and if any underpayment of tax is paid by October 14.

(2) Taxpayment not by EFT. Taxpayers are considered to have met the requirements of paragraph (a)(2) of this section if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(c) Weekends and holidays. If the required taxpayment due date for the period September 16–25 or September 16–26, as applicable, falls on a Saturday or legal holiday, the return and remittance are due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance are due on the immediately following day.

(d) Example: Payment of tax for the month of September. (1) Facts. X, a manufacturer of tobacco products required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(2) Payment requirement. X’s payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 40.165(a)). X’s payment of tax for the period September 16–26 is due no later than September 29 (§ 40.164(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 40.164(b)). Under the safe harbor rule, X’s payment of tax must not be less than $21,990.00, that is, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X must pay the tax in the amount of $2,000 for the period September 27–30 no later than October 14 (§ 40.164(a)(1)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 40.164(b)).

(T.D. TTB–89, 76 FR 3513, Jan. 20, 2011)
required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including tobacco products, cigarette papers, and cigarette tubes brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563–1 through 1.1563–4, except that the words “at least 80 percent” shall be replaced by the words “more than 50 percent” in each place it appears in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a “controlled group of corporations” apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of determining who is required to make remittances by EFT.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate return, Form 5000.24, for each factory from which tobacco products are withdrawn upon determination of tax.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer’s bank to make an electronic fund transfer in the amount of the tax payment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in §40.165 or §40.167. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 41 of this chapter during the preceding calendar year, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return on as prescribed by §40.168. Upon filing the first return which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the appropriate TTB officer by attaching a written notification to Form 5000.24, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) Remittance. (1) Each taxpayer shall show on the return, Form 5000.24, information about remitting the tax for that return period by EFT and shall file the return with the TTB, in accordance with the instructions on Form 5000.24.

(2) Remittances shall be considered as made when the tax payment by electronic fund transfer is received by the Treasury Account. For purposes of this section, a tax payment by electronic fund transfer shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment,
§ 40.167 Prepayment tax return.

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

(b) However, if a manufacturer is required by §40.165a to pay the tax by electronic fund transfer, the manufacturer shall prepay the tax before any tobacco products can be removed for consumption or sale by completing the return and filing it with TTB, in accordance with the instructions on the