

109TH CONGRESS  
2D SESSION

# S. 3783

To amend the Internal Revenue Code of 1986 and the Foreign Trade Zones Act to simplify the tax and eliminate the drawback fee on certain distilled spirits used in nonbeverage products manufactured in a United States foreign trade zone for domestic use and export.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2006

Mr. LAUTENBERG introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 and the Foreign Trade Zones Act to simplify the tax and eliminate the drawback fee on certain distilled spirits used in nonbeverage products manufactured in a United States foreign trade zone for domestic use and export.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SPECIAL RULES FOR NONBEVERAGE PROD-**  
4 **UCTS MANUFACTURED IN A UNITED STATES**  
5 **FOREIGN TRADE ZONE.**

6 (a) IN GENERAL.—Subpart E of part I of subchapter  
7 A of chapter 51 of the Internal Revenue Code of 1986

1 is amended by inserting after section 5062 the following  
2 new section:

3 **“SEC. 5063. EXCEPTION FOR NONBEVERAGE PRODUCTS**  
4 **MANUFACTURED IN A UNITED STATES FOR-**  
5 **EIGN TRADE ZONE.**

6 “(a) GENERAL RULE.—In the case of domestic dis-  
7 tilled spirits on which a tax would be determined under  
8 this subchapter, when used in a foreign trade zone for the  
9 manufacture or production of nonbeverage products, in  
10 lieu of payment of the tax under this subchapter by the  
11 distilled spirits plant proprietor, distilled spirits may be  
12 transferred without payment of tax to an activated foreign  
13 trade zone. Upon demonstration to the Secretary of the  
14 manufacture or production of nonbeverage products in a  
15 foreign trade zone using the distilled spirits withdrawn  
16 from bond without payment of tax, authorized manufac-  
17 turers and producers of nonbeverage products, are not  
18 subject to the tax under section 5001. In case of any re-  
19 moval, sale, transport, or use of distilled spirits not au-  
20 thorized under section 5061 for which taxes have not been  
21 paid, the full rate of tax under section 5001 shall be paid  
22 by any person responsible.

23 “(b) APPLICATION.—The Secretary may require per-  
24 sons eligible for the application of this section to file an  
25 adequate bond and permit as reasonably determined by

1 the Secretary. Every person subject to the application of  
2 this section shall register annually with the Secretary,  
3 keep such books and records as may be necessary to estab-  
4 lish the fact that distilled spirits received on which no tax  
5 has been determined were used in the manufacture or pro-  
6 duction of nonbeverage products, and be subject to month-  
7 ly reporting and such rules and regulations in relation  
8 thereto as the Secretary may prescribe to secure the  
9 Treasury against fraud.

10 “(c) POWERS OF THE SECRETARY.—For purposes of  
11 ascertaining the correctness of the application of this sec-  
12 tion, the Secretary is authorized to examine any books,  
13 papers, records, or memoranda as may be necessary to es-  
14 tablish the fact that the distilled spirits received were used  
15 in the manufacture or production of nonbeverage prod-  
16 ucts, to require the attendance of the person or of any  
17 officer or employee of such person or the attendance of  
18 any other person having knowledge of the premises, to  
19 take testimony with reference to any matter covered, and  
20 to administer oaths to any person giving such testimony.

21 “(d) DEMONSTRATION OF USE IN THE MANUFAC-  
22 TURING OR PRODUCTION OF NONBEVERAGE PROD-  
23 UCTS.—Except in the case of knowing and willful non-  
24 compliance, application of this section shall not be denied  
25 in the case of failure to comply with any requirement im-

1 posed under this section, or any rule or regulation issued  
2 pursuant to this section, upon the person manufacturing  
3 or producing the nonbeverage product demonstrating that  
4 distilled spirits for which taxes have not been paid trans-  
5 ferred to an activated foreign trade zone were in fact used  
6 in the manufacture or production of nonbeverage prod-  
7 ucts.

