



Procedure for Certain Tobacco Products and Cigarette Papers and Tubes Withdrawn from the Market

To: Manufacturers and Importers of Tobacco Products, Cigarette Papers or Cigarette Tubes; Export Warehouse Proprietors; Dealers in Tobacco Products, Cigarette Papers, or Cigarette Tubes; and Others Concerned

A. Purpose.

This document establishes an optional alternate procedure that manufacturers and importers of tobacco products (except large cigars) or cigarette papers or tubes may use to file claims after April 1, 2009, for credit or refund of tax on such products withdrawn from the market.

B. Background

1. Tax Increase and Floor Stocks Tax

On February 4, 2009, the President signed into law the Children's Health Insurance Program Reauthorization Act ("the Act", Pub. L. 111-3). Section 701 of the Act increases the Federal excise tax rates applicable to tobacco products and cigarette papers and tubes. Section 701 also imposes a floor stocks tax on tobacco products (except large cigars) and cigarette papers and tubes held for sale on April 1, 2009. The tobacco products subject to the floor stocks tax are cigarettes, small cigars (that is, cigars weighing 3 pounds per 1,000 or less), chewing tobacco, snuff, pipe tobacco, and roll-your-own tobacco. Large cigars are not subject to floor stocks tax. A credit of up to \$500 may be taken against the total floor stocks tax liability.

The table below shows the Federal excise tax in effect on March 31, 2009, the tax in effect on April 1, 2009, and the floor stocks tax imposed on each product.

Product	Tax Rate Effective March 31, 2009	Tax Rate Effective April 1, 2009	2009 Floor Stocks Tax Rate (difference between the rates)
Small Cigarettes	\$19.50 per 1,000	\$50.33 per 1,000	\$30.83 per 1,000
Large Cigarettes (6½ " or less long)	\$40.95 per 1,000	\$105.69 per 1,000	\$64.74 per 1,000
Large Cigarettes¹ (more than 6½ " 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 Tobacco²	\$0.195 per pound	\$0.5033 per pound	\$0.3083 per pound
Snuff²	\$0.585 per pound	\$1.51 per pound	\$0.925 per pound
Pipe Tobacco²	\$1.0969 per pound	\$2.8311 per pound	\$1.7342 per pound
Roll-Your-Own Tobacco²	\$1.0969 per pound	\$24.78 per pound	\$23.6831 per pound
Cigarette Papers³	\$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 Tubes³	\$0.0244 per 50 or fraction of 50	\$0.0630 per 50 or fraction of 50	\$0.0386 per 50 or fraction of 50

1 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.

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

3 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.

Tobacco products and cigarette papers and cigarette tubes removed from bond before April 1, 2009, by manufacturers and importers and still in commercial channels will have been originally taxpaid by the manufacturer or importer at the rates applicable on March 31, 2009. On or after April 1, 2009, if the manufacturer

or importer still holds these products (except large cigars), the manufacturer or importer must pay the floor stocks tax on the products. Dealers (including distributors, wholesalers, and retailers) that hold such products for sale on April 1, 2009, are required to pay the floor stocks tax on the products.

2. Credit or Refund for Products Withdrawn from Market

Under section 701 of the Act, all provisions of law, including penalties, that apply to the taxes imposed by section 5701 of the Internal Revenue Code of 1986 (IRC) apply to the floor stocks tax, insofar as those provisions are applicable and not inconsistent with the provisions of the floor stocks tax provisions. Under the IRC at 26 U.S.C. 5705, a manufacturer or importer of tobacco products or cigarette papers or cigarette tubes may be allowed, under certain conditions, a credit or refund of Federal excise tax on such products that the manufacturer or importer withdraws from the market. One condition of the credit or refund is proof that the manufacturer or importer paid the tax on the products withdrawn from the market.

With regard to the floor stocks tax, section 701 of the Act provides that the Secretary of the Treasury may treat a person who bore the ultimate burden for the floor stocks tax as the person to whom a credit or refund may be allowed or made. Accordingly, where a manufacturer or importer withdraws products from the market and wishes to file a claim for refund or credit, the manufacturer or importer cannot obtain a refund or credit of the amount of the floor stocks tax paid by a dealer unless the manufacturer or importer can show to the satisfaction of the appropriate TTB officer that he reimbursed the dealer for the floor stocks tax paid on those products.

