scheme generally became effective on May 1, 1991, but a 16 month phase-in period was provided with respect to specified rules affecting employee benefit plans, in order to give registrants ample time to review the rule changes and amend their plans accordingly.[3] The Adopting Release provided that registrants could continue to rely on the exemptions from Section 16(b) of the Exchange Act[4] afforded by former Rules 16a–8(b),[5] 16a–8(g)(3),[6] and 16b–3[7] after May 1, 1991, but would be required to adopt the substantive conditions of new Rule 16b–3[8] by September 1, 1992.[9]

The Rule 16b–3 phase-in period was extended until September 1, 1995, in contemplation of further rulemaking under Section 16 with regard to employee benefit plans.[10] Because the Commission currently is engaged in such rulemaking,[11] the Commission is extending the phase-in period for new Rule 16b–3 until September 1, 1996, or such different date as is set by the Commission.

By the Commission.

Dated: August 7, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–19932 Filed 8–10–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 191

[T.D. 95–61]

Accounting Procedures for Drawback

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final interpretive rule.

SUMMARY: This document gives notice that Customs is amending the general drawback rate (or contract) for crude petroleum and petroleum derivatives (Treasury Decision (T.D.) 84–49) to permit first-in-first-out (FIFO) accounting for exports and drawback deliveries of petroleum products with different drawback factors which are commingled in inventory. Customs is also revoking a published ruling (Customs Service Decision (C.S.D.) 84–82) under which identification of merchandise and articles for drawback purposes is permitted on a ''higher-to-lower'' basis. However, drawback claimants operating under properly approved specific drawback rates may continue to claim drawback using higher-to-lower accounting procedures, as provided for in C.S.D. 84–82, if the drawback rates under which they are operating expressly provide for the use of such procedures, until such rates are modified, with notice to the rate holders.

EFFECTIVE DATE: The amendment of T.D. 84–49 and the revocation of C.S.D. 84–82 will be effective as to drawback entries or claims properly filed with Customs on or after November 9, 1995, unless there is a prior approved properly-executed contract.

FOR FURTHER INFORMATION CONTACT: Paul Hegland, Entry Rulings Branch, Office of Regulations and Rulings, 202–482–7040.

Background

Section 313, Tariff Act of 1930, as amended (19 U.S.C. 1313), authorizes ''drawback''. Drawback is a refund or remission, in whole or in part, of a Customs duty, internal revenue tax, or fee. There are a number of different kinds of drawback authorized under law, including manufacturing and unused merchandise drawback. Under section 1313(a), drawback is authorized when imported merchandise is used in the manufacture of articles which are exported or destroyed. Under section 1313(j)(1), drawback is authorized when imported merchandise is exported or destroyed without having been used in the U.S. Sections 1313(b) and (j)(2) respectively provide for the substitution of other merchandise (whether imported or domestic) for the imported merchandise in manufacturing and unused merchandise drawback. Section 1313(l) provides that the allowance of drawback shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe.

The regulations pertaining to drawback are found in part 191 of the Customs Regulations (19 CFR part 191). Under the Customs Regulations (19 CFR part 191, subparts B and D), manufacturers or producers of articles intended for exportation with drawback under section 1313(a) or (b) must apply for and obtain approval of a drawback rate (sometimes called a drawback contract) describing the manufacturing or production operations covered and setting forth the conditions which are to be met to obtain drawback.

Subpart D of part 191 of the Customs Regulations (19 CFR part 191, subpart D) authorizes general drawback rates for certain common manufacturing operations. A general drawback rate for substitution manufacturing drawback under section 1313(b) for crude petroleum and petroleum derivatives is provided for in T.D. 84–49, 18 Cust. Bull. 149. This general drawback rate was initially promulgated by T.D. 56487, which added the rate to the Customs Regulations then pertaining to drawback (see 19 CFR 22.6(g–1) (1983)). The general rate for crude petroleum and petroleum derivatives now in T.D. 84–49 is substantively the same as the rate formerly contained in the Customs Regulations.

