

DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

Instructions for TTB F 5000.28T09

These instructions provide information regarding the floor stocks tax imposed on tobacco products (except large cigars) and cigarette papers and tubes by the Children's Health Insurance Program Reauthorization Act of 2009, (Public Law 111-3, Section 701).

A. Product definitions. In order to apply the definition, you should look at the package. The package should tell you either the name of the product or its tax class. The tax class, if a product has one, is shown in the definition below.

Chewing Tobacco (Tax Class C). Any leaf tobacco that is not intended to be smoked.

Cigar. Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of cigarette set forth below).

Large Cigars. Cigars weighing more than three pounds per thousand.

Small Cigars (or Little Cigars). Cigars weighing three pounds or less per thousand

Cigarette. (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco, and (2) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described at (1) in this definition.

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

Small Cigarettes (Class A). Cigarettes weighing three pounds or less per thousand.

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.

Pipe Tobacco (Tax Class L). Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

Roll-Your-Own Tobacco (or Cigarette Tobacco) (Tax Class J). Any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

Snuff (Tax Class M). Any finely cut, ground, or powdered tobacco that is not intended to be smoked.

Tobacco Products. Cigars, cigarettes, smokeless tobacco (that is, chewing tobacco and snuff), pipe tobacco, and roll-your-own tobacco.

B. Floor stocks tax requirements in general. The floor stocks tax applies to cigarettes, small cigars (that is, cigars weighing 3 pounds per 1,000 or less), snuff, chewing tobacco, pipe tobacco, roll-your-own tobacco, cigarette papers and cigarette tubes that have been taxpaid or tax determined and are being held for sale on April 1, 2009. The tax does not apply to tobacco products or cigarette papers or tubes that have not been removed from the manufacturer's premises subject to tax or have not been released from customs custody subject to tax. The following procedures apply to floor stocks tax:

1. **Take an inventory.** Establish the quantity of tobacco products (except large cigars), cigarette papers and cigarette tubes subject to the floor stocks tax held for sale at 12:01 a.m. on April 1, 2009 (the tax increase date).
2. **Calculate tax amount.** Calculate the amount of tax for the products identified in the inventory. Apply the tax credit as described below.
3. **File tax return.** After you have computed the floor stocks tax, you must file a return and pay the tax due not later than July 31, 2009.
4. **Maintain records.** Maintain all records used to determine the quantity of products on hand on the tax increase date. You must also maintain a record of all computations used to determine the amount of tax owed.

C. Taking an Inventory.

You may take a physical inventory or a record (book) inventory. You must take your inventory after March 25, 2009, and before April 11, 2009, and if taken on any day other than April 1, 2009, it must be reconciled (adjusted) to reflect the actual quantity of products held at the beginning of business on April 1, 2009.

Inventory methods

Product	Inventory method
Small cigarettes:	Count the number of cigarettes.
Large cigarettes, measuring 6 ½ " or less in length:	Count the number of large cigarettes.
Large cigarettes, measuring more than 6 ½ " in length:	Keep a separate count for each size of large cigarette. Count each 2 ¾ ", or fraction thereof, as one small cigarette.
Small Cigars:	Count the number of small cigars.
Large Cigars:	Do not count large cigars for the floor stocks tax inventory.
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	Count the number of packages at each weight, noting the weight in pounds and ounces. Convert the ounces to pounds.
Cigarette papers 6 ½ " 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 6 ½ " in length	Count the number for each size of cigarette paper. Count each 2 ¾ ", or fraction thereof, as one cigarette paper. Divide adjusted total by 50 and round up if there is any remainder.
Cigarette tubes 6 ½ " or less in length	Count the number of cigarette tubes, divide by 50, and round up if there is any remainder.
Cigarette tubes more than 6 ½ " in length:	Count the number for each size of cigarette tube. Count each 2 ¾ ", or fraction thereof, as one cigarette tube. Divide adjusted total by 50 and round up if there is any remainder.