3. Basis for the Alternate Procedure

Manufacturers and importers are not required to mark packages of tobacco products or cigarette papers or tubes to show the date on which the products were removed from bond or released from customs custody subject to tax. Consequently, when there is a change in the tax rates, it is difficult for a manufacturer or importer to determine through records kept in the ordinary course of business the date a product withdrawn from the market was removed subject to tax and, therefore, the amount of tax paid on it. As a result, the usual procedures and records used to support a claim for refund or credit on such products may be inadequate. In the case of large cigars, the TTB regulations contain provisions (described below) for determining the amount of a refund or credit of tax where the taxable base varies and certain details about a specific withdrawal from the market (such as the amount of the original taxpayment) have not been established. There are no similar provisions applicable to tobacco products other than large cigars or to cigarette papers or tubes.

In recognition of these circumstances, in 1983, 2000, and 2001, TTB's predecessor agency, the Bureau of Alcohol, Tobacco, and Firearms (ATF), adopted a formula approach for floors stocks taxes for purposes of filing claims on withdrawals of cigarettes from the market under 26 U.S.C. 5705. These procedures were published as ATF Procedures 83-1, 2000-1, and 2001-2. The alternative procedure set forth here is based on these previous procedures. TTB believes that the procedure conforms to the intent and requirements of 26 U.S.C. 5705, section 701 of the Act, and the TTB regulations at 27 CFR 40.45 and 41.26.

This procedure is not authorized for use by manufacturers or importers of large cigars. As noted above, large cigars are not subject to the floor stocks tax. Further, the appropriate Federal excise tax applicable to large cigars is not only based on the date the products are removed; it is also based on the price for which the cigars are sold by the manufacturer or importer, including any bona fide discounts, rebates, or allowances. Because the tax on large cigars is based on a number of factors other than merely the date of removal, TTB believes that this procedure is inappropriate for use for such withdrawals from the market and that the existing TTB regulatory procedures regarding claims for refund or credit for large cigars should continue to apply. Under the TTB regulations, the refund or credit of tax on large cigars withdrawn from the market is limited to the lowest tax paid on that brand and size of cigar during the record retention period unless the manufacturer establishes that a greater amount was actually paid. (See 27 CFR 40.185, 40.311, 41.22, 41.170 and 41.172.)

4. Optional Use of the Procedure

TTB is authorizing this procedure as an alternate method under the provisions of 27 CFR 40.45 and 41.26. This procedure provides an alternative to the type of proof that a manufacturer or importer would ordinarily be required to submit to TTB to show the amount of tax actually paid, and thus refundable or creditable, on products withdrawn from the market.

Manufacturers and importers may, at their option, after April 1, 2009, submit claims for tobacco products under 26 U.S.C. 5705 using the procedure described herein. This procedure can be used only for purposes that are related to the tax increases on tobacco products (other than large cigars) and cigarette papers and tubes effective April 1, 2009. If a manufacturer or importer elects to use this procedure, then the procedure must be used in its entirety for all withdrawals from the market on which the manufacturer or importer intends to claim refund or credit of excise tax, until the conditions of the procedure are fully satisfied.

C. Procedure.

This procedure applies to all tobacco products (except large cigars) and cigarette papers and tubes. Where this procedure refers only to cigarettes, it is merely for illustrative purposes, and each reference to “cigarettes” in this procedure means small cigarettes. A manufacturer or importer may use this procedure for claims under 26 U.S.C. 5705 relating to other tobacco products as well (except large cigars) and to cigarette papers and tubes by using the applicable tax rate for the specific product in each case. A person who manufactures or imports more than one type of product must apply the formula individually for each type of product.

1. Establishing the Base Quantity

Under this procedure, a manufacturer or importer must first establish the base quantity of a particular type of product to which the previous tax rate applies. Using the example of cigarettes, a manufacturer or importer would establish the quantity of cigarettes at which the tax rate is \$19.50 per 1,000 by using the following steps:

- a. Determine the number of cigarettes withdrawn from the market during the period October 1, 2006, through September 30, 2008, for which credit or refund was approved by TTB and divide that number by the total number of cigarettes removed subject to tax for the same period. A manufacturer must include all withdrawals from the market and all removals subject to tax that took place under that manufacturer’s permit. An importer must include all cigarettes withdrawn from the market and all taxpaid removals (that is, releases from customs custody) at all ports of entry.
- b. Divide the number determined in (a) by 2.
- c. Multiply the number resulting from the calculation in (b) by the total number of cigarettes removed subject to tax during the period from April 1, 2008, through September 30, 2008. The resulting number is the base quantity.

