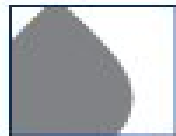




Drawback Update

American Petroleum Institute
Austin, Texas
March 8, 2010



CHARTER
B R O K E R A G E

Norwalk
Connecticut

Katy
Texas

New York
New York

Miami
Florida

Ontario
Canada



Outline

- *Aectra Ref. & Mktg. Inc. v. United States*, 565 F.3d 1364 (2009), *aff'd* CIT Decision 07-189 (Dec. 8 2007).
- *Delphi Petroleum, Inc. v. United States*, Slip Op. 09-139, 2009 Ct. Int'l Trade (CIT December 15, 2009).
- *Shell Oil v. United States*, CIT Oral arguments.
- NPRM on Drawback of Internal Revenue Taxes
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- Import / Export Balance



NPRM Excise Tax

DEPARTMENT OF HOMELAND SECURITY

DEPARTMENT OF THE TREASURY

Bureau of Customs and Border Protection

19 CFR Parts 113 and 191

[USCBP-2009-0021]

RIN 1505-AC18

Drawback of Internal Revenue Excise Tax

AGENCY: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend title 19 of the Code of Federal Regulations to preclude situations where imported merchandise subject to Federal excise tax is allowed into the United States, in effect, 99 percent free of that tax through application of a drawback claim. Specifically, the proposed amendments would preclude the filing of a substitution drawback claim for internal revenue excise tax paid on imported merchandise in situations where no excise tax was paid upon the substituted merchandise or where the substituted merchandise is the subject of a different claim for refund or drawback of tax under any provision of the Internal Revenue Code. This document also proposes to amend title 19 by adding a basic importation and entry bond condition to foster compliance with the amended drawback provision. These proposed amendments are necessary to protect the revenue by clarifying the relationship between drawback claims and Federal excise tax liability.

personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT:

William Rosoff, Entry Process and Duty Refunds, Regulations and Rulings, Office of International Trade, (202) 325-0047.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or

I. Excise Taxation Under the Internal Revenue Code of 1986

The Internal Revenue Code (IRC) of 1986, as amended (IRC), codified as title 26 of the United States Code (26 U.S.C.), is the main body of domestic statutory tax law of the United States and includes, *inter alia*, laws covering Federal excise taxes. Federal excise taxes are imposed on the manufacture and distribution of certain non-essential consumer goods, such as distilled spirits, wines, beer, tobacco products, imported taxable fuel and petroleum products.

Distilled Spirits, Wines, and Beer: Imposition of Federal Excise Tax and Exemptions

Chapter 51 of the IRC sets forth excise tax collection and related provisions applicable to distilled spirits, wines, and beer. In general, this chapter provides that a Federal excise tax is imposed on all wines, distilled spirits, and beer produced in or imported into the United States. 26 U.S.C. 5041, 5001, and 5051.

Statutory exceptions to the imposition of Federal excise tax exist; for example, domestically produced wine, distilled spirits, and beer are exempt from the tax if removed from bonded premises for export. 26 U.S.C. 5362(c), 5214(a), 5053. In addition, upon the exportation of domestically-produced wine, distilled spirits, or beer removed from bonded premises with payment of tax, drawback is allowed in an amount equal to the tax paid. 26 U.S.C. 5062, 5055.

Tobacco: Imposition of Federal Excise Tax and Exemptions

Under Chapter 52, a Federal excise tax is imposed on all tobacco products and cigarette papers and tubes manufactured in or imported into the



Responses to the NPRM

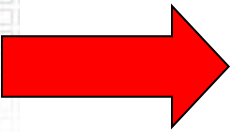
Congress of the United States
Washington, DC 20515

December 8, 2009

The Honorable Timothy Geithner
U.S. Department of Treasury
Washington, D.C. 20220

The Honorable Janet Napolitano
U.S. Department of Homeland Security
Washington, D.C. 20528


Dear Secretaries Geithner and Napolitano:



We would like to express our concern with the two Notices of Proposed Rulemaking published on October 15th by the Bureau of Customs and Border Protection and the Alcohol and Tobacco Tax and Trade Bureau.¹ These proposed rules ignore the clear intent of Congress under 19 USC 1313(j)(2) entitling exporters to obtain drawback of all duties, taxes and fees paid upon entry or importation when a substitute product is exported. Additionally, these proposed rules would significantly undercut the export programs of many U.S. businesses, including the wine industry, whose exports have grown to over \$1 billion in sales, in large part due to the availability of the (j)(2) drawback program enacted by Congress.



Responses to the NPRM



to claim drawback of federal taxes paid on imports. The agencies have been heard many times on this issue and can continue to comment as Drawback Simplification makes its way through Congress. Noticing the proposed rules at this time amounts to challenging Congress by initiating a rulemaking that will run concurrently with Congressional action on the same subject in the context of pending CBP reauthorization legislation. We view these proposed rules as an attempt by the administering agencies to change existing law via rulemaking, pre-empting and negating the role of Congress.

We, therefore, respectfully urge both agencies to withdraw these proposed rules.

Thank you for your attention, and we look forward to your prompt reply.

Sincerely,



Responses to the NPRM

Louise M. Slaughter

LOUISE M. SLAUGHTER
Member of Congress

Zoe Lofgren

ZOE LOFGREN
Member of Congress

Xavier Becerra

XAVIER BECERRA
Member of Congress

Joseph Crowley

JOSEPH CROWLEY
Member of Congress

Brian Higgins

BRIAN HIGGINS
Member of Congress

Wally Herger

WALLY HERGER
Member of Congress

Mike Thompson

MIKE THOMPSON
Member of Congress

George Miller

GEORGE MILLER
Member of Congress

Dennis A. Cardoza

DENNIS A. CARDOZA
Member of Congress

Anna G. Eshoo

ANNA G. ESHOO
Member of Congress

Maurice Hinchey

MAURICE HINCHEY
Member of Congress

Steve Israel

STEVE ISRAEL
Member of Congress



Responses to the NPRM

Doris O. Matsui

DORIS O. MATSUI
Member of Congress

Jerry McNerney

JERRY MCNERNEY
Member of Congress

George Radanovich

GEORGE RADANOVICH
Member of Congress

Jim McDermott

JIM MCDERMOTT
Member of Congress

Richard E. Neal

RICHARD E. NEAL
Member of Congress

Kevin Brady

KEVIN BRADY
Member of Congress



NPRM Withdrawal

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border
Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 113 and 191

[USCBP-2009-0021]

RIN 1505-AC18

Drawback of Internal Revenue Excise Tax

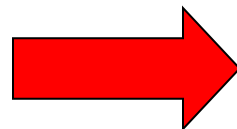
AGENCY: Customs and Border Protection,
Department of Homeland Security;
Department of the Treasury.

ACTION: Withdrawal of notice of
proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking, published in the **Federal Register** on October 15, 2009, that proposed amendments to title 19 of the Code of Federal Regulations to: preclude the filing of a substitution drawback claim for internal revenue excise tax paid on imported merchandise in situations where no excise tax was paid upon the substituted merchandise or where the substituted merchandise is the subject of a different claim for refund or drawback of tax under any provision of the Internal Revenue Code; and add a basic importation and entry bond condition to foster compliance with the amended drawback provision. The notice is being withdrawn to permit further consideration of the relevant issues involved in the proposed rulemaking.

DATES: *Effective Date:* The effective date of this withdrawal is March 2, 2010.

FOR FURTHER INFORMATION CONTACT:
William Rosoff, Regulations and
Rulings, Office of International Trade,
(202) 325-0047.





Outline

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