

## BUREAU PROCEDURES — III

### Subpart B —TOBACCO

#### **27 CFR 270.283 CREDIT OR REFUND OF TAX 27 CFR 275.163 REFUND OF TAX**

ATF establishes an alternate procedure for filing claims for cigarettes withdrawn from the market by tobacco product manufacturers and importers. This procedure allows the use of a quantity and percentage to determine the amount of taxes that can be refunded because of the tax increase on cigarettes imposed January 1, 2002. In addition, this procedure specifies how tobacco product manufacturers and importers who bear the ultimate burden of the cigarette floor stocks tax can file claims for cigarettes withdrawn from the market.

#### **ATF Procedure 2001-2**

##### GENERAL.

##### *Section 1. Purpose.*

This ATF Procedure establishes alternate procedures which tobacco products manufacturers and importers may use to file claims after January 1, 2002, under 26 U.S.C. 5705 for credit or refund of tax on cigarettes withdrawn from the market.

##### *§ 2. Application to All Tax Classes of Cigarettes.*

Small cigarettes comprise almost all of the cigarettes on which claims are filed under 26 U.S.C. 5705. Therefore, this procedure is written in terms of the tax rates specific to small cigarettes, and references to “cigarettes” in this procedure are always meant to be small cigarettes. However, a manufacturer or importer may use this procedure for claims under 26 U.S.C. 5705 relating to large cigarettes by using the applicable tax rates.

##### BACKGROUND.

##### *§ 3. Floor Stocks Tax on Cigarettes.*

Section 9302(j)(1) of the Balanced Budget Act of 1997 (P.L. 105-33, 111 Stat. 676) imposes a floor stocks tax of \$2.50 per thousand for small cigarettes held for sale on January 1, 2002. However, if cigarettes are held in ATF bond for a manufacturer or in a Customs bonded warehouse for an importer, the tax will not apply. Section 9302(j)(3) of the Act allows a credit against the floor stocks tax of an amount up to \$500.

*§ 4. Floor Stocks Tax Paid by Manufacturers and Importers and Increase in Tax Rate.*

Cigarettes removed from bond before January 1, 2002, by manufacturers or importers and still in commercial channels will have been originally taxpaid by the manufacturer or importer at the rate of \$17 per thousand. On or after January 1, 2002, if the manufacturer or importer still holds these cigarettes, an additional \$2.50 per thousand for floor stocks tax of these cigarettes will have to be paid for cigarettes that are held for sale after taking the allowable credit of up to \$500. Cigarettes removed from bond by manufacturers or importers on or after January 1, 2002, are required to be taxpaid by the manufacturer or importer at the rate of \$19.50 per thousand.

*§ 5. Floor Stocks Tax Paid by Others.*

Dealers (distributors, wholesalers and retailers) are required to pay \$2.50 per thousand floor stocks tax on cigarettes which they hold for sale on January 1, 2002, after taking the credit of up to \$500.

*§ 6. Credit or Refund for Cigarettes Withdrawn from Market.*

The first sentence of section 9302(j)(8) of the Act applies all other laws with respect to the taxes imposed by 26 U.S.C. 5701 (Internal Revenue Code of 1986) that are applicable and are not inconsistent with the floor stocks tax. Section 5705 allows the manufacturer or importer of tobacco products or cigarette papers to withdraw tobacco products or cigarette papers and tubes from the market. Consequently, a credit or refund of the floor stocks tax paid by the manufacturer or importer is allowable under the provisions of 26 U.S.C. 5705. However, under this first sentence of section 9302(j)(8) of the Act, manufacturers or importers can not claim the floor stocks tax paid by dealers. Thus, unless the manufacturer or importer reimburses a dealer for the amount of floor stocks tax that the dealer paid for the cigarettes (see section 7), the manufacturer or importer will use the formula approach to determine the amount of tax to be credited or refunded.

*§ 7. Person Who Bears Ultimate Burden.*

The second sentence of section 9302(j)(8) of the Act states that the Secretary may treat a person who bore the ultimate burden of the floor stocks tax on cigarettes as the person to whom a credit or refund under such provisions may be allowed or made. This provision allows manufacturers or importers to claim a refund or credit of the floor stocks tax paid by dealers if the manufacturer or importer reimbursed such dealers for the amount of cigarettes that were withdrawn from the market. In such a case, manufacturers and importers may claim the full amount of tax on the cigarettes.

