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(Approved by the Office of Management and Budget under control number 1512-0363)

Sec. 2128(c), Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5741)

[T.D. ATF-40, 42 FR 5011, Jan. 26, 1977, as amended by T.D. ATF-172, 49 FR 14943, Apr. 16, 1984; T.D. ATF-232, 51 FR 28090, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-307, 55 FR 52745, Dec. 21, 1990]

**PART 296—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES**

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AUTHORITY: 18 U.S.C. 2341-2346, 26 U.S.C. 5708, 5751, 5761-5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782.

CROSS REFERENCE: For exportation of tobacco materials, tobacco products, and cigarette papers and tubes, without payment of tax, or with drawback of tax, see part 290 of this subchapter.

Subpart A—Application of 26 U.S.C. 6423, as Amended, To Refund or Credit of Tax on Tobacco Products, and Cigarette Papers and Tubes

SOURCE: T.D. 6395, 24 FR 599, Jan. 28, 1959, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

GENERAL

**§296.1 Scope of regulations in this subpart.**

The regulations in this subpart relate to the limitations imposed by 26 U.S.C. 6423, on the refund or credit of tax paid or collected in respect to any article of a kind subject to a tax imposed by 26 U.S.C. chapter 52.

[T.D. ATF-48, 44 FR 55857, Sept. 28, 1979]

**§296.2 Meaning of terms.**

When used in this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section.

*Article.* The commodity in respect to which the amount claimed was paid or collected as a tax.

*Claimant.* Any person who files a claim for a refund or credit of tax under this subpart.

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

*Owner.* A person who, by reason of a proprietary interest in the article, furnished the amount claimed to the claimant for the purpose of paying the tax.

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

*Regional Director (compliance).* The principal ATF regional regulatory official responsible for administering regulations in this subpart.

*Tax.* Any tax imposed by 26 U.S.C. chapter 52, or by any corresponding provision of prior internal revenue laws, and in the case of any commodity of a kind subject to a tax under such chapter, any tax equal to any such tax, any additional tax, or any floor stocks tax. The term includes an exaction denominated a "tax", and any penalty, addition to tax, additional amount, or interest applicable to any such tax.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §296.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

**§296.3 Applicability to certain credits or refunds.**

The provisions of this subpart apply only where the credit or refund is claimed on the grounds that an amount of tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive. This subpart does not apply to:

- (a) Any claim for drawback,
- (b) Any claim made in accordance with any law expressly providing for credit or refund where an article is withdrawn from the market, returned to bond, lost, or destroyed, and
- (c) Any claim based solely on errors in computation of the quantity of an article subject to tax or on mathematical errors in computation of the amount of the tax due, or to any claim in respect of tax collected or paid on an

article seized and forfeited, or destroyed, as contraband.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-42, 42 FR 8372, Feb. 10, 1977]

#### § 296.4 Ultimate burden.

For the purposes of this subpart, the claimant, or owner, shall be treated as having borne the ultimate burden of an amount of tax only if:

- (a) He has not, directly or indirectly, been relieved of such burden or shifted such burden to any other person,
- (b) No understanding or agreement exists for any such relief or shifting, and
- (c) If he has neither sold nor contracted to sell the articles involved in such claim, he agrees that there will be no such relief or shifting, and furnishes bond as provided in § 296.10.

#### § 296.5 Conditions to allowance of credit or refund.

No credit or refund to which this subpart is applicable shall be allowed or made, pursuant to a court decision or otherwise, of any amount paid or collected as a tax unless a claim therefor has been filed, as provided in this subpart, by the person who paid the tax and the claimant, in addition to establishing that he is otherwise legally entitled to credit or refund of the amount claimed, establishes:

- (a) That he bore the ultimate burden of the amount claimed, or
- (b) That he has unconditionally repaid the amount claimed to the person who bore the ultimate burden of such amount, or
- (c) That (1) the owner of the article furnished him the amount claimed for payment of the tax, (2) he has filed with the regional director (compliance) the written consent of such owner to the allowance to the claimant of the credit or refund, and (3) such owner satisfies the requirements of paragraph (a) or (b) of this section.

#### § 296.6 Requirements for persons intending to file claim.

Any person who, having paid the tax with respect to an article, desires to claim refund or credit of any amount of

such tax to which the provisions of this subpart are applicable must:

- (a) File a claim, as provided in § 296.7,
- (b) Comply with any other provisions of law or regulations which may apply to the claim, and
- (c) If, at the time of filing the claim, neither he nor the owner has sold or contracted to sell the articles involved in the claim, file a bond on Form 2490, as provided by § 296.10.

#### CLAIM PROCEDURE

#### § 296.7 Execution and filing of claim.

Claims to which this subpart is applicable shall be executed on Form 2635 (5620.8) in accordance with instructions on the form and shall be filed with the regional director (compliance) for the region in which the tax was paid. (For provisions relating to hand-carried documents, see § 70.304 of this chapter.) The claim shall set forth each ground upon which the claim is made in sufficient detail to apprise the regional director (compliance) of the exact basis therefor. Allegations pertaining to the bearing of the ultimate burden relate to additional conditions which must be established for a claim to be allowed and are not in themselves legal grounds for allowance of a claim. There shall also be attached to the form and made a part of the claim the supporting data required by § 296.8. All evidence relied upon in support of such claim shall be clearly set forth and submitted with the claim.

[T.D. 7008, 34 FR 3672, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55857, Sept. 28, 1979; T.D. ATF-251, 52 FR 19342, May 22, 1987; T.D. ATF-301, 55 FR 47658, Nov. 14, 1990]

#### § 296.8 Data to be shown in claim.

Claims to which this subpart is applicable, in addition to the requirements of § 296.7, must set forth or contain the following:

- (a) A statement that the claimant paid the amount claimed as a "tax" as defined in this subpart.
- (b) Full identification (by specific reference to the form number, the date of filing, the place of filing, and the amount paid on the basis of the particular form or return) of the tax forms

or returns covering the payments for which refund or credit is claimed.

(c) The written consent of the owner to allow the refund or credit to the claimant (where the owner of the article on which the tax was paid has furnished the claimant the amount claimed for the purpose of paying the tax).

(d) If the claimant or the owner, as the case may be, has neither sold nor contracted to sell the articles involved in the claim, a statement that the claimant or the owner, as the case may be, agrees not to shift, directly or indirectly in any manner whatsoever, the burden of the tax to any other person.

