilled spirits plant for testing or analysis as an aid in the enforcement of laws relating to distilled spirits. This subsection provides that the proprietor of the distilled spirits plant shall be allowed (without interest) refund or credit for the tax on any samples of tax-determined distilled spirits so removed. Under existing law no tax is asserted in the case of samples of distilled spirits taken by internal revenue officers while the distilled spirits are still in bond. However, in the case of distilled spirits on which the tax has been paid or determined, there is no provision for credit or refund of the tax. This subsection is intended to correct this inequity.

Subsection (f), "Distilled spirits withdrawn without payment of tax": This subsection is a clarifying restatement of existing law derived principally from *section 5247 (e)* relating to distilled spirits withdrawn

for exportation, and *section 5522 (b)* relating to distilled spirits withdrawn for transportation to customs manufacturing bonded warehouses.

The specific provisions of paragraph 3, relating to losses during transportation to the vessel or aircraft on withdrawal under section 5214 (a) (7), conform to the construction of existing law and are consistent with existing procedure with respect to such losses.

The specific provisions of paragraph 4, relating to losses occurring during transportation to the foreign-trade zone in case of withdrawals under section 5214 (a) (8), conform to the construction of existing law and are consistent with existing procedures with respect to such losses.

Subsection (g), "Other laws applicable": The purpose of this subsection is to make it clear that all provisions of law, including penalties, applicable in respect of the internal revenue tax on distilled spirits, shall, insofar as applicable and not inconsistent with subsections (b) (2), (c), and (d), be applied to all credits or refunds provided for under such subsections, whether or not made to the person who paid the tax.

Subsection (h), "Cross reference".

Section 5009. Drawback

This section is identical with code section 5009 as contained in the House bill.

Subsection (a), "Drawback on exportation of distilled spirits in casks or packages": This subsection is derived from existing law (*sec. 5012*) which provides for payment of drawback of tax on distilled spirits exported subsequent to payment of the tax, in the distiller's original casks or packages.

This subsection contains three principal changes in existing law. The first change eliminates the requirement that the distilled spirits be in "distiller's original" casks or packages and provides that the distilled spirits may be in any casks or packages containing not less than 20 wine gallons each, filled on bonded premises. Distilled spirits in bond may be filled into casks or packages other than distiller's original packages, such as packages filled from tanks on bonded premises, and packages filled by the consolidation of packages. The purpose of this change is to provide for the drawback of tax on distilled spirits exported in any such packages filled on bonded premises.

The second change authorizes the allowance of drawback of the tax in respect of distilled spirits which have been withdrawn from bond on determination of tax under the provisions of section 5213. This change does not endanger the revenue since the person withdrawing the distilled spirits on determination of tax must post bond under the provisions of section 5174 to assure the payment of tax. This change is consistent with the provisions of section 5061 under which the tax may be paid on the basis of a return rather than by stamp.

The third change provides that the drawback shall be paid or credited. This gives to the Secretary or his delegate discretion as to the method of allowing the drawback and would enable the Secretary or his delegate to credit the amount of drawback against tax on distilled spirits where such tax had been determined but not yet paid.

Subsection (b), "Cross references".

SUBPART B—RECTIFICATION

Section 5021. Imposition and rate of tax

This section is identical with code section 5021 as contained in the House bill.

The first sentence of this section is existing law (*sec. 5021 (a)*).

The second sentence is new and provides that spirits or wines shall not be twice subjected to tax under this section because of separate acts of rectification, pursuant to approved formulas, between the time such spirits or wines are received on the bottling premises and the time they are removed therefrom. Existing law provides that the rectification tax shall be determined on the completion of the process of rectification, and if the rectified distilled spirits or wines are again subjected to rectification, additional tax is imposed. In instances where a quantity of rectified distilled spirits or wines on which the rectification tax has been paid or determined is again rectified by mixing with other distilled spirits or wines on bottling premises before being removed therefrom, this provision will result in the collection of rectification tax on the number of proof gallons of the mixture in respect to which such tax has not previously been paid or determined. The purpose of this change is to afford rectifiers greater freedom in the conduct of authorized operations.

Section 5022. Tax on cordials and liqueurs containing wine

This section is identical with code section 5022 as contained in the House bill, except that the date "July 1, 1958" has been stricken each place it appears and the date "July 1, 1959" has been inserted in lieu thereof in order to conform to section 3 of the Tax Rate Extension Act of 1958 (Public Law 85–475, approved June 30, 1958).

The section is a clarifying restatement of existing law (*sec. 5022*). There are two principal purposes for the revision of the language in this section. The first purpose is to make it clear that the tax imposed under this section does not apply to products produced for sale as wine, wine specialties, or cocktails. The second change is the insertion of a statement to make it clear that the last sentence of section 5021 is not to be construed as a limitation on the imposition of tax under this section.

Section 5023. Tax on blending of beverage brandies

This section is identical with code section 5023 as contained in the House bill and is derived from existing law (*sec. 5023*). Under existing law a tax of 30 cents per proof gallon (and a proprortionate tax at a like rate on all fractional parts of such proof gallon) is imposed on fruit brandies blended in internal revenue bonded warehouses, such tax to be determined at the time of withdrawal therefrom. This section continues this tax except as to such brandies which have been aged in wood at least 2 years at the time of their first blending or mixing. Section 5025 (f), as well as existing law, provides similar exemption for such blending on rectifying premises. Since section 5008 (a) is applicable to the loss of such distilled spirits, the separate loss provisions in existing law are omitted.

Section 5024. Definitions

This section is identical with code section 5024 as contained in the House bill and is a crossreference section.

Section 5025. Exemption from rectification tax

This section is identical with code section 5025 as contained in the House bill.

Subsection (a), "Absolute alcohol": This subsection is existing law (*sec. 5025 (a)*) except that the term "distilled" has been inserted preceding the word "spirits" as a clarifying and conforming change.

Subsection (b), "Production of gin and vodka": This subsection is a clarifying restatement of existing law (*sec. 5025 (b)*).

Subsection (c), "Refining spirits in course of original distillation": This subsection is existing law (*sec. 5025(c)*) except that the words "or other original and continuous processing" are inserted after the phrase "in the course of original and continuous distillation", and the word "production" is substituted for the word "manufacture." The purpose of these changes is to clarify the intent that any purifying or refining of distilled spirits, carried on in the production facilities on the bonded premises of a distilled spirits plant, which takes place in the course of the original and continuous production of distilled spirits, whether such original production is by distillation or other processing, is not deemed to be rectification within the meaning of the sections cited. This change recognizes the fact that it is possible to produce distilled spirits by methods of processing other than distillation.

This subsection is the authority for the production of gin and vodka in the production facilities of a distilled spirits plant. It is not intended to be construed as authorizing the production of such products in bonded warehousing facilities of such plants.

Subsection (d), "Redistillation of distilled spirits on bonded premises": Under existing law (*secs. 5025 (d) and 5217 (a)*), the redistillation of distilled spirits at a registered distillery is exempt from the provisions of law relating to rectification. There are similar exemptions in existing law (*secs. 5217 (a) and 5306*) for redistillation at industrial alcohol plants. This subsection continues these exemptions and makes them applicable to the redistillation of distilled spirits in the production facilities of a distilled spirits plant, as provided under section 5223.

Subsection (e), "Mingling of distilled spirits": This subsection specifies the conditions under which distilled spirits may be mingled without being subject to the provisions of sections 5021, 5081, and 5082, relating to rectification.

Paragraph (1): Under existing law (*sec. 5306*) the proprietors of industrial alcohol plants and industrial alcohol bonded warehouses are exempt in the conduct of their operations from the provisions of the internal revenue laws relating to rectification, and the mingling of alcohol is therefore permitted on such premises.

This paragraph provides exemption for the mingling on bonded premises of any spirits distilled at 190° or more of proof (with or without reduction subsequent to distillation), thus extending to all such spirits the rule applicable in existing law to distilled spirits designated as alcohol.

Paragraph (2): National emergency legislation (*sec. 5217 (a)*), which expires July 11, 1960, makes provision for the mingling of distilled spirits in bond, or in the course of removal therefrom, for redistillation, or storage, or any other purpose deemed neces-

sary to meet the requirements of the national defense. This paragraph provides for similar exemptions on a permanent basis.

Paragraph (3): This is a new provision which exempts from the laws relating to rectification the mingling of heterogeneous distilled spirits in bulk gauging tanks on bonded premises for immediate removal to bottling premises, exclusively for use in taxable rectification, or in rectification not subject to tax by virtue of the provisions of section 5025 (f) (blending of straight whiskies aged in wood for a period of not less than 4 years, etc.). The purposes of this provision are to simplify the determination of tax by permitting greater utilization of bulk gauging facilities and to make possible more efficient operations by proprietors in transactions relating to the removal of distilled spirits from bond and the transfer thereof to bottling premises. It is intended that the withdrawal of distilled spirits, under this paragraph, be conditioned upon the requirement that the proprietor of the bottling premises to which the distilled spirits are withdrawn from the bonded premises be a qualified rectifier and use such spirits exclusively in rectification.

Paragraph (4): This paragraph is derived from existing law (*sec. 5023*) which exempts the blending of beverage brandies on bonded premises from the laws relating to rectification.

Paragraph (5): This is a new provision which specifically exempts the mingling of homogeneous distilled spirits from the laws relating to rectification. This provision is in accordance with the construction of existing law that such mingling does not constitute rectification.

Paragraph (6): This is a new provision which provides exemption from the laws relating to rectification for the mingling on bonded premises of distilled spirits for immediate redistillation, immediate denaturation, or immediate removal from such premises free of tax under section 5214 (a) (1), (2), or (3), or section 7510. The purpose of this provision is to facilitate more efficient operations on bonded premises with respect to spirits distilled at less than 190° of proof.

Paragraph (7): This is a new provision which provides exemption from the laws relating to rectification for the mingling on bonded premises of distilled spirits in connection with the consolidation of packages under section 5234 (a) (2).

Subsection (f), "Blending straight whiskies, fruit brandies, or wines": This subsection is existing law (*sec. 5025 (e)*) except that the requirement that the blending of straight whiskies and brandies be under the immediate supervision of a revenue officer has been eliminated and provision made that the blending be under such conditions and supervision as the Secretary or his delegate may by regulations prescribe.

Subsection (g), "Addition of caramel to brandy": Existing law (*sec. 5025 (f)*) provides for the addition of caramel to commercial brandy at the distillery where produced, or in the internal revenue bonded warehouse where stored, and that such addition shall not be deemed to be rectification within the meanings of *sections 5021, 5081, and 5082*. This subsection continues this exemption with conforming changes in nomenclature.

Subsection (h), "Apothecaries": This subsection is existing law (*sec. 5025 (g)*) except for the substitution of the words "distilled

spirits" for the words "spirituous liquors" for purposes of clarifying and conforming language.

Subsection (i), "Manufacturer recovering distilled spirits for reuse in products unfit for beverage purposes": This subsection is derived from existing law (*sec. 5025 (h)*) which provides that the rectification taxes (gallonage and occupational) shall not be imposed on manufacturing chemists or flavoring extract manufacturers for recovering taxpaid alcohol or spirituous liquors from dregs or marc of percolation or extraction, if such recovered alcohol or spirituous liquors be again used in the manufacture of medicines or flavoring extracts of the kind in the production of which originally used.

This subsection provides exemption from such taxes in the case of any manufacturer who recovers distilled spirits on which the tax has been paid or determined, from dregs or marc of percolation or extraction, or from medicines, medicinal preparations, food products, flavors, or flavoring extracts, which do not meet the manufacturer's standards, if such recovered distilled spirits are used by such manufacturer in the manufacture of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for use for beverage purposes. This subsection eliminates the restriction in existing law which requires that such recovered distilled spirits be again used in the manufacture of products of the kind in the production of which originally used and allows such recovered distilled spirits to be used in any of the enumerated products which are unfit for use for beverage purposes.

Subsection (j), "Stabilization of distilled spirits": This is a new provision. Straight whiskies and certain other distilled spirits, when exposed to extreme temperatures, are subject to clouding which frequently renders them unmarketable. Under existing law, treatment prior to bottling for the sole purpose of producing a stable product occasionally results in incurrence of rectification tax. To remove this impediment to the manufacture of a satisfactory product, this paragraph provides limited exemptions from the laws relating to rectification.

Subsection (k), "Addition of tracer elements": This is a new provision which exempts from the laws relating to rectification the authorized addition of tracer elements to distilled spirits as provided under the provisions of section 5201 (d).

Subsection (l), "Cross references".

Section 5026. Determination and collection of rectification tax

This section is identical with code section 5026 as contained in the House bill.

Subsection (a), "Determination of tax":

Paragraph (1), "General": This paragraph is existing law (*sec. 5026 (a) (1)*) except that the phrase "as the Secretary or his delegate may require" has been changed to read "as the Secretary or his delegate may by regulations prescribe", for technical clarification.

Paragraph (2), "Unauthorized rectification": This paragraph is existing law (*sec. 5026 (a) (2)*) except for the insertion of the words "premises on which rectification is authorized" in lieu of "an authorized rectifying plant." This is a conforming change in language.

Subsection (b), "Payment of tax": This subsection is a clarifying and conforming restatement of existing law (*sec. 5026 (b)*), with the added provision that the taxes imposed by section 5023 (blending of beverage brandies) shall be paid in accordance with section 5061.

SUBPART C—WINES

Section 5041. Imposition and rate of tax

This section is identical with code section 5041 as contained in the House bill, except that the date "July 1, 1958" has been stricken each place it appears and the date "July 1, 1959" has been inserted in lieu thereof in order to conform to section 3 of the Tax Rate Extension Act of 1958 (Public Law 85–475, approved June 30, 1958).

The section is existing law (*sec. 5041*), except for the addition of the last sentence of subsection (a).

This sentence is added to clarify the distinction between still wines and effervescent wines (carbonated wines, champagne, and other sparkling wines).

The lack of such specific distinction has resulted in administrative difficulties.

This change will clearly permit the addition to, or retention in, still wines of such small quantities of carbon dioxide as will not result in the production of an effervescent wine. It is understood that such quantities of carbon dioxide improve the character and flavor of the wine but do not result in an effervescent wine.

Section 5042. Exemption from tax

This section is identical with code section 5042 as contained in the House bill and is existing law (*sec. 5042*).

Section 5043. Collection of taxes on wines

This section is identical with code section 5043 as contained in the House bill and is a clarifying restatement of existing law (*sec. 5043*).

Section 5044. Refund of tax on unmerchantable wine

This section is identical with code section 5044 as contained in the House bill.

The section is derived from existing law (*sec. 5044*) which made certain provisions for credit, or other tax relief, with respect to unmerchantable domestic champagne or other sparkling wine or artificially carbonated wine returned to bond. There is no provision in existing law for tax relief in respect to still wines returned to bond. This has caused substantial hardship in cases where tax determined wines are unmerchantable. This section continues existing law with respect to effervescent wines, and extends similar tax relief in respect to returned domestic still wines which are removed subject to tax on or after the effective date of this amendment. Also the words "without interest" are added to clarify the intent that refunds and credits under the provisions of this section shall be without interest, and specific provision has been added to this section that claims under subsection (a) shall not be allowed unless filed within 6 months after the return of the wine to bond; this addition conforms this section to other similar provisions of subtitle E. The returned wine would have the same status in respect of the tax as other wine on bonded wine cellar premises on which the tax had not been paid.

Section 5045. Cross references

This section is identical with code section 5045 as contained in the House bill and is a cross reference section only.

SUBPART D—BEER

Section 5051. Imposition and rate of tax

This section corresponds to code section 5051 as contained in the House bill, and is the same as that section except that the punctuation of the first sentence has been corrected and the date "July 1, 1958" has been stricken and the date "July 1, 1959" has been inserted in lieu thereof in order to conform to section 3 of the Tax Rate Extension Act of 1958 (Public Law 85-475, approved June 30, 1958).

The section is a restatement of existing law (*sec. 5051*) with certain changes. Since the term "removed for consumption or sale" is specifically defined in section 5052 (c) as including the sale and transfer of possession of beer for consumption at the brewery, the words "sold, or" have been eliminated as unnecessary. (For the effect of the definition of "removed for consumption or sale" on the determination of tax, see explanation under section 5052 (c) (2).)

The provision specifying statutory sizes for barrels and kegs has been eliminated to provide greater latitude in barrel size and design. The elimination of the specific statutory sizes is intended to permit the Secretary or his delegate to prescribe authorized sizes by regulations.

The section, as amended, continues the authority of the Secretary or his delegate to prescribe tolerances for barrels and kegs; however, the existing requirement, that, for tax purposes, any barrel or keg shall be accounted for at the next higher size if it contains more than the maximum tolerated quantity, has been eliminated, since the requirement is not considered to be reasonable or necessary for the protection of the revenue.

If the quantity of beer in a barrel or keg exceeds the tolerance provided by the regulations, it is intended that the tax will be computed on the actual quantity of the beer without any benefit of the tolerance provision.

Section 5052. Definitions

This section is identical with code section 5052 as contained in the House bill.

Subsections (a) and (b) are existing law (*sec. 5052*). Subsection (c) is existing law (*sec. 5051 (a)*) except for certain important changes.

Except with respect to beer removed without payment of tax as authorized by law, the term "removed for consumption or sale" is defined in subsection (c) as meaning (1) the sale and transfer of possession of beer for consumption at the brewery, and (2) any removal of beer from the brewery, except in the case of beer removed from the brewery for delivery and returned to the brewery on the day of its removal.

Paragraph (1) of subsection (c) is a clarifying restatement of existing law (*sec. 5051 (a)*) with respect to beer sold for consumption at the brewery. Under existing law the sale of a brewery, including the beer therein, has not been considered as a removal of the beer for consumption or sale, and no change is intended in this respect.

Paragraph (2) of subsection (c) is a restatement of existing law (*sec. 5051 (a)*) except with respect to beer returned to the brewery on

the same day it is removed therefrom. Brewers have no way of determining, at the time when they load their trucks for daily deliveries, the exact amount of beer which will be delivered during the day from each such truck. Consequently, trucks may still carry undelivered beer at the end of the day. Under existing law, the tax is determined on such beer at the time of its original removal from the brewery. Under this amendment, if such undelivered beer is returned to the brewery on the day of its removal, it will not be considered as having been removed for consumption or sale.

Section 5053. Exemptions

This section is identical with code section 5053 as contained in the House bill and is existing law (*sec. 5053*).

Section 5054. Determination and collection of tax on beer

This section is identical with code section 5054 as contained in the House bill.

Subsection (a), "Time of determination":

Paragraph (1), "Beer produced in the United States": This paragraph is a restatement of existing law (*secs. 5054 and 5055*) without substantive change except that the terms "owner, agent, or superintendent of the brewery", as used in connection with the payment of the tax, are deleted since they are considered unnecessary.

Paragraph (2), "Beer imported into the United States": Under existing law (*sec. 5055*) the tax on imported beer is determined on sale or removal for consumption or sale. This paragraph restates this provision to provide that the tax on imported beer shall be determined at the time of its importation, or, if entered into customs custody, at the time of its removal from such custody. This rephrasing becomes necessary because the definition of the term "removed for consumption or sale" in section 5052 (c) restricts its application to domestically produced beer. The change is not intended to have any substantive effect.

Existing law (*sec. 5055*) also provides that the tax on imported beer shall be paid in accordance with section 5061. This paragraph provides in lieu therof that this tax shall be paid under such regulations as the Secretary or his delegate shall prescribe. This change conforms these provisions, relating to beer, to similar provisions for distilled spirits, as contained in section 5007 (b) (1).

Paragraph (3), "Illegally produced beer": Existing law contains no specific provision respecting the time for payment of tax on illegally produced beer; however, such tax has been held to be due and payable immediately upon production of such beer. This paragraph makes such specific provision, in the same manner as is provided in respect to distilled spirits in section 5006 (c) (2).

Paragraph (4), "Unlawfully imported beer": Existing law contains no specific provision respecting the time for payment of tax on beer unlawfully brought into the United States; however, the tax has been held to be due and payable immediately. This paragraph specifically provides that beer smuggled or brought into the United States unlawfully shall be held to be imported, and that the internal revenue tax shall be due and payable at the time of such importation. These provisions are consistent with the provisions of section 5006 (c) (2), in respect to distilled spirits.

Subsection (b), "Tax on returned beer": This subsection is derived from existing law (*sec. 5057 (a)*) which provides that the tax shall apply to beer returned to the brewery upon withdrawal from the market, and reconditioned. The subsection has been restated to provide that beer removed from the market and returned to the brewery shall be subject to all provisions of this chapter relating to beer prior to removal for consumption or sale. The tax on any such beer which is again removed for consumption or sale is to be determined and paid without respect to any tax which may have been determined at the time of any prior removal for consumption or sale.

Subsection (c), "Stamps or other devices as evidence of payment of tax": This subsection is existing law (*sec. 5055*).

Subsection (d), "Applicability of other provisions of law": This subsection is existing law (*sec. 5055*).

Section 5055. Drawback of tax

This section is identical with code section 5055 as contained in the House bill and is existing law (*sec. 5056*).

Section 5056. Refund and credit of tax, or relief from liability

This section is identical with code section 5056 as contained in the House bill.

Subsection (a), "Beer removed from market": This subsection is a clarifying restatement of existing law (*sec. 5057*) without substantive change except that it further extends the privileges relating to the removal of beer from the market by the brewer. Under existing law provision is made for the refund or credit of tax or relief from liability therefor in the case of beer removed from the market before the transfer of title thereto to any person, provided that such beer is returned to the brewery for reconditioning or for use as material, or is destroyed under supervision. The provisions that the return must be made prior to the transfer of title to the beer, and that the beer may be returned only for reconditioning or for use as materials, have been eliminated.

Subsection (b), "Beer lost by fire, casualty, or act of God": This subsection is existing law (*sec. 5057 (b)*).

Subsection (c), "Date of filing": This subsection is existing law (*sec. 5057 (c)*).

SUBPART E—GENERAL PROVISIONS

Section 5061. Method of collecting tax

This section is identical with code section 5061 as contained in the House bill.

Subsection (a), "Collection by return": This subsection is existing law (*sec. 5061 (a)*), except for clarification of language. The words "or event" are added to the second sentence, following the word "period", to make it clear that returns may be prescribed to cover individual withdrawals or removals, or particular quantities, of the taxed commodities, as well as for periods of time.

Subsection (b), "Discretionary method of collection": This subsection is existing law (*sec. 5061 (b)*).

Subsection (c), "Applicability of other provisions of law": This subsection is existing law (*sec. 5061 (c)*).

Subsection (d), "Cross reference".

Section 5062. Refund and drawback in case of exportation

This section corresponds to code section 5062 as contained in the House bill. Your committee has amended subsection (b) to afford greater flexibility in industry operations relating to the preparation of distilled spirits for export.

Subsection (a), "Refund": This subsection is existing law (*sec. 5062 (a)*).

Subsection (b), "Drawback": This subsection is derived from existing law (*sec. 5062 (b)*). The requirement that wines be packaged or bottled especially for export is deleted as unnecessary.

Another change authorizes the allowance of drawback of the tax in respect of distilled spirits which have been withdrawn from bond on determination of tax under the provisions of section 5213. The person withdrawing the distilled spirits on determination of tax must post a bond under the provisions of section 5174 to assure the payment of tax. This change is consistent with the provisions of section 5061 under which the tax may be paid on the basis of a return rather than by stamp.

The authority of the Secretary or his delegate to require evidence of "payment of tax and exportation" is changed to authority to require evidence "indicating payment or determination of tax and exportation." This conforms the language of this subsection in this regard to similar provisions contained in section 5175 (c).

A further change provides that the drawback may either be paid or credited. This gives to the Secretary or his delegate discretion as to the method of allowing the drawback and will enable the Secretary or his delegate to credit the amount of drawback against tax on distilled spirits or wines which has been determined but not yet paid.

The House bill, as well as existing law, provides that distilled spirits, to be eligible for export drawback under provisions of section 5062 (b), must be bottled or packaged especially for export. This provision has resulted in situations where the distilled spirits have had to be rebottled or repackaged under conditions where such rebottling or repackaging serves no useful purpose. Your committee has revised this subsection to make it possible for the proprietor of a distilled spirits plant to restamp for export spirits bottled by him for domestic use, and to mark the bottles and cases in the manner required for spirits to be exported with benefit of drawback, if the spirits have not left the distilled spirits plant where bottled.

Section 5063. Floor stocks refunds on distilled spirits, wines, cordials, and beer

This section is identical with code section 5063 as contained in the House bill, except that the date "July 1, 1958" has been stricken each place it appears and the date "July 1, 1959" inserted in lieu thereof, and the date "October 1, 1958" has been stricken and the date "October 1, 1959" has been inserted in lieu thereof, in order to conform to section 3 of the Tax Rate Extension Act of 1958 (Public Law 85-475, approved June 30, 1958).

Subsection (a), "General": This subsection is derived from existing law (*sec. 5063 (a)*). The words "or determined" are added following the word "paid" in two instances, and the words "whichever is later" are added at the end of the subsection. The addition of the words "or determined" is a necessary conforming change since it is intended

that the provisions of this section be equally applicable to products on which the tax has been paid and to those on which it has been determined but not yet paid.

Existing law provides that claims must be filed with the Secretary or his delegate prior to August 1, 1959, or within 30 days from the promulgation of regulations under this section. The time for filing has been extended herein to October 1, 1959, to provide a more realistic time for filing claims. This conforms to comparable provisions for floor stocks tax refunds on cigarettes (*sec. 5707*). The addition of the words "whichever is later" is made for purposes of clarification.

Subsection (b), "Limitations on eligibility for credit or refund": This subsection is existing law (*sec. 5063 (b)*).

Subsection (c), "Other laws applicable": This subsection is existing law (*sec. 5063 (c)*).

Section 5064. Losses caused by disaster

This section corresponds to code section 5064 as contained in the House bill, and is the same as that section except that your committee has changed the date "June 30, 1958" to "June 30, 1959" in subsection (a) in conformity with the advancement in the effective date of the general revision of chapter 51, as provided by your committee, and has revised the provisions of subsection (d).

Subsection (a), "Authorization": This subsection provides that the Secretary or his delegate under certain conditions is to make payments equal to the internal revenue taxes paid or determined (and customs duties paid) on distilled spirits, wines, rectified products, or beer lost, rendered unmarketable, or condemned by a duly authorized official, by reason of a "major disaster", as determined by the President under the Act of September 30, 1950 (64 Stat. 1109), occurring after June 30, 1959. The payments provided may be made only in respect to products held and intended for sale at the time of disaster and only to the person holding the products for sale at that time.

Subsection (b), "Claims": This subsection provides that no claim shall be allowed unless filed within 6 months after the date on which the President makes the determination that the disaster has occurred. It also provides that the claimant must furnish proof that he was not indemnified in respect of the tax or duty on the products covered by the claim and that he is entitled to payment under this section.

Subsection (c), "Destruction of distilled spirits, wines, rectified products, or beer": This subsection provides that when the Secretary or his delegate has made payment, the products with respect to which the payment has been made must be destroyed under such supervision as the Secretary or his delegate may prescribe (unless such products were previously destroyed under satisfactory supervision).

Subsection (d), "Products of Puerto Rico": Subsection (d) as contained in the House bill provided for the application of this section to products of Puerto Rican manufacture brought into the United States and subsequently lost, rendered unmarketable, or condemned. Your committee has changed the subsection to specifically provide that its provisions shall not be applicable with respect to such Puerto Rican products. Your committee has made this change in view of the fact that after the bill was reported by the Committee on Ways and Means the Commonwealth of Puerto Rico enacted Law No. 61, approved June 14, 1957, authorizing the Secretary of the Treasury of

Puerto Rico to make refunds with respect to such Puerto Rican products. Therefore, the application of this section in respect to Puerto Rican products brought into the United States would be duplicative of the relief already afforded under the laws of the Commonwealth of Puerto Rico.

It is intended that this section apply to products of the Virgin Islands brought into the United States. Under the provisions of section 7652 (b) (3) of the Internal Revenue Code of 1954, refunds or credits would be deductible from amounts collected in respect of articles from the Virgin Islands brought into the United States.

Subsection (e), "Other laws applicable": The purpose of this subsection is to make it clear that all provisions of law, including penalties, applicable in respect of the internal revenue taxes on distilled spirits, wines, rectified products, and beer shall, insofar as applicable and not inconsistent with this section, be applied to all payments provided for in this section, whether or not made to the person who paid the tax.

Section 5065. Territorial extent of law

This section is identical with code section 5065 as contained in the House bill and is existing law (*sec. 5064*).

Section 5066. Cross reference

This section is identical with code section 5066 as contained in the House bill and is a cross reference section only.

PART II—OCCUPATIONAL TAX

SUBPART A—RECTIFIER

Section 5081. Imposition and rate of tax

This section is identical with code section 5081 as contained in the House bill.

The section is existing law (*sec. 5081*) except that the phrase "500 barrels a year, counting 40 gallons of proof spirits to the barrel," has been changed to its equivalent, "20,000 proof gallons a year," for purposes of simplifying the language.

Section 5082. Definition of rectifier

This section is identical with code section 5082 as contained in the House bill.

The section is existing law (*sec. 5082*) with two exceptions. The first exception is that the parenthetical statement "(other than by original and continuous distillation from mash, wort, or wash, through continuous closed vessels and pipes, until the manufacture thereof is complete)" is revised to read: "(other than by original and continuous distillation, or original and continuous processing, from mash, wort, wash, or any other substance, through continuous closed vessels and pipes, until the production thereof is complete)." This change is similar to, and is made for the same reason as, the change in existing law contained in section 5025 (c) and recognizes the fact that distilled spirits may be produced by processes other than by distillation and from substances other than mash, wort, or wash.

The second change is a deletion from the definition of a rectifier of the obsolete reference to "wholesale or retail liquor dealer who

has in his possession any still or leach tub, or who keeps any other apparatus for refining in any manner distilled spirits."

Section 5083. Exemptions

This is a cross reference section only, and is identical with code section 5083 of the House bill.

Section 5084. Cross references

This section is identical with code section 5084 as contained in the House bill and is a cross reference section only.

SUBPART B—BREWER

Section 5091. Imposition and rate of tax

This section is identical with code section 5091 as contained in the House bill and is existing law (*sec. 5091*), except for simplification of language.

Section 5092. Definition of brewer

This section is identical with code section 5092 as contained in the House bill and is derived from existing law (*sec. 5092*). The rephrasing of the definition is intended to make it clear that the production of beer by a person other than a person who has qualified under this chapter as a brewer is not authorized by law.

Section 5093. Cross references

This section corresponds to code section 5093 as contained in the House bill and is a cross reference section only. Cross references (1) and (2) have been made more descriptive of the provisions to which they refer.

SUBPART C—MANUFACTURERS OF STILLS

Section 5101. Imposition and rate of tax

This section is identical with code section 5101 as contained in the House bill and is existing law (*sec. 5101*), except that the more modern and descriptive term "condenser" has been substituted for "worm."

Section 5102. Definition of manufacturer of stills

This section is identical with code section 5102 as contained in the House bill and is existing law (*sec. 5102*), except that the more modern and descriptive term "condenser" has been substituted for "worm."

Section 5103. Exemptions

This section is identical with code section 5103 as contained in the House bill.

This section exempts proprietors of distilled spirits plants from taxes imposed by section 5101. It adopts the principle of a similar exemption in existing law (*sec. 5306*) which applies to industrial alcohol plants only, and makes the exemption uniformly applicable to proprietors of all producing distilled spirits plants who manufacture stills for their own use. The revenue effect of this exemption is nominal and the exemption eliminates the administrative difficulties in the determination of the extent of repairs which may be made to a still without constituting the manufacture of a new still.

Section 5104. Method of payment of tax on stills

This section is identical with code section 5104 as contained in the House bill and is existing law (*sec. 5104*), except that the more modern and descriptive term "condensers" has been substituted for "worms."

Section 5105. Notice of manufacture of and permit to set up still

This section is identical with code section 5105 as contained in the House bill and is existing law (*sec. 5105*).

Section 5106. Export

This section is identical with code section 5106 as contained in the House bill.

Subsection (a), "Without payment of tax": This is a new subsection which will permit the removal for exportation of stills and condensers without payment of the tax thereon. This provision will eliminate the burdensome and expensive process of first collecting the tax in each instance and then allowing drawback of the tax collected. This subsection adopts the principle generally extended under this chapter to the exportation of other taxable articles.

