

CRAFT BEVERAGE MODERNIZATION AND TAX REFORM ACT OF 2015

General Provisions

Sec. 101 Remove bonding requirements for producers with limited excise tax liability (Craft Beverage Bond Simplification Act).

Under present law producers of beer, wine, and distilled spirits must generally file a surety bond sufficient to cover excise tax liability and remit excise tax payments twice monthly. In 2005, Congress amended the code to allow those taxpayers with a tax liability of \$50,000 or less to file quarterly. This change was requested by industry and was intended to significantly reduce the filing burden on qualifying producers. However, Congress did not change the corresponding bonding requirements. Qualifying producers opting to file quarterly must now have a surety bond several times larger than if they continued to file twice monthly. The result is that a significant number of eligible producers continue to pay excise taxes twice monthly negating the intended relief from the 2005 legislation. For example, in 2013, 88% (7,007 of 7,916) of alcohol beverage taxpayers had a tax liability below that threshold, but 25% of those taxpayers (1,981) elected to file taxes semi-monthly.

This proposal would allow taxpayers with alcohol beverage tax liability of \$50,000 or less to file quarterly, and would remove the bonding requirement for those taxpayers. A further modification would permit annual filing for those taxpayers expecting to owe less than \$1,000 in alcohol excise tax. This proposal would significantly reduce the tax compliance burdens for both businesses and TTB, and would allow TTB to focus resources on other areas. The Craft Beverage Bond Simplification Act (S.904) was proposed by Senator Wyden and was passed out of the Finance Committee earlier this year.

Sec. 102 Exempt aging period of beer, wine, and spirits from certain capitalization rules.

Under current law, taxpayers may generally deduct interest expense on a loan in the year in which it is incurred, along with certain costs of goods sold. Interest expense and other direct and indirect costs related to the production of goods for sale generally must be capitalized over the production period and recovered when the goods are sold. The IRS has held that producers of wine must include the time that wine ages in bottles as part of the production period, which concludes when the wine vintage is officially released to the distribution chain. In addition, those same rules apply to barrel aging of beer, wine, and distilled spirits. This proposal would exclude aging periods for beer, wine, and distilled spirits from the production period for purposes of these capitalization rules. This proposal draws on the AGED Spirits Act (S.1179) sponsored by Senators McConnell and Paul.

Beer Provisions

Sec. 201 Reduce excise taxes for brewers.

Beer is currently taxed at \$18 per barrel (31 gallons). Current law provides a reduced \$7 per barrel rate for the first 60,000 barrels for brewers producing less than 2,000,000 barrels annually. This proposal would provide a rate of \$16 per barrel on the first 6 million barrels for all brewers and beer importers. Domestic breweries producing less than 2 million barrels annually would be eligible for a rate of \$3.50 per barrel on the first 60,000 barrels, and \$16 per barrel on the subsequent 1,940,000 barrels.

Sec. 202 Simplify beer formulation approvals.

Both TTB and FDA generally define beer as a malt beverage made from barley or other cereals and certain non-beverage ingredients. FDA's definition of beer includes the addition of "wholesome

products suitable for human food consumption.” TTB provides a similar definition, however, TTB requires case-by-case “formula approval” for any ingredients or production methods that are not generally recognized as a “traditional process” in the production of beer. This approval process takes nearly 60 days to complete. In 2014 TTB expanded the list of ingredients not requiring formula approval to include a limited list of specific fruits, spices and other ingredients. For example, the rule exempted blueberries and apples, but did not exempt huckleberries or pears. This proposal would provide that for the purpose of label approvals, the “traditional process” for the production of beer shall include the addition of any wholesome fruits, vegetables, or spices suitable for human food consumption not containing alcohol and safe for use in an alcoholic beverage.

Sec. 203 Simplify beer recordkeeping and inventory rules.

Brewers are subject to an array of complex inventory rules. For example, separate records and physical separation are required for taxpaid and nontaxpaid beer. In addition, TTB may require inventories of taxpaid beer destined for a brewpub be held separately from taxpaid beer intended for wholesale. Taxpaid beer inventory received from another brewery must be held separate from taxpaid beer produced on the brewery premises. This proposal would require TTB to allow common inventory and storage systems for beer produced by the brewer on which tax has already been paid. This would provision would reduce tax compliance burdens for brewpubs.

Sec. 204 Allow transfer of beer in bond to breweries.

Under present law, wine and distilled spirits may be transferred in bond without payment of tax between bonded facilities regardless of who owns the facilities, provided the receiving facility assumes such tax liability. Beer, however, may only be transferred in bond between two breweries if both breweries are owned by the same brewer. This special restriction on brewers significantly limits collaboration between breweries and limits sharing of bottling and storage facilities between breweries. This proposal would permit the transfer of beer in bond between two breweries regardless of who owns such facility.

Cider Provisions

Sec. 301 Expand definition for hard cider (CIDER Act).