(e) If the claim is for refund of a floor stocks tax, or of an amount resulting from an increase in rate of tax applicable to an article, a statement as to whether the price of the article was increased on or following the effective date of such floor stocks tax or rate increase, and, if so, the date of the increase, together with full information as to the amount of such price increase.

(f) Specific evidence (such as relevant records, invoices, or other documents, or affidavits of individuals having personal knowledge of pertinent facts) which will satisfactorily establish the conditions of allowance set forth in § 296.5.

The regional director (compliance) may require the claimant to furnish as a part of the claim such additional information as he may deem necessary.

[T.D. ATF-42, 42 FR 8372, Feb. 10, 1977]

**§ 296.9 Time for filing claim.**

No credit or refund of any amount of tax to which the provisions of this subpart apply shall be made unless the claimant files a claim therefor within the time prescribed by law and in accordance with the provisions of this subpart.

[T.D. ATF-42, 42 FR 8373, Feb. 10, 1977]

BOND

**§ 296.10 Bond, Form 2490.**

Each claim for a refund or credit of tax on articles which the claimant or the owner, as the case may be, has neither sold nor contracted to sell at the

time of filing of the claim must be accompanied by a bond on Form 2490. The bond shall be executed by the claimant or the owner of the articles, as the case may be, in accordance with the provisions of this subpart and the instructions printed on the form. Such bond shall be conditioned that there will be no relief or shifting of the ultimate burden of the tax to any other person. The penal sum shall not be less than the amount of tax claimed on all articles which have not been sold or contracted for sale at the time of filing of the claim. Bonds required by this subpart shall be given with corporate surety or with collateral security. A separate bond must be filed for each claim.

**§ 296.11 Corporate surety.**

(a) Surety bonds required under the provisions of this subpart may be given only with corporate sureties holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds. Limitations concerning corporate sureties are prescribed by the Secretary in the current revision of the Treasury Department Circular No. 570 (refer to paragraph (c) of this section). The surety shall have no interest whatever in the business covered by the bond.

(b) Each bond and each extension of coverage of bond shall at the time of filing be accompanied by a power of attorney authorizing the agent or officer who executed the bond to so act on behalf of the surety. The regional director (compliance) who is authorized to approve the bond may, whenever he deems it necessary, require additional evidence of the authority of the agent or officer to execute the bond or extension of coverage of bond. The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed document, it shall be accompanied by a certificate of its validity.

(c) Treasury Department Circular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies) is published in the FEDERAL REGISTER annually as of the first workday in July. As they occur,

interim revisions of the circular are published in the FEDERAL REGISTER. Copies may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, DC 20226.

(July 30, 1947, ch. 390, 61 Stat. 648, as amended (6 U.S.C. 6, 7); sec. 202, Pub. L. 85-859, 72 Stat. 1421, as amended (26 U.S.C. 5711))

[T.D. ATF-92, 46 FR 46923, Sept. 23, 1981]

**§ 296.12 Deposit of securities in lieu of corporate surety.**

In lieu of corporate surety, the principal may pledge and deposit securities which are transferable and are guaranteed as to both interest and principal by the United States, in accordance with the provisions of 31 CFR part 225.

**§ 296.13 Authority to approve bonds.**

Assistant regional commissioners are authorized to approve all bonds required by this subpart.

**§ 296.14 Termination of liability.**

Bonds on Form 2490 will be terminated by the regional director (compliance) on receipt of satisfactory evidence that the person giving the bond has disposed of the articles covered by the bond and that he bore the ultimate burden of the amount claimed and that no understanding or agreement exists whereby he will be relieved of such burden or shift such burden to another person.

**§ 296.15 Release of pledged securities.**

Securities of the United States, pledged and deposited as provided by § 296.12, shall be released only in accordance with the provisions of 31 CFR part 225. When the regional director (compliance) is satisfied that they may be released, he shall fix the date or dates on which a part or all of such securities may be released. At any time prior to the release of such securities, the regional director (compliance) may, for proper cause, extend the date of release for such additional length of time as he deems necessary.

PENALTIES

**§ 296.16 Penalties.**

It is an offense punishable by fine and imprisonment for anyone to make or cause to be made any false or fraudulent claim upon the United States, or to make any false or fraudulent statements, or representations, in support of any claim, or to falsely or fraudulently execute any documents required by the provisions of the internal revenue laws, or any regulations made in pursuance thereof.

**Subpart B [Reserved]**

**Subpart C—Losses of Tobacco Products and Cigarette Papers and Tubes Caused by a Disaster Occurring After the Date of Enactment of the Excise Tax Technical Changes Act of 1958**

**§ 296.71 Scope of subpart.**

This subpart prescribes the requirements necessary to implement 26 U.S.C. 5708, concerning payments which may be made by the United States in respect to the internal revenue taxes paid or determined and customs duties paid on tobacco products, and cigarette papers and tubes removed, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of a disaster occurring in the United States on or after September 3, 1958.

[T.D. 6871, 31 FR 59, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55857, Sept. 28, 1979; T.D. ATF-232, 51 FR 28090, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

DEFINITIONS

**§ 296.72 Meaning of terms.**

When used in this subpart, 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.

*Act.* The Excise Tax Technical Changes Act of 1958 (Pub. L. 85-859, 72 Stat. 1275), enacted September 2, 1958.

*Associate Director (Compliance Operations).* The Associate Director (Compliance Operations) in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director.

*Claimant.* The person who held the tobacco products or cigarette papers and tubes for sale at the time of the disaster and who files claim under this subpart.

*Commissioner of Customs.* The Commissioner of Customs, U.S. Customs Service, The Department of the Treasury, Washington, DC.

*Disaster.* A flood, fire, hurricane, earthquake, storm, or other catastrophe which has occurred in any part of the United States on and after the day following the date of enactment of the act and which the President of the United States has determined, under the Act of September 30, 1950 (64 Stat. 1109; 42 U.S.C. 1855), was a "major disaster" as defined in such Act.

*Duly authorized official.* Any Federal, State, or local government official in whom has been vested authority to condemn tobacco products and cigarette papers and tubes made the subject of a claim under this subpart.

*Duty or duties.* Any duty or duties paid under the customs laws of the United States.

*Region.* A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

*Regional Director (compliance).* The principal ATF regional official responsible for administering regulations in this part.

