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75TH CONGRESS 3d Session } SENATE { REPORT No. 1851

AMENDING SECTION 3336 OF THE REVISED STATUTES, AS AMENDED, PERTAINING TO BREWERS' BONDS

APRIL 20 (calendar day, MAY 23), 1938.—Ordered to be printed

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

REPORT

[To accompany H. R. 8665]

The Committee on Finance, to whom was referred the bill (H. R. 8665) to amend section 3336 of the Revised Statutes, as amended, pertaining to brewers' bonds, and for other purposes, having considered the same, report thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is fully explained in the report of the Committee on Ways and Means, House of Representatives, which is attached hereto and made a part of this report.

[H. Rept. No. 2305, 75th Cong., 3d sess.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 8665) to amend section 3336 of the Revised Statutes, as amended, pertaining to brewers' bonds, and for other purposes, having considered the same, report thereon with an amendment and as so amended recommend that the bill do pass.

The amendment is as follows:

Page 1, line 4, after the word "edition" insert "Supp. III,".

GENERAL STATEMENT

The question of brewers' bond has been one which has been giving trouble not only to brewers but also to the Treasury Department. Under the law, prior to 1936, the Treasury Department required surety bonds up to $100,000. For bonds above this amount, the brewer's personal bond was taken without surety. When the 1936 amendatory act was under consideration, the law was changed reducing the requirement that the bond be in a ratio of 3 to 1 for the tax paid, and leaving the matter entirely in the hands of the Treasury Department. The Treasury Department, since the 1936 amendment, has not issued a new regulation to give brewers the benefit of a reduction in the ratio of the bonds to the barrelage tax, for the reason that they have felt that in order to do this they would have to require surety bonds for all amounts, which would involve an additional tremendous cost to large breweries.

Your committee and the Treasury Department are of the opinion that a $100,000 bond ceiling is ample to guarantee the Government the payment of the required tax, especially since the brewery property is pledged as a lien to protect the Government against tax defalcations. The Treasury Department interposes no objection to the enactment of this bill into law, as evidenced by letter of February 9, 1938, as follows:

TREASURY DEPARTMENT,
Washington, February 9, 1938.

Hon. ROBERT L. DOUGHTON,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to bill H. R. 8665, introduced in the House of Representatives on December 9, 1937, by Mr. Boland and referred to your committee. The purpose of the bill is to amend section 3336 of the Revised Statutes, as amended by section 316 of the Liquor Tax Administration Act, approved June 26, 1936 (U. S. C., 1934 ed., Supp. II, title 26, sec. 1334 (b)), so that the bond of a brewer will be in a penal sum equal to the amount of the tax on fermented malt liquor which, in the opinion of the Commissioner of Internal Revenue, he will be liable to pay during any one month, with the proviso that such bond shall not in any case exceed $100,000 nor be less than $1,000. The present law requires brewers' bonds to be filed in penal sums in proportion to the production capacity of the plant, but in no event to be in a penal sum less than $1,000.

Prior to the amendment of section 3336 of the Revised Statutes, in 1936, that section read, in part, as follows:

"Every brewer, on filing notice * * * shall execute a bond to the United States, to be approved by the collector of the district, in a sum equal to three times the amount of the tax which, in the opinion of the collector, said brewer will be liable to pay during any one month, and conditioned * * *."

The requirement that brewers' bonds be in a sum equal to three times the amount of the tax was inserted in section 3336 of the Revised Statutes by the act of April 29, 1886 (24 Stat. 15). By reference to the single volume edition (1878) of the Revised Statutes of the United States, it will be noted that under section 3336, Revised Statutes (see the act of July 13, 1866, ch. 184, sec. 47, 14 Stat. 164; and the act of June 6, 1872, ch. 315, sec. 17, 17 Stat. 245), brewers' bonds were required to be in a sum equal to twice the amount of their tax liability.

On pages 6 and 7 of Report No. 1870, Seventy-fourth Congress, first session, House of Representatives, prepared by Mr. Buck, of your committee (August 21, 1935), to accompany H. R. 9185, appears the following language:

"Section 316 amends section 3336 of the Revised Statutes by permitting the Secretary of the Treasury to prescribe the penal sums of bonds to be furnished by brewers, in proportion to the production capacity of the plant, but in no event to be less than $1,000. The present law provides that the bond shall be in a sum equal to three times the amount of tax upon the amount of fermented malt liquor which it is estimated the brewer will manufacture in any one month. Since the present rate of tax on fermented malt liquor is $5 on each barrel of 31 gallons, it will be seen that the present bond required of brewers is excessive and imposes an unnecessary hardship as to premiums."

This language evidences the intention of the 1936 amendment to accomplish the relief of brewers in the matter of bonds filed by them. The basis for the bond was fixed at the rate of tax on fermented malt liquor brewed, and sold or removed for sale or consumption (instead of at three times the rate of tax), but the penal sum of bond was to be fixed by the Secretary of the Treasury in proportion to the production capacity of the various brewers. The only limit on the penal sums of bonds was that no bond should be in a penal sum of less than $1,000.

