

# Proposed Rules

Federal Register

Vol. 75, No. 40

Tuesday, March 2, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## 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 The notice is being withdrawn to permit further consideration of the relevant issues involved in the proposed rulemaking.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.

#### SUPPLEMENTARY INFORMATION:

#### Background

On October 15, 2009, Customs and Border Protection (CBP) published a

notice of proposed rulemaking in the **Federal Register** (74 FR 52928) proposing changes to parts 113 and 191 within title 19 of the Code of Federal Regulations. The proposed amendments would: (1) 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 (2) add a basic importation and entry bond condition to the CBP regulations to foster compliance with the amended drawback provision. The comment period was extended twice to allow additional time for interested parties to submit comments on the proposed rulemaking. The comment period ended on January 12, 2010.

#### Withdrawal of Notice of Proposed Rulemaking

CBP is withdrawing the notice of proposed rulemaking published in the **Federal Register** (74 FR 52928) on October 15, 2009, so that relevant issues involved in the proposed rulemaking may be further considered.

**David V. Aguilar,**

*Acting Deputy Commissioner, U.S. Customs and Border Protection.*

Approved: February 25, 2010.

**Michael Mundaca,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 2010-4379 Filed 3-1-10; 8:45 am]

**BILLING CODE 9111-14-P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### 27 CFR Parts 28 and 44

[Docket No. TTB-2009-0005; Notice No. 102; Re: Notice Nos. 100 & 101]

RIN 1513-AB77

### Drawback of Internal Revenue Excise Taxes

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, 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 conforming amendments to reflect proposed Customs and Border Protection regulations stating that domestic merchandise on which no tax is paid under the Internal Revenue Code may not be substituted for imported merchandise for purposes of claims for drawback of tax under the customs laws and regulations. The notice is being withdrawn to permit further consideration of the relevant issues involved in the proposed rulemaking.

**DATES:** The proposed rulemaking is withdrawn on March 2, 2010.

#### FOR FURTHER INFORMATION CONTACT:

Gerry Isenberg, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20220; telephone (202) 453-2097.

#### SUPPLEMENTARY INFORMATION:

#### Background

On October 15, 2009, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published in the **Federal Register** a notice of proposed rulemaking to amend its regulations to clarify the relationship between tax payment under the Internal Revenue Code of 1986 and drawback of tax under the Tariff Act of 1930. See Notice No. 100 at 74 FR 52937. Specifically, TTB's proposed rulemaking would have provided conforming regulations to reflect proposed Customs and Border Protection (CBP) regulations stating that domestic merchandise on which no tax is paid under the Internal Revenue Code may not be substituted for imported merchandise for purposes of claims for drawback of tax under the customs laws and regulations. TTB later extended the comment period closing date for its proposal until January 14, 2010. See Notice No. 101, November 27, 2009, at 74 FR 62266.

The CBP notice of proposed rulemaking regarding drawback of internal revenue excise tax, on which TTB's proposed rulemaking was based, also was published in the **Federal Register** on October 15, 2009, at 74 FR 52928. CBP twice extended the comment period on its proposal to allow additional time for interested parties to comment on the proposed rulemaking. See the CBP notices of November 4,

2009 (74 FR 57125), and November 25, 2009 (74 FR 61585). The CPB proposal's comment period ended on January 12, 2010.

#### Withdrawal of Notice No. 100

The proposed CBP regulations published on October 15, 2009, and on which TTB's proposed rulemaking was based, are being withdrawn to allow for further consideration of the issues involved. Consistent with the CBP action, TTB withdraws its proposed rulemaking, Notice No. 100, published in the **Federal Register** on October 15, 2009 at 74 FR 52928.

Dated: February 3, 2010.

**John J. Manfreda,**  
Administrator.

Approved: February 25, 2010.

**Michael Mundaca,**

Acting Assistant Secretary (Tax Policy).

[FR Doc. 2010-4374 Filed 3-1-10; 8:45 am]

BILLING CODE 4810-31-P

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### 29 CFR 2550

#### RIN 1210-AB35

### Investment Advice—Participants and Beneficiaries

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Proposed rule.