*Removal or remove.* The removal of tobacco products or cigarette papers or tubes from the factory, or release of such articles from Customs custody.

*Tax paid or determined.* The internal revenue tax on tobacco products and cigarette papers and tubes which has

actually been paid, or which has been determined pursuant to 26 U.S.C. 5703(b), and regulations thereunder, at the time of their removal subject to tax payable on the basis of a return.

*Tobacco products.* Cigars, cigarettes, smokeless tobacco, and pipe tobacco. The term does not include smoking tobacco that is not suitable for use or likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

*United States.* When used in a geographical sense, includes only the States, and the District of Columbia.

*Wholesale price.* The manufacturer's or importer's suggested delivered price, at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652 but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Associate Director (Compliance Operations).

[T.D. 6392, 24 FR 5300, June 30, 1959, as amended by T.D. 6573, 26 FR 8202, Aug. 31, 1961; T.D. 6871, 31 FR 59, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 296.72, see the List of CFR Sections Affected in the Finding Aids section of this volume.

#### PAYMENTS

#### § 296.73 Circumstances under which payment may be made.

Regional regulatory administrators shall allow payment (without interest) of an amount equal to the amount of tax paid or determined, and the Commissioner of Customs shall allow payment (without interest) of an amount equal to the amount of customs duty paid, on tobacco products, and cigarette papers and tubes removed, which are lost, rendered unmarketable, or

condemned by a duly authorized official by reason of a disaster occurring in the United States on and after September 3, 1958. Such payments may be made only if, at the time of the disaster, such tobacco products, or cigarette papers or tubes were being held for sale by the claimant. No payment shall be made under this subpart with respect to any amount of tax or duty claimed or to be claimed under any other provision of law or regulations.

[T.D. 6871, 31 FR 59, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28090, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

CLAIMS PROCEDURE

**§ 296.74 Execution and filing of claims.**

Claims under this subpart shall be executed on AFT Form 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes, in accordance with the applicable instructions on the form, and filed with the Regional Director (Compliance) of the region in which the tobacco products or cigarette papers or tubes were lost, rendered unmarketable, or condemned, within 6 months after the date on which the President makes the determination that the disaster has occurred. The claim shall state all the facts on which the claim is based, and shall set forth the number of small cigars, large cigars, (itemized separately as to the taxable wholesale price or sale price, as applicable), small cigarettes, large cigarettes, cigarette papers, cigarette tubes, the pounds and ounces of chewing tobacco and snuff, and the pounds and ounces of pipe tobacco, as the case may be, and the rate and the amount claimed with respect to each article set forth, substantially in the form as shown in the examples below:

EXAMPLE USING PRE-1991 RATES:

Quantity	Article	Rate of tax	Amount
20,000 .....	Small cigars	\$0.75 per thousand.	\$15.00
1,000 .....	Large cigars—wholesale price \$100 per thousand.	8½ pct of wholesale price.	8.50
500 .....	Large cigars—wholesale price \$236 per thousand.	\$20 per thousand.	10.00
10,000 .....	Small cigarettes.	\$8 per thousand.	80.00
5,000 .....	Large cigarettes.	\$8.40 per thousand.	42.00
2,000 sets ..	Cigarette papers—50 each set.	\$0.005 per set.	10.00
1,000 sets ..	Cigarette papers—100 each set.	\$0.01 per set.	10.00
1,000 .....	Cigarette tubes.	\$0.01 per 50 tubes.	0.20
100 lbs .....	Chewing tobacco.	\$.08 per lb.	8.00
200 lbs .....	Snuff .....	\$.24 per lb.	48.00
100 lbs .....	Pipe tobacco.	\$.45 per lb.	45.00
Total claimed.	.....	.....	\$276.70

EXAMPLE USING 1991 AND 1992 RATES:

Quantity	Article	Rate of tax	Amount
20,000 .....	Small cigars .....	\$0.9375 per thousand .....	\$18.75
1,000 .....	Large cigars—sale price \$100/thousand .....	10.625 percent of sale price .....	10.63
500 .....	Large cigars—sale price \$236/thousand .....	\$25 per thousand .....	12.50
10,000 .....	Small cigarettes .....	\$10 per thousand .....	100.00
5,000 .....	Large cigarettes .....	\$21.00 per thousand .....	105.00
2,000 sets .....	Cigarette papers—50 per set .....	\$0.00625 per set .....	12.50
1,000 sets .....	Cigarette papers 100 per set .....	\$0.0125 per set .....	12.50
1,000 .....	Cigarette tubes .....	\$0.0125 per 50 tubes .....	0.25
100 lbs .....	Chewing tobacco .....	\$0.10 per pound .....	10.00
200 lbs .....	Snuff .....	\$0.30 per pound .....	60.00
100 lbs .....	Pipe tobacco .....	\$0.5625 per pound .....	56.25

Quantity	Article	Rate of tax	Amount
Total claimed .....	.....	.....	\$398.38

EXAMPLE USING RATES FOR 1993 AND THEREAFTER:

Quantity	Article	Rate of tax	Amount
20,000 .....	Small cigars .....	\$1.125 per thousand .....	\$22.50
1,000 .....	Large cigars—sale price \$100/thousand ....	\$12.75 percent of sale price .....	12.75
500 .....	Large cigars—sale price \$236/thousand ....	\$30 per thousand .....	15.00
10,000 .....	Small cigarettes .....	\$12 per thousand .....	120.00
5,000 .....	Large cigarettes .....	\$25.20 per thousand .....	126.00
2,000 sets .....	Cigarette papers—50 per set .....	\$0.0075 per set .....	15.00
1,000 sets .....	Cigarette papers—100 per set .....	\$0.015 per set .....	15.00
1,000 .....	Cigarette tubes .....	\$0.015 per 50 tubes .....	0.30
100 lbs .....	Chewing tobacco .....	\$0.12 per pound .....	12.00
200 lbs .....	Snuff .....	\$0.36 per pound .....	72.00
100 lbs .....	Pipe tobacco .....	\$0.675 per pound .....	67.50
Total claimed .....	.....	.....	\$478.05

The claimant shall certify on the claim to the effect that no amount of internal revenue tax or customs duty claimed therein has been or will be otherwise claimed under any other provision of law or regulations.

