



Taxable Weight of Tobacco Products

The Alcohol and Tobacco Tax and Trade Bureau (TTB) has received a number of requests for advice regarding the taxable weight of certain tobacco products. Specifically, we have been asked whether non-tobacco ingredients that are included in roll-your-own tobacco, pipe tobacco, chewing tobacco, and snuff products are included in the weight of the products for purposes of computing the Federal excise tax. As an example, we have been asked whether the tax on a consumer-ready cigar wrapper (also referred to as a “blunt wrap”) is calculated based on the weight of the finished product or only on the weight of the tobacco content of the finished product.

TTB Ruling 2009-1

Background

The Federal excise taxes on tobacco products are imposed under chapter 52 of the Internal Revenue Code of 1986 (IRC). Under 26 U.S.C. 5702, “tobacco products” are defined as cigars, cigarettes, smokeless tobacco (that is, chewing tobacco and snuff), pipe tobacco, and roll-your-own tobacco. Section 5702 also defines each of these specific tobacco products, as follows:

- The term “cigar” means “any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco” other than any roll of

tobacco which is a cigarette within the meaning of cigarette set forth below.

(26 U.S.C. 5702(a))

- The term “cigarette” means “(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1).” (26 U.S.C. 5702(b))

- The term “snuff” means “any finely cut, ground, or powdered tobacco that is not intended to be smoked.” (26 U.S.C. 5702(m)(2))

- The term “chewing tobacco” means “any leaf tobacco that is not intended to be smoked.” (26 U.S.C. 5702(m)(3))

- The term “pipe tobacco” means “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 to be smoked in a pipe.” (26 U.S.C. 5702(n))

- The term “roll-your-own tobacco” means “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 cigarettes or cigars, or for use as wrappers thereof.” (26 U.S.C. 5702(o), as amended by Pub. L. 111-3)

The same definitions appear in the TTB regulations in 27 CFR parts 40, 41, 44, and 45. In general, each of the products listed above is subject to

tax upon removal from the factory or, in the case of imported products, release from customs custody. The applicable tax rate for each product appears in section 5701 of the IRC (26 U.S.C. 5701). The taxes on cigars and cigarettes depend upon the weight and quantity of the products when they are removed from the factory or released from customs custody. Cigars that weigh 3 pounds per 1,000 units or less are subject to a different tax rate than cigars that weigh over 3 pounds per 1,000 units, and the same applies to cigarettes. The taxes on snuff, chewing tobacco, pipe tobacco, and roll-your-own tobacco are based upon the amount (by weight) of the product removed from the factory or released from customs custody.

With regard to cigars and cigarettes, Rev. Ruling 64-11, 1964-1 C.B. 573, held that where cigars or cigarettes are manufactured with filters or mouthpieces as an integral part of the finished product, the filters or mouthpieces must be included in the weight of the cigars or cigarettes in determining the weight of the product per thousand for tax purposes. The same rationale applies to all tobacco products, that is, that the tax is imposed under section 5701 on the finished product which encompasses all integral ingredients and components, including non-tobacco ingredients and components.

TTB Determination

Held, that for purposes of calculating the Federal excise tax, the taxable weight of a tobacco product is the weight of the finished product, including all integral tobacco and non-tobacco ingredients and components, but excluding the immediate package or container in which it is removed or imported.

Held further, that a consumer-ready cigar wrapper (or “blunt wrap”) is subject to tax as roll-your-own tobacco, with the tax to be determined on the basis of the weight of all ingredients and materials incorporated in the finished product.

Date signed: April 23, 2009.

Signed by John Manfreda

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