

**THE JURISDICTION AND RESPONSIBILITIES
OF THE ALCOHOL AND TOBACCO TAX
AND TRADE BUREAU**

Scheduled for a Public Hearing
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CONTENTS

	<u>Page</u>
INTRODUCTION	1
I. JURISDICTION AND RESPONSIBILITIES OF THE TAX AND TRADE BUREAU ..	2
A. Bifurcation of the Bureau of Alcohol, Tobacco and Firearms and Establishment of the Alcohol and Tobacco Tax and Trade Bureau	2
B. Statutory Jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau.....	3
C. Responsibilities of the Alcohol and Tobacco Tax and Trade Bureau	4
II. EXCISE TAX COLLECTIONS AND BUDGET	6
III. ALCOHOL LAWS ADMINISTERED BY TTB	8
A. Excise Taxes on Alcohol under Chapter 51 of the Code	8
B. Federal Alcohol Administration Act.....	11
C. Alcoholic Beverage Labeling Act of 1988	13
D. Wilson Act and Webb-Kenyon Act	14
E. Selected Regulatory and Enforcement Issues	15
1. Proposed regulations regarding viticultural (location) labeling of wine	15
2. Final regulations relating to certification of winemaking practices.....	15
3. Proposed regulations on statement of alcohol content and serving facts panel	16
4. Final rulemaking on flavored malt beverages.....	16
5. European Commission claim that U.S. small domestic producer wine credit is discriminatory.....	17
6. Cooperation with the Food and Drug Administration (“FDA”)	17
7. Cooperation with the United States Department of Agriculture (“USDA”).....	17
8. Federal Trade Commission (“FTC”) cross-jurisdiction.....	18
9. Other State governmental organizations with which TTB works closely	18
IV. TOBACCO LAWS ADMINISTERED BY TTB	20
A. Excise Taxes on Tobacco Products and Cigarette Papers and Tubes Under Chapter 52 of the Code	20
B. Selected Legislative, Regulatory, and Enforcement Issues	23
1. Smuggling and diversion of tobacco products.....	23
2. Rate of excise tax on large cigars	23
3. Treatment of small cigars for purposes of tax and the Master Settlement Agreement (“MSA”).....	23
4. Rate and definitional changes under CHIP.....	24
5. Legislative enforcement proposals	24
6. Cooperation with State governmental organizations	25

V. FIREARMS AND AMMUNITION LAWS ADMINISTERED BY TTB.....	26
A. Excise Taxes on Firearms and Ammunition Under Sections 4181 and 4182 of the Code.....	26
B. Selected Regulatory and Enforcement Issues.....	28
VI. APPENDIX.....	29
A. Excise Tax Rates on Alcohol, Tobacco, and Firearms.....	29
B. Organizational Chart for the Alcohol and Tobacco Tax and Trade Bureau.....	33
C. Current Regulatory Actions.....	34
D. Summary of Certain Related Pending Legislation.....	37

INTRODUCTION

The Subcommittee on Oversight of the House Ways and Means Committee has scheduled a public hearing for May 20, 2008, on the Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides general background on the jurisdiction, organization, and activities of the Alcohol and Tobacco Tax and Trade Bureau.²

¹ This document may be cited as follows: Joint Committee on Taxation, *The Jurisdiction and Responsibilities of the Alcohol and Tobacco Tax and Trade Bureau* (JCX-43-08), May 19, 2008. Unless the context otherwise requires, references to sections or to the Internal Revenue Code refer to the Internal Revenue Code of 1986, as amended.

² As established by the Homeland Security Act of 2002, Pub. L. No. 107-296, sec. 1111 (Nov. 25, 2002), the organization is statutorily named the "Tax and Trade Bureau." However, on January 21, 2003, the Department of Treasury issued an order designating it as the "Alcohol and Tobacco Tax and Trade Bureau." Treasury Order 120-01 (Revised), par. 2, 68 F.R. 3583 (Jan. 24, 2003). This pamphlet refers to the organization as the Alcohol and Tobacco Tax and Trade Bureau, or simply "TTB."

I. JURISDICTION AND RESPONSIBILITIES OF THE TAX AND TRADE BUREAU

A. Bifurcation of the Bureau of Alcohol, Tobacco and Firearms and Establishment of the Alcohol and Tobacco Tax and Trade Bureau

The Alcohol and Tobacco Tax and Trade Bureau (“TTB”) was established by the Homeland Security Act of 2002.³ That Act split the Bureau of Alcohol, Tobacco and Firearms, which at the time was in the Department of the Treasury, into two agencies, and the Bureau of Alcohol, Tobacco and Firearms was terminated. The Alcohol and Tobacco Tax and Trade Bureau, which remained in the Treasury Department, is, in general, responsible for the administration and enforcement of the tax laws relating to alcohol, tobacco, and firearms and certain non-tax laws relating to alcohol. The Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), which was established within the Department of Justice, is responsible for the enforcement of criminal laws and regulatory rules relating to the manufacture, use, and distribution of firearms and explosives, and, under certain conditions, alcohol and tobacco. ATF’s responsibilities include enforcement of Federal laws relating to arson, trafficking in contraband cigarettes (i.e., cigarettes for which relevant State taxes have not been paid),⁴ and the National Firearms Act, codified in Chapter 53 of the Internal Revenue Code (the “Code”). ATF is also responsible for any functions formerly performed by its predecessor that were not transferred to TTB, as well as investigations of violent crime or domestic terrorism delegated to ATF by the Attorney General. The authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms were divided along the lines of the aforesaid responsibilities.⁵

³ Pub. L. No. 107-296, sec. 1111 (Nov. 25, 2002).

⁴ The law regarding contraband cigarettes is codified at 18 U.S.C. chapter 114.

⁵ The Homeland Security Act of 2002 became effective on January 24, 2003. Pub. L. No. 107-296, sec. 4.

B. Statutory Jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau

TTB is responsible for administering the following laws:

- Chapter 51 of the Code, relating to distilled spirits, wine, and beer;
- Chapter 52 of the Code, relating to tobacco products and cigarette papers and tubes;
- Sections 4181 and 4182 of the Code, relating to excise taxes on firearms and ammunition, and portions of chapter 32 relating to such taxes;
- Subtitle F of the Code, relating to general rules of tax procedure, with respect to the three substantive items above, including related criminal provisions;
- The Federal Alcohol Administration Act, 27 U.S.C. chapter 8, subchapter I, which covers basic permits, unfair trade practices, and labeling and advertising of alcohol beverages;
- The Alcoholic Beverage Labeling Act of 1988, 27 U.S.C. chapter 8, subchapter II, which requires a specified “Government Warning” statement on alcohol beverage labels;
- The Wilson Act, 27 U.S.C. section 121, relating to State authority over liquor in original packages; and
- The Webb-Kenyon Act, 27 U.S.C. sections 122-122b, which prohibits the shipment of liquor into a State in violation of State law.

C. Responsibilities of the Alcohol and Tobacco Tax and Trade Bureau

Administration activities in general

TTB administers the Federal excise taxes imposed on distilled spirits, wine, and beer, the Federal excise taxes imposed on tobacco products and cigarette papers and tubes, and the Federal excise taxes imposed on firearms and ammunition. These taxes (except for the taxes on firearms and ammunition) are imposed upon the domestic producer or manufacturer, or upon the importer, of these items and are collected on the basis of a return at the time of removal from the factory or from internal revenue bond, or in the case of importers, upon release from customs custody or bond. Accordingly, in the case of imports, U.S. Customs and Border Patrol (“CBP”) is delegated the responsibility for collecting these taxes at the border. The Federal taxes on firearms and ammunition are imposed on the manufacturer, producer, or importer at the time of sale. As in the case of any excise tax, the Code provides definitions and classifications of these products, exemptions, and applicable tax rates, as well as rules relating to product valuation, time of tax determination, collection, returns, refunds, and tax deposits. TTB has promulgated regulations that more specifically set forth the applicable substantive and procedural rules.

In addition to its purely tax-collection activities, TTB has permitting, registration, and bonding authority over distilleries, wineries, breweries, industrial alcohol producers and users, tobacco product manufacturers, importers and exporters, as well as certain regulatory authority over the operations of persons engaged in these activities. TTB also regulates the production, packaging, bottling, labeling, and storage of alcohol and tobacco products, as applicable.

TTB also imposes and collects occupational taxes on manufacturers of tobacco products or cigarette papers or tubes, and proprietors of tobacco export warehouses.⁶

Tax enforcement

In the areas of alcohol, tobacco, and firearms excise taxes, TTB has civil law enforcement authority and resources. TTB also has the authority to enforce the criminal laws relating to these taxes, and may refer cases to United States Attorneys for prosecution, but does not have any special (i.e., armed) agents on staff. If TTB needs assistance requiring such personnel, such as the execution of a search warrant or forfeiture, it may request such assistance from ATF, the Internal Revenue Service (“IRS”), or in international matters, from U.S. Immigration and Customs Enforcement, or other agencies, as appropriate.⁷

⁶ Occupational taxes on producers and marketers of alcoholic beverages were suspended for a three-year period that began on July 1, 2005, under section 5148, as added by the American Jobs Creation Act of 2004, Pub. L. No. 108-357. Effective July 1, 2008, these taxes are repealed by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, sec. 11125(a)(1).

⁷ TTB personnel generally would accompany such special agents to the extent TTB’s specialized knowledge is needed to identify the property covered by the warrant or seizure.