8       “(e) FORMULA AND MANUFACTURING INFRACTIONS  
9 FOR MANUFACTURERS AND PRODUCERS OF NONBEV-  
10 ERAGE PRODUCTS IN FOREIGN TRADE ZONES.—In the  
11 case of failure to comply with any formula or manufac-  
12 turing requirement imposed under this section or any rule  
13 or regulations issued pursuant to this section, the manu-  
14 facturer or producer of nonbeverage products shall be lia-  
15 ble for a penalty up to \$1,000 for each failure to comply  
16 unless it is shown that the failure to comply was due to  
17 reasonable cause. No penalty imposed under this sub-  
18 section shall exceed the amount of tax which would have  
19 been determined under this subchapter without regard to  
20 this section. The penalty imposed by this subsection shall  
21 be assessed, collected, and paid in the same manner as  
22 taxes under this subchapter, within 30 days of notification  
23 by the Secretary. Any excise tax determined to be owed  
24 through monthly reporting processes and procedures for  
25 submission and approval of formulas, on-site inspection,

1 or audit shall be paid by the manufacturer or producer  
 2 of nonbeverage products within 30 days of notification by  
 3 the Secretary.

4 “(f) DEFINITIONS.—For purposes of this section—

5 “(1) AUTHORIZED MANUFACTURERS AND PRO-  
 6 DUCERS.—The term ‘authorized manufacturers and  
 7 producers’ means those manufacturers and pro-  
 8 ducers of nonbeverage products that are registered  
 9 with the Secretary, agree to monthly reporting and  
 10 have received manufacturing or processing authority  
 11 from the United States Foreign Trade Zones Board.

12 “(2) NONBEVERAGE PRODUCT.—The term  
 13 ‘nonbeverage product’ means medicines, medicinal  
 14 preparations, food products, flavors, flavoring ex-  
 15 tracts, or perfume, which are unfit for beverage pur-  
 16 poses.”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) The table of sections for subpart E of part  
 19 I of subchapter A of chapter 51 of the Internal Rev-  
 20 enue Code of 1986 is amended by inserting after the  
 21 item relating to section 5062 the following new item:

“Sec. 5063. Exception for nonbeverage products manufactured in a United  
 States foreign trade zone.”.

22 (2) Section 5005(e)(2) of such Code is amended  
 23 by inserting “used as described in section 5063,”  
 24 after “deposited in a foreign-trade zone,”.

1           (3) Section 5214(a) of such Code is amended  
 2           by striking the period at the end of paragraph (13)  
 3           and inserting “; or”, and by adding at the end the  
 4           following new paragraph:

5           “(14) without payment of tax as authorized by  
 6           section 5063.”.

7           (4) Section 5003 of such Code is amended by  
 8           adding at the end the following new paragraph:

9           “(18) For provisions relating to an exception  
 10          for nonbeverage products manufactured in a United  
 11          States foreign trade zone.”.

12          (c) FOREIGN TRADE ZONES.—Section 3 of the Act  
 13          of June 18, 1934 (commonly known as the Foreign Trade  
 14          Zones Act; 19 U.S.C. 81c) is amended—

15               (1) in subsection (a), in the second proviso, by  
 16               inserting “or determined” after “paid”; and

17               (2) in subsection (c)(2)—

18                       (A) by inserting in the second sentence be-  
 19                       fore the end period the following: “and such  
 20                       products, upon approval by the Secretary of the  
 21                       Treasury and the Foreign Trade Zones Board,  
 22                       shall be eligible for tax treatment pursuant to  
 23                       section 5063 of the Internal Revenue Code of  
 24                       1986.”;

1 (B) by striking “or flavoring extract” and  
2 inserting “flavoring extract, or perfume”; and

3 (C) by adding at the end the following:  
4 “Distilled spirits for manufacturing or produc-  
5 tion of nonbeverage products for which taxes  
6 have not been paid shall be admitted to the for-  
7 eign trade zone in domestic status and reported  
8 to the Bureau of Customs and Border Protec-  
9 tion in accordance with admission procedures,  
10 including direct delivery as applicable.”.

11 (d) EFFECTIVE DATE.—The amendments made by  
12 this section shall take effect on the date of the enactment  
13 of this Act.

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