



Drawback Claims for Refund of Certain Excise Taxes

July 31, 2017

Fiscal Year 2017 Report to Congress



Homeland
Security

U.S. Customs and Border Protection

Message from the Acting Deputy Commissioner of CBP

July 31, 2017

I am pleased to submit the following Report, "Drawback Claims for Refund of Certain Excise Taxes" prepared by U.S. Customs and Border Protection (CBP).

This document has been compiled pursuant to a directive of House Report 114-668, accompanying P.L 115-31, the *Department of Homeland Security Appropriations Act, 2017*. This report describes CBP's treatment of various claims for drawback of duties, taxes and fees pursuant to section 313(j)(2) of the Tariff Act of 1930, as amended (19 U.S.C. § 1313(j)(2)).



Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable John R. Carter
Chairman, House Appropriations Subcommittee on Homeland Security

The Honorable Lucille Roybal-Allard
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable John Boozman
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jon Tester
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

I would be pleased to respond to any questions you may have. Please do not hesitate to contact my office at (202) 344-2001 or the Department's Chief Financial Officer (Acting), Stacy Marcott, at (202) 447-5751.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald D. Vitiello". The signature is fluid and cursive.

Ronald D. Vitiello
Acting Deputy Commissioner
U.S. Customs and Border Protection

Executive Summary

Drawback under section 313 of the Tariff Act of 1930, as amended (19 U.S.C. § 1313), is designed to encourage U.S. manufacturing operations and exports, and provides for the refund of duties and taxes associated with imported merchandise. However, because of the technical complexity of the drawback law, interpretive and operational issues frequently arise and require careful consideration by CBP.

Unused merchandise drawback, which includes substitution drawback under 19 U.S.C. § 1313(j)(2), provides for drawback of duties, taxes, and fees paid on imported merchandise if commercially interchangeable substitute merchandise that is unused is exported or destroyed under prescribed conditions. The scope of merchandise for which revenues may be refunded under section 1313(j)(2), and the types of taxes and fees available for refund, have undergone modifications as a result of either legislative amendment or judicial scrutiny.

At present, CBP has under consideration a protest concerning the refundability of Internal Revenue Code excise taxes paid on imported distilled spirits. The protest requires CBP to determine whether excise taxes paid directly to the Treasury Department's Tax and Trade Bureau for distilled spirits are subject to drawback under section 1313(j)(2). CBP will issue its determination on this protest following consultations within the agency and with other federal departments.



Drawback Claims for Refund of Certain Excise Taxes

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I. Legislative Language

This document was compiled pursuant to a directive in House Report 114-668, accompanying the Fiscal Year 2017 Department of Homeland Security Appropriations Act (P.L. 115-31).

House Report 114-668 states:

Under Section 1313(j)(2) of title 19 of the U.S. Code, CBP is required to refund any duties, taxes, and fees imposed on imported products if they are later exported or destroyed, or if commercially interchangeable products manufactured in the United States are subsequently exported. The Committee is concerned that the agency has adopted a policy that disallows drawback claims under section 1313(j)(2) for refund of taxes imposed on certain imported products on the pretext that such claims must be filed exclusively under title 26 of the U.S. Code, and that similarly disallows such drawback where the taxes are collected by a federal agency other than CBP. Not later than 60 days after the date of enactment of this Act, CBP shall provide a report to the Committee explaining why drawback claims for taxes imposed on certain imported products, whether paid to CBP or to another federal agency, are disallowed under section 1313(j)(2) of title 19 and why drawback claims are not treated consistently across all categories of imported merchandise.

II. Background

Drawback is a refund of duties paid on imported merchandise that is linked to an exportation (or destruction) of an article. Generally, drawback of duty and some taxes and fees is provided for under section 313 of the Tariff Act of 1930, as amended (19 U.S.C. § 1313). Certain excise taxes, namely those on imported alcohol and tobacco, are also subject to drawback pursuant to 26 U.S.C. § 5062. For these excise taxes, U.S. Customs and Border Protection (CBP) is responsible for collecting the taxes owed and administering the drawback program on behalf of the Department of the Treasury's Tax and Trade Bureau (TTB).

