

DEPARTMENT OF THE TREASURY  
Bureau of Alcohol, Tobacco and Firearms

Floor Stocks Tax Highlights

- ❑ Take an inventory of the quantity of cigarettes on or near last day of business of 2001 to determine if you owe floor stocks tax. Inventory should be taken no earlier than December 26, 2001 and no later than January 10, 2002. However, the inventory must be reconciled to reflect the actual quantity of cigarettes held as of the first moment of January 1, 2002. Be sure to keep a copy of the inventory available for inspection by ATF.
- ❑ A credit of up to \$500 is given towards the floor stocks tax. Subtract \$500 from your total computed floor stocks tax. Controlled groups are eligible for only one credit of \$500 for the entire group. The whole credit may be taken by one member, equally divided among the members, or apportioned in any other manner agreeable to the members of the group.

(A controlled group results when one person or business maintains more than 50% control over a group of corporations, non-incorporated entities or a combination of corporate and non-corporate entities).

- ❑ If you do not owe tax, do not complete or mail a tax return.
- ❑ If you owe floor stocks tax and currently pay Federal Excise taxes collected by ATF through Electronic Fund Transfer (EFT), you must also pay the floor stocks tax by EFT. Mark the enclosed tax return with "EFT" as the method of payment. Otherwise, complete the enclosed tax return and submit payment in the form of check or money order by April 1, 2002. (Do not forget to include your Employer Identification Number (EIN) on your check or money order.) Mail the tax return and remittance to The Bureau of Alcohol, Tobacco and Firearms, P.O. Box 371951, Pittsburgh, PA 15251-7951
- ❑ If you have any questions after reading the detailed instructions, access our website at [www.atf.treas.gov](http://www.atf.treas.gov) or call the National Revenue Center at 1-800-398-2282 or 513-684-7151 for further information.

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Instructions for Floor Stocks Tax for Cigarettes

Floor Stocks Tax on Cigarettes Held for Sale on January 1, 2002

A. GENERAL

1. Purpose.

These instructions are intended to provide information regarding the floor stocks tax imposed on cigarettes by the Balanced Budget Act of 1997, (Public Law 105-33, Section 9302).

2. Terms used.

(a) Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of prescribed laws.

(b) Controlled group. Pursuant to 26 U.S.C. 5061(e)(3), the term "controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words "at least 80 percent" shall

be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Controlled groups of corporations include, but are not limited to:

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

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

(3) Combined groups as defined in 26 CFR 1.1563-1(a)(4). Also, the rules for a controlled group of corporations apply in a similar fashion to groups, which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all are members of a controlled group.

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

(d) Large Cigarettes. Cigarettes weighing more than three pounds per thousand.

(e) Person. When the term "person" is used in this subpart, it refers to an individual, partnership, association, company, corporation, a trust, or an estate. It also includes any State or political subdivision.

(f) Small cigarettes. Cigarettes weighing not more than three pounds per thousand.

(g) Tax Increase Date. For the purposes of this floor stocks tax, the tax increase date is January 1, 2002.

### 3. Floor stocks tax defined.

Floor stocks tax is a tax imposed on all Federally taxpaid or tax determined cigarettes held for sale on the first moment a tax increase becomes effective. The tax is the difference between the previous excise tax rate (if any) and the new tax rate.

### 4. Persons liable for this tax.

You are liable for this tax if you hold for sale any taxpaid, tax determined, and/or cigarettes in transit at the moment the tax increase is effective. You may also be liable if you hold cigarettes in a foreign trade zone.

### 5. Persons not liable for this tax.

If you do not hold any taxpaid or tax determined cigarettes in transit or for sale at the moment a tax increase is effective, you are not liable for this tax.

### 6. Floor stocks requirements.

(a) Take an inventory. Establish the quantity of cigarettes subject to the floor stocks tax held for sale at the beginning of the tax increase date (January 1, 2002). You may take a physical inventory or you may use a book or record inventory.

(b) Compute tax amount. Compute the amount of tax for the cigarettes held for sale at the start of the tax increase date. Apply the tax credit as provided.

(c) File tax return. After you have computed the floor stocks tax, you must file a return if tax is due.

(d) Maintain records. Maintain all records used to determine the quantity of cigarettes on hand at the start of the tax increase date. You must also maintain all computations used to determine the amount of tax owed.

