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§ 45.46 Tax-exempt label.

Except in the case of articles described in § 45.31(a)(3), every package of tobacco products, and cigarette papers and tubes removed under this part shall have the words "Tax-Exempt. For Use of U.S. Not To Be Sold." adequately imprinted on the package or on a label securely affixed thereto.

(72 Stat. 1422; 26 U.S.C. 5723)

[T.D. 6871, 31 FR 58, 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; T.D. TTB-26, 70 FR 19890, Apr. 15, 2005]

Subpart F—Records

§ 45.51 Supporting records.

(a) *Records of removals.* Every manufacturer who removes tobacco products, and cigarette papers and tubes under this part must, in addition to the records kept under part 40 of this chapter, keep a supporting record of such removals and must make appropriate entries therein at the time of removal. The supporting record for each removal must show:

- (1) The date of removal;
- (2) The name and address of the Federal agency to which shipped or delivered;
- (3) The kind and quantity and,
- (4) for large cigars, the sale price.

(b) *Records of returns.* If any tobacco products, or cigarette papers or tubes removed under this part are returned to the factory, such returns must be noted in the supporting record.

(c) *Commercial records.* Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each removal, in such manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section.

(d) *Retention period.* The manufacturer must retain the supporting record for 3 years following the close of the year covered therein. The record must be made available for inspection

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by any appropriate TTB officer upon request.

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

(See 26 U.S.C. 5741)

[T.D. ATF-420, 64 FR 71945, Dec. 22, 1999, as amended by T.D. ATF-472, Feb. 27, 2002]

PART 46—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. 5061, 5704, 5708, 5731–5734, 5751, 5754, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805; 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

SOURCE: Redesignated by T.D. ATF–457, 66 FR 32220, June 14, 2001.

EDITORIAL NOTE: Nomenclature changes to part 46 appear by T.D. ATF–457, 66 FR 32220, 32221, June 14, 2001.

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 44.

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

§ 46.1 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]

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§ 46.2 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.

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.46, Delegation of the Administrator's Authorities in 27 CFR Part 46, Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes.

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.

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.

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 § 46.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 46.3 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]

§ 46.4 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 § 46.10.

§ 46.5 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 appropriate TTB officer 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.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

§ 46.6 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 § 46.7,
- (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 TTB Form 5620.10, as provided by § 46.10.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

CLAIM PROCEDURE

§ 46.7 Execution and filing of claim.

Claims to which this subpart is applicable must be executed on Form 2635 (5620.8) in accordance with instructions for the form. (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 appropriate TTB officer 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 § 46.8. All evidence relied upon in support of such

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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 47653, Nov. 14, 1990; T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

§ 46.8 Data to be shown in claim.

Claims to which this subpart is applicable, in addition to the requirements of § 46.7, 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 § 46.5.

The appropriate TTB officer may require the claimant to furnish as a part

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of the claim such additional information as he may deem necessary.

[T.D. ATF-42, 42 FR 8372, Feb. 10, 1977, as amended by T.D. ATF-472a, 67 FR 63544, Oct. 15, 2002]

§ 46.9 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

§ 46.10 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 TTB Form 5620.10. 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.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

§ 46.11 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 appropriate TTB officer 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, as amended by T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

§ 46.12 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.

§ 46.13 Authority to approve bonds.

An appropriate TTB officer may approve all bonds required by this subpart.

[T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

§ 46.14 Termination of liability.

Bonds on TTB Form 5620.10 will be terminated by the appropriate TTB officer 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.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

§ 46.15 Release of pledged securities.

Securities of the United States, pledged and deposited as provided by § 46.12, shall be released only in accordance with the provisions of 31 CFR part 225. When the appropriate TTB officer 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 appropriate TTB officer may, for proper cause, extend the date of release for such additional length of time as he deems necessary.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-472, 67 FR 8880, Feb. 27, 2002]

PENALTIES

§ 46.16 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—Administrative Provisions

SOURCE: T.D. ATF-472, 67 FR 8880, Feb. 27, 2002, unless otherwise noted.

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§ 46.21 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.46, Delegation of the Administrator's Authorities in 27 CFR Part 46, Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes. You may obtain a copy of this order by accessing the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

[T.D. TTB-44, 71 FR 16955, Apr. 4, 2006]

§ 46.22 Forms prescribed.

(a) The appropriate TTB officer is authorized to prescribe all forms required by this part. You must furnish all of the information required by each form as indicated by the headings on the form and the instructions for the form, and as required by this part. You must file each form in accordance with its instructions.

(b) Forms prescribed by this part are available for printing through the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

[T.D. ATF-472, 67 FR 8880, Feb. 27, 2002, as amended by T.D. TTB-44, 71 FR 16955, Apr. 4, 2006]

Subpart C—Disaster Loss Claims

§ 46.71 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 dis-

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aster 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

§ 46.72 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.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.46, Delegation of the Administrator's Authorities in 27 CFR Part 46, Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes.

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.

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

Sale price. The price for which large cigars are sold by the manufacturer or importer, determined in accordance with §§ 40.22 or 41.39 and used in computation of the tax.

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, pipe tobacco, and roll-your-own tobacco.

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

[T.D. 6392, 24 FR 5300, June 30, 1959]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 46.72, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

PAYMENTS

§ 46.73 Circumstances under which payment may be made.

An appropriate TTB officer 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; T.D. ATF-472, 67 FR 8881, Feb. 27, 2002]

CLAIMS PROCEDURE

§ 46.74 Execution of claims.

Disaster loss claims for tobacco products or cigarette papers or tubes must be executed on TTB Form 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes, in accordance with the instructions on the form. If a claim involves taxes on both domestic and imported products, the quantities of each must be shown separately in the claim. Prepare a separate claim in respect of customs duties.

[T.D. ATF-420, 64 FR 71945, Dec. 22, 1999]

§ 46.75 Required information for claim.

