Calendar No. 2130

74TH CONGRESS, 2d Session | SENATE | REPORT No. 2028

LIQUOR TAX ADMINISTRATION BILL

MAY 12 (calendar day, MAY 15), 1936.—Ordered to be printed

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

REPORT

[To accompany H. R. 9185]

The Committee on Finance, to whom was referred the bill (H. R. 9185) to insure the collection of the revenue on intoxicating liquor, to provide for the more efficient and economical administration and enforcement of the laws relating to the taxation of intoxicating liquor, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

GENERAL STATEMENT

The purpose of this bill is to amend the administrative provisions of law relating to the collection of taxes upon distilled spirits, wines, and fermented malt beverages. The bill is necessary because, due to the long period of prohibition, the internal-revenue laws have not kept pace with the growth of the country. At the public hearings held by your committee on this bill, representatives of the distillers, rectifiers, winemakers, and brewers appeared and offered numerous amendments to the bill as it passed the House. These representatives and those of the Treasury Department were requested by your committee to confer and endeavor to agree upon the form of those amendments which could be accepted by the Treasury Department without danger to the revenue. All of the amendments to the bill which your committee recommends are, with one or two exceptions, satisfactory to the Treasury Department.

The bill in general, in the interest of flexibility, makes certain changes in the laws relating to supervision by the Government of the production of, and the collection of taxes on, distilled spirits, wines, and fermented malt beverages.

In connection with the brewing industry, it broadens the present laws so as to permit the manufacture in breweries and bottling houses of products which your committee believes can be permitted to be

manufactured without danger to the revenue. It permits the shipment of beer in tank cars, if, in the judgment of the Commissioner of Internal Revenue, such shipments can be made without danger to the revenue. It also directs the Commissioner of Internal Revenue to investigate and ascertain whether refunds for losses on account of leakage, wastage, etc., can be made without danger to the revenue, and in the event that an affirmative finding is made, requires the Commissioner to prescribe rules and regulations under which such refunds can be made. Another provision authorizes brewers and other dealers to deliver beer to homes on oral or written standing orders without being subjected to an additional special occupational tax.

Among the amendments proposed by the winemakers and which your committee recommends be enacted are those authorizing the manufacture of vermouth on bonded winery premises, and the clarification on such premises of wine which has become cloudy without payment of the special tax as a rectifier or the 30-cent tax imposed on the products of rectification.

Among the amendments proposed by the rectifiers and which your committee recommends be enacted are those authorizing rectification of spirits and wines in customs manufacturing warehouses for shipment to Puerto Rico without payment of taxes due on the products of such rectification and exempting the rectifier of such spirits and wines from payment of special tax as a rectifier on account of such rectification conducted in the manufacturing warehouse; and another under which cordials, etc., made with tax-paid sweet wines, fortified with tax-paid brandy, will be relieved from second taxation as distilled spirits (as required under existing law) if they contain more than 24 percent of alcohol.

The bill contains new provisions which abolish the old distinctions between distillery warehouses, general bonded warehouses, and special bonded warehouses, and establish a new type of warehouses to be known as internal revenue bonded warehouses.

To aid in the suppression of bootlegging, the bill defines certain acts committed in connection with liquor-tax evasions as offenses against the United States and imposes severe penalties for the commission of such offenses.

The last title of the bill makes the Federal Alcohol Administration (which is now a division of the Treasury Department) an independent establishment of the Government.

The bill deals with many phases of internal-revenue taxation of distilled spirits, wine, and malt beverages. For the most part, the bill proposes technical amendments to the existing law on that subject. Many of these amendments have as their object the more economical administration of these laws. It was disclosed at the hearings that it was possible in various ways to simplify enforcement and avoid duplication in the work of tax collection. Other provisions of the bill propose the elimination of obsolete requirements of the statutes (most of them running back as far as 1875) which can now be repealed without danger to the revenue. Other statutes, old and new, are proposed to be modified to remove burdens on the liquor producing and distributing industries when this can be done without sacrificing efficiency of execution of the law or certainty of collection of the tax. Some of the restrictions which have been removed or modified were

imposed during national prohibition as an adjunct to that policy and their necessity no longer exists. Other provisions of the bill are designed to close doors which are now open to the tax evader and to assure tax collection by providing for closer supervision of those liable for the various taxes under these laws and by providing for other administrative machinery under which tax collection will be speedy and sure.

Your committee believes that a complete codification of the internal-revenue laws relating to liquor would be of great benefit to all persons concerned with the administration and application of such laws. However, it would perhaps be inadvisable to attempt such codification at this time. Nevertheless, the bill recommended for enactment, by removing obsolete provisions and clarifying the statutes, has made a step in the direction of a codification and will doubtless prove of great benefit from a purely practical standpoint.

The amendments to existing law are so various that any general statement will not adequately disclose the character of each particular section of the bill. There follows a detailed analysis of the various sections of the bill under which the effect of each is set forth.

Analysis of the Bill

TITLE I

Section 1 contains a short title for the act.

Section 2 of the House bill provided for the seizure and forfeiture of intoxicating liquor and containers thereof when the containers do not bear proper stamps, labels, and other markings required by Federal law or regulation, and for seizure and forfeiture of such containers and contents when the containers are not accompanied by proper bills of lading or other documents required by Federal law or regulation. Your committee was of the opinion that, as written, the section was too general and indefinite in its application, and further that existing law relating to forfeitures was sufficient for the protection of the revenues.

Section 2 (a) of the bill (section 3 (a) of the House bill) provides that any person convicted of having in his possession, while violating any Federal law or law of any Territory or possession or the District of Columbia relating to distilled spirits, wines, or fermented malt liquors, any smoke, gas, or fume device, or explosive, or firearm as defined in the National Firearms Act, except a machine gun or a shotgun or rifle having a barrel of less than 18 inches in length, shall be subject to a fine of not more than $5,000 or imprisonment for not more than 10 years, or both. Persons engaged in, or aiding in, such violation may also be held to be in possession of the device, firearm, or explosive.

Section 2 (b) (section 3 (b) of the House bill) provides a penalty of imprisonment for not more than 20 years, if the offender is convicted of having in his possession or in his control, while violating any of such laws, a machine gun as defined in section 5 (b) of the bill, or a sawed-off shotgun or rifle.

Section 2 (c) (section 3 (c) of the House bill) provides for the seizure and forfeiture of such devices, explosives, and firearms. The provisions of the National Firearms Act under which firearms may

be disposed of to law-enforcement agencies and under which such firearms may not be sold are made to apply.

Section 3 (section 4 of the House bill) amends the act of May 18, 1934, as amended, which now provides penalties for killing or assaulting certain classes of officers and employees of the United States while engaged in the performance of their duties. The effect of the amendment is to broaden the statute so as to make punishable assaults upon or the killing of any officer, employee, agent, or other person in the services of the customs or internal revenue. The present law is limited to officers of these services.

Section 4 (sec. 5 of the House bill) gives to courts having jurisdiction of proceedings involving seizure or forfeiture of any vessel or vehicle under any Federal law the power to refuse to order the return of the vessel or vehicle on bond to the claimant thereof, if good cause is shown by the United States why the vessel or vehicle should not be returned on bond. Section 938 of the Revised Statutes provided that any vessel, goods, wares, or merchandise seized and prosecuted under any law respecting the revenue from imports or tonnage should be delivered to any claimant, upon the filing of a bond. Section 1 of the act of June 19, 1934 (48 Stat. 1116), amended section 938, Revised Statutes, by adding thereto a new sentence granting to courts having jurisdiction of cases involving vessels seized for violation of any law of the United States discretion to refuse to order the return of any such vessel to the claimant thereof. Section 204 (d) of the Liquor Law Repeal and Enforcement Act, approved August 27, 1935, provided for the release on bond of vehicles or aircraft seized for a violation of the internal revenue laws relating to liquor but granted to the court discretion, upon good cause shown by the United States, to refuse to order such return on bond. This section will extend the court's discretion to cover every vessel or vehicle, including aircraft, seized for violation of any law of the United States. It has been shown that, in the past, in many cases, during the time the question of whether a vessel or vehicle was subject to forfeiture was being litigated the claimant, upon the filing of a bond, has been allowed to repossess the vessel or vehicle and reuse it in law violation.

