

Part III. Administrative, Procedural and Miscellaneous

Instructions for Filing Claims for Refund of Insurance Premium Excise Tax Based on the U.S. Supreme Court's Opinion in *United States v. IBM*

Notice 96-37

PURPOSE

This notice provides instructions for filing claims for refund of insurance premium excise tax imposed by section 4371 of the Internal Revenue Code based on the Supreme Court's opinion in *United States v. International Business Machines Corp.*, 64 U.S.L.W. 4419 (June 10, 1996).

BACKGROUND

Section 4371(1) of the Code imposes a tax on each policy of insurance or reinsurance issued by any foreign insurer or reinsurer with respect to casualty insurance that is issued to or for, or in the name of, an insured as defined in section 4372(d) of the Code. The rate of tax is 4 percent of the premium paid on the policy.

In *U.S. v. IBM*, the Supreme Court held that the tax imposed by section 4371(1) of the Internal Revenue Code of 1986 may not be applied to premiums paid with respect to insurance covering risks associated with goods actually in export transit from the U.S. The Supreme Court's decision was based on the Export Clause of the U.S. Constitution, Art. I, sec. 9, cl. 5.

PROCEDURE FOR CLAIMING REFUND OF INSURANCE PREMIUM EXCISE TAX

Any taxpayer requesting a refund of insurance premium excise tax based on the *U.S. v. IBM* opinion must file a Form 8849, Claim for Refund of Excise Taxes. Refunds relating to insurance premium excise tax based on the *U.S. v. IBM* opinion may not be claimed as a credit against any other tax liability, and this notice provides the only procedure for claiming a refund.

In addition to the information required by the Form 8849, a claim for refund must be accompanied by documentation establishing that the tax for which a refund is claimed was paid with respect to insurance covering only goods actually in export transit from the U.S. In the case of a policy covering risks in addition to goods in export transit, the claim for refund must be accompanied by documentation establishing the portion of the insurance excise tax attributable to premiums paid only for insuring goods in actual export transit from the U.S.

The following statement should be typed or clearly written at the top of the Form 8849:

CLAIM FOR REFUND OF
INSURANCE PREMIUM EXCISE
TAX AS A RESULT OF *U.S. V. IBM*.

Any Form 8849 requesting a refund of insurance premium excise tax should be submitted to the following address:
Internal Revenue Service Center
P.O. Box 21086
Philadelphia, PA 19114

DRAFTING INFORMATION

The principal author of this notice is Ed Williams of the Office of the Associate Chief Counsel (International). For further information regarding this notice, call Mr. Williams at (202) 874-1490 (not a toll-free number).

Month—
July—

Year—
1996—

Weighted Average
6.92—

90% to 108%
Permissible Range
6.23 to 7.47—

90% to 110%
Permissible Range
6.23 to 7.61