*§ 8. Difficulties in Determining Tax Payment Dates for Cigarettes Returned to Bond.*

The nature of the cigarette distribution system and the manner in which cigarettes are returned to the manufacturer or importer make determining the date of tax payment extremely difficult if not impossible. Cigarettes normally are first placed in packages,

then into cartons and finally into cases. Cases may then be loaded on to pallets. ATF regulations in 27 CFR parts 270 and 275 do not require a manufacturer or importer to mark packs, cartons or cases of cigarettes with the date of tax payment. As a matter of fact, ATF regulations (27 CFR 270.211 and 275.71) prohibit any statement or indication on a cigarette package that United States tax has been paid.

Some cigarette manufacturers and importers may identify dates of shipment by coding pallets for cases of cigarettes. If the cases of cigarettes are on the original pallet, such manufacturers and importers can match the pallet with a particular case of cigarettes. However, many cigarettes are not returned in a case on their original pallet. In addition, many returns are by an individual case, carton or pack. Many cigarette manufacturers and importers may code cigarettes with a date of production. The production date may be possibly used to obtain a date of tax payment for cigarettes returned in individual cartons or packages, but it would involve extensive recordkeeping and labor to determine the date of tax payment for such cigarettes. In addition, the date of tax payment of some cigarettes still could not be determined after instituting these costly requirements. Consequently, only part of the taxes could be refunded even after instituting such an extensive recordkeeping requirement for returns to bond.

#### *§ 9. Basis for Procedure.*

Given the difficulties in determining the tax payment dates, the Bureau is providing this procedure as an alternative to the usual proof that a manufacturer or importer would use to determine the amount of tax refundable or creditable. This procedure can only be used in the transition period following the cigarette tax increase and floor stocks tax imposition effective January 1, 2002. This procedure is based on past statistical data, the fact that cigarette inventories may be at different levels of distribution on January 1, 2002, and the normal cigarette "shelf-life." The Bureau believes that the procedure conforms with the intent and requirements of 26 U.S.C. 5705 and Section 9302(j)(8) of Public Law 105-33 (111 Stat. 675).

#### *§ 10. Optional Use of Procedure.*

Manufacturers or importers may, at their option, after January 1, 2002, submit claims for cigarettes under 26 U.S.C. 5705 under the procedure described below. However, if this election is made, then it must be used for all withdrawals from the market on which the manufacturer or importer intends to claim refund or credit of the excise tax. The Chief, Regulations Division, may grant a variance to the exclusivity of this procedure under 27 CFR 270.45 and 275.26.

In addition, if a manufacturer or importer has elected to reimburse a person who bore the ultimate burden of the floor stocks tax for cigarettes withdrawn from the market, the manufacturer or importer may also file a claim under this procedure.

#### PROCEDURE.

#### *§ 11. Establish Quantity.*

A manufacturer or importer will establish the quantity of cigarettes at which the tax rate of \$17 per thousand applies by using the following steps.

a. A manufacturer must include all operations involving cigarettes at all tobacco products factories, or an importer must include all operations involving cigarettes regardless of the number of ports through which taxpaid or tax determined withdrawals from Customs custody have been made.

b. Determine the number of withdrawals from the market with refund/credit allowed for the period October 1, 1999, through September 30, 2001, and divide by the total number of cigarettes removed subject to tax for the same period.

c. Take the number determined in (b) above and divide by 2.

d. Multiply the factor calculated in (c) above by the total number of cigarettes removed subject to tax during the period from April 1, 2001, through September 30, 2001.

This quantity must be amortized or depleted by claims for cigarettes under 26 U.S.C. 5705 before credit or refund of tax at the higher rate of \$19.50 per thousand will be allowed.

#### *§ 12. How to Use the Quantity.*

In cases where the manufacturer or importer did not reimburse the dealer for the amount of floor stocks tax that the dealer paid on the cigarettes, the following approach will be used: On each claim involving cigarettes withdrawn from the market on or after January 1, 2002, up to the established quantity, it will be presumed that the manufacturer or importer taxpaid 11 percent of the cigarettes at the \$17 per thousand rate and 89 percent at the \$19.50 per thousand rate. These percentages will be applied to each claim filed by the manufacturer or importer for withdrawals from the market (26 U.S.C. 5705) on or after January 1, 2002, regardless of the number of factories or entry locations involved, until the quantity of cigarettes paid at the lower tax rate of \$17 per thousand in allowed claims reaches the quantity determined by section 11. After reaching the established quantity, cigarettes withdrawn from the market will be presumed to have been taxpaid at the \$19.50 per thousand rate.