## B. INVENTORIES

### 1. Establish quantities of cigarettes.

You must take an inventory to establish the quantity of cigarettes subject to the floor stocks tax. You may take a physical inventory or a record or book inventory.

### 2. Inventory For Cigarettes with export markings.

Your inventory of cigarettes must count separately cigarettes that have been labeled for export from the United States.

### 3. How to identify cigarettes with export markings.

Each package (the container in which cigarettes are put up by the manufacturer and delivered to the consumer) of cigarettes will have:

(a) A mark or a label with the words "Tax-exempt. For use outside U.S." or "U.S. Tax Exempt. For use outside U.S."; or

(b) A stamp, sticker, or notice required by a foreign country or possession of the United States, which identifies such country or possession.

### 4. When to take inventory.

You must take your physical or book (record) inventory during the periods not earlier than December 26, 2001 and no later than January 10, 2002.

### 5. Physical inventory requirements.

Your physical inventory must include a written record of:

(a) Quantity and Type. You must record the quantity and type of cigarettes in sufficient detail to determine the tax rate and whether the cigarettes have export markings. The following chart provides the type of cigarette and method to use to determine quantities:

Type or Kind	Inventory method
Small cigarettes (Class A)	Count the: <ul style="list-style-type: none"><li>• Number of cigarettes without export markings.</li><li>• Number of cigarettes with export markings.</li></ul>
Large cigarettes (Class B)	Count the: <ul style="list-style-type: none"><li>• Number of large cigarettes 6.5" or less in length without export markings.</li><li>• Number of large cigarettes 6.5" or less in length with export markings.</li><li>• Number of each size of large cigarettes more than 6.5" in length without export markings.</li><li>• Number of each size of large cigarettes more than 6.5" in length with export markings.</li></ul>

(b) Date. Date(s) the inventory was taken.

(c) Name. Name of individual(s) conducting the inventory and the name of the person for whom the inventory was taken.

(d) Location. Record where the inventory was taken (street address, city and State).

(e) Time. The physical inventory must be taken between December 26, 2001 and January 10, 2002. If you do not take the physical inventory between the close of business on the last respective business day of 2001, the records must be reconciled. The inventory records must be reconciled to reflect the actual quantity of cigarettes held as of the first moment of January 1, 2002. These records must include all supporting records of receipt and disposition.

### 6. Book or record inventory requirements.

You may use a book or record inventory if you have source records that show:

- (a) The quantity of receipts and dispositions of all cigarettes.
- (b) The actual type and quantities of cigarettes on hand as if a physical inventory had taken place the moment the tax increase became effective.
- (c) The name and address of the consignor and consignee.
- (d) The date of receipt or disposition of the cigarettes.
- (e) The brand name of each product.
- (f) If you do not take the inventory between the close of business on the last business day of 2001, the records must be reconciled.

### 7. Cigarettes in transit.

Cigarettes in transit must be included in your inventory if you hold title to the cigarettes. If you have transferred the title, you must document the title transfer in writing. For example, you may mark the bill of lading with a written statement that indicates the time and place of the title transfer.

### 8. Guidelines to determine title of cigarettes in transit.

You may use the following guidelines to establish who holds title to cigarettes in transit.

- (a) If State law mandates the change in title, no agreement or contract between seller and buyer can alter it.
- (b) In the absence of State law, the Uniform Commercial Code allows the seller and buyer to agree when title passes.
- (c) If there is no State law or agreement, the Uniform Commercial Code states that title transfer depends on how the seller ships the cigarettes.
  - (1) Freight on board (F.O.B.) destination. The title transfer occurs when the seller completes the performance of the physical delivery of the cigarettes.
  - (2) Freight on board (F.O.B.) shipping point. The title transfer occurs when the seller transfers the title at the time and place of shipment, which is generally by common carrier.

### 9. Cigarettes in a foreign-trade zone.

You are liable for the tax and must take an inventory when either of the following conditions apply:

- (a) Internal revenue taxes have been determined or Customs duties liquidated, with respect to cigarettes pursuant to the first proviso of section 3(a) of the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a), or
- (b) Cigarettes are held by a Customs officer pursuant to the second proviso of section 3(a) of the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a).

### 10. Cigarettes held in bond.

If you are a manufacturer or export warehouse proprietor and hold cigarettes in ATF bond on the tax increase date, the floor stocks tax does not apply to those cigarettes. Likewise, if you have cigarettes held in a Customs bonded warehouse, the floor stocks tax does not apply on those cigarettes.