1. Physical inventory requirements.

Your physical inventory must yield a written record of:

- (a) The quantity and type of products, recorded in sufficient detail to determine the tax rate.
- (b) The date and time the inventory was taken.
- (c) The name of individual(s) conducting the inventory and the name of the person for whom the inventory was taken.
- (d) The street address, city, and State where the inventory was taken.

2. Record (book) inventory requirements.

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

- (a) The quantity and date of receipts and dispositions of all products.
- (b) The name and address of the consignor and consignee (unless sales are over-the-counter at retail).
- (c) The actual type and quantities of products on hand as if a physical inventory had taken place at 12:01 a.m. on April 1, 2009.
- (d) The brand name of each product.

You may **not** use ratios, averages, or estimates to determine the quantity of inventory held subject to tax. Your backup documentation must support your inventory results.

3. Products in transit.

Products in transit must be included in your inventory if you hold title to the products. If you have transferred the title, your records must document the title transfer.

You may use the following guidelines to establish who holds title to products 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. If there is no State law or agreement, the Uniform Commercial Code states that title transfer depends on how the seller ships the products.
 - (1) **Free on board (F.O.B.) destination.** The title transfer occurs when the seller completes the performance of the physical delivery of the products.
 - (2) **Free 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.

4. Products in a foreign-trade zone.

You are liable for the floor stocks tax and must take an inventory of taxable goods held in a foreign-trade zone if:

- (a) Internal revenue taxes have been determined or customs duties liquidated pursuant to the first proviso of section 3(a) of the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a et seq.), or
- (b) the taxable goods are held by a Customs and Border Protection 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 et seq.).

5. Products held in bond.

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

6. Unmerchantable products.

If you hold any products on April 1, 2009, for return to a supplier because of some defect or damage, you are not required to pay the floor stocks tax on those products; however, you must physically segregate any such unmerchantable products and include them in a separate section of your inventory record. If, for any reason, the tobacco products or cigarette papers or tubes that were determined to be unmerchantable are not subsequently returned or destroyed, you must file an additional floor stocks tax return and pay tax on such products.

7. Products in vending machines.

You must inventory products held in vending machines for retail sale, and include them in your final inventory. Products in vending machines are subject to the floor stocks tax.

8. Products marked "not for sale" or "complimentary."

Products marked "not for sale" or "complimentary" that are part of a sale (for example, buy two and get one free) are subject to this tax and must be included in the inventory.

D. Calculating the tax amount.

After you have taken your inventory, calculate the tax as instructed in Section II, lines 5 through 14, on the 2009 Floor Stocks Tax Return – TTB F 5000.28T09. The tax rate table below illustrates the old and new rates of tax and the floor stocks tax rates.

Product	Tax Rate Effective March 31, 2009	Tax Rate Effective April 1, 2009	2009 Floor Stocks Tax Rate <i>(difference between the rates)</i>
Small Cigarettes	\$19.50 per 1,000	\$50.33 per 1,000	\$30.83 per 1,000
Large Cigarettes (6 ½ " or less long)	\$40.95 per 1,000	\$105.69 per 1,000	\$64.74 per 1,000
Large Cigarettes * (More than 6 ½ " long)	\$19.50 per 1,000 2 ¾ "units	\$50.33 per 1,000 2 ¾ "units	\$30.83 per 1,000 2 ¾ "units
Small Cigars	\$1.828 per 1,000	\$50.33 per 1,000	\$48.502 per 1,000
Large Cigars	20.719% of sales price but not to exceed \$48.75 per 1,000	52.75% of sales price but not to exceed \$0.4026 per cigar	Not subject to floor stocks tax
Chewing Tobacco **	\$0.195 per pound	\$0.5033 per pound	\$0.3083 per pound
Snuff **	\$0.585 per pound	\$1.51 per pound	\$0.925 per pound
Pipe Tobacco **	\$1.0969 per pound	\$2.8311 per pound	\$1.7342 per pound
Roll-Your-Own Tobacco **	\$1.0969 per pound	\$24.78 per pound	\$23.6831 per pound
Cigarette Papers ***	\$0.0122 per 50 or fraction of 50	\$0.0315 per 50 or fraction of 50	\$0.0193 per 50 or fraction of 50
Cigarette Tubes ***	\$0.0244 per 50 or fraction of 50	\$0.0630 per 50 or fraction of 50	\$0.0386 per 50 or fraction of 50

* If more than 6 ½ inches in length, large cigarettes are taxable at the rate prescribed for small cigarettes, counting each 2 ¾ inches, or fraction thereof, as one small cigarette.