Section 5 (sec. 6 of the House bill) contains definitions of the terms "vessel", "vehicle", and "machine gun" as used in title I of the bill.

TITLE II

Section 201 amends section 3287 of the Revised Statutes to authorize the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, (1) to prescribe all necessary regulations relating to the drawing off, gauging and packaging of distilled spirits, and the marking, branding, numbering, stamping, transfer, transportation, and storage of such packages; (2) to prescribe regulations fixing the standards of fill of casks and packages at each distillery thereby assuring that each cask will have a definite amount run into it from a cistern, relieving the storekeeper-gauger of much of the detail work connected with the computation of the proof-gallon contents, now performed by him, and facilitating the entry of spirits into the warehouse; and (3) to require distillers and their employees to do such marking and branding and such mechanical labor pertaining to

gauging required under the section, as the Commissioner deems proper and determines may be done by them without danger to the revenue, thereby expediting the entry of the spirits by relieving the storekeeper-gauger of the manual work of marking and branding, and affording him much better opportunity to keep close surveillance over the activities of the distillers to see that they comply with the laws and regulations.

Under the House bill many of the details relating to gauging, marking, and branding were set forth in the bill. Your committee took the position that in the interest of flexibility of administration these matters might properly be the subject of regulations and has amended the bill accordingly.

Section 202 amends section 3295 of the Revised Statutes to authorize the Commissioner, with the approval of the Secretary of the Treasury, (*a*) to prescribe marks, brands, and stamps to be placed upon distilled spirits original packages upon tax payment and withdrawal from warehouse, and (*b*) to permit distillers and their employees, upon withdrawal of the spirits, to do such marking and branding and such mechanical labor pertaining to gauging as the Commissioner deems proper and determines may be done by them without danger to the revenue. This will expedite the tax payment and withdrawal of spirits. Following the policy adopted by the committee in section 201, the details of such marking and branding have been omitted from the bill.

Section 203 amends section 3290 of the Revised Statutes by relieving storekeeper-gaugers of liability to penalties if distillers are authorized by regulations prescribed under authority of sections 201 and 202, to perform mechanical labor pertaining to gauging.

TITLE III

Section 301 is amendatory of section 3262 of the Revised Statutes, which now requires each distiller to own the distillery property in fee, or to secure the written consent of the owner of the fee, and of any mortgagee, judgment creditor, or other person having a lien thereon, to the use of the property for distilling purposes, and a stipulation that the lien of the United States for taxes and penalties shall have priority over such mortgage, judgment, or other encumbrance, and that in the case of the forfeiture of the distillery premises or any part thereof the title to the same shall vest in the United States discharged from such mortgage, judgment, or other encumbrance. In the interest of the distiller who is now unable to comply with the requirements of the present law, the amendments made by the House (which have been retained by the committee) provide (1) that if the distiller who is not the owner of the fee cannot secure the consents and stipulations now required by law, he may, in lieu thereof, with the approval of the Commissioner of Internal Revenue, file a bond, and (2) that the lien imposed by section 3251 of the Revised Statutes on the distillery premises shall not attach by reason of distilling done during any period included within the term of any bond so filed.

Sections 302, 303, and 304 of the House bill, discussed in the succeeding paragraphs, relating to survey requirements as to the daily spirit-producing capacity of distilleries, have been retained by the committee without change.

Section 302 amends section 3264 of the Revised Statutes to permit the Secretary of the Treasury to waive the survey requirements as to whisky and rum distilleries, as is now done in the cases of industrial-alcohol plants and fruit-brandy distilleries, and, in the event of waiver, to relieve distilleries from such requirements of other sections of law incidental or relating to the survey as the Secretary determines may be waived without danger to the revenue. The survey is a method of determining the daily spirit-producing capacity of distilleries, and in some instances the incidental requirements appear to needlessly limit the output of distilleries. Upon waiver of survey, the output of distilleries will be very greatly increased with the same equipment.

Since the amount of the distiller's production bond is now predicated upon the distillery's spirit-producing capacity for 15 days under the survey, section 3260 of the Revised Statutes is amended by section 303 to provide that the Secretary of the Treasury shall, in the event that the survey is waived, fix the amount of such bond at a sum not less than $5,000, nor more than $100,000, the latter being the present maximum bond on distilleries operating under the survey.

At the present time, as an incident of carrying out the survey requirements, section 3267 of the Revised Statutes requires that cistern rooms at distilleries be equipped with two or more cisterns, each of which shall be of sufficient capacity to hold a day's run of each kind of spirits distilled. Section 304 amends section 3267 to authorize the Secretary, in the event the survey requirements are waived, and the distiller is relieved from the requirements of section 3267, as to the number and size of cisterns, to require the installation of such cisterns and other equipment in the cistern rooms, by way of tanks, etc., as he shall deem necessary to protect the revenue.

Section 305 amends section 67 of the act of August 27, 1894, by providing that no individual, corporation, etc., intending to commence or continue the business of a distiller, rectifier, brewer, or winemaker, shall commence or continue such business until all bonds required with relation thereto are approved, and that such bonds may be disapproved if the individual, corporation, etc., giving the bond or owning, controlling, or actively participating in the management of the business of the individual, corporation, etc., giving the same, shall have been convicted of any fraudulent noncompliance with any law of the United States relating to internal-revenue or customs taxation of distilled spirits, wines, or fermented malt liquors, or if such an offense shall have been compromised; or if such individual, corporation, etc., shall have been convicted of a felony under a law of the United States or of any State prohibiting the manufacture, sale, importation, or transportation of distilled spirits, wine, fermented malt liquor, or intoxicating liquor. It is obvious that any individual, corporation, or association which has committed any one of these offenses should not be permitted to engage in a business which plays so vital a role in the revenue system of the United States. This provision, it should be noted, is an extension of the old law which applied only to distillers, and is unchanged as it passed the House.

Section 306 (a) which has been added by the committee amends section 1 of the Bottling-in-Bond Act of March 3, 1897, to permit the bottling of distilled spirits in bond in any internal-revenue bonded warehouse without regard to the survey capacity of the distillery in which made and to permit such bottling to be done before or after

tax payment, and in the name of the individual or association in whose name the spirits were produced and warehoused, as well as in the name of the distiller as is now provided by law.

Section 306 (b) amends section 2 of the Bottling in Bond Act of March 3, 1897, to set forth clearly that the bonded period for spirits (except gin for export) shall be at least 4 years from the date of original gauge as to fruit brandy, and 4 years from the date of original entry as to all other spirits. This restatement of the law is considered necessary because of certain statutes passed during prohibition which, it has been contended, had the effect of repealing the foregoing requirements. A proviso has been added by the committee, declaring that nothing in the Bottling in Bond Act shall authorize the labeling of whisky contrary to regulations issued under authority of the Federal Alcohol Administration Act. Regulations of the Federal Alcohol Administration now provide that as to whisky produced on and after July 1, 1936, age statements on labels shall be based upon the length of time spirits have been stored in new oak containers.

Section 307, as passed by the House, amended the various provisions of law relating to the bonded period for spirits and the loss allowances thereof by redeclaring those laws as they existed prior to wartime and national prohibition. The purpose of this section was to redeclare the bonded period for spirits to be 8 years and to redeclare the loss allowance to be for a period of 7 years. It further provided that distilled spirits 8 years of age or over which were in bonded warehouses on December 5, 1933, might remain in bond, and, when withdrawn, be given loss allowances up to and including the thirtieth day after the date of the enactment of this act. In view of the piecemeal fashion in which the law granting allowances for losses of spirits by leakage and evaporation has been built up, your committee has deemed it advisable to rewrite the law so as to spell out clearly the intention of section 307 as passed by the House.