### 11. Unmerchantable cigarettes.

Any cigarettes that you hold for return to a supplier because of some defect are not subject to this tax. You must prepare a separate list of these items. You cannot include as unmerchantable any items that may be held because of poor market demand or to reduce your inventory.

### 12. Cigarettes in vending machines.

You do not have to inventory cigarettes held in a vending machine for retail sale, provided:

- (a) The vending machine holding the cigarettes is placed at a location where retail sales occur, and
- (b) The cigarettes are ready to be dispensed by a consumer.

### 13. Cigarettes marked "not for sale" or "complimentary."

Cigarettes 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 this tax and must be included in the book or record inventory. Cigarettes marked in this manner are intended to be given away and not in conjunction with any sale are not subject to this tax.

## C. COMPUTE TAX LIABILITY

### 1. Determine the amount of tax due.

After you have taken your inventory, apply the applicable tax rate for each type of cigarette using the table below. Multiply the amount of each type of cigarette by the applicable tax rate.

### 2. Floor stocks tax rates table.

Type or Kind	January 1, 2002
Small Cigarettes - Class A (3 pounds or less per 1,000)	\$2.50 per 1,000 or 5 cents per 20
Large Cigarettes - Class B (more than 3 pounds per 1,000)	\$5.25 per 1,000 or 10.5 cents per 20
Almost all cigarettes sold in the United States are small cigarettes. Special rule for large cigarettes over 6 1/2 inches long are taxable at the rate prescribed for small cigarettes counting each 2 3/4 inches or fraction thereof of the length of each as one cigarette.	

### 3. Apply tax credit.

You are allowed a credit against your floor stocks tax of up to \$500. 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.

## D. FILING REQUIREMENTS

### 1. How to obtain a tax return.

You may obtain ATF Form 5000.28T, Floor Stocks Tax Return for Cigarettes, from any of the following sources:

- (a) ATF web site ([www.atf.treas.gov](http://www.atf.treas.gov));

(b) ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5950, telephone (703) 455-7801; or

(c) National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202-3263, telephone (800) 398-2282 or (513) 684-7151.

## 2. Prepare tax return.

If your tax liability is zero, you do not have to complete or file a tax return. Otherwise, complete the floor stocks tax return in accordance with the instructions on the form.

## 3. How to pay.

Your payment must be in the form of a check or money order and sent with ATF Form 5000.28T unless you are required to file by electronic fund transfer as described below.

**Electronic Fund Transfer.** If you pay any other excise taxes collected by ATF by electronic fund transfer, then you must also send your payment for this floor stocks tax by an electronic fund transfer. ATF P 5000.10, Payment by Electronic Funds Transfer, specifies how to make an electronic fund transfer. You can get ATF P 5000.10 from any of the following sources:

(1) ATF web site ([www.atf.treas.gov](http://www.atf.treas.gov));

(2) ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150-5950, telephone (703) 455-7801; or

(3) National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202-3263, telephone (800) 398-2282 or (513) 684-7151.

## 4. Tax return due date.

Your tax return for the floor stocks tax increase effective January 1, 2002, must be filed no later than April 1, 2002.

## 5. Filing requirements for multiple locations.

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

## 6. Cigarettes in a warehouse.

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

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

## 7. Controlled group members.

If you are a member of a controlled group, you must file if the combined liability with other members is more than \$500. If you have your own employer identification number, you must file a separate tax return. You may take the tax credit discussed in instruction C 3, if it is apportioned to you as a member of the controlled group.

## E. RECORDS

### 1. Required Records.

You must maintain these required records:

(a) Inventory records.

(b) Tax computations.

(c) Names, addresses and employer identification number of all controlled group members, if applicable.

(d) Copy of tax return, if you filed one.

(e) List of locations and warehouses covered by the tax return.

(f) Any approved alternate method or procedure.

Keep your inventory records at your principal place of business. All records must be made available to an appropriate ATF officer upon demand.

### 2. Period for maintaining records.

An appropriate ATF officer may require, in writing, that you keep records and any tax returns for an additional period of not more than 3 years. Keep your records in accordance with time frames shown below.

If you have:	Maintain your records for at least:
Taken an inventory but are not required to file a tax return.	3 years from the tax increase date (or January 1, 2005).
Filed a tax return on or before the due date of the return.	3 years from the due date of the tax return (or April 1, 2005).
Filed a tax return after the due date of the tax return.	3 years from the date of filing the tax return.