2. Applying the Base Quantity.

On each claim involving cigarettes withdrawn from the market on or after April 1, 2009, it will be presumed that the manufacturer or importer taxpaid 11 percent of the cigarettes at the \$19.50 per 1,000 rate and 89 percent of the cigarettes at the \$50.33 per 1,000 rate. The manufacturer or importer must apply these percentages to each claim filed for withdrawals from the market on or after April 1, 2009, regardless of the number of factories or ports of entry involved, until the total quantity of cigarettes for which claims are paid at the rate of \$19.50 per 1,000 reaches the base quantity established in the section above entitled “Establishing the Base Quantity” above. After the base quantity for claims on products at the lower tax rate has been reached, all cigarettes withdrawn from the market will be presumed to have been taxpaid at the \$50.33 rate.

3. Filing Claims Where the Dealer has been Reimbursed

The application of the base quantity and the filing of claims under the percentages described above presumes that the manufacturer or importer did not reimburse the dealer, but rather that the manufacturer or importer paid tax at the rate of \$19.50 per 1,000 on 11 percent of the products covered by each claim and paid tax at the rate of \$50.33 per 1,000 on the remaining 89 percent of products covered by each claim.

However, TTB will allow a manufacturer or importer that uses the procedure to also be reimbursed for the amount of the floor stocks tax (\$30.83 per 1,000 cigarettes) that he reimbursed to a dealer, if the manufacturer or importer can show to the satisfaction of the appropriate TTB officer that he bore the ultimate burden of that tax. In such cases, the manufacturer or importer must file a separate claim for refund or credit covering only the floor stocks tax that he reimbursed to the dealer.

Because the floor stocks tax from dealers is not required prior to July 31, 2009, TTB will only pay such claims after July 31, 2009, unless the manufacturer or importer provides proof that the floor stocks tax was paid prior to that date. Further, because the manufacturer or importer operating under this procedure are being reimbursed for the full amount of the tax increase for 89 percent of the products withdrawn from the market, a manufacturer or importer may only be reimbursed for the floor stocks tax on a quantity up to the established base quantity.

4. Filing Claims

In addition to the requirements set forth in 27 CFR parts 40 and 41 regarding the filing of claims for tobacco products withdrawn from the market, each claim filed by the manufacturer or importer on TTB Form 5620.8 (Claim—Alcohol and Tobacco Tax and Trade Bureau Taxes) under this procedure must include the following information:

- a. The base quantity of products established under number 1 (Establishing the Base Quantity) above.
- b. The total quantity of products on which the manufacturer or importer has filed claims under this procedure up to and including the current claim.
- c. If applicable, the amount of floor stocks tax for which the manufacturer or importer claims to have borne through reimbursement to the dealer.
- d. If applicable, 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 or contracted to sell the products 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 the manufacturer or importer for the products was raised on or since the effective date of the floor stocks tax, the date of any such price 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 memoranda, 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 products withdrawn from the market.

5. Records

Manufacturers and importers must maintain all records, such as invoices, credit memoranda, 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 40.185 for manufacturers and 27 CFR 41.22 for importers.

6. Withdrawals Excluded from Procedure

Products in the ownership or possession of a manufacturer or importer on or before April 1, 2009, which are in the process of withdrawal on that date may not be included in claims filed under this procedure.

7. Questions and Inquiries

Questions regarding this procedure may be directed to:

National Revenue Center
550 Main Street
Cincinnati, OH 45202-3263

E-mail: ttbtobacco@ttb.treas.gov

Telephone: 1-877-882-3277

John J. Manfreda
Administrator
Alcohol and Tobacco Tax and Trade Bureau

Worksheet for TTB Procedure 2009–1

Although this worksheet refers only to cigarettes, it may be used for other products (except large cigars). If a manufacturer or importer wishes to apply this procedure to multiple products, each product must be addressed individually.

a. _____ Quantity of cigarettes withdrawn from the market during the period October 1, 2006, through September 30, 2008, for which claims were approved under 26 U.S.C. 5705.

b. _____ Quantity of cigarettes removed subject to tax during the period October 1, 2006, through September 30, 2008.

c. _____ Divide item (a) by item (b).

d. _____ Divide item (c) by 2.

e. _____ Multiply item (d) by the total number of cigarettes removed subject to tax during the period of April 1, 2008, through September 30, 2008.

f. _____ Quantity of cigarettes withdrawn from the market on or after April 1, 2009, for which claims under 26 U.S.C. 5705 have been filed. This number cannot exceed the amount determined in item (e) above.

g. _____ Multiply item (e) by 11 percent. This is the quantity of cigarettes for which a manufacturer or importer may file a claim at the lower tax rate.

h. _____ 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 (g) above.