

## CHAPTER 5. QUALIFYING TO DO BUSINESS IN NFA FIREARMS

### Section 5.1 Licensing under the GCA

**5.1.1 Application for GCA license.** Any “person” intending to engage in the business of importing, manufacturing, or dealing in NFA firearms, which are also defined as “firearms” under the GCA, must first apply for and obtain a license.<sup>70</sup> The license application is ATF Form 7 (5310.12). Appendix C contains a copy of the form. Licenses are issued for a period of 3 years.

**5.1.1.1 Definition of “person” for GCA purposes.** The GCA defines “person” to include “any individual, corporation, company, association, firm, partnership, society, or joint stock company.”<sup>71</sup> ATF recognizes the term to include a limited liability company (“LLC”) organized under State law. Thus, an LLC must obtain a GCA license to engage in a GCA firearms business and ATF will issue a license to an LLC meeting the licensing standards.

### 5.1.2 License fees.<sup>72</sup>

**5.1.2.1 Manufacturers.** If the applicant is a manufacturer of destructive devices, the fee is \$1,000 per year. For firearms other than destructive devices, the fee is \$50 per year.

**5.1.2.2 Importers.** If the applicant is an importer of destructive devices, the fee is \$1,000 per year. For firearms other than destructive devices, the fee is \$50 per year.

**5.1.2.3 Dealers.** If the applicant is a dealer in destructive devices, the fee is \$1,000 per year. For firearms other than destructive devices, the fee is \$200 for 3 years, except that the fee for renewal is \$90 for 3 years.

### 5.1.3 Licensing standards under the GCA.<sup>73</sup>

**5.1.3.1 Age.** If the applicant is an individual, he or she must be at least 21 years of age.

**5.1.3.2 Prohibited persons.** Persons who fall within the prohibited persons categories set forth in 18 U.S.C. 922(g) and (n) do not qualify for licensing. The same is true of business entities having “responsible persons” under any one of the disabilities.

**5.1.3.3 “Responsible persons.”** If the applicant is a corporation, partnership, or association (including an LLC), the applicant would not qualify for licensing if the entity itself has GCA disabilities under section 922(g) or (n) or has any individual possessing directly or indirectly the power to direct or cause the direction of the management and policies of the firm under disabilities. These management and policy-making individuals include only those having responsibilities with respect to firearms. For example, they would not include individuals only

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<sup>70</sup> 18 U.S.C. 923(a); 27 CFR 478.44

<sup>71</sup> 18 U.S.C. 921(a)(1)

<sup>72</sup> 18 U.S.C. 923(a)(1); 27 CFR 478.42

<sup>73</sup> 18 U.S.C. 923(d)(1)

having duties related to administration or personnel. Those having management and policy-making responsibilities with respect to firearms are referred to as “responsible persons” and must be listed on the firm’s license application and their fingerprints and photographs must accompany the application. If the firm has a “responsible person” under disabilities, the firm would become eligible for licensing if the person is removed from his or her firearms management or policy-making position.

**5.1.3.4 Removing disabilities.** The GCA provides a mechanism for ATF to grant relief to persons under Federal firearms disabilities who apply for relief.<sup>74</sup> However, Congress has denied ATF’s use of funds to process relief applications or grant relief. An exception was made for corporations. Thus, a corporation convicted of a “crime punishable by imprisonment for a term exceeding one year” may apply for and obtain relief from ATF. Not all disabilities are permanent. *Examples:* a person convicted of a crime in Federal court could get relief by applying to the U.S. Pardon Attorney for a presidential pardon and obtaining a pardon; a person convicted of a State crime may, depending on State law, get relief by a State pardon, expunction or set-aside of the conviction, or restoration of rights if the person would have no remaining firearms disabilities under State law<sup>75</sup>; and a person under a restraining order relating to domestic violence would be relieved from disabilities if the order is terminated.