[T.D. ATF-289, 54 FR 48842, Nov. 27, 1989; as amended by T.D. ATF-307, 55 FR 52745, Dec. 21, 1990]

**§ 296.75 Separation of imported and domestic tobacco products, and cigarette papers and tubes; separate claims for taxes and duties.**

If a claim involves taxes on domestic tobacco products, or cigarette papers or tubes and imported tobacco products, or cigarette papers or tubes, the quantities of each must be shown separately in the claim. A separate claim must be filed, with the regional director (compliance), in respect of customs duties.

[T.D. 6871, 31 FR 59, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28090, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**§ 296.76 Claimant to furnish satisfactory proof.**

The claimant shall furnish proof to the satisfaction of the regional director (compliance) regarding the following:

(a) That the tax on such tobacco products, or cigarette papers or tubes has been paid or determined and customs duty has been paid;

(b) That such tobacco products, or cigarette papers or tubes were lost, rendered unmarketable, or condemned by a duly authorized official, by reason of a disaster;

(c) The type and date of occurrence of the disaster and the location of the tobacco products, or cigarette papers or tubes at that time;

(d) That the claimant was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the tobacco products, or cigarette papers or tubes covered by the claim; and

(e) That the claimant is entitled to payment under this subpart.

[T.D. 6871, 31 FR 59, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28090, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**§ 296.77 Supporting evidence.**

The claimant shall support his claim with any evidence (such as inventories, statements, invoices, bills, records, stamps, and labels) that he is able to submit, relating to the tobacco products, or cigarette papers or tubes on hand at the time of the disaster and averred to have been lost, rendered unmarketable, or condemned as a result thereof. If the claim is for refund of duty the claimant shall furnish, if practicable, the customs entry number,

date of entry, and the name of the port of entry.

[T.D. 6871, 31 FR 59, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28090, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**§296.78 Action by regional director (compliance).**

The regional director (compliance) will date stamp and examine each claim filed under this subpart and will determine the validity of the claim. The claim will then be processed by him in accordance with existing procedures. Claims and supporting data involving customs duties will be forwarded to the Commissioner of Customs with a summary statement by the regional director (compliance) concerning his findings. The Commissioner of Customs will notify the regional director (compliance) as to allowance under this subpart of claims for duty in respect of unmarketable or condemned tobacco products, and cigarette papers and tubes.

[T.D. 6871, 31 FR 59, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28091, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

DESTRUCTION OF TOBACCO PRODUCTS,  
AND CIGARETTE PAPERS AND TUBES

**§296.79 Supervision.**

Before payment is made under this subpart in respect of the tax, or tax and duty, on tobacco products, or cigarette papers or tubes rendered unmarketable or condemned by a duly authorized official, such tobacco products, or cigarette papers or tubes shall be destroyed by suitable means under the supervision of an ATF officer who will be assigned for that purpose by the regional director (compliance), unless such tobacco products, or cigarette papers or tubes were previously destroyed under supervision satisfactory to the regional director (compliance).

[T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28091, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

PENALTIES

**§296.80 Penalties.**

Penalties are provided in 26 U.S.C. 7206 and 7207 for the execution under the penalties of perjury of any false or fraudulent statement in support of any claim and for the filing of any false or fraudulent document under this subpart. All provisions of law, including penalties, applicable in respect of internal revenue taxes on tobacco products, and cigarette papers and tubes shall, insofar as applicable and not inconsistent with this subpart, be applied in respect of the payments provided for in this subpart to the same extent as if such payments constituted refunds of such taxes.

[T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55857, Sept. 28, 1979; T.D. ATF-232, 51 FR 28092, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**Subparts D-E [Reserved]**

**Subpart F—Distribution of Cigarettes**

SOURCE: 45 FR 48612, July 21, 1980, unless otherwise noted.

GENERAL

**§296.141 Scope of subpart.**

The regulations in this subpart relate to the distribution of cigarettes in excess of 60,000 in a single transaction.

**§296.142 Territorial extent.**

The provisions of the regulations in this subpart apply in the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

**§296.143 Meaning of terms.**

When used in this subpart, terms are defined as follows in this section. Words in the plural shall include the singular, and vice versa. Words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude other things not named which are in

the same general class or are otherwise within the scope of the term defined.

*ATF officer.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this subpart.

*Business premises.* When used with respect to a distributor, the property on which the cigarettes are kept or stored. The business premises includes the property where the records of a distributor are kept.

*Common or contract carrier.* A carrier holding a certificate of convenience and necessity, a permit for contract carrier by motor vehicle, or other valid operating authority under the Interstate Commerce Act, or under equivalent operating authority from a regulatory agency of the United States or of any State.

*Contraband cigarettes.* Any quantity of cigarettes in excess of 60,000, if—

(a) The cigarettes bear no evidence of the payment of applicable State cigarette taxes in the State where the cigarettes are found;

(b) The State in which the cigarettes are found requires a stamp, impression, or other indication to be placed on packages or other containers of cigarettes to evidence payment of cigarette taxes; and

(c) The cigarettes are in the possession of any person other than an exempted person.

*Disposition.* The movement of cigarettes from a person's business premises, wherever situated, by shipment or other means of distribution.

*Distribute.* To sell, ship, issue, give, transfer, or otherwise dispose of.

*Distributor.* Any person who distributes more than 60,000 cigarettes in a single transaction.

*Exempted person.* Any person who is—

(a) Holding a permit issued pursuant to Chapter 52 of the Internal Revenue Code of 1954 as a manufacturer of tobacco products or as an export warehouse proprietor;

(b) Operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311 or 1555);

(c) An agent of a tobacco products manufacturer, an export warehouse

proprietor, or an operator of a customs bonded warehouse;

(d) A common or contract carrier transporting the cigarettes involved under a proper bill of lading or freight bill which states the quantity, source, and destination of the cigarettes;

(e) Licensed or otherwise authorized by the State, in which he possesses cigarettes, to account for and pay cigarette taxes imposed by that State; and who has complied with the accounting and payment requirements relating to his license or authorization with respect to the cigarettes involved; or

(f) An agent of the United States, of an individual State, or of a political subdivision of a State and having possession of cigarettes in connection with the performance of official duties.

(g) Operating within a foreign-trade zone established under 19 U.S.C., section 81b, when the cigarettes involved have been entered into the zone under zone-restricted status or, in respect to foreign cigarettes, have been admitted into the zone but have not been entered into the United States.

*Person.* Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

*Regional Director (compliance).* The regional official in charge of regulatory enforcement.