Subsection (b), "Drawback": This subsection is a modification of existing law (*sec. 5106*) and eliminates the provision that taxpaid stills and condensers must have been manufactured exclusively for export in order to be eligible for export with benefit of drawback. This change will permit the exportation with benefit of drawback of any taxpaid still or condenser which has not been used.

SUBPART D—WHOLESALE DEALERS

This subpart and subpart E are intended to effect a major change in the definitions of wholesale dealers and retail dealers. The terms "wholesale dealer in liquors," "wholesale dealer in beer," "retail dealer in liquors," and "retail dealer in beer" are redefined to conform in general to the trade understanding of the terms "wholesale" and "retail," and to more nearly conform to the concept of wholesale and retail functions as defined in other Federal statutes and in State laws. Because of these changes in definitions, certain retail dealers who are now also required to pay special tax as wholesale dealers by reason of selling or offering for sale liquors in quantities of 5 gallons or more at one time to a consumer or industrial user will be required to pay special tax only as retail dealers. Also, any wholesale dealers who are now required to pay special tax as retail dealers by reason of selling or offering for sale liquors in quantities of less than 5 gallons at one time to any person will be exempt from liability for special tax as retail dealers. In order to offset the revenue-reducing effect of these changes and of certain other changes in this subpart and subpart E, adjustments are made in the various rates of special tax, with the changes distributed, as equitably as is practical, in accordance with the benefits which are anticipated for each of the classes of dealers.

Section 5111. Imposition and rate of tax

This section is identical with code section 5111 as contained in the House bill.

Subsection (a), "Wholesale dealers in liquors": This subsection is existing law (*secs. 5111 (a) (1) and 5112 (a)*) except that the existing rate of tax, $200, is changed to $255.

Under existing law, practically all wholesale dealers in liquors also incur liability for special tax as retail dealers in liquors (at a rate of $50 a year) by reason of selling or offering for sale liquors in quantities of less than 5 wine gallons. Under the provisions of section 5123 (a), a wholesale dealer is exempt from special tax as a retail dealer at his place of business. This change, therefore, in effect represents the effective special tax now paid by such dealer as a wholesale liquor dealer and a retail liquor dealer, plus a nominal increase to offset the revenue-reducing effect of changes in this subpart and subpart E.

Subsection (b), "Wholesale dealers in beer": This subsection is a restatement of existing law (*sec. 5111 (b) (1)*) except that the existing rate of tax, $100, is changed to $123.

Under existing law (in the same manner as explained under subsection (a)), practically all wholesale dealers in beer also incur liability for special tax as retail dealers in beer (at a rate of $22 a year). Under the provisions of section 5123 (a) (2), a wholesale dealer in beer is exempt from special tax as a retail dealer in beer at his place of business. This change, therefore, in effect represents the effective special tax now paid by such dealer as a wholesale dealer in beer and a retail dealer in beer, plus a nominal increase to offset the revenue-reducing effect of changes in this subpart and subpart E.

Section 5112. Definitions

This section is identical with code section 5112 as contained in the House bill.

Subsection (a), "Dealer": This is a new definition which provides a basis for the definitions of wholesale dealer in liquors and wholesale dealer in beer in this section and for the definitions of retail dealer in liquors, retail dealer in beer, and limited retail dealer in section 5122. This definition also establishes the meaning of the word "dealer" as used in this subpart, subpart E, and subpart G. The phrase "foreign or domestic," in the definitions of the various classes of dealers in existing law has been omitted in this definition and the word "any" substituted therefor. It is intended that this substitution shall make the definition applicable to persons selling, or offering for sale, either foreign or domestic liquors. However, it is not intended that this definition shall include persons selling, or offering for sale, denatured distilled spirits or articles except as provided in section 5001 (a) (6).

Subsection (b), "Wholesale dealer in liquors": This definition of wholesale dealer in liquors represents a basic change from the definition of the term in existing law (*sec. 5112 (a)*).

Under existing law (unless otherwise exempted), a person selling, or offering for sale, liquors in quantities of 5 wine gallons or more to the same person at the same time incurs liability for special tax as a wholesale dealer in liquors and is required to post a sign and report certain transactions. This subsection redefines the term "wholesale dealer in liquors" to mean any dealer, other than a wholesale dealer in beer, who sells, or offers for sale, distilled spirits, wines, or beer to another dealer, thus conforming the definition of wholesale dealer in liquors to the general meaning of the term in trade channels, and making it more nearly consistent with the meaning of the term as used in other Federal statutes and in State laws. This change and the related change (contained in sec. 5122 (a)) in the definition of retail dealer in liquors are intended to eliminate the arbitrary distinction between wholesale and

retail dealers based on the quantity of liquors sold, or offered for sale, in a single transaction. The changes in definitions and related changes in this subpart and subpart E will relieve persons operating retail liquor stores who sell in quantities of 5 wine gallons or more to consumers from the requirements of the internal revenue laws applicable to wholesale liquor dealers, such as the payment of special tax as wholesale dealers, the posting of wholesale dealer signs, and the reporting of transactions.

Subsection (c), "Wholesale dealer in beer": This definition of wholesale dealer in beer represents a basic change from the definition of the term in existing law (*sec. 5112 (b)*).

Under existing law (unless otherwise exempted), a person selling, or offering for sale, beer in quantities of 5 wine gallons or more to the same person at the same time incurs liability for special tax as a wholesale dealer in beer. This subsection redefines the term "wholesale dealer in beer" to mean any dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to another dealer, thus conforming the definition of wholesaler dealer in beer to the general meaning of the term in trade channels and making it more nearly consistent with the meaning of the term as used in other Federal statutes and in State law. This change and the related change (contained in sec. 5122 (b)) in the definition of retail dealer in beer are intended to eliminate the arbitrary distinction between wholesale and retail dealers based on the quantity of beer sold, or offered for sale, in a single transaction. The changes in definitions and related changes in this subpart and subpart E will relieve persons engaged in the retail sale of beer who sell in quantities of 5 wine gallons or more to consumers from the payment of special tax as wholesale dealers.

Section 5113. Exemptions

This section is identical with code section 5113 as contained in the House bill.

Subsection (a), "Sales by proprietors of distilled spirits plants, bonded wine cellars, or breweries": Under existing law (*secs. 5113 (a), (b), and (c), 5123 (a), 5144 (c), and 5306*), distillers, brewers, wine-makers, and proprietors of industrial alcohol plants and bonded warehouses are afforded certain exemptions from liability for special occupational tax as wholesale or retail dealer, with the exemption for each being on a somewhat different basis. This subsection will provide uniform exemptions for proprietors of distilled spirits plants, bonded wine cellars, and breweries, and thereby extends the exemptions to internal revenue bonded warehousemen and rectifiers, who are granted no exemptions under existing laws. These changes will place the special tax exemptions for plant proprietors on a more equitable basis, and will materially simplify the administration of the applicable special tax laws. The revenue effect of these changes, which is relatively small, is offset by the gains which will result from the changes in the rates of special taxes in sections 5111 and 5121.

The term "taxpaid storeroom operated in connection therewith" as used in this subsection is intended to include only those storage facilities, the operations of which are integrated with the operations of the distilled spirits plant, bonded wine cellar, or brewery, as the case may be, and are contiguous, adjacent, or in the same immediate vicinity.

Subsection (b), "Sales by liquor stores operated by States, Political Subdivisions, etc.": This is a new exemption which provides that no liquor store which is operated by a State, or Territory, by a political subdivision of a State, Territory, or by the District of Columbia, and which is engaged in the business of selling to persons other than dealers, shall be required to pay a special tax as a wholesale dealer by reason of sales to dealers qualified to do business as such in such State, Territory, Subdivision, or District, if such liquor store has paid the prescribed special tax as a retail dealer, and if such State, or Territory, political subdivision of a State or Territory, or District has paid the applicable special tax as a wholesale dealer at its principal place of business. The purpose of this provision is to avoid a substantial increase in special tax in the case of States and Political Subdivisions which now sell liquors in quantities of less than 5 wine gallons from their retail outlets to taverns within their jurisdictions. With this exemption it is anticipated that the revenue derived from such liquor stores will be substantially unchanged.

The term "liquor store," as used in this subsection, is intended to mean a bona fide retail liquor store from which sales are regularly made to consumers.

Subsection (c), "Casual sales":

Paragraph (1), "Sales by creditors, fiduciaries, and officers of court": This paragraph is existing law (*sec. 5113 (d) (1)*), except for a clarifying change. Under existing law, exemption to special tax is afforded to creditors, fiduciaries, and officers of courts who sell distilled spirits, wines, or beer received by them in their capacities as such and sold by them, as provided therein. This paragraph continues the special tax exemption granted by existing law by providing that such persons shall not be deemed to be dealers, and thereby clarifies their exemption from the requirements of sections 5114 and 5124 respecting the keeping of records.

Paragraph (2), "Sales by retiring partners or representatives of deceased partners to incoming or remaining partners": This paragraph is existing law (*sec. 5113 (d) (2)*) except for a clarifying change. Existing law in this instance affords special tax exemption in respect to sales of distilled spirits, wines, or beer, made by a retiring partner or the representatives of a deceased partner, to the incoming, remaining, or surviving partner or partners of a firm. This paragraph continues the special tax exemption granted by existing law by providing that such persons shall not be deemed to be dealers, and thereby clarifies their exemption from the requirements of sections 5114 and 5124 respecting the keeping of records.

Paragraph (3), "Return of liquors for credit, refund, or exchange": This paragraph is new. It is intended to clarify existing law and to remove certain administrative difficulties which exist because of the lack of specific exclusion of bona fide returns or exchanges of distilled spirits, wines, or beer from classification as sales; it has no revenue effect.

Subsection (d), 'Dealers making sales on purchaser dealer's premises":

Paragraph (1), "Wholesale dealers in liquors": This paragraph preserves the provisions of existing law (*sec. 5123 (b) (3)*) in respect to the exemption afforded to wholesale dealers in liquors from special tax liability which would otherwise be incurred

on account of sales of beer to other dealers, at the purchasers' places of business, and extends the same exemption to sales of wine. This is intended to give wholesale dealers the same freedom in selling wine on the premises of purchasing dealers as is now allowed in the case of beer. No decrease in revenue will arise from this additional exemption, as wholesale dealers do not now pay special tax on the premises of retail dealers in order to obtain the privilege of consummating sales of wine at such locations.

The exemption in existing law relating to retail dealers making sales on purchaser dealer premises is omitted since it is in conflict with other provisions of this subpart and subpart E, which provide that sales to other dealers may be made only by wholesale dealers.

Paragraph (2), "Wholesale dealers in beer": This paragraph preserves the provisions of existing law (*sec. 5123 (b) (3)*) in respect to the exemption afforded to wholesale dealers in beer from special tax liability which would otherwise be incurred on account of sales of beer to other dealers, at the purchasers' places of business.

Subsection (e), "Sales by retail dealers in liquidation": This subsection is derived from *section 5123 (c)* of existing law, which provides exemption from liability for special tax as wholesale dealer for a retail dealer in liquidation who sells out his entire stock in the prescribed parcel or parcels, even though a parcel might exceed 5 wine gallons. Because of the proposed changes in applicable definitions, it is necessary, in order to make the proposed exemption coextensive with that in existing law, to provide that the sale of the parcel or parcels of goods may be made to other dealers.

Minor modifications in language have been made for greater clarity. The principal such modification involves the change of the afforded exemption from the imposition of special tax, as in existing law, to an exemption from being deemed a wholesale dealer. This change retains the exemption to special tax as a wholesale dealer, and in addition clarifies the exemption of such persons from the requirements of section 5114 respecting the keeping of records.

Subsection (f), "Sales to limited retail dealers": This subsection will establish new exemptions from special tax liability, which will permit a retail dealer in liquors or retail dealer in beer to sell at his place of business wines or beer, or beer only, respectively, to limited retail dealers (as defined in section 5122 (c)) without incurring liability for special tax as a wholesale dealer. The changes will resolve certain conflicts between Federal law and the laws of some States, whereunder, because of differences in privileges extended to different classes of dealers, it would not otherwise be possible for any dealer to lawfully sell wines or beer to a limited retail dealer. The revenue effect of these exemptions will be negligible.

Section 5114. Records

This section is identical with code section 5114 as contained in the House bill.

Subsection (a), "Requirements":

Paragraph (1), "Distilled spirits": This paragraph is derived from existing law (*sec. 5114 (a)*) and retains the basic requirements thereof relating to the keeping of records and the sub-

mission of reports by wholesale dealers in liquors, except as follows:

1. The requirement for the submission of transcripts and copies of records has been changed to require extracts from, or copies of, records. This change is intended to permit the requirement of either complete copies of records, or extracts of such portions of the records, as may be deemed necessary by the Secretary or his delegate.

2. Provision is made that the Secretary or his delegate may, on application of a dealer, and in accordance with regulations, relieve the dealer until further notice from the requirements for the submission of extracts from, or copies of, his records if he deems that the submission of such extracts or copies serves no useful purpose in law enforcement or in protection of the revenue. It has been found that under normal conditions reports are needed from only a small proportion of wholesale dealers, and this change will therefore serve to relieve industry of the necessity of preparing and submitting reports except when they will serve a useful purpose.

Existing requirements for the submission of summaries are being retained for statistical and other purposes.

Paragraph (2), "Wines and beer": This paragraph is new. It is intended to preserve the requirement of existing regulations that every wholesale dealer keep records of all wines and beer received, and corresponds to the record-keeping requirement of existing law (*sec. 5124*) in respect to retail liquor dealers

This paragraph does not require the submission of reports.

This provision is considered necessary for the proper administration of the internal revenue laws, particularly in view of provisions for payment of tax by return, as it permits the verification of deliveries of wines or beer, as shown in the taxpayers' records, by examination of the records of the receiving wholesale dealer.

Subsection (b), "Exemption of States, Political Subdivisions, etc.": This subsection is derived from existing law (*sec. 5114 (b)*) which exempts States and liquor stores operated by them from provisions of existing law (*sec. 5114 (a)*) respecting the keeping of records and the submission of reports by wholesale liquor dealers, with the provision that the Secretary or his delegate may require the furnishing of transcripts, summaries, and copies of their records. The exemption now granted to States is being extended to Territories, to political subdivisions of States or Territories, and to the District of Columbia, in recognition of the fact that a number of States and political subdivisions are wholesale dealers in liquor (as defined in sec. 5112), and present no major enforcement problem. The existing exemption is continued, and is extended to cover the requirements of paragraph (a) (2), provided such records are maintained and made available for inspection as will enable internal revenue officers to verify the receipts of wines and beer.

Subsection (c), "Cross references".

Section 5115. Sign required on premises

This section is identical with code section 5115 as contained in the House bill.

Subsection (a), "Requirements": This subsection is existing law (*sec. 5116 (a)*) with two changes. The requirement for the placing and keeping of the sign is restricted to wholesale dealers in liquors required to pay special tax as such dealers, thus eliminating the requirement in respect to those exempt from such special tax by reason of the provisions of section 5113 (a) and (b). Provision is also made for conforming the wording of the sign to that on the dealer's special tax stamp, as for example, "wholesale dealer in wines."

Subsection (b), "Cross reference".

Section 5116. Packaging distilled spirits for industrial uses

This section is identical with code section 5116 as contained in the House bill.

Subsection (a), "General": Under regulations promulgated pursuant to existing law, wholesale dealers in liquors may package alcohol for industrial purposes in containers in excess of 1 gallon and less than 5 gallons.

This subsection provides for the continuation, under regulations, of substantially the same operations, which otherwise would be prohibited because of other specific provisions in this chapter for bottling distilled spirits only on the premises of a distilled spirits plant.

The present privilege, which extends only to wholesale dealers in liquors, is extended by this section to retail dealers in liquors to conform to the new definitions of wholesale and retail dealers, since sales of distilled spirits for industrial use may be made either to another dealer (in which case the vendor is a wholesale dealer) or to a person using the spirits for industrial purposes (in which instance the vendor is a retail dealer).

Subsection (b), "Cross references".

Section 5117. Prohibited purchases by dealers

This section is identical with code section 5117 as contained in the House bill and is new. It is intended to prohibit the purchase for resale of distilled spirits by a dealer (either wholesale or retail) from other than lawful sources. In general, dealers will be required to purchase distilled spirits from wholesale dealers in liquors who have paid the special tax as such. However, provision is made for such purchases from wholesale dealers in liquors who are exempt, at the place where such purchase is made, from payment of special tax as wholesale liquor dealer, so that purchases may be made from proprietors of distilled spirits plants, State liquor stores exempt from special tax as wholesale liquor dealer under section 5113 (b), or other wholesale liquor dealers exempt from such special tax. Provision is also made for purchases by dealers from persons who sell distilled spirits and who by reason of provisions of this chapter are not required to pay special tax as wholesale liquor dealers.

SUBPART E—RETAIL DEALERS

This subpart contains basic changes from existing law in the definitions of retail dealers and conforms to the changes made in subpart D with respect to the definitions of wholesale dealers. Adjustments are made in this subpart in the existing rates of tax imposed on retail dealers in liquors and retail dealers in beer in order to offset the revenue-reducing effect of changes in this subpart and in subpart D.

These adjustments are distributed as equitably as is practical, in accordance with the benefits which it is anticipated will accrue to the various classes of dealers by reasons of the changes in existing law.

Section 5121. Imposition and rate of tax

This section is identical with code section 5121 as contained in the House bill.

Subsection (a), "Retail dealers in liquors": This subsection is a clarifying restatement of existing law (*secs. 5121 (a) (1) and 5122 (a) and (c)*) except that the special tax on retail dealers in liquors of $50 a year is increased to $54 a year. The purpose of this change in rates is to offset in part the revenue-reducing effect of the change in definitions as they relate to retail liquor dealers. Under existing law, retail dealers who sell or offer for sale liquors in quantities of 5 gallons or more to the same person at the same time are required to pay an additional special tax of $200 a year as wholesale dealers in liquors. By reason of the changes in the definitions of wholesale dealers and retail dealers, no such additional liability will be incurred by retail dealers in liquors if the sales, or offers to sell, are to persons other than dealers.

Subsection (b), "Retail dealers in beer": This subsection is existing law (*sec. 5121 (b) (1)*) except for an increase in the rate of tax from $22 a year to $24 a year. The purpose of this change is similar to the purpose of the change in rate in subsection (a). Under existing law, retail dealers in beer incur additional liability of $100 per year as wholesale dealers in beer whenever they sell or offer for sale beer in quantities of 5 gallons or more. By reason of the changes in the definitions of wholesale dealers and retail dealers, no such additional liability will be incurred by retail dealers in beer if the sales, or offers to sell, are to persons other than dealers.

Subsection (c), "Limited retail dealers": This subsection is derived from existing law (*sec. 5121 (c)*) and continues the existing rate of tax on limited retail dealers.

Section 5122. Definitions

This section is identical with code section 5122 as contained in the House bill.

Subsection (a), "Retail dealer in liquors": This definition of retail dealer in liquors represents a basic change from the definition of the term in existing law (*sec. 5122 (a)*).

Under existing law, a retail dealer in liquors is a person selling, or offering for sale, liquors in quantities of less than 5 gallons to the same person at the same time. This subsection redefines the term "retail dealer in liquors" to mean any dealer, other than a retail dealer in beer or a limited retail dealer, who sells, or offers for sale, any distilled spirits, wines, or beer, to any person other than a dealer, thus conforming the definition of retail dealer in liquors to the general meaning of the term in trade channels and making it more nearly consistent with the meaning of the term as used in other Federal statutes and in State laws. This change and the related change (contained in sec. 5112 (b)) in the definition of wholesale dealer in liquors are intended to eliminate the arbitrary distinction between wholesale and retail dealers based on the quantity of liquors sold, or offered for sale, in a single transaction. The changes in definitions and related changes

in this subpart and subpart D will relieve persons operating retail liquor stores who sell in quantities of 5 gallons or more to consumers from the requirements of the internal revenue laws applicable to wholesale liquor dealers, such as the payment of special tax as wholesale dealers, the posting of wholesale dealer signs, and the reporting of transactions.

Subsection (b), "Retail dealer in beer": This definition of retail dealer in beer represents a basic change from the definition of the term in existing law (*sec 5122 (b)*).

Under existing law, a retail dealer in beer is a person selling, or offering for sale, beer in quantities of less than 5 gallons to the same person at the same time. This subsection redefines the term "retail dealer in beer" to mean 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, thus conforming the definition of retail dealer in beer to the general meaning of the term in trade channels and making it more nearly consistent with the meaning of the term as used in other Federal statutes and in State laws. This change and the related change (contained in sec. 5112 (c)) in the definition of wholesale dealer in beer are intended to eliminate the arbitrary distinction between wholesale and retail dealers based on the quantity of beer sold, or offered for sale, in a single transaction. The changes in definitions and related changes in this subpart and subpart D will relieve persons engaged in the retail sale of beer who sell in quantities of 5 gallons or more to consumers from the requirements of the internal revenue laws applicable to wholesale dealers in beer, such as the payment of special tax as wholesale dealers.

Subsection (c), "Limited retail dealer": The definition of "limited retail dealer" in this subsection is derived from existing law (*sec. 5121 (c)*). Without substantive change, the definition specifies the fraternal, civic, and other organizations or persons to which the privileges of a limited retail dealer are extended.

Section 5123. Exemptions

This section is identical with code section 5123 as contained in the House bill.

Subsection (a), "Wholesale dealers":

Paragraph (1), "Wholesale dealers in liquors": This is a new provision which exempts a wholesale dealer in liquors from the special tax as a retail dealer at any location where such wholesale dealer is required to pay special tax under section 5111 (a). This change will result in no loss in revenue, since the special tax rate for wholesale dealers in liquors is increased from $200 to $255 a year under the provisions of section 5111 (a).

Paragraph (2), "Wholesale dealers in beer": This is a new provision which parallels paragraph (1) in its purpose and effect by exempting a wholesale dealer in beer from the special tax as a retail dealer in beer. This change will result in no loss in revenue, since the special tax rate for wholesale dealers in beer is increased from $100 to $123 a year under the provisions of section 5111 (b).

Subsection (b), "Business conducted in more than one location":

Paragraph (1), "Retail dealers at large": This paragraph is existing law (*sec. 5123 (b) (1)*).

Paragraph (2), "Dealers on trains, aircraft, and boats": This paragraph, with the exception of subparagraph (B), is existing law (*sec. 5123 (b), (2)*). Subparagraph (B) is new and extends the provisions of this paragraph (relating to the issuance of special tax stamps to retail dealers on trains, aircraft, or boats or other vessels, engaged in the business of carrying passengers) to persons carrying on the business of a retail dealer in liquors or a retail dealer in beer on boats or other vessels operated by them, when such persons operate from a fixed address in a port or harbor and supply exclusively boats or other vessels, or persons thereon, at such ports or harbors.

Subsection (c), "Cross references".

Section 5124. Records

This section is identical with code section 5124 as contained in the House bill.

Subsection (a), "Receipts": This subsection is a clarifying restatement of existing law (*sec. 5124 (a)*) except that the requirements thereof have been specifically extended to retail dealers in beer. Under existing law, retail liquor dealers are required to maintain records of receipts of beer, whereas no such specific statutory requirements exist with respect to retail dealers in beer. However, such records are required by regulations. In view of the increased need for such records, due to the taxpayment of beer on the basis of returns, it is deemed desirable to insure by law the maintenance and the availability of such records.

Subsection (b), "Dispositions": This is a new provision which authorizes the Secretary or his delegate, when he deems it necessary for law enforcement purposes or for the protection of the revenue, to require by regulations retail dealers in liquor and retail dealers in beer to keep records of the disposition of distilled spirits, wines, or beer. It is not the intent of this subsection that retail dealers in liquors and retail dealers in beer be required as a routine matter to keep records of all of their dispositions of distilled spirits, wines, or beer.

Subsection (c), "Cross reference".

Section 5125. Cross references

This section is identical with code section 5125 as contained in the House bill and is a cross reference section only.

SUBPART F—NONBEVERAGE DOMESTIC DRAWBACK CLAIMANTS

Section 5131. Eligibility and rate of tax

This section is identical with code section 5131 as contained in the House bill.

Subsection (a), "Eligibility for drawback": This subsection is existing law (*sec. 5131 (a)*) with one substantial change. Under existing law, distilled spirits to be eligible for drawback must be produced in domestic registered distilleries or industrial alcohol plants. This provision has precluded the allowance of drawback on imported distilled spirits which have been withdrawn from customs custody without payment of tax and transferred to industrial alcohol bonded warehouses. Section 5232 authorizes the withdrawal from customs custody of distilled spirits of 185° or more of proof without payment of tax for transfer to the bonded premises of a distilled spirits plant.

This subsection eliminates the existing discrimination against the use of such imported distilled spirits subject to drawback in the manufacture of nonbeverage products, by providing for the use of any distilled spirits withdrawn from the bonded premises of a distilled spirits plant.

Subsection (b), "Rate of tax": This subsection is existing law (*sec. 5131 (b)*) except that the word "withdrawals," wherever it appeared, has been changed to "use", to conform to the language of section 5134 and to conform to the construction of existing law.

Section 5132. Registration and regulation

This section is identical with code section 5132 as contained in the House bill and is a clarification of existing law (*sec. 5132*).

Section 5133. Investigation of claims

This section is identical with code section 5133 as contained in the House bill and is a clarifying restatement of existing law (*sec. 5133*) without substantive change.

Section 5134. Drawback

This section is identical with code section 5134 as contained in the House bill.

Subsection (a), "Rate of drawback": This subsection is a restatement of existing law (*sec. 5134 (a)*) except for the deletion of obsolete material relating to drawback in the case of distilled spirits taxpaid prior to November 1, 1951. The language has been changed to provide a refund of all but $1 of the distilled spirits tax so this provision will not need to be changed with each change in the distilled spirits tax rate.

Subsection (b), "Claims": This subsection is existing law (*sec. 5134 (b)*), except for simplification of language.

SUBPART G—GENERAL PROVISIONS

Section 5141. Registration

This section is identical with code section 5141 as contained in the House bill and is a cross reference section only.

Section 5142. Payment of tax

This section is identical with code section 5142 as contained in the House bill.

Subsection (a), "Condition precedent to carrying on business": This subsection is existing law (*sec. 5142 (a)*) except for the deletion of the words "in the manner provided in this part." The effect of this change and of the deletion of *section 5143* of existing law is to require payment of occupational taxes imposed by this part on or before engaging in a trade or business on which such taxes are imposed.

Under existing law (*sec. 5143 (a)*) each person engaged in or carrying on any trade or business subject to special tax under chapter 51 is required to file a return and pay the tax at such time during the calendar month in which the special tax liability commences as will enable the Secretary or his delegate to receive such return and tax not later than the last day of such month. Under existing law, such special taxes for continuing businesses are due and payable during the month of July.

The purpose of changing the time of payment of special taxes imposed under this part is to facilitate enforcement of the provisions relating to special tax. This change is consistent with the provisions of *section 4901* of existing law relating to the time for payment of certain other types of occupational taxes.

Specific provision has been made that this subsection is not applicable to the special tax imposed on nonbeverage manufacturers by section 5131. This is consistent with the provisions of section 5131 and regulations under existing law.

Subsection (b), "Computation": This subsection is a clarifying restatement of existing law (*sec. 5142 (b)*). Specific provision has been made that this subsection is not applicable to the special tax imposed on nonbeverage manufacturers by section 5131. This is consistent with the provisions of section 5131 and regulations under existing law.

Subsection (c), "How paid":

Paragraph (1), "Stamp": This paragraph is existing law (*sec. 5142 (c)*).

Paragraph (2), "Cross reference".

Section 5143. Provisions relating to liability for occupational taxes

This section is identical with code section 5143 as contained in the House bill.

Subsection (a), "Partners": This subsection is existing law (*sec. 5144 (a)*) except for the change of the word "copartnership" to "partnership." This change is for the purpose of using more accurate terminology and is not intended to change the substantive effect of this provision.

Subsection (b), "Different businesses of same ownership and location": This subsection is existing law (*sec. 5144 (b)*).

Subsection (c), "Businesses in more than one location":

Paragraph (1), "Liability for tax": This paragraph is a clarifying restatement of existing law (*sec. 5144 (c)*). The word "the" preceding "special tax" is changed to "a" in order to clearly include all special taxes imposed by this part under the provisions of this paragraph. The provisions relating to keeping the register are also clarified.

Paragraph (2), "Storage": This paragraph is a clarifying restatement of existing law (*sec. 5144 (c)*). The term "liquors" has been substituted for the words "goods, wares, or merchandise" as more accurate language.

This paragraph exempts from payment of special taxes the places where liquors are stored but not sold or offered for sale.

Paragraph (3), "Definition of place": This paragraph is a clarifying restatement of existing law (*sec. 5144 (c)*).

Subsection (d), "Death or change of location": This subsection is a clarifying restatement of existing law (*sec. 5144 (d)*). The phrase "the surviving spouse" is substituted for "his wife"; also provision is made for succession of a husband or wife to the business of his or her living spouse and for succession of remaining partners to the business of a partnership after death or withdrawal of a member of the partnership. These changes reflect long-standing construction of existing law.

Subsection (e), "Federal agencies or instrumentalities": This subsection is existing law (*sec. 5144 (e)*).

Section 5144. Supply of stamps

This section is identical with code section 5144 as contained in the House bill.

The section is existing law (*sec. 5145*) except that the word "worms" has been changed to "condensers" as a conforming change in nomenclature.

Section 5145. Application of State laws

This section is identical with code section 5145 as contained in the House bill and is existing law (*sec. 5148*).

Section 5146. Preservation and inspection of records, and entry of premises for inspection

This section is identical with code section 5146 as contained in the House bill.

Subsection (a), "Preservation and inspection of records": This subsection combines the provisions of existing law (*secs. 5114 (a), 5124 (b), and 5124 (c)*) relating to the preservation and inspection of records of wholesale and retail dealers.

The specific statutory period for the preservation of records (2 years) has been omitted and authority provided for the Secretary or his delegate to prescribe the period of retention by regulations. This change is made to provide for more flexible recordkeeping requirements and is consistent with similar changes in other provisions of this chapter.

The specific provision for taking abstracts has been omitted, as the authority to examine records includes the authority to take abstracts therefrom.

Subsection (b), "Entry of premises for inspection": While existing law (*sec. 7606*) provides authority for the entry for purposes of inspection of premises where taxable articles are kept, this subsection gives specific authority to the Secretary or his delegate to enter during business hours the premises (including places of storage) of any dealer for the purpose of inspection or examination of any records or documents required to be kept by such dealer under this chapter or regulations issued pursuant thereto, and of any distilled spirits, wine, or beer kept by such dealer on such premises. The purpose of this subsection is to reaffim and clarify the authority of the Secretary or his delegate with regard to the entry of wholesale and retail dealer premises for purposes of inspection.

Section 5147. Application of subpart

This section is identical with code section 5147 as contained in the House bill.

The section is existing law (*sec. 5149*) except that the reference to chapter 53 is deleted, since *section 5846* of existing law governs the applicability of the provisions relating to special tax in the case of chapter 53.

Section 5148. Cross references

This section is identical with code section 5148 as contained in the House bill and is a cross reference section only.

SUBCHAPTER B—QUALIFICATION REQUIREMENTS FOR DISTILLED SPIRITS PLANTS

Section 5171. Establishment

This section is identical with code section 5171 as contained in the House bill, except that your committee has changed the date "June 20, 1958," to "June 30, 1959," in subsection (b), in conformity with the advancement in the effective date of the general revision of chapter 51, as provided by your committee.

Under existing law, (*secs. 5172, 5175, 5178, 5231, 5243 (a), 5271, 5301, 5302, 5303, 5304 (a) (1), 5305, and 5331 (a) (1)*), there are 9 completely separate types of establishments which are required to be qualified under the Internal Revenue laws in order to perform all of the activities relating to production, storage, denaturation, rectification, and bottling of distilled spirits. Persons intending to produce distilled spirits are required to qualify as proprietors of registered distilleries, fruit distilleries, or industrial alcohol plants; those intending to store distilled spirits in bond are required to qualify as proprietors of internal revenue bonded warehouses or industrial alcohol bonded warehouses; those intending to denature distilled spirits are required to qualify as proprietors of industrial alcohol denaturing plants or distillery denaturing bonded warehouses; those intending to rectify distilled spirits are required to qualify as proprietors of rectifying plants; and those intending to bottle distilled spirits after payment or determination of tax are required to qualify as proprietors of taxpaid bottling houses, unless qualified as proprietors of rectifying plants. The requirements for qualifying to commence or continue such businesses are substantially different. This section provides, in lieu of the 9 separate existing types of establishments, for a single distilled spirits plant. In a distilled spirits plant the proprietor may perform such of the functions of the 9 separate types of establishments as he may qualify to perform under the provisions of this chapter. The consolidation of the types of establishments will facilitate simplification of procedures for the Government and for plant proprietors, particularly those proprietors who desire to perform functions now requiring the qualification of more than one type of plant. Under existing law (*sec. 5231*), internal revenue bonded warehouses may be established at the discretion of the Secretary or his delegate, and nothing in this section is intended to limit the discretion of the Secretary or his delegate under section 5178 with respect to the establishment of bonded warehousing facilities.

