

AMENDING THE PROVISIONS OF THE INTERNAL REVENUE CODE
BY SETTING NEW MAXIMUM LIMITS ON ALLOWANCES FOR
LOSSES OF DISTILLED SPIRITS BY LEAKAGE OR EVAPORATION
WHILE IN INTERNAL REVENUE BONDED WAREHOUSES

MARCH 5, 1942.—Ordered to be printed

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

REPORT

[To accompany H. R. 6273]

The Committee on Finance, to whom was referred the bill (H. R. 6273) to amend the provisions of the Internal Revenue Code by setting new maximum limits on allowances for losses of distilled spirits by leakage or evaporation while in internal revenue bonded warehouses, and for other purposes, having considered the same, report favorably thereon and recommend that the bill do pass.

The committee during consideration of the bill heard representatives of the Treasury Department, who offered no objections to the provisions of the proposed legislation.

For the further information of the Senate there is appended hereto and made a part of this report the general statement contained in the report of the Committee on Ways and Means of the House, reading as follows:

Subsection (a) of the bill would amend section 2901 (a) of the Internal Revenue Code by providing a slightly greater allowance for losses of distilled spirits due to leakage and evaporation while in storage in internal revenue bonded warehouses and extend the losses for what is in effect a full year.

The table of loss allowance provided by existing law begins with an allowance of 1 proof gallon for 2 months, or part thereof, after original entry, increasing with only slight irregularity for each additional 2, 3, or 4 months, and ends with an allowance of $13\frac{1}{2}$ proof gallons for more than 80 months. Since the periods in the table increase by steps of 4 months from 36 to 80 months, the table allowance for "more than 80 months" may be understood as in effect being for "more than 80 months and not more than 84 months." As spirits may remain in warehouses for a period of 96 months, it is at once apparent that they are without the benefit of a loss allowance for an entire year after the expiration of 84 months.

The bill would amend existing law by changing slightly the loss allowance periods; increasing the loss allowance in some periods; and extending the losses to "18 gallons for more than 90 months." The 90 months limitation is to be read as meaning "more than 90 months and not more than 96 months," since the spirits must be removed before the expiration of 96 months.

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In discussing the proposed changes in the loss allowance table the Treasury Department in a letter addressed to the chairman, dated October 27, 1941, has this to say:

"The Treasury Department has carefully checked its records covering thousands of barrels of distilled spirits withdrawn from internal revenue bonded warehouses since January 1, 1934, and has found that the losses in the various periods covered in the proposed amendment to subsection (a) are not in excess of the actual losses in such periods disclosed by the Department's check of its records. In other words, it is the experience of the Department that in the past few years the normal losses of distilled spirits through leakage and evaporation while in storage in bond under our present system of warehousing have been somewhat greater than those upon which the present loss allowance table was predicated."

It should be pointed out that the allowances set forth in the bill are maximum allowances for losses during the periods of time specified. If, upon gaging, it is determined that the loss is actually less than that set out in the table, the lesser amount is all that is allowable.

Subsection (b) of the bill constitutes a rewriting and a broadening of the present subsections (b) and (c) of section 2901 of the Internal Revenue Code.

The authority of the Secretary of the Treasury to abate taxes accruing on distilled spirits lost by casualty or theft, or to refund taxes paid on distilled spirits so lost, is limited by section 2901 (b) and (c) to the following instances:

1. Distilled spirits destroyed by accidental fire or other casualty while same were in the custody of any internal-revenue officer in any internal revenue bonded warehouse.

2. Grape brandy withdrawn for use in fortification of sweet wines and destroyed prior to such use while stored in the fortifying room on the winery premises.

3. Distilled spirits destroyed by accidental fire or other casualty after the time when the same should have been drawn off by the storekeeper-gager and placed in the internal revenue bonded warehouse provided by law.

4. Distilled spirits upon which the internal-revenue tax has not been paid and which are lost by theft, accidental fire, or other casualty while the same are in the possession of a common carrier subject to the Transportation Act of 1920 or the Merchant Marine Act of 1920, or if lost by theft from an internal revenue bonded warehouse.

As stated, subsection (b) of the bill proposes to broaden the provisions of existing law so that the Commissioner of Internal Revenue, under regulations to be prescribed by him and approved by the Secretary of the Treasury, may abate any internal-revenue taxes accruing on distilled spirits which were the subject of a bona fide loss or destruction in the following instances:

(1) The distilled spirits were not stolen or intentionally destroyed but were lost, otherwise than by leakage or evaporation, while on the premises of a registered distillery, during or after production and prior to deposit in an internal revenue bonded warehouse.

