

Calendar No. 538.

64TH CONGRESS, }
1st Session. }

SENATE.

} REPORT
No. 595.

J. L. DA ROZA ESTATE (INC.).

JULY 5, 1916.—Ordered to be printed.

Mr. CLARK of Wyoming, from the Committee on Finance, submitted the following

REPORT.

[To accompany H. R. 13728.]

The Committee on Finance, to which was referred the bill (H. R. 13728) for the relief of the J. L. da Roza Estate (Inc.), of Elk Grove, Cal., submits the following report:

The bill proposes to refund the internal-revenue taxes of \$1,158 to the claimant, this amount having been paid on 20 barrels of grape brandy destroyed by fire while stored in a place designated in conformity with the regulations of the Internal Revenue Bureau, and while in the custody of an officer of the internal revenue.

The Commissioner of the Internal Revenue states:

It appears to be equitable that the amount of tax should be refunded, and this office would have done so, but there appeared to be no provision of the law under which the same could have been done.

The report of the Committee on Claims of the House of Representatives upon this bill is as follows, and is made a part of this report:

[House Report No. 565, Sixty-fourth Congress, first session.]

The Committee on Claims, to whom was referred the bill (H. R. 13728) for the relief of the J. L. da Roza Estate (Inc.), of Elk Grove, Cal., having considered the same, report thereon with a recommendation that it do pass.

On the evening of November 18, 1911, the fruit distillery and the contents, owned by the claimant, known as fruit distillery No. 224, were destroyed by fire and 1,042.03 gallons of brandy were destroyed at the same time, on which \$1,146.63 tax had been paid. It appears that the fire occurred without collusion or neglect on the part of the distillery or any of its employees.

A claim was filed with the Treasury Department for the abatement of this tax under section 3221, Revised Statutes, and after careful consideration was rejected for the reason that the statute did not authorize the abatement of this tax.

There are two sections only in the internal-revenue laws which permit the refund or abatement of taxes assessed on distilled spirits accidentally destroyed by fire or other casualty. Section 3221, Revised Statutes, which provides for the refunding of taxes collected on spirits destroyed by fire or other casualty "while the same remained in the custody of any officer of internal revenue in any distillery warehouse or bonded warehouse of the United States." Section 3309a, Revised Statutes, provides for the

relief from assessment of taxes on spirits destroyed by fire or other casualty while the same are in process of manufacture or distillation or before removal to the distillery warehouse.

In the claim of J. L. da Roza Estate (Inc.) the distilled spirits so destroyed by fire was "grape brandy," distilled at their fruit distillery No. 224 at Elk Grove, Cal.

Under exemptions provided for, fruit-brandy distillers are not required to have "distillery bonded warehouses" in connection with their distilleries.

Under ruling by the Commissioner of Internal Revenue, fruit-brandy distillers are compelled to have a room, which must be a part of their distillery bonded premises known as "designated place of deposit," which is a substitute for the distillery bonded warehouse.

After brandy has been drawn off into barrels at fruit distilleries and gauged it must be deposited in said room until such time as it is either tax paid or removed to a special bonded warehouse.

The law does not provide for the constant attendance of an officer of internal revenue at fruit-brandy distilleries as it does at all grain distilleries.

But in this particular instance a United States internal-revenue gauger was assigned to the winery and distillery of J. L. da Roza Estate (Inc.) during the manufacture of sweet wines.

The 20 barrels of grape brandy were destroyed by fire while stored in the "designated place of deposit" on the distillery premises.

They were placed in said designated place of deposit by, and were in the custody of, an officer of internal revenue at the time of destruction.

Said 20 barrels of grape brandy were gauged by United States gauger but not stamped with proper warehouse stamps permitting the distillery to ship same to special bonded warehouses.

The Commissioner of Internal Revenue rules that no relief can be given under section 3221, Revised Statutes, as the grape brandy was not in a distillery bonded warehouse at the time of destruction. And as the said grape brandy had been placed in barrels and gauged, no relief can be given under section 3309a, Revised Statutes.

