

§ 44.2 Forms prescribed.

(a) The appropriate ATF officer is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part. The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5950, or by accessing the ATF web site (<http://www.atf.treas.gov>).

(5 U.S.C. 552(a) (80 Stat. 383, as amended))

[T.D. ATF-92, 46 FR 46922, Sept. 23, 1981, as amended by T.D. ATF-232, 51 FR 28087, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-372, 61 FR 20725, May 8, 1996; T.D. ATF-480, 67 FR 30801, May 8, 2002]

§ 44.3 Delegations of the Director.

Most of the authorities of the Director contained in this part are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.31, Delegation of the Director's Authorities in Part 44. ATF delegation orders, such as ATF Order 1130.31, are available from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5950, or from the ATF web site (<http://www.atf.treas.gov>).

[T.D. ATF-480, 67 FR 30801, May 8, 2002]

Subpart B—Definitions**§ 44.11 Meaning of terms.**

When used in this part and in forms prescribed under this part, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of

this part by ATF Order 1130.31, Delegation of the Director's Authorities in 27 CFR Part 44, Exportation of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, or With Drawback of Tax.

Chewing tobacco. Any leaf tobacco that is not intended to be smoked.

Cigar. Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the definition of "cigarette" given in this section).

Cigarette. (a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(b) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this definition.

Cigarette paper. Paper, or other material except tobacco, prepared for use as a cigarette wrapper.

Cigarette tube. Cigarette paper made into a hollow cylinder for use in making cigarettes.

Customs warehouse. A customs bonded manufacturing warehouse, class 6, where cigars are manufactured of imported tobacco.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

District director of customs. The district director of customs at a headquarters port of the district (except the district of New York, N.Y.); the area directors of customs in the district of New York, N.Y.; and the port director at a port not designated as a headquarters port.

Exportation or export. A severance of tobacco products or cigarette papers or tubes from the mass of things belonging to the United States with the intention of uniting them to the mass of things belonging to some foreign country. For the purposes of this part, shipment from the United States to Puerto Rico, the Virgin Islands, or a possession of the United States, shall be deemed exportation, as will the clearance from the United States of tobacco

products and cigarette papers and tubes for consumption beyond the jurisdiction of the internal revenue laws of the United States, i.e., beyond the 3-mile limit or international boundary, as the case may be.

Export warehouse. A bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

Export warehouse proprietor. Any person who operates an export warehouse.

Factory. The premises of a manufacturer of tobacco products or cigarette papers and tubes in which he carries on such business.

Foreign-trade zone. A foreign-trade zone established and operated pursuant to the Act of June 18, 1934, as amended.

In bond. The status of tobacco products and cigarette papers and tubes, which come within the coverage of a bond securing the payment of internal revenue taxes imposed by 26 U.S.C. 5701 or 7652, and in respect to which such taxes have not been determined as provided by regulations in this chapter, including (a) such articles in a factory or an export warehouse, (b) such articles removed, transferred, or released, pursuant to 26 U.S.C. 5704, and with respect to which relief from the tax liability has not occurred, and (c) such articles on which the tax has been determined, or with respect to which relief from the tax liability has occurred, which have been returned to the coverage of a bond.

Manufacturer of cigarette papers and tubes. Any person who manufactures cigarette paper, or makes up cigarette paper into tubes, except for his own personal use or consumption.

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Package. The container in which tobacco products or cigarette papers or tubes are put up by the manufacturer and delivered to the consumer.

Person. An individual, partnership, association, company, corporation, estate, or trust.

Pipe tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

Removal or remove. The removal of tobacco products or cigarette papers or tubes from either the factory or the export warehouse covered by the bond of the manufacturer or proprietor.

Roll-your-own tobacco. Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

Sale price. The price for which large cigars are sold by the manufacturer, determined in accordance with §§ 40.22 or 275.39.

State. "State" shall, for the purposes of this part, be construed to include the District of Columbia.

Smokeless tobacco. Any snuff or chewing tobacco.

Snuff. Any finely cut, ground, or powdered tobacco that is not intended to be smoked.

Tobacco products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

United States. "United States" when used in a geographical sense shall include only the States and the District of Columbia.

U.S.C. The United States Code.

Zone operator. The person to whom the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zones Board created by the Act of June 18, 1934, as amended.

Zone restricted status. Tobacco products, cigarette papers and cigarette tubes which have been taken into a foreign trade zone from the United States Customs territory for the sole purpose

of exportation or storage until exported.

[T.D. ATF-48, 43 FR 13556, Mar. 31, 1978; 44 FR 55856, Sept. 28, 1979, as amended by T.D. ATF-232, 51 FR 28087, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-289, 54 FR 48841, Nov. 27, 1989; T.D. ATF-421, 64 FR 71925, Dec. 22, 1999; T.D. ATF-424, 64 FR 71933, Dec. 22, 1999; T.D. ATF-420, 64 FR 71945, Dec. 22, 1999; T.D. ATF-460, 66 FR 39093, July 27, 2001; T.D. ATF-467, 66 FR 49532, Sept. 28, 2001; T.D. ATF-480, 67 FR 30801, May 8, 2002]

Subpart Ba—Special (Occupational) Taxes

SOURCE: T.D. ATF-271, 53 FR 17563, May 17, 1988, unless otherwise noted.

§ 44.31 Liability for special tax.

(a) *Export warehouse proprietor.* Every export warehouse proprietor shall pay a special (occupational) tax at a rate specified by § 44.32. The tax shall be paid on or before the date of commencing the business of an export warehouseman, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* For purposes of paragraph (a) of this section, a proprietor engaged in the business of an export warehouseman on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(c) *Each place of business taxable.* An export warehouse proprietor under this part incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the

divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5731)

§ 44.32 Rate of special tax.

(a) *General.* Title 26 U.S.C. 5731(a)(3) imposes a special tax of \$1,000 per year on every export warehouse proprietor.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5731(b) provides for a reduced rate of \$500 per year with respect to any export warehouse proprietor whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 44.31 relates) are less than \$500,000. The “taxable year” to be used for determining gross receipts is the taxpayer’s income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a “controlled group”; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. “Controlled group” means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words “at least 80 percent” shall be replaced by the words “more than 50 percent” in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a “controlled group of corporations” apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.