Subsection (a), "General requirements": This subsection provides uniform requirements for the registration of distilled spirits plants. It not only requires that every person shall make application for, and receive notice of, the registration of his plant before engaging in the business of a distiller, bonded warehouseman, rectifier, or bottler of distilled spirits, but also provides that the Secretary or his delegate may require reregistration under such conditions as he may by regulations prescribe. The provision that no plant shall be registered under this section until the applicant has complied with the laws and regulations in relation to the qualification thereof is intended to be equally applicable in the case of applications required to be filed subsequent to initial registration.

The function of denaturation, which under existing law requires separate qualifications, will, under the conditions and within the limitations prescribed in this chapter, be performed on the bonded premises of a distilled spirits plant.

Subsection (b), "Permits":

Paragraph (1), "Requirements": Under existing law it is unlawful, except pursuant to a basic permit issued by the Secretary or his delegate under the provisions of the Federal Alcohol Administration Act, to engage in the business of distilling distilled spirits, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits. As used in such act the term "distilled spirits" means distilled spirits for nonindustrial use.

Existing provisions of the Internal Revenue Code (*secs. 5301, 5302, 5303 and 5304 (a) (1)*) require permits for the establishment of industrial alcohol plants, industrial alcohol bonded warehouses, and industrial alcohol denaturing plants.

The basic effect of this paragraph is to place all distilling, warehousing, denaturing, rectifying, and bottling operations under permit, by providing that every person required to file an application for registration under subsection (a), whose distilling, warehousing, or bottling operations (or any part thereof) are not required to be covered by a basic permit under the Federal Alcohol Administration Act, shall, before commencing any such operations, apply for and obtain a permit under this subsection to engage in such operations.

The provisions of section 5271 (b), (c), (d), (e), (f), (g) and (h) and section 5274, pertaining to applications and permits for industrial use of distilled spirits, are extended to applications, to persons filing applications, and to permits required by or issued under this subsection.

Paragraph (2), "Exceptions for agency of a State or Political Subdivision": Agencies of States or political subdivisions thereof, or officers or employees of such agencies, engaged in the business of distilling distilled spirits, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits, are not required to obtain permits under the provisions of the Federal Alcohol Administration Act. However, under existing internal revenue laws, any such agencies or persons who establish industrial alcohol plants, industrial alcohol bonded warehouses, or industrial alcohol denaturing plants are required to obtain permits. This paragraph provides that paragraph (1) shall not apply to any agency of a State or political subdivision thereof or to any officer or employee of such agency, and that no such agency or officer or employee shall be required to obtain a permit under paragraph (1). This exception is applicable only to officers or employees acting in an official capacity, and applies only to permits and not to the registration requirements contained in subsection (a).

Paragraph (3), "Continuance of business": This paragraph provides for the continuation of existing operations in plants qualified under the internal revenue laws on the day preceding the effective date of this section, pending reasonable opportunity to make an application for permit, and pending final action on

such application, but only if the provisions of this chapter relating to qualification are otherwise complied with.

Subsection (c), "Cross references".

Section 5172. Application

This section is identical with code section 5172 as contained in the House bill.

In lieu of various provisions of existing law (*secs. 5172, 5175, 5178, 5231, 5243 (a), 5271, 5301, 5302, 5303, 5305 and 5331 (a) (1)*) in respect to information to be furnished in connection with the qualification of the various types of plants, this section requires that certain information be disclosed in the application for registration which is required under the provisions of section 5171 (a), and provides discretionary authority for the Secretary or his delegate to require by regulations any other information which he deems necessary for the purpose of carrying out the provisions of this chapter.

Section 5173. Qualification bonds

This section corresponds to code section 5173 as contained in the House bill. Your committee has amended paragraph (1) of subsection (c) by deleting the provisions relating to the computation of the 20-year bonding period in the case of distilled spirits mingled in storage tanks in internal revenue bond. For purposes of more orderly presentation, these provisions, with certain revisions, have been incorporated in code section 5006(a)(2) as contained in this bill. Your committee has also deleted from paragraph (1) the words "20 years" and has inserted in lieu thereof "the time prescribed for the determination of tax under section 5006 (a) (2)" as a clarifying and conforming change. In paragraph (1) of subsection (b), the phrase "the time which he shall carry on such business" has been changed to "the time in which he shall carry on such business" to correct an inadvertent omission and restore the language of existing law. Also, in paragraph (1) of subsection (c), the phrase "stored on such premises or in transit thereto" has been changed to "stored on such premises and in transit thereto" to restore the language of existing law, which better expresses the intent of the paragraph.

The section is principally derived from the various provisions of existing law relating to bonds required for qualifying and operating a registered distillery, fruit distillery, industrial alcohol plant, industrial alcohol bonded warehouse, industrial alcohol denaturing plant, internal revenue bonded warehouse, distillery denaturing bonded warehouse, or rectifying plant. It consolidates these provisions to provide greater uniformity and simplicity in the bonding requirements for the functions of distilling, bonded warehousing, and rectifying, and increases revenue security. This section does not provide for separate bonds for denaturation, as is required by existing law (*secs. 5303 and 5331*), since denaturation will be performed under the operating bond given by the proprietor of the distilled spirits plant in which the distilled spirits are denatured.

Subsection (a), "General provisions": This subsection consolidates and restates the provisions of existing law (*secs. 5172, 5176 (a), 5232 (a), 5272, 5301, 5302, 5303, 5304 (a) (5), 5305 and 5331 (a) (3)*) and regulations issued pursuant thereto in respect to the general conditions of operating bonds given by proprietors of registered distilleries,

fruit distilleries, industrial alcohol plants, internal revenue bonded warehouses, industrial alcohol bonded warehouses, industrial alcohol denaturing plants, distillery denaturing bonded warehouses, and rectifying plants, and continues their application to persons intending to commence or to continue the business of a distiller, bonded warehouseman, or rectifier.

Subsection (b), "Distiller's bond": This subsection is principally derived from existing law (*secs. 5176 (a) and (d) and 5177*) relating to distiller's bonds. Through the elimination of specific provisions in existing law (*secs. 5301 and 5306*) relating to bonds of industrial alcohol plants, the provisions of this subsection will apply to all production of distilled spirits, and to denaturation when performed by the producer of the spirits on the basis of entry for immediate denaturation.

The first sentence of this subsection is in conformity with existing law and regulations in respect to distilleries. The requirement in existing law for the execution of a new bond on May 1 of each year is eliminated, so that the Secretary or his delegate may prescribe continuing bonds, or bonds for specific periods.

Paragraph (1), "Conditions of approval": This paragraph is a clarifying restatement of existing law (*secs. 5176 (a), 5177 (b) (1), (2), and (3), and 5177 (c)*) in respect to distilleries, with certain modifications.

The provisions relating to appeal in the case of refusal of the designated officer to approve the distiller's bond are omitted, since section 5551 (c) is intended to be applicable to appeals from the disapproval of such bonds.

The provisions of existing law requiring the filing of an indemnity bond in lieu of lien by a distiller who does not hold clear title to his premises and who cannot furnish the Government the consent and stipulation of the owner or lienor are continued; however, under this paragraph the distiller is also permitted to file such bond voluntarily to relieve his property from future lien. This change is designed to eliminate administrative complexities for the Government and to relieve unreasonable burdens upon industry which have resulted from the existing inflexible lien provisions, such as preventing the voluntary encumbrance of major fixed assets, restricting the removal of obsolete equipment, and impeding the temporary installation of experimental equipment not owned by the proprietor.

Under existing law, this indemnity bond is required to be in a penal sum equal to the appraised value of the property. Such appraised value in many instances is so high as to make that requirement unrealistic. This paragraph provides that the penal sum shall be equal to the appraised value, but not in excess of $300,000.

(For other provisions respecting the indemnity bond provided for in this subsection, see section 5004 (b) (3) (B).)

Paragraph (2), "Cancellation of indemnity bond": This paragraph is new and makes provision for the cancellation of an indemnity bond when the liability for which it was given ceases to exist. This provision will serve the same purpose in respect to indemnity bonds given in lieu of lien as that now served by the provisions of existing law (*sec. 5004 (a) (4)*) for the issuance of a certificate of discharge of lien.

Paragraph (3), "Judicial sale": This paragraph is existing law (*sec. 5177 (b) (4)*).

Subsection (c), "Bonded warehouseman's bonds": This subsection is principally derived from existing law (*Sec. 5232 (a)*) relating to bonds for internal revenue bonded warehouses. The distinctive specific provisions in existing law (*Secs. 5302, 5303, 5306, and 5331 (a) (3)*) relating to bonds of industrial alcohol bonded warehouses, industrial alcohol denaturing plants, and distillery denaturing bonded warehouses have been eliminated in order to establish uniform provisions for bonds for the warehousing of all types of distilled spirits in a single type plant. Because of the inclusion of denaturation of distilled spirits as a function to be performed on the bonded premises of a distilled spirits plant, rather than in a separate establishment, bonds given under this section will be applicable to denaturation when performed after entry of the spirits into bonded storage.

Paragraph (1), "General requirements": The provisions of the first sentence, relating to the penal sum of the bond, are the same as provided in existing law (*sec. 5232 (a)*), and regulations issued pursuant thereto, for internal revenue bonded warehouses.

This paragraph, as amended by your committee, provides that the bonded warehouseman's bond shall be conditioned on the withdrawal of the distilled spirits from storage on bonded premises within the time prescribed for the determination of tax under section 5006 (a) (2).

Paragraph (2), "Exception": The exception provided in paragraph (2) permits the Secretary or his delegate to specify by regulations certain bonded warehousing operations, not involving the storage of more than 500 wooden casks or packages, for which a bond in maximum penal sum of less than $200,000 may be approved. This exception recognizes that the risk of unauthorized removal of spirits on storage may be greater when they are stored in wood than when stored in metal drums or bulk tanks; first because the normal soakage, leakage, and evaporation of distilled spirits from wooden containers makes precise accounting for such spirits impossible, and, second, because illegal access to the contents of a wooden package is more difficult to detect than such access to the contents of a properly sealed or protected metal drum or tank.

Subsection (d), "Rectifier's bond": This subsection is derived from existing law (*sec. 5272*) which provides that the business of a rectifier shall be carried on under such bonds as the Secretary or his delegate may prescribe by regulations. The specific provisions for maximum and minimum bonds provided in this subsection correspond to the provisions of regulations issued under existing law.

Subsection (e), "Combined operations":

Paragraph (1), "Distilled spirits plants": This paragraph adopts principles used in regulations issued under existing law (*sec. 5304 (a) (5)*) in setting maximum penal sums of bonds for the combined operation of an industrial alcohol plant, industrial alcohol bonded warehouse, and denaturing plant, or any two of these plants; that is, that the total penal sum of bonds for two or more related operations need not be as large as the total of bonds required for the individual operations, since the Government has available the total amount of the combined bond in respect to

any operation. In no case will the Government's protection as to any operation be less than the protection provided under existing law.

Paragraph (2), "Distilled spirits plants and adjacent bonded wine cellars": This paragraph is new and makes further application of the principle applied in paragraph (1), to distilled spirits plants producing distilled spirits adjacent to bonded wine cellars. There is an interrelation between such plants and such wine cellars, since the distilling material is usually fermented in the bonded wine cellar, and the brandy used in the production of wine is usually produced in the adjacent distilled spirits plant.

Subsection (f), "Blanket bonds": This subsection is new. It provides discretionary authority for the Secretary or his delegate to authorize, by regulations, a person operating more than one distilled spirits plant in a designated geographical area to give a blanket bond covering his operations at those plants and at any bonded wine cellars adjacent to such plants. The penal sum of the blanket bond would be based upon the total of the penal sums of bonds (other than indemnity bonds) which would be required under this section if no provision were made for blanket bonds. Such penal sum would be determined from the table in the text, which is so designed that, if the total of the bonds which would otherwise be required exceeds $300,000, the penal sum of the blanket bond given in lieu thereof would be somewhat less than such total, but the security available to the Government in respect to any individual plant would be greater than that of the bond otherwise applicable thereto.

The word "person" as used in this subsection includes, in the case of a corporation, controlled or wholly-owned subsidiaries. A controlled subsidiary is intended to mean a corporation where more than 50 percent of the voting shares is owned by the parent corporation.

Subsection (g), "Liability under combined operations and blanket bonds": This subsection is new. The interests of the Government are served by its provision that the total amount of any bond given under subsection (e) or (f) shall be available for the satisfaction of any liability incurred under any of the terms or conditions of the several bonds for which the combined or blanket bond is substituted.

Section 5174. Withdrawal bonds

This section is identical with code section 5174 as contained in the House bill.

Subsection (a), "Requirements":

Paragraph (1) is a clarifying and conforming restatement of existing law (*secs. 5176 (b) and 5232 (b)*) in respect to the posting of bonds for the withdrawal of distilled spirits from bond on determination of tax by distillers and proprietors of internal revenue bonded warehouses. It extends such provisions to all qualified producers and bonded warehousemen of distilled spirits. These provisions, like the corresponding provisions of existing law, are applicable only when a return system for payment of the distilled spirits tax is prescribed under regulations issued pursuant to the provisions of section 5061 (a).

Paragraph (2) constitutes an important change in existing law. It provides that the proprietor of a distilled spirits plant authorized to receive the distilled spirits for rectifying or bottling may,

upon application, assume liability at the receiving plant for payment of the tax, and furnish bond therefor. No limitation is placed on the penal sum of this bond, which is to be prescribed by regulations. If distilled spirits are withdrawn under the bond provided for in this paragraph, the liability for the tax on such spirits would not be chargeable to any bond given under the provisions of paragraph (1).

Subsection (b), "Release of other bonds": Under existing law the operating bonds of proprietors of registered distilleries and internal revenue bonded warehouses continue to cover liability for tax until the tax is paid, and thus supplement bonds given for withdrawals on determination of tax. This subsection provides that the bonds of proprietors covering operations on bonded premises, and bonds given under prior provisions of internal revenue law to cover similar operations, shall no longer cover liability for payment of the tax imposed under section 5001 (a) when a bond has been filed under subsection (a) and the distilled spirits have been withdrawn from bonded premises thereunder.

This separation of bond liability provides a clearer basis for evaluation of risk and frees the operating bonds to cover the risk which they have historically covered under the system where the tax was paid prior to withdrawal of distilled spirits from bond.

Section 5175. Export bonds

This section is identical with code section 5175 as contained in the House bill.

The section is derived from existing law (*secs. 5243 (e) and 5247 (a)*) and incorporates several important changes, as follows:

(1) The limitations of existing law (*sec. 5247 (a)*) that the exportation of distilled spirits be at the instance of the owner of the spirits and in the original casks or packages, or in packages, filled from such casks or packages, are considered to impose unnecessary restrictions, and are accordingly deleted,

(2) Provision is made, in case of distilled spirits withdrawn for exportation without payment of tax on application of the proprietor of the bonded premises from which the spirits are withdrawn, that the bond of the proprietor, covering operations on his bonded premises, shall also cover the exportation, and the bond specified in subsection (a) shall not be required. It is believed that the Government is afforded adequate security in such cases without recourse to special export bonds.

(3) The provisions of existing law (*sec. 5243 (e)*) prohibiting the allowance of drawback upon any spirits bottled in bond are deleted. This will permit proprietors to taxpay bottled-in-bond products and export the bottled-in-bond goods with benefit of drawback in the same manner as other taxpaid spirits. This affords proprietors greater flexibility in operations in connection with the exportation of bottled-in-bond distilled spirits, which, under existing law, can be stocked for exportation only in internal revenue bonded warehouses.

Section 5176. New or renewed bonds

This section is identical with code section 5176 as contained in the House bill.

Subsection (a), "General": This subsection is existing law in respect to operating bonds of distillers and internal revenue bonded warehousemen (*secs. 5176 (c) and 5232 (c)*) except that the provision for a new bond in case of the death of any surety has been deleted, as individual sureties are no longer accepted on these bonds. The provisions are extended to apply to all bonds required or given under sections 5173, 5174, and 5175.

Subsection (b), "Bonded warehouseman's bonds": This subsection is a restatement of existing law (*sec. 5232 (c)*) in respect to internal revenue bonded warehouses. The language has been rephrased for clarification, and the provisions are made applicable to the function of storing distilled spirits in bond on the bonded premises of any distilled spirits plant.

Section 5177. Other provisions relating to bonds

This section corresponds to code section 5177 as contained in the House bill. The language of the cross references in subsection (b) has been amended for the purpose of achieving consistency with the provisions to which they relate.

Subsection (a), "General provisions relating to bonds": *Section 5551* of existing law is applicable to bonds required to commence or continue the business of a distiller or rectifier. This subsection is intended to extend the provisions of section 5551 to all bonds required by or given under sections 5173, 5174, and 5175.

Subsection (b), "Cross references".

Section 5178. Premises of distilled spirits plants

This section corresponds to code section 5178 as contained in the House bill, and is the same as that section, except that your committee has made two amendments thereto. Subsection (a) (1) (C) has been amended by substituting the phrase "location, construction, arrangement, and method of operation" for "location, construction, and arrangement", in order to clarify the authority of the Secretary or his delegate to permit the continuation of established businesses which are duly authorized under existing law, in any instance where he deems that such continuation will not jeopardize the revenue, even though the original establishment of similar businesses could not be authorized under the provisions of this bill. Subsection (a) (3) (C) has also been amended, by striking the phrase "used solely for the storage or packaging of distilled spirits" and substituting in lieu thereof "used exclusively for the storage, bottling, or packaging of distilled spirits, and activities related thereto". This amendment is intended to avoid an unnecessarily restrictive interpretation of the provisions in respect to the use of warehouse rooms or buildings.

Subsection (a), "Location, construction, and arrangement":

Paragraph (1), "General":

Subparagraph (A) provides general authority for the prescribing of regulations relating to the location, construction, arrangement, and protection of distilled spirits plants, in lieu of the detailed statutory requirements in existing law (*secs. 5173, 5231, 5271, 5273, and 5305*) relating to the location, construction, arrangement, and protection of the various types of plants which under existing law are necessary to perform the functions of distilled spirits plants. The detailed requirements in existing law have

caused administrative difficulties and impeded the technological progress of industry.

Subparagraph (B) applies the restrictions in existing law (*sec. 5171*), relating to the location of registered distilleries, to the location of distilled spirits plants for the production of distilled spirits, except that the specific provisions prohibiting the location of such plants on premises where vinegar is manufactured or produced, or where sugars or sirups are refined, are deleted. The carrying on of businesses other than those listed in this paragragh is also prohibited, except when authorized under the provisions of subsection (b).

Subparagraph (C) will permit the Secretary or his delegate to approve the location, construction, arrangement, and method of operation of any existing registered distillery, fruit distillery, industrial alcohol plant, internal revenue bonded warehouse, industrial alcohol bonded warehouse, industrial alcohol denaturing plant, distillery denaturing bonded warehouse, rectifying plant, or taxpaid bottling house (or any combination thereof under the same proprietorship in the same general location) for a distilled spirits plant for the performance of the same general functions as the present plant (or plants), if he deems that the location, construction, arrangement, and method of operation thereof will afford adequate security to the revenue.

Your committee has inserted the phrase, "and method of operation", to clarify the authority of the Secretary or his delegate to permit the continuation of duly authorized existing operations, in existing facilities, in any instance where he deems that such continuation will not jeopardize the revenue, even though the original establishment of similar operations could not be authorized under the provisions of this bill. This provision recognizes the practical necessity of allowing the continuance of existing operations in existing facilities.

Paragraph (2), "Production facilities":

Subparagraph (A) is derived from existing law (*sec. 5307*) which provides that alcohol may be produced at any qualified industrial alcohol plant from any raw materials or by any process suitable for the production of alcohol. It provides that production facilities of a distilled spirits plant may be used to produce distilled spirits from any source or substance. Under these provisions the artificial distinctions between production facilities, based upon their qualification as either distilleries or industrial alcohol plants, are eliminated.

Subparagraph (B) retains the general principle expressed in existing law (*sec. 5173 (b)*) that the distilling system shall be so connected and constructed as to prevent the abstraction of spirits prior to their deposit in receiving cisterns, with modifications to permit greater flexibility in operations and utilization of modern technological developments in producing and gauging distilled spirits. The term "deposit in receiving cisterns" is deleted and "production gauge" is substituted, since gauging by meters or other devices is now feasible without deposit of the spirits in a tank or cistern. Also, large quantities of distilled spirits for industrial use are

produced without fermentation in chemical processes wherein the product is neither potable nor readily recoverable as potable distilled spirits during preliminary stages of the production process. The maintenance of a closed, sealed, distilling system at these stages of production entails unnecessary administrative expense and needlessly hampers the proprietor's operations.

Subparagraph (C) is derived from existing law (*sec. 5173*), relating to the construction, arrangement, identification, and security of distillery fixtures and equipment. The provisions of existing law are made generally applicable to fixtures and equipment on bonded premises of distilled spirits plants. Certain specific and detailed requirements are omitted in order to afford more administrative latitude, consistent with the greater flexibility in utilization of facilities provided for in this chapter.

Paragraph (3), "Bonded warehousing facilities": This paragraph contains provisions for the establishment of bonded warehousing facilities. Under the discretion granted the Secretary in existing law (*sec. 5231*) to establish warehouses, regulations have permitted a distiller to establish an internal revenue bonded warehouse on, or contiguous to, his distillery, and have permitted the establishment of warehouses at other locations by any person only upon a showing of need therefor. Also, within the discretion granted under existing law (*sec. 5302*) relating to industrial alcohol bonded warehouses, regulations have permitted the establishment of such warehouses by the proprietor of an industrial alcohol plant on the premises of his producing plant, or elsewhere. With the unification of all of these producing and warehousing operations within the concept of the distilled spirits plant, the basic authority of the Secretary to limit the establishment of facilities for bonded warehousing (other than those established in conjunction with production facilities) has been retained for the protection of the revenue and to avoid excessive supervisory and administrative costs.

Existing law (*secs. 5231 and 5243 (a)*) relating to internal revenue bonded warehouses provides that such warehouses shall be used exclusively for the storage of distilled spirits and for the bottling of distilled spirits in bond. The House bill continued these provisions in substance by providing that, where distilled spirits are to be stored in bond in casks, packages, cases, or similar portable approved containers, facilities for their storage must be provided in a room or building to be used solely for the storage or packaging of distilled spirits. Your committee has revised the language of this paragraph in respect to the use of such rooms or buildings to make it clear that these facilities may also be used for activities related to storage, bottling, or packaging distilled spirits. These provisions are not applicable in respect to denatured distilled spirits because of the provisions of code section 5202 (d) as contained in this bill.

Paragraph (4), "Bottling facilities":

Subparagraph (A) retains the authority for bonded warehousemen to establish facilities for the traditional bottling of distilled spirits in bond as provided under existing law (*sec.*

5243 (a)). By confining this authorization to those proprietors who are authorized to store distilled spirits in casks, packages, cases, or similar portable approved containers, it is intended to limit traditional bottling in bond to the type of premises where it is permitted under existing law, and to the bottling of beverage products.

Subparagraph (B) is derived from existing law (*secs. 5271 and 5273*) pertaining to the establishment of facilities for rectification, and the purposes for which such facilities may be used. The provisions relating to the establishment of such facilities as a separate distilled spirits plant, or as a part of a distilled spirits plant also qualified for the production or bonded warehousing of distilled spirits, are in keeping with the concept of the distilled spirits plant under which it is intended that facilities for producing, bonded warehousing, denaturing, rectifying, or bottling, under one proprietorship and in one general location, be qualified, wherever practical, as a single distilled spirits plant.

Subparagraph (C) is intended to preserve the equivalent of the present taxpaid bottling house, wherein distilled spirits may be bottled without rectification. Regulations promulgated under existing law provide for the establishment of such plants under restrictions substantially as set forth in this subparagraph. Restrictions of this nature are considered essential to protect the revenue and to avoid additional supervisory cost, and are consistent with the provisions of the Federal Alcohol Administration Act relating to bulk sales and bottling (27 U. S. C. 206).

Subparagraph (D) is derived from existing law (*secs. 5271 and 5273*) and is intended to prohibit the establishment of bottling premises on the bonded premises of a distilled spirits plant and to provide authority for the promulgation of regulations relating to the means and manner of separation of bottling premises from the bonded premises of a distilled spirits plant.

Paragraph (5), "Denaturing facilities": Under existing law (*secs. 5303, 5305, and 5331 (a)*) denaturation is performed in separately qualified plants. This paragraph provides that denaturing facilities established on the bonded premises of a distilled spirits plant shall be arranged and segregated in such manner as the Secretary or his delegate may by regulations require. (For authority to denature see sec. 5241.)

Subsection (b), "Use of premises for other businesses": This subsection is derived from existing law (*sec. 5171*) relating to registered distilleries, which empowers the Secretary or his delegate to authorize the carrying on of businesses, other than those specifically authorized or prohibited by statute, on distillery premises when the Secretary or his delegate finds that such operations will not jeopardize the revenue. This subsection is intended to continue this authority, and extend it to the entire distilled spirits plant. Specific statutory provision is made for an application and approval to carry on such businesses.

Subsection (c), "Cross references".

Section 5179. Registration of stills

This section is identical with code section 5179 as contained in the House bill.

Subsection (a), "Requirements": This subsection is a clarifying restatement of existing law (*sec. 5174*) without substantive change.

Subsection (b), "Cross references".

Section 5180. Signs

This section is identical with code section 5180 as contained in the House bill.

Subsection (a), "Requirements": Existing law (*secs. 5180 and 5274*) and regulations require the posting by plant proprietors of signs identifying the premises by proprietorship, registry number, and type of establishment. This subsection requires the posting of a sign denoting the proprietorship and the business or businesses in which the proprietor is engaged, and provides that signs be in such form and contain such information as regulations may require. This provision will make possible the continued utilization of plant designations which have obtained public and commercial significance, such as "fruit distillery," "rectifying plant," etc.

Subsection (b), "Cross reference".

Section 5181. Cross references

This section is identical with code section 5181 as contained in the House bill and is a cross reference section only.

SUBCHAPTER C—OPERATION OF DISTILLED SPIRITS PLANTS

This subchapter unifies the provisions of existing law relating to the operation of registered distilleries, fruit distilleries, industrial alcohol plants, internal revenue bonded warehouses, industrial alcohol bonded warehouses, industrial alcohol denaturing plants, distillery denaturing bonded warehouses, rectifying plants, and taxpaid bottling houses. It provides for the conduct of any or all of the present functions of these nine plants within a single distilled spirits plant. The unification of these provisions has been accompanied by provision for greater administrative discretion in the controls to be exercised, thus permitting adoption of modern methods of control and continued simplification of administration and supervision. Such unification will also provide opportunity for relief of industry from unnecessary restrictions on the manner in which their operations are to be conducted, the permissible hours of operation, the type of containers which may be used, and the type of records which must be kept and of reports which must be filed. Greater latitude is also provided for administrative discretion in the manner of gauging distilled spirits and the stamping of containers thereof.

PART I—GENERAL PROVISIONS

Section 5201. Regulation of operations

This section is identical with code section 5201 as contained in the House bill, except that your committee has added a new provision in subsection (b) relating to the production of non-potable chemical mixtures containing distilled spirits.

Subsection (a), "General": This subsection continues the authority provided in existing law (*secs. 5193 (a), 5194 (g), 5241 (a), 5281, 5282 (a), 5302, 5305, 5306, 5307, and 5319 (6)*) for the Secretary or his delegate to regulate operations relating to the production, storage, denaturation, rectification, and bottling of distilled spirits. Such authority is extended to cover the regulation of other operations which may be authorized on the premises of distilled spirits plants under section 5178 (b).

Subsection (b), "Distilled spirits for industrial uses": This subsection is a clarifying restatement of existing law (*sec. 5305*) to conform it to the distilled spirits plant concept. It is the same as the House bill except for the last sentence, which has been added by your committee.

Much of the industrial alcohol produced today is made by synthetic processes (for example, from petroleum derivatives). The product of the earlier stages of the process is generally a non-potable chemical mixture containing a small proportion of distilled spirits. The manufacturing process is frequently performed on the premises of a large petroleum refinery or other industrial plant where it is impracticable to include the earlier stages of the production on bonded premises. In order to facilitate and simplify the administration of the provisions of chapter 51 under such circumstances, your committee has provided that the Secretary or his delegate may waive any provision of that chapter with respect to the production of such chemical mixtures, and has further provided that the subsequent processing of such mixtures on the bonded premises of a distilled spirits plant shall be deemed to be production of distilled spirits for the purposes of that chapter. No jeopardy to the revenue will be involved by this change since such mixtures require expensive and complex equipment for completion of processing and are not suitable for diversion to illicit channels.

Subsection (c), "Hours of operations": This subsection is derived from existing law (*secs. 5195, 5215, and 5306*), which contains specific restrictions on the hours of operations with respect to the production of distilled spirits and the hours for removal of distilled spirits. However, the hours of production for industrial alcohol plants are exempt from such restrictions, except that regulations may reimpose such restrictions. Furthermore, the hours of production for fruit distilleries are also exempt from such restrictions by regulations. There is similar lack of uniformity in existing law with respect to hours within which distilled spirits may be removed from warehouses, as well as from producing establishments. There has been a substantial change in the conditions which existed (lighting, transportation facilities, etc.) when the statutory restrictions on hours of operation were enacted, and, therefore, this subsection is designed to permit modifications to meet current conditions by eliminating specific restrictions and authorizing the Secretary or his delegate, within certain limitations, to prescribe regulations relating to hours for distilling operations and to hours for removal of distilled spirits.

Subsection (d), "Identification of distilled spirits": This subsection is new. It provides for a new basic control technique for the enforcement of this chapter through the introduction into distilled spirits of tracer elements which will not impair the quality of the distilled spirits

for their intended use. Subsequent analysis would identify the tracer element or elements present, and thereby reveal the source of the distilled spirits; absence of appropriate tracer elements would constitute evidence of unlawful operations.

Section 5202. Supervision of operations

This section corresponds to code section 5202 as contained in the House bill, except that your committee has amended subsection (d) by inserting the parenthetical phrase "other than denatured distilled spirits" to avoid the possible construction that the distilled spirits which are required to be stored in locked rooms or buildings are inclusive of denatured distilled spirits. The storage of denatured distilled spirits in locked rooms or buildings is not a requirement of present law, and is not deemed necessary for the protection of the revenue.

Subsection (a), "General": This subsection provides authority for the Secretary or his delegate, by regulations, to prescribe the degree of supervision to be maintained over distilled spirits plants, and the manner in which they shall be supervised. These provisions are in lieu of the many detailed and specific requirements in existing law (*secs. 5192 (a) and (c), 5241 (a) and (b), and 5282 (b)*). This permits adjustments in supervisory practices to utilize more efficient procedures and scientific techniques, and will allow industry to adopt technological advances in operating procedures.

Subsection (b), "Removal of distilled spirits from distilling system": This subsection continues the principle of the closed distilling system required by existing law (*secs. 5173 (b) and 5192 (b) and (c)*) but provides greater scope for administrative determination of the means or methods of protection which will be required or which may be approved.

Subsection (c), "Storage tanks": This subsection is derived from existing law (*sec. 5241 (a) and (b)*) and regulations issued thereunder which provide that storage tanks for the bonded warehousing of distilled spirits shall be kept closed, and the flow of distilled spirits into and out of such tanks shall be controlled by Government locks. This subsection provides more latitude for the utilization of improved supervisory techniques and of mechanical or other control devices.

Subsection (d), "Storage rooms or buildings"; This subsection is derived from existing law (*sec. 5241 (b)*). It continues the requirement for Government locked rooms or buildings for the bonded storage of distilled spirits (other than denatured distilled spirits) in barrels or other portable containers. Such security is deemed necessary, due to the impracticability (by reason of losses through leakage and evaporation) of maintaining an accurate accounting for spirits aged in wood, and due to the greater opportunity for diversion in the case of distilled spirits in portable containers.