The features and procedures of, as well as the background to, T.D. 84–49 and its predecessor (see 19 CFR 22.6(g–1)(1983), as promulgated by T.D. 56487) were extensively described in the June 28, 1994, **Federal Register** (59 FR 33322) notice inviting public comment on the subject of this document. Under T.D. 84–49, distribution of drawback among the products produced during a period of production is based on the relative values of all products manufactured or produced during the production period, as of the time of separation of the products. The time of separation of the products is considered to be the monthly period of production. Relative values are stated in terms of drawback factors, which attach to each of the products manufactured or produced during the production period. An example of the calculation of these drawback factors was given in the June 28, 1994, **Federal Register** notice.

Because the relative value of the petroleum products which may be produced under T.D. 84–49 may vary from month to month, the drawback factors for a particular product produced under the procedures in T.D. 84–49 may also vary from month to month. The T.D. contains explicit procedures to account for such variances. When the inventory of a particular product contains product with different drawback factors (*e.g.*, if the inventory of a product was from more than one month's production, each month's quantity could have a different drawback factor), withdrawals from the inventory for exports are required to be

[3] Exchange Act Release No. 28869 (February 8, 1991) [56 FR 7242] (''Adopting Release''). See Section VII of the Adopting Release for transition provisions generally and Section VII.C for transition provisions relating to employee benefit plans.

[4] 15 U.S.C. 78p(b).

[5] 17 CFR 16a–8(b).

[6] 17 CFR 16a–8(g)(3).

[7] 17 CFR 16b–3 (1990).

[8] 17 CFR 240.16b–3 (1991).

[9] The phase-in period applies only to the exemption from Section 16(b), not to the revised reporting requirements under Section 16(a) that became effective on May 1, 1991.

[10] See Exchange Act Release No. 34513 (August 10, 1994) [59 FR 42448].

[11] See Exchange Act Releases Nos. 34514 (August 10, 1994) [59 FR 42449] and 34–34681 (September 16, 1994) [59 FR 48579].

from lowest factor on hand, withdrawals for drawback deliveries (i.e., for further manufacture resulting in a product on which drawback could be claimed) are required to be from lowest on hand after exports are deducted, and withdrawals for domestic (nondrawback) shipments are required to be from earliest on hand after withdrawals for export and drawback deliveries are deducted.

The above accounting procedures were based on the accounting requirements for drawback applicable at the time that the general drawback rate was initially promulgated, as fully described in the June 28, 1994, **Federal Register** notice. The general requirements in the Customs Regulations for records, storage, and identification pertaining to drawback are now found in 19 CFR 191.22. Section 191.22(c) authorizes the identification for drawback purposes of commingled lots of fungible merchandise or articles by applying FIFO accounting principles or any other accounting procedure approved by Customs. Customs has issued a number of rulings on the accounting procedures which may be used to identify merchandise or articles for drawback purposes. Those rulings and the background to them were extensively described in the June 28, 1994, **Federal Register** notice. In one of those rulings, Customs Service Decision (C.S.D.) 84–82, 18 Cust. Bull. 1036, Customs held that when fungible drawback and nondrawback input was placed in commingled storage, withdrawals for drawback purposes could be identified on a higher-to-lower basis against the drawback input commingled therein.

In the June 28, 1994, **Federal Register** notice, Customs furnished notice that it had been requested to amend T.D. 84–49 to permit the accounting for withdrawals for export and for drawback deliveries from the inventory of a particular product containing product with different drawback factors on the basis of FIFO or higher-to-lower. In the June 28, 1994, **Federal Register** notice, Customs stated that it believed that the proposal to amend T.D. 84–49 to permit the accounting on a FIFO basis in the described situation had merit. In the interest of administrative simplicity, Customs stated that it believed that the order of such withdrawals should continue to be the same (*i.e.*, first exports, then drawback deliveries, then domestic shipments). In regard to the proposal to amend T.D. 84–49 to permit the described accounting on a higher-to-lower basis, however, Customs stated that T.D. 84–49 should not be amended to permit such accounting. Customs also stated that C.S.D. 84–82, the only published Customs ruling permitting higher-to-lower accounting for drawback purposes, as well as any unpublished Customs rulings to the same effect, should be revoked. The reasons for these conclusions were fully described in the June 28, 1994, **Federal Register** notice.