The claim should contain the following information:

(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;

(e) That no amount of internal revenue tax or customs duty claimed has been or will be otherwise claimed under any other provision of law or regulations,

(f) That the claimant is entitled to payment under this subpart, and

(g) The claim must set forth the quantity and kind of tobacco products and cigarette papers and tubes in sufficient detail to calculate the amount of tax and duty paid on these products,

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substantially as shown in the examples below:

[Example using rates for 2002 and After]

Quantity	Article	Rate of tax	Amount
20,000	Small cigars	\$1.828 per thousand	36.56
1,000	Large cigars—sale price \$100/thousand	20.719% of sale price	20.72
500	Large cigars—sale price \$236/thousand	\$48.75 per thousand	24.38
10,000	Small cigarettes	\$19.50 per thousand	195.00
5,000	Large cigarettes	\$40.95 per thousand	204.75
199,975	Cigarette papers	\$0.0122 per 50 papers	48.80
1,000	Cigarette tubes	\$0.0244 per 50 tubes	0.49
100 lbs	Chewing tobacco	\$0.195 per pound	19.50
200 lbs	Snuff	\$0.585 per pound	117.00
100 lbs	Pipe tobacco	\$1.0969 per pound	109.69
300 lbs	Roll-your-own tobacco	\$1.0969 per pound	329.07
	Total claimed		1,105.96

EXAMPLE USING RATES FOR APRIL 1, 2009 AND AFTER

Quantity	Article	Rate of tax	Amount
20,000	Small cigars	\$50.33 per thousand	\$1,006.60
1,000	Large cigars—sale price \$100/thousand	52.75% of sale price	52.75
500	Large cigars—sale price \$0.77 per cigar	\$0.4026 per cigar	201.30
10,000	Small cigarettes	\$50.33 per thousand	503.30
5,000	Large cigarettes	\$105.69 per thousand	528.45
199,975	Cigarette papers	\$0.0315 per 50 papers	126.00
1,000	Cigarette tubes	\$0.0630 per 50 tubes	1.26
100 lbs	Chewing tobacco	\$0.5033 per pound	50.33
200 lbs	Snuff	\$1.51 per pound	302.00
100 lbs	Pipe tobacco	\$2.8311 per pound	283.11
300 lbs	Roll-your-own tobacco	\$24.78 per pound	7,434.00
	Total claimed	10,489.10.	

[T.D. ATF-420, 64 FR 71945, Dec. 22, 1999, as amended by T.D. TTB-75, 74 FR 14485, Mar. 31, 2009]

§ 46.76 Supporting evidence.

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

[T.D. ATF-420, 64 FR 71946, Dec. 22, 1999]

§ 46.77 Time and place of filing.

Disaster loss claims must be filed within 6 months after the date on which the President makes the determination that the disaster has occurred. All forms, including claims for

duty on imported products, must be filed with the appropriate TTB officer.

[T.D. ATF-420, 64 FR 71946, Dec. 22, 1999]

§ 46.78 Action by appropriate TTB officer.

The appropriate TTB officer must act upon each claim for payment (without interest) of an amount equal to the tax paid or determined filed under this subpart and must notify the claimant. Claims and supporting data involving customs duties will be forwarded to the Commissioner of Customs with a summary statement of such officer's findings.

[T.D. ATF-472, 67 FR 8881, Feb. 27, 2002]

Alcohol and Tobacco Tax and Trade Bureau, Treasury

§ 46.92

DESTRUCTION OF TOBACCO PRODUCTS, AND CIGARETTE PAPERS AND TUBES

§ 46.79 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 must be destroyed by suitable means under the supervision of an appropriate TTB officer who will be assigned for that purpose by another appropriate TTB officer. However, if the destruction of such tobacco products, or cigarette papers or tubes has already occurred, and if the appropriate TTB officer who acts on the claim is satisfied with the supervision of such destruction, TTB supervision will not be required.

[T.D. ATF-472, 67 FR 8881, Feb. 27, 2002]

PENALTIES

§ 46.80 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]

ADMINISTRATIVE PROVISIONS

§ 46.81 [Reserved]

Subpart D—Rules for Special (Occupational) Tax

SOURCE: T.D. TTB-79, 74 FR 37420, July 28, 2009, unless otherwise noted.

§ 46.91 Scope of subpart.

This subpart contains rules relating to special (occupational) taxes that must be paid by manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors.

§ 46.92 Meaning of terms.

As used in this subpart, the following terms shall have the meanings indicated unless either the context in which they are used requires a different meaning, or a different definition is prescribed for a particular section or portion of this subpart:

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.46, Delegation of the Administrator's Authorities in 27 CFR Part 46, Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes.

CFR. The Code of Federal Regulations.

Cigarette paper. Paper, or any 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.

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.

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 tobacco products.

Person. An individual, a trust, estate, partnership, association or other unincorporated organization, fiduciary,

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company, or corporation, or the District of Columbia, a State, or a political subdivision thereof (including a city, county, or other municipality).

Special tax. The special (occupational) tax on manufacturers of tobacco products, manufacturers of cigarette papers and tubes, and export warehouse proprietors, imposed by 26 U.S.C. 5731.

Tax year. The period from July 1 of one calendar year through June 30 of the following calendar year.

This chapter. Chapter I of title 27 of the Code of Federal Regulations.

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

U.S.C. The United States Code.

§ 46.93 Multiple businesses of same ownership and location.

(a) Where more than one type of taxable business is conducted by the same person at the same place, special tax for each business must be paid at the rates prescribed for each.

(b) Where the same type of taxable business is conducted by the same person in different areas of the same premises, only one special tax payment is required.

(26 U.S.C. 5733)

§ 46.94 Relation to State and municipal law.

(a) *General.* The payment of special (occupational) tax does not exempt any person from any penalty or punishment provided by the laws of any State for carrying on any trade or business within that State, nor does it authorize the commencement or continuance of any trade or business contrary to State law or in places prohibited by county or municipal law. Payment of this tax does not prohibit any State from placing an additional duty or tax on the same trade or business, for State or other purposes.

(b) *Special tax stamps.* TTB officers are without authority to refuse to issue a special tax stamp to a person engaged in business in violation of State law. The stamp is not a Federal permit or license, but is merely a receipt for the tax. The stamp affords the

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holder no protection against prosecution for violation of State law.

(26 U.S.C. 5734)

§ 46.95 Liability of partners.

Any number of persons carrying on one business in partnership at any one place during any tax year are required to pay only one special tax.

(26 U.S.C. 5733)

PAYMENT OF SPECIAL TAX

§ 46.101 Special tax returns.

(a) *Preparation of TTB Form 5630.5t.* Every manufacturer of tobacco products, manufacturer of cigarette papers and tubes, and export warehouse proprietor is required to pay special (occupational) tax and file a return on TTB Form 5630.5t, "Special Tax Registration and Return—Tobacco." TTB Form 5630.5t must be completed in accordance with the instructions on the form, and all of the information called for on the form must be provided, including the following:

(1) Name of the taxpayer.

(2) Trade name(s) (if any) of the business(es) subject to special (occupational) tax.

(3) Employer identification number (see § 46.102).

(4) Exact location of the place of business, by name and number of building or street, or if these do not exist, by some specific description in addition to the post office address. In the case of one return for two or more locations, the address to be shown must be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) Class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information. This consists of the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" includes every partner, if the taxpayer is a partnership, and every person owning 10 percent or more of its stock, if the taxpayer is a corporation. However, the

ownership and control information required by this paragraph need not be stated if the same information has been previously provided to TTB in connection with a permit application and that previously provided information is still current.

(b) *Multiple locations and/or classes of tax.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax must—

(1) File one special tax return, TTB Form 5630.5t, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on TTB Form 5630.5t), employer identification number, and period covered by the return. The list must show, by State, the name, address, and tax class of each location for which special tax is being paid. The original of the list must be filed with TTB as an attachment to TTB Form 5630.5t, and the copy must be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for a period of three years from the date of the return.

