

## Chapters 10

## Excise Tax on Imports

## Section:

**11.1002 Amount of tax on certain items.****11.1002 Amount of tax on certain items.**

(a) The tax on each item is:

(1) beer, malt extract, alcoholic beverage, tobacco products and smoking accessories:

(A) one hundred ninety percent of the basis of beer as defined in 27.0501(6), and malt extract, except that any person 21 years of age or over may bring into American Samoa tax free an amount of any alcoholic beverage as defined in 27.0501(1) or 27.0501(6) not to exceed 1 liter per trip if such alcoholic beverage is for his personal use and consumption and not for resale; and except further that any alcoholic beverage and tobacco products brought into American Samoa for export at the duty free shop at Pago Pago International Airport is also tax free; one hundred fifty percent (150%) of the basis of beer or malt extract shall be deposited in the general fund and shall be available for appropriation by the Legislature; and forty percent (40%) of the basis of beer or malt extract shall be deposited in the general fund in an account earmarked for and dedicated to the repayment of the government loan approved in 7.1444.3. Upon full repayment of said loan, the assessment and collection of this forty percent (40%) tax shall be repealed;

(B) alcoholic beverages as defined in 27.0501(1) shall be taxed as follows: fifteen (0.15) cents per one percent (1%) of alcohol by weight per liter, with a minimum tax of two dollars (\$2.00) per liter.

Of the revenues collected from the tax on alcoholic beverages, fifty percent (50%) shall be appropriated to fund the Feleti Barstow Public Library; twenty-five percent (25%) shall be appropriated to fund the Office of Administrative Law Judge; twelve and one-half percent (12.5%) shall be deposited in the general fund and shall be available for appropriation by the Legislature; and twelve and one-half percent (12.5%) shall be deposited in the general fund in an account earmarked for and dedicated to the repayment of the government loan approved in 7.1444.3. Upon full repayment of said loan, the twelve and one-half percent (12.5%) dedicated to repayment of the loan shall be deposited in the general fund and shall be available for appropriation by the Legislature.

(C) Twelve point five cents per cigarette, per cigar, or per 10 grams of smoking tobacco, except that any person 21 years of age or over may bring into American Samoa tax free tobacco products not to exceed either 200 cigarettes or 100 cigars and or 2 kilograms of smoking tobacco per trip if such tobacco products are for his personal use and consumption and not for resale; and twenty percent (20%) shall be deposited in an account earmarked for and dedicated to the repayment of the government loan approved in 7.1444.3. Upon full repayment of said loan, the assessment and collection of this twenty percent (20%) tax shall be reverted into the general fund subject upon appropriation by the Legislature.

(2) one hundred fifty percent of the basis of firearms and firearm ammunition;

(3) motor vehicles:

(A) twenty-five percent of the basis of motor bicycles, automobiles, trucks, and vans, to be used for commercial purposes;

(B) notwithstanding the provisions of paragraph (A), the tax levied on motor bicycles, automobiles, trucks, and vans, imported into American Samoa for personal or family use shall be 10 percent of the basis thereof. If a motor bicycle, automobile, truck or van, are converted to commercial use after being imported for personal or family use, it shall then be subject to the balance of the applicable tax imposed under paragraph (A).

(C) No tax exemption, including that provided by Title 11, Chapter 16, shall be granted for any motor vehicle. All other motor vehicles not taxed under this subsection shall be subjected to the tax under 11.1002(a)(7);

(4) petroleum products:

(A) thirty-five cents a gallon on fuel manufactured for use in motor vehicles, other than diesel fuels, 1.5 cents of this to be used for revenue for law enforcement costs the driver's training control school and 10 cents of it to be placed in an earmarked revenue fund for road maintenance;

(B) three and one-half cents a gallon on fuel manufactured for use in diesel engines, other than aircraft fuels. An express exception is made for the purpose of extending a full three and one-half cent excise tax credit for fuels which, subject to verification by the Treasurer of American Samoa, were sold to any commercial fishing vessel for the purpose of refueling. For purposes of this section, "Commercial Fishing Vessels" shall be defined as all purse seiners and longliner vessels actively engaged in commercial fishing in excess of five tons dead weight, plus reefers of "Mother Ships" that are used to transship fish products, plus diesel fuel tankers that provide fuel at sea to the commercial fishing vessels;

(C) one and one-half cents a gallon on kerosene and similar petroleum products;

(D) fifteen percent of the basis of lubricating oils;

(E) one cent a gallon on jet and other aircraft fuels, to be placed in the enterprise fund for the operation of Pago Pago International Airport;

(F) three cents a pound of liquified petroleum gas such as butane and propane or mixtures, thereof, and ethane;

(G) thirty-one and one-half cents per gallon, to be collected by the petroleum supplier at the point of sale, on fuel manufactured for use in diesel engines, excluding diesel fuel used by stationary boilers or burners, stationary generators of electric power and marine vessels.