Subsection (e), "Denaturation of distilled spirits": This subsection continues the requirement of existing law (*sec. 5331 (a) (1)*) that the denaturation of distilled spirits be supervised, but leaves to the Secretary or his delegate the degree and type of supervision to be exercised and the type of devices or methods to be utilized in controlling the operation.

Subsection (f), "Gauging": This subsection is a consolidation and generalization of existing law (*secs. 5193 (a) and 5250*) for more uniform administration. It provides that certain important gauges of

distilled spirits shall be made or supervised by internal revenue officers, under such regulations as the Secretary or his delegate shall prescribe.

Subsection (g), "Bottling in bond": This subsection retains the provision of existing law (*sec. 5243 (b)*) requiring that the bottling of distilled spirits in bond be done under supervision. The specific supervision to be given to this operation is left to regulations, to provide authority for the exercise of appropriate administrative discretion.

Section 5203. Entry and examination of premises

This section is identical with code section 5203 as contained in the House bill.

Subsection (a), "Keeping premises accessible": This subsection is existing law in respect to distillers (*sec. 5196 (a)*). It is extended to apply uniformly to all proprietors of distilled spirits plants.

Subsection (b), "Right of entry and examination": This subsection is a clarifying restatement of existing law (*sec. 5196 (b) and (e)*) in respect to distilleries, and is extended to apply uniformly to all distilled spirits plants, and to any premises where distilled spirits are rectified.

Subsection (c), "Furnishing facilities and assistance": This subsection is intended to continue existing law (*secs. 5196 (c) and (e) and 5283*) in respect to distillers and rectifiers. It is extended to apply uniformly to all proprietors of distilled spirits plants.

Subsection (d), "Authority to break up grounds or walls": This subsection is a clarifying restatement of existing law (*secs. 5196 (d) and 5283*) with respect to distilling and rectifying premises. It is extended to apply uniformly to all distilled spirits plants.

Subsection (e), "Cross reference".

Section 5204. Gauging

This section is identical with code section 5204 as contained in the House bill.

Subsection (a), "General": This subsection provides general authority for the Secretary or his delegate to prescribe by regulations the purposes for which distilled spirits shall be gauged (in addition to those specified in section 5202 (f)), as well as the times for required gauges and the conditions under which the gauges shall be made. This subsection replaces similar provisions of existing law (*secs. 5193 (a), 5194 (g), 5245, and 5282 (b)*) providing for the gauging of distilled spirits.

Subsection (b), "Gauging instruments": This subsection is existing law (*sec. 5212*) except that (1) the phrase "for the determination of tax" has been added, to clarify the authority of the Secretary or his delegate to prescribe gauging instruments or means of gauging, and (2) the phrase "or methods" has been inserted in order that the Secretary or his delegate may prescribe methods other than the use of traditional instruments for making gauges, as newer methods are developed and their merit proven. Technological developments in instrumentation and the development of techniques of statistical sampling are expected to be of great benefit to both Government and industry, and any such developments, or others not now foreseen, are intended to be utilizable under this subsection.

Subsection (c), "Gauging, stamping, marking, and branding by proprietors": This subsection is a consolidated restatement of existing law (*secs. 5193 (d), 5250 (b), 5282 (b), and 5306*) and regulations issued thereunder, made applicable to all proprietors of distilled spirits plants.

Section 5205. Stamps

This section corresponds to code section 5205 as contained in the House bill, except that your committee has made revisions as follows:

1. Paragraph (2) of subsection (a) has been amended to limit the applicability of the exception contained in subparagraph (C) to distilled spirits lawfully withdrawn from bond which are in immediate containers stamped under other provisions of internal revenue or customs law or regulations issued pursuant thereto.

2. Paragraph (3) of subsection (a) has been amended to provide that the requirement that stamps shall be affixed in such a manner as to be broken when containers are opened shall not be applicable in the case of containers of a capacity of more than 5 wine gallons. This change eliminates an impractical requirement in the case of the affixment of stamps under paragraph (2) to containers such as barrels and drums.

3. Subsection (g) has been amended to permit the Secretary or his delegate to waive requirements for the obliteration and effacement of marks or brands (or portions thereof) on emptied packages of distilled spirits where he determines that no jeopardy to the revenue will be involved. The change will permit the elimination of unnecessary work and expense incurred in obliterating meaningless remnants of marks on emptied packages.

4. A grammatical correction has been made in paragraph (2) of subsection (i), which is a cross reference.

Subsection (a), "Stamps for containers of distilled spirits":

Paragraph (1), "Containers of distilled spirits bottled in bond": This paragraph, relating to the stamping of distilled spirits bottled in bond, is a clarifying and conforming restatement of existing law (*sec. 5008 (a) (1)*). (For provisions relating to the manner of affixing stamps, see paragraph (3).)

Paragraph (2), "Containers of other distilled spirits": This paragraph is a restatement of existing law (*sec. 5008 (b) (1)*). The phrase "lawfully withdrawn from bond" has been inserted in subparagraphs (A), (C), (D), and (F) to make it clear that the exceptions contained in these subparagraphs do not apply to distilled spirits which have not been lawfully withdrawn from bond. Subparagraph (C) has been restated and revised by your committee to make it clear that the exception therein applies only to distilled spirits in immediate containers which are stamped under other provisions of internal revenue or customs law or regulations issued pursuant thereto. (The term "container" is defined in section 5002 (a) (9)).

Paragraph (3), "Stamp regulations": This paragraph is existing law (*sec. 5008 (a) (1) and (2) and (b)*), except for the following changes:

1. The provisions relating to the affixing of stamps in such manner as to be broken on opening the container has been made inapplicable in the case of containers of more than 5 wine gallons, since such provision is impracticable in the case of bulk containers.

2. Provision has been made to permit the Secretary or his delegate to relieve the requirements that the stamps be so affixed as to be broken on opening the bottle or other container, if the container is such as cannot again be used after opening. This is intended to give discretion to the Secretary or his delegate to permit the use of liquor containers which are of such material, or which are so designed as not to admit of stamping across the mouth, provided the containers are not, by reason of their design, susceptible of reuse.

3. The authority of the Secretary or his delegate to prescribe regulations with respect to stamps under this paragraph is extended to include stamps prescribed for bottled alcohol under section 5235.

4. The specific requirements for the destruction of stamps affixed to containers under the provisions of *section 5008 (b)* of existing law have been omitted. This paragraph continues authority for the Secretary or his delegate to prescribe regulations relating to the destruction of stamps affixed pursuant to this subsection and makes such authority applicable in respect to stamps affixed under the provisions of section 5235.

Subsection (b), "Stamps for containers of distilled spirits withdrawn from bonded premises on determination of tax": This subsection continues the requirements of existing law (*secs. 5193 (a) and 5250*) and regulations issued thereunder that containers of distilled spirits withdrawn from bonded premises on determination of tax shall be stamped.

The exemption provided for cases of bottled distilled spirits filled on bonded premises, with the bottles therein stamped under the provisions of subsection (a) or section 5235, is in accordance with existing law and regulations.

Subsection (c), "Stamps for containers of distilled spirits withdrawn for exportation":

Paragraph (1), "Exportation without payment of tax": This paragraph is derived from existing law (*sec. 5009*) which requires the stamping of all distilled spirits intended for export, before removal from the internal revenue bonded warehouse. The language has been simplified, and detailed requirements have been left to regulations. The limitation on the application of existing law, that the exportation be made in the original casks or packages, or in packages filled from the original packages, is removed, as it serves no useful purpose in the administration of the chapter, and restricts industry in its operations.

Paragraph (2), "Exportation with benefit of drawback": This paragraph is derived from existing law (*sec. 5008 (b) (1)*) which requires the stamping of containers of distilled spirits packaged, but not bottled especially for export. It provides that the Secretary or his delegate may require any container of distilled spirits bottled or packaged especially for export to be stamped under its provisions.

It is intended that the export stamp provided for in this paragraph might, if regulations so prescribe, be the same basic stamp as is used for domestic distilled spirits, overprinted to show use on products bottled or packaged for export.

In the event a stamp is not prescribed under this paragraph the provisions of subsection (a) (2) will apply.

Subsection (d), "Stamps for containers of 5 wine gallons or more of distilled spirits filled on bottling premises": This subsection is derived from existing law (*secs. 5115 and 5282 (b) and (c)*) which provides that containers of distilled spirits containing 5 gallons or more, filled by a rectifier or wholesale liquor dealer, shall be stamped. These provisions are made applicable to all such packages filled on bottling premises for removal therefrom. Details of existing law, such as those relating to the manner of affixing stamps, are omitted, and the Secretary or his delegate is instead granted authority to prescribe regulations relating to the stamping of these containers.

Subsection (e), "Issue for restamping": This subsection is existing law (*sec. 5010 (a)*) except for two changes. The phrase "may issue stamps" has been changed to "may authorize restamping." This is intended to provide authority for the Secretary or his delegate to authorize restamping whether or not the stamp is furnished by the Government. Also, the phrase, "of containers" has been substituted for "packages" in present law. Containers is a broader term, and is intended to cover all approved containers, including bottles, required to be stamped.

Subsection (f), "Accountability": This subsection is existing law (*sec. 5010 (b)*) except that the specific requirement that "all stamps relating to distilled spirits shall be charged to the principal collection officer in each internal revenue district" has been deleted.

Subsection (g), "Effacement of stamps, marks, and brands on emptied containers": This subsection is a clarifying restatement of existing law (*sec. 5010 (c)*) made applicable to all immediate containers of distilled spirits except containers stamped under subsection (a) or section 5235. The word "immediate" is specifically intended to make it clear that the provisions relating to the destruction of marks and brands are not applicable to marks and brands on cases of bottled distilled spirits. This subsection, as amended by your committee, provides authority for the Secretary or his delegate to waive requirements for the obliteration and effacement of marks or brands (or portions thereof) on emptied packages of distilled spirits where he determines that no jeopardy to the revenue will be involved.

Subsection (h), "Form of stamp": This subsection is new. It provides for administrative discretion in the type of stamp to be used and the method of applying the stamp, by permitting the Secretary or his delegate to prescribe by regulations that any stamp required by or prescribed pursuant to the provisions of this section or section 5235 may consist of such coupon, serially numbered ticket, imprint, design, or other form of stamp as may by regulations be prescribed.

Subsection (i), "Cross references".

Section 5206. Containers

This section corresponds to code section 5206 as contained in the House bill, except that your committee has amended subsection (d) in order to make it completely clear that the provisions of subsection (c) are applicable to the marking, branding, and identification of cases containing bottles or other immediate containers of distilled spirits.

Subsection (a), "Authority to prescribe": This subsection constitutes an important change in existing law. Existing law (*secs. 5193 (a) and (b), 5194, 5247 (a) and (d), and 5302*) contains numerous and diverse restrictions on the types of containers in which the different kinds of distilled spirits may be stored, transferred, packaged, or withdrawn. Such detailed restrictions have proven cumbersome of administration and have hampered the utilization of efficient method of storage, transfer, packaging, and withdrawal. This subsection replaces these statutory restrictions by a general provision granting administrative authority for control by regulations of the containers to be used under particular circumstances or for specific purposes. The basic purpose is to eliminate artificial distinctions and restrictions and to facilitate more efficient operations. It is intended that this section be broadly construed, so that the Secretary or his delegate may permit efficient storage, transfer, and withdrawal operations.

Subsection (b), "Standards of fill": This subsection is derived from existing law (*sec. 5193 (c)*) providing that the Secretary or his delegate may by regulations prescribe the standards of fill of casks or packages of distilled spirits at each distillery. Such authority is extended to standards of fill for all approved containers of distilled spirits, except the fill of containers of one gallon or less for other than industrial use which is controlled under other provisions of law.

Subsection (c), "Marking, branding, or identification": This subsection provides general authority for the Secretary or his delegate to prescribe by regulations the manner of marking, branding, or identifying containers of distilled spirits, including cases. This general authority replaces the many similar provisions of existing law (*secs. 5009, 5193 (a), 5194, 5243 (d) and (e), 5250 (a), and 5282 (b)*) both for specific markings and for authority to regulate marking, branding, or identifying containers of distilled spirits, including cases. Because of the limitation on applicability in subsection (d) following, these provisions do not apply to bottles of distilled spirits for other than industrial use, the labeling of which is controlled under other provisions of law.

Subsection (d), "Applicability": This subsection is new and limits the application of this section to containers of distilled spirits for industrial use, to containers of distilled spirits of a capacity of more than one gallon for other than industrial use, and to cases containing bottles or other immediate containers of distilled spirits.

Subsection (e), "Cross references".

Section 5207. Records and reports

This section is identical with code section 5207 as contained in the House bill.

Subsection (a), "Records of distillers and bonded warehousemen": This subsection provides uniform requirements for the maintenance of records by distillers and bonded warehousemen and replaces similar provisions of existing law (*sec. 5197 (a) (1) (A) and (a) (2)*). It continues regulatory authority under existing law (*secs. 5305 and 5331 (a) (3)*) relating to records to be kept by proprietors of industrial alcohol plants, industrial alcohol bonded warehouses, industrial alcohol denaturing plants, and distillery denaturing bonded warehouses. Under existing law and regulations proprietors of distillery denaturing bonded warehouses, industrial alcohol bonded warehouses, and industrial alcohol denaturing plants are required to maintain

records of their operations. However, the statutory requirement for the maintenance of records of the operations of internal revenue bonded warehouses is placed upon Government officers rather than upon proprietors of such establishments. This subsection places all these operations on a comparable basis insofar as the keeping of records and the rendering of reports are concerned, by providing that bonded warehousemen shall maintain records and submit reports relating to their operations. The uniform statutory requirements in this subsection are intended to place greater responsibility upon proprietors for their operations, and to relieve internal revenue officers from detailed clerical duties in this regard.

Subsection (b), "Records of rectifiers and bottlers": This subsection provides uniform statutory requirements for the maintenance of records by rectifiers and bottlers. The requirements of this subsection are substantially the same as those of existing law (*secs. 5285 and 5555 (a)*) and regulations issued thereunder.

Subsection (c), "Reports": This subsection replaces many specific requirements of existing law (*secs 5197 (b), 5285, 5305, 5331 (a) (3), and 5555 (a)*) with uniform statutory requirements for the submission of reports of operations by proprietors of distilled spirits plants, and grants administrative discretion to the Secretary or his delegate in prescribing the time of filing, the form and manner of reporting, and the information to be included in the reports.

Subsection (d), "Preservation and inspection": This subsection is derived from existing law (*secs. 5197 (a) (1) (B), 5305, 5331 (a) (3), and 5555 (a)*). Existing law in certain instances prescribes specific statutory periods for the retention of records, and in other instances leaves the period of retention to be prescribed by regulations. This subsection eliminates the specific statutory periods and provides authority for prescribing the period of retention by regulations. This change is intended to obviate the retention of records in particular cases beyond their period of usefulness. This subsection requires that the records shall be kept on the premises where the operations covered thereby are conducted, and shall be available for inspection by internal revenue officers during business hours.

Subsection (e), "Cross reference".

PART II—OPERATIONS ON BONDED PREMISES

SUBPART A—GENERAL

Section 5211. Production and entry of distilled spirits

This section corresponds to code section 5211 as contained in the House bill and is the same as that section except that your committee has added, as a further purpose for which entry may be made, the transfer of distilled spirits for redistillation. This amendment preserves the flexibility permitted by existing law in respect to the transfer of distilled spirits for redistillation without the technical requirement for entry of the spirits for deposit in storage.

Existing law (*secs. 5193 (a), 5194 (a), (e), (f), and (g), 5242, 5305, and sec. 2 act of March 3, 1877*) and regulations contain specific and differing requirements relating to the production of distilled spirits, their deposit in receiving cisterns (or receiving tanks) on the completion of production, the time and manner of drawing off spirits from such cisterns, the facilities in which various kinds of spirits may be

entered for storage in bond, and the various kinds of spirits which may be withdrawn from the three separate types of producing establishments (registered distilleries, registered fruit distilleries, and industrial alcohol plants). The requirements in connection with each are very restrictive in certain respects, such as the requirements for the deposit of the spirits after production in separate locked receiving tanks, the withdrawal therefrom within a specified period, and, if the spirits are to be stored in bond in tanks, their transfer to other tanks for storage. This section eliminates unnecessary restrictions and artificial distinctions and provides uniform statutory requirements with respect to production and entry.

One of the major effects of the provisions of this section is flexibility in the use of plant facilities, and much useless transferring of spirits can be avoided under these provisions.

The five purposes for which entry may be made after production is complete include one basically new concept; that is, entry for immediate denaturation. Under existing law the proprietor of an industrial alcohol plant who wishes to denature his product must establish a separate denaturing plant. The spirits must be withdrawn from his plant (or warehouse) to the denaturing plant after entry gauge, and there be gauged for denaturation, and denatured. Under the provisions of this section the production gauge may also be the gauge for denaturation, and in such case the denatured distilled spirits would remain in the production facilities until transferred in bond, or until withdrawn from bond under the provisions of section 5214 (a) (1).

Section 5212. Transfer of distilled spirits between bonded premises

This section is identical with code section 5212 as contained in the House bill.

Existing law (*secs. 5194 (a), (e), (f), and (g), 5217 (a), 5246, and 5308*) restricts the transfer of distilled spirits between various types of producing and warehousing establishments and imposes restrictions on the types of containers which may be used for such transfers. This section authorized the transfer of distilled spirits in bond between bonded premises under such regulations, and in such approved containers, as the Secretary or his delegate shall prescribe.

This section will eliminate artificial restrictions in existing law, and will facilitate the use of more efficient methods of transfer.

Section 5213. Withdrawal of distilled spirits from bonded premises on determination of tax

This section is identical with code section 5213 as contained in the House bill.

Existing law (*secs. 5194 (a) and (e) and 5244*) provides for the withdrawal of distilled spirits from bond on determination of tax, but imposes certain restrictions in the case of such withdrawals from registered distillers, including registered fruit distilleries, as to the types of containers that may be used. This section authorizes the withdrawal of distilled spirits from the bonded premises of any distilled spirits plant, in such approved containers, and under such regulations, as the Secretary or his delegate shall prescribe.

This section will eliminate artificial restrictions in existing law, and will facilitate the use of more efficient methods of withdrawal.

Section 5214. Withdrawal of distilled spirits from bonded premises free of tax or without payment of tax

This section is identical with code section 5214 as contained in the House bill.

Subsection (a), "Purposes": Existing law (*secs. 5193 (b), 5194 (d), 5243 (e), 5247, 5310 (a), (b), and (c), 5331 (a) (1) and (b), 5373 (b) (4), 5522 (a), 19 U. S. C. 81c, and 19 U. S. C. 1309*) contains various provisions pertaining to distilled spirits which may be withdrawn free of tax or without payment of tax, including artificial distinctions based upon the type of producing establishment or place of storage in bond.

This subsection provides uniform provisions relating to withdrawals from bonded premises free of tax and to withdrawals without payment of tax, and eliminates numerous artificial distinctions contained in existing law. These changes are of major significance in eliminating alternating production operations and separate types of warehouses, thereby facilitating more efficient utilization of producing and warehousing facilities, which will be of special benefit in times of national emergency.

This subsection also clarifies the distinction between the terms "free of tax" and "without payment of tax." The term "free of tax" is applied where it is intended that the distilled spirits be relieved, at the time of withdrawal from bonded premises, of the tax which attached when the spirits were produced (sec. 5001 (a) (1)), and "without payment of tax" is used where it is not intended that the spirits be so relieved at the time of their withdrawal from bonded premises.

Paragraph (1) is a clarifying and conforming restatement of existing law (*secs. 5310 (a) and 5331 (a) (1) and (b)*) except that provisions of existing law, that alcohol be withdrawn free of tax to an industrial alcohol denaturing plant for denaturation, are changed to provide that distilled spirits may be withdrawn from the bonded premises of a distilled spirits plant free of tax after denaturation in the manner prescribed by law.

Paragraph (2) is a clarifying and conforming restatement of *section 5310 (b)* of existing law which provides for the withdrawal of alcohol only, free of tax, for the use of the governmental units and agencies listed in this paragraph. This paragraph provides for the withdrawal of any type of distilled spirits which may be authorized by regulations. Consistent with the removal of the statutory limitation on the type of distilled spirits, this paragraph makes specific provision that the spirits be withdrawn for nonbeverage purposes. The change in language from "municipal subdivision" to "political subdivision" is intended to clarify the intent of the statute, and not to make any substantive change.

Paragraph (3), except for changes in subparagraphs (A) and (C), is a clarifying and conforming restatement of existing law (*sec. 5310 (c)*). Existing law provides for the withdrawal of alcohol only, free of tax, for certain purposes, while this paragraph provides for the withdrawal for similar purposes of any type of distilled spirits which may be authorized by regulations. Consistent with the removal of the statutory limitations on the type of distilled spirits, this paragraph makes specific provision that the spirits must be withdrawn for nonbeverage purposes.

Subparagraph (A) makes new provision for the withdrawal of distilled spirits, free of tax, for the exclusive use of any educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on, and which is exempt from income tax under *section 501 (a)*. This extends the provisions of existing law which limit such withdrawals to alcohol, free of tax, for the use of any scientific university or college of learning. The privilege of the use of such alcohol is presently enjoyed by public schools which use distilled spirits free of tax under withdrawal permits held by the District of Columbia or the municipal subdivisions of the several States and Territories.

Subparagraph (C) includes two new provisions. One authorizes withdrawal of distilled spirits, free of tax, for use at blood banks, consistent with the general purposes of existing law. The other new provision authorizes withdrawal of distilled spirits, free of tax, for use at any pathological laboratory exclusively engaged in making analyses or tests, for hospitals or sanitariums. Under existing law tests and analyses, with the use of alcohol withdrawn free of tax, are restricted to such services for patients of the institutions making the tests or analyses. This subparagraph removes that restriction.

Paragraph (4) is a consolidated restatement of existing law (*secs. 5193 (b), 5243 (e), and 5247*) except that the many specific requirements in existing law relating to applications, entries, and manner of exportation, have been left to regulations.

Paragraphs (5), (6), (7), and (8) are restatements of existing law without substantive change.

Paragraph (9) is a clarifying restatement of existing law (*sec. 5373 (b) (4)*) and permits the withdrawal free of tax, under such regulations as the Secretary or his delegate may prescribe, of samples of distilled spirits from bonded premises for use in making tests or laboratory analyses thereof.

Subsection (b), "Cross references".

Section 5215. Return of tax determined distilled spirits to bonded premises

This section is identical with code section 5215 in the House bill, except for correction of a typographical error in the cross reference in subsection (c) and change of the date "July 1, 1958," in subsection (a) to "July 1, 1959," to conform to the change in effective date of the general revision of chapter 51, as made by your committee.

Subsection (a), "General": This subsection is new. There is no provision in existing law for the return to bonded premises of distilled spirits withdrawn on payment or determination of tax. This has caused substantial hardship in cases where tax determined distilled spirits have been found to be unsuitable for the purpose for which intended to be used. This subsection affords relief in such cases by permitting the return of such distilled spirits to bonded premises in the original container in which withdrawn if such spirits have not been subjected to any processing and if no spirits have been removed from the original container (other than samples for testing or analysis).

"Bulk container" as used in this subsection is intended to exclude containers of less than five gallons.

The provision that the spirits, when returned to bonded premises, shall immediately be redistilled or denatured is intended to require processing of the spirits, to prevent abuse of the provisions of this subsection. The exception to this requirement, that they may instead be mingled on bonded premises with other spirits, is intended to allow the redistillation or denaturation of the returned spirits with other distilled spirits, or to permit returned spirits distilled at 190 degrees or more of proof to be mingled with other spirits so distilled, so that slight contaminations could be rendered insignificant by dilution.

Subsection (b), "Distilled spirits withdrawn by pipeline": This subsection is new and provides that, in the case of tax determined spirits removed by pipeline, the phrase "original container in which such distilled spirits were withdrawn from bonded premises", as used in subsection (a), means the bulk tank into which the distilled spirits were originally deposited from such pipeline. This is particularly intended to afford relief in case of distilled spirits contaminated from the pipeline in the process of removal.

Subsection (c), "Cross reference".

Section 5216. Regulation of operations

This section is identical with code section 5216 as contained in the House bill and is a cross reference section only.

SUBPART B—PRODUCTION

Section 5221. Commencement, suspension, and resumption

This section is identical with code section 5221 as contained in the House bill.

The section is a restatement of existing law (*sec. 5191*) in respect to distilleries, except that language has been clarified and the terminology conformed to the distilled spirits plant concept, and the specific requirement that locks be used to secure a suspended plant has been generalized to provide that the Secretary or his delegate may prescribe the means to be used to prevent the production of distilled spirits.

The provisions of this section are applicable to all producers of distilled spirits.

Section 5222. Production, receipt, removal, and use of distilling materials

This section corresponds to code section 5222 as contained in the House bill. Your committee has made three amendments to the section, only one of which is substantive. A new subsection (c) has been added for the purpose of facilitating the reclamation of impure distillates. Subsection (c), as contained in the House bill, has been redesignated as subsection (d), and has been rephrased for greater clarity. Also, "or" has been added at the end of paragraph (b) (2), as a technical correction.

Subsection (a), "Production, removal, and use": This subsection is a clarifying and conforming restatement of existing law (*secs. 5042 (a) and 5216*) except that the restriction on the removal of distilling material from the premises where produced has been modified to permit such removal whenever authorized by the Secretary or his delegate. Existing law provides that "no person, other than an

authorized distiller, shall, by distillation, or by any other process, separate the alcoholic spirits from any fermented mash, wort, or wash." This subsection provides in lieu thereof that "no person other than an authorized distiller, shall, by distillation or any other process, produce distilled spirits from any mash, wort, wash, or other material." This language is intended to continue to cover the original production of distilled spirits, but is broadened to more clearly apply to such production from any materials and by any process.

Subsection (b), "Receipt": This subsection is a clarifying and conforming restatement of existing law (*secs. 5309, 5362 (7) and 5412*) except that specific provision is made for the receipt on bonded premises of a distilled spirits plant of cider for use as distilling material. This provision is intended to permit apple growers to collect crushed apples or apple juice for transfer to distilled spirits plants for possible further fermentation and for distillation, even though natural fermentation of the produce may have begun before it is delivered to the distilled spirits plant.

The cider to which this subsection refers is that cider which is produced as described in *section 5042 (a) (1)*, that is, by normal fermentation of apple juice only, without the addition of any substance, and in such manner as to result in a noneffervescent product. Such cider will have a low alcoholic content, and its transfer to distilled spirits plants will not constitute a jeopardy to the revenue.

Subsection (c), "Processing of distilled spirits containing extraneous substances": Your committee has added this subsection to the House bill in order to facilitate the reclamation of distillates containing aldehydes, fusel oil, or other extraneous substances, which in some instances under existing law are required to be denatured or destroyed. A related provision, in respect of such distillates recovered from fruit spirits, is found in section 5373 (c).

Subsection (d), "Cross reference".

Section 5223. Redistillation of spirits

This section corresponds to code section 5223 in the House bill, and is the same as that section except for a change made by your committee in subsection (c), for the purpose of facilitating the recovery of denatured distilled spirits.

Subsection (a), "Spirits on bonded premises": Existing law (*secs. 5194 (f), 5217, 5305, and 5308*) and regulations contain limited authority for the transfer of distilled spirits from production or bonded warehousing facilities to production facilities for redistillation. There is no such provision for the transfer of denatured distilled spirits from denaturing plants to production facilities for redistillation. Since the restrictions on the transfer of distilled spirits (including denatured distilled spirits) in bond under existing law are removed by other changes in this chapter, it is not necessary to specifically authorize the transfer of distilled spirits for redistillation and provision is made in this subsection only for the act of redistillation itself. This provision is not intended to authorize redistillation of distilled spirits in distilled spirits plants unless such plants are constructed, equipped, and qualified for the original production of distilled spirits, and is not intended to be construed as authorizing the establishment of distilled spirits plants solely for the redistillation of spirits on bonded premises.

Subsection (b), "Distilled spirits returned for redistillation": This subsection is new. It is intended to provide for the return to bonded premises, and redistillation on bonded premises, of distilled spirits which have been removed free of tax or without payment of tax under section 5214 or 7510. In the case of distilled spirits withdrawn without payment of tax under section 5214, return to bonded premises for redistillation will only be permitted prior to the time that the spirits are exported, deposited in a foreign trade zone, used in production of wine, deposited in a customs manufacturing bonded warehouse, or laden as supplies upon or used in the maintenance or repair of vessels or aircraft, as the case may be. Such return and redistillation will be subject to regulations.

The regulatory authority of the Secretary or his delegate is intended to include the right to specify the containers in which spirits may be returned, the minimum quantities which may be returned at one time, and any other conditions relating to the return of the spirits and their redistillation, which he deems necessary to protect the revenue or to provide for efficient administration of these provisions.

Subsection (c), "Denatured distilled spirits": This subsection as contained in the House bill provided that distilled spirits recovered by the redistillation of denatured distilled spirits could be withdrawn from bonded premises only after denaturation. Your committee, in order to facilitate the recovery of denatured distilled spirits and the disposition of the recovered distilled spirits, has revised this subsection to permit the utilization of the redistilled spirits for any industrial use. However, such recovered spirits could not be used for beverage purposes.

Subsection (d), "Products of redistillation": This subsection, except for the last sentence, is a clarifying restatement of existing law (*sec. 5194 (f)*), and is applicable to spirits returned under section 5215 (a) to bonded premises after withdrawal on payment or determination of tax, as well as to distilled spirits transferred to bonded premises under the provisions of section 5232 and subsequently redistilled. The last sentence is new. Under existing law and regulations, vodka may be manufactured in a registered distillery by the processing of distilled spirits in the course of original distillation (before production gauge) or in the course of redistillation of distilled spirits returned to the distillery subsequent to production gauge, and before withdrawal from bond. In the case of returned neutral spirits the redistillation serves no purpose in the manufacture of vodka. This new provision is intended to eliminate the legal necessity for redistillation of such returned distilled spirits in connection with their use in the manufacture of vodka.

SUBPART C—STORAGE

Section 5231. Entry for deposit in storage

This section is identical with code section 5231 as contained in the House bill.

The section is a restatement of existing law (*sec. 5242*) and is made applicable to all production and bonded storage in distilled spirits plants.

Section 5232. Imported distilled spirits

This section is identical with code section 5232 as contained in the House bill and is existing law (*sec. 5311*) with certain important changes.

Under existing law, the only imported distilled spirits which may be transferred from customs custody to internal revenue bond are spirits known and designated as alcohol. Under the provisions of this section any distilled spirits of 185 degrees or more of proof may be so transferred. This change continues to restrict the privilege of transferring distilled spirits to the same kinds of spirits (i. e., high-proof spirits) for which the privilege is now used. It is intended to prohibit the application of this privilege to imported whisky, brandy, or rum, or similar beverage spirits.

Provision is made for the transfer of distilled spirits of any proof from customs custody to internal revenue bond, if imported for any purpose incident to the requirements of the national defense. This provision is intended to grant standby authority for use in any national emergency.

The language has been conformed to the distilled spirits plant concept.

Section 5233. Bottling of distilled spirits in bond

This section is identical with code section 5233 as contained in the House bill.

Subsection (a), "General": This subsection is a clarifying and conforming restatement of existing law (*sec. 5243 (a)*).

Subsection (b), "Bottling requirements": This subsection is a restatement of existing law (*sec. 5243 (a) and (b)*), except that (1) provision is made for specifically limited treatment of the distilled spirits to be bottled in order to attain product stability not possible under existing law, (2) the bottling of vodka in bond for export without storage in wooden containers for at least four years is permitted, in the same manner that such bottling of gin is allowed under existing law, and (3) the provision in existing law, that the 4-year period of required storage of distilled spirits in wooden containers prior to bottling commence with the date of original entry (or original gauge as to fruit brandy), is modified, so that the 4-year storage period in wood may begin subsequent to original entry. This third change will permit of original entry of the spirits into storage in tanks, with subsequent filling into barrels for storage, so that more economical means of operation may be utilized.

Subsection (c), "Trademarks on bottles": This subsection is existing law (*sec. 5243 (c)*).

Subsection (d), "Return of bottled distilled spirits for rebottling, relabeling, or restamping": This subsection is new. It conforms substantially to provisions of existing regulations which permit distilled spirits which have been bottled in bond and subsequently taxpaid to be returned to bonded premises for rebottling, relabeling, or restamping. It is not intended to preclude authorization for relabeling of such spirits on other than bonded premises.

Subsection (e), "Cross references".

Section 5234. Mingling and blending of distilled spirits

This section is identical with code section 5234 as contained in the House bill.