Section 308 as passed by the House amends section 602 of the Revenue Act of 1918 which provided for the removal of alcohol and other high-proof spirits from registered distilleries for the purposes stated therein. When section 602 was enacted, alcohol and other high-proof spirits of 160 degrees of proof or more were produced at whisky distilleries. At the present time alcohol and other high-proof spirits of 160 degrees or more (except fruit brandy), may be withdrawn only from industrial-alcohol plants established under title III of the National Prohibition Act and regulations thereunder. The committee has amended section 308 to specifically require distillers to reduce spirits in the cisterns at distilleries to a proof somewhere between 100 and 159 degrees of proof before removal from the cisterns. The purposes of these amendments are to preserve the distinction between alcohol and other distilled spirits. The section provides (1) for the withdrawal of spirits of less than 159 degrees of proof and more than 100 degrees of proof from cisterns at distilleries into packages, and tax payment and removal of such spirits without being entered into warehouse; (2) for the transfer of such spirits from receiving cisterns at such distilleries by means of pipe lines to storage tanks in warehouses located on the bonded premises of such distilleries; (3) for the transfer of such spirits in bond, in approved containers, to warehouses for storage therein; and (4) that such spirits may be transported, after tax payment, in approved containers for beverage use only.

As passed by the House section 309 amended section 3293 of the Revised Statutes to prescribe the form of the entry and the entry stamp and to require distillers to furnish monthly or annual warehousing bonds in penal sums of not less than 50 percent of the tax due on distilled spirits on deposit in the distillery warehouse at one time. Your committee has amended the section to require the entries of spirits to be made in accordance with the provisions of regulations prescribed by the Commissioner of Internal Revenue, thus giving desired flexibility to such requirements; and has further amended the section to require distillers and warehousemen to furnish bonds in penal sums not to exceed $200,000 for each warehouse.

Sections 310 and 311 amend sections 3302 and 3303, respectively, of the Revised Statutes, to authorize the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to prescribe, by regulations, the records to be kept by storekeeper-gaugers and distillers of the receipt and use of distilling materials, and the production of spirits, at distilleries. In the bill as passed the House the matter to be included in these records was set out in considerable detail. Your committee is of the opinion that these matters should be left to regulations.

Section 312 amends section 3331 of the Revised Statutes to provide for the operation of a distillery or distilling apparatus, under bond, after seizure. The existing statute provides that seized distilleries and apparatus may be operated under bond only when cattle are being fed with the spent grain therefrom, and this section amends the law with a view to permitting the continuance of the employment of the workers in the distillery. No change is made in the section as it passed the House.

Section 313 as it passed the House clarifies existing law by amending certain provisions which by implication would permit the use of containers other than hogsheads, barrels, and kegs as original stamped packages for fermented malt liquors, so as to confine such packaging to hogsheads, barrels, and kegs. The amendment does not prohibit the packing of beer in cans. In this respect canned beer is accorded the same treatment as bottled beer. It also permits the Commissioner of Internal Revenue to authorize the use of such tapping devices or faucets as will permit the fixing and destruction of stamps on hogsheads, barrels, and kegs containing fermented malt liquors in a manner consistent with the protection of the revenue. Your committee has added two new subsections. One authorizes the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to prescribe by regulations tolerances within the limits of which the amount of fermented malt liquor in a barrel or fractional part of a barrel may exceed the quantity tax-paid as indicated by the stamp affixed to such barrel or fractional part of a barrel, without being accounted and tax-paid at a higher rate. This amendment is in the interest of brewers whose barrels are reduced in capacity by the customary treatment accorded them to keep them in fit condition for the shipment of beer (to wit: (1) steaming; (2) driving of hoops to tighten the staves; and (3) pitching of interior), and therefore, must be a trifle oversize when new. The second amendment added by your committee is for the purpose of authorizing the Commissioner of Internal Revenue to permit brewers to ship beer in tank cars to breweries and depots occupied and used solely by them, notwithstanding the provisions of

law amended by the section as it passed the House, if in his opinion such transfer may be permitted without danger to the revenue.

Section 314 amends sections 3242 and 3281 of the Revised Statutes by making uniform the penalties which may be imposed upon any person who carries on the business of a brewer, rectifier, wholesale liquor dealer, retail liquor dealer, wholesale dealer in malt liquors, retail dealer in malt liquors, or manufacturer of stills, and willfully fails to pay the special tax required by law. Under the present law the last sentence of section 3242 of the Revised Statutes imposes a comparatively light penalty upon brewers who operate without paying the special tax, and section 3281 imposes a relatively high penalty upon the other special taxpayers named. In addition, section 314 imposes the penalties only upon those who willfully fail to pay the special taxes. No change is made in this section as it passed the House.

Section 315 amends section 3335 of the Revised Statutes to authorize the requiring of more information to be supplied by brewers in their notices than is now required by law, for the purposes of enforcing tax liability, effecting forfeitures, and approving bonds offered by prospective brewers. The Commissioner of Internal Revenue is authorized to require the notice to set out the names and residences of persons directly or indirectly interested in the business, the precise place and description of the premises, and such additional information as he deems necessary for the protection of the revenue. No change is made in this section as it passed the House.

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, and the committee has added a proviso that if under regulations the penal sum of a brewer's bond exceeds $100,000, the brewer shall give bond to cover such excess, which additional bond may be given without surety or collateral security. 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, the present bond required of brewers is excessive and imposes an unnecessary hardship as to premiums. The requirement that a new bond must be furnished every 4 years has been stricken from the section by the committee.

Section 3340 of the Revised Statutes is amended by section 317 to provide for the forfeiture of brewer's premises for flagrant and willful removal of taxable malt liquors for consumption or sale without payment of the tax thereon. The present law does not provide for such forfeitures and this amendment is considered necessary in aid of the collection of the revenue. Similar provisions of law exist as to distillery premises.

The section, as it passed the House, provided that the brewery premises should consist of the lands and buildings described in the brewer's notice, and that such premises should, as to breweries established after the enactment of this act, be used solely for the manufacture of beer, lager beer, ale, porter, and similar fermented malt liquors, cereal beverages containing less than one-half of 1 percent of alcohol

by volume, vitamins, and ice; of drying spent grain from the brewery, and recovering carbon dioxide and yeast.

It further provided that brewery bottling houses established after the date of the enactment of this act should be used solely for the purposes of bottling such fermented malt liquors, and cereal beverages containing less than one-half of 1 percent of alcohol by volume. The section provided that notwithstanding such amendments, where established breweries and brewery bottling houses were, on the date of the enactment of this act, being used by the brewer for other purposes, such use might be continued by such brewer. The section further provided that the bottling house of any brewery should not be used for the bottling of the product of any other brewery. A penalty of $50 was provided with respect to each day upon which any brewery or brewery bottling house was used contrary to the provisions of this section.

The committee has amended the section (1) to provide that the brewery premises shall also be available for the manufacture of malt sirup and the storing of bottles, packages, or supplies necessary or incidental to the manufacture of the articles now proposed to be manufactured on the brewery premises, and, under regulations, for the manufacture of other commodities or byproducts; (2) to permit the use of the brewery bottling house for the manufacturing, carbonating, and bottling of soft drinks and to permit the use of the bottling house for the bottling of the product of any other brewery under regulations prescribed by the Commissioner of Internal Revenue; and (3) to provide that not only the brewery premises, but the brewery bottling house premises may be forfeited in the event of flagrant and willful removals of taxable malt liquors for consumption or sale without payment of tax thereon. The penalty for use of the brewery or bottling house premises contrary to the section is retained.

Section 318, which has been retained unchanged by your committee, permits the Secretary of the Treasury to authorize the amelioration and fortification of wine without supervision by any officer of the United States, whenever he determines that this may be done without danger to the revenue. The present law requires the amelioration and fortification of wines by the winemaker to be conducted under the supervision of a Government officer. This is deemed unnecessary since wine must be tax paid upon removal from bonded winery premises.

Section 319 (a) amends section 605 of the Revenue Act of 1918, and relates to the premises to be used for rectification. This section provides that the premises of a rectifier shall be as described in his notice, and shall be used exclusively for the business of rectification, the bottling of liquors rectified by him thereon, and the bottling of wines and spirits without rectification. In the event that rectifying premises in existence on the date of the enactment of this act are being used for purposes other than those described above, such use may be continued for not more than 60 days after such date. A penalty similar to that contained in section 317 is prescribed for use of the premises contrary to the provisions of the section. No change is made in this subsection as it passed the House.