TTB has executed a Memorandum of Understanding with ATF that generally permits information sharing, including return and return information, between these bureaus and satisfies the disclosure requirements and restrictions of the Code.⁸

TTB also shares certain importer licensure and information concerning alcohol label approvals with CBP and receives certain import and importer information from CBP.⁹

Information collected by TTB solely under statutory authority other than the Code (for example, information under the Federal Alcohol Administration Act) is not precluded from disclosure under section 6103 of the Code.¹⁰

Laboratory analysis

TTB has a Scientific Services Division that operates several laboratories that analyze beverage and non-beverage alcohol and related products and tobacco products for the purposes of tax compliance and identifying or confirming appropriate tax classifications; supporting trade analysis and enforcement programs; addressing consumer complaints; identifying harmful contaminants, adulterants, and limited and prohibited ingredients; supporting its investigations and audits; and providing technical support to State tax authorities and other Federal agencies.¹¹

Support for the Office of the U.S. Trade Representative (“USTR”)

TTB serves as technical advisor to the USTR on U.S. alcohol beverage- and tobacco-related laws, regulations, and policy. TTB also provides assistance to the USTR with respect to alcohol beverage and tobacco matters arising within the World Trade Organization (“WTO”) Council on Trade-Related Aspects of Intellectual Property, its Technical Barriers to Trade Committee, and other WTO groups. TTB’s activities in this area are to assist the USTR in the worldwide expansion of market access for U.S. goods and services, participate in trade-related intellectual property protection issues, and assist in the negotiation of bilateral and multilateral free trade agreement issues related to distilled spirits, wine, and beer.

⁸ See generally sec. 6103. Sec. 6103(o)(1) permits disclosure of alcohol and tobacco tax returns and return information to other Federal agencies in furtherance of official duties.

⁹ TTB (along with several other Federal agencies) is also assisting CBP in the development of an integrated International Trade Data System, which will track commercial goods being shipped into U.S. ports.

¹⁰ Sec. 6103(b).

¹¹ Although TTB has a laboratory located in ATF’s building, it is physically and functionally separate from ATF’s laboratories.

II. EXCISE TAX COLLECTIONS AND BUDGET

In fiscal year 2007, TTB collected approximately \$14.7 billion in excise taxes, including from imports. This may be compared to:

- Fiscal-year 2007 Internal Revenue Service collections of corporate, individual, employment, state and gift, and excise taxes of approximately \$2.396 **trillion**,¹² and
- Fiscal-year 2007 U.S. Customs and Border Patrol collections of duties and taxes of over \$33 billion.¹³

Table 1 shows the Federal excise taxes collected by TTB from fiscal years 2003 through 2007 by general type of revenue. A more detailed breakdown for 2007 appears in the Appendix.

**Table 1.–Federal Excise Tax Collection By Revenue
Fiscal Year 2003 – Fiscal Year 2007**

Revenue Type	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Alcohol	\$6,910,631,000	\$6,995,366,000	\$7,074,076,000	\$7,182,940,000	\$7,232,138,000
Tobacco	\$7,382,435,000	\$7,434,211,000	\$7,409,758,000	\$7,350,842,000	\$7,194,113,000
Firearms Ammunition Mfg	\$193,414,000	\$216,006,000	\$225,818,000	\$249,578,000	\$287,835,000
Special Occupational Taxes*	\$103,781,000	\$100,562,000	\$10,190,000	\$2,895,000	\$2,808,000
TOTALS	\$14,590,261,000	\$14,746,145,000	\$14,719,842,000	\$14,786,255,000	\$14,716,894,000
*Special Occupational Taxes (SOT) were suspended on most alcohol taxpayers, effective July 1, 2005, and repealed for all alcohol taxpayers effective July 1, 2008.					

Source: Alcohol and Tobacco Tax and Trade Bureau FY 2009 Congressional Budget Briefing.

¹² Source: *Internal Revenue Service Data Book 2007*, Publication 55B, Washington, D.C., issued March 2008, “Table 1. Internal Revenue Collections and Refunds, by Type of Tax, Fiscal Years 2006 and 2007,” available at <http://www.irs.gov/pub/irs-soi/07db01co.xls>.

¹³ Source: U.S. Customs and Border Protection Performance and Accountability Report Fiscal Year 2007, at 3, available at http://www.cbp.gov/linkhandler/cgov/newsroom/publications/admin/fiscal_2007_pub.ctt/fiscal_2007.pdf.

Table 2 contains aggregate budget information for TTB for fiscal years 2003 through 2009.

**Table 2.—Alcohol and Tobacco Tax and Trade Bureau Budget
(in thousands)**

Fiscal Year 2003 (full year)	\$79,480
Fiscal Year 2004	\$79,528
Fiscal Year 2005	\$82,336
Fiscal Year 2006	\$90,215
Fiscal Year 2007	\$90,618
Fiscal Year 2008	\$93,515
Fiscal Year 2009 (proposed)	\$96,900

Source: Alcohol and Tobacco Tax and Trade Bureau.

III. ALCOHOL LAWS ADMINISTERED BY TTB

A. Excise Taxes on Alcohol under Chapter 51 of the Code

Return filing and payment

An excise tax is imposed on all distilled spirits, wine, and beer produced in, or imported into, the United States.¹⁴ The tax liability legally comes into existence the moment the alcohol is produced or imported but payment of the tax is not required until a subsequent withdrawal or removal from the distillery, winery, brewery, or, in the case of an imported product, from customs custody or bond.¹⁵ The excise tax is paid on the basis of a return¹⁶ and is paid at the time of removal unless the taxpayer has a withdrawal bond in place (most taxpayers have withdrawal bonds). In that case, the taxes are paid with semi-monthly returns, the periods for which run from the 1st to the 15th of the month and from the 16th to the last day of the month, with the returns and payments due not later than 14 days after the close of the respective return period.¹⁷ For example, payments of taxes with respect to removals occurring from the 1st to the 15th of the month are due with the applicable return on the 29th. Taxpayers who expect to be liable for not more than \$50,000 for the calendar year may pay quarterly.¹⁸ Taxpayers who were liable for a gross amount of taxes of \$5,000,000 or more for the preceding calendar year must make deposits of tax for the current calendar year by electronic funds transfer.¹⁹

A listing of excise tax rates applicable to distilled spirits, wine, and beer is included in the Appendix.

Transfer rules and removals without tax

Certain removals or transfers are exempt from tax. For example, distilled spirits, wine, and beer may be removed either free of tax or without immediate payment of tax for certain uses,²⁰ such as for export or an industrial use. Bulk distilled spirits, as well as wine and beer, may be transferred without payment of the tax between bonded premises under certain

¹⁴ Secs. 5001, 5041, and 5051.

¹⁵ Secs. 5006, 5043, and 5054. In general, proprietors of distilled spirit plants, proprietors of bonded wine cellars, brewers, and importers are liable for the tax. Secs. 5005, 5043, and 5054. CBP collects the excise tax on imported products.

¹⁶ Sec. 5061.

¹⁷ Under a special rule, September has three return periods. Sec. 5061.

¹⁸ Sec. 5061. Under regulations, small wineries (with less than \$1,000 in annual excise taxes) may file and pay on an annual basis. 27 C.F.R. sec. 24.273.

¹⁹ Sec. 5061.

²⁰ Such uses are specified in sections 5053, 5214, 5362, and 5414.

conditions specified in the regulations;²¹ such bulk products, if imported, may be transferred without payment of the tax to domestic bonded premises under certain conditions.²² The tax liability accompanies such a product that is transferred in bond.

Registration and bonding

Before commencing operations, a distiller must register, a winery must qualify, and a brewery must file a notice with TTB and receive approval to operate.²³ A surety bond covering the operations must be filed and approved in a dollar amount set by the statute and regulations.²⁴

Operational rules

In addition to the tax rules, chapter 51 also contains numerous provisions that govern the operations of distilleries, wineries, and breweries as well as certain related activities. For example, chapter 51 provides authority to regulate the labeling of containers of distilled spirits, wine, and beer.²⁵ Chapter 51 also contains several provisions that govern the cellar treatment or practices used to produce domestic or imported wine, including provisions governing the fortification of wine with distilled spirits.²⁶ Other rules address the redistillation or denaturing of distilled spirits. For example, imported distilled spirits may only be redistilled or denatured if imported at 185 proof or higher,²⁷ and distilled spirits on which tax has been determined or paid may only be returned to a distillery for purposes designated by law.²⁸ Tax-paid distilled spirits may also be used in the manufacture of medicines, food products, flavors, flavoring extracts, and perfumes which are unfit for beverages purposes. Manufacturers of such products may file a claim for drawback (return of taxes paid), under certain conditions, for virtually all of the tax previously paid on these distilled spirits.²⁹ Chapter 51 also provides statutory authority for the

²¹ See, e.g., sec. 5212. Domestic bottled distilled spirits cannot be transferred in bond between distilleries. See 27 C.F.R. sec. 19.505.

²² Secs. 5005, 5232, 5364, and 5418. Imported bottled distilled spirits, wine, and beer cannot be transferred in bond from customs custody to a distillery, winery, or brewery. See sec. 5061(d)(2)(B).

²³ Secs. 5171, 5351-53, and 5401; 27 C.F.R. sec. 25.61(a) (TTB approval of breweries).

