

# TAKING IT WITH YOU THROUGH U.S. CUSTOMS

Attorneys should know when their foreign clients are legally exempt from the costs and complexities of importing goods through U.S. customs.

By Alex Kozinski

With the great influx of foreign investment in Southern California in recent years, it is not unusual for Los Angeles attorneys to serve clients who are foreign born and who may plan to come here either permanently or for extended stays. While such clients' primary interest may be focused on matters concerning immigration, tax and business planning, the attorney can provide an added service by raising the question of which personal possessions they intend to bring to the United States. Some planning in this regard may well save the clients aggravation at customs and, perhaps, avoid the payment of unnecessary duty.

While customs law is generally quite complicated and requires association of specialized customs counsel, the statute provides certain "safe zones" for the importation of goods of a personal nature. This article will seek to acquaint attorneys with these "personal exemptions" by giving an overview of the relevant statutory provisions and applicable regulations.

## PRINCIPAL PERSONAL EXEMPTIONS

### Personal Effects

The Tariff Schedules of the United States (TSUS) (19 U.S.C. § 1202, Sched., 8, Part 2, Item 812.10), provide

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that persons entering the United States as nonresidents may bring in, free of duty, "[w]earing apparel, articles of personal adornment, toilet articles, and similar personal effects" (Accord, 19 CFR § 148.42). What constitutes a "nonresident" for customs purposes is not always clear, and the term is not synonymous with that used for either immigration or tax purposes. Accordingly, this is an area where some simple planning and careful documentation on the part of the attorney may save the client difficulties at customs.

The customs regulations provide (at 19 CFR § 148.2(b)) that for purposes of this provision, "[c]itizens of the United States, or persons who have formerly resided in the United States, shall be deemed residents thereof . . . in the absence of satisfactory evidence that they have established a home elsewhere." Persons not falling within the category of residents are deemed to be non-residents. Individuals who arrive in the United States for the first time on a tourist, business, treaty trader or investor, or other non-immigrant visa, clearly are non-residents and thus may take advantage of this provision by bringing personal effects, free of duty, into the United States. However, where the individual has been in the United States on prior occasions and has established a residence here (albeit on a non-permanent basis), it is wise to prepare documentation for presentation at customs showing that he has established and/or maintained a residence abroad in the interim.

Persons immigrating to the United States who have never established a residence here and have obtained their so-called "green card" (Form I-151, U.S. Immigration and Naturalization Service) abroad, should have no difficulty in taking advantage of this exemption, since at the time of their arrival they would be deemed non-residents. Where, however, the individual applies for a green card after having resided in the United States for some time, (e.g., on a

business or student visa), he or she may have difficulty in establishing an entitlement to import personal effects free of duty, unless it can be shown that this person has continued to maintain a domicile abroad. If this cannot be done, he or she may be considered a resident for customs purposes. Thus, if a client contemplates applying for a green card in these circumstances, the importation of any personal effects remaining abroad should be effected prior to termination of the domicile abroad.

It may be noted that, once entitlement to this exemption is established, there is no limitation on the value and number of items which may be imported duty free, provided that they have been owned or possessed by the person abroad and are not intended for transfer to another person or for sale. However, if the aggregate value of jewelry and similar items of personal adornment imported under this exemption exceeds \$300, such items may not normally be sold within three years of importation without payment of duty or risk of forfeiture.

### Vehicular Conveyances

TSUS (Sched. 8, Part 2, Item 812.30) permits duty free importation by non-residents of "[a]utomobiles, trailers, aircraft, motorcycles, bicycles, baby carriages, boats, horse-drawn conveyances, horses, and similar means of transportation, and the usual equipment accompanying the foregoing . . ." See also 19 CFR § 148.45.

As in the case of personal effects, it should first be noted that the exemption applies only to non-residents.

Second, unlike other items discussed in this article, vehicular conveyances need *not* have been owned and used abroad by the importer. So long as any such conveyance is imported "in connection with the arrival of the non-resident" in the United States (i.e. accompanying or following the non-resident) the vehicle may be brought in duty free, even if brand new and shipped directly from the factory. The vehicle

may not be imported duty free under this provision if it arrives in the United States ahead of its non-resident owner.

Third, any such vehicle may be imported solely for the personal use of the importer, his or her family and guests "and such incidental carriage of articles as may be appropriate to [the importer's] personal use of the conveyance." *Id.* Thus, the vehicle must not be intended for commercial use.

Fourth, vehicles and equipment brought in duty free under this provision may not be sold within one year of importation (19 CFR § 148.46(a)(2)). If prior permission for such sale is not obtained from the Customs Service, a vehicle sold in contravention of this provision becomes subject to forfeiture.

Fifth, there is no limitation upon the number, type or value of conveyance which may be imported duty free under the provision, so long as they meet the above requirements.

Finally, if the vehicle to be imported is an automobile or other highway vehicle manufactured after 1967, proof must normally be furnished that it complies with federal air pollution control and vehicle safety standards (19 CFR §§ 12.73, 12.80). A vehicle which fails to meet these standards may be imported on a temporary basis (e.g., if the vehicle is

brought in by a non-resident who plans to use it here for less than one year and then re-export it, and a declaration to that effect is filed with the Customs Service). However, if the individual then decides to keep the vehicle here permanently, it will be necessary to conform the vehicle to the federal standards, which may prove costly.