Section 319 (b) amends section 605 of the Revenue Act of 1918 to declare that the filtering, clarifying, or purifying of wines, and the manufacture of vermouth with fortified sweet wine, on the

premises of a bonded winery, shall not be deemed to be rectification. Under the present law these operations are considered to be rectification and may be conducted only in rectifying plants, and the products are subject to a tax of 30 cents per proof gallon. It seemed to your committee that the winemakers should be permitted to clarify their wines and to make vermouth from sweet wine fortified by them without incurring additional occupational or commodity taxes.

Section 319 (c) amends section 611 of the Revenue Act of 1918 to reduce the tax on still wines containing not more than 14 percent of alcohol from 10 cents per wine gallon to 5 cents per wine gallon. Your committee recommends that this provision be enacted in the interest of the use of light wines as food and also to insure a reasonable return to the wine producer on his investment and labor. In the opinion of your committee, however, the proposed reduction in tax (which will result in a revenue loss of not in excess of $833,000) will be considerably offset by increased consumption.

Section 319 (d) amends section 613 of the Revenue Act of 1918 to exempt from payment of tax at the distilled spirits rate cordials, liqueurs, and similar compounds made with tax-paid wine fortified with tax-paid brandy, and containing more than 24 percent of alcohol by volume, and to authorize the refund or remission of such taxes paid or assessed prior to enactment of this bill. Under the present law such cordials, etc., are subjected to multiple taxation in that the brandy and wine used in their manufacture are taxed, the cordial itself is taxed after manufacture, and there is an additional tax if the alcoholic content, which is attained only through the wine and brandy used, exceeds 24 percent.

Section 320 amends section 609 of the Revenue Act of 1918 by striking from that section the words "industrial distillery of either class established under the act entitled 'An act to reduce tariff duties and to provide a revenue for the Government, and for other purposes', approved October 3, 1913", and substituting therefor the words, "industrial alcohol plant." Under the act of 1913 the alcohol distilleries of both classes were designated as industrial distilleries, whereas under title III of the National Prohibition Act, all alcohol may be produced only at "industrial alcohol plants." The purpose of the amendment is to harmonize section 609 and title III of the National Prohibition Act in this regard. No change is made in this section as it passed the House.

Section 321 requires every retail liquor dealer to keep records, in as simple a form as he desires, of all distilled spirits, wines, and malt liquors received by him. Under this section the records must be retained by the retailer for a period of 2 years from the time of the transaction to which they relate, and shall be open to inspection by Government officers. The section provides a fine of $25 for each willful violation. Such records will prove helpful in the enforcement of the revenue laws. No change is made in this section as it passed the House.

Section 322 amends section 3237 of the Revised Statutes by requiring the taxpayer to remit his special taxes with his return within the calendar month in which the special-tax liability commences. Whereas section 3232 of the Revised Statutes provides that no person shall be engaged in or carry on any trade or business in respect of which a special tax is imposed until he has paid the special tax, section

3237 provides only that the return shall be made within the calendar month in which business is commenced. The purpose of this amendment of section 3237 is to harmonize it with the apparent intention of section 3232 that the tax shall be paid within the month in which the business is commenced. The House provision is retained unchanged.

Sections 323 and 324 amend paragraphs "Fourth" and "Fifth", respectively, of section 3244 of the Revised Statutes to restate the classifications of retail and wholesale dealers in liquors and malt liquors. The amendments further provide (*a*) that no retail dealer in liquors or malt liquors shall be held to be a wholesale dealer solely by reason of sales of 5 wine-gallons or more to the same person at the same time when such sales are for immediate consumption on the premises where sold, and (*b*) that additional special tax as dealer shall not be due on account of sales of malt liquors consummated at other dealers' places of business or, as amended by the committee, at the residences of purchasers who have filed oral or written standing orders with such dealers to call at the residences to ascertain the needs of the residents.

Section 323 as modified by your committee also amends paragraphs (a) and (b) of paragraph "Fourth" of section 3244 of the Revised Statutes to authorize the issuance of "wine dealer" or "wine and malt liquor dealer" special tax stamps to wholesale and retail dealers who sell wine only, or wine and malt liquor only, and the issuance of "at large" special tax stamps to retail liquor dealers whose business requires them to travel from place to place.

A new provision has been added by the committee to section 324 to permit the sale of malt beverages at fairs, picnics, and other similar places for a period of not more than 30 days once in any year, with the payment of a special tax of $2 in lieu of the special tax which is ordinarily paid by retail dealers in malt liquor.

Section 325 reenacts section 3450 of the Revised Statutes and amends it by increasing the penalty for removal, deposit, or concealment of taxable articles with intent to defraud the Government of the tax thereon, from a fine of not more than $500, to a fine of not more than $5,000 or imprisonment for not more than 3 years, or both. The purpose of reenacting section 3450 is to obviate the possibility of a construction that section 3450 was so amended by section 26 of title II of the National Prohibition Act (relating to the transportation of intoxicating liquor) as to make section 3450 inapplicable to transportation of liquor. Since transportation is the backbone of liquor law violation, it has been considered necessary to increase the penalty in the manner provided in this amendatory section, so as to combat effectively the transportation of illicit liquor. No change is made in the section as it passed the House.

Section 326 as it passed the House amended section 203 of the Liquor Taxing Act of 1934 to authorize the redemption of the strip stamps issued under the authority of that act. The purpose of this amendment is to remove the incentive to bootleg these stamps, by providing a means for the purchaser to secure reimbursement for those stamps which he cannot use. Your committee has rewritten the section to specify the conditions under which the stamps may be redeemed.

Section 327 (a) provides that the tax paid on fermented malt liquor which was lawfully removed from a brewery to a brewery bottling house between March 22, 1933, and the date of the enactment of this act, and became unsalable during that period without fraud, connivance or collusion on the part of the brewer and without removal from such bottling house, and was destroyed in the presence of a representative of the Bureau of Internal Revenue or was returned from such bottling house to the brewery in which made for use therein as brewing material, may be refunded to the brewer or credit allowed therefor, provided the brewer files a claim for such refund within 90 days after the date of the enactment of this act.

This subsection in the House bill was applicable to future as well as past losses of beer. To care for such future losses the committee has added section 327 (b) which authorizes the Commissioner of Internal Revenue to make a survey of the losses of tax paid fermented malt liquor in breweries, brewery bottling houses and elsewhere, for the purpose of ascertaining if refunds may be made of taxes paid on fermented malt liquor so lost, and, if he finds that such refunds may be made consistently with the protection of the revenue, to prescribe regulations under which such refunds may be made.

Section 328 amends section 3246 of the Revised Statutes by providing that a wine maker who has qualified under the internal-revenue laws may be exempt from occupational tax for the sale of wine of his own production at the place of manufacture or at his principal office or place of business, but can have only one such exemption. Under the House bill it was not required that the wine maker be qualified as such under the internal-revenue laws. Under existing law such exemption is granted only to vintners who make wine of grapes grown by them or purchased from others, which obviously affords no exemption to wine makers who produce wine from fruits other than grapes. By reason of the fact that wines are produced from other materials, it is deemed advisable to rewrite the section to cover the subject. The provision that apothecaries and manufacturing chemists or flavoring-extract manufacturers shall use recovered tax-paid alcohol only in the manufacture of medicines or flavoring extracts of the kind in the production of which originally used, is in harmony with the long-established ruling of the Department that tax-paid alcohol recovered after use in the manufacture of dangerous drugs shall not again be used in the production of medicines or flavoring extracts for internal use to the possible injury of the users.

