



Tax Classification of Snuff and Chewing Tobacco, Specifically as Related to “Gutkha” Products

The Alcohol and Tobacco Tax and Trade Bureau (TTB) has received a number of requests for advice regarding the taxable status of a type of tobacco product known generally as gutkha or gutka. We evaluated samples of several products labeled as “gutkha” and have determined that the products are appropriately classified as “snuff” for Federal excise tax purposes.

TTB RULING 2014-1

Background

We understand that the term “gutkha” typically refers to a combination of betel leaf, areca nut, slaked lime, and tobacco. This combination is consumed orally by placing it between the gum and cheek and sucking and chewing.¹

TTB collected several samples from the marketplace of imported consumer products labeled as “gutkha.” Each of the product samples appeared to be a gray/brown substance made up of hard, irregularly-shaped particles covered with a powdery substance. Where the package of the sample listed the product’s ingredients, the list included betel nut, tobacco, catechu, lime, and other spices or flavorings.

Statutory Provisions

Chapter 52 of the Internal Revenue Code of 1986 (IRC) deals with the Federal taxation of tobacco products and the related regulation of tobacco products and processed tobacco manufactured in or imported into the United States. Under 26 U.S.C. 5702(c), “tobacco products” are defined as cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco. Section 5702 also defines each of these specific tobacco products. The definitions that are relevant to the product at hand are set forth in section 5702(m). Under section 5702(m)(1), the term “smokeless tobacco” means any snuff or chewing tobacco. The term “snuff” is defined in section 5702(m)(2) as “any finely cut, ground, or powdered tobacco that is not intended to be smoked.” The term “chewing tobacco” is defined in section 5702(m)(3) as “any leaf tobacco that is not intended to be smoked.” The same

¹ See CDC Fact Sheet “Betel Quid and Tobacco (Gutka)” downloaded on January 10, 2014, from http://www.cdc.gov/tobacco/data_statistics/fact_sheets/smokeless/betel_quid/.

definitions appear in the TTB regulations in 27 CFR parts 40, 41, 44, and 45. Tobacco products are taxed at the rates set forth in the IRC at 26 U.S.C. 5701, and must be packaged and labeled in accordance with regulations prescribed under 26 U.S.C. 5723.

Analysis

In order for a product to fall within one of the definitions of tobacco products under the IRC, it must, at minimum, contain tobacco. This is because each of the tobacco products defined in the IRC includes “tobacco” in its definition. It is important to note also that, for the purpose of applying the statutory definitions, the term “tobacco product” refers to the final product in the form in which it is offered for sale or delivery to the consumer. This is also the form in which the product is removed subject to tax from the factory by the manufacturer or released from customs custody by the importer.

For a product to meet the definition of “smokeless tobacco” under the IRC, the product must meet the definition of either snuff or chewing tobacco. As noted above, under the IRC, chewing tobacco is “leaf tobacco that is not intended to be smoked.” This definition, and its reference to “leaf tobacco,” is different from the definitions of the other tobacco products set forth in the IRC in that it refers to “leaf tobacco” rather than merely to “tobacco.” That is, the descriptor “leaf” before “tobacco” does not appear in any of the other tobacco product definitions and, as such, must be given effect. Although other tobacco products may have been made from processing leaf tobacco in some way, one characterizing factor of chewing tobacco is the presence of tobacco in a form that is consistent with leaf in the final product. This differs from snuff, for example, in that while snuff may be produced from leaf tobacco, the leaf tobacco may be powdered or ground to an extent that the leaf is no longer discernible in the final product.

As noted above, snuff is finely cut, ground, or powdered tobacco that is not intended to be smoked. For a tobacco product to fall within the definition of snuff, it must be finely cut, ground, or powdered tobacco. A product that is made by processing leaf tobacco (or other tobacco particles, such as stems) in such a way as to result in finely cut, ground, or powdered tobacco as a finished product would be snuff for purposes of the IRC.

Accordingly, a cut leaf tobacco product may fall within the definition of chewing tobacco or of snuff, depending upon whether or not the cut leaf tobacco is considered to be “finely cut” consistent with snuff. In 1987, TTB’s predecessor, the Bureau of Alcohol, Tobacco and Firearms (ATF), issued ATF Procedure 87–4, setting forth a means for determining the particle size of a product for purposes of applying the smokeless tobacco definitions. That procedure is now superseded by TTB Procedure 2014–1.

With regard to the definitions of the smokeless tobacco products, it is important to note that the intended uses of such products are only relevant to the extent that the product is “not intended to be smoked.” Neither the definition of snuff nor the definition of chewing tobacco refers to the intended use of the product other than that it is not intended to be smoked. Therefore, it is irrelevant for purposes of the IRC that the product may be intended to be used by placing in the nose (as is traditional dry snuff) or by placing in the mouth (as is traditional moist snuff or chewing tobacco), or whether it is to be chewed after placing in the mouth. None of these intended styles of use is a consideration under the statutory definitions of the products in question.

TTB Determination

With regard to the “gutkha” products described above, the samples were determined to contain tobacco, but no leaf material was discernible.

Held: The product samples described above are consistent with finely cut, ground, or powdered tobacco that is not intended to be smoked, as contemplated by section 5702(m)(2) of the IRC. Accordingly, the samples are properly classified as snuff under the statutory and regulatory provisions administered by TTB.

Held further: As snuff, these products are subject to the tax imposed on snuff by 26 U.S.C. 5701(e)(1), and, as such, the packages must bear a statement regarding the product’s classification and weight, as required in the TTB regulations at 27 CFR 40.216 (applicable to domestic products) and 41.72 (applicable to imported products, and with the exceptions set forth in 27 CFR 41.75), promulgated under 26 U.S.C. 5723.

Date signed: January 14, 2014

/s/

John J. Manfreda,

John J. Manfreda
Administrator
Alcohol and Tobacco Tax and Trade Bureau