(c) *Signing of TTB Form 5630.5t*—(1) *By principal.* The return of an individual proprietor must be signed by the individual. The return of a partnership must be signed by a general partner. The return of a corporation must be signed by an officer. In each case, the person signing the return must designate his or her capacity as "individual owner," "member of firm," or, in the case of a corporation, the officer's title.

(2) *By fiduciary.* A receiver, trustee, assignee, executor, administrator, or other legal representative who continues the business of a bankrupt, insolvent, deceased, or otherwise incapacitated person must indicate the capacity in which the fiduciary acts.

(3) *By agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature must be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the TTB office with which the return is required to be filed,

a power of attorney authorizing the agent to perform the act.

(d) *Perjury statement.* Each TTB Form 5630.5t must contain, or be verified by, a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5732, 6061, 6065, 6151, 7011)

(Approved by the Office of Management and Budget under control number 1513-0112)

§ 46.102 Employer identification number.

(a) *Requirement.* The employer identification number (as defined in 26 CFR 301.7701-12) of the taxpayer who has been assigned such a number must be shown on each special tax return, including each amended return, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.113 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return and who has not already been assigned an employer identification number must file Internal Revenue Service (IRS) Form SS-4 to apply for one. The taxpayer must apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The taxpayer must apply for the employer identification number no later than 7 days after the filing of the taxpayer's first special (occupational) tax return. IRS Form SS-4 may be obtained from the director of an IRS service center, from any IRS district director, or from <http://www.irs.gov/>.

(26 U.S.C. 6109)

§ 46.103 Time for filing return and paying tax.

The return, along with remittance of special tax, must be filed on or before the date of commencing business as a manufacturer of tobacco products, manufacturer of cigarette papers or tubes, or export warehouse proprietor, and thereafter every year on or before July 1. If the return and applicable tax are received in the mail and the U.S. postmark on the cover shows that it

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was deposited in the mail in the United States within the time prescribed for filing in an envelope or other appropriate wrapper which was properly addressed with postage prepaid, the return will be considered as timely filed. If the postmark is not legible, the sender has the burden of proving the date when the postmark was made. When registered mail is used, the date of registration will be accepted as the postmark date. When certified mail is used, the date of the postmark on the sender's receipt of certified mail is treated as the postmark date.

(26 U.S.C. 5732, 6011, 6071)

§ 46.104 Method of payment.

Payment of special tax must be made in cash, or by check or money order payable to Alcohol and Tobacco Tax and Trade Bureau. If a check or money order so tendered is not honored when presented for payment, the person who tendered the check or money order will remain liable for the payment of the special tax, and for all penalties and additions, to the same extent as if the check or money order had not been tendered. In addition, unless the person who tendered the check or money order can show that the check or money order was issued in good faith, and with reasonable cause to believe that it would be duly paid, there must be paid as penalty an amount equal to 1 percent of the amount of the check or money order, except that if the amount of the check or money order is less than \$500, the penalty will be \$5, or the amount of the check or money order, whichever is less.

(26 U.S.C. 6311, 6657)

§ 46.105 Receipt for taxes.

Subject to § 46.106, the appropriate TTB officer will issue a receipt to a taxpayer if cash is received as a remittance in payment of special tax (including penalties and interest, if any), or for any type of remittance received if the taxpayer requests a receipt.

§ 46.106 Receipt in lieu of stamp prohibited.

No receipt will be issued in lieu of issuance of a special tax stamp under § 46.116. A receipt may be given only

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pending the issuance of a stamp, or where the tax liability relates to a prior tax year.

(26 U.S.C. 6314)

§ 46.107 Penalty for failure to file return or to pay tax.

(a) *Failure to file return.* Any person required by this subpart to file a return on TTB Form 5630.5t who fails to file the return on or before the date for filing prescribed in § 46.103 must pay, in addition to the tax, a delinquency penalty, unless it is shown that such failure is due to reasonable cause and not due to willful neglect (see § 46.109). The delinquency penalty for failure to file the return on or before the last date prescribed will be 5 percent of the amount required to be shown as tax on the return if the failure to file is for not more than one month; with an additional 5 percent for each additional month or fraction thereof during which the delinquency continues, but not more than 25 percent in the aggregate.

(b) *Failure to pay tax.* Any person who files a return on TTB Form 5630.5t under this subpart and who fails to pay the amount shown as tax on the return on or before the date prescribed in § 46.103 for payment of such tax, must pay a penalty, in addition to the tax, unless it is shown that such failure is due to reasonable cause and not due to willful neglect (see § 46.109). The penalty for failure to pay the tax on or before the date prescribed for payment is 0.5 percent of the amount shown as tax on the return if the failure to pay is not for more than one month; with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not more than 25 percent in the aggregate. Any person required to pay the special tax who willfully fails to pay the tax shall be fined not more than \$5,000, or imprisoned not more than 2 years, or both, for each such offense.

(c) *Limitations.* With respect to any return on Form 5630.5t, the amount of the addition under paragraph (a) of this section will be reduced by the amount of the addition under paragraph (b) of this section for any month to which an addition to tax applies under both paragraph (a) and paragraph (b) of this section. If the amount of tax required

to be shown as tax on the return is less than the amount shown as tax on such return, the penalties prescribed in paragraphs (a) and (b) of this section will be applied by substituting that lower amount.

(26 U.S.C. 5731, 6651)

§ 46.108 Interest on unpaid tax.

(a) *General.* Interest is due on unpaid special tax from the date the tax was required to be paid to the date paid. Interest will be charged for each day at the rate prescribed by law in effect on that day. Interest accruing after December 31, 1982, is compounded daily.

(b) *Adjusted interest rates.* Adjusted interest rates, determined in accordance with the procedure prescribed by 26 U.S.C. 6621(b), are announced quarterly by the Commissioner of Internal Revenue. The appropriate TTB officer will provide information, when requested, regarding interest rates applicable to specific time periods.

(26 U.S.C. 6601, 6621)

§ 46.109 Waiver of penalties.

In every case where a special tax return is not filed, or the tax is not paid, at the time prescribed in § 46.103, the delinquency penalties specified in § 46.107 for failure to file a return or for failure to pay the amount shown as tax on the return will be asserted and collected unless a reasonable cause for delay in filing the return or payment of the tax is clearly established. A taxpayer who believes the circumstances that delayed such taxpayer's filing of the return or payment of the tax are reasonable, and who desires to have the penalties waived, must submit with the return a written statement under the penalty of perjury, affirmatively showing all of the circumstances alleged as reasonable causes for delay. If the appropriate TTB officer determines that the delinquency was due to a reasonable cause and not to willful neglect or gross negligence, the addition to the tax will be waived. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, or if the taxpayer made a satisfactory showing that the taxpayer exercised ordinary business care and prudence

in providing for payment of the tax liability and was nevertheless either unable to pay the tax or would have suffered an undue hardship if the taxpayer had paid on the due date, then the delay is due to reasonable cause. Mere ignorance of the law will not be considered a reasonable cause.