Section 329 amends the third paragraph of section 11 of title III of the National Prohibition Act to permit the tax-free withdrawal of alcohol for the use of clinics operated for charity and not for profit. The same privilege is now extended to governmental agencies, both Federal and State, to scientific universities, laboratories using alcohol exclusively in scientific research, hospitals, and sanitariums. The committee has added a new subsection which amends section 3 of title III of the National Prohibition Act, to provide that tanks on the industrial alcohol plant premises which are approved by the Commissioner of Internal Revenue may be used as warehouses for the storage of alcohol.

The committee has added another new subsection for the purpose of extending and making applicable to Puerto Rico and the Virgin Islands, from and after August 27, 1935, title III of the National Prohibition Act relating to industrial alcohol, and all provisions of

the internal-revenue laws relating to the enforcement thereof, the respective insular governments to advance to the Treasury of the United States such funds as may be required from time to time by the Secretary of the Treasury for the purpose of defraying all expenses incurred by the Treasury Department in connection with the enforcement of the title and regulations promulgated thereunder in the islands. Title III of the National Prohibition Act was extended to the islands by the act of November 23, 1921, which was repealed, insofar as it was amendatory of, or supplementary to, the National Prohibition Act, by section 1 of title I of the Liquor Law Repeal and Enforcement Act of August 27, 1935. As a result, since August 27, 1935, there has been no law authorizing the Bureau of Internal Revenue to grant industrial alcohol permits in the islands or to maintain forces there to supervise the manufacture and denaturation of industrial alcohol. It has been brought to the attention of your committee that a very serious industrial emergency has thereby been created in the islands, and that unless promptly corrected by legislation it will destroy their production of industrial alcohol, bay rum, and solvents and products which are important industries in those islands, because they cannot be marketed in the continental United States if they have to pay the internal-revenue tax on the alcohol contained in the articles.

Section 330 in the House bill has, in substance, been enacted into law in the Federal Alcohol Administration Act since this bill passed the House. The committee has inserted a new section 330 which amends sections 610 and 613 of the Revenue Act of 1918 to authorize (1) the manufacture of wine from peaches, cherries, berries, apricots, and apples, and (2) to make subject to tax the cordials, liqueurs, or similar compounds containing wine made from such fruits and fortified with brandy.

Section 331 amends section 612 of the Revenue Act of 1918 to authorize withdrawal of peach, cherry, berry, apricot, and apple brandy from the new type of internal-revenue bonded warehouse for use in the fortification of peach, cherry, berry, apricot, and apple wines; extends the time within which the tax on brandy and wine spirits of any kind used in the fortification of wines must be paid from 10 to 18 months; and requires every producer of wine who withdraws brandy or wine spirits to give bond, in the form prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, to fully cover at all times the amount of tax due on the brandy and wine spirits so withdrawn by him. As passed by the House, this section reduced the tax on brandy and wine spirits used in the fortification of wine from 20 cents to 10 cents per gallon (this rate has been restored by the committee); extended the time for payment of the tax to 12 rather than 18 months; did not require full bond coverage; and made no reference to peach, cherry, berry, apricot, or apple brandy or fortified peach, cherry, berry, apricot, or apple wine.

Sections 332 and 333 of the House bill, like section 331, were in substance enacted into law in the Federal Alcohol Administration Act. Your committee has substituted two new sections dealing with peach, cherry, berry, apricot, and apple wines and brandies. Section 332 amends the last paragraph of section 42 of the act approved October 1, 1890, to extend the provisions of that section and of section 43 of the same act to cover the use of peach, cherry, berry, apricot, and apple brandies in the fortification of such wines, and to provide that

no brandy made from one fruit may be used in the fortification of wine made from another fruit. Section 333 amends the first proviso of section 3255 of the Revised Statutes to provide that where in the manufacture of peach, cherry, berry, apricot, or apple wine, artificial sweetening has been used, the wine or the fruit pomace residuum thereof may be used in the distillation of brandy and that the distiller may be granted exemption from the administrative provisions of the internal-revenue laws under section 3255. This amendment has the effect of extending to distillers of peach, cherry, berry, apricot, or apple brandy the privileges already enjoyed by distillers of brandy and citrus-fruit brandy.

Section 334 amends section 618 (b) of the Revenue Act of 1918 by striking therefrom the limitations formerly contained therein as to use of wines as distilling material for the production of nonbeverage spirits, and the further limitation that all alcoholic spirits obtained therefrom by distillation at any industrial distillery should be denatured and all spirits so obtained at any fruit distillery should be removed and used only for nonbeverage purposes or for denaturation. In view of the administrative difficulties involved, the committee has stricken from this section the authority to allow on all spirits distilled from wines, credit for tax paid upon the wine or the spirits or brandy used in the fortification of such wines. The committee has also amended this section of the bill to make it applicable to peach, cherry, berry, apricot, and apple wines.

Section 335 amends section 620 of the Revenue Act of 1918 by removing the prohibition against mixing domestic wines with distilled spirits, for the purpose of increasing the market for domestic wines by permitting their use in rectification. Under the present law only foreign wines may be so used. No change has been made by the committee in this section as it passed the House.

Section 336 repeals the tax imposed on grape concentrate, etc., under section 601 (c) (3) of the Revenue Act of 1932. Because of the negligible amount of tax collected under section 601 (c) (3), it is believed that there is no need for continuing that provision. No change has been made by the committee in this section as it passed the House.

Section 337 limits the amount of intoxicating liquor which may be imported free of customs duty by travelers returning from abroad to 1 wine-gallon. It has been brought to the attention of the committee that returning travelers have been able, by the liberal exemption of $100 contained in paragraph 1798 of the present tariff law, to import liquors from foreign countries without payment of duty, and that the practice of bringing in such liquors is becoming so general that considerable loss of revenue is sustained and bona-fide taxpaying sellers in the United States are losing a substantial amount of business. The effect of the provision proposed by the bill is to impose duty on any amount of such liquor imported if in excess of 1 wine-gallon in the aggregate (all kinds imported at a time being included); and to include the value of the free amount of liquor in the ascertainment of the total $100 exemption. No change has been made by the committee in this section as it passed the House.

Section 338, which has been added by the committee, amends section 616 of the Revenue Act of 1918 to provide that the Commissioner may prescribe labels or other marks for the case or shipping container of

wines as well as for the immediate container of such wines, as is now provided by such section 616.

TITLE IV

Section 401 (a) amends section 3354 of the Revised Statutes to eliminate the words "other vessel", so that the withdrawal of fermented malt liquors will be permitted only in hogsheads, barrels, or kegs, except where withdrawal in other containers is permitted by the Commissioner under section 313 (f). No change has been made in this subsection by the committee.

Section 401 (b) amends section 3354 of the Revised Statutes by permitting the Commissioner of Internal Revenue to prescribe the manner of paying the tax on fermented malt liquor removed from a brewery to a brewery bottling house by means of a pipe or conduit other than by the cancelation and defacement of stamps covering the amount of the tax. Under the present law, the brewer turns over to the Government officer for defacement, stamps covering the amount of tax due on the fermented liquor removed from the brewery by pipe line or conduit. The purpose of this amendment is to permit the Commissioner of Internal Revenue to prescribe some other method of payment of the tax which will involve less expense to the Government. The committee has amended this subsection to insure that the method prescribed will not entail additional expense to the taxpayer.

Section 402 of the House bill, relating to the disposal of forfeited liquor was, in substance, enacted into law in the Federal Alcohol Administration Act and has been stricken from the bill.

Section 402 and all of the succeeding sections of the bill, as reported, have been added by the committee.

Section 402 relieves the Commissioner of Internal Revenue from the necessity of making assessments or bringing suits to effect recovery of taxes on distilled spirits, wine, or fermented liquors, or special occupational taxes required to be paid by persons manufacturing or dealing in distilled spirits, wines, or fermented liquor, whenever, after investigation, it appears that such taxes would not be collectible in full or in any substantial amount. The section requires that in each case of such omission to assess or to authorize the bringing of suit a report setting forth the facts as to the uncollectibility of the tax must be filed in the office of the Commissioner of Internal Revenue. It has been brought to the attention of your committee that it has been the practice heretofore under the law for the Commissioner of Internal Revenue to assess or to authorize suit in each case of liquor or occupational taxes due to the United States, but that the amount of the collections as a result of such assessments or authorizations of suits has been very small; that such action on his part involves a great volume of clerical work; that the percentage of collections does not justify such an amount of work, and that the investigations made in each case of tax liability disclose whether or not the tax will be collected. This section presents no danger to the revenue and affords very great relief to the Commissioner of Internal Revenue and his assistants.

