

## Federal Excise Taxes

Federal excise taxes imposed on goods, services, and activities contributed \$98.5 billion to U.S. government revenues in 2019. The IRS pursues the collection of these taxes aggressively and taxpayers need counsel with a deep knowledge of federal excise tax practices and procedures to ensure they do not overpay them. As a leading tax practice in the U.S. according to *Chambers USA*, we have an unsurpassed track record of success in solving our clients' most complex excise tax challenges.

Our lawyers have an in-depth understanding of the byzantine federal excise tax regimes. And we understand the internal policies and personalities within the IRS office responsible for administering federal excise taxes. We assist clients with the intricacies of collecting, reporting, and paying federal excise taxes in compliance with IRS rules. In addition, we regularly guide clients through the process of obtaining refunds of overpaid excise tax. This process is often arcane, counter-intuitive, and complex with many millions of dollars at stake. When administrative relief is unavailable, we stand ready to pursue refund claims in court. We have litigated and won federal excise tax cases in a variety of jurisdictions. Our seasoned team has a long track record of achieving significant excise tax relief for our clients, having navigated many groundbreaking controversies resulting in the aggregate reduction of tax burden of hundreds of millions of dollars.

Although we help clients reduce their excise tax burdens across many industries, our lawyers are particularly experienced with the excise taxes imposed on fuel producers and other manufacturers, and the excise taxes imposed on air travel. We have unparalleled experience in these subfields and have led the way in some of the largest controversies over the past few years.

### REPRESENTATIVE ENGAGEMENTS

- Obtained significant refunds of the Section 4251 federal communications excise tax in court cases that ultimately led to the IRS conceding that amounts paid for most long-distance telephone services were not subject to the tax. *Nat'l R.R. Passenger Corp. v. United States*, 431 F.3d 374 (D.C. Cir. 2005); *America Online, Inc. v. United States*, 64 Fed. Cl. 571 (2005).
- Successfully petitioned the D.C. Circuit to overturn the government's refusal to consider an air carrier's request for a refund of erroneously paid user fees. *United Airlines, Inc. v. TSA*, 859 F.3d 67 (D.C. Cir. 2017).
- Obtained a refund of federally imposed passenger-based user fees for several major U.S. air carriers. *American Airlines, Inc. v. United States*, 551 F.3d 1294 (Fed. Cir. 2008); *Continental Airlines, Inc. v. United States*, 77 Fed. Cl. 482 (2007).
- Represented a major utility in an appeal to the Federal Circuit from an adverse trial court decision imposing liability for the Section 4481 excise tax on highway motor vehicles. *Florida Power & Light Co. v. United States*, 375 F.3d 1119 (Fed. Cir. 2004).
- Successfully resolved federal excise tax controversies for clients before IRS Exam, IRS Appeals, and the IRS National Office involving:
  - The tax-free treatment of export sales of fuel otherwise subject to the Section 4081 tax on motor and aviation fuels;
  - The question of who is the appropriate taxpayer entitled to a refund of the Section 4251 federal communications excise tax;
  - The extent to which ozone-depleting chemicals (ODC) may have been used in the manufacture of imported products for purposes of the Section 4681 excise tax on ODCs;
  - The applicability of the Section 4371 excise tax on policies of insurance and reinsurance issued by foreign insurers or reinsurers;
  - The applicability of the Section 4261(e)(3) excise tax on frequent flyer miles to business partners in a marketing arrangement;
  - The extent to which interest is owed by the government when a provider of air transportation who uses the "alternative method" for computing deposits overpays the Section 4261 excise tax;
- Proposed assessments of excise taxes and penalties under Section 7272 for the failure to register to sell diesel fuel subject to tax under Sections 4041 or 4081;