(26 U.S.C. 6651)

SPECIAL TAX STAMPS

§ 46.116 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on TTB Form 5630.5t together with the full tax remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, TTB will send to the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer) one appropriately designated stamp for each location listed on the attachment to TTB Form 5630.5t required by § 46.101(b)(2).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer must verify that there is one stamp for each location listed on the attachment to TTB Form 5630.5t and that the information on each stamp is correct. The taxpayer must then forward each stamp to the place of business designated on the stamp. Incorrect stamps must be returned to the appropriate TTB officer as provided in § 46.120.

(c) *Examination of special tax stamps.* Each stamp denoting payment of special tax must be kept available for inspection by an appropriate TTB officer during business hours at the location for which the stamp is designated.

(26 U.S.C. 5732)

§ 46.117 Lost or destroyed stamps.

If a special tax stamp has been lost or destroyed, the taxpayer must immediately notify the TTB officer who issued the stamp. A "Certificate in Lieu of Lost or Destroyed Special Tax Stamp" will be issued to the taxpayer who submits an affidavit explaining to the satisfaction of the appropriate TTB officer that the stamp was lost or destroyed. The certificate must be kept

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available for inspection in the same manner as prescribed for a special tax stamp in § 46.116(c).

§ 46.118 Certificate in lieu of lost or destroyed special tax stamp.

The provisions of this subpart relating to special tax stamps apply as well to certificates in lieu of lost or destroyed special tax stamps issued to taxpayers under § 46.117.

§ 46.119 Errors disclosed by taxpayers.

On receipt of a special tax stamp, the taxpayer must examine it to ensure that the name and address are correctly stated; if not, the taxpayer must return the stamp to the TTB officer who issued it, with a statement showing the nature of the error and the correct name or address. The appropriate TTB officer, on receipt of such stamp and statement, will compare the data on the stamp with that of the Form 5630.5t in TTB files, correct the error if made in the TTB office, and return the stamp to the taxpayer. However, if the error was in the taxpayer's preparation of the Form 5630.5t, the appropriate TTB officer will require the taxpayer to file a new Form 5630.5t, designated "Amended Return," setting forth the taxpayer's correct name and address, and a statement explaining the error on the original Form 5630.5t. On receipt of the amended Form 5630.5t and a satisfactory explanation of the error, the appropriate TTB officer will make the proper correction on the stamp and return it to the taxpayer.

§ 46.120 Errors discovered on inspection.

When a TTB officer discovers on a special tax stamp a material error in the name, ownership, or address of the taxpayer, that officer will require the taxpayer to surrender the erroneous tax stamp and prepare a new Form 5630.5t, designated "Amended Return," showing correctly all of the information required in § 46.101 and containing, in the body of the form or in an attachment thereto, a statement of the reason for requesting correction of the stamp. On receipt of the amended return and an acceptable explanation for the error, the officer will make the proper correction on the stamp and re-

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turn it to the taxpayer. However, if the error found by the TTB officer is on a special tax stamp issued as a result of a return on Form 5630.5t filed under § 46.101(b), that officer will instruct the taxpayer to return the stamp, with a statement showing the nature of the error and the correct data, to the TTB officer who issued the stamp, for correction in accordance with § 46.119.

CHANGES IN BUSINESSES HOLDING SPECIAL (OCCUPATIONAL) TAX STAMPS

§ 46.126 Change in name or address.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on TTB Form 5630.5t, the taxpayer must file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade name. No new special tax is required to be paid. The taxpayer must attach the special tax stamp for endorsement of the change in name.

(b) *Change in location—(1) General.* If there is a change in location of a taxable place of business, the taxpayer must, within 30 days after the change, file with TTB an amended special tax return covering the new location. The taxpayer must attach the special tax stamp or stamps for endorsement of the change in location. No new special tax is required to be paid. However, if the taxpayer does not file the amended return within 30 days, the taxpayer is required to pay a new special tax and obtain a new special tax stamp.

(2) *Procedure.* If the taxpayer's original return on TTB Form 5630.5t covered only one location, the taxpayer may deliver the amended return and the stamp at any TTB office, or to any TTB officer inspecting the business, in lieu of mailing them to TTB. If the taxpayer's original return covered multiple locations under the provisions of § 46.101(b), he or she must forward with the amended return an attachment showing both the old and new address of any place of business which has been relocated, and the special tax stamp covering the location from which the business was removed. The appropriate TTB officer receiving such return or stamp will, if the return is submitted within the 30-day period, enter the

proper endorsement on the stamp and return it to the taxpayer.

(26 U.S.C. 5733, 7011)

§ 46.127 Change in ownership.

(a) *General.* A special tax stamp is a receipt for tax, personal to the one to whom issued, and is not transferable from one manufacturer of tobacco products, manufacturer of cigarette papers and tubes, or export warehouse proprietor to another. If there is a change in the ownership of a special-tax payer, the successor must pay a new special (occupational) tax and obtain the required special tax stamp(s). Examples of changes in ownership that require payment of a new special tax include, but are not limited to, the following:

- (1) Sale of business;
- (2) Formation of a partnership by two persons who have paid special tax;
- (3) Addition of a partner;
- (4) Incorporation of the business;
- (5) Creation of a new corporation to replace one or more corporations that have paid special tax; and
- (6) Stockholder continuing the business of a corporation after its dissolution.

(b) *Changes that do not require payment of a new special tax.* The following changes do not require payment of a special tax:

- (1) Increase in capital stock of a corporation.
- (2) Change in ownership of any or all of the capital stock of a corporation.

(c) *Exemption for certain successors.* Persons identified in paragraph (d) of this section as having the right of succession may carry on the business for the remainder of the tax year for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files with TTB a special tax return on TTB Form 5630.5t showing the basis of succession. A person who is a successor to a business for which special tax has been paid, and who fails to register the succession, is liable for special tax computed from the first day of the calendar month in which the successor began to carry on the business.

(d) *Persons having right of succession.* The right of succession referred to in paragraph (c) of this section will pass to the identified persons in the following circumstances:

(1) *Death.* The surviving spouse or child, or the executor, administrator, or other legal representative, of a deceased taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her living spouse;

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for the benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after the death or withdrawal of a member of a partnership.

(26 U.S.C. 5733)

STAMPS FOR INCORRECT PERIOD OR
INCORRECT LIABILITY

§ 46.131 General.