Section 239 of the Criminal Code was adopted in 1909 to afford relief to "dry" States against c. o. d. shipments of "intoxicating liquors"

whether collection was effected by carriers or by banks. Banks now refuse to accept drafts attached to bills of lading for liquors shipped in interstate commerce. This situation makes it difficult for importers, distillers, rectifiers, brewers, and others to do an interstate business. Section 403 amends section 239 by eliminating the designation of "intoxicating liquor" and adding to spirituous liquor, or vinous, and malted liquor the designation "or other fermented liquor, or any compound containing any spirituous liquor, or vinous, malted, or other fermented liquor, fit for use for beverage purposes." Section 239 is further amended to limit the scope of its prohibition to shipments of liquors into States which prohibit the delivery or sale therein of such liquor as is designated. The section is also amended by providing a further penalty of imprisonment for not more than 1 year in addition to, or in lieu of, the present penalty of a fine of not more than $5,000.

Sections 404 and 405 amend the provisions of the Tariff Act to allow draw-back of internal-revenue tax on distilled spirits bottled especially for export and actually exported.

Section 406 amends section 311 of the Tariff Act of 1930, (*a*) to permit the rectification of distilled spirits and wines in customs bonded warehouses, class 6, for shipment to Puerto Rico (as well as for export) exempt from all internal revenue taxes; (*b*) to exempt the person so rectifying in the customs bonded warehouse from the payment of special tax as a rectifier; and (*c*) to provide that for the purposes of the section distilled spirits reduced in proof and bottled in such manufacturing warehouses shall be deemed to have been there manufactured.

Section 407 amends section 51 of the act of August 27, 1894 (which now authorizes the establishment of general bonded warehouses) to authorize the Commissioner of Internal Revenue to establish a single type of warehouse to be known as "internal revenue bonded warehouse" for the storage of distilled spirits (other than alcohol) until payment of tax thereon.

Section 408 (a) repeals section 3271 of the Revised Statutes (which now requires each distiller to provide a distillery warehouse on his bonded premises) but preserves the liabilities of all distillers for taxes and penalties arising out of the use of, or storage of distilled spirits in, distillery warehouses authorized, approved, or maintained under section 3271 of the Revised Statutes.

Section 408 (b) provides for the designation as internal revenue bonded warehouses of all distillery, general, and special bonded warehouses lawfully established and used prior to the enactment of this act, and authorizes their continued use for the storage of distilled spirits (other than alcohol) upon the filing of such new bonds or the consents of sureties on existing bonds covering spirits in distillery or general or special bonded warehouses as the Commissioner shall consider adequate to insure the payment of taxes due the United States.

Section 409 abolishes the distinction between distillery, general, and special bonded warehouses and authorizes the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to prescribe regulations governing the establishment, construction, maintenance, and supervision of internal revenue bonded warehouses.

Section 410 exempts internal revenue bonded warehouses from the provisions of those sections of law which prior to the date of enactment of this act made distinctions between distillery, general, and special bonded warehouses.

Section 411 amends section 3296 of the Revised Statutes by striking therefrom the words "distillery warehouse" and inserting the words "internal revenue bonded warehouse". The section will then provide for the punishment of those who remove distilled spirits on which the tax has not been paid to a place other than the internal revenue bonded warehouse provided by law or remove distilled spirits from any such warehouse in a manner not authorized by law.

Section 412 is a new section which authorizes the destruction or denaturation, exempt from tax, of distillates containing one-half of 1 percent or more of aldehydes or 1 percent or more of fusel oil (commonly referred to as heads and tails, respectively) removed in the course of distillation. The presence of the minimum quantities of aldehydes and fusel oil prescribed in this section make the distillate unfit for use for beverage purposes, and the effect of the section will be to relieve distillers of the tax on such distillates and authorize the destruction or denaturation thereof, whichever is more economical to the distiller.

Section 413 amends section 3318 of the Revised Statutes to require rectifiers and wholesale liquor dealers to keep daily at their places of business covered by special tax stamps records of distilled spirits received and disposed of by them and to render under oath correct transcripts and summaries of such records, and to authorize the Commissioner in his discretion to require such records to be kept at the place where such spirits are actually received and sent out. The present statute requires the record to be kept, prescribes the details thereof, and provides for the summary and transcript. Many rectifiers and wholesale liquor dealers maintain their business offices in one place and their warehouses in another. Under this section the Commissioner is authorized to require the keeping of such records as he prescribes, in the place which he deems most advantageous to the Government in checking on the receipt and disposition of distilled spirits. Under the present statute the details of the report and the record are fixed. Under this section the Commissioner is authorized to require the records to be kept in such form as he deems desirable.

Section 414 amends section 62 of the act of August 27, 1894, insofar as that section relates to the keeping of records by distillers who sell only distilled spirits of their own production at the place of manufacture, or at the place of storage in bond, in the original packages to which the tax-paid stamps are affixed. As to the keeping of the records and the form of the records and transcripts, this section is identical with section 413.

Section 415 declares that all internal-revenue laws of the United States in regard to the manufacture and taxation of, and traffic in, distilled spirits, wines, and malt liquors, and all penalties for violations of such laws, that were in force at the time the National Prohibition Act was enacted, shall be and continue in force, except as they have been repealed or amended by acts other than (1) title II of the National Prohibition Act as amended and supplemented, and (2) section 1 of the Liquor Law Repeal and Enforcement Act, and except as they may be modified by, or may be inconsistent with, this act.

This section is comparable to section 5 of the Willis-Campbell Act, approved November 23, 1921, after the Supreme Court of the United States, in the case of *Yuginovich* v. *United States* (256 U. S. 450) had ruled that certain internal-revenue statutes had been repealed by the National Prohibition Act. Following the enactment of section 5 the Supreme Court rendered an opinion in the case of *United States* v. *Stafoff* (260 U. S. 477) in which it held that the effect of section 5 was to restore fully, as if they had been reenacted in terms, those sections of the internal-revenue laws which were in effect when the National Prohibition Act was enacted and were not in direct conflict with that act, or section 5. Section 1 of the Liquor Law Repeal and Enforcement Act, approved August 27, 1935, repealed title II of the National Prohibition Act and all acts supplementary thereto. Prior to the enactment of the National Prohibition Act, a considerable body of laws relating to the manufacture and taxation of intoxicating liquors had been built up. Your committee feels that those laws should be reaffirmed in order to avoid any implication that they may have been permanently repealed by the National Prohibition Act. It should be noted that this section does not reaffirm any laws which the Congress has specifically and deliberately amended or repealed.

Section 416 provides that, except as provided in section 329 of this act, nothing contained in the act shall be construed as restricting or limiting the provisions of title III of the National Prohibition Act as amended. This section preserves the distinction between alcohol and other distilled spirits.

TITLE V

Title V is a new title designed to make the Federal Alcohol Administration an independent establishment of the Government instead of, as now, a division of the Treasury Department. It will be recalled that last year the Senate passed the Federal Alcohol Administration Act containing such provisions. The experience in connection with the administration of the act has revealed that the work of the Administration, being essentially quasi-judicial and regulatory of the social and economic aspects of the liquor industries, could be performed more effectively by a separate agency outside the Treasury Department, the work of which, so far as relates to liquor, deals mainly with the collection of revenue on distilled spirits, wines, and malt beverages. While the name of the Administration is retained, the office of Administrator is abolished and his powers and duties are conferred and imposed upon the Federal Alcohol Administration, to be composed of three members appointed by the President by and with the advice and consent of the Senate. The provisions relating to the qualifications of the members are the same as were passed by the Senate last year. The compensation of the members is fixed at $8,000 a year. The appointment of officers and employees of the Administration, except attorneys and necessary experts, is to be subject to the civil-service laws; and the compensation of all officers and employees is to be fixed in accordance with the Classification Act. The usual provisions have been inserted for continuing in force the rules, regulations, permits, etc., that have been issued by the Federal Alcohol Administrator and for the continuation of proceedings, hearings, investigations, and suits.