Cider generally has alcohol content similar to beer and is produced, consumed, and marketed in a similar manner. However, for tax purposes, cider may be taxed at a rate similar to either beer or wine, depending on certain criteria. Cider is only taxed at the reduced beer tax rate if it meets the strict definition of having no more than 7 percent alcohol by volume (ABV), not containing carbonation, and including only apples and water as ingredients. Cider that exceeds these limits may be taxed as wine at between 5 and 13 times the hard cider rate. This provision would allow inclusion of pears as an eligible ingredient, increase the carbonation limit, and increase the alcohol content limit from 7 to 8.5 percent ABV. This legislation proposed by Sen. Schumer was passed out of the Finance Committee earlier this week in the miscellaneous tax bill markup.

Wine Provisions

Sec. 401 Expand excise tax credit for small wine producers.

Under current law, wine is subject to an excise tax of between \$1.07 and \$3.40 per gallon, based on alcohol content and carbonation level. Qualifying small domestic wineries producing 250,000 wine gallons or less are eligible for a tax credit generally equal to 90 cents per gallon on the first 100,000

gallons produced, with that benefit phasing out between 150,000 gallons and 250,000 gallons. This proposal would provide a new \$1.00 per wine gallon credit on the first 30,000 wine gallons produced for any domestic winery regardless of size. Domestic wineries producing less than 2 million wine gallons may claim an additional 90 cent per wine gallon credit for the subsequent 100,000 wine gallons produced. The benefit of the 90 cent credit is phased out ratably for wineries producing between 1 million and 2 million gallons. The \$1.00 credit is not subject to the phase out.

Sec. 402 Expand alcohol threshold for certain wines.

Under current law, still wine is taxed at different rates based on alcohol content. Still wine containing not more than 14 percent ABV is taxed at \$1.07. Still wine above 14 percent and less than 21 percent ABV is taxed at \$1.57 per gallon. For labeling purposes only, alcohol content in wine may vary from the stated amount within certain tolerances, however no such tolerances exist for tax purposes. This proposal would provide that wines up to 14.25 percent ABV may qualify for the \$1.07 tax rate, in order to provide more certainty for wine producers whose wines may vary in alcohol content by small amounts.

Distilled Spirits Provisions

Sec. 501 Reduce excise taxes for small distilleries.

Distilled spirit are generally taxed at \$13.50 per proof gallon. Unlike beer and wine, no reduced tax rate exists for small, domestic distillers. This proposal would establish a reduced rate of \$2.70 per proof gallon for the first 100,000 gallons of distilled spirits produced or imported annually.

Sec. 502 Remove prohibition for home hobby distilling.

Present law provides exemptions from tax, registration, and regulations for certain production of wine and beer for personal consumption. No such exemption exists for hobby distillers. Even distillers producing small batches of spirits for personal use must register with TTB as a commercial distiller, maintain bond, pay taxes, and comply with all commercial regulations. This proposal would provide an exemption for distilled spirits for personal use, similar to the exemptions currently available to wine and beer producers. It would also exempt qualifying home hobby distillers from registration requirements on the installation of a still. A number of protections would remain in place to prevent abuse, and sales of such spirits would remain illegal.

Misc. Provisions to Offset Partial Cost of Legislation, Improve Tax Administration, and Streamline Regulation

Sec. 601 Expand TTB program integrity funding and increase TTB regulatory appropriations.

In 2004, the Bureau of Alcohol, Tobacco and Firearms (ATF) was transferred to the Department of Homeland Security, but the revenue collection function was kept under Treasury and placed into a new bureau—the Alcohol and Tobacco Tax and Trade Bureau (TTB). TTB was established with a dual mandate to “protect the revenue and protect the public.” Thus, TTB is responsible for excise tax collection and enforcement, as well as various regulatory functions such as approval of beverage labels, regulation of contents and ingredients, and establishment of American Viticulture Areas. Despite TTB’s tax enforcement mandate, the Bureau is not authorized to hire criminal enforcement agents. In order to enforce tax collection, TTB maintains five IRS criminal investigation agents on a reimbursable basis. This proposal would annually increase TTB’s Program Integrity budget by \$193 million over the next 10 years, and increase TTB’s Protect the Public function by \$50 million (\$5 million for each of 10 years).

Over that same period, those investments are estimated to generate \$338 million in increased tax collection, resulting in net savings of \$95 million to offset the cost of provisions in this bill.

Sec. 602 Expand information sharing for excise tax administration.

The Internal Revenue Code generally permits the IRS and TTB to disclose tax return information only to Treasury employees whose official duties involve tax administration. In 2003, U.S. Customs and Border Protection (CBP) which administers tobacco taxes, alcohol taxes, the heavy vehicle use tax (HVUT) and certain other excise taxes on imports was moved from the Department of Treasury to the Department of Homeland Security (DHS); however, no corresponding change in law was made to facilitate sharing of information with DHS employees. Treasury has stated that it believes it needs a statutory clarification to improve administration of these excise taxes. Specifically, Treasury has stated it has authority to share information related to alcohol and tobacco taxes, but not information related to the heavy vehicle use tax. This proposal would expand the alcohol and tobacco existing excise tax information sharing authority to include other taxes administered by CBP.