**5.1.3.5 Prior willful violations.** The applicant must not have willfully violated any provision of the GCA or the regulations.

**5.1.3.6 False statements.** The applicant has not willfully failed to disclose any material information required or made any material false statements in connection with the application.

**5.1.3.7 Business premises.** The applicant must have a permanent premises from which business is to be conducted. The applicant must certify that conducting business from that location is not prohibited by State or local law; that within 30 days after license approval the business will comply with State and local laws applicable to the business and business will not be conducted until State and local requirements have been met; and that the chief law enforcement officer at the proposed business location has been advised of the intent to apply for a license.

**5.1.3.8 May a license be obtained to do business solely away from the licensed premises at gun shows?** Under the law, a licensee is entitled to do business at gun shows within the State in which the licensed premises is located. However, a person seeking a license to deal in firearms solely away from the licensed premises at gun shows does not qualify for licensing. Licensing in this instance would not meet the requirement discussed in Section 5.1.3.8 that the applicant must have a permanent premises from which business is conducted.

**5.1.3.9 Gun storage and safety devices.** Applicants for dealers licenses must certify that secure gun storage or safety devices will be available to nonlicensees with certain exceptions: storage or safety devices are temporarily unavailable because of theft, casualty loss, consumer sales, backorders, or similar reasons beyond the licensee’s control.

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<sup>74</sup> 18 U.S.C. 925(c)

<sup>75</sup> 18 U.S.C. 921(a)(20)

**5.1.4 Multiple business locations.** A separate license must be obtained for each location at which business will be conducted.<sup>76</sup>

**5.1.4.1 Locations solely for storage.** No license is required to cover a separate warehouse used by the FFL solely for storage of firearms if required records are maintained at the licensed premises served by the warehouse.<sup>77</sup>

**5.1.5 Establishing a common expiration date for licenses at multiple locations.** For the convenience of FFLs, ATF Ruling 73-9 (see Appendix C) provides that FFLs holding licenses at more than one location may establish a common expiration date for the licenses issued to their several locations. FFLs wishing to establish such a date for all licenses issued to them may apply in writing to the Federal Firearms Licensing Center.

**5.1.6 Engaging in business as both an importer and a manufacturer.** Persons intending to engage in business as firearms importers and manufacturers, even if the businesses will be conducted from the same premises, must have both an importer's license and a manufacturer's license.<sup>78</sup>

**5.1.7 Do importers and manufacturers need a dealer's license to deal in the firearms they import or manufacture?** Licensed importers and manufacturers are not required to have a separate dealer's license to deal in firearms they import or manufacture. A license as an importer or manufacturer authorizes the FFL to deal in the types of firearms authorized by the license to be imported or manufactured.<sup>79</sup>

**5.1.8 License renewal.** Licenses are issued for a 3-year period. Prior to the expiration of a license, the FFL will receive from ATF a license renewal application, ATF Form 8, that should be filed with ATF prior to the expiration date shown on the current license. If a Form 8 is not received 30 days before the expiration date, the FFL should contact ATF's Federal Firearms Licensing Center. It is the responsibility of the FFL to timely obtain and file a renewal application. Appendix C contains a copy of the form. ATF has 60 days within which to act on an original or renewal license application.<sup>80</sup>

**5.1.8.1 Right to operate while renewal application is pending; "letters of continuing operations."** ATF's approval of a license renewal application may occur after the expiration date shown on the current license. If a license renewal application is timely filed, but not acted upon until after the expiration date of the applicant's current license, may the applicant lawfully conduct the business after that date? The law, 5 U.S.C. 558, allows an FFL to continue to lawfully conduct business under a current license until a timely filed renewal application is acted upon. To show the FFL's current suppliers that the license is still valid while the renewal application is pending, the FFL may obtain a "letter of continuing operations" from the Federal Firearms Licensing Center, showing that the transferee's license is still valid even though it appears on its face to have expired.