The first drawback law was enacted by section 3 of the second Act of Congress, the Act of July 4, 1789. That first drawback law provided for a drawback of 99 percent of duties paid on merchandise (except distilled spirits) if exported within a year after duty was paid or security was given for duty. Between the 1789 Act and the Tariff Act of 1930, drawback was added for various merchandise, such as imported salt used for curing meat and fish and imported merchandise used to construct vessels in this country.

Since the Tariff Act of 1930, statutory amendments and judicial decisions have made changes to the drawback law. For example, in 1980, drawback was permitted on the exportation of imported merchandise if the condition of the merchandise was unchanged and it was not used in the United States. In 1984, the concept of substitution was added for same condition drawback, and the concept of exchange, or tradeoff, of domestic merchandise for imported merchandise was added for manufacturing drawback. A special provision for drawback for petroleum derivatives was added in 1990 and was amended in 1993 and 1999. Further important amendments were enacted in 2004, 2008, and 2016.

Today, there are three broad categories of drawback: manufacturing drawback, unused merchandise drawback, and rejected merchandise drawback. Within each category, there are variations prescribed by statute, including the permissible scope of substitutions and specific time limits to manufacture or export articles.

The requirement in House Report 114-668 concerns the provision known as "Unused Merchandise Drawback" codified at 19 U.S.C. § 1313(j), particularly subsection 1313(j)(2), under which a claimant may receive a refund of duties, taxes, or fees paid on imported merchandise, provided that a corresponding amount of commercially interchangeable substitute merchandise is exported or destroyed. The questions identified in the Committee's request are raised in a protest of first impression, which is currently under consideration by CBP.

III. Protest Pending Before CBP on Drawback of Title 26 Excise Taxes

In May 2016, a U.S.-based distiller submitted a protest with CBP's San Francisco Drawback Office covering four drawback claims, which were denied and liquidated without payment of drawback in December 2015. The claims were for the refund of excise taxes on distilled spirits pursuant to 19 U.S.C. § 1313(j)(2), upon the exportation of commercially interchangeable merchandise. The denials were based on two principal positions. First, TTB assessed and determined actual excise taxes owed by the drawback claimant and collected by the agency without CBP involvement. Consequently, CBP was unable to validate whether excise taxes had been paid on the imported distilled spirits for purposes of processing the drawback claim. Second, the San Francisco Drawback Office relied on prior CBP determinations that drawback on distilled spirits is exclusively available under 26 U.S.C. § 5062.

Thereafter, in accordance with 19 Code of Federal Regulations § 174.23, the protest was referred to CBP for further review of the arguments raised by the drawback claimant. Specifically, the drawback claimant raises the following contentions: 1) that section 1313(j)(2), as amended, applies to any taxes, including excise taxes on distilled spirits; 2) that 26 U.S.C. § 5062 is not the exclusive avenue for claiming drawback of excise taxes on distilled spirits; and 3) that taxes paid directly to another agency are not precluded from drawback under section 1313(j)(2).

The drawback claimant and counsel met on September 15 and October 13, 2016, with senior CBP officials and officials from the Office of Trade, Regulations, and Rulings. Subsequently, the drawback claimant provided a supplemental submission, which provides additional arguments for CBP to consider when issuing its decision on the pending protest. Regulations and Rulings anticipates issuing its decision by the end of 2017, following consultations with CBP offices and the Department of the Treasury.

IV. Conclusion

In view of the technical complexities of the drawback laws, and their susceptibility to differing interpretations, it is to be expected that issues might arise when administering the drawback program. As with all its programs, CBP strives for uniformity of administration within the governing legal frameworks. There are several outstanding issues of first impression, which CBP anticipates resolving in the context of the pending protest under review.

V. Appendix: List of Acronyms

Acronym	Definition
CBP	U.S. Customs and Border Protection
TTB	Tax and Trade Bureau
U.S.C.	United States Code