(2) The distilled spirits were not stolen or intentionally destroyed but were lost, otherwise than by leakage or evaporation, while being transferred between buildings constituting the same internal revenue bonded warehouse or while being transferred by a common carrier from the premises of a registered distillery to an internal revenue bonded warehouse off such registered distillery premises, or while being transferred by a common carrier between internal revenue bonded warehouses.

(3) The distilled spirits were not stolen or intentionally destroyed but were lost, otherwise than by leakage or evaporation, while the same remained in an internal revenue bonded warehouse and such loss is not allowable under subsection (a) of the bill.

(4) The distilled spirits were withdrawn for use in the fortification of sweet wines and were not stolen or intentionally destroyed but were lost, otherwise than by leakage or evaporation, prior to such use while being transferred to, or while stored in, the fortifying room on the bonded winery premises.

(5) The distilled spirits were lost by theft from the premises of a registered distillery, or while being transferred between buildings, constituting the same internal revenue bonded warehouse, or while being transferred by common carrier to an internal revenue bonded warehouse off such registered distillery premises, or while being transferred by a common carrier between internal revenue bonded warehouses, and that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the distiller, owner, consignee, consignee, bailee, or carrier, or the employees of any of them.

(6) The distilled spirits were lost by theft from an internal revenue bonded warehouse, and that such loss did not occur as the result of connivance, collusion,

fraud, or negligence on the part of the distiller, owner, or warehouseman, or the employees of any of them.

(7) The distilled spirits were withdrawn for use in the fortification of sweet wines and were lost by theft prior to such use while being transferred to, or while stored in, the fortifying room on the bonded winery premises, and that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the distiller, owner, consignor, consignee, bailee, or carrier, or the employees of any of them.

(8) The distilled spirits were unfit for use for beverage purposes and were voluntarily destroyed by the distiller, the warehouseman, or the proprietor of the bonded winery premises, pursuant to the written permission of the Commissioner in each case and under regulations which the Commissioner, with the approval of the Secretary, is hereby authorized to promulgate.

Subsection (c) of the bill provides that the Commissioner of Internal Revenue may, under regulations prescribed by him and approved by the Secretary of the Treasury, refund any tax that has been paid subsequent to the loss or destruction of distilled spirits in any case to which subsection (a) or (b) applies.

Subsection (d) of the bill provides that the abatement or refund of taxes provided for by subsections (b) and (c) of the bill shall only be allowed to the extent that the claimant is not indemnified against or recompensed for such loss.

Subsection (e) of the bill makes no change in existing law.

Section 2 of the bill provides that the amendments to present law made by the bill shall apply only to claims for taxes which may accrue after the date of the enactment of the amendments proposed by the bill, and that section 2901 of the Internal Revenue Code as it existed prior to its amendment by this bill shall apply to all claims for taxes or tax penalties that accrued on or before the date of the enactment into law of this bill. Section 2 further provides that nothing in section 2901 of the Internal Revenue Code, as amended by this bill, shall be construed as in any manner limiting or restricting the provisions of part II, subchapter C, chapter 26 of the Internal Revenue Code.

The provisions of this bill have been submitted to the Treasury Department and have been approved by it.

CHANGES IN EXISTING LAW

In compliance with paragraph 2 (a) 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. 2901. LOSS ALLOWANCES.

(a) Leakage or Evaporation.—Any distilled spirits [deposited before June 26, 1936, in any distillery, general, or special bonded warehouse,] *on deposit in any internal revenue bonded warehouse on the date this amendatory subsection takes effect*, or thereafter deposited in any internal revenue bonded warehouse, may, at the time of withdrawal of the spirits from such warehouse, upon the filing of an application for the regauge of such spirits, giving a description of the package containing the spirits, be regauged by a storekeeper-gauger who shall place upon each such package such marks and brands as the Commissioner, with the approval of the Secretary, shall by regulations prescribe. If upon such regauging it shall appear that there has been a loss by leakage or evaporation of distilled spirits from any cask or package, without the fault or negligence of the distiller or warehouseman, taxes shall be collected only on the quantity of distilled spirits contained in such cask or package at the time of such withdrawal. The allowance which shall be made for such loss of spirits shall not exceed—

- [1 proof gallon for 2 months or part thereof;
- [1½ gallons for more than 2 months and not more than 4 months;
- [2 gallons for more than 4 months and not more than 6 months;
- [2½ gallons for more than 6 months and not more than 8 months;
- [3 gallons for more than 8 months and not more than 10 months;
- [3½ gallons for more than 10 months and not more than 12 months;
- [4 gallons for more than 12 months and not more than 15 months;
- [4½ gallons for more than 15 months and not more than 18 months;
- [5 gallons for more than 18 months and not more than 21 months;
- [5½ gallons for more than 21 months and not more than 24 months;
- [6 gallons for more than 24 months and not more than 27 months;
- [6½ gallons for more than 27 months and not more than 30 months;