*State.* A State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands.

#### RECORDS

##### § 296.146 General requirements.

Each distributor of cigarettes shall keep copies of invoices, bills of lading, or other suitable commercial records relating to each disposition of more than 60,000 cigarettes. Dividing a single agreement for the disposition of more than 60,000 cigarettes into the delivery of smaller components of 60,000 cigarettes or less does not exempt the distributor from the recordkeeping requirements of this subpart. The distributor shall include the information prescribed in § 296.147 in his commercial records of disposition.

**§ 296.147 Required information.**

(a) *Distributors who are exempted persons.* Each distributor who is an exempted person as defined in § 296.143 shall show the following information in his commercial records.

(1) For each disposition of more than 60,000 cigarettes to an exempted person; or for each disposition of more than 60,000 cigarettes to a person who is not an exempted person and which is delivered by the distributor to the recipient's place of business, the distributor shall show on dated records—

(i) The full name of the purchaser (or the recipient if there is no purchaser);

(ii) The street address (including city and state) to which the cigarettes are destined; and

(iii) The quantity of cigarettes disposed of.

(2) For each disposition of more than 60,000 cigarettes, other than the dispositions specified in paragraph (a)(1) of this section, the distributor shall show on dated records—

(i) The full name of the purchaser (if any);

(ii) The name, address (including city and state), and signature of the person receiving the cigarettes;

(iii) The street address (including city and state) to which the cigarettes are destined;

(iv) The quantity of cigarettes disposed of;

(v) The driver's license number of the individual receiving the cigarettes;

(vi) The license number of the vehicle in which the cigarettes are removed from the distributor's business premises;

(vii) A declaration by the individual receiving the cigarettes of the specific purpose of receipt (such as personal use, resale, delivery to another person, etc.); and

(viii) A declaration by the person receiving the cigarettes of the name and address of his principal when he is acting as an agent.

(b) *Distributors who are not exempted persons.* Each distributor who is not an exempted person as defined in § 296.143 shall show on dated commercial records the information specified in paragraphs (a)(2) (i) through (viii) of

this section for each disposition of more than 60,000 cigarettes.

(Approved by the Office of Management and Budget under control number 1512-0391)

[45 FR 48612, July 21, 1980, as amended by T.D. ATF-172, 49 FR 14943, Apr. 16, 1984]

**§ 296.150 Retention of records.**

(a) *General.* Each distributor of cigarettes shall retain the records required by §§ 296.146 and 296.147 for three years following the close of the year in which the records are made. The distributor shall keep the required records on his business premises.

(b) *Shorter retention periods.* The regional director (compliance) may, pursuant to an application submitted by a distributor, approve a shorter retention period where—

(1) The distributor requesting the shorter retention period is an agent of a tobacco products manufacturer;

(2) The tobacco products manufacturer will keep the required record for each disposition of more than 60,000 cigarettes from the agent's premises for the full retention period specified in paragraph (a) of this section; and

(3) The approval of a shorter retention period will not unduly hinder the administration of enforcement of this subpart.

(c) *Application requirements.* Each distributor proposing to employ a shorter retention period shall submit a written application, in duplicate, to the regional director (compliance) of the region in which the distributor is located. A distributor may not employ a shorter retention period until approval is received from the regional director (compliance). Each application should indicate the duration of the proposed retention period and should include the information required by paragraph (b) of this section.

OTHER PROVISIONS RELATING TO THE  
DISTRIBUTION OF CIGARETTES

**§ 296.153 Authority of ATF officers to enter business premises.**

Any ATF officer may enter the business premises of any distributor of cigarettes to inspect the records required by §§ 296.146 through 296.147 or to inspect any cigarettes stored on the premises—

(a) Pursuant to duly issued search warrant or an administrative inspection warrant; or

(b) Upon the consent of the distributor to enter his premises.

PENALTIES AND FORFEITURES

**§ 296.154 Penalties.**

(a) Any person who knowingly ships, transports, receives, possesses, sells, distributes, or purchases contraband cigarettes shall be fined not more than \$100,000 or imprisoned not more than five years, or both.

(b) Any person who knowingly violates any regulation contained in this subpart or makes any false statement or misrepresentation with respect to the information required to be recorded by this subpart shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

**§ 296.155 Forfeitures.**

(a) Any contraband cigarettes involved in any violation of the provisions of 18 U.S.C. chapter 114 shall be subject to seizure and forfeiture. All provisions of the Internal Revenue Code of 1954 (title 26 U.S.C.) relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures of contraband cigarettes under the provisions of 18 U.S.C. chapter 114.

(b) Any vessel, vehicle or aircraft used to transport, carry, convey, or conceal or possess any contraband cigarettes with respect to which there has been committed any violation of any provision of 18 U.S.C. chapter 114 or the regulations in this subpart shall be subject to seizure and forfeiture under the Customs laws, as provided by the Act of August 9, 1939 (49 U.S.C. 781–788).

(18 U.S.C. 2344; 53 Stat. 1291 (49 U.S.C. 782))

**Subpart G—Dealers in Tobacco Products**

SOURCE: T.D. 6573, 26 FR 8202, Aug. 31, 1961, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

**§ 296.161 Scope of subpart.**

The regulations in this subpart relate to the purchase, receipt, possession, offering for sale, or sale or other disposition of tobacco products by dealers in such products.

[T.D. 6871, 81 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28092, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**§ 296.162 Territorial extent.**

The provisions of the regulations in this subpart shall apply in the several States of the United States and the District of Columbia.

**§ 296.163 Meaning of terms.**

When used in this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, each of the following terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, words in the singular form shall include the plural, and words importing the masculine gender shall include the feminine. The terms “includes” and “including” do not exclude things not enumerated which are in the same general class.

*ATF officer.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this subpart.

*Dealer.* Any person who sells, or offers for sale, at wholesale or retail levels, any cigars or cigarettes after removal.

*Manufacturer of tobacco products.* Any person who manufactures cigars, cigarettes, smokeless tobacco, or pipe tobacco, except that such term shall not include (a) a person who produces cigars, cigarettes, smokeless tobacco, or pipe tobacco solely for his own personal consumption or use; or (b) a proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

*Package.* The container in which tobacco products are put up by the manufacturer or the importer and offered for delivery to the consumer.

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

*Removal or remove.* The removal of tobacco products from the factory or release from Customs custody, including the smuggling or other unlawful importation of such articles into the United States.