### 3. Cigarettes at multiple locations.

You must maintain a list of each place where you hold cigarettes 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).

(d) Quantity and classification of all cigarettes held at each location.

### 4. Where records must be maintained.

Keep your inventory records at your principal place of business. All records must be made available to an appropriate ATF officer upon demand.

### 5. Errors in records.

If your inventory records or tax computation records contain an error that resulted in an overpayment of tax, you can file a claim for refund. If your inventory or tax computation records contain an error that resulted in an underpayment of tax, you must file an additional tax return on which you show and pay the additional tax, interest and any applicable penalties.

## F. CLAIMS

### 1. Before filing a claim

Before you can file a claim for refund, you must have paid your floor stocks tax on ATF F 5000.28T and subsequently determined that you overpaid the tax.

### 2. When to file a claim for errors on return.

You must file the claim within 3 years from the due date of filing the tax return or 2 years from the time the tax was paid, whichever is later.

### **3. How to file a claim for errors on return.**

Your claim must be filed on ATF Form 2635 (5620.8). The claim must include detailed and sufficient evidence to support why you believe the tax was overpaid. The claim and supported documentation must be mailed or delivered to the address shown on the form.

### **4. Destruction of cigarettes by a Presidentially- declared major disaster.**

After you have paid the floor stocks tax, you may file a claim for refund of tax on cigarettes lost, rendered unmarketable, or condemned because of a Presidentially declared major disaster.

### **5. Additional reasons for filing a claim.**

(a) Manufacturer. 27 CFR part 270, subparts I and K state the times, reasons and procedures for filing a claim for refund.

(b) Export warehouse proprietor. 27 CFR part 290, subpart G, states the time, evidence and procedures for filing a claim for refund.

(c) Exported taxpaid. If cigarettes are shipped from the United States, you may file a claim for drawback of taxes under subpart K of 27 CFR part 290.

(d) Importer. An importer may follow the procedures for filing a claim as described in 27CFR part 275, subpart I.

## **G. ALTERNATE METHODS OR PROCEDURES**

### **1. Purpose of an alternate method or procedure.**

An alternate method or procedure is another way of performing a requirement stated in these instructions. You would only make a request if you wanted to perform a requirement in a manner other than what is stated in these instructions. All alternate methods or procedures may not hinder the proper collection of the revenue.

### **2. How to apply for approval.**

You must apply in writing to the National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202-3263. You must describe the alternate method or procedure and reasons you wish to use it. You cannot use the alternate method until you receive written approval from ATF.

### **3. Conditions for approval.**

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

- (a) There is a 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 these instructions, such as delaying timely payment of taxes.

(g) It is not a method or procedure that relates to the payment or collection of tax.

### **4. Withdrawal of an alternate method or procedure.**

The approval will be withdrawn if revenue is jeopardized or administration of these instructions are hindered. ATF will give you written notice of the withdrawal.

## **H. ATF AUTHORITIES**

### **1. Delegations of the Director**

The regulatory authorities of the Director contained in these instructions are delegated to appropriate ATF officers. These ATF officers are specified in ATF O 1130.24, Delegation Order--Delegation of the Director's Authorities in subpart C and subpart I of 27 CFR part 46, which is available to any interested party by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, VA 22150-5190 or by accessing the ATF website (<http://www.atf.treas.gov>).

### **2. Entry examination and testimony.**

Appropriate ATF officers, in performing official duties, may enter any premises to examine cigarettes 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 ATF officers may audit and examine all cigarettes, 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.

### **3. Issuance of summons.**

An appropriate ATF officer can issue summonses when there is no Justice Department referral. The summons will state a place and time for such items or person to appear. ATF will issue a summons to require:

- (a) Any books of account or other data pertaining to liability of floor stocks tax.
- (b) Any person liable for the floors stocks tax or having possession of books of account or other data.
- (c) Any other appropriate person in connection with the books or tax liability.

### **4. Refusing entry or examination.**

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

### **5. Penalties for failure to comply.**

If you fail to comply with the law, ATF may apply applicable civil and criminal penalties under the Internal Revenue Code (IRC) (Title 26 U.S.C.). For example, failure to file and failure to pay penalties may be assessed against you if you do not timely file your 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.