²⁴ Secs. 5173, 5354, 5401, and 5551; 27 C.F.R. parts 19 (Distilled Spirits), 24 (Wine), and 25 (Beer).

²⁵ Secs. 5201, 5301, 5388, 5412, and 5662.

²⁶ Secs. 5373-92.

²⁷ Sec. 5232.

²⁸ Sec. 5215.

²⁹ Sec. 5131. Such claims are generally filed and paid on a quarterly basis, except that a person may elect to file and be paid on a monthly basis upon posting a bond. The amount of the drawback

regulation of alcohol fuel plants,³⁰ vinegar production using stills,³¹ and volatile fruit concentrate plants.³² Other provisions of chapter 51 address the tax consequences of certain occurrences, such as operational losses, casualty losses, and voluntary destruction of product.³³

Miscellaneous rules, including industry reporting and recordkeeping requirements

Taxpayers are required to maintain records and file reports of operations as required by the regulations³⁴ and are subject to inspection of their premises and records.³⁵ Special occupational taxes had been imposed on alcohol industry members, including wholesale and retail dealers, but were effectively repealed for taxes due on or after July 1, 2005. However, these persons remain subject to registration and recordkeeping requirements that supplement the operational reporting rules. Distillers, winery proprietors, and brewers file monthly, quarterly, or annual reports of operations (the frequency depends upon the type of operation and its size), which do not include reports of inventory, although inventory records must be kept. Wholesalers and some retailers must keep records, including inventory, but need only register and need not file reports. Civil and criminal penalties, in addition to forfeiture provisions, may apply in the event of non-compliance with the laws and regulations.³⁶

allowed per proof gallon is calculated at a rate equal to \$1.00 less than the per-gallon tax paid. Secs. 5131-34.

³⁰ Sec. 5181.

³¹ Secs. 5501-05.

³² Secs. 5511-12.

³³ Secs. 5008, 5053(h), 5064, and 5370.

³⁴ Secs. 5207, 5275, 5367, 5414, and 5555.

³⁵ Secs. 5366 and 5553.

³⁶ Secs. 5601-91.

B. Federal Alcohol Administration Act

In general

The Federal Alcohol Administration Act (“FAA Act”)³⁷ consists of two subchapters. Subchapter I, entitled “Federal Alcohol Administration,” was originally enacted in August 1935 and covers basic permits, unfair trade practices, and labeling and advertising of alcohol beverages. Subchapter II, entitled “Alcoholic Beverage Labeling,” was enacted in 1988, and requires a specified “Government Warning” statement on alcohol beverage container labels.

Federal Alcohol Administration

Immediately following the repeal of Prohibition in 1933, the alcohol beverage industry (like many other industries) was subject to Federal regulation primarily under the codes of fair competition authorized by the National Industrial Recovery Act. That Act was declared unconstitutional by the Supreme Court in May 1935. In order to provide for the orderly regulation of the alcohol beverage industry, Congress enacted the FAA Act in August 1935.

Basic permits

The FAA Act requires producers of distilled spirits or wine, bottlers of distilled spirits, and importers or wholesalers of distilled spirits, wine, or malt beverages to obtain basic permits.³⁸ A basic permit application may be denied if the applicant has certain criminal convictions or is determined to be not likely to operate in conformity with Federal laws in light of its past business experience, financial standing, or trade connections.³⁹ The basic permit is conditioned on compliance with several provisions of the FAA Act, the twenty-first amendment, and other Federal laws relating to alcohol, including the internal revenue laws.⁴⁰ The basic permit is subject to suspension or revocation for willful noncompliance with these conditions after affording the permit holder a formal hearing before a Department of the Treasury administrative law judge.⁴¹ The Department of the Treasury’s decisions on suspension or revocation are subject to review by the Federal Courts of Appeal.⁴² The basic permit terminates by operation of law when there is a change in the actual or legal control of the permitted business,⁴³ subject to extension upon timely filing of an application for a new permit.

³⁷ 27 U.S.C. chapter 8.

³⁸ 27 U.S.C. sec. 203. Brewers are not required to hold a basic permit.

³⁹ 27 U.S.C. sec. 204(a).

⁴⁰ 27 U.S.C. sec. 204(d).

⁴¹ 27 U.S.C. sec. 204(e).

⁴² 27 U.S.C. sec. 204(h).

⁴³ 27 U.S.C. sec. 204(g).

Unfair trade practices

Unfair trade practices regulated under the FAA Act concern the use of exclusive retail outlets, tied-house arrangements, commercial bribery, and consignment sales.⁴⁴ The first three provisions are designed to prevent producers, wholesalers, and importers from entering into agreements, transactions, or arrangements that threaten retailer independence. The provision on consignment sales is designed to prevent industry members from entering into consignment sales, conditional sales, sales with the privilege of return, or other than bona fide sales with retailers or wholesalers.

Labeling and advertising

Labeling and advertising of alcohol beverages are regulated under a consumer protection mandate.⁴⁵ Regulations issued by TTB require labels and advertisements to provide adequate information to consumers regarding the identity and quality of these products and to prohibit misleading statements or representations, including misleading health claims.⁴⁶ The labeling provisions are enforced principally through the issuance of certificates of label approval which must be obtained by bottlers and importers.⁴⁷ American viticultural areas (discussed, *infra*) are established under the labeling authority.⁴⁸

Miscellaneous rules

The FAA Act includes provisions limiting bulk sales of distilled spirits (and warehouse receipts)⁴⁹ and regulating interlocking directorates between distilled spirits companies.⁵⁰ The FAA Act also includes investigative and enforcement provisions, including rules relating to criminal prosecutions, consent decrees, injunctions, and offers in compromise.⁵¹

⁴⁴ 27 U.S.C. sec. 205(a)-(d).

⁴⁵ 27 U.S.C. sec. 205(e)-(f).

⁴⁶ 27 C.F.R. part 4 (Wine), part 5 (Distilled Spirits), and part 7 (Malt Beverages).

⁴⁷ 27 C.F.R. part 13.

⁴⁸ 27 C.F.R. part 9.

⁴⁹ 27 U.S.C. sec. 206.

⁵⁰ 27 U.S.C. sec. 208.

⁵¹ 27 U.S.C. secs. 202 and 207.

C. Alcoholic Beverage Labeling Act of 1988

Subchapter II of the FAA Act requires a “Government Warning” statement on all containers of alcohol beverages that are manufactured, imported, or bottled for sale or distribution in the United States.⁵² The statement must be located in a conspicuous and prominent location on the container.⁵³ The subchapter preempts any State law that requires a statement relating to alcoholic beverages and health,⁵⁴ and provides for civil penalties,⁵⁵ injunctions, and offers in compromise.⁵⁶

⁵² 27 U.S.C. sec. 215. The required warning is as follows:

“GOVERNMENT WARNING:

(1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects.

(2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.”

⁵³ 27 U.S.C. sec. 215; 27 C.F.R. part 16.

⁵⁴ 27 U.S.C. sec. 216.

⁵⁵ 27 U.S.C. sec. 218.

⁵⁶ 27 U.S.C. sec. 219.

D. Wilson Act and Webb-Kenyon Act

The Wilson Act⁵⁷ provides that any liquors transported into any State or territory or remaining therein for use, consumption, sale, or storage shall be subject to the laws of such State or territory enacted in the exercise of its police powers, to the same extent and the same manner as though the liquors had been produced in such State or territory, regardless of whether the liquors were introduced into such State or territory in original packages or otherwise.

The Webb-Kenyon Act was re-enacted as part of the Liquor Enforcement Act of 1935,⁵⁸ in order to assist the States in enforcing the twenty-first amendment. The Webb-Kenyon Act prohibits the shipment or transportation of liquor of any kind into a State in violation of the laws of such State.⁵⁹ Under TTB's interpretation, the Webb-Kenyon Act is a Federal law relating to alcohol and, therefore, compliance with it is a condition of holding the basic permit. The law itself provides no penalties for its violation. However, State attorneys general are authorized to obtain injunctions from a Federal district court against persons shipping liquors into their State in violation of such State's laws.⁶⁰

⁵⁷ 27 U.S.C. sec. 121.

⁵⁸ 49 Stat. 877, c. 740, sec. 202(b), August 27, 1935. The Webb-Kenyon Act was originally enacted in 1913, in 37 Stat. 699, c. 90, sec. 1, March 1, 1913.

⁵⁹ 27 U.S.C. sec. 122.

⁶⁰ 27 U.S.C. sec. 122a.

E. Selected Regulatory and Enforcement Issues

1. Proposed regulations regarding viticultural (location) labeling of wine

A viticultural area is a delimited, grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Federal regulations.⁶¹ Only those American viticultural areas specified in the regulations are permitted to be used as an appellation of origin on a wine label or in wine advertisements. (Other appellations of origin include names of countries, States, or counties.) TTB establishes viticultural areas based on petitions that contain: evidence that the name of the viticultural area is locally and/or nationally known as referring to the area specified in the application and that the boundaries of the viticultural area are as specified in the application; evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas; and the specific boundaries of the viticultural area, as marked on a U.S. Geological Survey map. Brand names that include viticultural area names must be used on wines eligible for that viticultural area unless the brand name is grandfathered under 27 C.F.R. section 4.39(i), relating to brand names that appear on certificates of label approval that were issued prior to July 7, 1986.

