

# Calendar No. 523

70TH CONGRESS }  
1st Session }

SENATE

} REPORT  
No. 512

## SUNNY BROOK DISTILLERY CO.

MARCH 6 (calendar day, MARCH 10), 1928.—Ordered to be printed

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

### REPORT

[To accompany S. 1763]

The Committee on Finance, to whom was referred the bill (S. 1763) for the relief of the Sunny Brook Distillery Co., having had the same under consideration, report it back to the Senate with an amendment, and recommend that the bill do pass.

The bill is amended by striking out the figures "\$1.65", on page 1, line 7, and inserting in lieu thereof the figures "2.20".

Two letters submitted by the Secretary of the Treasury as a report on the bill follow:

TREASURY DEPARTMENT,  
Washington, January 23, 1928.

HON. REED SMOOT,  
Chairman Committee on Finance,  
United States Senate.

MY DEAR MR. CHAIRMAN: I am in receipt of a communication under date of December 20, 1927, from the assistant clerk of the Committee on Finance, referring to me S. 1763, a bill for the relief of the Sunny Brook Distillery Co., in relation to tax paid on certain distilled spirits in excess of \$1.65 a gallon, the non-beverage rate during the calendar year 1927, and requesting me to furnish the committee with suggestions which I may deem proper touching the merits of the bill and the propriety of its passage.

It appears that the distillery where the spirits in question were produced was operated in the name of the Associated Distilleries of Kentucky at Mount Sterling, Ky., a corporation all the stock of which (except qualifying shares) was owned and controlled by the Sunny Brook Distillery Co., proprietor of a distillery at Louisville, Ky. In the spring of 1919 all spirits then stored at the Mount Sterling Distillery were tax paid, bottled in bond, and removed to the free warehouse operated in connection with the distillery at Louisville, Ky.

The act entitled "An act to refund taxes paid on distilled spirits in certain cases," approved February 11, 1925 (43 Stat. L., p. 860), provides for the refund to the distiller of taxes "paid in excess of \$2.20 per proof gallon on any distilled spirits produced and now owned by him and stored on the premises of the distillery where produced." The position of the Treasury Department with regard to the refund of taxes paid on distilled spirits in excess of the nonbeverage rate

was stated, during the enactment of the above act, in a letter addressed to you on March 29, 1924. A copy of this letter is inclosed herewith. The objections raised by this department to the bill (S. 2657) then under consideration were removed in a bill (H. R. 10528) which was introduced by Mr. Johnson, of Kentucky, and which became the act of February 11, 1925.

It will be noted that the existing law imposes two requirements: First, that the distilled spirits must be owned by the distiller, and second, that they must be stored on the premises of the distillery where produced. The Sunny Brook Distillery Co. filed a claim for refund of \$32,067, the amount paid in excess of \$2.20 a gallon on the spirits in question. This claim was rejected January 13, 1926, upon the ground that the act of February 11, 1925, was not applicable.

The requirements of the present law were imposed in order that the spirits, in respect of which the refund was claimed, could be identified and the amount of tax paid ascertained. In the case under consideration, the spirits were distilled by a subsidiary of the Sunny Brook Distillery Co; and have been continuously owned by and in the possession of the subsidiary or the parent corporation; and the amount of tax paid is known. Accordingly, it would seem that the policy of the existing law is applicable.

It will be noted, however, that under the existing law the amount to be refunded is the amount of the tax paid in excess of \$2.20 per proof gallon. The bill proposes a refund of taxes paid in excess of \$1.65 per proof gallon. It is not believed that the case covered by the bill should be accorded more favorable treatment than would be accorded if the existing law were applicable. Therefore it is recommended that the bill, if it is to be enacted into law, be amended by striking out the figures "\$1.65" and inserting in lieu thereof the figures "\$2.20."

It may be added that the Director of the Bureau of the Budget advises that the proposed legislation, amended as suggested, is not in conflict with the financial program of the President.

Very truly yours,

A. W. MELLON,  
*Secretary of the Treasury.*

MARCH 29, 1924.

HON. REED SMOOT,  
*Chairman Senate Finance Committee,  
United States Senate.*

MY DEAR SENATOR: I acknowledge receipt of your communication of March 1, with which you inclose a copy of S. 2657, introduced by Mr. Stanley, being a bill "allowing claims for the recovery of taxes paid on distilled spirits in certain cases," and reply thereto as follows:

The only classes of internal revenue taxes on spirituous liquors on which this department would be inclined to recommend a refund is that class wherein, during the existence of the war prohibition act, the rate was fixed by law at \$6.40 per gallon, and it happened that at the close of the war, after which the rate was fixed at \$2.20 per gallon, some distillers had already tax paid certain lots of spirits at the former rate and withdrawn them from their distillery warehouse, but had not yet removed them from their distillery premises, having them in free warehouse thereon. In cases of this kind the owner of the spirits, having paid the tax at the rate of \$6.40 per gallon, suddenly found himself in competition with the owners of spirits who thereafter could tax pay their spirits at \$2.20 per gallon. This inequality as to spirits thus undisposed of at that time, and which had not yet been removed from the distillery premises, should in my opinion be righted and I should be disposed to favor a bill to that end. Bill S. 3657 goes beyond this and includes other classes of spirits wherein there would be, no doubt, much confusion of title, and where many opportunities for fraud would be offered.

I can not see my way to approve the bill in its present form, but would approve it if it were rewritten so as to carry out the suggestion herein previously made.

Very truly yours,

A. W. MELLON,  
*Secretary of the Treasury.*