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<sup>76</sup> 27 CFR 478.50

<sup>77</sup> Ibid

<sup>78</sup> 27CFR 478.41(b)

<sup>79</sup> Ibid

<sup>80</sup> 27 CFR 478.45

**Section 5.2 Payment of special (occupational) tax to do business in NFA firearms.** See also Section 4.1.3.

**5.2.1 Every “person” who engages in the business of importing, manufacturing, or dealing in firearms (including pawnbrokers) shall pay a special tax.**<sup>81</sup> The tax must be paid on or before the date of commencing the taxable business and every year thereafter on or before July 1. The tax is not prorated and is computed for the entire tax year (July 1 through June 30), regardless of the portion of the year during which the taxpayer engages in business. Persons commencing business at any time after July 1 in any year are liable for the tax for the entire tax year.

**5.2.1.1 Definition of “person” for NFA purposes.** For purposes of the NFA, “person” is defined as a “partnership, company, association, trust, estate, or corporation, as well as a natural person.”<sup>82</sup> ATF recognizes the term to include a limited liability company (“LLC”) organized under State law. Thus, an LLC engaged in an NFA firearms business must pay the NFA special tax.

**5.2.2 Tax must be paid for each business location.** The special tax must be paid for each premises where business will be conducted.<sup>83</sup>

### **5.2.3 Rate of tax.**

**5.2.3.1 Importers and manufacturers.** The tax is generally \$1,000 a year or fraction thereof.<sup>84</sup> See 26 U.S.C. 5801(b) and 27 CFR 479.32a for the reduced tax rate for certain “small importers and manufacturers.” Those entitled to the reduced tax rate are subject only to a \$500 tax per year.

**5.2.3.2 Dealers.** The tax is \$500 a year or fraction thereof.<sup>85</sup>

**5.2.4 How to pay special tax.** Special tax must be paid by filing ATF Form 5630.7, Special Tax Registration and Return, together with a check or money order for the amount of the tax. The form and tax payment must be sent to the Bureau of ATF, Attention NFA, P.O. Box 403269, Atlanta, Ga. 30384-3269. Upon filing a properly completed Form 5630.7 and payment of the special tax, the taxpayer will be issued a special tax stamp as evidence of tax payment.<sup>86</sup>

**5.2.4.1 Employer identification number (EIN).** The tax return, Form 5630.7, must contain a valid EIN number issued by the Internal Revenue Service (IRS). If the taxpayer does not have an EIN number, the IRS in the taxpayer’s locality should be contacted to obtain a number. The number may also be obtained by contacting the IRS on-line.

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<sup>81</sup> 26 U.S.C. 5801

<sup>82</sup> 27 CFR 479.11

<sup>83</sup> 27 CFR 479.38

<sup>84</sup> 26 U.S.C 5801(a)(1)

<sup>85</sup> 26 U.S.C. 5801(a)(2)

<sup>86</sup> 27 CFR 479.36

**5.2.4.2 Renewal of special tax.** In May of each year, ATF will send a renewal tax return, ATF Form 5630.5R (NFA Special Tax Renewal Registration and Return) and ATF Form 5630.5RC (NFA Special Tax Location Registration Listing) to each person who paid the special tax for the current tax year. The taxpayer should make any necessary changes to the information pre-printed on the forms and return the forms with remittance to ATF as directed on the forms.

**5.2.5 Exemption from special tax.** Any person required to pay special tax shall be relieved from tax payment if it is established that the business is conducted exclusively on behalf of the U.S. Government.<sup>87</sup> The exemption may be obtained by filing with the NFA Branch a letter stating the manner in which business is conducted, the type of firearms to be manufactured, and proof of the person's contract with the U.S.<sup>88</sup> The exemption must be renewed on or before July 1 of each year.