There are approximately 180 established American viticultural areas. TTB proposed new rules in 2007 that modify the information required to be submitted in a petition and that would allow a brand name which includes a viticultural area name approved in the future to be used on labels and in advertisements if, in general, the name has been used on an approved label for five years, notwithstanding the approval of a new petition for a viticultural area that contains the same appellation of origin.⁶²

2. Final regulations relating to certification of winemaking practices

Section 5382 of the Code specifies proper winemaking practices. Prior to 2005, section 5382(a) provided that “[p]roper cellar treatment of natural wine constitutes those practices and procedures in the United States and elsewhere, whether historical or newly developed, of using various methods and materials to correct or stabilize the wine, or the fruit juice from which it is made, so as to produce a finished product acceptable in good commercial practice.” The Miscellaneous Trade and Technical Corrections Act of 2004⁶³ modified Code section 5382(a) to authorize only those practices and procedures recognized in the United States and, in the case of imported wines, those practices and procedures acceptable to the United States under an international agreement or treaty. In the case of imported wines, the new provision generally requires certification by the government of the producing country that the wine is (1) produced in accordance with United States practices and procedures, or (2) covered by an international

⁶¹ 27 C.F.R. sec. 9.11.

⁶² Proposed Revision of American Viticultural Area Regulations, 72 F.R. 65261, RIN 1513-AB39, Nov. 20, 2007.

⁶³ Pub. L. No. 108-429, sec. 2002, effective January 1, 2005.

agreement where the agreement requires a certification. On April 28, 2008, TTB issued final regulations regarding the content, validity, and use of such certifications relating to imported wine.⁶⁴

3. Proposed regulations on statement of alcohol content and serving facts panel

TTB has long required certain labeling, such as brand name, class and type, alcohol content (in the case of wines containing more than 14 percent alcohol by volume and distilled spirits), and net contents. In recent years, TTB has published updated standards for the use of carbohydrate and calorie claims. Because of petitions from interested groups to mandate additional information, including ingredient, alcohol, calorie, and carbohydrate content, and requests by some to use labels with at least some of that additional information on a voluntary basis, TTB proposed in 2007 to amend these regulations in certain respects.

TTB's proposed regulations require a statement of alcohol content, expressed as a percentage of alcohol by volume, on all alcohol beverage products. This statement may appear on any label affixed to the container. The proposed regulations also require a "serving facts" panel on alcohol beverage labels, which would include a statement of calories, carbohydrates, fat, and protein. Industry members may also choose to disclose on the serving facts panel the number of U.S. fluid ounces of alcohol per serving as part of a statement that includes alcohol content expressed as a percentage of alcohol by volume. The proposed regulations also specify new "reference serving" sizes for wine, distilled spirits, and malt beverages based on the amount of beverage customarily consumed as a single serving.⁶⁵

The proposed regulations have attracted many comments from industry members as well as consumer groups.

4. Final rulemaking on flavored malt beverages

In 2005, TTB issued final rules addressing certain malt beverages derived from beer, in which flavors containing distilled spirits are added and some elements of the beer may be removed. Because beer is taxed at a lower tax rate by volume than distilled spirits, there is a tax incentive for a manufacturer of such a product to characterize it as beer. Under the final regulations, for both tax and labeling purposes, if 51 percent or more of the alcohol in the product is derived from fermentation, then the product is treated as beer if its alcohol content is six percent or less. In the case of a beer with an alcohol content of more than six percent by

⁶⁴ Final Rule, Certification Requirements for Imported Natural Wine, T.D. TTB-70, 73 F.R. 22816, April 28, 2008.

⁶⁵ Notice of Proposed Rulemaking, Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages, 72 F.R. 41860, RIN 1513-AB07, July 31, 2007.

volume, no more than 1.5 percent of the volume of beer may consist of alcohol derived from added flavors. Otherwise, it is treated as distilled spirits.⁶⁶

5. European Commission claim that U.S. small domestic producer wine credit is discriminatory

The United States provides an excise tax credit to small domestic wine producers, defined as domestic wine producers producing not more than 250,000 wine gallons of wine during a calendar year. The amount of the credit is \$0.90 per wine gallon (\$0.056 per wine gallon in the case of hard cider) on the first 100,000 wine gallons (other than champagne and other sparkling wines) removed from the bonded premises.⁶⁷ The credit is reduced by one percent for each 1,000 wine gallons produced in excess of 150,000 wine gallons in a calendar year. Importers are not eligible for this credit.

In its report titled *United States Barriers to Trade and Investment Report*, the European Commission states that a GATT panel found in March 1992 that the small domestic wine producer credit violated U.S. obligations under Art. III.2 of GATT and that the issue was raised at the European Commission/United States wine talks held in 2006 and 2007.⁶⁸

6. Cooperation with the Food and Drug Administration (“FDA”)

TTB routinely examines alcohol beverage labels and tests product samples for compliance with laws and regulations. If this analysis indicates a potential risk to public health or safety, TTB’s policy is to take immediate action. Any food product (including an alcohol beverage) is considered adulterated under the Federal Food, Drug and Cosmetic Act if it contains a poisonous or deleterious substance or an unapproved food additive (or contains approved additives above approved limits). Contaminated alcohol beverages are considered adulterated for purposes of the Food, Drug and Cosmetic Act and are mislabeled under the FAA Act. Thus, they are subject to enforcement action by both FDA and TTB. Under the terms of a Memorandum of Understanding between the two agencies, TTB notifies FDA when an adulterated alcohol beverage is encountered, consults with FDA before implementing a voluntary recall, and keeps FDA apprised of the situation.

7. Cooperation with the United States Department of Agriculture (“USDA”)

On October 21, 2002, USDA finalized rules implementing the National Organic Program. This program establishes national standards for the production and handling of organically produced products, including alcohol beverages. Consequently, USDA and TTB

⁶⁶ Final Rule, Flavored Malt Beverage and Related Regulatory Amendments, T.D. TTB-21, 70 F.R. 194, RIN 1513-AA12, January 3, 2005.

⁶⁷ A wine gallon is a United States gallon of liquid measure equivalent to the volume of 231 cubic inches. Sec. 5041(d).

⁶⁸ *United States Barriers to Trade and Investment Report for 2007*, European Commission, April, 2008.

share in the regulatory control of alcohol products that bear an organic claim on their labeling. A Memorandum of Understanding between USDA and TTB establishes procedures that allow for a timely concurrent review of these labels to ensure that they comply with all federal labeling regulations. In addition, TTB cooperates with USDA by providing information on tobacco product manufacturers and importers to assist USDA in verifying tobacco buyout payments under the Fair and Equitable Tobacco Reform Act of 2004.

8. Federal Trade Commission (“FTC”) cross-jurisdiction

FTC and TTB have cross-jurisdictional authority in the area of alcohol beverage advertising. TTB has worked with FTC on several occasions in response to complaints about alcohol advertisements, most recently regarding the advertisement and placement of so-called “malternatives” in retail shops. Since TTB recently expanded its advertising enforcement program, the opportunities for working together with FTC will increase.

9. Other State governmental organizations with which TTB works closely

State tax authorities

TTB administers a State Agreement program that controls the exchange of tax information between TTB and the various States. Although the disclosure of tax returns and return information by Federal agencies is generally prohibited by section 6103 of the Code, subsection 6103(d) provides that “[r]eturns and return information...shall be open to inspection by, or disclosure to any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws...” The statute requires a State tax agency to send a formal, detailed, written request for tax-related information from the head of the State agency. In order to ease the burden of the formal request process, TTB’s predecessor agency executed agreements with most State agencies responsible for the administration of alcohol and tobacco taxes. When TTB was established, it instituted a program to update the existing agreements and to negotiate new agreements with other State tax agencies. As of the end of March 2008, TTB had executed updated agreements with 12 State agencies, and negotiations are ongoing with 23 additional State tax agencies.

Federation of Tax Administrators (“FTA”)

The FTA represents State agencies that collect taxes. TTB attends FTA meetings that focus on the collection of excise taxes on alcohol and tobacco products. During these meetings, TTB and representatives of the various State agencies share general information and foster relationships to improve efforts on collection of excise taxes.

State liquor regulators

TTB also works with State liquor regulators and their two associations, the National Conference of State Liquor Administrators and the National Association of Beverage Control Administrators. The National Conference of State Liquor Administrators represents the States that require licensing and that act as regulators and tax collectors. The National Association of Beverage Control Administrators represents 19 States known as the “control states” which not

only regulate alcohol beverage distribution within their respective borders, but also sell these products at the wholesale and, in many cases, retail level.

IV. TOBACCO LAWS ADMINISTERED BY TTB

A. Excise Taxes on Tobacco Products and Cigarette Papers and Tubes Under Chapter 52 of the Code

Return filing and payment

Chapter 52 of the Code imposes excise taxes on tobacco products and cigarette papers and tubes that are manufactured in, or imported into, the United States.⁶⁹ Tobacco products are cigars (both small and large), cigarettes (both small and large), smokeless tobacco (snuff and chewing tobacco), pipe tobacco, and roll-your-own tobacco.⁷⁰ The tax liability legally comes into existence the moment that the tobacco products or cigarette papers and tubes are manufactured or imported, but the requirement to pay the tax is not triggered until the product is removed from the taxpayer's premises or, in the case of an imported product, from customs custody or bond. The tax is determined and paid at the time of removal from the manufacturer's premises unless the taxpayer has a deferral bond in place, in which case the taxes are paid on the basis of semi-monthly return periods.⁷¹ The tax is paid on the basis of a return. Any taxpayer who is liable for a gross amount of taxes equal to or exceeding \$5,000,000 during a calendar year must make deposits of tax for the following year by electronic funds transfer.⁷² A special occupational tax is imposed annually on manufacturers and export warehouse proprietors (but not importers).⁷³

A listing of excise tax rates applicable to tobacco products and cigarette papers and tubes is included in the Appendix.