*Tobacco products.* Cigars, cigarettes, smokeless tobacco, and pipe tobacco. The term does not include smoking tobacco that is not suitable for use or likely to be offered to, or purchased by consumers, as tobacco to be smoked in a pipe.

*U.S.C.* The United States Code.

[T.D. 6573, 26 FR 8202, Aug. 31, 1961, as amended by T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 296.163, see the List of CFR Sections Affected in the Finding Aids section of this volume.

**§ 296.164 Authority of ATF officers to enter premises.**

Any ATF officer may enter in the daytime any premises where tobacco products are kept or stored, so far as it may be necessary for the purpose of examining such products. When such premises are open at night, any ATF officer may enter them, while so open, in the performance of his official duties. The owner of such premises, or person having the superintendence of the same, who refuses to admit any ATF officer or permit him to examine such products shall be liable to the penalties prescribed by law for the offense. Operators of vending machines shall make the tobacco products in their machines available for inspection upon the request of any ATF officer.

(68A Stat. 872, 903; 26 U.S.C. 7342, 7606)

[T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28092, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**§ 296.165 Interference with administration.**

Whoever, corruptly or by force or threats of force, endeavors to hinder or obstruct the administration of this subpart, or endeavors to intimidate or impede any ATF officer acting in his official capacity, or forcibly rescues or attempts to rescue or causes to be rescued any property, after it has been duly seized for forfeiture to the United

States in connection with a violation of the internal revenue laws, shall be liable to the penalties prescribed by law.

(68A Stat. 855; 26 U.S.C. 7212)

**§ 296.166 Dealing in tobacco products.**

All tobacco products purchased, received, possessed, offered for sale, sold or otherwise disposed of, by any dealer must be in proper packages which bear the mark and notice as prescribed in parts 270 and 275 of this chapter. Tobacco products may be sold, or offered for sale, at retail from such packages, provided the products remain in the packages until removed by the customer or in the presence of the customer. Where a vending machine is used, tobacco products must similarly be vended in proper packages or directly from such packages.

(72 Stat. 1424; 26 U.S.C. 5751)

[T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28092, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**§ 296.167 Liability to tax.**

Any dealer who, with intent to defraud the United States, possesses tobacco products (a) upon which the tax has not been paid or determined in the manner and at the time prescribed in parts 270 and 275 of this chapter or (b) which, after removal without payment of tax pursuant to section 5704, I.R.C., and regulations issued thereunder, have been diverted from the applicable purpose or use specified in that section or (c) which are not put up in packages prescribed in parts 270 and 275 of this chapter or are put up in packages not bearing the marks and notices prescribed in such regulations shall be liable for a tax equal to the tax on such products.

(72 Stat. 1424; 26 U.S.C. 5751)

[T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28092, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**§ 296.168 Liability to penalties and forfeitures.**

Any dealer who fails to comply with the provisions of this subpart becomes

liable to the civil and criminal penalties, and forfeitures, provided by law. (72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, and 5763)

### Subpart H [Reserved]

### Subpart I—Floor Stocks Tax on Cigarettes Held for Sale on January 1, 1991 and on January 1, 1993

AUTHORITY: Section 11202, Public Law 101-508, 104 Stat. 1388, unless otherwise noted.

SOURCE: T.D. ATF-307, 55 FR 52746, Dec. 21, 1990, unless otherwise noted.

#### § 296.191 Scope of subpart.

The regulations in this subpart relate to the floor stocks tax imposed by Public Law 101-508, 104 Stat. 1388 on cigarettes held for sale on January 1, 1991, and January 1, 1993, respectively.

#### § 296.192 Meaning of terms.

When used in this subpart, terms shall have the meaning prescribed below:

(a) *ATF Officer*. An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

(b) *Controlled Group*. Pursuant to 26 U.S.C. 5061(e)(3), the term “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. Controlled groups of corporations include, but are not limited to:

(1) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563-1(a)(2).

(2) Brother-sister controlled groups as defined in 26 CFR 1.1563-1(a)(3).

(3) Combined groups as defined in 26 CFR 1.1563-1(a)(4). 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 con-

sisting of corporations and one, or more, partnerships and/or sole proprietorships, all are members of a controlled group.

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

(d) *Person*. This term includes an individual, a trust, estate, partnership, association, company, or corporation. It also includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

(e) *Regional Director (Compliance)*. The principal regional official responsible for administering regulations in this part.

(f) *Tax-increase dates*. As specified in Public Law 101-508, 104 Stat. 1388, the tax-increase dates for purposes of imposition of the floor stocks tax on cigarettes are January 1, 1991, and January 1, 1993.

#### § 296.193 Alternate methods or procedures.

The Director may approve alternate methods or procedures, subject to stated conditions, where the Director finds that there is good cause for use of the alternate method or procedure, the alternate method or procedure is within the purpose of, and consistent with the effect intended by, the prescribed method or procedure, and affords equivalent security to the revenue, and the alternate method or procedure is not contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this subpart. No alternate method or procedure relating to the assessment, payment or collection of tax, shall be authorized under this paragraph. A proprietor who wishes to use an alternate method or procedure shall submit a written application to the regional director (compliance) for transmittal to the Director. The application should describe the alternate method or procedure and the reasons for its use. The proprietor may not use an alternate method until the application has been approved by the Director. The Director may withdraw approval for any alternate method or procedure if the revenue is jeopardized

or the effective administration of this subpart is hindered by such approval.

(Approved by the Office of Management and Budget under control number 1512-0504)

**§ 296.194 Scope of tax.**

(a) *General.* Subject to the exceptions set forth in this section, the floor stocks tax is imposed on all Federally taxpaid or tax determined cigarettes which are held by any person for sale at the first moment of the respective tax increase dates of January 1, 1991, and January 1, 1993. Cigarettes subject to floor stocks tax are regarded as held for sale by the one who owns them at the first moment of each respective tax-increase date, although at the time the articles may be in transit to the owner, or in a warehouse, storeroom or distributing depot, and shall be included in the return and inventory of the owner. If ownership does not pass to the consignee until delivery, cigarettes in transit at the first moment of each respective tax-increase date shall be regarded as owned or held by the consignor at that time.

