Public Law 95-458
95th Congress

An Act

Oct. 14, 1978
[H.R. 1337]

To amend the Internal Revenue Code of 1954 with respect to excise tax on certain trucks, buses, tractors, et cetera, home production of beer and wine, refunds of the taxes on gasoline and special fuels to aerial applicators, and partial rollovers of lump sum distributions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Internal Revenue Code of 1954, amendments.

SECTION 1. EXCISE TAX ON CERTAIN TRUCKS, BUSES, TRACTORS, ETC.

(a) IN GENERAL.—Paragraph (1) of section 4216(b) of the Internal Revenue Code of 1954 (relating to constructive sale price) is amended by inserting after the second sentence thereof the following new sentence: "In the case of an article the sale of which is taxable under section 4061(a) and which is sold at retail, the computation under the first sentence of this paragraph shall be a percentage (not greater than 100 percent) of the actual selling price based on the highest price for which such articles are sold by manufacturers and producers in the ordinary course of trade (determined without regard to any individual manufacturer's or producer's cost)". 26 USC 4216. 26 USC 4061.

(b) CONFORMING AMENDMENT.—The second sentence of paragraph (1) of such section 4216(b) is amended by inserting "(other than an article the sale of which is taxable under section 4061(a))" after "sold at retail".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer or producer on or after the first day of the first calendar quarter beginning 30 days or more after the date of enactment of this Act. 26 USC 4216 note.

SEC. 2. HOME PRODUCTION OF BEER AND WINE.

(a) EXEMPTION FROM TAX ON WINE.—Section 5042(a)(2) of the Internal Revenue Code of 1954 (relating to production of wine for personal consumption) is amended to read as follows: 26 USC 5042.

"(2) WINE FOR PERSONAL OR FAMILY USE.—Subject to regulations prescribed by the Secretary—

"(A) EXEMPTION.—Any adult may, without payment of tax, produce wine for personal or family use and not for sale.

"(B) LIMITATION.—The aggregate amount of wine exempt from tax under this paragraph with respect to any household shall not exceed—

"(i) 200 gallons per calendar year if there are 2 or more adults in such household, or

"(ii) 100 gallons per calendar year if there is only 1 adult in such household.

"(C) ADULTS.—For purposes of this paragraph, the term 'adult' means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the household is situated at which wine may be sold to individuals, whichever is greater.".

(b) EXEMPTION FROM TAX ON BEER.—

(1) IN GENERAL.—Section 5053 of such Code (relating to exemptions from excise tax on beer) is amended by redesignat- 26 USC 5053.

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ing subsection (e) as subsection (f) and by inserting after subsection (d) the following new section:

"(e) BEER FOR PERSONAL OR FAMILY USE.—Subject to regulation prescribed by the Secretary, any adult may, without payment of tax, produce beer for personal or family use and not for sale. The aggregate amount of beer exempt from tax under this subsection with respect to any household shall not exceed—

Limitation.

"(1) 200 gallons per calendar year if there are 2 or more adults in such household, or

"(2) 100 gallons per calendar year if there is only 1 adult in such household.

"Adult."

For purposes of this subsection, the term 'adult' means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the household is situated at which beer may be sold to individuals, whichever is greater.".

(2) ILLEGALLY PRODUCED BEER.—

26 USC 5051.

(A) Section 5051 of such Code (relating to imposition and rate of tax) is amended by adding at the end thereof the following new subsection:

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

26 USC 5054.

"(1) such beer is produced in a brewery qualified under the provisions of subchapter G, or

26 USC 5401.

26 USC 5053.

"(2) such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).".

(B) Section 5054(a)(3) of such Code (relating to illegally produced beer) is amended to read as follows:

"(3) ILLEGALLY PRODUCED BEER.—The tax on any beer produced in the United States shall be due and payable immediately upon production unless—

"(A) such beer is produced in a brewery qualified under the provisions of subchapter G, or

"(B) such production is exempt from tax under sections 5053(e) (relating to beer for personal or family use).".