Transfer rules and removals without tax

Tobacco products and cigarette papers and tubes may be transferred between bonded premises of manufacturers of tobacco products and export warehouse proprietors without payment of the tax; the transferee is liable for the tax on the transferred tobacco products and papers and tubes.⁷⁴ Tobacco products and cigarette papers and tubes may also be removed without payment of tax for exportation; the exporter is relieved from the tax once proof of

⁶⁹ Sec. 5701.

⁷⁰ Sec. 5702.

⁷¹ Sec. 5703.

⁷² Sec. 5703(b).

⁷³ Secs. 5731-34.

⁷⁴ Secs. 5703(a) and 5704.

exportation is obtained.⁷⁵ Tax-paid product exported from the United States is eligible for drawback of the tax under certain conditions.⁷⁶

Imported tobacco products may be released from customs custody in bulk for transfer to the bonded premises of a manufacturer or export warehouse proprietor without payment of the tax. The transferee is then responsible for the taxes.⁷⁷ Previously exported domestic tobacco products may be relanded in the United States only if they are transferred to the original manufacturer or to an export warehouse proprietor authorized by the original manufacturer.⁷⁸ In order to prevent the diversion of tobacco products destined for export without payment of tax, however, packages bearing export marks are not allowed in the domestic marketplace.⁷⁹

The tax is refunded or credited (without interest) for products withdrawn from the market and returned to bonded premises.⁸⁰ Tax-paid products that are lost by casualty or disaster are eligible for tax refunds or credits.⁸¹

Permits and bonds

Before commencing operations, a manufacturer or importer of tobacco products or cigarette papers or tubes and an export warehouse proprietor must file an application for a permit.⁸² Permits are subject to suspension or revocation for noncompliance.⁸³ A surety bond is required to be furnished by manufacturers and export warehouse proprietors.⁸⁴ Importers are not required to post a surety bond because the requirement to pay the tax is triggered at the time the tobacco products or cigarette papers or tubes are released from customs custody. Prior to that time, the customs bond is applicable.

⁷⁵ Sec. 5704(b).

⁷⁶ Sec. 5706.

⁷⁷ Sec. 5704(c).

⁷⁸ Secs. 5754 and 5761(c).

⁷⁹ Secs. 5754(a) and 5761(c).

⁸⁰ Sec. 5705.

⁸¹ Secs. 5705 and 5708.

⁸² Secs. 5712 and 5713.

⁸³ Sec. 5713(b).

⁸⁴ Sec. 5711.

Operational rules

Upon removal, tobacco products and cigarette papers and tubes must be in packages and bear such marks, labels, and notices as required by the regulations.⁸⁵ The Code prohibits lottery features and indecent or immoral material from being contained in or attached to a package of tobacco products or cigarette papers or tubes.⁸⁶

Tobacco products may be furnished by a manufacturer to its employees or put to experimental use without payment of the tax under conditions set forth in regulations.⁸⁷

Miscellaneous rules, including industry reporting and recordkeeping requirements

Manufacturers, importers, and export warehouse proprietors are required to keep records and make accurate inventories as required by regulations.⁸⁸ Tobacco products manufacturers and export warehouse proprietors must also file operating reports, including inventories. Civil and criminal penalties, including forfeiture, apply in the case of noncompliance with various provisions of Chapter 52.⁸⁹ The criminal and forfeiture provisions of subtitle F of the Code that apply to taxes in general also apply to tobacco taxes.

⁸⁵ Sec. 5723(a) and (b).

⁸⁶ Sec. 5723(c) and (d).

⁸⁷ Sec. 5704(a).

⁸⁸ Secs. 5721-22 and 5741.

⁸⁹ Secs. 5751-52 and 5761-63.

B. Selected Legislative, Regulatory, and Enforcement Issues

1. Smuggling and diversion of tobacco products

Smuggling of tobacco products generally refers to the act of entering items into the United States without payment of duty and tax.⁹⁰ Diversion of tobacco products generally refers to the unauthorized distribution of items without payment of tax. For example, (1) cigarettes may be removed without payment of tax for exportation but once removed may be diverted for domestic sale, or (2) may be produced by an unauthorized manufacturer. These types of schemes also affect State excise tax receipts. TTB coordinates its efforts with State tax authorities, CBP, and U.S. Immigration and Customs Enforcement, as appropriate.

2. Rate of excise tax on large cigars

Under present law, cigars weighing over three pounds per thousand are taxed at a rate equal to 20.719 percent of the price for which sold but not more than \$48.75 per thousand. Large cigars are the only tobacco product whose tax calculation is determined based upon price sold, and many of these cigars are subject to the \$48.75 cap. Imported large cigars tend to be more expensive than domestically manufactured large cigars. As a result of this market fragmentation, when Congress attempted in 2007 to equitably reset the range of excise tax rates on tobacco products and cigarette papers and tubes to fund the reauthorization of the Children's Health Insurance Program, it was particularly challenging to set a new excise tax rate and an appropriate tax cap with respect to large cigars.⁹¹

3. Treatment of small cigars for purposes of tax and the Master Settlement Agreement ("MSA")

Under present law, small cigars are taxed at a much lower rate than small (regular) cigarettes. Small cigars are taxed at a rate of \$1.828 per thousand, while small cigarettes are taxed at a rate of \$19.50 per thousand. In addition, small cigars are not assessed to fund the MSA. Perhaps as a result of these factors, recently a number of new brands of small cigars have entered the market and the volume of small cigar sales has increased. The Children's Health Insurance Program Reauthorization Act of 2007 ("CHIP") would have equalized the excise tax rates on small cigars and small cigarettes.⁹² In 2006, TTB proposed regulations that would

⁹⁰ For example, section 401 of the Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432 (December 20, 2006), addresses a certain type of smuggling of tobacco products in which U.S. individuals order certain tobacco products from foreign sources via the internet and the items are delivered to them through the U.S. mail or other common carrier. The provision clarifies that the customs personal use exemption from duty and tax (e.g., 200 cigarettes) does not apply with respect to such "delivery sales."

⁹¹ The Children's Health Insurance Program Reauthorization Act of 2007 provided for a tax rate on large cigars equal to 52.988 percent of the selling price, with a cap of \$3.00 per cigar.

⁹² The Children's Health Insurance Program Reauthorization Act of 2007 was passed by both Houses of Congress twice and was vetoed by the President both times. H.R. 3963 (passed November 1, 2007) and H.R. 976 (passed September 27, 2007).

clarify the classification of cigars and cigarettes, with particular reference to the distinction between small cigars and cigarettes. The proposed regulations attempt to provide more objective product classification criteria in order to reduce possible revenue losses through the misclassification of cigarettes as small cigars and to facilitate the determination of payments under the MSA.⁹³

4. Rate and definitional changes under CHIP

CHIP would have increased the rates of excise tax on tobacco products and cigarette papers and tubes by approximately 150 percent, generally in a proportionate manner. In addition, under CHIP, roll-your-own tobacco would include any tobacco, which because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigars as well as cigarettes, or for use as wrappers for making cigars.

5. Legislative enforcement proposals

CHIP also contained several tax enforcement provisions, which are briefly described below.

Processed tobacco

The provision would create a new category of manufacturers and importers who are subject to regulation but not to Federal excise tax. Under this provision, manufacturers and importers of “processed tobacco” would be subject to the present-law permit, inventory, reporting, and recordkeeping requirements. Processed tobacco would be defined as any tobacco other than tobacco products. However, the processing of tobacco does not include the farming or growing of tobacco or the handling of whole tobacco leaf solely for sale, shipment, or delivery to a manufacturer of tobacco products or processed tobacco. The purpose of the provision is to better track the path of processed tobacco to manufacturers of tobacco products in order to prevent the diversion of processed tobacco to unauthorized manufacturers.

Permit suspension or revocation in some circumstances

Under this provision, permits could be denied, suspended, or revoked if the applicant or holder is convicted of, or in some circumstances, in legal proceedings involving the violation of, a Federal or State criminal felony law relating to tobacco products or cigarette papers or tubes.

Impose statute of limitations provided in tax statutes on imported items

Under this provision, notwithstanding any customs law, the general three-year statute of limitations for assessment under the tax law would apply with respect to taxes imposed on

⁹³ Notice of Proposed Rulemaking, Tax Classification of Cigars and Cigarettes, 71 F.R. 62506, RIN 1513-AB34, October 25, 2006.

imported distilled spirits, wines, beer, tobacco products, and cigarette papers and tubes. This provision would apply to alcohol as well as tobacco.

Inventory of unauthorized manufacturers of tobacco products subject to immediate seizure

Under this provision, in the case of any tobacco products or cigarette papers or tubes produced in the United States at any place other than the premises of a manufacturer that had obtained a permit (if required) and approval of a bond, the excise tax would be due and payable immediately upon manufacture. This provision would facilitate the seizure of inventory of unauthorized manufacturers of tobacco products. A similar provision currently applies in the case of distilled spirits, wine, and beer.

