

INTERNATIONAL TRADE ALERT

CUSTOMS DRAWBACK UPDATE: CBP AND TTB PROPOSE CHANGES IMPACTING EXCISE TAX REFUNDS

New Rules Would Limit the Availability of Substitution Drawback for Internal Revenue Excise Taxes on Claims Involving Certain Alcohol, Tobacco and Cigarette Products; Imported Taxable Fuel; and Petroleum Products

In the October 15, 2009 issue of the *Federal Register*, U.S. Customs and Border Protection (CBP) issued a Notice of Proposed Rulemaking that limits the availability of substitution drawback under certain circumstances involving internal revenue excise tax. As a general matter, the proposed rule would preclude the filing of substitution drawback claims for internal revenue excise tax that is paid on imported merchandise under circumstances where no excise tax was paid on the substituted merchandise this is exported or destroyed. [See 74 Fed. Reg. 52,928 (Oct. 15, 2009)]. In addition, the Alcohol and Tobacco Tax and Trade Bureau (TTB) has proposed to amend its regulations to conform with the new rules proposed by CBP, as applicable. [See 74 Fed. Reg. 52,937 (Oct. 15, 2009)].

Interested parties are encouraged to submit comments in response to these proposed rules by no later than Monday, November 16, 2009.

GENERAL OVERVIEW OF SUBSTITUTION DRAWBACK

Drawback is a refund of certain duties, taxes and fees that are paid by an importer. Drawback claims are generally granted (i.e., paid) to a so-called drawback claimant upon the exportation or destruction of eligible articles. The purpose of the drawback program is to place U.S. exporters on equal footing with foreign competitors by refunding most of the duties, taxes and fees that are paid on imports used in the domestic production of merchandise intended for export.

There are different categories of drawback, and the proposed rules described here involve only substitution drawback under 19 U.S.C. 1313(j)(2). As a general matter, under substitution drawback, merchandise other than the imported merchandise may be exported or destroyed in order to satisfy this requirement. 19 U.S.C. 1313(j)(2) provides for the payment of drawback of the duties, taxes and fees paid on imported merchandise, based on the exportation or destruction of “any other merchandise (whether imported or domestic)” that is: (1) commercially interchangeable with the imported merchandise on which duties, taxes, and fees were paid; (2) exported or destroyed within three years of the date of importation of the imported merchandise;

and (3) not used within the United States before such exportation or destruction and is in the possession of the party claiming drawback.

MERCHANDISE POTENTIALLY IMPACTED BY THE PROPOSED REGULATORY AMENDMENT

Internal revenue excise tax is generally available for drawback under a substitution drawback scenario. Internal revenue excise taxes are imposed on the manufacture and distribution of certain nonessential consumer goods. The goods that are subject to the internal revenue excise tax may also be the subject of substitution drawback claims where the excise taxes on those goods has been refunded, remitted or not paid. As a general matter, the categories of goods potentially affected by the regulatory amendment limiting drawback under these circumstances includes: wine; distilled spirits and beer; tobacco products and cigarette papers and tubes; imported taxable fuel; and petroleum products.

PROPOSED REGULATORY AMENDMENTS

CBP and TTB have proposed these new rules because the U.S. government has concluded that allowing substitution drawback claims in situations where internal revenue excise taxes have not been paid on the substituted domestic product is not compatible with the intent of Congress to levy excise taxes under the Internal Revenue Code. As a result—

- CBP has proposed to amend its regulations to provide that “[i]n the case of imported merchandise that is subject to internal revenue tax imposed under the Internal Revenue Code of 1986, as amended (IRC), the principal agrees not to file, or to transfer to a successor the right to file, a substitution drawback claim involving such tax if the substituted merchandise has been, or will be, the subject of a removal from bonded premises without payment of tax, or the subject of a claim for refund or drawback of tax, under any provision of the IRC.” [See 74 Fed. Reg. 52,928 at 52,931].
- TTB has proposed to amend its regulations by adding “conforming amendments that alert the reader to the effect of the [proposed] CBP regulatory provision as regards alcohol and tobacco products exported without payment of tax or with drawback of tax.” [See 74 Fed. Reg. 52,937 at 52,939-52,941)].

CONTACT INFORMATION

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