



INFORMATION SHEET

50 GUN EXEMPTION TO THE FIREARMS AND AMMUNITION EXCISE TAX (FAET)

FILING CLAIMS OR TAKING CREDITS

To: Manufacturers, producers and importers of firearms

Background:

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109–59, 119 Stat. 1144). This act amended section 4182 of the IRC by adding a provision that exempts from the tax any pistol, revolver, or firearm if it was manufactured, produced, or imported by a person who manufactures, produces, or imports less than an aggregate of 50 of such articles during the calendar year. This amendment was codified in Title 26, United States Code, Section 4182(c) and also in Title 27, Code of Federal Regulations, Section 53.62(c).

Who qualifies for this exemption?

Whether a manufacturer, importer, or producer qualifies for this exemption is determined by the number of firearms manufactured, produced and imported on a calendar year basis (January 1 – December 31).

For example, if “Company A” manufactures 20 firearms in a calendar year, no FAET is due upon the sale or taxable use of those 20 firearms.

However, if “Company A” manufactures 55 firearms in a calendar year, then FAET is due upon the sale or taxable use of any of those 55 firearms.

The amendment also provides that all persons who are a part of a controlled group under Title 26, United States Code, Section 1563 will be treated as one taxpayer for purposes of this exemption.

It should be noted that this amendment **does not apply** to shells and cartridges.

When was this change effective?

The new exemption went into effect on October 1, 2005. Since FAET is paid quarterly, this corresponded to the beginning of the new tax quarter (October 1 through December 31, 2005).

Further, this exemption has prospective application in that it has no effect on the tax liability of a manufacturer, producer, or importer prior to October 1, 2005.

What is the purpose of this information sheet?

This information sheet provides guidance in filing a claim or taking a credit if you paid Federal Firearms and Ammunition Excise Tax (FAET) on any pistol, revolver, or firearm (article) during a calendar year and subsequently fell under the exemption from the FAET because you manufactured, produced or imported less than an aggregate of 50 of such articles during a calendar year. If you fell under the exemption during any calendar year, you would be eligible to file a claim on TTB Form 5620.8, Claim – Alcohol, Tobacco and Firearms Taxes, or would be entitled to take a Decreasing Adjustment in Schedule C on a subsequent TTB Form 5300.26, Federal Firearms and Ammunition Excise Tax Return, for taxes paid. (A copy of TTB Form 5620.8, Claim – Alcohol, Tobacco and Firearms Taxes, is attached to this information sheet.)

What is the authority for this claim or credit?

Legal authority to make credits or refunds is Title 26, United States Code, Section 6402.

What is the statute of limitation for filing a claim or taking a credit?

Under Title 26, United States Code, Sections 6511 and 6513, a credit must be taken or refund requested on a return or claim filed for an overpayment:

- a. Three (3) years from the filing date of the return, or
- b. Two (2) years from the date the tax was paid, **WHICHEVER IS LATER.**
- c. If no tax return was filed, credit must be taken or refund requested or claim filed within two (2) years from when tax was paid.

When is this type of claim filed or credit taken?

This type of claim is filed or credit taken when taxpayer makes a simple overpayment or when no liability exists and tax was paid in error. In this particular situation – tax was paid and the taxpayer subsequently fell under the 50 Gun Exemption.

Are the Condition to Allowance Rules under Title 26, United States Code, Section 6416(a) applicable to this type of claim or credit?

Yes. Title 26, United States Code, Section 6416(a) provides that no credit or refund for any overpayment of tax imposed by Chapter 31 (relating to retail excise taxes) or Chapter 32 (manufacturers taxes) shall be allowed or made unless the person who paid the tax establishes, under regulations prescribed by the Secretary, that he –

- (1) Has not included the tax in the price of the article with respect to which it was imposed and has not collected the amount of the tax from the person who purchased such article;
- (2) Has repaid the amount of the tax to the ultimate purchaser of the article; or

- (3) Has filed with the Secretary, the written consent of the person referred to in subparagraph (B) to the allowance of the credit or the making of the refund.

What evidence is required to support this type of claim or credit?

- (1) Documentation will have to be provided by the taxpayer to prove that an overpayment was made, that no tax liability existed or that tax was paid in error. Documentation will depend on the type of overpayment made and for what reason. This documentation may be in the form of invoices, sales records etc. Records that are maintained by the taxpayer for compliance with other Federal and State laws and regulations can be used so long as the records have the above required information to document the claim or credit. Examples of such records include the following records maintained under the Gun Control Act of 1968, Title 18, United States Code, Chapter 44 and Title 27, Code of Federal Regulations, Part 478:

Title 27, Code of Federal Regulations, Part 478, Subpart H, Section 478.122(a) – **Records maintained by importers** – provides that each licensed importer shall, within 15 days of the date of importation or other acquisition, record the type, model, caliber or gauge, manufacturer, country of manufacture, and the serial number of each firearm imported or otherwise acquired, and the date such importation or other acquisition was made.

Title 27, Code of Federal Regulations, Part 478, Subpart H, Section 478.123(a) – **Records maintained by manufacturers** – provides that each licensed manufacturer shall record the type, model, caliber or gauge and serial number of each complete firearm manufactured or otherwise acquired, and the date such manufacture or other acquisition was made. The information required by this paragraph shall be recorded not later than the seventh day following the date such manufacture or other acquisition was made.

- (2) Title 27, Code of Federal Regulations, Section 53.172 (a)(2) requires the person who paid the tax to submit with the claim or credit a written consent of the ultimate purchaser to the allowance of the credit or refund, or submit with the claim or credit a statement, supported by sufficient available evidence, asserting that:
 - (i) The person has neither included the tax in the price of the article with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or
 - (ii) The person has repaid the amount of the tax to the ultimate purchaser of the article.

Is interest allowable on this type of claim?

Yes.

Whom do I contact if I have questions about claims or credits taken due to this exemption?

If you have any questions regarding FAET claims or credits on this exemption, please contact:

Alcohol and Tobacco Tax and Trade Bureau
National Revenue Center
Firearms and Ammunition Excise Tax Group
8002 Federal Office Building
550 Main Street
Cincinnati, OH 45202-5215

Toll-free telephone number: 1-877-882-3277

Direct telephone number: (513) 684-3817

Fax Number: (513) 684-2252

E-mail: ttbfaet@ttb.treas.gov

Attachment: [TTB Form 5620.8, Claim – Alcohol, Tobacco and Firearms Taxes](#)