6. Cooperation with State governmental organizations

In addition to working closely with many of the State organizations described in the portion of this pamphlet pertaining to alcohol regulatory and enforcement issues, TTB also works with the National Association of Attorneys General (“NAAG”). NAAG is the coordinator of the MSA concerning cigarettes and smokeless tobacco among the various State governments. Because NAAG is interested in collecting MSA payments from domestic manufacturers and importers, TTB has provided domestic production and import information to NAAG in accordance with the disclosure provisions of the Code.

V. FIREARMS AND AMMUNITION LAWS ADMINISTERED BY TTB

A. Excise Taxes on Firearms and Ammunition Under Sections 4181 and 4182 of the Code

Return filing and payment

The Federal firearms and ammunition excise taxes are *ad valorem* excise taxes imposed on firearms, shells, and cartridges that are manufactured or produced in, or imported into, the United States.⁹⁴ The tax liability legally comes into existence upon the first domestic sale of the taxable article or when a manufacturer, producer, or importer removes an article from inventory and puts the article to a taxable business use.⁹⁵ A listing of excise tax rates applicable to firearms and ammunition is included in the Appendix.

Three types of transactions are exempt from the firearms and ammunition excise taxes: (1) sales in which the transfer tax under section 5811 has been paid;⁹⁶ (2) purchases made by a military department of the Department of Defense or the Coast Guard with appropriated funds; and (3) transactions of a manufacturer, importer, or producer that manufactures, produces, and imports fewer than 50 firearms in a calendar year.⁹⁷ In addition, there are five types of transactions which can qualify for tax-free status if the taxpayer meets applicable statutory and regulatory requirements: (1) sales for further manufacture; (2) sales for export; (3) sales to state or local governments for their exclusive use; (4) sales for use as supplies for vessels or aircraft; and (5) sales to non-profit educational organizations for their exclusive use.⁹⁸

Generally, the tax liability is based upon a manufacturer's or importer's arm's-length domestic wholesale price for the taxable article; however, the taxpayer is permitted to exclude certain costs that are not related to the manufacture or importation of the taxable article when computing its taxable sale price.⁹⁹ The purpose of these rules is to ensure a degree of tax parity between these types of sales transactions and those at wholesale.

⁹⁴ Sec. 4181.

⁹⁵ Secs. 4181 and 4218(a).

⁹⁶ Section 5811 is part of the National Firearms Act, which is enforced by ATF.

⁹⁷ Sec. 4182.

⁹⁸ Sec. 4221(a).

⁹⁹ Sec. 4216(a). For example, such excludable costs include the transportation, delivery, and insurance expenses incurred when shipping the taxable article to a purchaser. In a number of sale situations the taxpayer may elect (or is required to calculate) a new taxable sale price pursuant to the constructive sale price rules. Common examples of such sale situations include sales at retail, to retail dealers, sales that are not at arm's length, and sales for less than fair market value.

The detailed rules for collecting the firearms and ammunition excise taxes are prescribed by regulations.¹⁰⁰ A taxpayer is generally required to file tax returns and pay tax on a quarterly basis but may be required to file such returns on a monthly or semi-monthly basis under certain circumstances. Taxpayers are also required to deposit their taxes on a semi-monthly basis when their tax liability exceeds \$2,000 for a given tax quarter.

Taxpayers may file claims for credit or refund of tax overpayments, but in most instances must first comply with certain conditions. These rules require that a taxpayer must pass along to its purchaser the amount of tax refunded unless the taxpayer either is able to demonstrate that it did not include the tax in the sale price of the article or receives a waiver of this requirement from the purchaser.¹⁰¹

Operational and miscellaneous rules

Taxpayers are required by regulations to maintain accurate records relating to their tax liability and eligibility for claims.¹⁰² The procedural, civil penalty, criminal, and forfeiture provisions of subtitle F of the Code that apply to other taxes in general also apply to the firearms and ammunition excise taxes.

¹⁰⁰ 27 C.F.R. part 53, subpart L.

¹⁰¹ Sec. 6416.

¹⁰² 27 C.F.R. part 53, subpart C.

B. Selected Regulatory and Enforcement Issues

Several of the general rules included in chapter 32 of the Code, for example, rules pertaining to exemptions and the determination of price, apply to a broad range of manufacturers excise taxes administered by the IRS, in addition to the firearms and ammunition excise taxes. Accordingly, TTB coordinates with the IRS to ensure that their rules and interpretations in these areas are consistent. In particular, the IRS is responsible for the administration and collection of excise taxes imposed on other recreational equipment, i.e., on sport fishing equipment and bows and arrows. The two agencies work to ensure that similar transactions in different types of taxable recreational equipment are taxed in a similar manner.

VI. APPENDIX

A. Excise Tax Rates on Alcohol, Tobacco, and Firearms

Table 3.—General Excise Tax Rates for Alcohol

Item	Current Tax Rate	Prior Tax Rate	Date Rate Last Changed
Distilled Spirits	\$13.50 per proof gallon ¹	\$12.50	1/1/91
Wine ² --			
Still Wines --			
No more than 14 percent alcohol	\$1.07 per wine gallon ³	\$0.17	1/1/91
More than 14 percent but not more than 21 percent alcohol	\$1.57 per wine gallon	\$0.67	1/1/91
More than 21 percent but not more than 24 percent alcohol	\$3.15 per wine gallon	\$2.25	1/1/91
More than 24 percent alcohol	Taxed at the distilled spirits rate		
Hard apple cider	\$0.226 per wine gallon	\$1.07	10/1/97
Sparkling Wines --			
Champagne and other naturally sparkling wines	\$3.40 per wine gallon	\$0.17 per half pint	1/1/55
Artificially carbonated wines	\$3.30 per wine gallon	\$2.40	1/1/91
Beer	\$18.00 per barrel ⁴	\$9.00	1/1/91

¹ A “proof gallon” is a U.S. liquid gallon consisting of 50 percent alcohol. Credits are allowed for wine content and flavors content of distilled spirits.

² Small domestic wine producers (i.e., those producing not more than 250,000 wine gallons in a calendar year) are allowed a credit of \$0.90 per wine gallon (\$0.056 per wine gallon in the case of hard cider) on the first 100,000 wine gallons (other than champagne and other sparkling wines) removed from the bonded premises. The credit is reduced by one percent for each 1,000 wine gallons produced in excess of 150,000 wine gallons per calendar year.

³ A “wine gallon” means a United States gallon of liquid measure equivalent to the volume of 231 cubic inches.

⁴ A “barrel” is equal to 31 gallons, each gallon equivalent to the volume of 231 cubic inches. A domestic brewer who produces not more than 2 million barrels in a calendar year is subject to a per barrel rate of \$7.00 on the first 60,000 barrels produced in that year.

Table 4.—General Excise Tax Rates for Tobacco Products and Cigarette Papers and Tubes

Item	Current Tax Rate	Prior Tax Rate	Date Rate Last Changed
Cigarettes -- Small Cigarettes (no more than three pounds per thousand) Large Cigarettes (no more than three pounds per thousand)	\$19.50 per thousand (\$0.39 per pack) \$40.95 per thousand	\$17.00 per thousand (\$0.34 per pack) \$35.70 per thousand	1/1/2002
Cigars -- Small Cigars (no more than three pounds per thousand) Large Cigars (no more than three pounds per thousand)	\$1.828 per thousand 20.719% of price sold, not to exceed \$48.75 per thousand	\$1.594 per thousand 18.063% of price sold, not to exceed \$42.50 per thousand	1/1/2002 1/1/2002
Cigarette Papers	\$0.0122 for each 50 papers	\$0.0106 per 50	1/1/2002
Cigarette Tubes	\$0.0244 for each 50 tubes	\$0.0213 per 50	1/1/2002
Snuff	\$0.585 per pound	\$0.51 per pound	1/1/2002
Chewing Tobacco	\$0.195 per pound	\$0.17 per pound	1/1/2002
Pipe Tobacco	\$1.0969 per pound	\$0.9567 per pound	1/1/2002
Roll-Your-Own Tobacco	\$1.0969 per pound	\$0.9567 per pound	1/1/2002

Table 5.–General Excise Tax Rates for Firearms and Ammunition

Item	Current Tax Rate	Prior Tax Rate	Date Rate Last Changed
Pistols and Revolvers	10% of price sold	11% of price sold	1/1/55
Other Firearms	11% of price sold	10%	1941
Shells and Cartridges	11% of price sold	10%	1941
Machine Guns and other Heavy Firearms	\$200 ¹	0	1934

¹ This is a transfer tax imposed under section 5811 and administered by ATF.

