

ALERTS AND UPDATES

U.S. to Prohibit Drawback Claims for Excise Tax on Imports?

November 5, 2009

***Update:** On November 4, 2009, by notice in the Federal Register, U.S. Customs and Border Protection (CBP) extended until December 14, 2009, the time to file comments to proposed amendments of its drawback regulations. This addition of 30 days to CBP's original deadline made it coincide with the deadline set by the Alcohol and Tobacco Tax and Trade Bureau (TTB) for comments to proposed modifications to its regulations. Both of these agencies' proposed amendments pertain to the recovery of excise taxes on certain exports of alcoholic beverages and tobacco products.*

U.S. Customs and Border Protection (CBP) has proposed amendments to its regulations that would preclude the filing of a "substitution drawback claim for internal revenue excise taxes 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 drawbacks of taxes under any other provision of the Internal Revenue Code" of 1986, as amended (the "IRC").

Under the current regulatory scheme, a drawback claimant can substitute an exported domestic qualifying product, upon which no excise tax was paid, for an imported product, upon which an excise tax was paid, and thus recover 99 percent of the excise tax paid when it was imported. Thus, according to CBP, there is a loss of revenue to the United States of 98 percent of the excise tax that would have otherwise been collected. CBP argues that such a process is contrary to the congressional intent of the drawback statute. It might appear that CBP is seeking to accomplish a legislative result via administrative action.

Industries and products affected include:

1. Distilled spirits, wines and beer
2. Tobacco
3. Gasoline, diesel fuel and other taxable fuel

The U.S. Alcohol and Tobacco Tax and Trade Bureau (TTB) has also proposed amending its regulations to conform to this proposed modification of Customs' regulations, relating to the drawback of excise taxes under the IRC paid on imported distilled spirits, wines, beer and tobacco products.

Both CBP's and TTB's notices of proposed rulemaking were published in the *Federal Register* on October 15, 2009. CBP originally required comments by November 16, 2009, while comments to TTB are due on or before December 14, 2009. On November 4, 2009, by notice in the *Federal Register*, CBP extended until December 14, 2009, the time to file comments to its proposed amendments, making its deadline for comments coincide with the deadline set by TTB.

For Further Information

<http://www.jdsupra.com/post/documentViewer.aspx?fid=dd47c275-6745-48cc-abdb-d14fdccaedb8>

If you have any questions about this topic or would like more information, please contact [Brian S. Goldstein](#), any [member](#) of the Duane Morris [International Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

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