Subsection (a), "Mingling of distilled spirits on bonded premises":

Paragraph (1), "In general":

Subparagraph (A), permitting the mingling on bonded premises of distilled spirits distilled at 190° or more of proof, is intended to continue the present privilege of mingling alcohol in bond enjoyed, under existing law (*sec. 5306*) and regulations issued thereunder, by proprietors of industrial alcohol bonded warehouses, and to extend the privilege to all proprietors of bonded warehousing facilities, in order to permit more efficient storage and transportation of such distilled spirits, which, by reason of their high proof of distillation, are substantially neutral in character.

Subparagraph (B) is new. It permits the dumping together of heterogeneous spirits for bulk gauging to determine the taxable quantity thereof, if the spirits are to be immediately removed to bottling premises for use exclusively in rectification. It will admit of substantial economies for both Government and industry. Under existing law it is sometimes necessary to make as many as 20 or more separate gauges of distilled spirits intended to be used in a single blend. Under the proposed law the several lots of spirits may be dumped together into a single bulk gauging tank, and there gauged in one operation. While the mingling of distilled spirits in bulk gauging tanks is exempted from rectification tax by the provisions of section 5025 (e) (3), it is intended that no loss of revenue occur thereby, for, if the mingling would otherwise have been subject to tax, the mingled spirits must be used, after removal, in taxable rectification.

Subparagraph (C) is new. It provides for the mingling on bonded premises of distilled spirits which are homogeneous. It is intended to permit greater freedom of operations and more economical storage, aging, and transportation of distilled spirits. It will, for example, permit the consolidation of packages of homogeneous spirits, or the dumping together of homogeneous spirits for transfer in bulk containers such as tank cars or tank trucks.

Subparagraph (D) is new. It provides for the mingling on bonded premises of distilled spirits for immediate denaturation or immediate removal for an authorized tax-free purpose. It is intended to provide greater flexibility of operations on bonded premises with distilled spirits to be withdrawn for the purposes provided in section 5214 (a) (1), (2), (3), or (9), or 7510.

Subparagraph (E) is new. It authorizes the mingling of distilled spirits on bonded premises for immediate redistillation; it will permit greater utilization of redistillation to improve the quality of distilled spirits, since the redistillation of small quantities in separate batches is uneconomical in large distilling units.

Paragraph (2), "Consolidation of packages for further storage in bond": This paragraph is new. It makes provision, under certain conditions, for the mingling on bonded premises of distilled spirits for further storage in bond in packages. It also provides that the consolidated product will assume the age of the youngest spirits in the mixture.

The distilled spirits which may be mingled under the provisions of this paragraph must meet the requirements for homogeneous spirits except as to differences in age.

The consolidation of spirits under these provisions will permit the proprietor of bonded storage premises to conserve warehouse space, reduce the number of barrels requiring supervision by warehousemen and Government, and reduce evaporation.

Subsection (b), "Mingling of distilled spirits for national defense": This subsection is derived from existing law (*sec. 5217 (a)*) which will, if not reenacted, expire at the close of July 11, 1958. It is the intent of this subsection to conform the provisions of existing law to the distilled spirits plant concept, and to provide continuing administrative authority for action in the interest of the national defense.

Subsection (c), "Blending of beverage brandies": This subsection is existing law (*sec. 5023*) with minor conforming changes in language, except for the elimination of the restrictions that the blending or mixing be done (1) by the distiller of the brandies, and (2) on premises where brandy or wine spirits exclusively are stored. These restrictions have prevented full utilization of the privilege granted by existing law, and are deemed to be unnecessary.

Subsection (d), "Cross reference".

Section 5235. Bottling of alcohol for industrial purposes

This section is identical with code section 5235 as contained in the House bill.

Under existing law (*sec. 5305*) and regulations issued thereunder, alcohol may be bottled, stamped, and cased on the premises of an industrial alcohol bonded warehouse, and a distinctive strip stamp is provided for such bottles. With the adoption of the concept of a distilled spirits plant it becomes necessary to preserve this privileged industrial operation, and to distinguish it from the traditional bottling in bond of beverage distilled spirits. It is not intended that these provisions will preclude authorization of the use of facilities, established under section 5178 (a) (4) (A), for bottling alcohol under the provisions of this section at times during which such facilities are not being used for the bottling in bond of distilled spirits as provided in section 5233.

Section 5236. Discontinuance of storage facilities and transfer of distilled spirits

This section is identical with code section 5236 as contained in the House bill and is a clarifying and conforming restatement of existing law (*sec. 5252*).

SUBPART D—DENATURATION

Section 5241. Authority to denature

This section is identical with code section 5241 as contained in the House bill.

This section contains basic changes from existing law relating to the denaturation of distilled spirits. Existing law (*secs. 5194 (c), 5303, 5310 (a), and 5331*) provides that alcohol or rum must be withdrawn to a separate establishment for denaturation, while this section provides that distilled spirits may be denatured on the bonded premises of a distilled spirits plant without withdrawal to a separate establishment. The elimination of the requirement of withdrawal of the spirits to separate premises prior to denaturation will greatly simplify the procedures involved in denaturing operations, and will also admit of greater flexibility in the use of physical facilities and equipment. This section eliminates the specific restrictions upon the kinds of distilled spirits that can be denatured and will provide latitude for the development of new industrial processes involving the use of denatured distilled spirits.

Under existing law and regulations an industrial alcohol denaturing plant may be established only by the proprietor of an industrial alcohol plant, at his industrial alcohol plant or industrial alcohol bonded warehouse, or, at the discretion of the Secretary or his delegate, elsewhere. Also, under existing law, a distillery denaturing bonded warehouse (for the denaturation of rum) may be established only by the proprietor of a registered distillery, and on the distillery premises. These restrictions in existing law upon the establishment of denaturing plants were designed to admit of the establishment of such facilities as may be necessary to serve adequately the public need, while at the same time preventing the establishment of numerous and widely scattered denaturing facilities which would endanger the revenue and increase the cost of supervision of operations. This section retains the basic restrictions in existing law in respect to the establishment of denaturing facilities. It also continues the authority for the Secretary or his delegate to exercise discretion in permitting the establishment of denaturing facilities, except that producers of distilled spirits may establish such facilities on their producing premises or on any qualified bonded warehousing premises operated by them. This section is not intended to limit the authority of the Secretary or his delegate under section 5178 (a) (3) (B), and that authority is intended to complement his discretionary authority under this section.

Section 5242. Denaturing materials

This section is identical with code section 5242 as contained in the House bill and is a clarifying and conforming restatement of existing law (*secs. 5303, 5310 (a), and 5331 (a) (1) and (2)*.

Section 5243. Sale of abandoned spirits for denaturation without collection of tax

This section is identical with code section 5243 as contained in the House bill.

The section is existing law (*sec. 5333*) except that the term "distilled spirits plant" has been substituted for "industrial alcohol plant." This change conforms the language to the nomenclature of this chapter, and is intended to extend the authority to sell abandoned spirits so that they may be purchased for denaturation, or redistillation and denaturation, by the proprietor of any distilled spirits plant having approved facilities for denaturation, or redistillation and denaturation, on bonded premises.

Section 5244. Cross references

This section is identical with code section 5244 as contained in the House bill and is a cross-reference section only.

PART III—OPERATIONS ON BOTTLING PREMISES

Section 5251. Notice of intention to rectify

This section is identical with code section 5251 as contained in the House bill.

The section is derived from existing law (*sec. 5282 (a)*). The specific requirements of existing law relating to the rectifier's notice of intention to rectify have been eliminated in order to provide greater flexibility in administration.

Section 5252. Regulation of operations

This section is identical with code section 5252 as contained in the House bill and is a cross-reference section only.

SUBCHAPTER D—INDUSTRIAL USE OF DISTILLED SPIRITS

Section 5271. Permits

This section is identical with code section 5271 as contained in the House bill, except that your committee has restated and clarified the provisions of subsection (e) (5).

Subsection (a), "Requirements": This subsection is derived from existing law (*sec. 5304 (a) (1)*), which provides that no person shall procure alcohol tax-free, deal in or use specially denatured alcohol, recover completely or specially denatured alcohol, or transport specially denatured or tax-free alcohol, without first obtaining a permit from the Secretary or his delegate so to do. This subsection continues these provisions of existing law, except that the provision for permits for persons transporting alcohol are eliminated, since such permits no longer are useful, and are not generally required in the case of distilled spirits other than alcohol.

The term "alcohol" is changed to "distilled spirits" to conform the nomenclature to other provisions of this chapter, and to eliminate the restrictions of existing law which confine the tax-free industrial use of distilled spirits to alcohol, denatured alcohol, and denatured rum. Other clarifying and conforming changes in language have also been made.

Subsection (b), "Form of application and permit": This subsection is derived from existing law (*sec. 5304 (a) (2) and (a) (4)*).

Paragraph (1) is a clarifying and conforming restatement of existing law. Provision is made that the application shall be submitted at such times as the Secretary or his delegate may by regulations prescribe, in order to conform the provisions of this paragraph to other changes in this subchapter, including those relating to the filing of amended applications and to the duration of permits issued under this subchapter (including permits required by section 5171 (b)).

Paragraph (2) is a clarifying and conforming restatement of existing law except that certain specific and detailed requirements have been deleted.

Subsection (c), "Disapproval of application": This subsection is derived from existing law (*sec. 5304 (a) (3)*). The provisions of existing law have been substantially revised for the purposes of clarification, of bringing them more in line with the comparable provisions of the Federal Alcohol Administration Act, and of making them consistent with the provisions of the Administrative Procedure Act (*5 U. S. C. 1001*) governing the procedures for disapproval of applications under this subsection.

Four bases for disapproval are provided by this subsection. The first such basis, viz, in the case of an application to withdraw and use distilled spirits free of tax, that the applicant is not authorized by law or regulations issued pursuant thereto to withdraw or use such distilled spirits, is intended to provide authorization for the disapproval of applications for withdrawal or use of distilled spirits filed by persons ineligible to withdraw or use distilled spirits under the provisions of section 5214 (a) (2) or (3), and for disapproval of such applications where the proposed use of the distilled spirits (or part thereof) free of tax is not authorized by law. These provisions are consistent with the administration of existing law.

The second basis is new. It is similar to a provision in the Federal Alcohol Administration Act relating to the disapproval of applications for permits under that act (*27 U. S. C. 204*). It is intended to authorize the Secretary or his delegate to consider the reputation or criminal record of the applicant as a part of his consideration of the applicant's business experience, financial standing, and trade connections. In the case of a corporate applicant, the Secretary or his delegate is authorized to give such consideration in respect to any officer, director, or principal stockholder thereof, and, in the case of a partnership, in respect to any partner.

The third basis is existing law, except that (1) the phrase "willfully failed to disclose any information required by regulation to be furnished" has been changed to "failed to disclose any material information required," since no permit should be issued on the basis of an application containing material omission, whether or not the omission was willful, (2) the phrase "made any false statement" has been changed to "made any false statement as to any material fact," for a similar reason, and (3) the specific references to violations of certain laws of the United States, States, Territories, possessions of the United States, and the District of Columbia, together with the specific prohibition against the issuance of a permit to any person who within 1 year before the application therefor or the issuance thereof shall have violated certain specific proscriptions of existing law, are deleted, since the Secretary or his delegate will consider the entire reputation and criminal record of the applicant in determining whether or not the applicant is likely to maintain operations in compliance with this chapter.

The fourth basis for disapproval is consistent with requirements of regulations issued under existing law, that the premises of users of tax-free alcohol (including specially denatured alcohol) and dealers in specially denatured alcohol be suitable for the activities or businesses carried on.

Subsection (d), "Changes after issuance of permit": This subsection is new. Its provisions are intended to authorize the Secretary

or his delegate to require, by regulations, after the issuance of a permit under this section, written notice of any change relating to the information contained in the application therefor, and, where the change affects the terms of the permit, to require an application for an amended permit. It is intended that such applications shall be subject to the provisions of this section, including those pertaining to disapproval thereof.

Subsection (e), "Suspension or revocation": This subsection is derived from existing law (*sec. 5304 (b) and (c)*) with important changes. Existing law provides detailed procedure for the revocation of permits relating to industrial alcohol. This subsection eliminates these specific details, and provides in lieu thereof for notice and hearing which will be governed by the provisions of the Administrative Procedure Act (*5 U. S. C. 1001*).

Also, existing law makes no provision for suspension of permits. This subsection permits greater administrative latitude by providing for revocation or suspension in whole or in part for such period as the Secretary or his delegate deems proper.

This subsection lists the causes for which a permit issued under this section may be suspended or revoked. These causes are enumerated in eight paragraphs.

Paragraphs (1) and (2) are clarifying restatements of existing law.

Paragraph (3) is existing law, except that the provision that the false statement must be as to a material fact has been inserted.

Paragraph (4) is existing law, except that the requirement that the failure to disclose information be willful has been omitted, to reduce the burden of proof upon the Government, and the requirement that such information be material has been inserted to eliminate suspension or revocation actions without a substantial basis.

Paragraph (5) is derived from existing law, which provides for revocation of permits where the permittee has violated any law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, relating to intoxicating liquor. The House bill eliminated as causes for revocation violations of laws of the States, Territories, possessions of the United States, or of the District of Columbia, relating to intoxicating liquor, in order to avoid involving the Internal Revenue Service in the enforcement of such laws in connection with its administration of permits under this section. The House bill also added a provision which made conviction of fraudulent noncompliance with any provision of this title a basis for suspension or revocation of a permit issued under this section. Your committee has restated this added provision to provide that conviction of any offense under this title punishable as a felony or of any conspiracy to commit such offense may form the basis for suspension or revocation of a permit under this section, since persons who have been so convicted are not entitled to the confidence of the Government. Your committee has also inserted language to make it clear that conspiracy to violate any law of the United States relating to intoxicating liquor may also form the basis for such suspension or revocation, to the same extent as would a violation of such law.

Paragraph (6) is new. It is intended to provide means for terminating permits when the basis on which they were issued no longer exists. It is intended also to be applicable to the suspension or revocation of a permit in part.

Paragraph (7) is a clarifying restatement of existing law.

Paragraph (8) is new. It is intended to provide a basis for the termination of permit privileges in the instance of inactive permits.

Subsection (f), "Duration of permits": This subsection is derived from existing law (*sec. 5304 (a) (1)*), with an important change. Under existing law, all alcohol permits are issued on an annual basis. This subsection provides that permits issued under this section shall continue in effect until suspended, revoked, or voluntarily surrendered, unless sooner terminated by the terms of the permit. It is not intended to preclude inclusion in the terms of permits of specific conditions as to expiration, either at a fixed date or after a fixed period of time. It is intended that all statements, conditions, and stipulations contained in the application for permit, and all statements, evidence, affidavits, and other documents filed in support thereof, shall be considered as a part of such permit and shall be included in the provisions and conditions of the permit, as is now provided by regulations in the case of alcohol permits.

Subsection (g), "Posting of permits": This subsection is new. It provides for the posting of certain permits to facilitate inspection.

Subsection (h), "Regulations": This subsection is existing law (*sec. 5304 (a) (2)*), except that the specific authority of the Secretary or his delegate to prescribe regulations, pertaining to the issuance of permits to purchase or procure specially denatured alcohol, has been extended to include the prescribing of regulations relating to the issuance, denial, suspension, or revocation of all permits under this section.

Section 5272. Bonds

This section is identical with code section 5272 as contained in the House bill.

Subsection (a), "Requirements": This subsection is existing law (*sec. 5304 (a) (5)*).

Subsection (b), "Exceptions": The exemption from bond provided by this subsection in the case of a permit issued to the United States or any governmental agency thereof, or to any of the several States and Territories or any political subdivision thereof, or to the District of Columbia, is a clarifying restatement of existing law (*sec. 5310 (d)*).

Section 5273. Sale, use, and recovery of denatured distilled spirits

This section is identical with code section 5273 as contained in the House bill.

Subsection (a), "Use of specially denatured distilled spirits": This subsection is a conforming and clarifying restatement of existing law (*secs. 5331 (a) and (b)*) as applied by regulations issued thereunder.

Subsection (b), "Internal medicinal preparations and flavoring extracts":

Paragraph (1), "Manufacture": This paragraph continues the prohibition in existing law (*secs. 5303, 5305, 5310 (a), 5331 (a) (1)*

and (2) and (b), and 5647) and regulations issued thereunder, against the use of denatured alcohol and denatured rum in the manufacture of flavoring extracts or internal medicinal preparations, and extends it to any denatured distilled spirits, in conformity with other changes in this chapter. It does not prohibit the use of denatured distilled spirits in external liquid medicinal preparations (including mouth washes, gargles, nose drops, and similar preparations) or in internal liquid medicinal preparations for other than human beings.

Paragraph (2), "Sale": This paragraph continues the prohibition in existing law (*secs. 5303, 5305, 5310 (a), 5331 (a) (1) and (2) and (b), and 5647*) and regulations issued thereunder, against the selling, or offering for sale, for internal human use of any medicinal preparations or flavoring extracts manufactured from denatured distilled spirits where any of the spirits remains in the finished product. This prohibition is not applicable in respect to such articles for other than human beings.

Subsection (c), "Recovery of spirits for reuse in manufacturing": This subsection is a clarifying and conforming restatement of existing law (*sec. 5332*).

Subsection (d), "Prohibited withdrawal or sale": This subsection is a clarifying restatement of existing law (*secs. 5303, 5305, 5310 (a), 5331 (a), and 5647*).

Subsection (e), "Cross references".

Section 5274. Applicability of other laws

This section is identical with code section 5274 as contained in the House bill.

The section is existing law (*sec. 5317 (b)*) inre spect to the jurisdiction, powers, and duties of the Secretary or his delegate under *part I of subchapter E* and *section 5686*, and in respect to persons subject to the provisions of such law. It is extended in this section to apply to the jurisdiction, powers, and duties of the Secretary or his delegate under this subtitle, and in respect to persons subject to the provisions of this subtitle.

Section 5275. Records and reports

This section is identical with code section 5275 as contained in the House bill.

The section consolidates, conforms, and clarifies the requirements of existing law (*secs. 5305, 5313 (b), and 5331 (a) (3)*) relating to records and reports in respect to alcohol withdrawn free of tax and to denatured alcohol, denatured rum, and articles. In conformance with other changes in this chapter, this section is applicable to all distilled spirits withdrawn free of tax under section 5214 (a) (2) or (3) and to all denatured distilled spirits or articles.

In addition, this section clarifies the authority of internal revenue officers with regard to inspection of records and reports and taking of samples of distilled spirits, denatured distilled spirits, articles, and substances used in the manufacture of articles, to which such records and reports relate.

SUBCHAPTER E—GENERAL PROVISIONS RELATING TO DISTILLED SPIRITS

PART I—RETURN OF MATERIALS USED IN THE MANUFACTURE OR RECOVERY OF DISTILLED SPIRITS

Section 5291. General

This section is identical with code section 5291 as contained in the House bill.

Subsection (a), "Requirement": This subsection is a restatement of existing law (*sec. 5213*) covering the reporting of the disposition of any substance of the character used in the manufacture of distilled spirits, extended to also include the reporting of the disposition of denatured distilled spirits or articles from which distilled spirits may be recovered. While general authority to require the reporting of the disposition of denatured distilled spirits or articles is contained in existing law (*sec. 5305*), it is deemed essential as an enforcement measure to provide specific authority to require such reporting as a control against diversions of such spirits or articles into illicit distilled spirits channels.

A specific requirement for the keeping, preservation, and inspection of records has been added to facilitate enforcement.

Subsection (b), "Cross references".

PART II—REGULATION OF TRAFFIC IN CONTAINERS OF DISTILLED SPIRITS

Section 5301. General

This section corresponds to code section 5301 as contained in the House bill and, with the exception of subsection (c), is identical therewith. Your committee has restated the provisions of subsection (c), relating to liquor bottles, for purposes of more orderly arrangement and to perfect the intended application of these provisions.

Subsection (a), "Requirements": This subsection is existing law (*sec. 5214*), except for the insertion of the word "kind" in the text of paragraph (1) for the purpose of clarification. This subsection continues and clarifies the authority of the Secretary or his delegate to regulate the kind, type, size, standard of fill, branding, marking, manufacture, dealing in, sale, resale, possession, use, and reuse of containers (of a capacity of not more than 5 wine gallons) designed or intended for use for the sale of distilled spirits for other than industrial use.

Subsection (b), "Disposition": This subsection is new. It extends authority to the Secretary or his delegate to require the reporting of the disposition of any containers of the character used for the packaging of distilled spirits, similar to the authority in existing law (*sec. 5213 (a)*) to require the reporting of the disposition of any substance used in the manufacture of distilled spirits.

This new provision is primarily intended to prevent the diversion into illicit channels of used barrels which have been emptied, upon taxpayment or determination, but which due to soakage still contain quantities of easily extractable nontaxpaid distilled spirits.

The illegal extraction by "sweating" or "bull-dogging" of such spirits by illicit operators is becoming more extensive, and a serious

jeopardy to the revenue. This new provision will materially assist in combating this enforcement problem by providing a means of tracing the sale or other disposition of such containers to the extent necessary to prevent such illegal extraction of spirits.

Subsection (c), "Refilling of liquor bottles": Regulations prescribed under existing law (*sec. 5214*) prohibit (with limited exceptions) the reuse of liquor bottles or other authorized containers, or the increase of the original contents, or of any portion of the original contents remaining in a liquor bottle or other authorized container, by the addition of any substance.

The prevention of the reuse of liquor bottles or other authorized containers for the packaging of any distilled spirits, or of the alteration of the original contents of liquor bottles or other authorized containers which have been used for the packaging of distilled spirits, is essential for the protection of the revenue since it is in most cases impossible, once the container has been refilled or the original contents thereof altered by the addition of any substance (whether taxable or nontaxable), to establish whether the tax on the contents of such containers has been lawfully determined.

It has long been recognized that the contents of packages containing taxable articles can be lawfully restricted to the article which is taxed (*Felsenheld* v. *U. S.*, 1902, 186 U. S. 126). It is essential to the effective operation of the system of control of distilled spirits for the protection of the revenue that Government officers and the public be able to rely on the integrity of the stamps, marks, and brands on liquor bottles or other authorized containers of distilled spirits as credible evidence that the spirits at the time of purchase or sale remain exactly the same as they were at the time of affixture of the stamp in order to prevent the use of stamped authorized containers as an instrument in the aid of fraud.

This subsection as contained in the House bill set forth specific prohibitions against the reuse of liquor bottles and against any alteration of any portion of the original contents remaining in any such bottle. It also specifically prohibited the possession of unlawfully reused liquor bottles, or of liquor bottles whose original contents have been altered. The provisions of the subsection were applicable only to dealers (as defined in sec. 5112 (a)) and to agents or employees of such dealers.

Your committee has rearranged and restated the provisions of the subsection to achieve more orderly arrangement and to make completely clear the direct relationship which these provisions bear to the protection of the revenue.

In this regard language has been inserted by your committee to directly prohibit any person who sells or offers for sale distilled spirits, or any agent or employee of such person, from placing in any liquor bottle any distilled spirits whatsoever, other than those contained in such bottle at the time of its stamping under the provisions of this chapter. Similar provisions have been inserted prohibiting such persons from altering or increasing any portion of the original contents contained in a liquor bottle at the time of such stamping. The exception provided in this subsection, as contained in the House bill, would have permitted the authorized reuse of liquor bottles under regulations. This exception has been restated by your committee to

include the specific restriction that such reuse may be permitted by regulations only if the liquor bottles are to be again stamped under the provisions of this chapter. This change is consistent with the general purpose of the subsection, which is that no person should sell or offer for sale distilled spirits in or from a liquor bottle unless the spirits are those contained in such bottle at the time of stamping.

Your committee has defined the term "liquor bottle" as used in this subsection to mean a liquor bottle or other container which has been used under regulations issued pursuant to the provisions of subsection (a) for the bottling or packaging of distilled spirits. Under chapter 51 such liquor bottles have affixed at the time of filling stamps, marks, and brands as prescribed under this title and regulations issued pursuant thereto, to identify the legal status of the contents of the bottle until they reach the consumer.

The regulations prescribed under existing law (*sec. 5214*) have recently been restrictively construed in certain court decisions. The use of the word "whatsoever" in the phrases "any distilled spirits whatsoever" and "any substance whatsoever" makes it completely clear that the construction given to the regulations under existing law in *U. S.* v. *Goldberg et al* (8 Cir. 1955, 255 F. 2d 180) and in *Wisniewski* v. *U. S.* (8 Cir. 1957, 247 F. 2d 292) does not apply with respect to the provisions of this subsection. The language of this subsection as contained in the House bill and as restated by your committee is intended to obviate any question that its provisions are applicable, whether or not the tax has been paid or determined on the distilled spirits used in refilling and whether or not the substance used to alter the original contents is taxable under the internal revenue laws.

Subsection (d), "Cross reference".

PART III—MISCELLANEOUS PROVISIONS

Section 5311. Detention of containers

This section is identical with code section 5311 as contained in the House bill.

The section is existing law (*sec. 5211*) except that the words "cask, package, or other container" are changed to "container" to make it clear that this section is applicable to any container of distilled spirits.

Section 5312. Production and use of distilled spirits for experimental research

This section corresponds to code section 5312 as contained in the House bill. Your committee has amended subsection (b) by adding "and operated" after "established", and subsection (c) by substituting the phrase "by regulations provide for the waiver of" for the phrase "by regulations waive". The amendment of subsection (b) is intended as a clarification of language, since the subsection is necessarily applicable to both establishment and operation of experimental distilled spirits plants. The change in subsection (c) makes it clear that the Secretary's authority to waive does not in each instance have to be exercised by regulations, but that the regulations may provide the limitations, conditions, and procedures, under which the provisions of the chapter may be waived in individual cases to effectuate the purposes of this section.

Subsection (a), "Scientific institutions and colleges of learning": This subsection is a clarifying restatement of existing law (*sec. 5215*) except that the amounts and conditions of bonds are left to the discretion of the Secretary or his delegate and the provisions are broadened to include research in respect to all types of distilled spirits. Existing law is applicable only with regard to brandy or wine spirits.

Subsection (b), "Experimental distilled spirits plants": Existing law (*sec. 5305*) and regulations issued thereunder provide for the establishment of experimental industrial alcohol plants. This subsection provides for the establishment and operation of experimental distilled spirits plants for specific and limited periods of time solely for experimentation in, or development of, sources of materials from which distilled spirits may be produced, processes by which distilled spirits may be produced or refined, or industrial uses of distilled spirits.

Subsection (c), "Authority to exempt": Under exising law (*secs. 5215 and 5306*) the Secretary or his delegate is authorized to exempt experimental or research operations similar to those provided for in subsections (a) and (b) from such provisions of this chapter (other than the payment of tax) as he deems necessary to facilitate the experimental or research operations. This subsection provides similar exemption authority but specifically precludes any waiver of the provisions of subsections (a) and (b).

The exception to the authority to exempt which provides that the Secretary or his delegate may not waive the payment of the tax on distilled spirits removed from the institutions or plants described in subsections (a) and (b) is not intended to preclude the waiver of the tax as to distilled spirits used by such institutions or plants in authorized experimentation or research if not removed from such institution or plant.

Section 5313. Withdrawal of distilled spirits from customs custody free of tax for use of the United States

This section is identical with code section 5313 as contained in the House bill.

The section is existing law (*sec. 5310 (b)*) except that the term "alcohol" is changed to "distilled spirits", and, consistent with the removal of the statutory limitation on the type of distilled spirits, this paragraph makes specific provision that the spirits be withdrawn for nonbeverage purposes.

This section is comparable to the authority to withdraw distilled spirits from the bonded premises of a distilled spirits plant free of tax under the provisions of section 5214 (a) (2) for the use of the United States or any governmental agency thereof.

Section 5314. Special applicability of certain provisions

The provisions of section 5314 as contained in the House bill represented a restatement of the provisions of existing law in the light of the single distilled spirits plant concept.

The provisions of internal revenue law relating to distilled spirits for nonindustrial uses do not apply in Puerto Rico and the Virgin Islands. However, under existing law the provisions of the internal revenue laws relating to industrial alcohol have limited application to Puerto Rico and the Virgin Islands for the purpose of enabling alcohol, denatured alcohol, and articles made therefrom in Puerto Rico and the

Virgin Islands to be brought into the United States free of tax for the same types of uses for which such alcohol or articles produced in the United States could be obtained free of tax.

The bill as passed by the House provided that the Commonwealth of Puerto Rico advance to the Treasury Department of the United States funds for the cost of administration of these provisions in Puerto Rico. Since Puerto Rico will in effect defray the costs of administration of these provisions in Puerto Rico and since the purpose of the provisions is to grant privileges to articles of Puerto Rican manufacture, it appears proper that, in view of the foregoing, provision be made for the assent of the Commonwealth to the application of these provisions thereto.

The provisions of the section have been rearranged to separate the parts relating to Puerto Rico and the Virgin Islands into separate subsections. Subsection (a) relates to Puerto Rico and subsection (b) relates to the Virgin Islands. Paragraph 1 of subsection (a) contains the applicability provision which states that the provisions of the subsection shall not apply to the Commonwealth of Puerto Rico unless the Legislative Assembly of the Commonwealth of Puerto Rico expressly consents thereto in the manner prescribed for the enactment of a law. This provision closely corresponds to the provision contained in the Narcotics Act of 1956 (see sec. 4774 I. R. C. 1954 as amended). Since the provisions are of benefit to Puerto Rico, it will undoubtedly take the necessary action to make the provisions applicable.

Paragraph 2 of subsection (a) is a clarified restatement of existing law (*Section 5318*) and of section 5314 (a) as contained in the House bill. It makes it completely clear that the basic purpose of the application of these provisions to Puerto Rico is to enable the described products produced and manufactured in Puerto Rico to be brought into the United States free of tax for disposal under the same conditions as like spirits, denatured spirits, and articles produced or manufactured in the United States.

Paragraph 3 of subsection (a) provides that distilled spirits, including denatured distilled spirits, may be withdrawn from bonded premises of a distilled spirits plant in Puerto Rico for use therein, pursuant to authorization issued under the laws of the Commonwealth of Puerto Rico. However, such spirits so withdrawn and products containing such spirits could not be brought into the United States free of tax. Since the internal revenue tax in respect to distilled spirits is not applicable to distilled spirits produced in Puerto Rico for use therein, it is believed that no jeopardy to the Federal revenue would result from this provision, which specifically recognizes the intended scope of the extension of the industrial alcohol provisions to Puerto Rico.

Paragraph 4 of subsection (a) corresponds to subsection (b) of section 5314 as contained in the House bill. However, it is revised to provide that the cost of administration incurred by the United States Treasury Department in Puerto Rico in respect to these provisions shall be charged against and retained out of taxes collected under the internal revenue laws on articles of Puerto Rican manufacture brought into the United States.

Under the bill as passed by the House and under existing law, the costs of administration are advanced to the Treasury Department by

the Commonwealth of Puerto Rico, which advancement requires recurring legislative action by the Commonwealth of Puerto Rico.

Subsection (b) contains the provisions relating to the Virgin Islands. Paragraph 1 corresponds to section 5314 (a) as contained in the House bill, except that it has been restated for clarification and for conformity with the changes in language made in paragraph 2 of subsection (a).

Paragraph 2 of subsection (b) corresponds to subsection (b) as contained in the House bill in respect of the Virgin Islands.

Paragraph 3 of subsection (b) corresponds in respect of the Virgin Islands to subsection (c) of the House bill. Since the Federal internal revenue tax on distilled spirits is not applicable to distilled spirits produced in the Virgin Islands for consumption therein, and since there is no Virgin Islands tax on distilled spirits, the language of this paragraph has been broadened to enable the Secretary of the Treasury to waive, insofar as the Virgin Islands are concerned, provisions applicable in the United States but which are not necessary to effectuate the intended scope and purpose of these provisions in the Virgin Islands.

Section 5315. Status of certain distilled spirits on July 1, 1959

This section corresponds to code section 5315 as contained in the House bill, except that the words "immediately prior to" have been inserted in lieu of "on" in three instances, to preserve the obvious intent of the section, and "1958" has been changed to "1959" in the section title and in five instances in the text to conform to the change in the effective date of the general revision of chapter 51.

The purpose of this section is to clarify the status of distilled spirits, and provide for orderly continuity of control, during the transition from provisions of existing law to provisions of this bill.

Subsection (a), "In registered distilleries, fruit distilleries, and industrial alcohol plants": This subsection is new. It establishes the status of distilled spirits which are in the process of production or are held pending lawful disposition in plants qualified under existing law for the production of distilled spirits.