7 gallons for more than 30 months and not more than 33 months;
 7½ gallons for more than 33 months and not more than 36 months;
 8 gallons for more than 36 months and not more than 40 months;
 8½ gallons for more than 40 months and not more than 44 months;
 9 gallons for more than 44 months and not more than 48 months;
 9½ gallons for more than 48 months and not more than 52 months;
 10 gallons for more than 52 months and not more than 56 months;
 10½ gallons for more than 56 months and not more than 60 months;
 11 gallons for more than 60 months and not more than 64 months;
 11½ gallons for more than 64 months and not more than 68 months;
 12 gallons for more than 68 months and not more than 72 months;
 12½ gallons for more than 72 months and not more than 76 months;
 13 gallons for more than 76 months and not more than 80 months;
 13½ gallons for more than 80 months from the date of original gauge as to fruit brandy, or original entry as to all other spirits; and no further allowances shall be made for loss by leakage or evaporation.]

1½ proof gallons for 2 months or part thereof;
 2½ gallons for more than 2 months and not more than 4 months;
 3 gallons for more than 4 months and not more than 6 months;
 3½ gallons for more than 6 months and not more than 8 months;
 4 gallons for more than 8 months and not more than 10 months;
 4½ gallons for more than 10 months and not more than 12 months;
 5 gallons for more than 12 months and not more than 14 months;
 5½ gallons for more than 14 months and not more than 16 months;
 6 gallons for more than 16 months and not more than 18 months;
 6½ gallons for more than 18 months and not more than 21 months;
 7 gallons for more than 21 months and not more than 24 months;
 7½ gallons for more than 24 months and not more than 27 months;
 8 gallons for more than 27 months and not more than 30 months;
 8½ gallons for more than 30 months and not more than 33 months;
 9 gallons for more than 33 months and not more than 36 months;
 9½ gallons for more than 36 months and not more than 39 months;
 10 gallons for more than 39 months and not more than 42 months;
 10½ gallons for more than 42 months and not more than 45 months;
 11 gallons for more than 45 months and not more than 48 months;
 11½ gallons for more than 48 months and not more than 51 months;
 12 gallons for more than 51 months and not more than 54 months;
 12½ gallons for more than 54 months and not more than 57 months;
 13 gallons for more than 57 months and not more than 60 months;
 13½ gallons for more than 60 months and not more than 63 months;
 14 gallons for more than 63 months and not more than 66 months;
 14½ gallons for more than 66 months and not more than 69 months;
 15 gallons for more than 69 months and not more than 72 months;
 15½ gallons for more than 72 months and not more than 75 months;
 16 gallons for more than 75 months and not more than 78 months;
 16½ gallons for more than 78 months and not more than 81 months;
 17 gallons for more than 81 months and not more than 84 months;
 17½ gallons for more than 84 months and not more than 90 months;
 18 gallons for more than 90 months from the date of original gauge as to fruit brandy, or original entry as to all other spirits; and no further allowance shall be made for loss by leakage or evaporation.

The foregoing allowance shall not apply to distilled spirits which on July 26, 1936, were eight years of age, or older, and which on that date were in bonded warehouses.

The foregoing allowance for loss shall apply only to casks or packages of a capacity of forty or more wine-gallons, and the allowance for loss on casks or packages of less capacity than forty gallons shall not exceed one-half the amount allowed on said forty-gallon [cask] casks or [package] packages; but no allowance shall be made on casks or packages of less capacity than twenty gallons. The proof of such distilled spirits shall not in any case be computed at the time of withdrawal at less than 100 per centum.

[(b) ACCIDENTAL FIRE OR OTHER CASUALTY.]—The Secretary, upon the production to him of satisfactory proof of the actual destruction by accidental fire or other casualty, and without any fraud, collusion, or negligence of the owner thereof, of any distilled spirits, while the same remained in the custody of any officer of internal revenue in any internal revenue bonded warehouse or of any grape brandy withdrawn for use in the fortification of sweet wines and destroyed prior to such use while stored in the fortifying room on the winery premises, and before the tax thereon has been paid, may abate the amount of internal revenue taxes

accruing thereon, and may cancel any warehouse bond, or enter satisfaction thereon, in whole or in part, as the case may be. And if such taxes have been collected since the destruction of said spirits or grape brandy, the said Secretary shall refund the same to the owners thereof out of annual appropriations from the general fund of the Treasury. And when any distilled spirits are destroyed by accidental fire or other casualty, without any fraud, collusion, or negligence of the owner thereof, after the time when the same should have been drawn off by the storekeeper-gauger and placed in the internal revenue bonded warehouse provided by law, no tax shall be collected on such spirits so destroyed, or, if collected, it shall be refunded upon the production of satisfactory proof that the spirits were destroyed as herein specified. When the owners of distilled spirits or grape brandy in the cases provided for by this section may be indemnified against such tax by a valid claim of insurance, for a sum greater than the actual value of the distilled spirits or grape brandy before and without the tax being paid, the tax shall not be remitted to the extent of such insurance.】