If a taxpayer through error has filed a return and paid special tax for an incorrect period of liability or for an incorrect class of business, the taxpayer must prepare a corrected TTB Form 5630.5t, designated "Amended Return," for each tax year involved and must submit the amended return, or returns, with remittance for the total applicable tax and additions to the tax (delinquency penalties and interest), to TTB in accordance with the instructions on the Form 5630.5t or, if the error is discovered by a TTB officer inspecting the premises, to that officer. Subject to the limitations imposed by 26 U.S.C. 6511, the incorrectly paid tax (including additions thereto) may be allowed as a credit against the correct tax (including any additions thereto), as provided in § 46.132, on surrender of the incorrect stamp or stamps, with the amended return or returns noted to show that credit is requested. Any incorrectly paid tax (including additions thereto) that is not credited as provided in § 46.132, including any creditable tax and additions thereto in excess of the correct tax (including additions thereto), may be refunded pursuant to §§ 46.136 through 46.138 if the taxpayer files a corrected return on Form 5630.5t with remittance of the correct amount

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of tax (including any additions thereto). A new stamp will be issued only for a current period of liability.

(26 U.S.C. 6011)

§ 46.132 Credit for incorrect stamp.

(a) *General.* The appropriate TTB officer may credit the tax (including additions thereto) paid for an incorrect stamp if the taxpayer has filed an amended return showing the correct tax on TTB Form 5630.5t and has, with the amended return, surrendered the incorrect stamp for credit.

(b) *Underpayment.* Where the correct tax (including any additions thereto) exceeds the incorrect tax paid, the appropriate TTB officer may credit the tax paid against the correct tax upon remittance of the difference between the tax paid and the correct tax plus any additions thereto.

(c) *Overpayment.* Where the tax (and additions thereto) paid for the surrendered incorrect stamp exceeds the amount due, the appropriate TTB officer will advise the taxpayer to file a claim for refund of that excess on TTB Form 5620.8. Sections 46.136 through 46.138 apply to all claims for refund.

(26 U.S.C. 6402, 6511)

ABATEMENT OR REFUND OF SPECIAL TAXES

§ 46.136 Claims.

Claims for abatement of assessment of special tax (including penalties and interest), or for refund of an overpayment of special tax (including interest and penalties), must be filed on TTB Form 5620.8. The claim must be filed with the appropriate TTB officer. Each claim must set forth in detail each ground on which it is based and must contain facts sufficient to explain to the appropriate TTB officer the exact basis for the claim. If the claim is for refund of special tax for which a stamp was issued, either the stamp must be attached to and be made a part of the claim, or the claimant must include in the claim a satisfactory explanation of the reason why the stamp cannot be submitted.

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§ 46.137 Time limit on filing of claim for refund.

No claim for the refund of a special tax or penalty will be allowed unless presented within 3 years after the filing of the related tax return or within 2 years after the payment of such tax or penalty, whichever of these periods expires later.

(26 U.S.C. 6511)

§ 46.138 Discontinuance of business.

A dealer who for any reason discontinues business is not entitled to a refund of special tax for the unexpired portion of the tax year for which the special tax stamp was issued.

(26 U.S.C. 5732)

Subparts E-F [Reserved]

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.

§ 46.161 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]

§ 46.162 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.

§ 46.163 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.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.46, Delegation of the Administrator’s Authorities in 27 CFR Part 46, Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes.

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, 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 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, pipe tobacco, and roll-your-own tobacco.

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 § 46.163, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 46.164 Authority of TTB officers to enter premises.

Any appropriate TTB 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 appropriate TTB 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 appropriate TTB 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 appropriate TTB 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; T.D. ATF-472, 67 FR 8881, Feb. 27, 2002]

§ 46.165 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 appropriate TTB 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)

[T.D. 6573, 26 FR 8202, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-472, Feb. 27, 2002]

§ 46.166 Dealing in tobacco products.

(a) 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 or notice as prescribed in parts 40 and 41 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

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be vended in proper packages or directly from such packages.

(b) Tobacco products manufactured in the United States and labeled for exportation under chapter 52 of title 26, U.S.C. may not be sold or held for sale for domestic consumption in the United States unless such articles are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label. This applies to articles labeled for export even if the packaging or the appearance of such packaging to the consumer of such articles has been modified or altered by a person other than the original manufacturer so as to remove or conceal or attempt to remove or conceal (including by placement of a sticker over) the export label.

(c) For penalty and forfeiture provisions applicable to the selling, re-landing or receipt of articles which have been labeled or shipped for exportation, see § 41.83 of this chapter.

[T.D. ATF-465, 66 FR 45618, Aug. 29, 2001, as amended by T.D. TTB-16, 69 FR 52423, Aug. 26, 2004]

§ 46.167 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 40 and 41 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 40 and 41 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; T.D. ATF-460, 66 FR 390 93, July 27, 2001; T.D. TTB-16, 69 FR 52423, Aug. 26, 2004]

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§ 46.168 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 Certain Tobacco Products, Cigarette Papers, and Cigarette Tubes Held for Sale on April 1, 2009

AUTHORITY: Section 701, Pub. L. 111-3, unless otherwise noted.

SOURCE: T.D. TTB-75, 74 FR 14486, Mar. 31, 2009, unless otherwise noted.

GENERAL

§ 46.191 Purpose of this subpart.

The regulations in this subpart implement the floor stocks tax on certain tobacco products, cigarette papers, and cigarette tubes held for sale on April 1, 2009.

§ 46.192 Definitions used in this subpart.

As used in this subpart, the following terms have the meanings indicated unless the context in which they are used requires a different meaning or a different definition is prescribed for a particular section or portion of this subpart.

(a) *Appropriate TTB officer.* An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.46, Delegation of the Administrator's Authorities in 27 CFR 46, Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes.

(b) *Articles subject to floor stocks tax.* All Federally taxpaid or tax determined tobacco products (other than large cigars described in 26 U.S.C.

5701(a)(2)), cigarette papers, and cigarette tubes that are held for sale on April 1, 2009.

(c) *Cigarette paper.* Paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

(d) *Cigarette tube.* Cigarette paper made into a hollow cylinder for use in making cigarettes.

(e) *Controlled group.* A related group of dealers under common control. Controlled groups include:

(1) *Controlled group of corporations.* The term “controlled group of corporations” has the meaning given to that term by 26 U.S.C. 1563(a) and the implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the phrase “more than 50 percent” shall be substituted for the phrase “at least 80 percent” each time it appears. Controlled groups of corporations include, but are not limited to:

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

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

(iii) Combined groups as defined in 26 CFR 1.1563-1T(a)(4).

(2) *Nonincorporated dealers under common control.* A group of dealers is considered to be a controlled group when the group would qualify as a controlled group of corporations, except for the fact that one or more of the dealers is not incorporated.

(f) *Dealer.* A person or other entity holding articles subject to floor stocks tax for sale on April 1, 2009, including manufacturers, importers, wholesalers, and retailers.