Section 505, which amends the third paragraph of section 5 (e) of the Federal Alcohol Administration Act, clarifies that section and also limits the duties of internal revenue officers with respect to withholding the release of products from the bottling plant which are not covered by certificates of label approval or exemption granted by the Administrator. The act now requires that internal revenue officers withhold the release of distilled spirits, wines, and malt beverages which are not covered by such certificates. In view of the extremely large number of places where wine and malt beverages may be bottled, the provisions in their present form impose an administrative burden upon the Bureau of Internal Revenue which will unduly interfere with the work of the Bureau in administering the revenue laws relating to distilled spirits, wines, and malt beverages. Moreover this work would be costly, could not be carried on within present appropriations, and the cost in any event would far exceed the advantages accruing to the Government by the performance of such work. Accordingly, the provisions have been limited to the withholding of the release of distilled spirits only.

○

Calendar No. 2130

74TH CONGRESS, 2d Session } SENATE { REPT. 2028 Part 2

LIQUOR TAX ADMINISTRATION BILL

MAY 12 (calendar day, MAY 18), 1936.—Ordered to be printed

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

MINORITY VIEWS

[To accompany H. R. 9185]

MINORITY VIEWS OF MESSRS. BAILEY, CLARK, BYRD, AND CAPPER ON THE GRAIN-ALCOHOL AMENDMENT

The members expressing these minority views urge the adoption in the present bill, H. R. 9185, of the grain-alcohol amendment proposed by Senator Murphy. That amendment is as follows:

SEC. —. (a) For the purposes of the Federal Alcohol Administration Act, the Food and Drugs Act, as amended, and of any Act of Congress amendatory of or in substitution for either of said Acts, no product shall be labeled or advertised or designated as neutral spirits, whisky, or gin, or any type thereof, for non-industrial use, if distilled from materials other than grain, or if the neutral spirits contained therein are produced from materials other than grain. The term "neutral spirits" includes ethyl alcohol.

(b) The fifth paragraph of section 605 of the Revenue Act of 1918 is hereby repealed.

Purposes.—The grain-alcohol amendment has two purposes: First, to preserve for the farmer an existing outlet for his grain; and second, to provide for honest labeling of whisky in the interests of the consumer.

Since the famous decision by President Taft in 1909, whisky has been a distillate from grain only, irrespective of whether the whisky was a straight whisky, a blend of two or more whiskies, or a blend composed of whisky and alcohol or neutral spirits. The terms "alcohol" and "neutral spirits" are synonymous for the present purposes. Since the Taft decision the Food and Drug Administration of the Department of Agriculture has at all times taken the position that a blend of whisky, together with alcohol produced from blackstrap molasses or other cane products, cannot be labeled "whisky" or "blended whisky." To do so is to mislead the consumer. Such a compound, according to the Food and Drug Administration, can only be properly labeled "a compound of whisky and neutral spirits

distilled from molasses." The former Federal Alcohol Control Administration, in administering the liquor codes, followed the Food and Drug Administration's position and required a product labeled "blended whisky" to be composed solely of grain distillates. The present Federal Alcohol Administration, so long as Judge Franklin C. Hoyt was Administrator, took the same position, and it was not until following his resignation that the Treasury Department, despite the opposition of that Administration, adopted on January 18 last, effective next August 15, a regulation permitting molasses alcohol or any other alcohol, such as that distilled from petroleum, to be substituted for grain alcohol in blended whisky up to 80 percent of the total content of the bottle. The Treasury Department asserted that notwithstanding the provisions of the Food and Drugs Act and of the Federal Alcohol Administration Act, such a regulation was required by the rather ambiguous language found in the fifth paragraph of section 605 of the Revenue Act of 1918.

As a result of the regulation, two Departments of the Government, the Treasury Department and the Department of Agriculture, will have conflicting rulings. It is obviously impossible for a distiller or rectifier bottling whisky to observe both. The adoption of the grain alcohol amendment will eliminate this conflict and restore the requirements as to the labeling of blended whisky to those that prevailed continuously until January 18 of this year when the Treasury Department regulation was promulgated.

The adoption of the proposed grain alcohol amendment is urged by the American Farm Bureau Federation and the Farmers National Grain Corporation. Such State units of the farmers' union as have been heard from up to the present are all favorable. These include the farmers' union in the States of Montana, North Dakota, Minnesota, Wisconsin, Washington, Oregon, and Missouri. The Distilled Spirits Institute approves the proposed amendment. The National Institute of Wine and Spirit Distributors is on record before the Treasury Department in opposition to its regulation.

Chester C. Davis, Administrator of the Agricultural Adjustment Administration, has endorsed the amendment on behalf of that Administration, as being in conformity with the legislative mandate already binding the Agricultural Adjustment Administration, namely, to undertake all practicable measures to increase domestic utilization of agricultural products, and as being necessary to prevent interference with the present agricultural program through depriving the farmer of one of his large grain outlets. Walter G. Campbell, Chief of the Food and Drug Administration, has, on behalf of that Administration, approved the amendment so far as it relates to the honest labeling of whisky. The Treasury Department does not object to the amendment. It stated to the committee that the amendment would not affect the revenues and that in other respects the amendment involved a question of legislative policy.

Preservation of the farmer's market.—During the fiscal year 1935, distilleries consumed 33,006,619 bushels of corn, rye, malt, and other grain in the production of whisky and gin. Using the Treasury Department figures for the period from July to November 1935 as a basis, this figure will be increased to approximately 40,000,000 bushels of grain for the fiscal year 1936. During the fiscal year 1935, 1,453,593 bushels of grain went into the production of alcohol in

alcohol plants. The estimate for the present fiscal year is 2,700,000 bushels. Substantially all of this grain alcohol is used for beverage purposes. During 1935, however, 187,849,299 gallons of molasses, mainly blackstrap molasses imported from the West Indies, were used for the production of alcohol in alcohol plants almost wholly for industrial purposes. The grain alcohol amendment will not disturb this industrial outlet for imported and domestic molasses. So far as is known, there has never been a gallon of domestic molasses used for producing beverage alcohol.

Of the approximately 43,000,000 bushels of grain which are now being used annually in the distilling of whisky, gin, and alcohol for beverage purposes, it is estimated that the market for 15,000,000 bushels [1] will be lost to the farmer unless the grain-alcohol amendment is adopted and the Treasury ruling annulled.

Blended whisky is of two kinds: Blends averaging 20 to 30 percent of old whisky and the balance grain alcohol, and blends averaging 20 to 30 percent of old whisky and the balance young straight whisky. Before prohibition the blend with grain alcohol was used almost exclusively. Today the blend with young straight whisky dominates the market.

While figures as to the position of blends in the present market are not available, it is fair to assume that they account for at least the same amount of production as before wartime prohibition, the only difference being that young straight whisky produced from grain is now largely used in lieu of alcohol produced from grain. In either event, with a price differential of at least 13 cents per proof gallon in favor of mollasses alcohol as against grain alcohol or young straight whisky, molasses alcohol must replace young straight whisky and grain alcohol in all blends of whisky save in the very limited market for quality blends, where price is not a primary consideration.

During the 10 years prior to wartime prohibition, an average of, roughly 75,000,000 proof gallons of grain alcohol were used for beverage purposes, mostly for blended whisky and gin, or the equivalent, conservatively, of 15,000,000 bushels of grain. At least the same amount of grain is now being used for grain alcohol and for young whisky in whisky blends and for gin.