#### Household Goods

TSUS (Item 810.10) provides that the following items may be brought in free of duty by, or on account of, persons arriving into the United States from a foreign country:

"... usual and reasonable furniture, and similar household effects, if actually used abroad by [the person] or by [the person] and his family [for] no less than one year, and not intended for any other person, or for sale." The regulations specify that the term "similar household effects" includes: "furniture, carpets, paintings, tableware . . ." (19 CFR § 148.52(a)).

The following points should be noted with regard to this exemption.

First, the exemption is not limited to non-residents. Thus, unlike personal effects and vehicles, which must be brought into the U.S. prior to establishment of residence, household goods may be brought in later (see below) so long as the requirements of this section are met.

Second, the items must have been owned and used abroad by the person or his family for no less than one year. The regulations, however, provide that the year need not have been continuous nor need it have immediately preceded importation (*Id.*).

Third, to establish that the items have been used in the household as required by this section, it is necessary to file with the Customs Service a completed Customs Form 3299 (*Id.* §(c)). This form requires information regarding the importer's residence abroad, plus a description of the type of merchandise involved. Completion of this form generally suffices to permit free importation of the goods; however, the District Director of Customs may require additional proof if he deems it necessary (*Id.* § (b)).

Fourth, while this section requires that the items imported thereunder not be intended for sale, there appears to be no automatic forfeiture provision if sale takes place within a specified period, as in the case of jewelry and vehicles discussed above. It should be noted, however, that an immediate sale of the items

so imported may be viewed as evidence that the requisite intent did not exist, and this could result in the imposition of duty and various penalties.

Fifth, items need not be imported under this exemption immediately upon the arrival of the person into the United States. Up to ten years are unconditionally available for such importation; in some cases, an additional fifteen years may elapse before free importation under this exemption is absolutely foreclosed.

Finally, no limitation seems to exist either as to the value or the number of items imported under this exemption so long as the requirements of the statute are met.

#### Tools of Trade

TSUS (Item 811.10) provides that any person emigrating to the United States from a foreign country may bring in, duty free, "[p]rofessional books, implements, instruments, and tools of trade occupation or employment . . . owned and used by him abroad."

First, it should be noted that this exemption is applicable only to persons emigrating to the United States. Thus, unlike the exemptions for personal effects and automobiles, this exemption may not be used by persons arriving in the United States on a non-permanent basis. On the other hand, it does not appear that establishment of residence in the United States prior to immigration would preclude use of this exemption.

Second, the statute specifically excludes the importation of any theatrical scenery, properties or apparel under this exemption. Also excluded are any articles for use in any manufacturing establishment.

Third, the articles must be imported for personal use only, and not for sale or for another person. Again, however, no automatic forfeiture provision appears to exist, if the tools so imported are sold after importation.

Fourth, Customs Form 3299, discussed above, must be completed and presented to the Customs Service to support any claim for free importation.

#### REFUND OF DUTY WRONGFULLY PAID

If it is discovered that a client has paid duty on goods which were subject to one of the above exemptions, it may be possible to obtain a refund of such money if administrative procedures are undertaken in a timely fashion.

The regulations provide that an application for refund of duty, or "protest,"

## Our Apologies

... to the Family Law Section and the Los Angeles Superior Court:

The September issue of *Los Angeles Lawyer* carried several inadvertent errors in the advertisement for the First Annual Colloquium on Child Custody and Visitation, scheduled for Saturday, October 7, at the Los Angeles Hilton Hotel.

Panelists who were listed incorrectly are:

Gary A. Chase, M.D., Child Psychiatrist,

Thomas S. Curtis, M.D., Child Psychiatrist,

Norman J. Lachman, M.D., Child Psychiatrist,

Hugh McIsaac, Director of Conciliation Court, Los Angeles Superior Court,

Richard B. Rosenstein, M.D., Child Psychiatrist, Board Certified.

normally must be filed with the relevant district director of customs within ninety days of liquidation or reliquidation of the customs entry in question (19 CFR § 174). Such protest must set forth the name of the importer, the date and number of the entry, and the nature of the objection to the payment of duty. A copy of the entry, applicable invoices, and any other supporting documents should accompany the protest.

There are two situations where the above ninety day limit does not apply. First, a refund for duty paid on household goods may normally be obtained if an application therefor is filed with the district director within one year after the date of the entry (19 CFR § 173.5). Second, the district director has discretion to correct clerical errors, mistakes of fact, or other inadvertence resulting in the overpayment of duty for one year after the date of the entry, regardless of the type of goods involved. The mistake in question must not, however, relate to the construction or interpretation of law, and it must either appear on the record or be established by documentary evidence.

#### **CONCLUSION**

Careful attention to the above matters may greatly facilitate a client's move to the United States, particularly where transition from a former home abroad to a new home in the United States is involved. As indicated above, the purpose of this article is to indicate areas where the general practitioner may assist his foreign client in taking advantage of the personal exemptions to see the U.S. customs laws. However, where difficult customs problems arise, one should not hesitate to consult with specialized customs counsel.

#### **Addendum**

As this article went to press, it was learned that a compromise version of the "Customs Procedural Reform and Simplification Act of 1978" (H.R. 8149) had been approved by a House-Senate Conference committee. Although complete details were unavailable, it appeared that the compromise version of the act would permit duty-free importation by returning residents of the United States of \$300.00 in goods not otherwise exempt. This tripling of the current duty exemption for returning residents would no doubt prove particularly beneficial to persons who have established residence here and, hence, may have difficulty in importing personal possessions under TSUS (Item 812.10). JL