



February 5, 2013

Christina L. Wood
Manager, Land Use/Property Management
Dallas/Fort Worth International Airport
DFW Airport, Texas 75261

Dear Ms. Wood:

I am writing in response to your inquiry about the potential impact of the Foreign-Trade Zones (FTZ) Board's revised regulations on certain activities conducted for the Dallas/Fort Worth International Airport (DFW), grantee of FTZ 39, by Ernst & Young (EY). Specifically, you inquired whether the cited activities that EY undertakes for FTZ 39 would be prohibited under 15 CFR 400.43(d) – which has a delayed compliance date of February 28, 2014 for existing business arrangements – absent the FTZ Board's issuance of a waiver for EY's activities for FTZ 39 pursuant to 15 CFR 400.43(f). You stated that EY provides zone-related services to users of FTZ 39 and also provides advice and assistance to DFW Airport as grantee of FTZ 39. In particular, given that EY provides zone-related services to users of FTZ 39, you noted that EY will be prohibited by 15 CFR 400.43(d)(1) from "[t]aking action on behalf of [FTZ 39], or making recommendations to [FTZ 39], regarding the disposition of proposals or requests by zone participants pertaining to FTZ authority or activity (including activation by CBP)."

The specific activity undertaken by EY that you presented as potentially prohibited under 15 CFR 400.43(d)(1) pertains to EY's role in advising and assisting FTZ 39 on issues related to letters from local taxing authorities regarding impacts of potential FTZ designations. You provided the following context and summary of EY's role:

Texas is a state in which local jurisdictions assess personal property tax on inventory, and as such, the views of local taxing authorities are pertinent to a Foreign-Trade Zones Board decision on applications. DFW has a stated policy which requires evidence of taxing authority concurrence be obtained by the potential zone user prior to an application being filed. DFW publishes a standard form letter for each taxing authority to use as evidence of its concurrence. Taxing authorities, however, do not always provide the letter we request, in which case we regularly turn to EY for advice. As you are aware, EY has particular expertise with this provision of the FTZ Act, and because of its long history with DFW, on potential risks to DFW of accepting a non-standard letter as meeting the DFW policy. When we conclude that a particular letter is not sufficient to

meet our requirements, we notify the potential applicant of the deficiency and request that the applicant obtain appropriate clarification from the taxing authority. With the approval of the potential applicant, we sometimes ask EY to contact the taxing authority directly to clarify its position in direct communication with DFW.

You also presented your position on whether the activity in question should be considered a “key function” subject to 15 CFR 400.43(d)(1):

We do not believe that the EY activity described above is a key function as defined, in the regulations. EY does not make a recommendation on the ultimate disposition of an application. Instead, EY advises DFW on its view of qualification of the non-standard letter under DFW policy, risks to DFW related to accepting the non-standard letter as evidence of concurrence, and recommendations to reduce risk and/or bring the letter into conformity with DFW policy. While the ultimate impact of EY advice that a letter does not meet DFW policy may be a DFW decision not to submit an application until taxing authority letters are brought into conformity with DFW policy, we do not believe that EY should be viewed as making a recommendation on “the disposition of proposals or requests by zone participants pertaining to FTZ authority.”

Based on your characterizations of the activity in question, our determination is that the activity is not a “key function” subject to 15 CFR 400.43(d)(1). Our determination is also based on our understanding that, although FTZ 39 may take into account the advice of EY on potential risks associated with accepting a non-standard letter from a taxing authority, any ultimate recommendation (and action) on the disposition of the specific proposal/request to which such a letter pertains is generated internally by FTZ 39. We have also taken into account that FTZ 39 provides a standard letter for taxing authorities to use – with no involvement of EY – in providing concurrence on a proposed FTZ designation, and that FTZ 39 seeks advice or assistance from EY only when a taxing authority has diverged from the language of the standard letter.

