

## ***Advocacy Encouraged Treasury and the TTB to Comply with RFA in Proposed Rule on Tax Classification of Cigars and Cigarettes***

On March 23, 2007, the Office of Advocacy (Advocacy) submitted a comment letter on a notice of proposed rulemaking by the Department of Treasury (Treasury) and Alcohol and Tobacco Tax and Trade Bureau (TTB) entitled *Tax Classification of Cigars and Cigarettes* (NPRM). The NPRM designates how a tobacco product is determined to be a cigar or cigarette for federal tax purposes. At a roundtable hosted by Advocacy, small business representatives raised concerns that the NPRM significantly deviates from current market practices. Advocacy recommends that Treasury and TTB consider the comments they receive from small companies regarding the impacts the NPRM will have on current practices. A copy of Advocacy's letter to Treasury and TTB may be accessed at: <http://www.sba.gov/advo/laws/comments/>.

- Under the Regulatory Flexibility Act (RFA) agencies are required to publish a small business impact statement (an "Initial Regulatory Flexibility Analysis" (IRFA)) or "certify" that the rule will not significantly impact a substantial number of small entities. Treasury and TTB certified the NPRM under the RFA by stating that the rule will not have a significant impact on a substantial number of small entities. Treasury and TTB explained their certification by stating that the rule primarily codifies and clarifies existing administrative tax classification principles and practices.
- Little cigar manufactures, importers and exporters contacted Advocacy regarding the impact of the NPRM believing that new definitions in the rule will substantially change industry practice.
- Under current regulations little cigar manufacturers are permitted to use a cigarette type filter. Current Treasury and TTB classification principles evaluate a tobacco product's wrapper, filler and labeling to determine if it is a cigar or cigarette. The NPRM goes further and reclassifies a little cigar as a cigarette if it contains a cigarette type filter.
- On behalf of small businesses, Advocacy's letter advised that the NPRM will have a significant economic impact on a substantial number of small entities and therefore, should not be certified under the RFA. Treasury and TTB can bring the NPRM into compliance with the RFA by modifying the rule such that it does not have a significant economic impact on a substantial number of small entities. Alternatively, an initial regulatory flexibility analysis (IRFA) should be published in the *Federal Register* with a period for notice and comment.