(b) *Exception.* The floor stocks tax is not imposed on cigarettes held for sale by any person on the first moment of any tax-increase date if:

(1) The aggregate number of cigarettes held by such person on each such date does not exceed 30,000. If such person's inventory includes large cigarettes more than 6½ inches in length, each ¾ inches or fraction thereof of the length of each shall be counted as one cigarette; and

(2) Such person complies with the inventory requirements of § 296.198 and the tax return filing requirements of § 296.197 of this part. A controlled group may only claim the exception if the aggregate number of cigarettes held by all members of the controlled group on the respective tax-increase dates does not exceed 30,000.

(c) *Credit against tax.* Each person shall be allowed as a credit against the floor stocks tax imposed by paragraph (a) of this section an amount equal to \$60, or the amount of floor stocks tax for which such person is liable, whichever is less. Controlled groups are eligible for one credit amount for the entire group. Dealers who are component members of a controlled group must

apportion the \$60 credit among the members of the group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members. An attachment shall be made to the tax returns required by § 296.197 for the members of the controlled group showing the name, address, and amount of credit taken by each member of the controlled group.

(d) *Vending machines.* The floor stocks tax shall not be imposed on cigarettes held by any person in any vending machine on the first moment of each respective tax-increase date. Cigarettes owned by vending machine operators on the first moment of each respective tax-increase date and held in transit or in storage facilities on those dates and not in the vending machines are not exempt from floor stocks tax. Vending machine operators are subject to the inventory requirements of § 296.198 and the tax return filing requirements of § 296.197 of this part if they hold any cigarettes outside of vending machines on the first moment of each respective tax-increase date.

(e) *Treatment of cigarettes in foreign trade zones.* Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provisions of law, cigarettes which are held in a foreign trade zone on the first moment of January 1, 1991, or the first moment of January 1, 1993, shall be subject to floor stocks tax and shall be treated for purposes of this subpart as held on such date for sale if

(1) Internal Revenue taxes have been determined, or Customs duties liquidated, with respect to such cigarettes before such date pursuant to a request made under the first proviso of section 3(a) of such Act, or

(2) Such cigarettes are held on such date under the supervision of a Customs officer pursuant to the second proviso of section 3(a) of such Act.

(f) *Cigarettes held in bond.* The floor stocks tax does not apply to cigarettes held in ATF or customs bond on the first moment of each respective tax-increase date.

(Approved by the Office of Management and Budget under control number 1512-0504)

**§ 296.195 Rate of tax.**

(a) *Small ("Class A") cigarettes.* The rate of floor stocks tax applicable to small cigarettes held for sale on the respective tax-increase dates of January 1, 1991, and January 1, 1993, is \$2 per thousand. The term "small cigarettes" means cigarettes weighing not more than 3 pounds per thousand, and includes the usual king, 100 mm, and 120 mm sizes of cigarettes.

(b) *Large ("Class B") cigarettes.* The rate of floor stocks tax applicable to large cigarettes held for sale on the respective tax-increase dates of January 1, 1991, and January 1, 1993, is \$4.20 per thousand; except that for large cigarettes more than 6½ inches long, the rate is the same as for small cigarettes, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette. The term "large cigarettes" means cigarettes weighing more than 3 pounds per thousand, and includes the unusually large cigarettes such as those sometimes referred to as the "Banquet" size.

**§ 296.196 Payment of tax.**

(a) *General.* The floor stocks tax is payable by every person who holds for sale, on the first moment of the respective tax increase dates of January 1, 1991, and January 1, 1993, federally tax-paid or tax determined cigarettes, except those vending machine stocks exempt under § 296.194(d) and stocks held by persons who have less than 30,000 cigarettes in inventory on a tax increase date. Except as provided in paragraph (b) of this section, the tax shall be paid on or before June 30, 1991, for cigarettes held on January 1, 1991, and on or before June 30, 1993, for cigarettes held on January 1, 1993, and shall accompany the floor stocks tax return. Checks and money orders shall be made payable to the Bureau of Alcohol, Tobacco and Firearms, and shall show the taxpayer's name and employer identification number.

(b) *Payment by Electronic Fund Transfer (EFT).* Persons who pay excise tax by electronic fund transfer shall use the same method for the payment of floor stocks tax.

(Approved by the Office of Management and Budget under control number 1512-0504)

**§ 296.197 Return.**

(a) *General.* Each person who holds for sale, at the first moment of the respective tax-increase dates of January 1, 1991, and January 1, 1993, Federally taxpaid or tax determined cigarettes, shall file a return for the cigarettes so held. The return shall be made on ATF Form 5000.28, Floor Stocks Tax Return, in accordance with the instructions on the form. The returns shall be filed no later than June 30, 1991 (with respect to the tax increase date of January 1, 1991), and June 30, 1993 (with respect to the tax-increase date of January 1, 1993), at the address indicated on the form. The provisions of 26 U.S.C. 5703(b)(2)(D) concerning the special rule where a return due date falls on a Saturday, Sunday or holiday, and of 27 CFR 70.305 concerning timely mailing apply to floor stocks tax.

(b) *Multiple locations.* Where cigarettes subject to floor stocks tax are held at more than one location or place of business, the taxpayer shall file either a consolidated return (if all locations have the same employer identification number) or a separate return for each place of business. In either case, the taxpayer shall make and retain a list, showing the address of each place of business where the taxpayer held cigarettes subject to floor stocks tax, the name of the proprietor of each such place of business (if different from the taxpayer), the employer identification number (if different from the taxpayer's), and the number and tax category of cigarettes so held at each such place. Cigarettes which are warehoused at one or more locations shall be reported on a tax return representing the location from which the warehoused cigarettes will be offered for sale. If cigarettes held in a warehouse are offered for sale at several locations, the cigarettes so held shall either be reported on the tax return filed by any one of those locations, or shall be apportioned among the several locations in any manner and reported on the tax returns filed at those locations.

(c) *Controlled groups.* A separate return must be filed by each member of a controlled group who has an individual employer identification number. The credit discussed in § 296.194(c) of this part may be apportioned among the

members of the controlled group and reported on the various returns. A list showing the names, addresses, and employer identification numbers of all members of a controlled group shall be retained by each member who files a separate return.