26 USC 5092.

(3) DEFINITION OF BREWER.—Section 5092 of such Code (defining brewer) is amended to read as follows:

"SEC. 5092. DEFINITION OF BREWER.

"Every person who brews beer (except a person who produces only beer exempt from tax under section 5053(e)) and every person who produces beer for sale shall be deemed to be a brewer.".

(4) EXEMPTION FROM CERTAIN PROVISIONS RELATING TO DISTILLING MATERIALS.—Section 5222(a)(2)(C) of such Code (relating to certain exemptions) is amended by striking out "; or" and inserting in lieu thereof "or 5053(e); or".

26 USC 5222.

(5) PENALTY FOR UNLAWFUL PRODUCTION OF BEER.—

26 USC 5674.

(A) Section 5674 of such Code (relating to penalty for unlawful removal of beer) is amended to read as follows:

"SEC. 5674. PENALTY FOR UNLAWFUL PRODUCTION OR REMOVAL OF BEER.

"(a) UNLAWFUL PRODUCTION.—Any person who brews beer or produces beer shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, unless such beer is brewed or produced in a brewery

qualified under subchapter G or such production is exempt from tax under section 5053(e) (relating to beer for personal or family use). 26 USC 5401. 26 USC 5053.

"(b) UNLAWFUL REMOVAL.—Any brewer or other person who removes or in any way aids in the removal from any brewery of beer without complying with the provisions of this chapter or regulations issued pursuant thereto shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.". Penalty.

(B) The item relating to section 5674 in the table of sections for part III of subchapter J of chapter 51 of such Code is amended to read as follows: 26 USC 5674.

"Sec. 5674. Penalty for unlawful production or removal of beer.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act. 26 USC 5042 note.

SEC. 3. REFUNDS TO BE MADE TO AERIAL APPLICATORS IN CERTAIN CASES.

(a) ENTITLEMENT OF AERIAL APPLICATORS TO REFUND OF GASOLINE TAX IN CERTAIN CASES.—Subsection (c) of section 6420 of the Internal Revenue Code of 1954 (defining use on a farm for farming purposes) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph: 26 USC 6420.

"(4) CERTAIN FARMING USE OTHER THAN BY OWNER, ETC.—In applying paragraph (3)(A) to a use on a farm for any purpose described in paragraph (3)(A) by any person other than the owner, tenant, or operator of such farm—

"(A) the owner, tenant, or operator of such farm shall be treated as the user and ultimate purchaser of the gasoline, except that

"(B) if the person so using the gasoline is an aerial applicator who is the ultimate purchaser of the gasoline and the person described in subparagraph (A) waives (at such time and in such form and manner as the Secretary shall prescribe) his right to be treated as the user and ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph shall not apply and the aerial applicator shall be treated as having used such gasoline on a farm for farming purposes.".

(b) ENTITLEMENT OF AERIAL APPLICATORS TO REFUND OF SPECIAL FUELS TAX IN CERTAIN CASES.—The second sentence of subsection (c) of section 6427 of such Code (relating to use for farming purposes) is amended to read as follows: "For purposes of this subsection, if fuel is used on a farm by any person other than the owner, tenant, or operator of such farm, the rules of paragraph (4) of section 6420(c) shall be applied (except that 'liquid taxable under section 4041' shall be substituted for 'gasoline' each place it appears in such paragraph (4)).". 26 USC 6427. 26 USC 4041.

(c) CONFORMING AMENDMENT.—Subparagraph (A) of section 6420 (c)(3) of such Code is amended by striking out "except that" and all that follows down through the semicolon at the end of such subparagraph (A).

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first calendar quarter which begins more than 90 days after the date of the enactment of this Act. 26 USC 6420 note.

SEC. 4. PARTIAL ROLLOVERS OF LUMP SUM DISTRIBUTIONS.