**5.2.6 Collectors acquiring NFA firearms for their personal collections by acquiring dealers' licenses and paying NFA special tax.** Some NFA firearms collectors, who are not engaged in any firearms business, have been known to acquire a GCA license to deal in firearms and pay the NFA special tax to acquire NFA firearms for their personal firearms collections. They do so for a number of reasons: (1) to acquire firearms from nonlicensees residing out-of-state; (2) to circumvent requirements imposed on individuals to provide their fingerprints and photographs in order to receive NFA firearms and law enforcement certifications authorizing their receipt of such firearms; and (3) to avoid NFA transfer tax on firearms they receive from FFLs/SOTs.

*Warning: These transactions violate the law and can only lead to trouble for the collector. In these instances, the collector has committed Federal felonies by falsely stating on a license application and special tax return that the collector intends to conduct a firearms business. Any NFA firearms received tax free by the collector are subject to transfer tax and the collector's receipt of the firearms tax free violated the NFA. As held in ATF Ruling 76-22, these transfers are unlawful and the firearms received are subject to seizure and forfeiture.*

**Section 5.3 Registration by firearms manufacturers and exporters with the U.S. Department of State (DOS).** DOS has the responsibility of enforcing the provisions of the Arms Export Control Act (AECA) relating to the export of firearms and other defense articles on the U.S. Munitions List. Nevertheless, any person engaged in the U.S. in the business of manufacturing or exporting firearms or other defense articles is required to register with DOS's Directorate of Defense Trade Controls.<sup>89</sup> The regulations expressly state that "Manufacturers who do not engage in exporting must nevertheless register."

**5.3.1 How manufacturers should register.** DSP-9 (Registration Statement) and a transmittal letter required by DOS regulations at 22 CFR 122.2(b) must be submitted to DOS by the registrant with a check or money order payable to DOS of one of the fees prescribed by 22 CFR 122.3(a).<sup>90</sup> Appendix C contains a copy of Form DSP-9. The registration and transmittal letter must be signed by a senior officer who has been empowered by the registrant to sign the documents. The registrant must also

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<sup>87</sup> 26 U.S.C. 5851

<sup>88</sup> 27 CFR 479.33

<sup>89</sup> 22 CFR 122.1

<sup>90</sup> 22 CFR 122.2(a)

submit documentation demonstrating that it is incorporated or otherwise authorized to do business in the U.S.

**Section 5.4 Registration by firearms importers with ATF.** Persons engaged in the business in the U.S. of importing firearms and other articles enumerated on the U.S. Munitions Import List must register with ATF's Director.<sup>91</sup>

**5.4.1 How importers should register.** An application to register must be filed on ATF Form 4587, in duplicate, with the Director and be accompanied with the registration fee at the rate prescribed by the regulations at 27 CFR 447.32(b).<sup>92</sup> Appendix C contains a copy ATF Form 4587. Fees paid in advance for whole future years of a multiple year registration will be refunded upon request if the registrant ceases to engage in importing such firearms or other articles on the List. A request for refund must be submitted to ATF's Director, attention Firearms and Explosives Imports Branch, prior to the beginning of any year for which refund is claimed.

**Sec. 5.5 Filing by Facsimile Transmission.** The NFA Branch allows an FFL who is qualified to import, manufacture, or deal in NFA to file certain registration forms by facsimile transmission (fax) directly to the NFA Branch. The forms are: Form 2, Form 3, Form 5 (where the application is not accompanied by fingerprint cards), and Form 9. However, before the FFL can file by fax, the FFL must first submit an affidavit, in original, to the Chief, NFA Branch. The affidavit concerns who files the forms, the treatment of the signature on the fax as original, and that the copies are to be treated as originals. The format for the affidavit and a discussion of the procedure is in an ATF memo to Federal Firearms Licensees and NFA Special (Occupational) Taxpayers, dated January 31, 2006, and can be found in Appendix B.

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<sup>91</sup> 27 CFR 447.31

<sup>92</sup> 27 CFR 447.32