**Table 6.—Detail on Tax Collections of the Alcohol and Tobacco Tax
and Trade Bureau for Fiscal Year 2007**

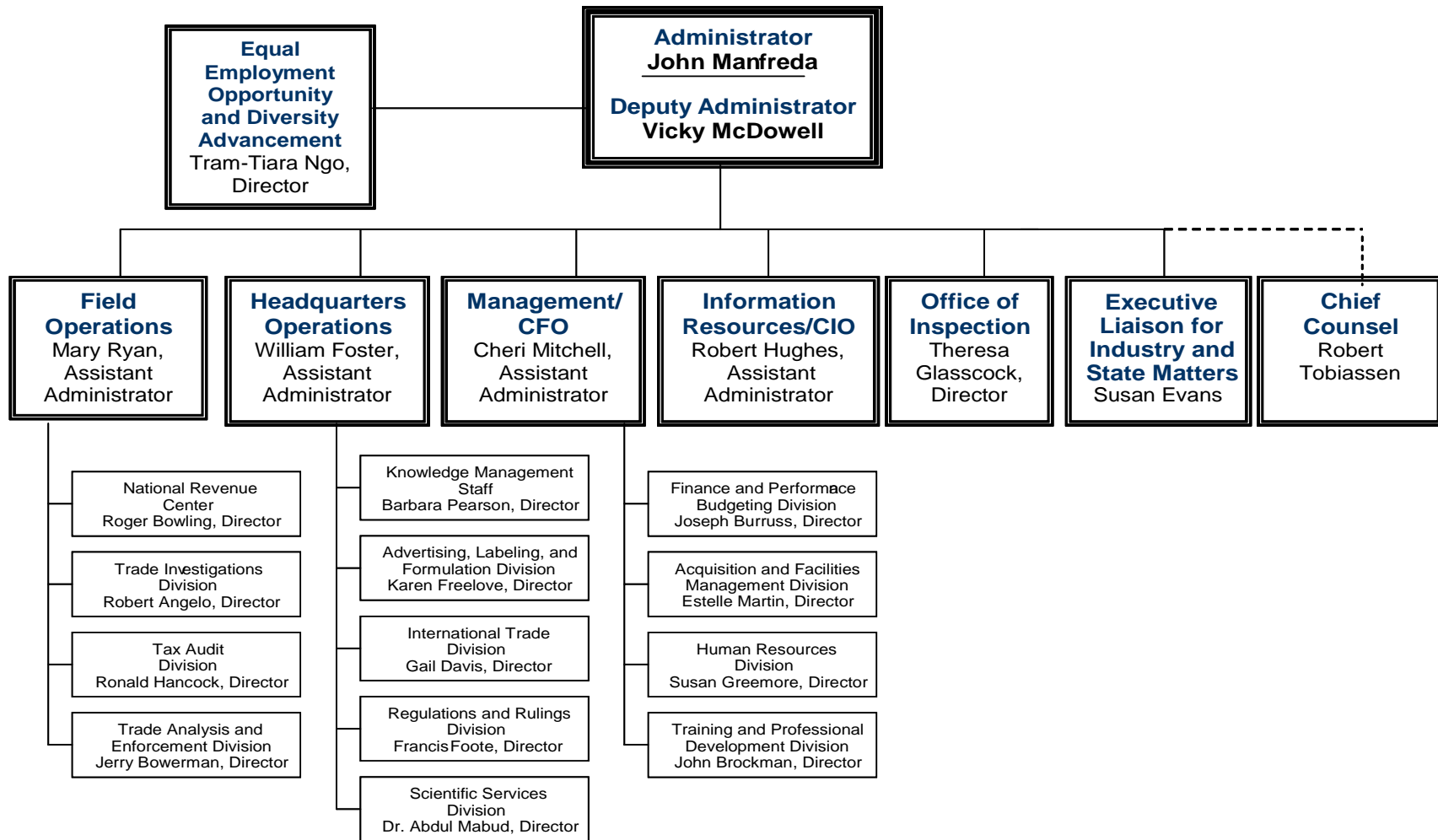
REGISTRY TYPE	2007
	Manufacturer of Tobacco Products
Manufacturer of Cigarette Papers and Tubes	\$1,000
Export Warehouse	\$72,000
Distilled Spirits Plant	\$3,409,622,000
Brewery	\$3,198,308,000
Bonded Winery	\$341,206,000
Bonded Wine Cellar	\$248,352,000
Manufacturer of Non Beverage Products	\$34,642,000
Importers	\$8,000
Firearms Ammunition Mfg	\$287,835,000
Special Occupational Taxes	\$2,808,000
Floor Stock Tax	\$0
Grand Total	\$14,716,894,000

Source: Alcohol and Tobacco Tax and Trade Bureau.

B. Organizational Chart for the Alcohol and Tobacco Tax and Trade Bureau

Organizational Chart

The Alcohol and Tobacco Tax and Trade Bureau



Source: Alcohol and Tobacco Tax and Trade Bureau FY 2009 Congressional Budget Briefing.

C. Current Regulatory Actions

TREAS/TTB	Prerule Stage	Proposed Revisions to the Beer Regulations	1513-AB05
TREAS/TTB	Prerule Stage	Use of Various Winemaking Terms on Wine Labels and in Advertisements; Request for Public Comment	1513-AB24
TREAS/TTB	Prerule Stage	Proposals Related to the Application for and Certification/Exemption of Label/Bottle Approval	1513-AB54
TREAS/TTB	Proposed Rule Stage	Denatured Spirits, Articles, and Nonbeverage Products	1513-AB03
TREAS/TTB	Proposed Rule Stage	Alternating Brewery Proprietors	1513-AB09
TREAS/TTB	Proposed Rule Stage	Use of the Word "Pure" or Its Variants in the Labeling and Advertising of Alcohol Beverages	1513-AB16
TREAS/TTB	Proposed Rule Stage	Proposed Expansion of the Santa Maria Valley Viticultural Area	1513-AB31
TREAS/TTB	Proposed Rule Stage	Proposed Amendment to the Standards of Identity for Distilled Spirits	1513-AB33
TREAS/TTB	Proposed Rule Stage	Proposed Establishment of the Upper Mississippi River Valley Viticultural Area	1513-AB40
TREAS/TTB	Proposed Rule Stage	Proposed Establishment of the Pine Mountain-Mayacmas Viticultural Area	1513-AB41
TREAS/TTB	Proposed Rule Stage	Proposed Establishment of the Lake Chelan Viticultural Area	1513-AB42
TREAS/TTB	Proposed Rule Stage	Proposed Expansion of the Fort Ross Seaview Viticultural Area	1513-AB44
TREAS/TTB	Proposed Rule Stage	Proposed Establishment of the Indiana Uplands Viticultural Area	1513-AB46
TREAS/TTB	Proposed Rule Stage	Proposed Expansion of the Paso Robles Viticultural Area	1513-AB47
TREAS/TTB	Proposed Rule Stage	Firearms and Ammunition Excise Taxes, Consignment Sales of Imported Articles	1513-AB12
TREAS/TTB	Proposed Rule Stage	Exportation of Alcohol	1513-AA00
TREAS/TTB	Proposed Rule Stage	Determination of Tax and Recordkeeping on Large Cigars	1513-AA16
TREAS/TTB	Proposed Rule Stage	Proposed Revisions to the Distilled Spirits Plant Regulations	1513-AA23
TREAS/TTB	Proposed Rule Stage	Proposed Addition of New Grape Variety Names for American Wines	1513-AA42
TREAS/TTB	Proposed Rule Stage	Petition To Establish Santa Maria Bench as a New American Viticultural Area	1513-AA51
TREAS/TTB	Proposed Rule Stage	Labeling and Advertising of Malt Beverages	1513-AA60
TREAS/TTB	Proposed Rule Stage	Form TTB F 5100.51, Formula and Process for Domestic and Imported Alcohol Beverages	1513-AB28
TREAS/TTB	Proposed Rule Stage	Nonbeverage Product Formulas	1513-AB35

TREAS/TTB	Proposed Rule Stage	Proposed Establishment of the Snipes Mountain Viticultural Area	1513-AB51
TREAS/TTB	Proposed Rule Stage	Proposed Establishment of the Happy Canyon of Santa Barbara Viticultural Area	1513-AB52
TREAS/TTB	Proposed Rule Stage	Proposed Establishment of the Tehachapi Valley Viticultural Area	1513-AB53
TREAS/TTB	Proposed Rule Stage	Proposed Establishment of the Antelope Valley of California's High Desert Viticultural Area	1513-AB55
TREAS/TTB	Proposed Rule Stage	Standards of Fill for Wine and Distilled Spirits	1513-AB56
TREAS/TTB	Proposed Rule Stage	Expansion of the Russian River Valley American Viticultural Area	1513-AB57
TREAS/TTB	Final Rule Stage	New Certification Requirements for Imported Wine	1513-AB00
TREAS/TTB	Final Rule Stage	Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages	1513-AB07
TREAS/TTB	Final Rule Stage	Major Food Allergen Labeling for Wines, Distilled Spirits, and Malt Beverages	1513-AB08
TREAS/TTB	Final Rule Stage	Quarterly Excise Tax Filing for Small Alcohol Excise Taxpayers	1513-AB17
TREAS/TTB	Final Rule Stage	Swan Creek	1513-AB20
TREAS/TTB	Final Rule Stage	Proposed Establishment of the Tulocay Viticultural Area	1513-AB26
TREAS/TTB	Final Rule Stage	Proposed Establishment of the Paso Robles Westside Viticultural Area	1513-AB27
TREAS/TTB	Final Rule Stage	Modification of Mandatory Label Information for Wine	1513-AB36
TREAS/TTB	Final Rule Stage	Proposed Establishment of the Haw River Valley Viticultural Area	1513-AB45
TREAS/TTB	Final Rule Stage	Tax Classification of Cigars and Cigarettes	1513-AB34
TREAS/TTB	Final Rule Stage	Implementation of Public Law 105-33, Section 9302, Relating to Tobacco Product Minimum Manufacturing Requirements and Transfer Marking	1513-AB37
TREAS/TTB	Final Rule Stage	Implementation of Public Law 105-33, Section 9302, Requiring the Qualification of Tobacco Product Importers and Miscellaneous Technical Amendments	1513-AA10
TREAS/TTB	Final Rule Stage	Proposal To Recognize Synonyms for Petite Sirah and Zinfandel Grape Varieties	1513-AA32
TREAS/TTB	Final Rule Stage	Organic Claims in Labeling and Advertising of Alcohol Beverages	1513-AA46
TREAS/TTB	Final Rule Stage	Petition To Establish the Fort Ross Seaview Viticultural Area	1513-AA64
TREAS/TTB	Final Rule Stage	Petition To Establish Calistoga as an American Viticultural Area	1513-AA92
TREAS/TTB	Final Rule Stage	Suspension of Special (Occupational) Tax	1513-AB04