(a) PARTIAL ROLLOVER FROM EMPLOYEES' TRUSTS PERMITTED.—

26 USC 402.

Paragraph (5) of section 402(a) of the Internal Revenue Code of 1954 (relating to rollover amounts) is amended to read as follows:

"(5) ROLLOVER AMOUNTS.—

"(A) GENERAL RULE.—If—

"(i) the balance to the credit of an employee in a qualified trust is paid to him in a qualifying rollover distribution,

"(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

"(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

"(B) MAXIMUM AMOUNT WHICH MAY BE ROLLED OVER.—In the case of any qualifying rollover distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the fair market value of all the property the employee receives in the distribution, reduced by the employee contributions.

"(C) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—Subparagraph (A) shall not apply to any transfer of a distribution made after the 60th day following the day on which the employee received the property distributed.

"(D) DEFINITIONS.—For purposes of this paragraph—

"(i) QUALIFYING ROLLOVER DISTRIBUTION.—The term 'qualifying rollover distribution' means 1 or more distributions—

"(I) within 1 taxable year of the employee on account of a termination of the plan of which the trust is a part or, in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan, or

"(II) which constitute a lump sum distribution within the meaning of subsection (e)(4)(A) (determined without reference to subsection (e)(4)(B)).

"(ii) EMPLOYEE CONTRIBUTIONS.—The term 'employee contributions' means—

"(I) the excess of the amounts considered contributed by the employee (determined by applying section 72(f)), over

26 USC 72.

"(II) any amounts theretofore distributed to the employee which were not includible in gross income.

"(iii) QUALIFIED TRUST.—The term 'qualified trust' means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

26 USC 401.
26 USC 501.

"(iv) ELIGIBLE RETIREMENT PLAN.—The term 'eligible retirement plan' means—

"(I) an individual retirement account described in section 408(a),

26 USC 408.

"(II) an individual retirement annuity described in section 408(b) (other than an endowment contract),

"(III) a retirement bond described in section 409, 26 USC 409.

"(IV) a qualified trust, and

"(V) an annuity plan described in section 403(a). 26 USC 403.

"(E) SPECIAL RULES.—

"(i) TRANSFER TREATED AS ROLLOVER CONTRIBUTION UNDER SECTION 408.—For purposes of this title, a transfer 26 USC 408. described in subparagraph (A) to an eligible retirement plan described in subclause (I), (II), or (III) of subparagraph (D)(iv) shall be treated as a rollover contribution described in section 408(d)(3).

"(ii) SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—An eligible retirement plan described in subclause (IV) or (V) of subparagraph (D)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if any part of the distribution is attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were 26 USC 401. made on his behalf under the plan."

(b) PARTIAL ROLLOVER OF ANNUITY CONTRACTS PERMITTED.—Subsection (a) of section 403 of such Code (relating to taxability of 26 USC 403. beneficiary under a qualified annuity plan) is amended by striking out paragraphs (4) and (5) and inserting in lieu thereof the following new paragraph:

"(4) ROLLOVER AMOUNTS.—

"(A) GENERAL RULE.—If—

"(i) the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in a qualifying rollover distribution.

"(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

"(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

"(B) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of subparagraphs (B) through (E) of section 402 *Ante*, p. 1258. (a)(5) and of paragraph (6) of section 402(a) shall apply 26 USC 402. for purposes of subparagraph (A)."

(c) TAXATION OF PORTION NOT ROLLED OVER.—

(1) IN GENERAL.—Paragraph (6) of section 402(a) of such Code (relating to special rollover rules) is amended by adding at the end thereof the following new subparagraph:

"(C) TREATMENT OF PORTION NOT ROLLED OVER.—If any portion of a lump sum distribution is transferred in a transfer to which paragraph (5)(A) applies, paragraph (2) of sub- *Ante*, p. 1258. section (a), and paragraphs (1) and (3) of subsection (e) shall not apply with respect to such lump sum distribution."

(2) CONFORMING AMENDMENTS.—Paragraph (6) of section 402(a) of such Code is amended—

(A) by striking out "For purposes of paragraph (5)(A)(i)",

(B) by striking out "A complete" in subparagraph (A) and inserting in lieu thereof "For purposes of paragraph (5)(D)(i), a complete", and

Ante, p. 1258.