Subsection (b), "Produced at registered distilleries, fruit distilleries, and industrial alcohol plants": This subsection is new. It establishes the status of distilled spirits produced under existing law which are held in bond in internal revenue bonded warehouses, industrial alcohol bonded warehouses, industrial alcohol denaturing plants, and distillery denaturing bonded warehouses, or are in transit thereto in bond.

Subsection (c), "Withdrawn from customs custody": This subsection is new. It establishes the status of imported alcohol which has been withdrawn from customs custody under the provisions of *section 5311* of existing law and is held in bond in plants and warehouses qualified under internal revenue law, or is in transit thereto in bond.

Subsection (d), "Withdrawn free of tax": This subsection is new. It establishes the status of alcohol, denatured alcohol, and denatured rum which have been withdrawn free of tax under existing law for purposes similar to those authorized under section 5214 (a) (1), (a) (2), or (a) (3), and which are in the possession of, or in transit to, persons holding permits under existing law to procure or use distilled spirits, including specially denatured distilled spirits, free of tax, or

to deal in or recover specially denatured distilled spirits. These provisions are not applicable to distilled spirits withdrawn for denaturation to industrial alcohol denaturing plants and distillery denaturing bonded warehouses, and in transit thereto or held therein, since the status of such spirits is covered in subsection (b).

Subsection (e), "Withdrawn for use in the production of wine": This subsection is new. It establishes the status of unused brandy or wine spirits which have been withdrawn under existing law without payment of tax for use in the production of wine.

SUBCHAPTER F—BONDED AND TAX-PAID WINE PREMISES

PART I—ESTABLISHMENT

Section 5351. Bonded wine cellar

This section is identical with code section 5351 as contained in the House bill and is existing law (*sec. 5351*), except for simplification of language.

Section 5352. Taxpaid wine bottling house

This section is identical with code section 5352 as contained in the House bill.

The section is existing law (*sec. 5352*), except the words "a rectifying plant or a taxpaid distilled spirits bottling house" have been supplanted by the words "the bottling premises of a distilled spirits plant" as a conforming change in nomenclature.

Section 5353. Bonded wine warehouse

This section is identical with code section 5353 as contained in the House bill and is existing law (*sec. 5353*).

Section 5354. Bond

This section is identical with code section 5354 as contained in the House bill.

The section is existing law (*sec. 5354*), except for simplification of language.

Section 5355. General provisions relating to bonds

This section is identical with code section 5355 as contained in the House bill and is existing law (*sec. 5355*).

Section 5356. Application

This section is identical with code section 5356 as contained in the House bill and is existing law (*sec. 5356*).

Section 5357. Premises

This section is identical with code section 5357 as contained in the House bill and is existing law (*sec. 5357*).

PART II—OPERATIONS

Section 5361. Bonded wine cellar operations

This section is identical with code section 5361 as contained in the House bill.

The section is a restatement of existing law (*sec. 5361*) which is intended to make it clear (i) that nonbeverage wine products, such as salted cooking wine, may be made from a base of standard natural wine, even though the standard natural wine may have been ameliorated with sugar to correct natural deficiencies, as permitted by law; (ii) that these nonbeverage wine products made from standard natural wine may not be made on premises where substandard wines are present; and (iii) that nonbeverage wine products, such as salted cooking wines, do not have to be similar in character and composition to nonbeverage heavy bodied blending wines and nonbeverage Spanish-type blending sherries.

Section 5362. Removals of wine from bonded wine cellars

This section is identical with code section 5362 as contained in the House bill.

The section is a clarifying and conforming restatement of existing law (*sec. 5362*).

Section 5363. Taxpaid wine bottling house operations

This section is identical with code section 5363 as contained in the House bill.

The section is a clarifying and conforming restatement of existing law (*sec. 5363*).

Section 5364. Standard wine premises

This section is identical with code section 5364 as contained in the House bill.

The section is a restatement of existing law (*sec. 5364*), without substantive change. The language has been conformed to the changes made in section 5361.

Section 5365. Segregation of operations

This section is identical with code section 5365 as contained in the House bill and is existing law (*sec. 5365*).

Section 5366. Supervision

This section is identical with code section 5366 as contained in the House bill and is a clarifying restatement of existing law (*sec. 5366*).

Section 5367. Records

This section is identical with code section 5367 as contained in the House bill and is existing law (*sec. 5367*).

Section 5368. Gauging, marking, and stamping

This section is identical with code section 5368 as contained in the House bill and is a clarifying restatement of existing law (*sec. 5368*).

Section 5369. Inventories

This section is identical with code section 5369 as contained in the House bill and is existing law (*sec. 5369*).

Section 5370. Losses

This section is identical with code section 5370 as contained in the House bill and is a clarifying restatement of existing law (*sec. 5370*).

Section 5371. Insurance coverage, etc.

This section is identical with code section 5371 as contained in the House bill and is existing law (*sec. 5371*).

Section 5372. Sampling

This section is identical with code section 5372 as contained in the House bill and is existing law (*sec. 5372*).

Section 5373. Wine spirits

This section is identical with code section 5373 as contained in the House bill.

Subsection (a), "In general":

This subsection is derived from existing law (*secs. 5215 and 5373 (a)*) and continues without substantive change the restrictions as to eligibility of brandy or wine spirits for use in wine production.

Subsection (b), "Withdrawal of wine spirits":

Paragraph (1): This paragraph is a conforming restatement of existing law (*sec. 5373 (b) (1)*).

Paragraph (2): This paragraph is a conforming restatement of existing law (*sec. 5373 (b) (2)*).

Paragraph (3): This paragraph is a conforming restatement of existing law (*sec. 5373 (b) (3)*).

Paragraph (4): This paragraph is a conforming restatement of existing law (*sec. 5373 (b) (4)*).

Subsection (c), "Distillates containing aldehydes": This subsection is new. It provides that the Secretary or his delegate may, by regulations, authorize the transfer of the heads portion of distilled spirits (aldehydes) from the bonded premises of distilled spirits plants to adjacent bonded wine cellars whereat such aldehydes may be added in limited amounts to distilling materials in the course of fermentation in such bonded wine cellars. These provisions are intended to provide opportunity for partial recovery of the alcohol contained in such aldehydes which presently are of no use to the distiller and must be destroyed or transferred to other premises for denaturation.

PART III—CELLAR TREATMENT AND CLASSIFICATION OF WINE

Section 5381. Natural wine

This section is identical with code section 5381 as contained in the House bill and is existing law (*sec. 5381*).

Section 5382. Cellar treatment of natural wine

This section is identical with code section 5382 as contained in the House bill.

Subsection (a), "General": This subsection is existing law (*sec. 5382 (a)*).

Subsection (b), "Specifically authorized treatments": This subsection is existing law (*sec. 5382 (b)*), except for simplification of language.

Subsection (c), "Other authorized treatment": This subsection is existing law (*sec. 5382 (c)*).

Section 5383. Amelioration and sweetening limitations for natural grape wines

This section is identical with code section 5383 as contained in the House bill and is existing law (*sec. 5383*), except for simplification of language.

Section 5384. Amelioration and sweetening limitations for natural fruit and berry wines

This section is identical with code section 5384 as contained in the House bill.

Subsection (a), "In general": This subsection is existing law (*sec. 5384 (a)*), except for simplification of language.

Subsection (b), "Reserve fruit and berry wines": This subsection is existing law (*sec. 5384 (b)*) except that it has been revised to provide for the addition of sufficient dry sugar to wines made from low sugar fruit to cause the production of alcohol by fermentation up to just under 14 percent by volume and to permit the addition of the sugar either in one lot or in successive stages, and either prior to or during fermentation, rather than requiring it to be added in a single batch prior to commencement of fermentation.

Section 5385. Specially sweetened natural wines

This section is identical with code section 5385 as contained in the House bill and is existing law (*sec. 5385*).

Section 5386. Special natural wines

This section is identical with code section 5386 as contained in the House bill and is existing law (*sec. 5386*).

Section 5387. Agricultural wines

This section is identical with code section 5387 as contained in the House bill and is existing law (*sec. 5387*).

Section 5388. Designation of wines

This section is identical with code section 5388 as contained in the House bill and is existing law (*sec. 5388*).

PART IV—GENERAL

Section 5391. Exemption from rectifying and spirits taxes

This section is identical with code section 5391 as contained in the House bill and is a clarifying restatement of existing law (*sec. 5391*). Specific language has been added to make it completely clear that the proprietor of a bonded wine cellar is not considered to be a rectifier within the meaning of section 5082 because of his use or treatment of wine, or use of wine spirits in wine production, and consequently is not subject to the special tax as a rectifier under section 5081.

Section 5392. Definitions

This section is identical with code section 5392 as contained in the House bill.

The section is existing law (*sec. 5392*), except for simplification of language in subsections (c) and (e), and changes in subsection (f).

The definition of "own production" in subsection (f) is related to other provisions of this subchapter in such a manner as to control the premises in which wine spirits may be added to a particular wine, or in which a particular wine may be ameliorated. Under the wording of this definition in existing law, these operations are required to take place in the premises where the wine was originally fermented.

The revised wording of the definition will permit the addition of wine spirits to, and/or amelioration of, wine in premises other than

those of original fermentation, if (i) the latter premises are located in the same State as the bonded wine cellar adding wine spirits or ameliorating the wine, and (ii) the proprietors of the cellars involved are either the same person or affiliated persons. The term "affiliated persons" includes members of a farm cooperative as well as persons affiliated within the meaning of section 17 (a) (5) of the Federal Alcohol Administration Act (27 U. S. C. 211).

SUBCHAPTER G—BREWERIES

PART I—ESTABLISHMENT

Section 5401. Qualifying documents

This section is identical with code section 5401 as contained in the House bill and is existing law (*sec. 5401*), except for simplification of language.

Section 5402. Definitions

This section is identical with code section 5402 as contained in the House bill and is existing law (*sec. 5402*).

Section 5403. Cross references

This section is identical with code section 5403 as contained in the House bill and is a cross reference section only.

PART II—OPERATIONS

Section 5411. Use of brewery

This section is identical with code section 5411 as contained in the House bill and is existing law (*sec. 5411*), except for simplification of language.

Section 5412. Removal of beer in containers or by pipeline

This section is identical with code section 5412 as contained in the House bill and is a conforming restatement of existing law (*sec. 5412*).

Section 5413. Brewers procuring beer from other brewers

This section is identical with code section 5413 as contained in the House bill and is a conforming restatement of existing law (*sec. 5413*).

Section 5414. Removal from one brewery to another belonging to the same brewer

This section is identical with code section 5414 as contained in the House bill.

The section is a clarifying restatement of existing law (*sec. 5414*), except for the addition of the second sentence. The purpose of this sentence is to extend to breweries owned by different corporations the advantages of common ownership provided by this section if one such corporation owns the controlling interest in the other such corporation, or if the controlling interest in each such corporation is owned by the same person or persons.

Section 5415. Records and returns

This section is identical with code section 5415 as contained in the House bill.

The section is existing law (*sec. 5415*) except that the provision relating to the preservation of records is changed from a period of at least 2 years, to such period as the Secretary or his delegate shall by regulations prescribe. This change makes this provision consistent with other similar provisions of this chapter.

Section 5416. Definitions of bottle and bottling

This section is identical with code section 5416 as contained in the House bill and is existing law (*sec. 5416*).

SUBCHAPTER H—MISCELLANEOUS PLANTS AND WAREHOUSES

PART I—VINEGAR PLANTS

Section 5501. Establishment

This section is identical with code section 5501 as contained in the House bill.

The section is a clarifying restatement of existing law (*sec. 5216 (a) (1)*) and regulations issued pursuant thereto authorizing the establishment of plants for production of vinegar by the vaporizing process.

Section 5502. Qualification

This section is identical with code section 5502 as contained in the House bill.

Subsection (a), "Requirements": Existing law (*sec. 5216 (a) (1)*) and regulations provide for filing of notice and approval thereof, prior to commencing the operation of a vinegar plant. This subsection specifically requires the filing of an application for registration, and the receipt of permission to operate a vinegar plant, prior to commencing operations.

Subsection (b), "Form of application": This subsection authorizes the Secretary or his delegate to prescribe the form of application required by subsection (a), and the information to be contained therein.

Section 5503. Construction and equipment

This section is identical with code section 5503 as contained in the House bill and is a clarifying restatement of existing law (*secs. 5216 (a) (1) and 5552*).

Section 5504. Operation

This section is identical with code section 5504 as contained in the House bill.

Subsection (a). "General": This subsection is a clarifying restatement of existing law (*sec. 5216 (a) (1)*) which authorizes qualified vinegar plants to produce mash and separate the spirits from such mash by a vaporizing process, and condense the vapor by introducing it into water or other liquid. This subsection also contains authority for the Secretary or his delegate to regulate these operations.

Subsection (b), "Removals": This subsection is a restatement of existing law (*sec. 5216 (a) (2)*).

Subsection (c), "Records": This subsection is new. It provides for the keeping of records and the filing of reports by proprietors of vinegar plants in the form and manner to be prescribed by regulations.

Section 5505. Applicability of provisions of this chapter

This section is identical with code section 5505 as contained in the House bill.

Subsection (a), "Tax": This subsection is a clarification of existing law (*sec. 5216 (a) (1)*). It imposes the distilled spirits tax on any spirits produced in violation of section 5501 or removed from vinegar plants in violation of section 5504 (b).

Subsection (b), "Prohibited premises": This subsection is a clarifying restatement of existing law (*sec. 5171*) relating to premises on which vinegar plants may not be established.

Subsection (c), "Entry and examination of premises": This subsection is a clarifying restatement of existing law (*sec. 5216 (a) (3)*) relating to officers' right of entry to and examination of vinegar plants.

Subsection (d), "Registration of stills": This subsection is a clarifying restatement of existing law (*sec. 5174*) relating to registration of stills used at vinegar plants.

Subsection (e), "Installation of meters, tanks, and other apparatus": This subsection is existing law (*sec. 5552*).

Subsection (f), "Assignment of internal revenue officers": This subsection is existing law (*sec. 5553 (a)*).

Subsection (g), "Authority to waive records, statements, and returns": This subsection is existing law (*sec. 5555 (b)*).

Subsection (h), "Regulations": This subsection is existing law (*sec. 5556*).

Subsection (i), "Penalties": This subsection is existing law (*secs. 5601, 5607, 5608, and 5686 (b)*).

Subsection (j), "Other provisions": This subsection is new. By exempting plants established, and operations conducted, under this part from the provisions of this chapter, other than this part and the provisions referred to in subsections (a), (b), (c), (d), (e), (f), (g), (h), and (i), it provides for the lawful manufacture of vinegar without unnecessary restrictions.

PART II—VOLATILE FRUIT-FLAVOR CONCENTRATE PLANTS

Section 5511. Establishment and operation

This section is identical with code section 5511 as contained in the House bill.

The section is existing law (*sec. 5511*) with the exception that the word "application" is inserted in paragraph (3) and *section 5171* of existing law has been eliminated from the sections applicable to this part. The elimination will permit operation on bonded wine cellar premises of the required stills or evaporators used in the manufacture of volatile fruit-flavor concentrates.

Section 5512. Control of products after manufacture

This section is identical with code section 5512 as contained in the House bill and is a cross reference section only.

PART III—MANUFACTURING BONDED WAREHOUSES

Section 5521. Establishment and operation

This section is identical with code section 5521 as contained in the House bill and is existing law (*sec. 5521*).

Section 5522. Withdrawal of distilled spirits to manufacturing bonded warehouses

This section is identical with code section 5522 as contained in the House bill.

The section is existing law (*sec. 5522*) except that the permitted withdrawals, i. e., from an internal revenue bonded warehouse, have been extended to include withdrawals from the bonded premises of any distilled spirits plant, in conformity with the concept of a distilled spirits plant.

Section 5523. Special provisions relating to distilled spirits and wines rectified in manufacturing bonded warehouses

This section is identical with code section 5523 as contained in the House bill and is existing law (*sec. 5523*).

SUBCHAPTER I—MISCELLANEOUS GENERAL PROVISIONS

Section 5551. General provisions relating to bonds

This section is identical with code section 5551 as contained in the House bill and is existing law (*sec. 5551*) except that it is extended to include "bonded warehouseman."

Section 5552. Installation of meters, tanks, and other apparatus

This section is identical with code section 5552 as contained in the House bill.

The section is existing law (*sec. 5552*) except that the terms "distilleries" and "rectifying plants" are changed, for conformity, to "distilled spirits plants."

Section 5553. Supervision of premises and operations

This section is identical with code section 5553 as contained in the House bill.

The section is existing law (*sec. 5553*) except that the term "storekeeper-gauger" is changed to "internal revenue officer." This change is consistent with the elimination in the 1954 code revision of other statutory references by specific title to officers performing specific functions or duties.

Section 5554. Pilot operations

This section is identical with code section 5554 as contained in the House bill.

The section is the same as section 5554 (1954 I. R. C.), authority under which terminated December 31, 1955, except for the substitution of "distilled spirits plants" in place of the detailed listing of each particular type of plant, and the omission of the last sentence which placed a time limit on the authority under the section.

Section 5555. Records, statements, and returns

This section is identical with code section 5555 as contained in the House bill.

Subsection (a), "General": This subsection is existing law (*sec. 5555 (a)*).

Subsection (b), "Authority to waive": This subsection is existing law (*sec. 5555 (b)*), except for simplification of language.

Subsection (c), "Photographic copies": This subsection is new. It makes provision for the reproduction of original records required by this chapter and the treatment of the reproduction for all purposes as though it were the original.

The section follows closely the provisions with respect to copies of records made in the regular course of business in *28 U. S. C. 1732 (b)*. It is designed to meet modern business practices and eliminate undue burden and expense on taxpayers in connection with record preservation.

Section 5556. Regulations

This section is identical with code section 5556 as contained in the House bill.

The section is a new provision authorizing the Secretary or his delegate to make such distinction in regulatory requirements relating to construction, equipment, or methods of operation as may be necessary or desirable due to differences in materials or variations in methods used in production, processing, or storage of distilled spirits.

Section 5557. Officers and agents authorized to investigate, issue search warrants, and prosecute for violations

This section is identical with code section 5557 as contained in the House bill.

Existing law (*sec. 5314*) contains specific provisions relating to persons authorized to make investigations, issue search warrants, and prosecute violations of chapter 51.

This section makes similar provisions applicable to any violation of subtitle E, thus establishing uniform authority and procedure with respect to liquor, tobacco, and firearms enforcement.

The provisions of existing law relating to the reporting of violations to United States Attorneys are modified to eliminate the unnecessary reporting of cases in which no prosecution is indicated.

The last sentence of *section 5314* of existing law has been omitted as inconsistent with the Federal Rules of Criminal Procedure and a cross reference to such rules has been added.

Section 5558. Authority of enforcement officers

This is a cross reference section.

For a discussion of the substantive provisions contained in the House bill under this section number, see code section 7608 as set forth in section 204 of this bill.

Section 5559. Determinations

This section is identical with code section 5559 as contained in the House bill and is new. It provides authority for the Secretary or his delegate to utilize scientific techniques and developments in instrumentation in the making or verifying of any quantitative determination required or authorized in this chapter.

Section 5560. Other provisions applicable

This section is identical with code section 5560 as contained in the House bill and is existing law (*sec. 5557*).

Section 5561. Exemptions to meet the requirements of the national defense

This section corresponds to code section 5561 as contained in the House bill, which was derived from existing law (*sec. 5217 (b) and (c)*).

The section, as contained in the House bill, continued until the close of June 30, 1959, the provisions granting authority to temporarily waive (other than payment of tax) internal revenue law relating to distilled spirits when deemed necessary to meet the requirements of national defense. Your committee has deleted the last sentence of the section, as contained in the House bill, in order to provide permanent authority under the section, since the section is the basis of standby procedures which have been prescribed for use in the event of a national emergency.

It is intended that any waiver under this section shall be terminated as to any proprietor when the waiver as to such proprietor is no longer necessary to meet the requirements of the national defense.

Section 5562. Exemptions from certain requirements in cases of disaster

This section is identical with code section 5562 as contained in the House bill.

The section is derived from existing law (*5215*). It provides authority for the Secretary or his delegate to take steps necessary to eliminate or reduce economic loss incident to disasters. This authority is intended, when used incident to the salvaging of perishable agricultural products, to be limited to the elimination or reduction of general and widespread economic loss.

SUBCHAPTER J—PENALTIES, SEIZURES, AND FORFEITURES RELATING TO LIQUORS

Subchapter J is a substantial revision of the penalty, seizure, and forfeiture provisions contained in subchapter J, of chapter 51 of the Internal Revenue Code of 1954. Existing law has been rewritten wherever necessary, not only to conform it to the revisions of the substantive provisions to which it relates, but also to consolidate, clarify, and make more uniform and realistic the application of the existing law to liquor violations.

The penalty and forfeiture provisions of this subchapter are rearranged to place them in more logical sequence, and obsolete or unnecessary provisions are deleted. The criminal and civil penalties imposed are made more uniform and realistic, and the standards of title 18 of the United States Code (entitled "Crimes and Criminal Procedure") for felonies and misdemeanors are followed wherever practicable.

Under existing law the provisions imposing penalties for violation of the law with respect to liquor taxes in several instances provide for penalties such as an amount equal to or double the amount of the tax fraud involved. Although offenses are of a similar nature, in some cases the penalty is designated as a criminal penalty to be imposed by the court after conviction, in others as a civil penalty to be collected by a separate civil court action, and in others as a civil penalty to be added to the tax and assessed and collected in the same manner as the tax. This lack of uniformity, as well as adding to the burden on the courts, has made these provisions very difficult to administer. These penalties are in addition to those provided in subtitle F for fraudulent evasion or willful failure to pay, and therefore can result in penalties far in excess of those for similar violations with respect to other internal revenue taxes. Such specific penalties are therefore

omitted in order to conform the law with respect to liquor taxes to the criminal and civil penalty provisions of subtitle F.

Under existing law the provisions imposing penalties for violation of law with respect to the taxes on liquors often provide for mandatory monetary penalties, either in lieu of or in addition to fines or imprisonment. Such penalty provisions are deleted in most instances because it has been found that they have interfered with the effective administration of justice in such violations. With the removal of such penalties, the courts will have greater freedom to fix sentences according to the circumstances in each case. This is consistent with the action of the Congress in deleting statutory minimums in the 1954 code revision with regard to alcohol and tobacco tax criminal penalties.

PART I—PENALTY, SEIZURE, AND FORFEITURE PROVISIONS APPLICABLE TO DISTILLING, RECTIFYING, AND DISTILLED AND RECTIFIED PRODUCTS

Section 5601. Criminal penalties

This section corresponds to code section 5601 as contained in the House bill, except that your committee has amended paragraph (3) of subsection (a) by striking "(a)" from the citation to section 5171 (a) therein. The amendment will make the penalty provided in subsection (a) (3) applicable to the filing of a false or fraudulent application for a permit under section 5171 (b), as well as to the filing of a false or fraudulent application for registration under section 5171 (a).

Subsection (a), "Offenses": This subsection is (with the exceptions noted in the discussion of the individual paragraphs) a clarifying, conforming, and consolidated restatement of certain of the offenses described in *part I of subchapter J of chapter 51* of existing law with a uniform penalty of a fine of not more than $10,000, or imprisonment of not more than 5 years, or both, prescribed for each such offense in lieu of the varying penalties prescribed by existing law. The uniform penalty is substantially in line with the penalties prescribed for felonious offenses in respect to wine, beer, and tobacco. The specific monetary penalties imposed in existing law with respect to certain of the offenses described in this subsection have been omitted for the reasons noted in the introductory discussion of the subchapter.

Paragraph (1), "Unregistered stills": This paragraph is a restatement of existing law (*sec. 5601*) except for the deletion of the monetary penalty, and the making of the imposed penalty uniform with penalties for other offenses under this subsection.

Paragraph (2), "Failure of distiller or rectifier to file application": This paragraph is a restatement of existing law (*secs. 5172 and 5603*) except for the deletion of the monetary penalty and the making of the penalty imposed uniform with penalties for other offenses under this subsection.

Paragraph (3), "False or fraudulent application": This paragraph is derived from existing law (*sec. 5603*) which provides a penalty for the filing of a false or fraudulent notice in respect to the business of distilling or rectifying. Under the provisions of this bill the filing of notices in respect to these businesses is no longer required, and uniform provisions for the filing of applications for registration and (in certain cases) applications for

permits are provided for all distilled spirits plants. This paragraph provides a penalty for the filing of a false or fraudulent application for registration of, or permit for, a distilled spirits plant. This penalty has been made uniform with penalties for other offenses under this subsection.

Paragraph (4), "Failure or refusal of distiller or rectifier to give bond": This paragraph is a restatement of existing law (*secs. 5172, 5604, and 5606*) with respect to carrying on the business of a distiller without having given bond, extended to include carrying on the business of a rectifier without having given bond as required by law. The penalty imposed is made uniform with penalties for other offenses under this subsection.

Paragraph (5), "False, forged, or fraudulent bonds": This paragraph is a restatement of existing law (*sec. 5604*) in respect to the giving of false, forged, or fraudulent bonds by persons engaged in, or intending to engage in the business of a distiller, extended to persons engaged in, or intending to engage in, the business of a bonded warehouseman, rectifier, or bottler of distilled spirits. The penalty imposed is made uniform with penalties for other offenses under this subsection.

Paragraph (6), "Distilling on prohibited premises": This paragraph is a restatement of existing law (*secs. 5171 and 5607*) with the following exceptions:

First, the words "or vinegar are manufactured or produced, or where sugars or sirups are refined" are omitted as specific prohibitions and these activities are to be treated in the category of "any other business" as used in this paragraph and in section 5178 (b).

Second, specific exception is made in the case of lawfully authorized distillers of brandy or wine spirits consistent with the exception under existing law (*sec. 5215*) and regulations.

Third, the penalty imposed is made uniform with the penalty for other offenses under this subsection.

Paragraph (7), "Unlawful production, removal, or use of material fit for production of distilled spirits": This paragraph is a restatement of existing law (*secs. 5216 (a) (1) and (4), and 5608 (a)*) with two exceptions.

Existing law prohibits the removal of distilling material from the premises of the distillery where produced, except as authorized by the Secretary or his delegate with respect to the carrying on of a business other than distilling. This paragraph prohibits the removal of distilling material from the premises of the distilled spirits plant where produced except when authorized by the Secretary or his delegate; thus allowing the removal of distilling material for any lawful purpose, if authorized by the Secretary or his delegate. In addition, the penalty imposed is made uniform with the penalty for other offenses under this subsection.

Paragraph (8), "Unlawful production of distilled spirits": This paragraph is a restatement of existing law (*secs. 5216 (a) (1) and 5608 (a)*) with two exceptions.

Existing law makes it unlawful for any person other than an authorized distiller to separate by distillation the alcoholic spirits from any fermented mash, wort, or wash.

This paragraph makes it unlawful for any person other than an authorized distiller to produce distilled spirits by distillation or any other process from mash, wort, wash, or other material. This change is in recognition of the fact that distilled spirits may be produced from material other than mash, wort, or wash and by processes other than by distillation.

The penalty imposed is made uniform with the penalty for other offenses under this subsection.

Paragraph (9), "Unauthorized use of distilled spirits in manufacturing processes":

Subparagraph (A): This subparagraph is a restatement of existing law (*secs. 5216 (a) (1) and 5608 (a)*) except that the penalty imposed is made uniform with the penalty for other offenses under this subsection.

Subparagraph (B): This subparagraph is new and is designed to cover the use of imported distilled spirits in the same manner that the use of distilled spirits of domestic production is covered under subparagraph (A).

Paragraph (10), "Unlawful rectifying or bottling": This paragraph is a restatement of existing law (*secs. 5628 and 5629*) as to rectifiers, extended to include bottlers of distilled spirits. The specific monetary penalty is omitted and the criminal penalty imposed made uniform with the penalty for other offenses under this subsection.

Paragraph (11), "Unlawful purchase, receipt, rectification, or bottling of distilled spirits": This paragraph is a restatement of existing law (*sec. 5629*), extended to include bottling of distilled spirits. The penalty imposed is made uniform with the penalty for other offenses under this subsection.

Paragraph (12), "Unlawful removal or concealment of distilled spirits": This paragraph is a restatement of existing law (*secs. 5608 (a), 5631, 5632, 5643, and 5647*) with respect to certain specific instances of unlawful removal or concealment of distilled spirits, broadened to clearly prohibit any removal, other than as authorized by law, of distilled spirits on which the tax has not been paid or determined, from the place of manufacture or storage, or from any instrument of transportation, or the concealment of spirits so removed. The penalty imposed is made uniform with the penalty for other offenses under this subsection.

Paragraph (13), "Creation of fictitious proof": This paragraph is existing law (*sec. 5634*) except for the addition of the clarifying parenthetical statement "(other than ingredients or substances authorized by law to be added)" and for the making of the penalty imposed uniform with the penalty for other offenses under this subsection.

Paragraph (14), "Distilling after notice of suspension": This paragraph is a restatement of existing law (*sec. 5650*) except that the penalty imposed is made uniform with the penalty for other offenses under this subsection.

Subsection (b), "Presumptions": These paragraphs are new. Their purpose is to create a rebuttable presumption of guilt in the case of a person who is found at illicit distilling or rectifying premises, but who, because of the practical impossibility of proving his actual participa-

tion in the illegal activities except by inference drawn from his presence when the illegal acts were committed, cannot be convicted under the ruling of the Supreme Court in *Bozza* v. *United States* (330 U. S. 160).

The prevention of the illicit production or rectification of alcoholic spirits, and the consequent defrauding of the United States of tax, has long been rendered more difficult by the failure to obtain a conviction of a person discovered at the site of illicit distilling or rectifying premises, but who was not, at the time of such discovery, engaged in doing any specific act.

In the Bozza case, the Supreme Court took the position that to sustain conviction, the testimony "must point directly to conduct within the narrow margins which the statute alone defines." These new provisions are designed to avoid the effect of that holding as to future violations.

Section 5602. Penalty for tax fraud by distiller

This section is identical with code section 5602 as contained in the House bill.

The section is a consolidated restatement of existing law (*secs. 5606 and 5626*) except that the penalty imposed is increased to a fine of not more than $10,000, or imprisonment of not more than 5 years, or both, which is the same as the penalty under existing law (*sec. 5762*) with regard to similar offenses in respect to tobacco.

Section 5603. Penalty relating to records, returns, and reports

This section is identical with code section 5603 as contained in the House bill.

The section is a consolidated and clarifying restatement of existing law (*secs. 5610, 5611, 5620, 5621, and 5692*) with respect to certain records and reports required under chapter 51, extended to apply to all persons required under this chapter (other than subch. F and G) or regulations issued pursuant thereto to keep or file any record, return, report, summary, transcript, or other document.

Subsection (a), "Fraudulent noncompliance": This subsection designates the offenses with intent to defraud, and provides a penalty of a fine of not more than $10,000, or imprisonment of not more than 5 years, or both, for each such offense. The reference to "such document" in paragraphs (1) through (5) is intended to refer to all of the documents listed preceding paragraph (1).

Subsection (b), "Failure to comply": This subsection designates the offenses otherwise than with intent to defraud, and provides a penalty of a fine of not more than $1,000, or imprisonment of not more than 1 year, or both, for each such offense. The reference to "such document" in paragraphs (1) through (5) is intended to refer to all of the documents listed preceding paragraph (1).

Section 5604. Penalties relating to stamps, marks, brands, and containers

This section is identical with code section 5604 as contained in the House bill.

The section is a clarifying, conforming, and consolidated restatement of existing law (*secs. 5008 (b), 5635, 5636, 5637, 5638, 5642, 5643, and 5644*) in respect of criminal penalties relating to distilled spirits stamps, marks, brands, and containers under this chapter, except

that the penalty is made uniform as a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, for each such offense.

The forfeiture provisions of the sections of existing law from which this section is derived are considered to be duplications of other provisions of this chapter or subtitle F, and therefore have been omitted.

Section 5605. Penalty relating to return of materials used in the manufacture of distilled spirits, or from which distilled spirits may be recovered

This section is identical with code section 5605 as contained in the House bill.

The section is existing law (*sec. 5609*) except that the fine of not more than $500, or imprisonment for not more than 1 year, or both, has been increased to a fine of not more than $1,000, or imprisonment for not more than 2 years, or both. By reason of the changes in section 5291 this penalty is made applicable with respect to the disposal of denatured distilled spirits or articles from which distilled spirits may be recovered.

