



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

May 02, 2023

Control Number: SBSE-04-0523-0030
Expiration Date: May 02, 2025
Affected IRM(s): 4.24.1

MEMORANDUM FOR: DIRECTOR, SPECIALTY EXAMINATION, CHIEF, ESTATE &
GIFT/EXCISE TAX EXAM, AND EXCISE TAX EXAMINATION
MANAGERS

FROM: Timothy J. Bilotta, Acting Director, Examination - Specialty Policy

SUBJECT: Petroleum Tax on Domestic Crude Oil Exported from the United
States

This memorandum issues interim guidance on the petroleum tax on domestic crude oil that is exported from the United States until IRM 4.24.1, Introduction to Excise Taxes, is revised.

Purpose: The purpose of this memorandum is to provide guidance to Excise Tax Examination on administering the petroleum tax on domestic crude oil that is exported from the United States.

Background/Source of Authority: A taxpayer filed a complaint in federal district court seeking a refund of the Internal Revenue Code (IRC) 4611(b) excise taxes which the taxpayer had remitted. The taxpayer argued that the IRC 4611(b) tax on exports violated the U.S. Constitution. The government argued that IRC 4611(b) is a valid user fee rather than an impermissible tax on exports because the Oil Spill Liability Trust Fund pays for oil pollution cleanup costs and the exporter benefits from a liability cap related to oil spills.

In *Trafigura Trading LLC v. United States*, 485 F.Supp.3d 822, 826 (S.D. Tex. 2020), the court determined that IRC 4611(b) imposes a tax on exports in violation of the Export Clause. The appellate court affirmed the district court, holding that IRC 4611(b) imposes a tax on exports in violation of the Export Clause. See *Trafigura Trading LLC v. United States*, 29 F.4th 286 (5th Cir. 2022).

Chief Counsel issued an Action on Decision (AOD), AOD 2023-1, 2023-10 IRB 502, which was published in the Internal Revenue Bulletin. The AOD provided that the Service disagrees with the Fifth Circuit. Nonetheless, in the interest of sound tax administration, the Service will follow the decision in all circuits. The Service will no longer seek to collect the tax imposed by IRC 4611(b)(1)(A) on domestic crude oil that is exported.

Procedural Change: Additional and/or modified guidance for administering the petroleum tax on domestic crude oil that is exported from the United States.

IRM 4.24.1.6.2.1(1), Environmental Taxes, is reworded to reflect the following: “Tax is imposed on crude oil when it is received at a United States (U.S.) refinery and on domestic crude oil when it is used in or exported from the U.S. (IRS Nos. 53 and 18). However, as a result of a court ruling that IRC 4611(b) imposes a tax on exports in violation of the Export Clause, the Service will no longer seek to collect the tax imposed by [IRC 4611\(b\)\(1\)\(A\)](#) on domestic crude oil that is exported. Refer to Action on Decision (AOD), [AOD 2023-1, 2023-10 IRB 502](#), for additional information.”

Effect on Other Documents: This guidance will be incorporated into IRM 4.24.1 by May 02, 2025.

Effective Date: This guidance is effective May 02, 2023.

Contact: If you have any questions regarding this memorandum, you may contact Kellie L. McCann, Program Manager, Excise Tax Policy, or Allison Boyd, Excise Tax Policy Analyst.

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