In cases where the manufacturer or importer reimburses the dealer for the amount of floor stocks tax that the dealer paid on the cigarettes, the following approach will be used: Using this same established quantity of cigarettes, a manufacturer or importer may claim a refund or credit at the rate of \$2.50 per thousand on cigarettes (the difference between old and new tax rates) withdrawn from the market if the manufacturer or importer can show that they bore the ultimate burden of this tax (that is, the manufacturer or importer reimbursed for floor stocks tax that the dealer paid). The manufacturer or importer must follow all of the requirements in section 13 to receive this credit or refund. Because the floor stocks tax from dealers is not normally paid until April 1, 2002, ATF will only pay such claims after April 1, 2002, unless the manufacturer or importer provides proof that the floor stocks tax was paid prior to this date.

At the end of this ATF procedure is a worksheet that a manufacturer or importer may use to determine and keep track of the above quantities.

#### *§ 13. Filing Claims.*

Each claim filed by the manufacturer or importer on ATF Form 5620.8 under this procedure must include the following additional information. [Manufacturers and importers must continue to comply with all the regulatory requirements of regulations (27 CFR parts 270 or 275, respectively) when filing claims for cigarettes withdrawn from the market under this procedure.]

- a. The quantity of cigarettes as determined in section 11 above.
- b. The total quantity of cigarettes on which the manufacturer or importer has filed claims company-wide under this procedure up to and including the current claim.
- c. The amount of cigarette floor stocks tax that the manufacturer or importer did not pay to ATF but for which the manufacturer or importer claims to have borne the ultimate burden.
- d. A statement that the manufacturer or importer has reimbursed the floor stocks tax to the person who paid that tax.
- e. A statement that the claimant has not sold nor contracted to sell the cigarettes involved in the claim and agrees not to shift, directly or indirectly in any manner whatsoever, the burden of the floor stocks tax to any other person.
- f. A statement as to whether the price charged by manufacturer or importer for the cigarettes was increased on or following the effective date of the floor stocks tax increase, the date of any such increase, and information as to the nature and reasons for the amount of any such price increase.
- g. A statement that the claimant will provide upon request all records, invoices, credit memorandums, ledgers and journals, cost accounting records, and other records to establish the claimant's statements.
- h. A statement that no other person is claiming a refund of the floor stocks tax for the cigarettes withdrawn from the market.

*§ 14. Records.*

Manufacturers and importers must maintain all records, such as invoices, credit memorandums, ledgers and journals, and cost accounting records, to establish statements made in claims filed under this procedure. These records must be maintained as required by 27 CFR 270.185 for manufacturers or 27 CFR 275.22 for importers.

*§ 15. Withdrawals Excluded from Procedure.*

Cigarettes in the ownership or possession of a manufacturer or importer on or before January 1, 2002, which are in the process of withdrawal at that time may not be included in claims filed under this procedure.

*§ 16. Questions.*

If you have questions about this ATF Procedure, you can contact either of the following offices:

ATF  
Chief, Regulations Division

Washington, DC 20226  
Phone: 202-927-8210  
E-mail: alctob@bhq.atf.treas.gov

ATF  
Chief, National Revenue Center  
550 Main Street  
Cincinnati, OH 45202-3263  
Phone: 800-398-2282 or 513-684-7151  
E-mail: natrevctr@CINC.ATF.TREAS.GOV

Signed: **Bradley A. Buckles,**  
*Director*

Date: 3/12/2001

### **Worksheet for ATF Procedure 2001-2**

1. \_\_\_\_\_ Quantity of cigarettes withdrawn from the market during the period of October 1, 1999, through September 30, 2001, for which claims were approved under 26 U.S.C. 5705.
2. \_\_\_\_\_ Quantity of cigarettes removed subject to tax during the period of October 1, 1999, through September 30, 2001.
3. \_\_\_\_\_ Divide item 1 by item 2.
4. \_\_\_\_\_ Divide item 3 by 2.
5. \_\_\_\_\_ Multiply item 4 by the total number of cigarettes removed subject to tax during the period of April 1, 2001 through September 30, 2001.
6. \_\_\_\_\_ Quantity of cigarettes withdrawn from market on or after January 1, 2002, for which claims under 26 U.S.C. 5705 have been filed. This number cannot exceed the amount determined in item 5 above.
7. \_\_\_\_\_ Multiply item 5 by 11 percent (this is the amount that a manufacturer or importer may file a claim based on the lower tax rate of \$17 per thousand).
8. \_\_\_\_\_ Quantity of cigarettes for which a claim for refund or credit has been filed that the manufacturer or importer claims to have borne the ultimate burden of the floor stocks tax. This number cannot exceed the amount determined in item 7 above.