- Potential civil and criminal penalties as a result of changes in the commercial airline industry that raised novel issues as to the application of the Section 4261 “ticket” tax; and
- Potential criminal penalties under Section 7275 for failure to properly reflect the air transportation excise tax on the ticket as a result of complications arising from Congress’ revamping of the underlying excise tax.
- Obtained private letter rulings for companies on such issues as:
  - The effect of a change in operations on Section 4261 “ticket” tax obligations; and
  - The extent to which equipment is taken into consideration in determining a vehicle’s taxable gross weight for purposes of the Section 4481 excise tax on the use of heavy trucks.
- Obtained favorable guidance/legislation for companies on such issues as:
  - The application of the air transportation excise tax to online travel intermediaries (Rev. Rul. 2006-52); and
  - Congressional clarification of the affiliated group exemption under Section 4282 so as to override unfavorable IRS guidance in Rev. Rul. 77-405.
- Provided substantive tax advice and consulting on a wide range of excise tax issues, for instance:
  - How to determine the point at which the first retail sale occurred, when use is treated as a sale, and the effect of subsequently installed parts or accessories on the sales price subject to tax for purposes of the Section 4051 excise tax on heavy trucks and trailers sold at retail;
  - The applicability of the Section 4251 federal communications excise tax with respect to both service providers and subscribers, the point of imposition of the tax, exemption uses, and the refund procedures for collected taxes;
  - Potential exposure for the Section 4261 “ticket” tax in connection with the use of aircraft in business operations, the tax base applicable to “wet/dry” lease arrangements, affiliated group issues, and the interaction between the “ticket” tax and the Section 4041 excise tax on fuel used in aviation;
  - Who should be considered the manufacturer, producer, or importer for purposes of the Section 4161 excise tax on sporting goods and how to determine the correct sales price to which the tax applies and the items to be included in that determination;
  - The applicability of the Section 4216 constructive sale price provisions; and
  - The availability of the Section 6426(e) alternative fuel mixture credit for mixing alternative fuels derived from biomass and the procedures for claiming the credit against excise taxes under Section 4081, obtaining a cash refund under Section 6427, or taking the credit against income tax under Section 34.
- Advised clients in the various industries to which federal excise taxes apply on compliance issues, such as:
  - Reporting, deposit, and payment obligations with respect to collected taxes in general;
  - Appropriate documentary support for return positions;
  - Elections for reporting purposes; and
  - Registering with the IRS to avoid potential penalties for clients engaged in certain types of activities (e.g., gasoline blenders, refiners, terminal operators).
- Advised clients (e.g., farm enterprises, construction companies, and nonprofit educational organizations) on the availability of exemptions from various excise taxes, such as the Section 4041 excise tax on diesel fuel and the Section 4081 excise tax on motor and aviation fuels, and assisted them in obtaining exemption certificates from the IRS for tax-free purchases.
- Successfully resolved numerous issues arising under the Crude Oil Windfall Profit Tax Act of 1980, including net income

limitation calculations, the definition of “crude oil,” taxable removal price determinations, and a variety of enhanced oil recovery projects.

## **RANKINGS AND RECOGNITION**

- *Chambers USA*: Tax Team of the Year, 2016
- *Chambers USA*: Tax: Controversy (Nationwide), 2007 - 2021
- *Chambers USA*: Government Relations: Specialist Tax Firms (Nationwide), 2019 - 2021
- *Chambers USA*: Tax (District of Columbia), 2003 - 2021
- *Legal 500*: Tax: Contentious (U.S.), 2007 - 2021
- *Legal 500*: Tax: International Tax (U.S.), 2013 - 2021
- *Legal 500*: Tax: Non-Contentious (U.S.), 2013 - 2021
- *U.S. News - Best Lawyers*® “Best Law Firms”: Tax Law (National), 2010 - 2021
- *U.S. News - Best Lawyers*® “Best Law Firms”: Tax Law (District of Columbia), 2010 - 2021
- *International Tax Review “Americas Tax Awards”*: Americas Tax Policy Firm of the Year, 2012 - 2013, 2015 - 2016
- *International Tax Review “Americas Tax Awards”*: Washington, DC Tax Firm of the Year, 2013
- *International Tax Review “Americas Tax Awards”*: Washington, DC Transfer Pricing Firm of the Year, 2012
- *International Tax Review*: World Tax (Washington, DC), 2012, 2014 - 2020
- *International Tax Review*: World Transfer Pricing (National), 2014 - 2020
- *International Tax Review*: Tier 1 U.S. Firm, Tax Planning Survey, 2018