The proposed amendment, it seems, seeks to accomplish no more than was sought to be accomplished by the amendment of 1936, i. e., the giving of bonds by brewers in such amounts as would, without endangering the revenue from the brewing of fermented malt liquor, be least burdensome upon the brewing industry and upon the consuming public, which, in the final analysis, pays all of the costs and expenses which enter into the production and marketing of products.

Section 316 of the Liquor Tax Administration Act (H. R. 9185), amendatory of section 3336, Revised Statutes, reads (as H. R. 9185 passed the House and was referred to the Senate, August 22, 1935) in part, as follows:

"Every brewer, on filing notice as provided by law of his intention to commence or continue business, shall execute a bond to the United States in such penal sum, in proportion to the production capacity of the plant, as the Secretary of the Treasury shall by regulations prescribe, but in no event shall such sum be less than $1,000."

The above-quoted portion of section 316 (3336, Rev. Stat.) was amended in the Senate (Senate amendment No. 60) by substituting a colon for the period following "$1,000" and inserting the following:

"*Provided*, That if under such regulations bond in a penal sum in excess of $100,000 is required, no surety or collateral security shall be required for any such excess amount, but the brewer shall give an additional bond to cover such excess, which additional bond may be given without surety or collateral security."

Senate amendment No. 60, among others, was the subject of House disagreement, and H. R. 9185 was sent to conference. Report No. 2950, Seventy-fourth Congress, second session, June 6, 1936, prepared by you to accompany H. R. 9185, discloses that the Senate receded from its amendment No. 60, among others, and the above-quoted portion of section 316 (3336, Rev. Stat.) was restored to the form in which it first passed the House, and was enacted into law in that form. The amendment offered in the Senate would have accomplished a limitation of $100,000 on brewers' bonds with sureties and all amounts of brewers' bonds above that figure would have been without security, except such security as would have been provided in the undertakings of the brewers, from whom personal bonds would have been required. The present form of the statute, authorizing the requirement of bonds in proportion to the production capacities of the various breweries, has been exceedingly difficult of application, because (1) of the vast range of production capacity between the small and large breweries, as well as in the equipment of breweries within the same class as to size; and (2) of the congressional desire, concurred in by the Department, to keep the bond figures at a point where they would adequately protect the revenue without imposing an unnecessary hardship as to premiums paid for such bonds.

It is the view of the Treasury Department that the proposed amendment is not objectionable in theory and that, under proper regulations, a bond of $100,000, covering the monthly tax liability of a brewer, will be quite sufficient to safeguard the tax due on the entire taxable product of the very largest brewery. Likewise, bonds ranging in amount from the minimum to the maximum will be sufficient, in our opinion, to insure collection of the tax.

The last sentence of section 3336, Revised Statutes, reads now as follows:

"Once in every four years, or whenever required so to do by the Secretary of the Treasury, or such officer as may be designated by the Secretary of the Treasury, the brewer shall execute a new bond in the penal sum fixed in this section or prescribed in pursuance of this section, and conditioned as above provided, which bond shall be in lieu of any former bond or bonds of such brewer in respect to all liabilities accruing after its approval."

It is the opinion of the Department that the responsibility for the handling of the bond should be, as proposed in the bill, imposed upon the Commissioner of Internal Revenue under regulations prescribed by the Commissioner and approved by the Secretary of the Treasury, rather than upon the Secretary of the Treasury or such officer as may be designated by the Secretary, as is now provided by section 3336, Revised Statutes. It is suggested that the citation of section 3336, Revised Statutes, appearing in line 4 of page 1 of the bill, be changed to read as follows: "U. S. C., 1934 edition, Supp. II, title 26, sec. 1334 (b)."

The Treasury Department will interpose no objection to the enactment of this bill into law.

Very truly yours,

ROSWELL MAGILL,
Acting Secretary of the Treasury.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman).

"SEC. 3336. (Revised Statutes.) Every brewer, on filing notice as provided by law of his intention to commence or continue business, shall execute a bond to the United States in [such penal sum, in proportion to the production capacity of the plant, as the Secretary of the Treasury shall by regulations prescribe, but in no event shall such sum be less than $1,000.] *a penal sum equal to the amount of the tax on fermented malt liquor which, in the opinion of the Commissioner of Internal Revenue, said brewer will be liable to pay during any one month: Provided, That the penal sum of any such bond shall not exceed $100,000 nor be less than $1,000.* The bond shall be conditioned that the brewer shall pay, or cause to be paid, as herein provided, the tax required by law on all beer, lager beer, ale, porter, and other fermented liquors made by or for him, before the same is sold or removed for consumption or sale, except as hereinafter provided; and that he shall keep, or cause to be kept, in the manner required by law, a book which shall be open to inspection by the proper officers, as by law required; and that he shall in all respects faithfully comply, without fraud or evasion, with all requirements of law relating to the manufacture and sale of any malt liquors aforesaid. Once in every four years, or whenever required so to do by the [Secretary of the Treasury] *Commissioner of Internal Revenue*, or such officer as may be designated by the [Secretary of the Treasury] *Commissioner of Internal Revenue*, the brewer shall execute a new bond in the penal sum [fixed in this section or] prescribed in pursuance of this section, and conditioned as above provided, which bond shall be in lieu of any former bond or bonds of such brewer in respect to all liabilities accruing after its approval."

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