Section 5606. Penalty relating to containers of distilled spirits

This section is identical with code section 5606 as contained in the House bill.

The section is a restatement of existing law (*sec. 5641*) except that the offense has been reduced from a felony to a misdemeanor by reducing the penalty to a fine of not more than $1,000, or imprisonment for not more than 1 year, or both. Consistent with the reduction of the penalty from a felony to a misdemeanor the provision of existing law that the offense be willful is omitted.

The forfeiture provisions of the existing law (*sec. 5641*) are considered to be a duplication of other provisions of this chapter or subtitle F, and therefore have been omitted.

Section 5607. Penalty and forfeiture for unlawful use, recovery, or concealment of denatured distilled spirits, or articles

This section is identical with code section 5607 as contained in the House bill.

The section is a clarifying restatement of existing law (*sec. 5647*) conformed to the related changes in sections 5214, 5223, and 5273 except that the fine of not more than $5,000 is increased to a fine of not more than $10,000.

Section 5608. Penalty and forfeiture for fraudulent claims for export drawback or unlawful relanding

This section is identical with code section 5608 as contained in the House bill.

Subsection (a), "Fraudulent claim for drawback": This subsection is a restatement of existing law (*sec. 5648 (a)*) except that the criminal penalty applicable to fraudulent claims is reduced from 10 years to 5 years, and except that the penalty as to owners, agents, or masters of vessels, and others aiding or abetting in the fraud, is increased from a fine not exceeding $5,000, and imprisonment for not more than 1 year, to a fine of not more than $5,000, or imprisonment for not more than 3 years, or both.

Subsection (b), "Unlawful relanding": This subsection is a clarifying and conforming restatement of existing law (*sec. 5648 (b)*).

Section 5609. Destruction of unregistered stills, distilling apparatus, equipment, and materials

This section is identical with code section 5609 as contained in the House bill.

The section is a restatement of existing law (*sec. 5623*) with respect to the destruction of unregistered stills, distilling or fermenting equipment or apparatus, or distilling or fermenting material. Specific authority has been provided in this section for the destruction of illicit distilled spirits by the seizing officer at the time of seizure.

This section omits as obsolete or unnecessary certain of the detailed provisions of existing law and provides more modern and simplified procedures with regard to such destructions and the filing of claims with respect to such destroyed property.

Section 5610. Disposal of forfeited equipment and material for distilling

This section is identical with code section 5610 as contained in the House bill.

The section is a clarifying restatement of existing law (*sec. 5622*) except that the obsolete provision for "deducting expenses of sale" has been omitted and authority given the court to dispose of forfeited property other than by sale at public auction where it would be to the best interests of the Government. Public sale of the forfeited property described in this section is, under certain conditions, not in the Government's interest. This discretion will also permit the court to better dispose of perishable property where necessary to prevent loss to the Government, or to the owners or claimants of the property.

Section 5611. Release of distillery before judgment

This section is identical with code section 5611 as contained in the House bill.

The section is a clarifying restatement of existing law (*sec. 5624*) except that the provision for personal sureties is omitted as a conforming change since such sureties are not generally accepted with respect to other bonds given under this chapter.

Section 5612. Forfeiture of taxpaid distilled spirits remaining on bonded premises

This section is identical with code section 5612 as contained in the House bill.

Subsection (a), "General": This subsection is a restatement of existing law (*sec. 5625*) in respect to distillery or internal revenue bonded warehouse premises, extended to apply to the bonded premises of any distilled spirits plant. This subsection is also made applicable to distilled spirits upon which the tax has been determined.

Subsection (b), "Exceptions": This subsection is new. It sets forth the specific conditions under which subsection (a) is not applicable.

Paragraphs (1) and (2) are consistent with existing administrative procedure.

Paragraph (3) is necessary to prevent conflict with the provisions of section 5215.

Paragraph (4) is necessary to protect the Government in the instance of distilled spirits held on bonded premises beyond the

bonding period, where the removal of the spirits would adversely affect the collection of the tax thereon.

Section 5613. Forfeiture of distilled spirits not stamped, marked, or branded as required by law

This section is identical with code section 5613 as contained in the House bill.

Subsection (a), "Unmarked or unbranded casks or packages": This subsection is a clarifying restatement of existing law (*sec. 5639*).

Subsection (b), "Unstamped containers": This subsection is a clarifying restatement of existing law (*secs. 5639 and 5640*).

Section 5614. Burden of proof in cases of seizure of spirits

This section is identical with code section 5614 as contained in the House bill.

This section is a clarifying restatement of existing law (*sec. 5649*) with language conformed to the concept of the distilled spirits plant.

Section 5615. Property subject to forfeiture

This section is identical with code section 5615 as contained in the House bill.

Paragraph (1), "Unregistered still or distilling apparatus": This paragraph is a clarifying and conforming restatement of existing law (*sec. 5601*).

Paragraph (2), "Distilling apparatus removed without notice or set up without permit": This paragraph is a clarifying and conforming restatement of existing law (*sec. 5602*).

Paragraph (3), "Distilling without giving bond or with intent to defraud": This paragraph is a consolidated and clarifying restatement of existing law (*secs. 5604, 5606, 5626, and 5650*).

Paragraph (4), "Unlawful production and removals from vinegar plants": This paragraph is a restatement of existing law (*sec. 5608 (b)*) except that under subparagraph (A) the long established limitations by regulations upon the alcoholic content of the materials that may be produced in vinegar plants is set forth therein to conform with the limitations set forth in section 5501.

Paragraph (5), "False or omitted entries in records, returns, and reports": This paragraph is a clarifying restatement of the forfeiture provisions of existing law (*sec. 5620*) relating to false or omitted entries in distillers' books or records, extended to apply to false or omitted entries in records, returns, or reports of bonded warehousemen, rectifiers, and bottlers of distilled spirits.

Paragraph (6), "Unlawful removal of distilled spirits": This paragraph is a clarifying and consolidated restatement of certain forfeiture provisions of existing law (*secs. 5631, 5632, 5643, and 5647*) in respect to unlawful removal of distilled spirits, extended to apply to all distilled spirits on which the tax has not been paid or determined and which have been removed, other than as authorized by law, from the place of manufacture, storage, or instrument of transportation.

Paragraph (7), "Creation of fictitious proof": This paragraph is a restatement of existing law (*sec. 5634*).

PART II—PENALTY AND FORFEITURE PROVISIONS APPLICABLE TO WINE AND WINE PRODUCTION

Section 5661. Penalty and forfeiture for violation of laws and regulations relating to wine

This section is identical with code section 5661 as contained in the House bill.

Subsection (a), "Fraudulent offenses": This subsection is existing law (*sec. 5661 (a)*), except that the text reading "shall, on conviction, be punished for each such offense by a fine not exceeding $5,000, or imprisonment for not more than 5 years, or both," is changed for uniformity to read "shall be fined not more than $5,000, or imprisoned not more than 5 years, or both, for each such offense." The references in the text to "any requirement of subchapter F * * *" is likewise changed to "any provision of subchapter F * * *" to conform with subsection (b).

The provision for an additional penalty "of double the tax due, to be assessed, levied and collected in the same manner as taxes are collected" is omitted as unrealistic, and unnecessary in view of the provisions of chapter 68, subtitle F, relating to "additions to the tax, additional amounts, and assessable penalties."

Subsection (b), "Other offenses": This subsection is a clarifying and conforming restatement of existing law (*sec. 5661 (b)*), except that the scope of the offense has been broadened to more clearly cover the misrepresentation in any manner of a still wine as an effervescent wine or a substitute therefor.

Section 5662. Penalty for alteration of wine labels

This section is identical with code section 5662 as contained in the House bill and is a clarifying and conforming restatement of existing law (*sec. 5662*).

Section 5663. Cross reference

This section is identical with code section 5663 as contained in the House bill and is a cross reference section only.

PART III—PENALTY, SEIZURE, AND FORFEITURE PROVISIONS APPLICABLE TO BEER AND BREWING

Section 5671. Penalty and forfeiture for evasion of beer tax and fraudulent noncompliance with requirements

This section is identical with code section 5671 as contained in the House bill and is a clarifying and conforming restatement of existing law (*sec. 5671*).

Section 5672. Penalty for failure of brewer to comply with requirements and to keep records and file returns

This section is identical with code section 5672 as contained in the House bill and is a clarifying and conforming restatement of existing law (*sec. 5672*).

Section 5673. Forfeiture for flagrant and willful removal of beer without taxpayment

This section is identical with code section 5673 as contained in the House bill and is existing law (*sec. 5673*).

Section 5674. Penalty for unlawful removal of beer

This section corresponds to code section 5674 as contained in the House bill, except that your committee has clarified the application of the penalty provided in the section by inserting therein the phrase "this chapter or" in lieu of "section 5054 and".

The section is a clarifying and conforming restatement of existing law (*sec. 5674*).

Section 5675. Penalty for intentional removal or defacement of brewer's marks and brands

This section is identical with code section 5675 as contained in the House bill.

The section is existing law (*sec. 5675*) except for the substitution of "removes or defaces any mark, brand, or label" in place of "removes or defaces the marks and brands" and of "such mark, brand, or label is so removed or defaced" in place of "the marks or brands are so removed or defaced." This change in text is necessary to conform and make the section consistent with the provision of section 5412 to which it relates.

Section 5676. Penalties relating to beer stamps

This section is identical with code section 5676 as contained in the House bill.

The section is existing law (*sec. 5676*), except that the language of paragraph (3) has been restated and clarified.

PART IV—PENALTY, SEIZURE, AND FORFEITURE PROVISIONS COMMON TO LIQUORS

Section 5681. Penalty relating to signs

This section is identical with code section 5681 as contained in the House bill.

Subsection (a), "Failure to post required sign": This subsection is existing law (*sec. 5681*) except that it is extended to warehousing and bottling of distilled spirits consistent with the change in the requirement for posting of signs under section 5180 (a), and the penalty of $500, is changed to a fine of not more than $1,000, or imprisonment not more than 1 year, or both.

Subsection (b), "Posting or displaying false sign": This subsection is a clarifying restatement of existing law (*sec. 5681*) except that it is extended to warehousing and bottling of distilled spirits consistent with the change in the requirements for posting of signs under section 5180 (a), and the fine of $1,000, and imprisonment not more than 6 months, is changed to a fine of not more than $1,000, or imprisonment not more than 1 year, or both.

Subsection (c), "Premises where no sign is placed or kept": This subsection is a clarifying restatement of existing law (*sec. 5681*) except that it is extended to include distilled spirits bottling establishments consistent with the change in the requirements for posting of signs under section 5180 (a), and the fine of not more than $1,000, or imprisonment not more than 6 months is changed to a fine of not more than $1,000, or imprisonment not more than 1 year, or both.

Subsection (d), "Presumption": This subsection is a new provision. It provides a rebuttable presumption of guilt in the case of persons

who are present on the premises of a distillery or rectifying establishment where no sign is placed or kept as required by section 5180 (a). The purpose of this presumption is the same as the purpose of the presumptions contained in section 5601 (b).

Section 5682. Penalty for breaking locks or gaining access

This section is identical with code section 5682 as contained in the House bill and is a conforming restatement of existing law (*sec. 5682*).

Section 5683. Penalty and forfeiture for removal of liquors under improper brands

This section is identical with code section 5683 as contained in the House bill.

The section is existing law (*sec. 5683*) except that for uniformity "spirituous liquors or beer or wines" is changed to "distilled spirits, wines, or beer," and the fine of $500 is changed to "shall be fined not more than $1,000, or imprisoned not more than 1 year, or both."

Section 5684. Penalties relating to the payment and collection of liquor taxes

This section is identical with code section 5684 as contained in the House bill.

Subsection (a), "Failure to pay tax": This subsection is a new provision which makes applicable to the failure to pay any tax imposed by part I of subchapter A at the time prescribed a civil penalty of 5 percent of the tax due but unpaid. This penalty is similar to the penalty provided in existing law (*sec. 5761 (c)*) with regard to comparable failure to pay tax in respect to tobacco. This provision is necessary for adequate administration of a system which provides for the payment of these taxes on the basis of a return (sec. 5061).

Subsection (b), "Failure to make deposit of taxes": This subsection is a new provision which changes the penalty provided for the failure to make deposit of taxes imposed under part I of subchapter A on the date prescribed therefor (from 1 percent if such failure is for not more than 1 month plus 1 percent for each additional month or fraction thereof not to exceed 6 percent in the aggregate) to a flat penalty of 5 percent. This change is deemed to be essential to assure the proper operation of the deposit system with regard to these taxes.

Subsection (c), "Applicability of section 6659": This subsection is new and provides that *section 6659 (a)* shall govern the assessment, collection, and payment of the penalties imposed by subsections (a) and (b). This provision is comparable to the provision of existing law (*sec. 5761 (c)*) with respect to tobacco taxes.

Subsection (d), "Cross references".

Section 5685. Penalty and forfeiture relating to possession of devices for emitting gas, smoke, etc., explosives and firearms, when violating liquor laws

This section is identical with code section 5685 as contained in the House bill and is existing law (*sec. 5685*).

Section 5686. Penalty for having, possessing, or using liquor or property intended to be used in violating provisions of this chapter

This section corresponds to code section 5686 as contained in the House bill and is the same as that section except for a correction of an error in punctuation in the section title.

Subsection (a), "General": This subsection is existing law (*sec. 5686 (b)*), except for conforming changes in language.

Subsection (b), "Cross reference".

Section 5687. Penalty for offenses not specifically covered

The section corresponds to code section 5687 as contained in the House bill and is a simplified consolidated restatement of existing law (*secs. 5602, 5608 (c), 5612, 5613, 5614, 5615, 5616, 5617, 5618, 5619, 5627, 5628, 5630, 5631, 5643, 5684 (a), 5686 (a), and 5687*), extended to provide uniform punishment as a misdemeanor by a fine of not more than $1,000, imprisonment not more than 1 year, or both, for any person violating any provision of this chapter, or regulations issued pursuant thereto, for which a specific criminal penalty is not prescribed by this chapter.

Section 5688. Disposition and release of seized property

This section corresponds to code section 5688 as contained in the House bill and is the same as that section except for a correction of a typographical error in subsection (b).

Subsection (a), "Forfeiture": This subsection is existing law (*sec. 5688 (a)*) except for the added authority in paragraph (2) (A) for delivery to government agencies of such property for use for any other official purpose for which appropriated funds may be expended. The purpose of this change is to effect savings in the use of appropriated funds where practicable.

Subsection (b), "Distraint or judicial process": This subsection is existing law (*sec. 5688 (b)*).

Subsection (c), "Release of seized vessels or vehicles by courts": This subsection is existing law (*sec. 5688 (c)*).

Section 5689. Penalty and forfeiture for tampering with a stamp machine

This section is identical with code section 5689 as contained in the House bill.

The section is existing law (*sec. 5689*) without substantive change, except that the monetary penalty of $5,000, is dropped to conform the penalty to other penalties under this chapter.

Section 5690. Definition of the term "person"

This section is identical with code section 5690 as contained in the House bill and is existing law (*sec. 5690*).

Part V—Penalties Applicable to Occupational Taxes

Section 5691. Penalties for nonpayment of special taxes relating to liquors

This section is identical with code section 5691 as contained in the House bill.

Subsection (a), "General": This subsection is a clarifying and conforming restatement of existing law (*sec. 5691*). The forfeiture provisions contained in existing law (*sec. 5691*) are omitted as they are deemed to be covered by other provisions of this chapter or of subtitle F.

Subsection (b), "Presumption in case of the sale of 20 wine gallons or more": This subsection is a new provision establishing a rebuttable presumption and is for the purpose of aiding in the enforcement of the special tax provisions applicable to carrying on the business of wholesale dealer in liquors or wholesale dealer in beer.

Section 5692. Penalties relating to posting of special tax stamps

This section is identical with code section 5692 as contained in the House bill and is a cross reference section only.

OMITTED SECTIONS

Your committee's bill adopts the provisions of the House bill in respect to the following sections and parts of sections in chapter 51 of the 1954 Code which have been omitted in their entirety:

(1) Section 5007 (c), "Payment of tax on alcoholic compounds from Puerto Rico and Virgin Islands": Authorization for prescribing regulations relating to collection of tax on alcoholic compounds from Puerto Rico and Virgin Islands is included in the provisions of sections 7652 and 7805.

(2) Section 5007 (e) (2), "Relief from assessment for deficiencies in production and excess of materials used": This paragraph is obsolete and its omission is consistent with the omission of section 5179.

(3) Section 5021 (b), "Change in proof or volume": This section, which prohibits the rectifier from increasing the volume of rectified spirits or wine by the addition of water or other substance after the process of rectification is complete and the taxes have been determined, unnecessarily restricts the rectifier's operations, and is therefore omitted.

(4) Section 5027, "Stamp provisions applicable to rectifiers": The provisions of this section relating to the furnishing of wholesale liquor dealers' stamps in lieu of and in exchange for stamps for rectified spirits, are not necessary in view of the general provisions for the supplying or procuring of stamps contained in section 5205.

(5) Section 5111 (a) (2) and (b) (2), "Retailers selling at wholesale": These paragraphs are inconsistent with the new definitions of retail and wholesale dealers.

(6) Section 5121 (a) (2) and (b) (2), "Wholesalers selling at retail": These paragraphs are inconsistent with the new definitions of wholesale and retail dealers.

(7) Section 5143, "Returns": This section is omitted in order that the payment of special tax will be made a condition precedent to the carrying on of the trade or business subject to such tax (except in the case of non-beverage drawback claimants) under this part. The omission of the specific requirements in this section for the filing of returns makes the provisions of subtitle F relating to returns applicable to special taxes under this chapter.

(8) Section 5177 (a), "General conditions of approval of distiller's bond": This provision is unnecessary in view of the provisions contained in the last sentence of section 5171 (a).

(9) Section 5179, "Survey of distillery": The provisions of this section are obsolete.

(10) Section 5192 (d), "Storekeeper-gaugers' records": Special provision for records and reports of storekeeper-gaugers are not necessary in view of the requirements of section 7803 and title 5, United States Code, section 22.

(11) Section 5194 (h), "Effect on other laws": The provisions of this subsection are omitted as unnecessary in view of the au-

thority for the establishment of a single type of distilled spirits plant and the elimination of artificial restrictions on transfers of distilled spirits and on the redistillation of spirits.

(12) Section 5241 (c), "Storekeeper-gaugers' records and returns": Special provision for records and reports of storekeeper-gaugers are not necessary in view of the requirements of section 7803 and title 5, United States Code, section 22.

(13) Section 5243 (f), "Effect on State laws": The provisions of this subsection are unnecessary, since the act of August 8, 1890 (26 Stat. 313; 27 U. S. C. 121) is applicable to all distilled spirits, including those bottled in bond.

(14) Section 5304 (a) (6), "Review of disapproval": The provisions of this subsection are inappropriate, since the Administrative Procedure Act (5 U. S. C. 1001) governs the procedure for review of disapprovals of applications for permits.

(15) Section 5304 (d), "Provisions relating to venue": The provisions of this subsection are unnecessary in view of the provisions of the Administrative Procedure Act (5 U. S. C. 1001) and the Federal Rules of Criminal and Civil Procedure.

(16) Section 5315, "Compliance with court subpena as to testifying or producing records": The circumstances justifying the application of the provisions of this section no longer exist.

(17) Section 5316, "Form of affidavit, information, or indictment": The provisions of this section are unnecessary in view of the provisions of the Federal Rules of Criminal Procedure.

(18) Section 5317 (a), "Applicability of other internal revenue laws": This section is duplicative of other provisions of this chapter and subtitle F.

(19) Section 5319 (3), (4), and (5), "Definitions": These definitions are unnecessary.

(20) Section 5319 (8), "Definition": This definition is unnecessary in view of other definitions in this chapter and subtitle F.

(21) Section 5502, "Distilled vinegar": The provisions of this section are unnecessary.

(22) Section 5605, "Penalty for improper approval of distiller's bond": This section is omitted since it is considered that the provisions of section 7214 adequately cover unlawful acts of revenue officers.

(23) Section 5633, "Penalty of officer in charge of warehouse for unlawful removal of spirits": This section is omitted since it is considered that the provisions of section 7214 adequately cover unlawful acts of revenue officers.

(24) Section 5645, "Penalty for unlawful affixing, canceling, or issue of stamps by officer": This section is omitted since it is considered that the provisions of section 7214 adequately cover unlawful acts of revenue officers.

(25) Section 5646, "Penalty for evasion of distilled spirits tax": This section is omitted in order to conform the law with respect to evading, or attempting to evade, liquor taxes to the civil penalty provisions of subtitle F.

(26) Section 5684 (b) and (c), "Penalties relating to the payment and collection of liquor taxes": The penalties in these subsections are omitted in order to conform the law with respect to

certain willful acts relating to liquor taxes to the criminal and civil penalty provisions of subtitle F.

(27) Section 5688 (d), "Release of seized property by Secretary or his delegate": This section was omitted in order to make uniform the procedure with respect to release of seized property.

SECTION 202. AMENDMENT OF CHAPTER 52 OF THE INTERNAL REVENUE CODE OF 1954

CHAPTER 52—TOBACCO, CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

SUBCHAPTER A—DEFINITIONS; RATE AND PAYMENT OF TAX; EXEMPTION FROM TAX; AND REFUND AND DRAWBACK OF TAX

Section 5701. Rate of tax

This section is identical with code section 5701 as contained in the House bill, except that the date "July 1, 1958" has been stricken each place it appears and the date "July 1, 1959" has been inserted in lieu thereof in order to conform to section 3 of the Tax Rate Extension Act of 1958 (Public Law 85-475, approved June 30, 1958).

Subsection (a), "Tobacco": This subsection is existing law (*sec. 5701 (a)*).

Subsection (b), "Cigars": This subsection is existing law (*sec. 5701 (b)*) except for two clarifying changes. The addition of the expression "exclusive of any State or local taxes imposed on the retail sale of cigars" is intended to make it clear that such taxes are not to be considered by the manufacturer or importer of cigars in determining the ordinary retail price of a single cigar in its principal market, for purposes of payment or determination of the internal revenue tax on such cigars. The addition of the new sentence "Cigars not exempt from tax under this chapter which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale." is intended to protect the revenue by preventing the undertaxpayment of large cigars removed by manufacturers and importers for gratuitous distribution rather than for sale.

Subsection (c), "Cigarettes": This subsection is existing law (*sec. 5701 (c)*).

Subsection (d), "Cigarette papers": This subsection is existing law (*sec. 5701 (d)*) except for changes in the language which imposes the tax on domestic and imported cigarette papers when made up into books or sets containing more than 25 papers each, for the purpose of making clear that the tax is applied directly to each book or set of such papers. The word "package" is eliminated from the existing taxable units of cigarette papers because it has lead to some uncertainty and misunderstanding on the part of taxpayers since the term "package" usually relates to the container in which books or sets of cigarette papers are put up for shipping purposes. The change in this subsection also enables further clarification to be made throughout the chapter so as to make it clear that the Government's concern is

directed to the collection of the tax on such books or sets of cigarette papers on which the tax is imposed, and not directed to nontaxable cigarette papers.

Subsection (e), "Cigarette tubes": This subsection is existing law (*sec. 5701 (e)*).

Subsection (f), "Imported tobacco products and cigarette papers and tubes": This subsection is a clarifying and conforming restatement of existing law (*sec. 5701 (f)*).

Section 5702. Definitions

This section corresponds to code section 5702 as contained in the House bill and is the same as that section except that your committee has (1) consolidated the definitions of "manufacturer of tobacco" and "manufacturer of cigars and cigarettes" into a single definition of "manufacturer of tobacco products" (2) made conforming changes in the definition of "dealer in tobacco materials" and (3) clarified the definition of "manufactured tobacco". The consolidation of definitions has resulted in the redesignation of various subsections as they appear in the House bill.

Subsection (a), "Manufactured tobacco": This subsection corresponds to subsection (a) as contained in the House bill, and is a restatement of existing law (*sec. 5702 (a)*). Your committee has changed the expression "any other tobacco" to "any tobacco (other than cigars and cigarettes)" to obviate any misconstruction of language.

Subsection (b), "Cigar": This subsection is identical with subsection (c) as contained in the House bill and is existing law (*sec. 5702 (c)*).

Subsection (c), "Cigarette": This subsection is identical with subsection (d) as contained in the House bill and is existing law (*sec. 5702 (d)*).

Subsection (d), "Tobacco products": This subsection is identical with subsection (f) as contained in the House bill and is existing law (*sec. 5702 (f)*).

Subsection (e), "Manufacturer of tobacco products": This subsection corresponds to subsections (b) and (e) as contained in the House bill. Subsection (b) as contained in the House bill restated the definition of "manufacturer of tobacco" as contained in existing law (*sec. 5702 (b)*), except for the addition of a specific provision that an association of farmers or growers of tobacco is excluded from the defined term if it keeps prescribed records of leaf tobacco received and disposed of, in order that the Government may determine the bona fides of the association and its entitlement to the resultant exemption from the requirement to qualify as a "manufacturer of tobacco" and to pay tax on such tobacco. Subsection (e) as contained in the House bill was a clarifying and conforming restatement of existing law (*sec. 5702 (e)*), with the addition of a sentence intended to continue the longstanding construction that a proprietor of a customs bonded manufacturing warehouse, which warehouse is entirely under customs jurisdiction and supervision, shall not be regarded as a domestic manufacturer of cigars and cigarettes for internal revenue purposes. Your committee has consolidated these two definitions into a single definition of "manufacturer of tobacco products" in recognition of the fact that the term "manufacturer of tobacco prod-

ucts" is used throughout chapter 52 to denote both a manufacturer of tobacco and a manufacturer of cigars and cigarettes.

Your committee rephrased the language of the exemption relating to an association of farmers or growers of tobacco in order to make it completely clear that the exemption applies only with respect to sales of leaf tobacco grown by its farmer or grower members. There is no intent to preclude such association from engaging in the sale of commodities other than tobacco, or from handling the tobacco of nonmembers without benefit of the exemption in this respect.

Subsection (f), "Cigarette paper": This subsection is identical with subsection (g) as contained in the House bill and is existing law (*sec. 5702 (g)*).

Subsection (g), "Cigarett papers": This subsection is identical with subsection (h) as contained in the House bill and is new. It provides a statutory definition of "cigarette papers," and conforms with the clarifying change in the language of section 5701 (d).

Subsection (h), "Cigarette tube": This subsection is identical with subsection (i) as contained in the House bill and is existing law (*sec. 5702 (h)*).

Subsection (i), "Manufacturer of cigarette papers and tubes": This subsection is identical with subsection (j) as contained in the House bill and is a clarifying and conforming restatement of existing law (*sec. 5702 (i)*).

Subsection (j), "Export warehouse": This subsection is identical with subsection (k) as contained in the House bill and is new. It provides a definition of "export warehouse" in order to give specific statutory recognition to bonded tobacco export warehouses. For approximately 25 years, provision has been made by regulation for the establishment and operation of bonded warehouses for the purpose of receiving, from manufacturers, tobacco products and cigarette papers and tubes upon which the internal revenue tax has not been paid, for subsequent shipment for sea stores or export.

Subsection (k), "Export warehouse proprietor": This subsection is identical with subsection (l) as contained in the House bill and is new. It provides a conforming specific statutory definition of "export warehouse proprietors."

Subsection (l), "Tobacco materials": This subsection is identical with subsection (m) as contained in the House bill and is a clarifying restatement of existing law (*sec. 5702 (k)*) intended to eliminate any overlapping with the definition for "manufactured tobacco."

Subsection (m), "Dealer in tobacco materials": This subsection corresponds to subsection (n) as contained in the House bill and is the same as that subsection except that your committee has restated paragraph (2) to conform its language to corresponding changes in subsection (c). Such restatement is intended to make it clear that the exemption of a bona fide association of farmers or growers of tobacco is applicable with respect to sales of leaf tobacco grown by farmer or grower members, but that the activities of such association need not be restricted to such sales.

This subsection, and the corresponding subsection of the House bill, is a restatement of existing law (*sec. 5702 (l)*) except for clarifying changes in language and addition of the statutory requirement that an association of farmers or growers of tobacco shall keep records of leaf tobacco received and disposed of which would enable the Govern-

ment to determine that the association is bona fide and is, therefore, entitled to the resultant exemption from the requirement to qualify as a "dealer in tobacco materials." Paragraph (3) is intended to make it clear that speculators (referred to in the trade as pinhookers) in leaf tobacco, whose tobacco is generally sold by qualified dealers in tobacco materials, are specifically excluded from the definition of "dealer in tobacco materials." Such speculators usually move from one leaf tobacco market to another, have no fixed place of business, and do not have possession of the tobacco when it is sold. Traditionally, for revenue purposes, the Government has been interested only in the physical possession of leaf tobacco rather than in the ownership thereof. Paragraph (4) is intended to make it clear that a qualified manufacturer of tobacco products is not regarded as a dealer in tobacco materials with respect to his sale, shipment, or delivery of tobacco materials received by him under his bond as such a manufacturer.

Subsection (n), "Removal or remove": This subsection is identical with subsection (o) as contained in the House bill and is a clarifying and conforming restatement of existing law (*sec. 5702 (m)*).

Subsection (o), "Importer": This subsection is identical with subsection (p) as contained in the House bill and is a clarifying and conforming restatement of existing law (*sec. 5702 (n)*) except for the addition of a clause intended to continue the longstanding construction that the proprietor of a customs bonded manufacturing warehouse, who produces cigars or cigarettes therein, is regarded as an importer of such products and not as a domestic manufacturer for internal revenue purposes, since the cigars and cigarettes are produced under customs supervision and control, from imported tobacco materials. This will avoid any conflict or duplication of supervision by Customs and the Internal Revenue Service, and will maintain the existing status of proprietors of such warehouses.

Section 5703. Liability for tax and method of payment

This section corresponds to section 5703 as contained in the House bill and is the same as that section except that because of the revenue effect your committee has stricken from subsection (b) the provision which would have required the Secretary or his delegate to institute, not later than August 4, 1958, a return system with a period of not less than 7 days for the payment of tax by manufacturers of tobacco products. The effect of this change is to restore the provision of existing law which leaves to the Secretary or his delegate discretion to institute a return system by regulations and to prescribe the period for which the return is made and the time when the return will be filed.

Subsection (a), "Liability for tax": This subsection is a clarifying and conforming restatement of existing law (*sec. 5703 (a)*) except that it provides for the transfer of liability for tax in cases where taxable articles are transferred in bond between factories and bonded export warehouses, or released in bond from customs custody to manufacturers. Such provision makes export warehouse proprietors liable for the tax on tobacco products and cigarette papers and tubes which they receive for temporary storage and subsequent removal and shipment for export purposes.

Subsection (b), "Method of payment of tax": This subsection is a clarifying and conforming restatement of existing law (*sec. 5703 (a)*).

This subsection provides that the Secretary or his delegate may, by regulations, require payment of tax prior to removal of the tobacco products and cigarette papers and tubes in the case of a person who has defaulted in taxpayment postponed under this subsection, so long as the taxpayer is in default. It also provides authority for the Secretary or his delegate to prescribe by regulations, that any postponement of the payment of taxes determined at the time of removal shall be conditioned upon the filing of such additional bonds, and upon compliance with such requirements, as he deems necessary for the protection of the revenue.

Subsection (c), "Stamps to evidence the tax": This subsection is a clarifying and conforming restatement of existing law (*sec. 5703 (b)*) except that cigarette papers and tubes have been eliminated from its provisions.

Subsection (d), "Use of Government depositaries": This subsection is existing law (*sec. 5703 (c)*).

Subsection (e), "Assessment": This subsection is a clarifying restatement of existing law (*sec. 5703 (d)*) except for the addition of provisions intended to protect the revenue where collection of tax may be jeopardized by delay in assessing such tax.

Section 5704. Exemption from tax

This section is identical with code section 5704 as contained in the House bill.

Subsection (a), "Tobacco products furnished for employee use or experimental purposes": This subsection is existing law (*sec. 5704 (a)*).

Subsection (b), "Tobacco products and cigarettes papers and tubes transferred or removed in bond from domestic factories and export warehouses": This subsection is a clarifying and conforming restatement of existing law (*sec. 5704 (b)*) except that its provisions have been extended to include export warehouse proprietors as being authorized to make transfers of products without payment of tax.

Subsection (c), "Tobacco materials shipped or delivered in bond": This subsection is a clarifying and conforming restatement of existing law (*sec. 5704 (c)*) except for the addition of provisions intended to permit the shipment or delivery of tobacco stems and waste materials, without payment of tax, to any person for use as fertilizer or insecticide or in the manufacture of fertilizer, insecticide, or nicotine.