(g) *Floor stocks tax.* A tax imposed on all Federally taxpaid or tax determined tobacco products (other than large cigars described in 26 U.S.C. 5701(a)(2)), cigarette papers, and cigarette tubes held for sale on April 1, 2009. The floor stocks tax is the difference between the previous excise tax rate and the new excise tax rate.

(h) *Foreign trade zone.* A foreign trade zone established and operated pursuant to the Act of June 18, 1934, as amended, 19 U.S.C. 81a.

(i) *Person.* An individual, trust, estate, partnership, association, company, or corporation, any State, including the District of Columbia, or po-

litical subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

(j) *Tobacco products.* Cigars, cigarettes, snuff, chewing tobacco, pipe tobacco, and roll-your-own tobacco as described in 26 U.S.C. 5702(a), (b), (m)(2), (m)(3), (n) and (o), respectively.

§ 46.193 Persons liable for floor stocks tax.

A dealer who holds for sale any articles subject to floor stocks tax on April 1, 2009, is liable for floor stocks tax. See §§ 46.204 and 46.205 regarding articles subject to floor stocks tax that are in transit on April 1, 2009 and § 46.206 regarding articles subject to floor stocks tax that are held in a foreign trade zone on April 1, 2009.

§ 46.194 Persons not liable for floor stocks tax.

A person who does not meet the definition of a dealer is not liable for the floor stocks tax under this subpart.

§ 46.195 Floor stocks requirements.

(a) *Take inventory.* The dealer must establish the quantity of articles subject to the floor stocks tax held for sale on April 1, 2009. The dealer may take a physical inventory or may use a record (book) inventory, as specified in § 46.202 or § 46.203.

(b) *Compute tax.* The dealer must compute the amount of tax for the articles held for sale on April 1, 2009. Refer to the table in § 46.222. The dealer may apply the tax credit as provided in § 46.223.

(c) *File tax return and pay tax.* After computing the floor stocks tax, the dealer must file a return even if no tax is due. See § 46.233 for payment methods if tax is due.

(d) *Maintain records.* The dealer must maintain all records used to determine the quantity of articles subject to floor stocks tax and the quantity of articles held for sale on April 1, 2009 that are not subject to floor stocks tax. The dealer must also maintain records of all computations used to determine the amount of tax owed. Refer to § 46.241.

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INVENTORIES

§ 46.201 General.

(a) *Date.* The dealer must take an inventory to establish the quantities of articles subject to the floor stocks tax held for sale on April 1, 2009. The dealer must take the physical inventory or record (book) inventory not earlier than March 26, 2009 and not later than April 10, 2009.

(b) *Reconciliation.* If the dealer takes a physical inventory on any day other than April 1, 2009, the resulting records must be reconciled to reflect the actual quantity of articles held at 12:01 a.m. on April 1, 2009. These records must include all supporting records of receipt and disposition.

(c) *Method.* The dealer may take a physical inventory in accordance with § 46.202 or a record (book) inventory in accordance with § 46.203. The following table lists the taxable articles and the method to use for each to determine quantities:

Article	Inventory method
Small cigarettes	Count the number of cigarettes.
Large cigarettes 6½" or less in length.	Count the number of large cigarettes.
Large cigarettes more than 6½" in length.	Keep a separate count for each size of large cigarette. Count each 2¾", or fraction thereof, as one small cigarette.
Small Cigars	Count the number of small cigars.
Snuff	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Chewing tobacco ...	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Pipe tobacco	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Roll-your-own tobacco.	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Cigarette papers 6½" or less in length.	Count the number of cigarette papers, divide by 50, and round up if there is any remainder.
Cigarette papers more than 6½" in length.	Count the number for each size of cigarette paper. Count each 2¾", or fraction thereof, as new cigarette paper. Divide adjusted total by 50 and round up if there is any remainder.
Cigarette tubes 6½" or less in length.	Count the number of cigarette tubes, divide by 50, and round up if there is any remainder.

Article	Inventory method
Cigarette tubes more than 6½" in length.	Count the number for each size of cigarette tube. Count each 2¾", or fraction thereof, as one cigarette tube. Divide adjusted total by 50 and round up if there is any remainder.

§ 46.202 Physical inventory requirements.

The dealer's physical inventory must result in a written record of:

(a) The quantity and type of each article subject to floor stocks tax recorded in sufficient detail to determine the tax rate as stated in § 46.222. See the table in § 46.201(c) for the information required for each type of article;

(b) The date and time the inventory was taken;

(c) The name of the individual(s) conducting the inventory and the name of the dealer for whom the inventory was taken; and

(d) The location where the inventory was taken (street address, city and State).

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§ 46.203 Record (book) inventory requirements.

(a) The dealer may use a record (book) inventory if the dealer has source records that show:

(1) The quantities of receipts and dispositions of all articles subject to floor stocks tax;

(2) The types and quantities of articles actually on hand as if a physical inventory had taken place on April 1, 2009. See the table in § 46.201(c) for the information required for each type of article;

(3) The name and address of the consignor and consignee. For over the counter sales by retail dealers, the consignee name and address is not required;

(4) The date of receipt or disposition of the articles; and

(5) The brand name of each product.

(b) If the dealer does not take the inventory as of the close of business on the last business day before April 1, 2009, the records must be reconciled as provided in § 46.201(b).

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§ 46.204 Articles in transit.

The dealer must include articles subject to floor stocks tax that are in transit in the inventory if the dealer holds title to those articles. If the dealer has transferred title to the article, the dealer must document the title transfer in writing. For example, the dealer may mark the bill of lading with a written statement that indicates the time and place of the title transfer.

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§ 46.205 Guidelines to determine title to articles in transit.

The dealer may use the following guidelines to establish who holds title to articles in transit.

(a) If State law mandates the change in title, then no agreement or contract between seller and buyer can alter it.

(b) In the absence of State law governing the change of title between seller and buyer, the Uniform Commercial Code allows the seller and buyer to agree when title passes.

(c) If there is no State law or agreement between the seller and buyer, the Uniform Commercial Code states that title transfer depends on how the seller ships the articles.

(1) If the shipment is free on board (F.O.B.) destination, the title transfer occurs when the seller completes the physical delivery of the articles.

(2) If the shipment is free on board (F.O.B.) shipping point, the title transfer occurs at the time and place of shipment, which is generally by common carrier.

§ 46.206 Articles in a foreign trade zone.

If articles subject to floor stocks tax are stored in a foreign trade zone established under the Foreign Trade Zone Act (the Act of June 18, 1934, 48 Stat. 998, 19 U.S.C. 81a *et seq.*), the dealer is liable for the tax and must take an inventory in accordance with § 46.207 or when either of the following conditions apply:

(a) Internal revenue taxes have been determined or customs duties liquidated, with respect to the articles pursuant to the first proviso of section 3(a) of the Foreign Trade Zone Act; or

(b) Articles are held by a customs officer pursuant to the second proviso of section 3(a) of the Foreign Trade Zone Act.