**SUMMARY:** This document contains a proposed rule under the Employee Retirement Income Security Act, and parallel provisions of the Internal Revenue Code of 1986, relating to the provision of investment advice to participants and beneficiaries in individual account plans, such as 401(k) plans, and beneficiaries of individual retirement accounts (and certain similar plans). Upon adoption, the proposed rule would implement provisions of a statutory prohibited transaction exemption, and would replace guidance contained in a final rule, published in the **Federal Register** on January 21, 2009, that was withdrawn by the Department pursuant to a Notice published in the **Federal Register** on November 20, 2009. Upon adoption, the proposed rule affects sponsors, fiduciaries, participants and beneficiaries of participant-directed individual account plans, as well as providers of investment and investment advice related services to such plans.

**DATES:** Written comments on the proposed regulations should be submitted to the Department of Labor on or before May 5, 2010.

**FOR FURTHER INFORMATION CONTACT:** Fred Wong, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), (202) 693-8500. This is not a toll-free number.

**ADDRESSES:** To facilitate the receipt and processing of comment letters, the EBSA encourages interested persons to submit their comments electronically by e-mail to *e-ORI@dol.gov* (enter into subject line: 2010 Investment Advice Proposed Rule) or by using the Federal eRulemaking portal at *http://www.regulations.gov*. Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting paper copies should send or deliver their comments to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Attn: 2010 Investment Advice Proposed Rule, Room N-5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. All comments will be available to the public, without charge, online at *http://www.regulations.gov* and *http://www.dol.gov/ebsa* and at the Public Disclosure Room, N-1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On January 21, 2009, the Department of Labor published final rules on the provision of investment advice to participants and beneficiaries of participant-directed individual account plans and to beneficiaries of individual retirement accounts and certain similar plans (IRAs) (74 FR 3822). The rules implement a statutory prohibited transaction exemption under ERISA Sec. 408(b)(14) and Sec. 408(g), and under section 4975 of the Internal Revenue Code of 1986 (Code),<sup>1</sup> and also contain an administrative class exemption granting additional relief. As published, these rules were to be effective on March 23, 2009. On

<sup>1</sup> Section 601 of the Pension Protection Act of 2006 (PPA) added sections 408(b)(14) and 408(g) of ERISA. The PPA also added parallel provisions to the Code at sections 4975(d)(17) and 4975(f)(8). Under Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), 5 U.S.C. App. 1, 92 Stat. 3790, the authority of the Secretary of the Treasury to issue rulings under section 4975 of the Code has been transferred, with certain exceptions not here relevant, to the Secretary of Labor. Therefore, the references in this notice to specific sections of ERISA should be taken as referring also to the corresponding sections of the Code.

February 4, 2009, the Department published in the **Federal Register** (74 FR 6007) an invitation for public comment on a proposed 60 day extension of the effective dates of the final rules in order to afford the Agency the opportunity to review legal and policy issues relating to the final rules. The Department also invited public comments on the provisions of those rules and on the merits of rescinding, modifying or retaining the rules. In response to this invitation, the Department received 28 comment letters.<sup>2</sup> On March 20, 2009, the Department adopted a 60 day extension of the final rule. (See 74 FR 11847). In order to afford the Department additional time to consider the issues raised by commenters, the effective and applicability dates were further delayed until November 18, 2009 (74 FR 23951), and then until May 17, 2010 (74 FR 59092).

##### B. Comments Received

A number of the commenters expressed the view that the final rule raises significant issues of law and policy, and should be withdrawn. Several of these commenters argued that the class exemption contained in the final rule permits financial interests that would cause a fiduciary adviser, and individuals providing investment advice on behalf of a fiduciary adviser, to have conflicts of interest, but does not contain conditions that would adequately mitigate such conflicts. They asserted that investment advice provided under the class exemption therefore might be tainted by the fiduciary adviser's conflicts. Other commenters expressed concerns about those provisions of the rule relating to the "fee-leveling" requirement under the statutory exemption. In particular, some opined that the Department's interpretation of the statutory exemption's fee-leveling requirement is incorrect for permitting the receipt of varying fees by an affiliate of a fiduciary adviser. As a result, they argued, a fiduciary adviser under such a fee-leveling arrangement has a conflict of interest, and the final rule does not adequately protect against investment advice that is influenced by the financial interests of the fiduciary adviser's affiliates. Commenters who advocated retention of the final rule argued that it contains strong safeguards that would protect the interests of plan participants and beneficiaries.

<sup>2</sup> These comments are available on the Department's Web site at: *http://www.dol.gov/ebsa/regs/cmt-investmentadvicefinalrule.html*.