(5) forty percent of the basis of all construction materials, as defined in 26.1501 et seq., which are of a lesser quality than the standard grades established under such chapter;

(6) fifteen cents per 12 fluid ounces or fraction thereof on all soft drinks or nonalcoholic carbonated beverages, to be applied to the measure of the container in which it is offered for sale by the importer;

(7) five percent of the basis of all items not listed in subsections (a) (1) through (a)(6) of this section or exempted by this section which are imported for commercial use or resale purposes. The revenues received from the three percent excise tax shall be

deposited in the general fund and shall be available for appropriation by the Legislature, except that \$500,000 is appropriated for the student financial aid provided for in 11.0605.

(b) The minimum tax shall be 25 cents.

(c) Items otherwise taxable under subsection (a)(1) and (a)(7) of this section are exempted from the taxes imposed by this section when they are brought into American Samoa for export sale for consumption outside American Samoa; provided that importation and sale of these items are made pursuant to rules promulgated by the Treasurer under the Administrative Procedures Act 4.1001 et seq., that require, among other things, separate storage of these items clearly identified for export sale and a system of delivery to the purchaser ensuring their exportation.

(d) Payment of the taxes imposed by this section on items brought into American Samoa for consumption within American Samoa may be postponed pursuant to rules promulgated by the Treasurer under the Administrative Procedures Act, 4.1001 et. seq., that require, among other things, separate storage of those items clearly identified for domestic sale and consumption and a system of delivery to the importer ensuring payment of the taxes at the time of delivery.

(e) The Treasurer shall promulgate rules under the Administrative Procedures Act, 4.1001 et seq., to ensure that the taxes imposed when the exception set forth in subsection (a)(7) of this section is inapplicable are paid.

(f) One percent (1%) of the five percent excise tax shall be earmarked for the repairs, renovations and upgrading of all public schools facilities and equipment in American Samoa beginning in the fiscal year 1995.

**History:** 1989, PL 21-26; 1990, PL 21-40, PL 21-30; 1995, PL 24-3, PL 24-8; amd 1998, PL 25-28; 1999, PL 26-9, 26-13; PL 2000, 26-28; 2001, PL 27-5 amd 2001, PL 27-9; 2001, PL 27-17; 2003, PL 28-8, 2005, PL 29-4, PL 29-13.

**Reviser's Comment:** Suspension of operation of subsection (a)(4)(B). The operation of subsection (a)(4)(B), placing a 3½¢ a gallon tax on diesel fuel other than aircraft fuels, was suspended by PL 13-19, 1973, for the period from 9 April 1973 to 30 June 1974, and by PL 13-55, 1974, for the period 1 July 1974 to 30 June 1976.

By PL 15-82, 1978, 2¢ of the 3½¢ tax was suspended from the period 18 April 1978 through 17 April 1979.

By PL 16-22, 1979, 2¢ of the 3½¢ was suspended for 2 years, effective 18 April, 1979, for vessels who are registered in American Samoa or who have contract to fish for an American Samoa based cannery or operator.

Section 2 of PL 17-17 provides that, under operation of (a)(3)(A), the 25 percent excise tax on parts and accessories for all motor vehicles is suspended for 3 years commencing on August 26, 1981.

Section 1 of PL 17-40 provides that, under operation of (a)(4), 1½ cents tax is suspended for one year, effective 1 July 1982, for vessels that are registered in American Samoa or that have a contract to fish for an American Samoa based cannery or operator.

Section 1 (4)(A) of PL 27-17 provides for a 10¢ a gallon increase on fuel and to be deposited to the general fund; Section (1) adds a new paragraph (G), of which, 31-1½¢ per gallon of fuel manufactured for use in diesel engines, excludes diesel fuel used by stationary boilers or burners, stationary generators of electric power and marine vessels.

**Case Notes:**

Excise tax on imported vehicles has rational basis in desire of Fono to maintain beauty of islands and will, be upheld by court. Absent adoption of USC provisions relating to excise tax rules, chapter will be

implemented in its own terms. *Letuli v. Government of American Samoa*, ASR (1976).  
Meaning of “imported”, as used in this section’s tax upon motor vehicles “imported into American Samoa for a personal or a family use”, is not vague or ambiguous and covers motor vehicles the importation of which is incidental as being consequent to other primary purposes, such as a change of residence to American Samoa, *Letuli v. Government*, 4 ASR 830 (1973).