§ 46.207 Articles held in bond.

If the dealer is a manufacturer or an export warehouse proprietor and holds articles in TTB bond on April 1, 2009, the floor stocks tax does not apply to those articles. Likewise, if the dealer holds articles in a customs bonded warehouse on which tax has not been paid or determined, the floor stocks tax does not apply on those articles. However, if the dealer on April 1, 2009, holds articles in a customs bonded warehouse or foreign trade zone on which tax has been paid or determined pursuant to 26 U.S.C. 5703(b)(2)(B), the floor stocks tax applies to those articles.

§ 46.208 Unmerchutable articles.

Articles that the dealer holds for return to a supplier because of some defect are not subject to the floor stocks tax. However, the dealer must segregate any such unmerchutable articles and include them in a separate section of the inventory record. The dealer cannot include as unmerchutable any items that may be held because of poor market demand or to reduce the dealer's inventory. If, for any reason, the tobacco products or cigarette papers or tubes that were determined to be unmerchutable are not subsequently returned or destroyed, the dealer must file an additional floor stocks tax return and pay tax on such products plus any applicable penalties and interest.

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§ 46.209 Articles in vending machines.

There is no exemption for articles in vending machines. They are subject to the floor stocks tax and must be included in the dealer's inventory record.

§ 46.210 Articles marked "not for sale" or "complimentary".

Articles marked "not for sale" or "complimentary" that are part of a sale (for example, buy two packs and get one pack free) are subject to the floor stocks tax and must be included

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in the physical or record (book) inventory as provided in §§ 46.202 or § 46.203.

TAX LIABILITY CALCULATION

§ 46.221 Floor stocks tax rates.

Product	Floor stocks tax rate
Small cigars	\$48.502 per thousand.
Small cigarettes	30.83 per thousand.
Large cigarettes 6½ inch or less in length.	64.74 per thousand.
Large cigarettes more than 6½ inch in length.	30.83 per thousand units of length.
Snuff	0.925 per pound.
Chewing tobacco	0.3083 per pound.
Pipe tobacco	1.7342 per pound.
Roll-your-own	23.6831 per pound.
Cigarette papers	0.0193 per 50 papers or fraction thereof
Cigarette tubes	0.0386 per 50 tubes or fraction thereof.

§ 46.222 Determination of amount of tax due.

After the dealer has taken the inventory, the dealer must convert the inventory quantities to taxable units using the table below. For tobacco products, round the quantities to two decimal places. The dealer must then apply the applicable tax rate for each type of taxable article using the table in § 46.221 to determine the amount of tax due.

Product	Computation
Small cigars weighing not more than 3 pounds thousand.	Divide number of cigars by 1,000 and multiply by the small cigar tax rate.
Small cigarettes weighing not more than 3 pounds thousand.	Divide number of cigarettes by 1,000 and multiply by the small cigarette tax rate.
Large cigarettes weighing more than 3 pounds thousand, measuring 6½" or less in length.	Divide number of cigarettes by 1,000 and multiply by the large cigarette tax rate.
Large cigarettes weighing more than 3 pounds thousand, measuring more than 6½" in length.	Mathematically adjust the number of large cigarettes using the instructions below.* Divide the adjusted number of large cigarettes by 1,000 and multiply by the small cigarette tax rate.
Snuff	Multiply the total in pounds by the snuff tax rate.
Chewing tobacco ...	Multiply the total in pounds by the chewing tobacco tax rate.
Pipe tobacco	Multiply the total in pounds by the pipe tobacco tax rate.
Roll-your-own	Multiply the total in pounds by the roll-your-own tax rate.
Cigarette papers 6½" or less in length.	Divide the number of cigarette papers by 50, add 1 if there is a remainder, and multiply that number by the cigarette paper tax rate.

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Product	Computation
Cigarette papers more than 6½" in length.	Mathematically adjust the number of cigarette papers using the instructions below.* Divide the adjusted number of cigarette papers by 50, add 1 if there is a remainder, and multiply that number by the cigarette paper tax rate.
Cigarette tubes 6½" or less in length.	Divide the number of cigarette tubes by 50, add 1 if there is a remainder, and multiply that number by the cigarette tube tax rate.
Cigarette tubes more than 6½" in length.	Mathematically adjust the number of cigarette tubes using the instructions below.* Divide the adjusted number of cigarette tubes by 50, add 1 if there is a remainder, and multiply that number by the cigarette tube tax rate.

*Large cigarettes, cigarette papers, and cigarette tubes more than 6½ inch in length are counted as multiple units. Each 2¾ inch or fraction of the length is counted as a separate taxable unit. For each different length of product in this category, divide the length by 2¾ inch and add 1 to the result if there is a remainder. Multiply the number of cigarettes, cigarette papers, or tubes of that length by the resulting number.

§ 46.223 Tax credit.

The dealer is allowed a credit of up to \$500 against the total floor stocks tax. However, controlled groups are eligible for only one credit for the entire group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members.

FILING REQUIREMENTS

§ 46.231 Floor stocks tax return.

Form 5000.28T09, 2009 Floor Stocks Tax Return—Tobacco Products and Cigarette Papers and Tubes, is available for printing through the TTB Web site (<http://www.ttb.gov>) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Suite 8002, Cincinnati, OH 45202-5215.

§ 46.232 Preparation of floor stocks tax return.

The dealer must complete and file the floor stocks tax return in accordance with the instructions for the form.

§ 46.233 Payment of floor stocks tax.

(a) *Electronic funds transfer.* If the dealer pays any other excise taxes collected by TTB by electronic funds transfer, then the dealer must also send the payment for the floor stocks tax by an electronic funds transfer.

Other dealers may voluntarily elect to pay the floor stocks tax by electronic funds transfer. Electronic funds transfers of floor stocks tax must be received on or before July 31, 2009.

(b) *Check or money order.* Dealers not paying floor stocks tax by electronic fund transfer must pay by a check or money order sent with Form 5000.28T09.

§ 46.234 Tax payment deadline.

Section 701 of Public Law 111-3 specifies a tax payment deadline of August 1, 2009. However, section 5703(b)(2)(E) of the Internal Revenue Code requires that when a due date falls on a Saturday, Sunday or a legal holiday, the preceding day that is not a Saturday, Sunday or legal holiday will be the due date. Therefore, the floor stocks tax is due on July 31, 2009, since August 1, 2009, falls on a Saturday.

§ 46.235 Filing requirements for multiple locations.

The dealer may file a consolidated return if all locations or places of business have the same employer identification number. The dealer also has the option of filing a separate return for each place of business or location.

§ 46.236 Articles in a warehouse.

(a) Articles warehoused at one or more locations must be reported on the tax return representing the location where the articles will be offered for sale.