We recognize that when a specific proposal/request includes a non-standard, tax-related letter and FTZ 39 therefore consults EY regarding the risks associated with accepting that letter, the advice provided by EY could conceivably affect FTZ 39’s decision on the disposition of the proposal/request. More broadly, professional advice obtained by a grantee regarding any element of a proposal/request could conceivably affect a grantee’s decision-making on that proposal/request. However, the regulation in question was not intended to be applied so broadly as to eliminate FTZ grantees’ ability to obtain professional advice regarding individual elements of proposals/requests. In sum, in the context of the information and analysis outlined above, EY would not be prohibited by 15 CFR 400.43(d)(1) from providing advice and assistance to FTZ 39 so long as EY’s role does not encompass making a “recommendation” on the overall “disposition” of the proposal/request in question.

If you have any questions regarding the contents of this letter, do not hesitate to contact me at (202) 482-2862, or Matthew Walden of the Office of the Chief Counsel for Import Administration at (202) 482-2963.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew McGilvray', with a long horizontal flourish extending to the right.

Andrew McGilvray
Executive Secretary

RECEIVED

AUG 15 2012

FOREIGN-TRADE ZONES BOARD
EXECUTIVE SECRETARY



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August 6, 2012

Mr. Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board
U.S. Department of Commerce
1401 Constitution Ave., Room 2111
Washington, D.C. 20230

Re: Request for Determination on Uniform Treatment

Dear Mr. McGilvray,

The Dallas/Fort Worth International Airport Board (DFW), Grantee of Foreign Trade Zone No. 39, requests a determination by the Executive Secretary of the consistency of our current arrangement with Ernst & Young, LLP (EY) with the uniform treatment rules of 15 CFR § 400.43, pursuant to the authority of § 400.43(g).

EY has provided advice to DFW for many years. EY also provides zone related services to users of FTZ No. 39. As such, EY is a key person as defined in § 400.43(d)(2) with regard to FTZ No. 39. Key persons cannot undertake defined key functions specified in §400.43(d)(1), one of which is: "(i) Taking action on behalf of a grantee, or making recommendations to a grantee, regarding the disposition of proposals or requests by zone participants pertaining to FTZ authority or activity (including activation by CBP)."

Texas is a state in which local jurisdictions assess personal property tax on inventory, and as such, the views of local taxing authorities are pertinent to a Foreign-Trade Zones Board decision on applications. DFW has a stated policy which requires evidence of taxing authority concurrence be obtained by the potential zone user prior to an application being filed. DFW publishes a standard form letter for each taxing authority to use as evidence of its concurrence. Taxing authorities, however, do not always provide the letter we request, in which case we regularly turn to EY for advice. As you are aware, EY has particular expertise with this provision of the FTZ Act, and because of its long history with DFW, on potential risks to DFW of accepting a non-standard letter as meeting the DFW policy. When we conclude that a particular letter is not sufficient to meet our requirements, we notify the potential applicant of the deficiency and request that the applicant obtain appropriate clarification from the taxing authority. With the approval of the potential applicant, we sometimes ask EY to contact the taxing authority directly to clarify its position in direct communication with DFW.

We do not believe that the EY activity described above is a key function as defined in the

Mr. Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board
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regulations. EY does not make a recommendation on the ultimate disposition of an application. Instead, EY advises DFW on its view of qualification of the non-standard letter under DFW policy, risks to DFW related to accepting the non-standard letter as evidence of concurrence, and recommendations to reduce risk and/or bring the letter into conformity with DFW policy. While the ultimate impact of EY advice that a letter does not meet DFW policy may be a DFW decision not to submit an application until taxing authority letters are brought into conformity with DFW policy, we do not believe that EY should be viewed as making a recommendation on "the disposition of proposals or requests by zone participants pertaining to FTZ authority."

Additionally, we note that the discussion of comments received published with the regulations states that with regard to waivers of §400.43(d) "a key factor the Board will consider is whether a grantee's specific arrangement presents a significant risk that zone users will experience implied pressure to procure a particular private party's services as a condition of obtaining access to the federal FTZ program." There is no implied pressure present in this arrangement. To the contrary, DFW publishes a standard letter which is always acceptable, and seeks advice from EY only with regard to non-standard language.

We appreciate your consideration of this request. Please let us know if we can provide any additional information.

Sincerely,



Christina L. Wood
Manager, Land Use/Property Management

cc: John Terrell
Gary Hedges
Bill Methenitis, Ernst & Young, LLP – Dallas, TX