(Approved by the Office of Management and Budget under control number 1512-0504)

**§ 296.198 Inventory.**

(a) *General.* The floor stocks tax liability required to be shown on the floor stocks tax return shall be established by a complete physical inventory, except as provided in paragraph (b) of this section. The inventory shall be the basis for establishing the quantity of all large and small cigarettes subject to floor stocks tax held as of the first moment of the respective tax-increase dates of January 1, 1991, and January 1, 1993. Cigarettes in transit on the first moment of January 1, 1991, and on the first moment of January 1, 1993, shall be included in the inventory of the person (either consignor or consignee) who is the legal owner of the articles at that moment.

(b) *Source record inventory.* In lieu of a physical inventory, a book or record inventory may be used if supported by source records which indicate the receipt and disposition of all cigarettes subject to floor stocks tax, and reflect the actual quantity of such cigarettes on hand as if a physical inventory had been taken as of the first moment of the respective tax-increase dates. The proprietor's records must include (1) the name and address of the consignor and consignee, (2) the date of receipt or disposition, (3) brand name, (4) class of cigarettes, and length of large cigarettes, if more than 6½ inches in length, and (5) the quantity of cigarettes involved.

(c) *Record of inventory.* The inventory shall be recorded in writing as it is being taken or summarized from source records by the taxpayer and retained as prescribed in § 296.199. The record of inventory shall show the quantities of large and small cigarettes held for sale by the taxpayer at the first moment of January 1, 1991, and the first moment of January 1, 1993. Quantities in transit shall be recorded separately from quantities actually on hand.

Unmerchable articles held for return to a supplier because of some defect are not subject to floor stocks tax, so such articles must be recorded separately from taxable items on the inventory report. (Products which are being returned because of poor market demand or to reduce inventory are not considered unmerchable.) The record of inventory shall show the taxpayer's name and the address of the place of business where the cigarettes are held. The record of inventory shall include complete and accurate information showing the details of the inventory, when and by whom the inventory was taken. If the inventory was verified by anyone other than the person taking it, the name and title of that other person shall also be shown.

(d) *Time of taking inventory.* The physical inventory to determine the amount of cigarettes held on the respective tax-increase dates of January 1, 1991, and January 1, 1993, may be taken no later than January 10 immediately following the respective tax-increase date and no earlier than December 26 of the preceding year. If the physical inventory is not taken between the close of business on the last respective business day of 1990 and 1992 and the beginning of business on the first respective business day of 1991 and 1993, the records of inventory shall be reconciled to reflect the actual quantity of cigarettes held as of the first moment of January 1, 1991, and January 1, 1993, respectively; and shall include complete supporting records of receipt and disposition.

(68A Stat. 731, as amended (26 U.S.C. 6001))

(Approved by the Office of Management and Budget under control number 1512-0504)

**§ 296.199 Retention of records.**

Every person liable for floor stocks tax shall keep the copy of the floor stocks tax return at the place of business covered thereby, or, in the case of a consolidated return, at the principal place of business. The record of physical inventory shall be kept at the place of business to which the inventory pertains. In the case of a consolidated return, a copy of the record of inventory shall also be kept at the taxpayer's principal place of business.

Such documents and records shall be retained for at least 3 years after the date of filing of the floor stocks tax return, and shall be available for inspection by ATF officers. The regional director (compliance) may also require these documents and records to be retained for an additional period of not more than 3 years in any case where the regional director (compliance) deems such retention to be necessary or advisable for the protection of the revenue.

(Approved by the Office of Management and Budget under control number 1512-0504)

**§ 296.200 Refund of floor stocks tax.**

A claim for refund may be filed by any person who has paid a floor stocks tax on cigarettes and who claims that such person made an overpayment of that tax. Such a claim shall be filed on ATF Form 2635 (5620.8), contain the information required by the form, and be supported by a statement of the facts and evidence upon which the claim is based. The claim shall be filed with the regional director (compliance), Bureau of Alcohol, Tobacco and Firearms, for the region in which the inventory was held and on which the tax was paid. Claims filed under this section shall comply with the provisions of subpart A of this part.

(Approved by the Office of Management and Budget under control number 1512-0141)

**§ 296.201 Penalties and interest.**

(a) *Penalties.* All civil and criminal penalties and forfeiture provisions of the Internal Revenue Code (title 26 U.S.C.), which are applicable to excise taxes on cigarettes, are applicable also to floor stocks tax.

(b) *Interest.* Interest shall accrue at the underpayment rate established by 26 U.S.C. 6621, compounded daily, on all floor stocks tax that is not paid on or before June 30, 1991, and/or June 30, 1993. Interest shall accrue from June 30, 1991, and/or June 30, 1993, to the date of payment. (See 26 U.S.C. 6601.)

(68A Stat. 817, as amended (26 U.S.C. 6601); sec. 7, Pub. L. 93-625, 88 Stat. 2114, as amended (26 U.S.C. 6621); sec. 344, Pub. L. 97-248, 96 Stat. 635 (26 U.S.C. 6622))

**§ 296.202 Authority of ATF officers.**

(a) *Entry of premises; penalties for interference.* Any ATF officer may enter, in the performance of official duties, in the daytime, any premises where cigarettes subject to floor stocks tax are kept, so far as may be necessary for the purpose of examining such products. When such premises are open at night, any ATF officer may enter them, while so open, in the performance of official duties. If the owner or other person in charge of such premises refuses to admit any ATF officer, or to permit the ATF officer to examine such cigarettes, the owner or other person shall be liable to the penalty prescribed by 26 U.S.C. 7342. Further, if anyone corruptly, or by force or threats of force, attempts to intimidate or impede any ATF officer in the performance of official duties, such person shall be liable to the penalty prescribed by 26 U.S.C. 7212.

(b) *Other authority.* For the purpose of ascertaining, determining, or collecting floor stocks tax, or of inquiring into any offense connected with the administration or enforcement of floor stocks tax:

(1) Any ATF officer may examine any books, papers, records, or other data which may be relevant or material to that inquiry, and may take any testimony of any person concerned, under oath, as may be relevant or material to the inquiry.

(2) Any ATF officer, to whom authority has been delegated by § 70.22 of this chapter, in any case where there is no Justice Department referral, may issue summonses compelling the production of any books of account or other data pertaining to liability for floor stocks tax, or the appearance of any person liable for floor stocks tax or having in such person's possession such books of account or data, or any other appropriate person, at a place and time stated in the summons.

(68A Stat. 855, 872, 901, as amended, 903, as amended (26 U.S.C. 7212, 7342, 7602, 7606); sec. 204, Pub. L. 85-859, 72 Stat. 1429, as amended (26 U.S.C. 7608))