(b) *Loss.*—The Commissioner of Internal Revenue may, under regulations to be prescribed by him and approved by the Secretary of the Treasury, abate any internal-revenue taxes accruing on distilled spirits if he shall find that—

(1) *The distilled spirits were not stolen or intentionally destroyed but were lost, otherwise than by leakage or evaporation, while on the premises of a registered distillery, during or after production and prior to deposit in an internal revenue bonded warehouse.*

(2) *The distilled spirits were not stolen or intentionally destroyed but were lost, otherwise than by leakage or evaporation, while being transferred between buildings constituting the same internal revenue bonded warehouse or while being transferred by a common carrier from the premises of a registered distillery to an internal revenue bonded warehouse off such registered distillery premises, or while being transferred by a common carrier between internal revenue bonded warehouses.*

(3) *The distilled spirits were not stolen or intentionally destroyed but were lost, otherwise than by leakage or evaporation, while the same remained in an internal revenue bonded warehouse and such loss is not allowable under subsection (a) hereof.*

(4) *The distilled spirits were withdrawn for use in the fortification of sweet wines and were not stolen or intentionally destroyed but were lost, otherwise than by leakage or evaporation, prior to such use while being transferred to, or while stored in, the fortifying room on the bonded winery premises.*

(5) *The distilled spirits were lost by theft from the premises of a registered distillery, or while being transferred between buildings, constituting the same internal revenue bonded warehouse, or while being transferred by common carrier to an internal revenue bonded warehouse off such registered distillery premises, or while being transferred by a common carrier between internal revenue bonded warehouses, and that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the distiller, owner, consignor, consignee, bailee, or carrier, or the employees of any of them.*

(6) *The distilled spirits were lost by theft from an internal revenue bonded warehouse, and that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the distiller, owner, or warehouseman, or the employees of any of them.*

(7) *The distilled spirits were withdrawn for use in the fortification of sweet wines and were lost by theft prior to such use while being transferred to, or while stored in, the fortifying room on the bonded winery premises, and that such loss did not occur as the result of connivance, collusion, fraud, or negligence on the part of the distiller, owner, consignor, consignee, bailee, or carrier, or the employees of any of them.*

(8) *The distilled spirits were unfit for use for beverage purposes and were voluntarily destroyed by the distiller, the warehouseman, or the proprietor of the bonded winery premises, pursuant to the written permission of the Commissioner in each case and under regulations which the Commissioner, with the approval of the Secretary, is hereby authorized to promulgate.*

【(c) SPIRITS LOST BY THEFT.—If distilled spirits upon which the internal-revenue tax has not been paid are lost by theft, accidental fire, or other casualty while in possession of a common carrier subject to the Transportation Act of 1920, February 28, 1920, c. 91, 41 Stat. 474 (U. S. C. Title 49, c. 1), or the Merchant Marine Act, 1920, June 5, 1920, c. 250, 41 Stat. 988 (U. S. C., Title 46, c. 24), or if lost by theft from an internal revenue bonded warehouse, and it shall be made to appear to the Commissioner that such losses did not occur as the result of negligence, connivance, collusion, or fraud on the part of the owner or person legally accountable for such distilled spirits, no tax shall be assessed or collected upon the distilled spirits so lost, nor shall any tax penalty be imposed or collected by reason of such loss, but the exemption from the tax and penalty

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shall only be allowed to the extent that the claimant is not indemnified against or recompensed for such loss. This provision shall apply to any claim for taxes or tax penalties that may have accrued since October 28, 1919, or that may accrue hereafter. Nothing in this section shall be construed as in any manner limiting or restricting the provisions of Part II of Subchapter C.】

(c) *REFUND OF TAX.*—*When, in any case to which subsection (a) or (b) applies, the tax is paid subsequent to the loss or destruction, as the case may be, of the spirits, the Commissioner may, under regulations prescribed by him with the approval of the Secretary, refund such tax.*

(d) *INSURANCE COVERAGE.*—*The abatement or refund of taxes provided for by subsections (b) and (c) shall only be allowed to the extent that the claimant is not indemnified against or recompensed for such loss.*

【d】 (e) *TRANSFER OF DUTIES.*—*For transfer of powers and duties of Commissioner and his agents, see section 3170.*

