

# Client Bulletin

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## Payment of Special Occupational Tax by Airline Lounge Operators Serving Alcohol Is Suspended Through June 30, 2008.

The Internal Revenue Code of the United States requires a retail dealer of alcoholic beverages to pay an annual Special Occupational Tax of \$250 per location and to obtain a Special Tax Stamp from The Alcohol and Tobacco Tax and Trade Bureau, an agency of the United States Department of the Treasury. 26 U.S.C. § 5121. An airline which serves complimentary alcohol as part of its lounge product is considered to be selling alcoholic beverages and is therefore a retail dealer under the Code. *See, e.g., Division of Alcoholic Beverages and Tobacco v. Cost Plus Imports of Tampa Bay Inc.*, 513 So.2d 763 (4th Dist. 1987) (complimentary drinks offered in limousine as part of service was a sale); *New York State Liquor Authority v. Fuffy's Pancake House, Ltd.*, 65 A.D.2d 556 (N.Y. App. Div. 1978) (complimentary drinks as part of dinner service was a sale). These Federal requirements are in addition to State license requirements for the sale of alcoholic beverages. State licensing requirements for service or restocking of alcoholic beverages vary from state to state.

In the fall of 2004, President Bush signed the "American Jobs Creation Action of 2004" which amended the Internal Revenue Code by providing for a three-year suspension of the annual Special Occupational Tax from July 1, 2005 to June 30, 2008. 26 U.S.C. § 5148.

Accordingly, an airline serving alcohol in an airport lounge will have no Special Occupational Tax liability until June 30, 2008. However, although the tax is suspended, airlines still are required to file a "Special Tax Registration and Return" (TTB Form 5630.5) with the Alcohol and Tobacco Tax and Trade Bureau prior to July 1 each year. A failure to file the appropriate form may subject the airline to a fine of not more than \$5,000 and may impact an airline's ability to renew its State liquor license or permit. The "Special Tax Registration and Return" should list all of the locations which the airline serves alcoholic beverages in the United States.



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