Subsection (d), "Tobacco products, cigarette papers and tubes, and tobacco materials released in bond from customs custody": This subsection is a clarifying and conforming restatement of existing law (*sec. 5704 (d)*).

Section 5705. Refund or allowance of tax

This section is identical with code section 5705 as contained in the House bill.

Subsection (a), "Refund": This subsection is a clarifying and conforming restatement of existing law (*sec. 5705 (a)*) except that (1) it extends the refund provisions to export warehouse proprietors, consistent with the extension to such proprietors of the provisions of section 5703 (a) in respect to liability for payment of tax, (2) it limits its provisions to articles lost, destroyed, or withdrawn from the market (claims arising from tax having been paid in error to be treated under subtitle F of this title), and (3) it makes it clear that the related refunds shall be made without interest.

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Subsection (b), "Allowance": This subsection is a clarifying and conforming restatement of existing law (*sec. 5705 (b)*), except that it also provides relief from the payment of tax on articles withdrawn from the market prior to taxpayment.

Subsection (c), "Limitation": This subsection is existing law (*sec. 5705 (c)*), except that it changes the period of limitation from 3 years after the date of payment of tax to 6 months after the date of the withdrawal from the market, loss, or destruction of the articles to which the claim relates. Such change is consistent with similar provisions in sections 5044, 5056, 5064, and 5708.

Section 5706. Drawback of tax

This section is identical with code section 5706 as contained in the House bill and is a clarifying and conforming restatement of existing law (*sec. 5706*).

Section 5707. Floor stocks refund on cigarettes

This section is identical with code section 5707 as contained in the House bill, except that the date "July 1, 1958," has been stricken each place it appears and the date "July 1, 1959," inserted in lieu thereof, and the date "October 1, 1958," has been stricken and the date "October 1, 1959," has been inserted in lieu thereof, in order to conform to section 3 of the Tax Rate Extension Act of 1958 (Public Law 85–475, approved June 30, 1958).

The section is a clarifying restatement of existing law (*sec. 5707*).

Section 5708. Losses caused by disaster

This section is identical with code section 5708 as contained in the House bill.

Subsection (a), "Authorization": This subsection provides that the Secretary or his delegate, under certain conditions, is to make payments equal to the internal revenue taxes paid or determined (and customs duties paid) on tobacco products and cigarette papers and tubes lost, rendered unmarketable, or condemned by a duly authorized official, by reason of a "major disaster," as determined by the President under the act of September 30, 1950 (64 Stat. 1109), occurring on or after the effective date of this section. Such payments are to be made to the person holding such tobacco products or cigarette papers or tubes for sale at the time of such disaster.

Subsection (b), "Claims": This subsection provides that the claimant must furnish proof that he was not indemnified by any valid claim of insurance or otherwise in respect of the tax or duty on the articles covered by the claim, and that he is entitled under this section to the payment claimed.

Subsection (c), "Destruction of tobacco products or cigarette papers or tubes": This subsection provides that before the Secretary or his delegate makes payment with respect to tobacco products or cigarette papers or tubes condemned by a duly authorized official, or rendered unmarketable, such articles must be destroyed under such supervision as the Secretary or his delegate may prescribe, unless such articles were previously destroyed under supervision satisfactory to the Secretary or his delegate.

Subsection (d), "Other laws applicable": The purpose of this subsection is to make it clear that all provisions of law, including penalties, applicable in respect of the internal revenue taxes on tobacco products and cigarette papers and tubes shall, insofar as applicable and not inconsistent with this section, be applied to all payments provided for in this section, whether or not made to the person who paid the tax.

SUBCHAPTER B—QUALIFICATION REQUIREMENTS FOR MANUFACTURERS OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, EXPORT WAREHOUSE PROPRIETORS, AND DEALERS IN TOBACCO MATERIALS

The title of this subchapter is changed to show clearly the persons to whom the subchapter applies, including export warehouse proprietors.

Section 5711. Bond

This section is identical with code section 5711 as contained in the House bill.

Subsection (a), "When required": This subsection is a clarifying and conforming restatement of existing law (*sec. 5711 (a)*) except for the inclusion under its provisions of export warehouse proprietors who are now required by regulation to give bond.

Subsection (b), "Approval or disapproval": This subsection is existing law (*sec. 5711 (b)*).

Subsection (c), "Cancellation": This subsection is existing law (*sec. 5711 (c)*).

Section 5712. Application for permit

This section is identical with code section 5712 as contained in the House bill, except that the date "1957" has been changed to "1958" to conform to the change in the short title of the act.

The section is a clarifying restatement of existing law (*sec. 5712*) except that it no longer requires applications for permits by dealers in tobacco materials or manufacturers of cigarette papers and tubes and makes such requirement applicable to export warehouse proprietors. Provision is made for export warehouse proprietors to carry on business pending reasonable opportunity to make application for permit and final action thereon.

Section 5713. Permit

This section is identical with code section 5713 as contained in the House bill.

Subsection (a), "Issuance": This subsection is a clarifying restatement of existing law (*sec. 5713 (a)*) except that it no longer requires a permit to engage in business as a dealer in tobacco materials or manufacturer of cigarette papers and tubes and requires a permit in order to engage in business as an export warehouse proprietor.

Subsection (b), "Revocation": This subsection is a clarifying restatement of existing law (*sec. 5713 (c)*).

SUBCHAPTER C—OPERATIONS BY MANUFACTURERS AND IMPORTERS OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES AND EXPORT WAREHOUSE PROPRIETORS

The title of this subchapter is changed to show clearly the persons to whom the subchapter applies, including export warehouse proprietors.

Section 5721. Inventories

This section is identical with code section 5721 as contained in the House bill.

The section is a clarifying and conforming restatement of existing law (*sec. 5721*) except that its provisions are also made applicable to export warehouse proprietors.

Section 5722. Reports

This section is identical with code section 5722 as contained in the House bill.

The section is a clarifying and conforming restatement of existing law (*sec. 5722*) except that its provisions are also made applicable to export warehouse proprietors.

Section 5723. Packages, marks, labels, notices, and stamps

This section is identical with code section 5723 as contained in the House bill.

Subsection (a), "Packages": This subsection is a clarifying and conforming restatement of existing law (*sec. 5723 (a)*) in respect to the requirement that tobacco products and cigarette papers and tubes be packaged before removal.

Subsection (b), "Marks, labels, notices, and stamps": This subsection is a clarifying and conforming restatement of existing law (*sec. 5723 (a)*) in respect to the authority given the Secretary or his delegate to prescribe marks, labels, notices, and stamps. Rather than being directive in nature, these provisions delegate authority to the Secretary or his delegate to take such regulatory action in this field, with respect to each taxable product, as he deems necessary to protect the revenue.

Subsection (c), "Lottery features": This subsection is a clarifying and conforming restatement of existing law (*sec. 5723 (b)*).

Subsection (d), "Indecent or immoral material prohibited": This subsection is a clarifying and conforming restatement of existing law (*sec. 5723 (c)*).

Subsection (e), "Exceptions": This subsection is a clarifying and conforming restatement of existing law (*sec. 5723 (d)*) and regulations, except that the exemptions from the lottery provisions are omitted, consistent with the provisions of section 1301 of title 18 of the United States Code.

SUBCHAPTER D—OPERATIONS BY DEALERS IN TOBACCO MATERIALS

Section 5731. Shipments and deliveries restricted

This section is identical with code section 5731 as contained in the House bill and is a clarifying restatement of existing law (*sec. 5731*).

Section 5732. Inventory, and statement of shipments and deliveries

This section is identical with code section 5732 as contained in the House bill and is a clarifying restatement of existing law (*sec. 5732*) and regulations.

SUBCHAPTER E—RECORDS OF MANUFACTURERS OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, EXPORT WAREHOUSE PROPRIETORS, AND DEALERS IN TOBACCO MATERIALS

The title of this subchapter is changed to show clearly the persons to whom the subchapter applies, including export warehouse proprietors.

Section 5741. Records to be maintained

This section is identical with code section 5741 as contained in the House bill.

The section is a clarifying and conforming restatement of existing law (*sec. 5741*) except that its provisions are extended to include specific statutory authority for the Secretary or his delegate to prescribe records to be kept by export warehouse proprietors.

SUBCHAPTER F—GENERAL PROVISIONS

Section 5751. Purchase, receipt, possession, or sale of tobacco products and cigarette papers and tubes, after removal

This section is identical with code section 5751 as contained in the House bill.

Subsection (a), "Restriction": This subsection is a clarifying and conforming restatement of existing law (*sec. 5751 (a)*), revised: (1) to make it clear that its restrictions relative to purchase, receipt, possession, and sale of tobacco products and cigarette papers and tubes are applicable to such articles which have been removed without payment or determination of tax; (2) to extend the exception in existing law in the case of sales of such articles from proper packages directly to consumers, to other dispositions of such articles from proper packages directly to consumers; and (3) to specifically provide restrictions with respect to such articles which, after authorized removal without payment of tax, have been diverted from the authorized tax exempt purpose or use.

Subsection (b), "Liability to tax": This subsection is a clarifying and conforming restatement of existing law (*sec. 5751 (b)*).

Section 5752. Restrictions relating to marks, labels, notices, stamps, and packages

This section is identical with code section 5752 as contained in the House bill.

The section is a clarifying and conforming restatement of existing law (*sec. 5752*), except that it has been revised: (1) to impose restrictions, essential under a return system of taxpayment, to prevent the destruction, obliteration, or detachment of any required or authorized mark, label, notice, or stamp on any unemptied package of tobacco products or cigarette papers or tubes, if such act is with intent to defraud the United States; and (2) to limit the penalties applicable

to the destruction or detachment of a required stamp to instances where there is intent to defraud the United States.

Section 5753. Disposal of forfeited, condemned, and abandoned tobacco products, cigarette papers and tubes, and tobacco materials

This section is identical with code section 5753 as contained in the House bill and is a clarifying and conforming restatement of existing law (*sec. 5753*).

SUBCHAPTER G—PENALTIES AND FORFEITURES

Section 5761. Civil penalties

This section is identical with code section 5761 as contained in the House bill.

Subsection (a), "Omitting things required or doing things forbidden": This subsection is existing law (*sec. 5761 (a)*), except for the omission of the reference to section 6652, which is inapplicable to this chapter.

Subsection (b), "Failure to pay tax": This subsection is derived from existing law (*sec. 5761 (c)*), and continues its provisions, except in respect to interest. The omission of the provisions relating to interest makes applicable the general rule with respect to interest provided in *section 6601 (a)* of existing law.

Subsection (c), "Failure to make deposit of taxes": This subsection is a new provision which changes the penalty provided for the failure to make deposit of taxes imposed under this chapter on the date prescribed therefor (from 1 percent if such failure is for not more than 1 month plus 1 percent for each additional month or fraction thereof not to exceed 6 percent in the aggregate) to a flat penalty of 5 percent. This change is deemed essential to assure the proper operation of the deposit system with regard to these taxes.

Subsection (d), "Applicability of section 6659": This subsection is derived from existing law (*sec. 5761 (c)*) and provides that section 6659 (a) shall govern the assessment, collection, and payment of the penalties imposed by subsections (b) and (c) of section 5761.

Section 5762. Criminal penalties

This section is identical with code section 5762 as contained in the House bill.

Subsection (a), "Fraudulent offenses":

Paragraph (1), "Engaging in business unlawfully": This paragraph is a clarifying and conforming restatement of existing law (*sec. 5762 (a) (1)*) except that the provisions have been extended to cover engaging in business as an export warehouse proprietor without filing the bond and obtaining the permit required by this chapter or regulations thereunder.

Paragraph (2), "Failing to furnish information or furnishing false information": This paragraph is existing law (*sec. 5762 (a) (2)*).

Paragraph (3), "Refusing to pay or evading tax": This paragraph is existing law (*sec. 5762 (a) (3)*).

Paragraph (4), "Removing tobacco products or cigarette papers or tubes unlawfully": This paragraph is a clarifying and conforming restatement of existing law (*sec. 5762 (a) (4)*).

Paragraph (5), "Purchasing, receiving, possessing, or selling tobacco products or cigarette papers or tubes unlawfully": This paragraph is a clarifying and conforming restatement of existing law (*sec. 5762 (a) (5)*).

Paragraph (6), "Affixing improper stamps": This paragraph is a clarifying and conforming restatement of existing law (*sec. 5762 (a) (6)*), except that it is applicable to stamps only.

Paragraph (7), "Destroying, obliterating, or detaching marks, labels, notices, or stamps before packages are emptied": This paragraph is new. It provides the penalty for violations of the substantive provisions of section 5752 (a).

Paragraph (8), "Emptying packages without destroying stamps": This paragraph is new. It provides the penalty for violations of the substantive provisions of section 5752 (b).

Paragraph (9), "Possessing emptied packages bearing stamps": This paragraph is a clarifying and conforming restatement of existing law (*sec. 5762 (a) (10)*), except that it is applicable to stamps only.

Paragraph (10), "Refilling packages bearing stamps": This paragraph is a clarifying and conforming restatement of existing law (*sec. 5762 (a) (8)*), except that it is applicable to stamps only.

Paragraph (11), "Detaching stamps or possessing used stamps": This paragraph is a clarifying and conforming restatement of existing law (*sec. 5762 (a) (9)*), except that it is applicable to stamps only.

Subsection (b), "Other offenses": This subsection is a clarifying restatement of existing law (*sec. 5762 (b)*).

Section 5763. Forfeitures

This section is identical with code section 5763 as contained in the House bill.

Subsection (a), "Tobacco products and cigarette papers and tubes unlawfully possessed": This subsection is a clarifying restatement of existing law (*sec. 5763 (a)*), with its provisions conformed to section 5751 (a), to which it relates.

Subsection (b), "Personal property of qualified manufacturers, export warehouse proprietors, and dealers acting with intent to defraud": This subsection is a clarifying and conforming restatement of existing law (*sec. 5763 (b)*) except that it has been extended to include export warehouse proprietors.

Subsection (c), "Real and personal property of illicit operators": This subsection is a clarifying and conforming restatement of existing law (*sec. 5763 (c)*) except that it has been extended to include any person engaged in business as an export warehouse proprietor without filing the bond or obtaining the permit as required by this chapter.

Subsection (d), "General": This subsection is a clarifying restatement of existing law (*sec. 5763 (d)*).

OMITTED SECTIONS

Your committee's bill adopts the provisions of the House bill in respect to the following subsections or paragraphs in chapter 52 of the 1954 code which have been omitted in their entirety:

(1) Section 5702 (j), "Articles": This subsection, which provides the statutory definition for "articles," is considered unneces-

sary, since each provision of the chapter sets forth specifically the taxable articles to which it is applicable.

(2) Section 5713 (b), "Posting": This subsection, which requires that a permit shall be posted, is considered to be unnecessary.

(3) Section 5713 (d), "Limitation": This subsection is unnecessary and could create a hardship by prohibiting the issuance of a permit although extenuating conditions might justify issuance thereof. Similar provisions restricting the issuance of alcohol permits after revocation have been omitted from chapter 51.

(4) Section 5761 (b), "Willfully failing to pay tax": The penalty in this subsection is omitted in order to conform the law with respect to tobacco taxes to the civil penalty provisions of subtitle F.

(5) Section 5762 (a) (7), "Packaging with improper notices": This paragraph, which provides the penalty for putting articles into any package bearing an improper notice to evidence the tax, is considered to be no longer necessary.

SECTION 203. TECHNICAL AMENDMENTS RELATING TO MACHINE GUNS AND CERTAIN OTHER FIREARMS

CHAPTER 53—MACHINE GUNS AND CERTAIN OTHER FIREARMS

SUBCHAPTER A—TAXES

PART I—SPECIAL (OCCUPATIONAL) TAXES

Section 5801. Tax

Your committee's bill adopts the House amendments to *section 5801* of the 1954 Code.

The changes obviate the present necessity of prorating the $1 tax. Under the present practice, as required by existing law, the proration of the $1 tax often results in a tax payment of only a few cents, obviously insufficient to cover the necessary expenses attendant upon issuance of the tax stamp. This amendment will require payment of $1 tax regardless of the period of time within a year for which the stamp is issued.

PART II—TRANSFER TAX

Section 5811. Tax

Your committee's bill adopts the House amendment to *section 5811* of the 1954 Code which clarifies existing law without substantive change.

Section 5814. Order forms

Your committee's bill adopts the House amendments to *section 5814* of the 1954 Code.

Subsection (c) is stricken in its entirety and subsections (d) and (e) are renumbered accordingly. Existing law makes it necessary that the owner of a firearm (which has been acquired lawfully by transfer) transmit, in addition to the order form required by subsection (b), all prior stamp-affixed orders and/or stamp-affixed declarations (as

provided in *sec. 5821*) when he sells the firearm. This present requirement of law places a heavy burden on the owner of a firearm, in that he must carefully keep these documents which, if a firearm has been transferred several times, would result in responsibility for the care and transmission of several order forms and/or declarations.

The only purpose served in the present requirement is to show that the order forms and/or declarations have "National Firearms Act" stamps affixed thereto, evidencing payment of transfer tax. However, experience has shown that many of these order forms and/or declarations are lost, misplaced, or destroyed. When such circumstances arise it becomes impossible for the transferor to be in technical compliance with the law.

Since the Internal Revenue Service maintains a complete record of all lawful transfers of firearms and also has a record of the transfer tax payments, it is believed to be unnecessary for a person to possess all the presently required stamped documents in order that he may later be able to comply with the provisions of subsection (c) of existing law should he transfer the firearm.

It is considered that the ends of proper administration and enforcement of the law will be served adequately by requiring only that a person evidence payment of the transfer tax by producing the document provided by *section 5814 (a)*.

PART III—TAX ON MAKING FIREARMS

Section 5821. Rate, exceptions, etc.

Your committee's bill adopts the House amendments to *section 5821* of the 1954 Code.

Under *section 5821 (a)* of existing law the tax on the making of a firearm is at "that rate provided in *section 5811 (a)* which would apply to any transfer of the firearm so made." This means that if the transfer tax on a firearm under *section 5811 (a)* is only $1 then the making tax under *section 5821 (a)* is only $1. This is a situation which rebounds to the advantage of the criminal element, and seriously hampers proper enforcement of the law.

The possible advantage of the $1 rate on the making of a firearm is inconsistent with the purpose of these laws. The amendment of *section 5821 (a)* provides a uniform rate of tax of $200 on the making of firearms. This change places no hardship on the persons engaged in the business of manufacturing firearms, since they are adequately protected by the exceptions contained in existing law (*sec. 5821 (b)*).

Section 5821 (b) (2) is amended by deleting the reference to *section 5811 (a)* as a conforming change to the amendment to *section 5821 (a)*.

SUBCHAPTER B—GENERAL PROVISIONS

Section 5843. Identification of firearms

Your committee's bill adopts the House amendment to *section 5843* of the 1954 Code.

The amendment of *section 5843* is for the purpose of clarifying the intent of this section, that firearms be identified by serial number and other approved identification marks. This change is in accordance with the administrative construction of existing law.

Section 5848. Definitions

Your committee's bill adopts the House amendments to *section 5848* of the 1954 Code.

The amendments of *paragraphs (3), (4), and (7)* of *section 5848* are conforming changes in language to clarify the intent of this section and are in accordance with the administrative construction of existing law.

Section 5849. Citation of chapter

Your committee added this new code section.

Vessels, vehicles, or aircraft, in respect of which there have been violations of chapter 53 of the Internal Revenue Code of 1954, are forfeited under the provisions of the act of August 9, 1939 (49 U. S. C., ch. 11) based on the reference in such act to the "National Firearms Act". When the act of August 9, 1939, was enacted, the provisions of the National Firearms Act had already been incorporated in the Internal Revenue Code of 1939. The provisions of the National Firearms Act subsequently became chapter 53 of the Internal Revenue Code of 1954. The amendment is intended to clarify the application of title 49, United States Code, chapter 11, to the provisions of chapter 53 of the Internal Revenue Code of 1954.

SUBCHAPTER C—UNLAWFUL ACTS

Section 5851. Possessing firearms illegally

Your committee's bill adopts the House amendment to *section 5851* of the 1954 Code.

Existing law (*sec. 5851*) specifically defines as an unlawful act the receipt or possession of any firearm which has been transferred or made in violation of law, but fails to so define the possession of an unregistered firearm. The amendment of this section specifically defines such possession of an unregistered firearm as an unlawful act and makes applicable to such possession the presumption contained in the section. The primary purpose of this change is to simplify and clarify the law and to aid in prosecution.

Section 5854. Failure to register and pay special tax

Your committee's bill adopts the House amendment to *section 5854* of the 1954 Code.

The amendment of *section 5854* is solely for the purpose of rearrangement in more logical order by dividing the existing section into two sections (*secs. 5854 and 5855*) with more descriptive titles. Section 5854 is the same as *section 5854 (a)* of existing law.

Section 5855. Unlawful transportation in interstate commerce

Your committee's bill adopts the House amendment to the 1954 Code.

This section is the same as *section 5854 (b)* of existing law.

SECTION 204. AMENDMENTS TO SUBTITLE F OF THE INTERNAL REVENUE CODE OF 1954

This section corresponds to section 204 of the House bill and is the same as that section except that your committee has stricken amendments (14), (15), and (16), as contained in the House bill, and sub-

stituted new amendments in lieu thereof. The stricken amendments were conforming changes in cross references. New amendment (14) restates the provisions of section 5558, as contained in the House bill, relating to the authority of alcohol and tobacco tax enforcement officers, and makes such provisions applicable to all internal revenue enforcement officers. Your committee restated these provisions to delete certain obsolete phraseology carried over from existing law (*sec. 5313 (a)*) and to provide greater uniformity with comparable provisions relating to the authority of officers of the Bureau of Narcotics and Bureau of Customs contained in *section 7607*, as added to the code by the act of July 18, 1956 (70 Stat. 570).

These provisions are intended to clarify the authority of internal revenue officers who are charged by the Secretary or his delegate with the duty of enforcing any of the criminal or forfeiture provisions of this title or any other law for the enforcement of which the Secretary or his delegate is responsible.

Internal revenue enforcement officers are presently charged with the duty of enforcing criminal and forfeiture provisions of certain laws not contained in this title, such as the Federal Firearms Act (15 U. S. C., ch. 18), Federal Alcohol Administration Act (27 U. S. C., ch. 8), title 18, United States Code, section 1262–1265, etc., and it is intended that the authority provided in this section shall extend to internal revenue officers enforcing any such provisions.

Internal revenue officers whose duty it is to enforce criminal and forfeiture provisions perform an important law enforcement function, and it is desirable that specific statutory authority be provided for all such officers similar to the existing statutory authority provided in the case of other law enforcement officers who perform comparable duties (for example, the authority granted to agents of the Bureau of Narcotics and to Customs officers under *section 7607*.

The authority of internal revenue officers to make searches and seizures without warrant under certain circumstances is well recognized, and it is not intended that this section be construed as limiting any such existing authority.

New amendment (15) redesignates present code *section 7608* as section 7609 and makes conforming changes in the cross references contained therein.

New amendment (16) makes conforming changes in the table of sections for subchapter A of chapter 78.

Your committee has adopted amendments (1) through (13) and (17) through (19) as contained in the House bill.

Amendments (1), (2), (3), (4), (5), (7), and (19) are conforming changes in cross references relating to subtitle E.

Amendment (6) is a clarification of existing law which specifically exempts persons required to register under subtitle E, or persons engaging in a trade or business on which a special tax is imposed by subtitle E, from the provisions of *section 7272 (a)*. Such failures to register are covered by specific penalties under subtitle E.

Amendment (8) restores the provisions of the Internal Revenue Code of 1939 with respect to forfeiture of property used to transport, or for the deposit or concealment of property which is intended to be used in the making or packaging of the taxable articles described in *section 7301 (a)*.

Amendment (9) clarifies the applicability of *section 7324* to the disposition of property seized under *section 7301*.

Amendment (10) increases from $1,000 to $2,500 the maximum appraised value of personal property, seized under the provisions of the internal revenue laws, which may be disposed of by administrative action. This change provides consistency in maximum appraised value of seized personal property subject to administrative disposition, whether such disposition is under the customs laws or the internal revenue laws.

Amendments (11), (17), and (18) are conforming changes.

Amendments (12) and (13) provide specific authority for the destruction of coin-operated gaming devices (such as slot machines) forfeited due to their use in violation of the internal revenue laws. Such devices are not disposed of by sale since their sale is not permitted in many States and would be generally contrary to public policy. It is intended that these provisions will permit the destruction of substantial numbers of such forfeited devices now being stored at Government expense, as well as the destruction of such devices forfeited in the future.

SECTION 205. REPEAL OF ACT OF MARCH 3, 1877, ETC.

This section is identical with section 205 of the House bill.

The act entitled "An Act relating to the production of fruit brandy, and to punish frauds connected with the same", approved March 3, 1877 (ch. 114, 19 Stat. 393), and the act entitled "An Act to provide for warehousing fruit brandy", approved October 18, 1888 (ch. 1194, 25 Stat. 560), were not codified in the Internal Revenue Code of 1939 or of 1954 and were not repealed by the enactment of such codes. The provisions of chapter 51 are intended to supersede the presently effective provisions of such acts, and such acts are repealed because they no longer serve any purpose.

SECTION 206. EXTENSION OF BONDING PERIOD

This section corresponds to section 206 of the House bill. It provides for an interim extension of the bonding period between the date of enactment of the act and the effective date of the revision of chapter 51. The extension of the bonding period as to distilled spirits in any internal revenue bonded warehouse would only be applicable where the transportation and warehousing bond covering the spirits has been conditioned to cover the extension.

Your committee has added clarifying language at the end of subparagraph (A) of paragraph (1) of subsection (f). This change will clarify the intent of this section by removing an inadvertent inconsistency between the language of this subparagraph and paragraph (2). It is clear from paragraph (2) that the provisions of this section are intended to apply only with regard to distilled spirits in respect of which the 8-year bonding period will not expire before the enactment of this act, since a grace period is provided in such paragraph for conditioning bonds in respect of distilled spirits for which the bonding period expires within the 10-day period starting with the date of enactment.

SECTION 207. BEER LOST BY REASON OF FLOODS OF 1951 OR HURRICANES OF 1954

This section corresponds to section 207 of the House bill, and is the same as that section except for clarification of language in respect to the effective date of its provisions.

The section makes provision for relief in the case of beer lost, rendered unmarketable, or condemned by a duly authorized health official by reason of the floods of 1951 or the hurricanes of 1954. This relief is substantially the same as was provided in the case of distilled spirits by section 498 of the Revenue Act of 1951, and in the case of distilled spirits and wines by the act of August 11, 1955 (69 Stat. 685).

SECTION 208. LOSSES OF ALCOHOLIC LIQUORS CAUSED BY DISASTER

This section corresponds to section 208 of the House bill. Your committee has made changes in paragraph (2) of subsection (b) and in subsection (e).

The section contains relief provisions in respect to losses caused by disaster, similar to the provisions of section 5064 of the Internal Revenue Code as contained in section 201 of this bill. However, the provisions of this section are retrospective and apply to disasters occurring after December 31, 1954, and not later than the date of enactment of this act.

Such section 5064 provides that payments shall be made only to the person holding the distilled spirits, wines, rectified products, or beer for sale at the time of the disaster. This section as contained in the House bill provided for the making of payments to the possessor as referred to in subsection (a), or to any distiller, winemaker, brewer, rectifier, importer, wholesale liquor dealer, or wholesale beer dealer who replaced (or to any distiller, winemaker, brewer, rectifier, or importer who has given credit or made replacement to a wholesale dealer who replaced) for the possessor the full equivalent of distilled spirits, wines, rectified products, or beer so lost or rendered unmarketable or condemned, without compensation, remuneration, or credit of any kind in respect of the tax, or tax and duty, on such spirits, wines, rectified products, or beer.

Your committee has found that in some instances wholesale liquor dealers and wholesale beer dealers, such as those operating as sales agents for manufacturers, have made replacements of liquors to other wholesale liquor dealers and wholesale beer dealers. Your committee has amended subsection (b) (2) to include such wholesalers within the provisions of this section.

The provisions for payment provided in this section are necessary to conform to industry practices of replacing products lost or damaged in the disasters of 1955 and 1956, which practices were consistent with special relief legislation in connection with prior disasters.

Subsection (e) as contained in the House bill provided for the application of this section to products of Puerto Rican manufacture brought into the United States and subsequently lost, rendered unmarketable, or condemned. Your committee has changed the subsection to specifically provide that its provisions shall not be applicable

with respect to such Puerto Rican products. Your committee has made this change in view of the fact that after the bill was reported by the Committee on Ways and Means the Commonwealth of Puerto Rico enacted legislation authorizing the Secretary of the Treasury of Puerto Rico to make refunds with respect to such Puerto Rican products. Therefore, the application of this section in respect to Puerto Rican products brought into the United States would be duplicative of the relief already afforded under the laws of the Commonwealth of Puerto Rico.

It is intended that this section apply to products of the Virgin Islands brought into the United States. Under the provisions of section 7652 (b) (3) of the Internal Revenue Code of 1954, refunds or credits would be deductible from amounts collected in respect of articles from the Virgin Islands brought into the United States.

For provisions in respect to disasters which may occur after the date of enactment of this act and before the effective date of section 201 of this act, see section 210 (a) (3).

PUERTO RICAN LIQUORS LOST IN HURRICANES OF 1954

Section 209 as contained in the House bill contained relief provisions in respect of taxes on distilled spirits and wines of Puerto Rican manufacture brought into the United States and thereafter lost, rendered unmarketable, or condemned by a duly authorized health official, by reason of the hurricanes of 1954. Your committee has deleted that section inasmuch as the Commonwealth of Puerto Rico has already provided by legislation relief provisions in respect of such products so lost, rendered unmarketable, or condemned. (See Law No. 61, approved June 14, 1957.)

SECTION 209. LOSSES OF TOBACCO PRODUCTS CAUSED BY DISASTER

This section is identical with section 210 of the House bill.

This section contains relief provisions in respect to losses caused by disaster, similar to the provisions of section 5708 of the Internal Revenue Code as contained in section 202 of this bill. However, the provisions of this section are retrospective and apply to disasters occurring after December 31, 1954, and not later than the date of enactment of this act.

While such section 5708 provides that payments shall be made to the person holding the tobacco products or cigarette papers or tubes for sale at the time of the disaster, this section provides that payments may be made to the possessor, as referred to in subsection (a), or to any manufacturer, importer, or wholesaler who replaced (or to any manufacturer or importer who has given credit or made replacement to a wholesaler who replaced) for the possessor the full equivalent of the tobacco products or cigarette papers or tubes so lost or rendered unmarketable or condemned, without compensation, remuneration, or credit of any kind in respect of the tax, or tax and duty, on such tobacco products or cigarette papers or tubes. Such provision for payment is necessary to conform to industry practices of replacing products lost or damaged in the disasters of 1955 and 1956, which practices were consistent with special relief legislation in connection with liquors lost or damaged in prior disasters.

SECTION 210. EFFECTIVE DATE AND RELATED PROVISIONS

This section corresponds to section 211 of the House bill.

The purpose of this section is to specify the effective dates of various provisions of title II and to effectuate orderly administration in the transition from existing law to the provisions of the general revision of subtitle E.

As contained in the House bill, paragraph (1) of subsection (a) provided that the amendments made by sections 201 and 205 and by paragraphs (5), (15), (16), (17), and (18) of section 204 should take effect on July 1, 1958. The bill also stated that, except as provided in section 206 (f), all other provisions of title II should take effect on the day following the date of enactment of this act. Your committee has changed the effective date of the general revision of chapter 51 from July 1, 1958, to July 1, 1959, in order to provide sufficient time for the promulgation of regulations. However, your committee has provided that any provision of sections 201 and 205 may be made effective at an earlier date if the regulations which are promulgated to effectuate the provision so provide. (This provision is not intended to authorize any advance by the Secretary or his delegate in the effective date of any provision imposing tax, or refunding or crediting tax.) In such case, the earlier effective date (i. e., a date between the date of enactment of this act and July 1, 1959) would be prescribed by such regulations. Your committee has also provided that the provisions of paragraphs (14), (15), and (16) of section 204, relating to the authority of enforcement officers, shall take effect on the day following the date of enactment of this act.

Your committee changed the year "1957" to "1958" in subsection (g), and the year "1958" to "1959" wherever it appears in the section to effect the change in the effective date of the general revision of chapter 51 and to conform the related provisions of the section to such change.

V. CHANGES IN EXISTING LAW

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).

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