As the J. L. da Roza Estate (Inc.), the claimants, complied with the internal-revenue laws and regulations relating to fruit-brandy distillers in every respect, and as the 20 barrels of grape brandy in question were destroyed by fire without fraud, collusion, or negligence on the part of the claimant, it is only equitable and just that the tax, \$1,146.53, which had been paid, together with \$11.47 interest, which had afterwards been paid, making a total of \$1,158, should be refunded.

Letters from the office of the Commissioner of Internal Revenue are herewith appended and made a part of this report.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, February 16, 1916.

HON. C. F. CURRY,
House of Representatives, Washington, D. C.

MY DEAR MR. CURRY: Referring to your personal call in this office day before yesterday in regard to the rejected claim of the J. L. da Roza Estate (Inc.) for the refund of \$1,158, stamp tax on 20 barrels of brandy destroyed by fire while in the designated place of deposit in the distillery warehouse of the claimant, I have the honor to inform you that this claim was finally rejected in this office on January 27, 1916, for the reason that this office was not authorized to refund the amount of tax collected.

In letter of January 27, 1916, to Collector Scott, the following statement was made in regard to the claim:

"It appears that on the afternoon of November 18, 1911, Gauger Burr drew off and gauged 20 barrels of brandy, the contents of which were 1,042 gallons.

"After the gauge had been made and the numbers of the special bonded warehouse stamps had been entered on Form 59 he found that, owing to the lateness of the hour, he would be prevented from attaching the stamps to the packages and removing them to the special bonded warehouse.

"They were accordingly placed in the special 'designated place of deposit' and held by the gauger in his custody awaiting the morning. During the night the distillery was destroyed by fire, and Gauger Burr, who lived on the premises, was a witness to the destruction of the 20 barrels of brandy.

"The refunding of the tax is claimed under the provision of section 3221, Revised Statutes, but no relief can be given under that section, as the spirits were not in a distillery bonded warehouse at the time of the destruction.

"As they had been drawn off and gauged, the claimant is barred from relief afforded by the provisions of section 3309, Revised Statutes."

The claim was therefore rejected, for the reason that this office had no jurisdiction in the matter.

As stated by you, a bill will be drawn in Congress for the repayment of this tax.

It appears to be equitable that the amount of tax should be refunded to the taxpayer, and this office would have refunded the same, but there appeared to be no provision of law under which the same could have been done.

Respectfully,

W. H. OSBORN, *Commissioner.*

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, March 31, 1916.

Hon. E. W. Pou,
*Chairman Committee on Claims,
House of Representatives, Washington, D. C.*

MY DEAR MR. POU: I have the honor to acknowledge receipt of your letter of the 28th instant, inclosing bill (H. R. 13728) for the relief of the J. L. da Roza Estate (Inc.), of Elk Grove, Cal., in the sum of \$1,158, being the internal-revenue taxes paid on 20 barrels of grape brandy destroyed by fire on the evening of November 18, 1911, and while stored in the designated place of deposit on the distillery premises in the custody of an officer of internal revenue and before being stamped with special bonded warehouse stamps. You ask for the opinion of this office as to the merits of the bill.

I have the honor to inform you that, as stated in the bill, on the evening of November 18, 1911, the fruit distillery and the contents, owned by the claimant, known as fruit distillery No. 224, were destroyed by fire and that 1,042.3 gallons of brandy were destroyed at the same time, the tax on which is estimated to be \$1,146.53. It appears that the fire occurred without collusion or neglect on the part of the distillery or any of its employees.

A claim for the abatement of this tax under section 3221, Revised Statutes, was filed in this office and after careful consideration was rejected for the reason that the above statute did not authorize the abatement of this tax. The distillery afterwards paid the tax, with \$11.47 interest, amounting to \$1,158. As the spirits were not in distillery warehouse, no statute authorized the refundment of the tax collected, and as the spirits were not in the process of manufacture an allowance could not be made for the loss thereof.

The claim was rejected in this office on account of lack of jurisdiction, but the same appears to be a just and legal claim, and it appears that the amount collected from the taxpayer should be refunded by an act of Congress. This office so recommends.

Respectfully,

W. H. OSBORN, *Commissioner.*

This committee recommends that the bill do pass without amendment.

○