(C) by inserting "For purposes of paragraph (5)(D)(i)—" after "ASSETS.—" in subparagraph (B).

26 USC 402 note.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) shall apply with respect to taxable years beginning after December 31, 1974.

(2) VALIDATION OF CERTAIN ATTEMPTED ROLLOVERS.—If the taxpayer—

(A) attempted to comply with the requirements of section 402(a)(5) or 403(a)(4) of the Internal Revenue Code of 1954 for a taxable year beginning before the date of the enactment of this Act, and

Ante, p. 1258.
26 USC 403.

(B) failed to meet the requirements of such section that all property received in the distribution be transferred,

such section (as amended by this section) shall be applied by treating any transfer of property made on or before December 31, 1978, as if it were made on or before the 60th day after the day on which the taxpayer received such property. For purposes of the preceding sentence, a transfer of money shall be treated as a transfer of property received in a distribution to the extent that the amount of the money transferred does not exceed the highest fair market value of the property distributed during the 60-day period beginning on the date on which the taxpayer received such property.

SEC. 5. CASH PAYMENTS IN LIEU OF FOOD STAMPS TO RECIPIENTS OF SSI BENEFITS.

42 USC 1382e notes.

(a) Section 8(d) of Public Law 93-233 is amended by adding at the end thereof the following new sentences: "For purposes of this subsection, if the State requests the Secretary to make the finding specified in the first sentence of this subsection and to make an additional cash payment under title XVI in lieu of food stamps, in the amount and the manner described below, to every individual in the State who does not have an eligible spouse and who receives a supplementary payment pursuant to an agreement under section 1616(a) of the Act (other than an individual who (i) receives such a supplementary payment at a level prescribed by the State by reason of his or her residence in an institution, or other living arrangement in which board and care are provided, or (ii) receives payments pursuant to section 212 of Public Law 93-66 at a level in excess of the level applicable to such individual as established by the State under such agreement), the Secretary shall make such payments if he finds that the conditions of paragraph (1) have been met (and for this purpose the conditions of paragraph (1) shall be considered to have been met to the extent that they involve amounts payable under the law referred to in paragraph (1)(B) notwithstanding the suspension in 1978 of the cost-of-living increase in State supplementary payments under such law) for months beginning with the first month in which, as determined by the Secretary, such additional cash payment can be made, and ending with the month before the first subsequent month for which the conditions of paragraph (1) are met without regard to this sentence (and the requirements of paragraph (2) shall also be considered to have been met, effective on the first day of such first subsequent month, for purposes

42 USC 1381.
42 USC 1382e.
87 Stat. 155.

of applying the first sentence of this subsection to that month and succeeding months). For purposes of the preceding sentence, the amount of an additional cash payment under title XVI in lieu of food stamps shall equal the cash value of the minimum allotment specified by section 8(a) of the Food Stamp Act of 1977 for one-person households, and such additional cash payment shall be appropriately included in or with the check issued to such individual in payment of his supplementary security income benefit (or supplementary payment under such section 1616(a)).".

42 USC 1381.

7 USC 2017.

42 USC 1382e.

(b) No additional cash payment under title XVI of the Social Security Act may be made pursuant to the third sentence of section 8(d) of Public Law 93-233 (as added by subsection (a) of this section) for any month beginning before October 1, 1978, or ending after September 30, 1979.

42 USC 1382e note.
42 USC 1381.
42 USC 1382e note.

Approved October 14, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-976 (Comm. on Ways and Means).
SENATE REPORT No. 95-1127 (Comm. on Finance).
CONGRESSIONAL RECORD, Vol. 124 (1978):
May 16, considered and passed House.
Aug. 25, considered and passed Senate, amended.
Sept. 7, 12, House agreed to Senate amendments with amendments.
Sept. 28, Senate concurred in House amendments.