In the June 28, 1994, **Federal Register** notice, Customs invited comments on the proposed changes. Four commenters responded to the notice. After review of these comments, Customs has decided to proceed as proposed (*i.e.*, to amend T.D. 84–49 to permit the described accounting on a FIFO basis and to revoke C.S.D. 84–82). In regard to the latter, it is Customs position that unless substitution is specifically provided for in the law, accounting methods used to identify merchandise or articles for drawback purposes must be revenue neutral or favorable to the Government. Other criteria for evaluating such accounting methods include consistency with commercial accounting procedures, consistency with the accounting procedures generally used by the drawback claimant, and ease of administration. The comments received are discussed below.

Discussion of Comments

Comment: The use of FIFO accounting for T.D. 84–49, as proposed in the June 28, 1994, **Federal Register** notice, is not opposed. However, in the interest of maximum flexibility in accounting for drawback, higher-to-lower accounting should also be permitted for the described accounting in T.D. 84–49.

Response: In regard to the comment on FIFO accounting for T.D. 84–49, this document is proceeding as proposed and amending T.D. 84–49 to permit such accounting. In regard to permitting higher-to-lower accounting for the described purposes in T.D. 84–49, such accounting would not be revenue neutral or favorable to the Government (*i.e.*, withdrawals for drawback purposes (exports or drawback deliveries) would always be from the highest drawback factor first, thus always resulting in the greatest amount of drawback). Furthermore, higher-to-lower accounting methods are not consistent with commercial accounting procedures nor, based on information submitted to Customs by a representative of the petroleum industry, are they consistent with the accounting methods generally used by that industry. Therefore, Customs is *not* permitting higher-to-lower accounting for the described purposes in T.D. 84–49.

Comment: Customs should make it clear that T.D. 56487 (the predecessor of T.D. 84–49) is not authoritative on the issue of producibility, particularly that of proportional deductions.

Response: The June 28, 1994, document did not, and was not intended to, comment on the authoritativeness of T.D. 56487 on the issue of producibility or the issue of proportional deductions (see 19 CFR 22.6(g–1)(5)(1983) and T.D. 84–49, paragraph (5)). No change was proposed in this regard.

Comment: C.S.D. 84–82 should not be revoked. Higher-to-lower accounting procedures are consistent with the purposes of the drawback law and adequately protect the revenue and should continue to be allowed to be used for drawback. Drawback claimants under section 1313(b) are able to substitute any eligible merchandise of the same kind and quality as eligible imported merchandise received and put into production. This should continue.

Response: This comment appears to be based on a misunderstanding of the proposal to revoke C.S.D. 84–82. The proposal would not (and could not) change the current statutory provision allowing a drawback claimant to substitute any eligible merchandise of the same kind and quality as the designated imported merchandise to use in manufacture or production of the exported articles. In this regard, Customs notes the amendment of section 1313(b) by the North American Free Trade Agreement (NAFTA) Implementation Act, Title VI, section 632 (Pub. L. 103–182; 107 Stat. 2057, 2192–2193), specifically providing for the substitution of any other merchandise (whether imported or domestic) for the imported duty-paid merchandise designated for drawback under section 1313(b). The same is true of substitution unused merchandise drawback under section 1313(j)(2) (*i.e.*, any merchandise (whether imported or domestic) may be substituted for the designated imported merchandise, provided that the lots of merchandise are commercially interchangeable and that the other requirements of the law are met).

The revocation of C.S.D. 84–82 would apply to the identification by accounting procedures of merchandise or articles in situations where the law does not authorize substitution. For example, except in the case of petroleum derivatives under certain circumstances, the drawback law does not authorize the substitution of articles on which drawback is claimed under the manufacturing drawback law (section 1313 (a) or (b)) for other

articles. That is, when manufactured articles qualifying for drawback are commingled with nonqualifying articles after the former are manufactured by a drawback claimant, substitution under the law is not authorized. In such situations, identification of merchandise or articles for drawback purposes by accounting procedures must be revenue neutral or favorable to the Government and the accounting procedures should be consistent with the criteria for such accounting procedures described above.

