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where a manufacturer is otherwise in default in payment of tax on tobacco products under the internal revenue laws or this chapter, during the period of such default and until the regional director (compliance) finds that the revenue will not be jeopardized by the deferred payment of tax pursuant to the provisions of this part, no tobacco products shall be removed subject to tax until the tax thereon has first been paid as provided in §40.167. Any remittance made during the period of a default shall be in cash, or in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or in the form of a U.S. postal money order or other money order, and defined in §70.61 of this chapter (payment by check or money order), or shall be delivered in the form of an electronic fund transfer message as provided in §40.165a.

(68A Stat. 777, 72 Stat. 1417; 26 U.S.C. 6311, 5703; Aug. 16, 1954, ch. 736, 68A Stat. 707 (26 U.S.C. 5703); Aug. 16, 1954, ch. 736, 68A Stat. 777 (26 U.S.C. 6311))

[T.D. 6871, 31 FR 34, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55855, Sept. 28, 1979; T.D. ATF–77, 46 FR 3008, Jan. 13, 1981; T.D. ATF–232, 51 FR 28081, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–301, 55 FR 47658, Nov. 14, 1990]

§40.167 Prepayment tax return.

(a) To prepay the tax on tobacco products a manufacturer shall file a prepayment tax return on Form 5000.24 showing the tax to be paid on the tobacco products prior to removal. The return shall be executed and filed, prior to the removal of such products, with ATF, in accordance with the instructions on the form. A manufacturer prepaying the taxes on tobacco products under the provisions of this section shall continue to file semimonthly returns as required by §40.162.

(b) However, if a manufacturer is required by §40.165a to pay the tax by electronic fund transfer, the manufacturer shall prepay the tax before any tobacco products can be removed for consumption or sale by completing the return and filing it with ATF, in accordance with the instructions on the form. At the same time, the manufacturer shall direct his bank to effect an EFT.

(Sec. 202, Pub. L. 85–859, 68A Stat. 1417 (26 U.S.C. 5703); sec. 202, Pub. L. 85–859, 72 Stat. 1423, as amended (26 U.S.C. 5741); (Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302)); 26 U.S.C. 7805 (68A Stat. 917, as amended))

[T.D. 6871, 31 FR 34, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–77, 46 FR 3008, Jan. 13, 1981; T.D. ATF–219, 50 FR 51390, Dec. 17, 1985; T.D. ATF–232, 51 FR 28081, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–251, 52 FR 19340, May 22, 1987]

§40.168 Remittance with return.

Except when an electronic fund transfer has been made under §40.165a for the full amount of tax due, the tax on tobacco products shown to be due and payable on any return shall be paid by remittance in full with the tax return. The remittance may be in the form which the regional director (compliance) is authorized to accept under §70.61 of this chapter (Payment by check or money order) and which is acceptable to him, except as otherwise specified in §40.166. Checks and money orders shall be made payable to the ''Bureau of Alcohol, Tobacco and Firearms''. In paying the tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(68A Stat. 778, 72 Stat. 1417; 26 U.S.C. 6313, 5703; Aug. 16, 1954, ch. 736, 68A Stat. 707, as amended (26 U.S.C. 5703))

[T.D. 6871, 31 FR 35, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55855, Sept. 28, 1979; T.D. ATF–77, 46 FR 3009, Jan. 13, 1981; T.D. ATF–232, 51 FR 28081, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–301, 55 FR 47658, Nov. 14, 1990]

§40.169 Employer identification number.

The employer identification number (defined at 26 CFR 301.7701–12) of a manufacturer of tobacco products who has been assigned such a number shall be shown on each tax return, Form 5000.24. Failure of the manufacturer to include his employer identification number on Form 5000.24 may result in

assertion and collection of the penalty specified in § 70.113 of this chapter.

[T.D. ATF–219, 50 FR 51390, Dec. 17, 1985, as amended by T.D. ATF–301, 55 FR 47658, Nov. 14, 1990]

§ 40.170 Application for employer identification number.

Every manufacturer of tobacco products who has neither secured an employer identification number nor made application therefor shall file an application on Form SS–4. Form SS–4 may be obtained from any service center director or from any district director. Such application shall be filed on or before the seventh day after the date on which any tax return under this part is filed. Each manufacturer shall make application for and shall be assigned only one employer identification number for all internal revenue tax purposes.

(75 Stat. 828; 26 U.S.C. 6109)

[T.D. 7055, 35 FR 13515, Aug. 25, 1970. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 40.171 Execution and filing of Form SS–4.

The application on Form SS–4, together with any supplementary statement, shall be prepared in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. The application shall be filed with the service center director serving any internal revenue district where the applicant is required to file returns under this part, except that hand-carried applications may be filed with the district director of any such district as provided for in 26 CFR 301.6091–1. The application shall be signed by (a) the individual if the person is an individual; (b) the president, vice president, or other principal officer if the person is a corporation; (c) a responsible and duly authorized member or officer having knowledge of its affairs if the person is a partnership or other unincorporated organization; or (d) the fiduciary if the person is a trust or estate.

(75 Stat. 828; 26 U.S.C. 6109)

[T.D. 7055, 35 FR 13515, Aug. 25, 1970. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55855, Sept. 28, 1979]

RECORDS

§ 40.181 General.

Every manufacturer of tobacco products must keep records of his operations and transactions which shall reflect, for each day, the information specified in §§ 40.182 and 40.183. For this purpose *day* shall mean calendar day, except that the regional director (compliance) may, upon application of the manufacturer by letter, in duplicate, authorize as such day for a factory a 24-hour cycle of operation other than the calendar day. A day once so established as other than the calendar day may be changed only by another application approved by the regional director (compliance). No specific form is required. The manufacturer may use commercial records from which the required information may be readily ascertained for this purpose. The manufacturer shall keep the auxiliary and supplemental records from which such records are compiled and shall keep supporting records, as specified in §§ 40.184 and 40.186, of tobacco products removed subject to tax and transferred in bond. Except as provided in §§ 40.184 and 40.186, the entries in the commercial records so maintained or kept shall be made not later than the close of the next business day following the day on which the transaction(s) occurred. As used in this section the term *business day* shall mean any day other than Saturday, Sunday, a legal holiday in the District of Columbia, or a statewide legal holiday in the State wherein the factory to which the records relate is located.

(72 Stat. 1423, as amended; 26 U.S.C. 5741)

[T.D. ATF–424, 64 FR 71931, Dec. 22, 1999]