Molasses prices at the seaboard are about the equivalent of 35-cent corn in the Middle West. Corn and other grains cannot compete with molasses in the production of distilled spirits. At the present time molasses alcohol sells at 13 cents per proof gallon less than grain alcohol used in blended whisky. A somewhat greater differential exists as between molasses alcohol and the young whisky used in blended whisky. As a result of this price differential and the Treasury Department ruling, the market for substantially all the grain that is now used in the production by original distillation of the high-quality gins produced from grain rather than molasses, or in the production of beverage alcohol for rectified gins, or in the production of beverage alcohol or young whisky for blended whisky, will be lost to the farmer. At the same time, the possible price advantage to the consumer, if all the difference in cost were passed on to him, would be almost unnoticed. Even in case of the blended whisky and gin sold

[1] This estimate is based upon the following considerations: The amount of grain going into beverage alcohol at the present moment is no criterion whatsoever. There will be lost to the farmer not only most of the present market for gin and beverage alcohol produced from grain, but a large part of the present market for blended whisky.

in low-price ranges around $1.25 a full quart, the difference in cost could mean to the consumer only 3¼ cents for gin and 2.4 cents for the usual blended whisky composed of 25 percent old whisky and 75 percent of either grain alcohol or young whisky.

On the other hand, the loss of the market for 15,000,000 bushels of grain, or anything approaching that figure, would have a substantial effect upon the price of grain. As pointed out above, corn would have to sell at about 35 cents a bushel to compete with molasses in the distilling field. Further, if some fall in grain prices as a result of the loss of this outlet is to be prevented, it will be necessary for the agricultural program, as administered by the Agricultural Adjustment Administration, to provide for removal from production of acreage producing 15,000,000 bushels of grain. The cost of reduction in production under the Agricultural Adjustment Act was, in case of corn, $350,000 for each million bushels. Under the present agricultural program, the cost would be similar. Thus the cost to the Government of the loss of an outlet for 15,000,000 bushels of grain would be, roughly, $5,250,000.

From the farmer's standpoint, it should also be noted that during the past 12 months there have been produced, as a byproduct of distilling grain, approximately 140,000 tons of distillers' dried grains, which constitute a valuable feed stuff for farm livestock, available at a moderate price. The distillation of blackstrap molasses produces as a byproduct only a waste suitable for no useful purpose.

The farmer was urged to vote for repeal on the ground that it would afford a new outlet for his grain. Unless the proposed grain alcohol amendment is adopted and the Treasury ruling annulled, the farmer will find himself deceived, and that deception will flow from governmental action, not only altering the status quo but also taken at the very time there was pending the soil conservation bill, subsequently enacted, to reduce production and encourage the development of new outlets for agricultural products.

Honest labeling of whisky.—Objections have been raised to the proposed amendment on the ground that it attempts by legislative fiat to deny the name "whisky" to a product entitled to be called "whisky" and to arrest scientific progress in the production of blended whiskies. Neither objection has any merit.

In the first place, as has been pointed out, for over a quarter of a century "whisky" has meant a product all of the components of which are derived from grain. This was the decision of President Taft in 1909 and has been the position of the Food and Drug Administration and of the Federal Alcohol Control Administration. It is the consumer and trade understanding.

The grain alcohol amendment does not prevent the production and marketing of a compound of molasses alcohol and whisky. It merely requires this product to be marketed under an appropriate name and not to disguise its character by being marketed under the name "whisky." The consumer is entitled to have every product placed before him bear an honest label. To palm off a compound of whisky and molasses alcohol on the consumer as a type of whisky is a fraud to which the Government should not lend its support.

It is urged that under the Treasury regulations a back label will indicate that this particular blended whisky is composed in part of "cane products." No one, it is believed, would seriously contend

that such a euphonious description of alcohol from blackstrap molasses, appearing on the back of a bottle in type as small as the Congressional Record type, would serve to offset the erroneous impression created by an attractive front label on which appears the words "blended whisky", in characters as large as the bottler chooses to use.

The argument as to arresting scientific progress is based on the assumption that there is no difference between molasses alcohol and grain alcohol. It is true that during prohibition the processes of refining molasses alcohol were perfected to a much greater extent than theretofore. It is also true that a chemical analysis will show no difference between grain alcohol and molasses alcohol if the latter has been adequately refined. Notwithstanding, the trade generally is convinced that there is a difference between grain alcohol and molasses alcohol. It is an opinion widely held in the trade that the rum characteristics of molasses alcohol are likely to appear and distort the flavor of a blended whisky containing molasses alcohol if the bottle is allowed to remain on the shelf a moderate length of time. Further, it is well known that the processes for chemical analysis of alcohols are not sufficiently refined to indicate all the differences between two kinds of alcohol. The characteristics of good whisky depend upon the ingredients which cannot be identified through chemical analysis.

However, irrespective of where the truth may lie as to these alleged scientific considerations, they afford no reason for attempting to palm off one product under the recognized name of another. In the *Apple Cider Vinegar case* (*U. S.* v. *95 Barrels Alleged Apple Cider Vinegar* (1924) 265 U. S. 438) vinegar made from dehydrated apples plus water was labeled "apple cider vinegar", a designation to which, according to the Government, only vinegar made from the juice of fresh apples is entitled. Mr. Justice McReynolds, after referring to the fact that chemical analysis showed no difference in the two vinegars (except for a trace of barium incident to the process of manufacture and in no wise unhealthful) and to the fact that the two vinegars were similar in taste, stated:

> The statute [the Food and Drugs Act] is plain and direct. Its comprehensive terms condemn every statement, design, or device which may mislead or deceive. * * * The aim of the statute is to prevent that resulting from indirection and ambiguity as well as from statements which are false. It is not difficult to choose statements, designs, and devices, which will not deceive. * * * The statute * * * was enacted to enable purchasers to buy food for what it really is. * * *
>
> The name "apple-cider vinegar", included in the brand, did not represent the article to be what it really was; and, in effect, did represent it to be what it was not—vinegar made from fresh or unevaporated apples. * * * And it makes no difference whether vinegar made from dried apples is or is not inferior to apple-cider vinegar. * * * The label was misleading as to the vinegar, its substance, and ingredients.

There are numerous similar court decisions.

It is submitted that the policy of Congress with respect to honest labeling as heretofore embodied by it in the Food and Drugs Act, which applies to liquors, and as recognized by the Supreme Court, and followed by the Food and Drug Administration and the Federal Alcohol Control Administration, should not be upset through failure of Congress to adopt such legislation as is necessary to nullify any governmental ruling embodying a contrary policy of deceptive labeling.

Molasses distillates are legitimate products, but they are not honestly sold when sold under the name "whisky", which is confined to grain distillates. If the Treasury ruling has any sound legal basis in the provisions of the Revenue Act of 1918, that basis should be repealed, as is done by the second paragraph of the proposed grain alcohol amendment. If the Treasury ruling has no sound legal basis, the farmer and the public should not be left to litigation. Unfortunately, litigation affords no remedy for the farmer, and the distillers using grain have no remedy whereby they can compel the Treasury Department to modify a regulation which, while it makes competitively impracticable the use of grain, does not legally deny the right to use grain but merely permits competitors to use molasses, petroleum, and other raw materials.

Pharmaceutical products.—Further objection has been raised to the proposed amendment in that it would interfere with the use of molasses alcohol for pharmaceutical and similar products. The basis for this objection is not apparent. The amendment is carefully limited to "alcohol for nonindustrial use." Nonindustrial use is a well-recognized term which excludes the use of alcohol in the manufacture of pharmaceutical and similar products. Further, the term is defined by regulations of the Federal Alcohol Administration of the Treasury Department, issued December 20, 1935, to exclude use of tax-free alcohol by governmental agencies, universities, laboratories, and hospitals; the use of denatured alcohol; the use of alcohol for experimental purposes; and the use of alcohol in the manufacture "(*a*) of medicinal, pharmaceutical, or antiseptic products, including prescriptions compounded by retail druggists; (*b*) of toilet products; (*c*) of flavoring extracts, sirups, or food products; or (*d*) of scientific, chemical, mechanical, or industrial products, provided such products are unfit for beverage use." There can be no question but that the proposed amendment would continue to permit industrial products to be produced from molasses alcohol and applies only with respect to products that are fit for beverage use.

JOSIAH W. BAILEY.
BENNETT CHAMP CLARK.
HARRY F. BYRD.
ARTHUR CAPPER.

○