TREAS/TTB	Final Rule Stage	Proposed Revision of Part 9--American Viticultural Areas	1513-AB39
TREAS/TTB	Final Rule Stage	Implementation of Public Law 103-465, Section 712, Time for Payment and Deposits of Certain Excise Taxes (No. 277)	1513-AB43
TREAS/TTB	Final Rule Stage	Proposed Establishment of the Leona Valley Viticultural Area	1513-AB49
TREAS/TTB	Long-Term Actions	Implementation of Public Law 105-34, Section 1416, Relating To Refund of Tax for Domestic Wine Returned To Bond Regardless of Merchantability (Taxpayer Relief Act of 1997)	1513-AA06
TREAS/TTB	Long-Term Actions	Amended Standard of Identity for Sherry	1513-AA08
TREAS/TTB	Completed Actions	Prohibition of Alcohol Beverage Containers and Standard of Fill for Distilled Spirits and Wine	1513-AA07
TREAS/TTB	Completed Actions	Lehigh Valley	1513-AB19
TREAS/TTB	Completed Actions	San Francisco Bay Expansion	1513-AB21
TREAS/TTB	Completed Actions	Proposed Expansion of the Alexander Valley Viticultural Area	1513-AB23
TREAS/TTB	Completed Actions	Availability of Information	1513-AA98
TREAS/TTB	Completed Actions	Removal of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, for Use by the United States in Law Enforcement Activities	1513-AA99
TREAS/TTB	Completed Actions	Tobacco Products and Cigarette Papers and Tubes Shipped From Puerto Rico to the U.S.	1513-AB38
TREAS/TTB	Completed Actions	Implementation of Wine Credit Provisions of Public Law 104-188	1513-AA05

Source: Unified Agenda of Regulatory and Deregulatory Actions, located at <http://www.reginfo.gov/public/do/eAgendaMain>, provided by Regulatory Information Service Center of the General Services Administration and Office of Management and Budget.

D. Summary of Certain Related Pending Legislation¹⁰³

1. H.R. 5689 “Smuggled Tobacco Prevention Act of 2008”

H.R. 5689, sponsored by Congressman Lloyd Doggett, amends the Internal Revenue Code to require manufacturers and importers of tobacco products to legibly print a unique serial number on all packages of tobacco products manufactured or imported for sale or distribution. In addition, the bill imposes marking requirements for exports of tobacco products; authorizes the Secretary of the Treasury to require additional secure methods of identification or marking of tobacco products; requires the Secretary to prescribe a system of tobacco tax stamps, meter impressions, or other tax-payment indicia for tobacco products; requires tobacco products sold on Indian reservations to be visibly and prominently labeled as such; prohibits the export of tobacco products without the posting of a bond with the Secretary; extends permit, recordkeeping, and reporting requirements to wholesalers of tobacco products; establishes new criminal offenses relating to the distribution of tobacco products; increases the civil penalty for tobacco-related infractions from \$1,000 to \$10,000. Finally, the bill amends the federal criminal code to: (1) extend criminal penalties for contraband cigarettes to tobacco products (i.e., cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco) and define “contraband tobacco product” for purposes of such penalties; (2) establish new unlawful acts relating to tobacco products and machines used to manufacture or package tobacco products; and (3) establish whistleblower protections for employees who provide information about violations relating to contraband tobacco.

2. H.R. 4081 “Prevent All Cigarette Trafficking Act of 2007”

H.R. 4081, sponsored by Congressman Anthony Weiner, amends the Jenkins Act to: (1) include smokeless tobacco as a regulated substance; (2) impose shipping and recordkeeping requirements on delivery sellers (sellers using the telephone, mails, or the Internet) of cigarettes and smokeless tobacco; (3) require common carriers of cigarette products to obtain age and identity verification upon delivery of such products; (4) require the Attorney General to compile and publish a list of delivery sellers of cigarettes or smokeless tobacco who have not complied with the registration or other requirements of such Act; (5) increase criminal penalties and impose new civil penalties for violations of this Act; (6) grant jurisdiction to U.S. district courts to restrain violations of such Act and direct the Attorney General to administer and enforce such Act; and (7) treat cigarettes and smokeless tobacco as nonmailable and prohibit such items from being deposited in or carried through the U.S. mails. In addition, the bill prohibits a tobacco product manufacturer or importer from selling or delivering in States cigarettes not in compliance with model or qualifying state statutes, and authorizes ATF officers to enter the premises of certain cigarette shippers to inspect records and inventories. The bill limits the applicability of this Act with respect to Indian tribes and certain tribal matters.

¹⁰³ Source: Library of Congress Thomas website located at <http://thomas.loc.gov>.

3. H.R. 2571

H.R. 2571, sponsored by Congressman Bill Pascrell, Jr., amends the Internal Revenue Code and the Foreign Trade Zones Act to permit the transfer of distilled spirits used in a foreign trade zone for the manufacture or production of nonbeverage products (i.e., medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume, which are unfit for beverage purposes) to an activated foreign trade zone without payment of applicable excise taxes. The bill authorizes the Secretary of the Treasury to: (1) require manufacturers and producers of such nonbeverage products to file an adequate bond and permit; and (2) examine records and compel testimony to enforce the provisions of this Act.

4. H.R. 1610

H.R. 1610, sponsored by Congressman Earl Pomeroy, amends the Internal Revenue Code to reduce from \$18 to \$9 (its pre-1991 level) the per-barrel tax on beer.

5. H.R. 2488

H.R. 2488, sponsored by Congresswoman Shelley Berkley, amends the Internal Revenue Code to reduce the tax rate on distilled spirits.

6. H.R. 3443 “Drawback Simplification Act of 2007”

H.R. 3443, sponsored by Congressman Mike Thompson, amends the Tariff Act of 1930 to revise eligibility requirements for the drawback (refund) of duties on merchandise exported from the United States. Under the bill, upon the exportation of flavoring extracts, medicinal, or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic alcohol on which an internal revenue tax has been paid, there shall be allowed a drawback equal in amount to the tax found to have been paid on the alcohol so used.

In addition, the bill provides that if distilled spirits and wines are imported into the United States and such spirits and wines, or substitute merchandise, are then exported, or are incorporated into an article that is exported, or a substitute article is exported, duties, fees, and taxes imposed upon entry or importation shall be refunded as drawback pursuant to subsection (b) notwithstanding any other provision of law.

Finally the bill provides that upon the exportation of bottled distilled spirits and wines manufactured or produced in the United States on which an internal revenue tax has been paid or determined, there shall be allowed, under regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, a drawback equal in amount to the tax found to have been paid or determined on such bottled distilled spirits and wines. In the case of distilled spirits, the preceding sentence shall not apply unless the claim for drawback is filed by the bottler or packager of the spirits and unless such spirits have been stamped or restamped, and marked, especially for export, under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

7. H.R. 1108 “Family Smoking Prevention and Tobacco Control Act”

H.R. 1108, sponsored by Congressman Henry Waxman, amends the Federal Food, Drug, and Cosmetic Act to provide for the regulation of tobacco products by the Secretary of Health and Human Services through the Food and Drug Administration, including through disclosure, annual registration, inspection, recordkeeping, and user fee requirements.

The bill sets forth criteria by which tobacco products are deemed adulterated or misbranded, and allows the Secretary to require prior approval of all label statements.

In addition, the bill allows the Secretary to restrict the sale or distribution of tobacco products, including advertising and promotion, if the Secretary determines that such regulation would be appropriate for the protection of the public health. Prohibits such regulations from: (1) limiting product sales or distribution to authorization of a practitioner licensed to prescribe medical products; (2) prohibiting product sales in face-to-face transactions by a specific category of retail outlets; or (3) establishing a minimum age greater than 18 years of age for product purchases.

Also, the bill prohibits cigarettes from containing any artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, cinnamon, or coffee; requires the Secretary to establish tobacco product standards to protect the public health, but reserves to Congress the power to ban any tobacco products or reduce the nicotine level to zero.

The bill allows the Secretary to take specified actions, including public notification and recall, against unreasonably harmful products, requires premarket approval of all new tobacco products; sets forth standards for the sale of modified risk tobacco products.

In addition, the bill sets forth provisions regarding: (1) judicial review; (2) coordination with the Federal Trade Commission (FTC); (3) congressional review of regulations; and (4) state and local authority, and the bill requires the Secretary to establish a Tobacco Products Scientific Advisory Committee.

Finally, the bill amends the Federal Cigarette Labeling and Advertising Act to change cigarette warning label and advertising requirements, and it amends the Comprehensive Smokeless Tobacco Health Education Act of 1986 to change smokeless tobacco warning label and advertising requirements.