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Internal Revenue Code Section 5051

Imposition and rate of tax

(a) Rate of tax.

(1) In general.

(A) Imposition of tax. A tax is hereby imposed on all beer brewed or produced, and removed for consumption or sale, within the United States, or imported into the United States. Except as provided in paragraph (2), the rate of such tax shall be-

(i) \$16 on the first 6,000,000 barrels of beer-

(I) brewed by the brewer and removed during the calendar year for consumption or sale, or

(II) imported by the importer into the United States during the calendar year but only if the importer is an electing importer under paragraph (4) and the barrels have been assigned to the importer pursuant to such paragraph, and

(ii) \$18 on any barrels of beer to which clause (i) does not apply.

(B) Barrel. For purposes of this section, a barrel shall contain not more than 31 gallons of beer, and any tax imposed under this section shall be applied at a like rate for any other quantity or for fractional parts of a barrel.

(2) Reduced \$3.50 a barrel rate for certain domestic production.

(A) Rate. In the case of a brewer who produces not more than 2,000,000 barrels of beer during the calendar year, the per barrel rate of the tax imposed by this section shall be \$3.50 on the first 60,000 barrels of beer which are removed in such year for consumption or sale and which have been brewed or produced by such brewer at qualified breweries in the United States.

(B) Regulations. The Secretary may prescribe such regulations as may be necessary to prevent the reduced rates provided in this paragraph from benefiting any person who produces more than 2,000,000 barrels of beer during a calendar year.

(3) Tolerances.

Where the Secretary finds that the revenue will not be endangered thereby, he may by regulations prescribe tolerances for barrels and fractional parts of barrels, and, if such tolerances are prescribed, no assessment shall be made and no tax shall be collected for any excess in any case where the contents of a barrel or a fractional part of a barrel are within the limit of the applicable tolerance prescribed.

(4) Reduced tax rate for foreign manufacturers and importers.

(A) In general. In the case of any barrels of beer which have been brewed or produced outside of the United States and imported into the United States, the rate of tax applicable under clause (i) of paragraph (1)(A) (referred to in this paragraph as the "reduced tax rate") may be assigned by the brewer (provided that the brewer makes an election described in subparagraph (B)(ii)) to any electing importer of such barrels pursuant to the requirements established by the Secretary under subparagraph (B).

(B) Assignment. The Secretary, after consultation with the Secretary of the Department of Homeland Security, shall, through such rules, regulations, and procedures as are determined appropriate, establish procedures for assignment of the reduced tax rate provided under this paragraph, which shall include-

(i) a limitation to ensure that the number of barrels of beer for which the reduced tax rate has been assigned by a brewer-

(I) to any importer does not exceed the number of barrels of beer brewed or produced by such brewer during the calendar year which were imported into the United States by such importer, and

(II) to all importers does not exceed the 6,000,000 barrels to which the reduced tax rate applies,

(ii) procedures that allow the election of a brewer to assign and an importer to receive the reduced tax rate provided under this paragraph,

(iii) requirements that the brewer provide any information as the Secretary determines necessary and appropriate for purposes of carrying out this paragraph, and

(iv) procedures that allow for revocation of eligibility of the brewer and the importer for the reduced tax rate provided under this paragraph in the case of any erroneous or fraudulent information provided under clause (iii) which the Secretary deems to be material to qualifying for such reduced rate.

(C) Controlled group. For purposes of this section, any importer making an election described in subparagraph (B)(ii) shall be deemed to be a member of the controlled group of the brewer, as described under paragraph (5).

(5) Controlled group and single taxpayer rules.

(A) In general. Except as provided in subparagraph (B), in the case of a controlled group, the 6,000,000 barrel quantity specified in paragraph (1)(A)(i) and the 2,000,000 barrel quantity specified in paragraph (2)(A) shall be applied to the controlled group, and the 6,000,000 barrel quantity specified in paragraph (1)(A)(i) and the 60,000 barrel quantity specified in paragraph (2)(A) shall be apportioned among the brewers who are members of such group in such manner as the Secretary or their delegate shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning assigned to it

by subsection (a) of section 1563, except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" in each place it appears in such subsection. Under regulations prescribed by the Secretary, principles similar to the principles of the preceding two sentences shall be applied to a group of brewers under common control where one or more of the brewers is not a corporation.

(B) Foreign manufacturers and importers. For purposes of paragraph (4), in the case of a controlled group, the 6,000,000 barrel quantity specified in paragraph (1)(A)(i) shall be applied to the controlled group and apportioned among the members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning given such term under subparagraph (A). Under regulations prescribed by the Secretary, principles similar to the principles of the preceding two sentences shall be applied to a group of brewers under common control where one or more of the brewers is not a corporation.

(C) Single taxpayer. Pursuant to rules issued by the Secretary, two or more entities (whether or not under common control) that produce beer under a license, franchise, or other arrangement shall be treated as a single taxpayer for purposes of the application of this subsection.

Note: Section 5051(a)(6), below, is effective for beer, removed after Dec. 31, 2022.

(6) Refunds in lieu of reduced rates for foreign production removed after December 31, 2022.

(A) In general. In the case of any barrels of beer which have been produced outside the United States and imported into the United States, if such barrels of beer are removed after December 31, 2022-

(i) paragraph (1)(A)(i) shall not apply, and

(ii) the amount determined under subparagraph (B) shall be allowed as a refund, determined for periods not less frequently than quarterly, to the importer in the same manner as if such amount were an overpayment of tax imposed by this section.

(B) Amount of refund. The amount determined under this subparagraph with respect to any importer for any period is an amount equal to the sum of-

(i) excess (if any) of-

(I) the amount of tax imposed under this section on barrels of beer referred to in subparagraph (A) which were removed during such period, over

(II) the amount of tax which would have been imposed under this section on such barrels of beer if this section were applied without regard to this paragraph, plus-

(ii) the amount of interest which would be allowed and paid on an overpayment of tax at the overpayment rate established under section 6621(a)(1) (without regard to the second sentence thereof) were such rate

applied to the excess (if any) determined under clause (i) for the number of days in the filing period for which the refund under this paragraph is being determined.

(C) Application of rules related to elections and assignments. Subparagraph (A)(ii) shall apply only if the importer is an electing importer under paragraph (4) and the barrels of beer have been assigned to the importer pursuant to such paragraph.

(D) Ruled for refunds within 25 days. For purposes of refunds allowed under this paragraph, section 6611(e) shall be applied by substituting "90 days" for "45 days" each place it appears.

(b) Assessment on materials used in production in case of fraud.

Nothing contained in this subpart or subchapter G shall be construed to authorize an assessment on the quantity of materials used in producing or purchased for the purpose of producing beer, nor shall the quantity of materials so used or purchased be evidence, for the purpose of taxation, of the quantity of beer produced; but the tax on all beer shall be paid as provided in section 5054, and not otherwise; except that this subsection shall not apply to cases of fraud, and nothing in this subsection shall have the effect to change the rules of law respecting evidence in any prosecution or suit.

(c) Illegally produced beer.

The production of any beer at any place in the United States shall be subject to tax at the rate prescribed in subsection (a) and such tax shall be due and payable as provided in section 5054(a)(3) unless-

- (1) such beer is produced in a brewery qualified under the provisions of subchapter G, or
- (2) such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).