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CBP Tees it up Again: CBP Form 5106

The CBP form 5106 is the Importer ID Import Record used by CBP to record Tax Identification Numbers, addresses and other pertinent information identifiable to an importer as an individual or business. The current form actually expired on March 31, 2014. It was one page, with instructions on the back.

The draft form to replace the expired version, issued in October 2014 is four pages long, with more questions about the importer, its status, how many entries are planned (if any), and how the identification number will be used. In section 3 of the proposed form, it was pretty clear that personal information about the officers of the importer was required. That section had language that REQUIRED that the officers "must have financial and business knowledge of the company AND legal authority to make decisions on behalf of" the importing entity.

The new form would be called "CREATE/UPDATE IMPORTER IDENTITY FORM." Reminds me a little of the George Carlin explanation of the difference between football, played on a Grid Iron, and baseball, played on a field.

In a notice issued on July 24, 2015, CBP invited additional comments beyond the 27 it already received from the public, reopening the comment period until August 26, 2015.

And it turns out that answers to all of the invasive questioning in section 3 of the draft were "optional." As CBP says:

CBP cannot deny the importation for lack of information that is requested, but optional, in section 3 of the form, but information such as identity, Tax ID numbers and addresses in blocks 1 and 2 are always required. However, the absence of other reportable data about companies or individuals will affect CBP's ability to fully understand the level of risk on subsequent transactions, and could result in the delay of the release of cargo or the delay in the processing a refund.

Oh, it's OPTIONAL. How could anyone have thought otherwise? Because "if you'd like to" was implied whenever the word "Provide," "List," or "Must" appeared on the form?

Why would any importer be sensitive about section 3? Anyone remember the *Trek Leather* case and the imposition of PERSONAL LIABILITY on the officer of an importer?

If the proposed form comes into use, when you fill out you fill out MANDATORY section 1(I) which asks how the identification number will be used, don't say "NA," next to "other." It might be taken to mean "NEFARIOUS ACTIVITIES," and that you are being helpful in understanding the level of risk associated with that Tax ID number. And that's not optional.

SIMON GLUCK & KANE LLP

A handwritten signature in black ink, appearing to read "Christopher M. Kane". The signature is written in a cursive style with a large, looping initial 'C'.

Christopher M. Kane