** The tax rate is set forth per pound and a prorated tax at the same rate applies to all fractions of a pound.

*** If more than 6 ½ inches in length, the cigarette papers or cigarette tubes shall be taxable at the rate prescribed for that product, counting each 2 ¾ inches, or fraction thereof, as one cigarette paper or cigarette tube, as appropriate.

You are allowed a credit against your total 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.

E. Filing the tax return

1. You may obtain TTB Form 5000.28T09, 2009 FLOOR STOCKS TAX RETURN - Tobacco Products and Cigarette Papers and Tubes, from the TTB web site, by e-mail, or by calling us (see below). A return must be filed even if your net tax due is zero.
2. **Your 2009 Floor Stocks Tax Return must be postmarked and the taxes paid no later than July 31, 2009.** Your payment must be in the form of a check or money order and sent with TTB Form 5000.28T09, unless you are required to file Federal tobacco excise taxes by electronic funds transfer (as may be required for manufacturers or importers – see regulations in 27 CFR Parts 40 and 41). You may elect to pay this tax by electronic funds transfer even if not required to do so. See www.ttb.gov or contact us (see below) for instructions for payment by electronic funds transfer.

Send your tax return and payment (made payable to **ALCOHOL AND TOBACCO TAX AND TRADE BUREAU**) to:

Alcohol and Tobacco Tax and Trade Bureau
2009 Floor Stocks Tax
P. O. Box 790208
St. Louis, MO 63179-0208

3. You may file a consolidated return if all locations (including places of business, stores, and warehouses) have the same employer identification number. If you file one consolidated return, attach a list of the additional locations to your return. Provide in the list, the name and address of the other locations, and the portion of the \$500 tax credit allotted to each location. You also have the option of filing a separate return for each location.
4. If you are a member of a controlled group, and you have your own employer identification number, you must file a separate tax return. A “controlled group” is any group of corporations or non-incorporated businesses that have common ownership interests. Generally, a business is considered to be part of a controlled group if more than 50 percent of the business is either owned by, or in common with, another business. You may take the tax credit, if all or part of the credit is apportioned to you as a member of the controlled group.

F. Maintaining records

1. You must keep your records in support of the return for 3 years from the date that you file the return, or until July 31, 2012, whichever date is later. The required records include: (a) a copy of your inventory, (b) your tax computations, (c) names, addresses, and employer identification number of all controlled group members, if applicable, (d) a copy of your floor stocks tax return, (e) a list of locations covered by the tax return, and, if applicable, (f) a copy of any approved alternate method or procedure. Keep your inventory records at your principal place of business.
2. If your inventory records or tax calculation records contain an error that resulted in an overpayment of tax, you can file a claim for refund. If your inventory or tax calculation 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. Claim forms and instructions are available from our web site, by e-mail or by calling us (see below).

G. Contact TTB for more information

The above instructions supplement the instructions provided on TTB Form 5000.28T09 – 2009 Floor Stocks Tax Return. Regulations in 27 CFR Part 46 will provide the specific rules for persons affected by the floor stocks tax requirements. Should you have questions please access the TTB web site (www.TTB.gov) and look for floor stocks tax information; write to us via e-mail at FloorStocksTax@ttb.gov; or call or write the TTB National Revenue Center, 550 Main Street, Room 8002, Cincinnati, Ohio 45202 - 5215, telephone toll free (877) 882-3277 or (513) 684-3334.