Comment: The drawback law does not require any method of identifying fungible duty-paid imported materials which may be commingled in storage with other foreign or domestic materials; rather, the law delegates authority to the Secretary of the Treasury to prescribe appropriate accounting methods by regulation.

Response: Section 1313(l) of the drawback law provides that the allowance of drawback shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe. Under this authority, the agency has already prescribed, *inter alia*, a regulation governing the use of accounting methods (see, 19 CFR 191.22(c)). As stated above, the final interpretative ruling articulates Customs position that in situations where the law does not specifically authorize substitution, identification of merchandise or articles for drawback purposes by appropriate accounting procedures should be consistent with the criteria for such accounting procedures described above.

Comment: The higher-to-lower accounting method promotes administrative efficiency because it allows Customs to verify drawback claims without inquiring as to the order of withdrawal from commingled inventory.

Response: The drawback statute contains specific time limits (see *e.g.*, sections 1313 (i), (b), (c), (j), (p)). Any verification by Customs of whether a drawback claimant has complied with the drawback law and the regulations issued thereunder must include verification that the statutory time-limits were met.

Comment: If Customs decides to revoke C.S.D. 84–82 and proscribe the use of higher-to-lower accounting for drawback, Customs should specify a ''cut-off'' date for use of the higher-to-lower method. Customs should delay the effective date for this change in position because the drawback public may have relied on this ruling in establishing its inventory methods for drawback. One commenter suggests an implementation period of 3 years.

Response: Customs is delaying the effective date of the amendment of T.D. 84–49 and the revocation of C.S.D. 84–82 for 90 days after the publication of this document, the maximum delay provided for in the Customs Regulations for a modification or revocation of a ruling (see 19 CFR 177.9). Customs notes that, in regard to manufacturing drawback, a drawback claimant which relied on C.S.D. 84–82 should be able to document such reliance in its drawback rate (*i.e.*, in order to be paid manufacturing drawback, a claimant must have an approved drawback rate (see 19 CFR 191.23 and the general drawback rate for section 1313(a) (T.D. 81–234), as well as the sample drawback proposal for section 1313(b) provided for in 19 CFR 191.21(c), the latter of which contains specific sections in which the claimant is instructed to describe its inventory procedures)). In such instances (*i.e.*, when a claimant is operating under a drawback rate which specifically provides for higher-to-lower accounting), drawback claimants may continue to use higher-to-lower accounting procedures, as provided for in their drawback rates, until their rates are modified, and notice of the modification is sent to the rate holders.

Conclusion

For the reasons given in the June 28, 1994, **Federal Register** notice, and following careful consideration of the comments received and further review of the matter, Customs is taking the actions described in the June 28, 1994, **Federal Register** notice. That is:

1. T.D. 84–49 is amended to permit the accounting for withdrawals from inventory of exports and drawback deliveries on a FIFO basis. The order of such withdrawals will continue to be: first exports, then drawback deliveries, after which domestic shipments will be accounted for on a FIFO basis.

2. C.S.D. 84–82 is revoked.

This amendment of T.D. 84–49 and the revocation of C.S.D. 84–82 will be effective to drawback entries or claims properly filed with Customs on or after 90 days from the date of publication in the **Federal Register**. Drawback claimants operating under properly approved drawback rates under 19 CFR 191.23 may continue to claim drawback using higher-to-lower accounting procedures, as provided for in C.S.D. 84–82, if the drawback rates under which they are operating specifically provide for the use of such procedures, until such rates are modified, and notice of such modification is sent to the rate holders.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: July 6, 1995.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–19911 Filed 8–10–95; 8:45 am]

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Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8611]

RIN 1545–AS40

Conduit Arrangements Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to conduit financing arrangements issued under the authority granted by section 7701(l). The final regulations apply to persons engaging in multiple-party financing arrangements. The final regulations are necessary to determine whether such arrangements should be recharacterized under section 7701(l).

EFFECTIVE DATE: The regulations are effective September 11, 1995.

FOR FURTHER INFORMATION CONTACT: Elissa J. Shendalman of the Office of the Associate Chief Counsel (International), (202) 622–3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1440. The estimated annual burden per recordkeeper is 10 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On August 10, 1993, Congress enacted section 7701(l) of the Internal Revenue Code (Code), which authorizes the