(b) Articles offered for sale at several locations must be reported on a tax return filed by one or more of the locations. The articles can be reported by a single location or apportioned among several locations.

§ 46.237 Controlled group member.

If the dealer is a member of a controlled group, but has its own employer identification number, the dealer must file a separate floor stocks tax return. The dealer may take the tax credit referred to in § 46.223 if it is apportioned to the dealer as a member of the controlled group.

RECORDS

§ 46.241 Required records.

The dealer must maintain:

- (a) Inventory records;
- (b) Tax computation records;
- (c) Names, addresses and employer identification numbers of all controlled group members, if applicable;
- (d) A copy of the tax return, if the dealer filed one;
- (e) A list of locations covered by the tax return; and
- (f) A copy of any alternate method or procedure approval issued under § 46.263.

(Approved by the Office of Management and Budget under control number 1513-0129)

§ 46.242 Period for maintaining records.

The dealer must maintain the required records for a period of three years from the due date of the tax return or the date the return was filed, whichever is later. However, the appropriate TTB officer may require, in writing, that the dealer keep these records for an additional period of not more than 3 years.

(Approved by the Office of Management and Budget under control number 1513-0129)

§ 46.243 Articles at multiple locations.

The dealer must maintain a list of all places where the dealer holds articles subject to the floor stocks tax. This list must include:

- (a) Address;
- (b) Name of the proprietor (if different);
- (c) The employer identification number (if different); and
- (d) Types and quantities of articles held at each location.

(Approved by the Office of Management and Budget under control number 1513-0129)

§ 46.244 Location of records.

The dealer must keep the inventory records at the principal place of business. All records must be made available to an appropriate TTB officer upon demand.

(Approved by the Office of Management and Budget under control number 1513-0129)

§ 46.245 Errors in records.

If the inventory records or tax computation records contain an error that resulted in an overpayment of tax, the dealer may file a claim for refund. If

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the inventory or tax computation records contain an error that resulted in an underpayment of tax, the dealer must file an additional tax return on which the dealer shows and pays the additional tax, interest and any applicable penalties.

(Approved by the Office of Management and Budget under control number 1513-0129)

CLAIMS

§ 46.251 Payment of tax required.

Before the dealer can file a claim for refund, the dealer must have paid the floor stocks tax and subsequently determined that there was an overpayment of the tax.

§ 46.252 Claim based on error on return.

If the dealer overpaid tax due to an error on the return, the dealer may file a claim for refund. The claim must be filed within 3 years from the date the tax return was filed or 2 years from the time the tax was paid, whichever is later. The dealer's claim must be filed on TTB Form 2635 (5620.8). The claim must include detailed and sufficient evidence explaining why the dealer believes the tax was overpaid. The claim and supporting documentation must be mailed or delivered to the address shown on the form.

(Approved by the Office of Management and Budget under control number 1513-0030)

§ 46.253 Destruction of articles by a Presidentially-declared major disaster.

After the dealer has paid the floor stocks tax, the dealer may file a claim for refund of tax on articles lost, rendered unmarketable, or condemned because of a Presidentially-declared major disaster. Subpart C of this part prescribes the time, evidence, and procedures for filing such a claim.

§ 46.254 Additional reasons for filing a claim.

(a) *Manufacturer.* Subparts I and K of part 40 of this chapter prescribe the times, reasons and procedures for filing other claims for refunds.

(b) *Export warehouse proprietor.* Subpart G of part 44 of this chapter prescribes the time, evidence, and proce-

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dures for filing other claims for refunds.

(c) *Exported taxpaid.* If taxpaid articles are shipped from the United States, the dealer may file a claim for drawback of taxes under subpart K of part 44 of this chapter.

(d) *Importer.* An importer may follow the procedures for filing a claim as set forth in subpart I of part 41 of this chapter.

ALTERNATE METHODS OR PROCEDURES

§ 46.261 Purpose of an alternate method or procedure.

For purposes of this subpart, an alternate method or procedure is a different way of meeting a requirement imposed by this subpart. An alternate method or procedure must be approved in writing by TTB.

§ 46.262 Application.

The dealer seeking approval of an alternate method or procedure under this subpart must apply in writing to the National Revenue Center, 550 Main Street, Room 8002, Cincinnati, Ohio 45202-5215. The dealer must describe the alternate method or procedure and reasons the dealer wishes to use it. The dealer cannot use the alternate method until the dealer receives written approval from the appropriate TTB officer.

§ 46.263 Conditions for approval.

The alternate method or procedure may be approved if it meets all of the following conditions:

- (a) There is good cause for its use;
- (b) It is consistent with the purpose and effect intended by the prescribed method or procedure;
- (c) It affords equivalent security to the revenue;
- (d) It is not contrary to any provision of law;
- (e) It will not result in an increase in cost to the Government;
- (f) It will not hinder the effective administration of this subpart such as delaying timely payment of taxes; and
- (g) It is not a method or procedure that relates to the payment or collection of tax.

§ 46.264 Withdrawal of an approval.

The approval will be withdrawn if revenue is jeopardized or administration of this subpart is hindered. The appropriate TTB officer will give the dealer a written notice of the withdrawal.

TTB AUTHORITIES

§ 46.270 [Reserved]**§ 46.271 Entry, examination and testimony.**

Appropriate TTB officers, in performing official duties, may enter any premises to examine articles subject to floor stocks tax. They may enter the premises during the day or may also enter at night if the premises are open. Appropriate TTB officers may audit and examine all articles, inventory records, books, papers, or other resource data for the purpose of ascertaining, determining, or collecting floor stocks tax. They may take testimony, under oath, of any person when inquiring as to proper payment of floor stocks taxes.

§ 46.272 Issuance of summons.

Appropriate TTB officers can issue summonses when there is no referral to the Justice Department under the authority stated in § 70.22 of this chapter. The summons will state a place and time for such items or person to ap-

pear. TTB will issue a summons to require:

(a) Any books of account or other data pertaining to liability for floor stocks tax;

(b) Any person liable for the floor stocks tax or having possession of books of account or other data; and

(c) Any other appropriate person in connection with the books or tax liability.

§ 46.273 Refusing entry or examination.

If the dealer or another person in charge of the premises refuses to admit any appropriate TTB officer or prevents any appropriate TTB officer from examining the records or articles, the dealer may be liable for the penalties described in 26 U.S.C. 7342 or 7212.

§ 46.274 Penalties for failure to comply.

If the dealer fails to follow the regulations set forth in this subpart, TTB may apply applicable civil and criminal penalties under the Internal Revenue Code of 1986. For example, failure to file and failure to pay penalties may be assessed against the dealer if the dealer does not timely file the tax return or timely pay the taxes due. In addition, interest under 26 U.S.C. 6621 accrues for any underpayment of tax and on all assessed penalties until paid.